

**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**  
Rud Browne  
Barry Buchanan  
Tyler Byrd  
Todd Donovan  
Ben Elenbaas  
Carol Frazey  
Kathy Kershner

**WHATCOM COUNTY COUNCIL**

# **COMBINED AGENDA PACKET FOR DECEMBER 8, 2020**

**INCLUDES INFORMATION  
FOR THE FOLLOWING MEETINGS:**

**9:45 A.M. – FINANCE AND ADMINISTRATIVE SERVICES COMMITTEE  
(ENDS NO LATER THAN NOON)**

**12:45 P.M. – COMMITTEE OF THE WHOLE  
(CHERRY POINT DISCUSSION SCHEDULED 3 – 5 P.M.)**

**COUNCIL (6 P.M.)**

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## **UPCOMING MEETINGS AND EVENTS:**

**DECEMBER 8, 2020**

**3 P.M. – SPECIAL COUNCIL MEETING (CHERRY POINT)  
VIRTUAL MEETING – VIEW ONLINE**

**DECEMBER 24 - 25, 2020**

**HOLIDAYS**

**JANUARY 1, 2021**

**HOLIDAY**

**JANUARY 12, 2021**

**REGULAR COMMITTEE AND COUNCIL MEETINGS**

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## **PARTICIPATE IN VIRTUAL COUNCIL MEETINGS**

**THE COUNCIL IS CURRENTLY HOLDING ALL MEETINGS REMOTELY**

**VIEW MEETING SCHEDULES, AGENDAS, MINUTES, VIDEOS, AND ARCHIVES AT  
[WWW.WHATCOM.LEGISTAR.COM](http://WWW.WHATCOM.LEGISTAR.COM)**

**FOR INSTRUCTIONS ON HOW TO WATCH OR PARTICIPATE IN COMMITTEE AND  
COUNCIL MEETINGS, PLEASE VISIT**

**[WWW.WHATCOMCOUNTY.US/3415/PARTICIPATE-IN-VIRTUAL-COUNCIL-MEETINGS](http://WWW.WHATCOMCOUNTY.US/3415/PARTICIPATE-IN-VIRTUAL-COUNCIL-MEETINGS)**

**OR CONTACT THE COUNCIL OFFICE AT 360.778.5010**

# **COMMITTEE AGENDAS**

## **FINANCE AND ADMINISTRATIVE SERVICES COMMITTEE**

**9:45 a.m. TUESDAY, December 8, 2020 (ENDS NO LATER THAN 12:00 p.m.)**

**Virtual Meeting**

### **Call To Order**

### **Roll Call**

### **Committee Discussion and Recommendation to Council**

1. AB2020-535 Ordinance amending the project budget for the E. Smith/Hannegan Road Intersection Improvements Fund, request no. 1  
**Pages 1 - 8**
2. AB2020-536 Ordinance amending the project budget for the Marine Drive, Locust Ave to Alderwood Ave, Reconstruction Fund, request no. 1  
**Pages 9 - 16**
3. AB2020-542 Ordinance amending Silver Lake Park Improvement Fund, request no. 2  
**Pages 17 - 21**
4. AB2020-543 Ordinance amending the 2021 Whatcom County Budget, request no. 1, in the amount of \$14,781,015  
**Pages 22 - 32**
5. AB2020-556 Ordinance amending the 2020 Whatcom County Budget, request no. 22, in the amount of \$3,524,769  
**Pages 33 - 36**
6. AB2020-561 Request authorization for the County Executive to enter into an interlocal agreement amendment 1 of Whatcom County contract 201909004 between Whatcom County and the City of Bellingham for the Lake Whatcom Homeowner Incentive Program, in the amount of \$200,000  
**Pages 37 - 43**
7. AB2020-562 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the Whatcom Conservation District for the Lake Whatcom Homeowner Incentive Program assistance, in the amount of \$92,095  
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**Pages 70 - 100**
10. AB2020-584 Resolution approving the 2021 recommended Convention Center allocations for tourism-related facilities and activities as defined through RCW 67.28.1816  
**Pages 101 - 104**



## **Council "Consent Agenda" Items**

1. AB2020-551 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Action Cleaning for providing custodial services to Whatcom County's satellite buildings, also to include Sheriff Laurel Street station, WUECC, and extra Covid-19 sanitization, in the amount of \$50,667.80\_  
**Pages 105 - 112**
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**Pages 113 - 144**
3. AB2020-557 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Pacific Security to continue security services at the COVID-19 Temporary Housing Facility, in the amount of \$41,000 for a total amended contract amount of \$156,000  
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4. AB2020-558 Request authorization for the County Executive to enter into a contract between Whatcom County and Lydia Place to provide emergency housing for families experiencing unsheltered homelessness, in the amount of \$114,172  
**Pages 153 - 178**
5. AB2020-559 Request authorization for the County Executive to enter into a contract between Whatcom County and YWCA Bellingham to provide additional shelter beds for women aged 55 or older, in the amount of \$122,020  
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6. AB2020-560 Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Meridian School District for reimbursement of eligible COVID-related technology expenses, in the amount of \$79,560  
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7. AB2020-568 Request authorization for the County Executive to enter into a contract between Whatcom County and the Jet Oldsters Association of Ferndale to provide custodial services and supervision when the Ferndale Senior Activity Center is reserved after program hours  
**Pages 217 - 224**
8. AB2020-570 Request authorization for the County Executive to enter into an agreement between Whatcom County and the Jet Oldsters Association of Ferndale for staffing and operation of the Ferndale Senior Activity Center, in the amount of \$123,748  
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11. AB2020-573 Request authorization for the County Executive to enter into an agreement between Whatcom County and the Whatcom Council on Aging for staffing and operation of the Bellingham Senior Activity Center, in the amount of \$123,748  
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12. AB2020-574 Request authorization for the County Executive to enter into an agreement between Whatcom County and Pioneer Human Services to lease a portion of the Crisis Stabilization Center, in the amount of \$24,500  
**Pages 278 - 287**
13. AB2020-575 Request authorization for the County Executive to enter into an agreement between Whatcom County and Compass Health to lease a portion of the Crisis Stabilization Center, in the amount of \$24,000 annually  
**Pages 288 - 297**

14. AB2020-576 Request authorization for the County Executive to enter into a contract between Whatcom County and Opportunity Council to operate the Whatcom Homeless Service Center, in the amount of \$796,701  
**Pages 298 - 336**
15. AB2020-577 Request approval for the County Executive to authorize the purchase of body worn cameras, and enter into a contract for associated services with Axon Enterprise, Inc., using the Washington State Contract #06316, in an amount not to exceed \$381,437.85  
**Pages 337 - 349**
16. AB2020-578 Request authorization for the County Executive to renew a Collective Bargaining Agreement between Whatcom County and General Teamsters' Local Union 231 Master Collective Bargaining Unit for the period January 1, 2021 through December 31, 2021  
**Pages 350 -354**
17. AB2020-579 Request authorization for the County Executive to accept Midwest Employer Casualty renewal option 1 for insurance protection for the self-insured workers' compensation program in 2021  
**Pages 355 - 359**
18. AB2020-581 Request authorization for the County Executive to enter into a residential lease agreement between Whatcom County and Wayne and Michelle Moses and Barbara Jackson to reside at 7981 Blaine Road, Blaine, for monthly rent of \$1,639.00  
**Pages 360 - 397**
19. AB2020-582 Request authorization for the County Executive to renew a Collective Bargaining Agreement between Whatcom County and PROTEC17 for the period January 1, 2021 through December 31, 2021  
**Pages 398 - 403**
20. AB2020-583 Request authorization for the County Executive to enter into a two year agreement between Whatcom County and Whatcom Humane Society to provide animal control and shelter services, in an amount not to exceed \$796,260  
**Pages 404 - 433**
21. AB2020-585 Request authorization for the County to Executive to enter into a 10 year lease agreement between Whatcom County and Stryker for the acquisition of capital equipment including gurneys, powerlifts, LifePaks and more to outfit EMS Advanced Life Support Units in an amount of 10 equal payments of \$468,316.48 over 10 years totaling \$4,683,164.80  
**Pages 434 - 455**
22. AB2020-586 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Service Master Cleaning to continue providing cleaning services at the COVID-19 Temporary Housing Facility, in the amount of \$150,000.  
**Pages 456 - 461**
23. AB2020-587 Request authorization for the County Executive to enter into a three-year agreement, using the National Association of State Procurement Officials ValuePoint Master Agreement #AR2474 and State of Washington Participating Addendum #05116, between Whatcom County and CenturyLink Communications, LLC for telecommunications trunk line services, in the amount of \$106,127.17  
**Pages 462 - 521**
24. AB2020-589 Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Bellingham Fire Department to increase the reimbursement for costs associated with the support of two Community Paramedics in the amount of \$383,494 for a total amended amount of \$704,549  
**Pages 522 - 527**

**Items Added by Revision**

**Other Business**

**Adjournment**

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COMMITTEE OF THE WHOLE  
12:45 p.m. TUESDAY, Decemer 8, 2020 (CHERRY POINT DISCUSSION 3:00 – 5:00 p.m.)  
Virtual Meeting

**Call To Order**

**Roll Call**

**Special Presentation**

**Committee Discussion**

1. AB2020-219 Discussion and update on strategies and other items related to COVID-19 (Council and Health Board)

**Peace Health Chief Medical Officer Dr. Sudhakar Karlapudi will join Whatcom County Health Department Director Erika Lautenbach to provide information on hospital capacity**

**Page 528**

**Committee Discussion and Recommendation to Council**

1. AB2020-565 Consideration of Hearing Examiners recommendation on preliminary long subdivision application filed by Governors Point Land LP (Governors Point subdivision)  
**Pages 529 - 619**
2. AB2020-566 Resolution affirming confidence in election results  
**Pages 620 - 626**
3. AB2020-546 Ordinance amending Whatcom County Code 2.98, Point Roberts Community Advisory Committee, to revise membership and meeting procedures to broaden representation and improve transparency  
**Pages 627 - 629**

**Committee Discussion**

1. AB2020-345 Discussion of proposed Cherry Point amendments

**Continued discussion of County Council and Joint Stakeholder Group proposed revisions to the Whatcom County Planning Commission's recommendations - Cherry Point**

**Discussion will begin at 3 p.m. and end no later than 5 p.m.**

**Pages 630 - 714**

**Items Added by Revision**

**Other Business**

**Adjournment**

# **COUNCIL AGENDA**

REGULAR COUNCIL MEETING  
6:00 p.m. TUESDAY, December 8, 2020  
Virtual Meeting

## **CALL TO ORDER**

## **ROLL CALL**

## **FLAG SALUTE**

## **ANNOUNCEMENTS**

The Council is currently holding all meetings remotely. View meeting schedules, agendas, minutes, videos, and archives at [www.whatcom.legistar.com](http://www.whatcom.legistar.com). For instructions on how to watch or participate in this meeting, please visit us at [www.whatcomcounty.us/joinvirtualcouncil](http://www.whatcomcounty.us/joinvirtualcouncil) or contact the Council Office at 360.778.5010.

## **COUNTY EXECUTIVE'S REPORT**

### **MINUTES CONSENT**

1. [MIN2020-113](#) Committee of the Whole for November 10, 2020 **Pages 715 - 718**
2. [MIN2020-114](#) Regular County Council for November 10, 2020 **Pages 719 – 741**
3. [MIN2020-115](#) Special Council for November 16, 2020 **Pages 742 - 746**
4. [MIN2020-116](#) Water Work Session for November 17, 2020 **Pages 747 - 751**
5. [MIN2020-117](#) Special Council Cherry Point Work Session for November 17, 2020 **Pages 752 - 756**

### **OPEN SESSION (20 MINUTES)**

To participate, see instructions at [www.whatcomcounty.us/joinvirtualcouncil](http://www.whatcomcounty.us/joinvirtualcouncil) or contact the Council Office at 360.778.5010.

### **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)

1. [AB2020-551](#) Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Action Cleaning for providing custodial services to Whatcom County's satellite buildings, also to include Sheriff Laurel Street station, WUECC, and extra Covid-19 sanitization, in the amount of \$50,667.80  
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**Pages 522 - 527**

## **OTHER ITEMS**

### **(From Council Finance and Administrative Services Committee)**

1. AB2020-535 Ordinance amending the project budget for the E. Smith/Hannegan Road Intersection Improvements Fund, request no. 1  
**Pages 1 - 8**
2. AB2020-536 Ordinance amending the project budget for the Marine Drive, Locust Ave to Alderwood Ave, Reconstruction Fund, request no. 1  
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**Pages 101 - 104**

**(From Council Committee of the Whole)**

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**Pages 529 - 619**
12. AB2020-566 Resolution affirming confidence in election results  
**Pages 620 - 626**
13. AB2020-546 Ordinance amending Whatcom County Code 2.98, Point Roberts Community Advisory Committee, to revise membership and meeting procedures to broaden representation and improve transparency  
**Pages 627 - 629**

**(No Committee Assignment)**

14. AB2020-524 Ordinance creating a Child and Family Well-Being Task Force  
**Pages 757 - 762**

**COUNCIL APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES**

1. AB2020-552 Appointment to Drainage Improvement District #7, Supervisor Position 3 - Applicant(s): Rod Stump  
**Pages 763 - 767**

**ITEMS ADDED BY REVISION**

**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. AB2020-553 Ordinance granting City of Lynden a non-exclusive franchise for an industrial condensate pipeline  
Pages 768 - 782

**SPECIAL COUNCIL ONLY ITEM**

1. AB2020-588 Approval of letter/request to provide additional public spaces for assigned family visitations during the COVID-19 Pandemic  
Page 783

**COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES**

**ADJOURN**





# Whatcom County

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

## Agenda Bill Master Report

File Number: **AB2020-535**

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<b>File ID:</b>	AB2020-535	<b>Version:</b>	1	<b>Status:</b>	Introduced
<b>File Created:</b>	11/09/2020	<b>Entered by:</b>	MCaldwel@co.whatcom.wa.us		
<b>Department:</b>	Finance Division	<b>File Type:</b>	Ordinance		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

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Primary Contact Email: [mcaldwel@co.whatcom.wa.us](mailto:mcaldwel@co.whatcom.wa.us)

### **TITLE FOR AGENDA ITEM:**

Ordinance amending the project budget for the E. Smith/Hannegan Road Intersection Improvements Fund, request no. 1

### **SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

Requests appropriation of \$3,925,000 to fund the construction phase and wetland mitigation requirements of the E. Smith/Hannegan Rd Intersection Improvements project, to be funded by grants and local road funds.

### **HISTORY OF LEGISLATIVE FILE**

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<b>Date:</b>	<b>Acting Body:</b>	<b>Action:</b>	<b>Sent To:</b>
11/24/2020	Council	INTRODUCED	Council Finance and Administrative Services Committee

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**Attachments:** Proposed Ordinance, Proposed Ordinance - Exhibit A, Memo, Supplemental Budget Request, CRP Narrative

ORDINANCE NO. \_\_\_\_\_

**ORDINANCE AMENDING THE PROJECT BUDGET FOR THE E.  
SMITH/HANNEGAN ROAD INTERSECTION IMPROVEMENTS FUND,  
REQUEST NO. 1**

**WHEREAS**, Ordinance No. 2018-057 established the E. Smith/Hannegan Road Intersection Improvements Fund in 2018 granting expenditure authority to initiate preliminary engineering for the multi-year project, and;

**WHEREAS**, the preliminary engineering of the E. Smith/Hannegan Road Intersection Improvements is approximately 90% complete, with permitting and property rights acquisition in progress, and;

**WHEREAS**, it is now necessary to add to the project based budget to supplement design and continue with the construction and construction engineering services, and;

**WHEREAS**, the East Smith & Hannegan Road Intersection Improvements Project was confirmed on the Council approved 2021 Annual Construction Program and is item number 2 on the Council approved 2021-2026 Six Year Transportation Improvement Program (2021-2026 STIP), and;

**WHEREAS**, the 2021-2026 STIP estimate of \$3.565 million in remaining project expenses is an estimate only and therefore should be budgeted with a 10% contingency ,and;

**WHEREAS**, the project has secured \$2 million of outside funding commitments (\$1 million federal Highway Safety Improvement Program funds and \$1 million federal Surface Transportation Block Grant funds), and;

**WHEREAS**, additional Road funds of up to \$1.925 million, including contingency amounts, will be used to supplement the project's grant funding;

1           **NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that  
2 Ordinance No. 2018-057, associated with establishing a project based budget for  
3 the E. Smith/Hannegan Rd Intersection Improvements Fund, is hereby amended,  
4 effective January 1<sup>st</sup>, 2021, by adding an additional amount of \$3,925,000 of  
5 expenditure authority to the project budget for a new current project budget  
6 expenditure amount of \$4,785,000 as described in Exhibit "A"  
7

8  
9           **ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

10  
11  
12 ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

13  
14  
15 \_\_\_\_\_  
Dana Brown-Davis, Clerk of the Council

\_\_\_\_\_  
Barry Buchanan, Chair of the Council

16  
17  
18  
19 APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE  
WHATCOM COUNTY, WASHINGTON

20  
21  
22 Approved Electronically CQ/CPK11-09-20  
23 Christopher Quinn  
24 Senior Civil Deputy Prosecuting Attorney

\_\_\_\_\_  
Satpal Singh Sidhu, County Executive

(    ) Approved      (    ) Denied

Date Signed: \_\_\_\_\_

Exhibit "A"

**Project Based Budget - Budget Request Tracking Sheet**

11/5/2020

AJT

Project Title: **E. Smith Road & Hannegan Road Intersection Improvements**

Project Codes: **CRP No. 914002; Cost Center 382100**

Project Based Budget Request: **No. 1**

Duration Requested: **4 yrs (2020, 2021, 2022, 2023)**

Budget Account	Project Activity	Current Approved Project Budget	Amended Project Budget Request	New Approved Project Budget
595110	Preliminary Engineering (In-House & Consultant)	\$640,000	\$110,000	\$750,000
595200	Right of Way	\$220,000		\$220,000
595300	Construction		\$3,365,000	\$3,365,000
595120	Construction Engineering (In-House & Consultant)		\$450,000	\$450,000
<b>TOTAL</b>		<b>\$860,000</b>	<b>\$3,925,000</b>	<b>\$4,785,000</b>

Object Account	Project Funding	Current Approved Project Revenue	Amended Project Revenue Request	New Approved Project Revenue
8301	Local Funds (transfer from Road Fund)	\$860,000	\$1,925,000	\$2,785,000
4333	Federal STBG Funds (Reimbursement for construction)*		\$1,000,000	\$1,000,000
4333	Federal HSIP Funds (Reimbursement for construction)*		\$1,000,000	\$1,000,000
<b>TOTAL</b>		<b>\$860,000</b>	<b>\$3,925,000</b>	<b>\$4,785,000</b>

\* Funds committed, but not yet obligated

\*HSIP = Highway Safety Improvement Program

\*STBG = Surface Transportation Block Grant



**Jon Hutchings**  
Director

## MEMORANDUM

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

**Through:** Jon Hutchings, Director *JH*

**From:** James P. Karcher, P.E., County Engineer *JPK*

**Date:** November 6, 2020

**Subject:** E. Smith/Hannegan Road Intersection Improvements;  
CC 382100; CRP No 914002  
**Project Based Budget Amendment No. 1 to Ordinance 2018-057**

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Enclosed for your review and signature is Amendment No. 1 to Ordinance 2018-057 associated with the E. Smith/Hannegan Road Intersection Improvement's Project Based Budget Fund.

### **Requested Action**

Public Works respectfully requests that the County Council and the County Executive sign Amendment No. 1 to Ordinance 2018-057 for the E. Smith/Hannegan Road Intersection Improvements Project Based Budget Fund.

### **Background and Purpose**

The E. Smith/Hannegan Road Intersection Improvement's Project Based Budget Fund was established by Ordinance 2018-057 for an amount of \$860,000. This request will increase the Project Based Budget fund amount by \$3,925,000 to cover the construction contract, the consultant construction services, in-house construction engineering & contract administration and wetland mitigation requirements. The request includes a contingency to address the fact that the remaining construction phase items are an estimate. The total project budget authority will be \$4,785,000.

Current project status is: Design phase for the roundabout is at approximately 90% complete; Permitting and Right of Way are in progress.

### **Funding Amount and Source**

The construction contract and construction engineering work will be funded by a variety of sources including Federal Highway Safety Improvement Program Funds & Surface Transportation Block Grant Funds and Local Road Funds as detailed in the attached documents.

Please contact Andrew Tischleder at extension 6224, if you have any questions or concerns regarding the details of this Project Based Budget Amendment No. 1.

# Supplemental Budget Request


**Public Works**

**Engineering Design/Const**

Suppl ID # 3132    **Fund** 382    **Cost Center** 382100    **Originator:** Jim Karcher

**Expenditure Type:** One-Time    **Year 1** 2021    **Add'l FTE**     **Add'l Space**     **Priority** 1

**Name of Request:** Fund 382 E. Smith/Hannegan Intersection Imp. Req 2

<b>X</b>		11/9/20 Date
<b>Department Head Signature (Required on Hard Copy Submission)</b>		

Costs:	<i>Object</i>	<i>Object Description</i>	<i>Amount Requested</i>
	4333.2022	STP (Surface Trans Prog	(\$1,000,000)
	4333.2029	FHWA-Other	(\$1,000,000)
	6110	Regular Salaries & Wages	\$145,000
	6110	Regular Salaries & Wages	\$65,000
	6290	Applied Benefits	\$105,000
	6290	Applied Benefits	\$45,000
	6630	Professional Services	\$200,000
	7380	Other Improvements	\$3,365,000
	8301	Operating Transfer In	(\$1,925,000)
	<b>Request Total</b>		<b>\$0</b>

**1a. Description of request:**

The intersection of East Smith and Hannegan Roads is located in Sections 28, 29, 32 and 33, T39N, R3E. This project is listed #R2 on the 2021-2026 Six-Year Transportation Improvement Program and currently experiences delays due to the lack of left-turn channelization on Smith Road. Traffic counts and warrants have been completed. Additionally, an associated 'Alternatives Analysis' was performed by a traffic consultant in 2018. Construction proposed for 2021 or 2022 depending on ROW acquisition, utility relocation, and environmental permitting. This request is to provide the funding needed in the project based budget for the construction and construction engineering work related to this project.

**1b. Primary customers:**

All road users who travel on the Hannegan and Smith Road corridors.

**2. Problem to be solved:**

The main purpose of the intersection improvements is to improve vehicle operations and increase safety for vehicle drivers, bicyclists, and pedestrians.

**3a. Options / Advantages:**

The alternatives analysis completed in 2018 compared three alternatives for improvements to the intersection. The three alternatives were an upgraded traffic signal with protected left turn movements, a single-lane roundabout, and a double-lane roundabout. The double-lane roundabout provided the highest level of vehicle operations for a twenty year design life, while providing a much safer intersection than the existing signal or an upgraded signal.

**3b. Cost savings:**

Potential costs savings are realized by an improved level of service for the motoring public and potential decrease in motor vehicle accidents.

**4a. Outcomes:**

The approval of budget authority will allow for the completion of design, R/W acquisition, permitting, and construction of the chosen alternative

## Supplemental Budget Request

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**Public Works**

**Engineering Design/Const**

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Suppl ID # 3132

**Fund** 382

**Cost Center** 382100

**Originator:** Jim Karcher

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**4b. Measures:**

The measures of success will be obligation of construction grant funds of \$2 million when R/W is certified and environmental permits are signed off by FHWA and WSDOT.

**5a. Other Departments/Agencies:**

N/A

**5b. Name the person in charge of implementation and what they are responsible for:**

N/A

**6. Funding Source:**

The construction contract and construction engineering work will be funded with Surface Transportation Block Grant (STBG) and Highway Safety Improvement Program funds. The remainder will be covered with local Road funds.

Current Funding:

Road Funds: \$860,000

Proposed Additional Funding:

Federal STBG: \$1,000,000

Federal HSIP: \$1,000,000

Road Funds: \$1,925,000

Total Project Budget: \$4,785,000

## East Smith Road & Hannegan Road Intersection Improvements CRP # 914002

**Construction Funding Year(s):** 2021 - 2022

**Project Narrative:**

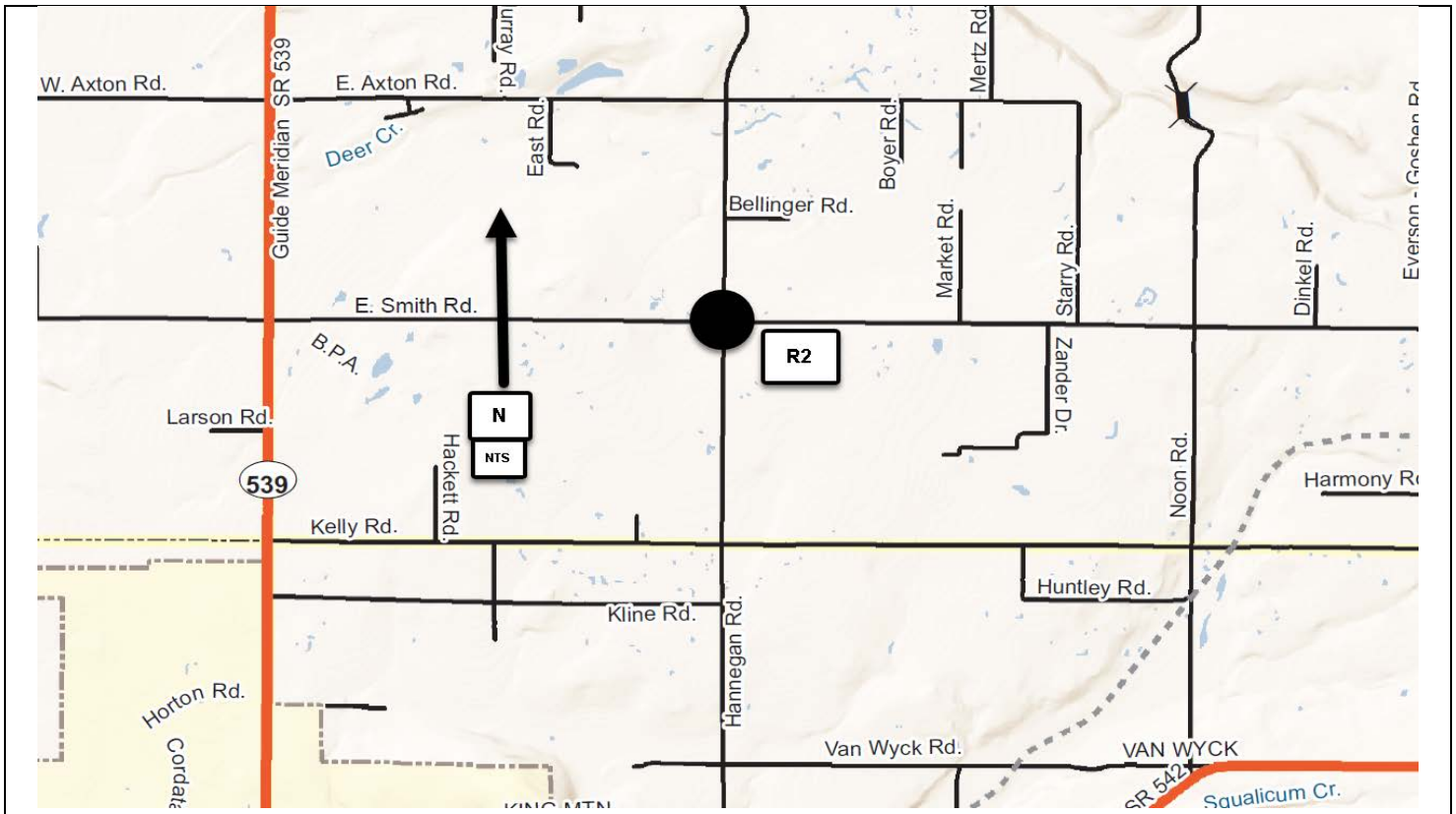
The intersection of East Smith and Hannegan Roads is located in Sections 28, 29, 32 and 33, T39N, R3E. This intersection currently experiences delays due to the lack of left-turn channelization on Smith Road. The project work entails the construction of a two-lane Roundabout at the intersection. This project is listed #R2 on the 2021-2026 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 is expected to be completed in 2021, with Construction planned for 2021 or 2022 depending on ROW acquisition, utility relocation, and environmental permitting.

<b>Total Estimated Project Cost:</b> \$4,785,000	<b>Funding Sources:</b>	
	Federal	\$2,000,000 STBG/HSIP available in 2021
<b>Expenditures to Date:</b> \$450,000	State	\$0
	Local	\$2,785,000

<b>Environmental Permitting</b>	NEPA, ESA, Corp of Engr, Clrg/CAO, DOE
<b>Right-of-Way Acquisition (Estimate)</b>	\$220,000
<b>County Forces (Estimate)</b>	N/A







# Whatcom County

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

## Agenda Bill Master Report

**File Number: AB2020-536**

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<b>File ID:</b>	AB2020-536	<b>Version:</b>	1	<b>Status:</b>	Introduced
<b>File Created:</b>	11/09/2020	<b>Entered by:</b>	MCaldwel@co.whatcom.wa.us		
<b>Department:</b>	Finance Division	<b>File Type:</b>	Ordinance		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

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Primary Contact Email: [mcaldwel@co.whatcom.wa.us](mailto:mcaldwel@co.whatcom.wa.us)

**TITLE FOR AGENDA ITEM:**

Ordinance amending the project budget for the Marine Drive, Locust Ave to Alderwood Ave, Reconstruction Fund, request no. 1

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

Requests appropriation of \$3,379,695 to fund the construction phase of the Marine Drive (Locust Ave to Alderwood Ave) Reconstruction & Bicycle/Pedestrian Facilities project, to be funded by grants and local road funds.

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### HISTORY OF LEGISLATIVE FILE

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<b>Date:</b>	<b>Acting Body:</b>	<b>Action:</b>	<b>Sent To:</b>
11/24/2020	Council	INTRODUCED	Council Finance and Administrative Services Committee

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**Attachments:** Proposed Ordinance, Exhibit A, Memo, Supplemental Request, Marine Dr Project Narrative

**ORDINANCE NO. \_\_\_\_\_**

**ORDINANCE AMENDING THE PROJECT BUDGET FOR THE  
MARINE DRIVE, LOCUST AVE TO ALDERWOOD AVE, RECONSTRUCTION FUND,  
REQUEST NO. 1**

**WHEREAS**, Ordinance No. 2018-070 established the Marine Drive, Locust Ave to Alderwood Ave, Reconstruction Fund in 2018 granting expenditure authority to initiate preliminary engineering for the multi-year project, and;

**WHEREAS**, the preliminary engineering (design) of the Marine Drive (Locust Ave to Alderwood Ave) Reconstruction & Bicycle/Pedestrian Facilities project is approximately 90% complete, with permitting and property rights acquisition in progress, and;

**WHEREAS**, it is now necessary to add to the project based budget to continue with the construction and construction engineering services, and;

**WHEREAS**, the Marine Drive (Locust Ave to Alderwood Ave) Reconstruction & Bicycle/Pedestrian Facilities project was confirmed on the Council approved 2021 Annual Construction Program and is item number 3 on the Council approved 2021-2026 Six Year Transportation Improvement Program (2021-2026 STIP), and;

**WHEREAS**, the 2021-2026 STIP estimate of \$3.510 million in remaining project expenses is an estimate only and therefore should be budgeted with a 10% contingency ,and;

**WHEREAS**, the project has secured \$1.51 million of outside funding commitments (\$1.30 million federal Surface Transportation Block Grant funds and \$0.21 million federal Transportation Alternative grant funds), and;

**WHEREAS**, additional Road funds of up to \$1.87 million, including contingency amounts, will be used to supplement the project's grant funding;

1           **NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that  
2 Ordinance No. 2018-070, associated with establishing project based budget for the  
3 Marine Drive, Locust Ave to Alderwood Ave, Reconstruction Fund, is hereby  
4 amended, effective January 1<sup>st</sup>, 2021, by adding an additional amount of  
5 \$3,379,695 of expenditure authority to the project budget for a new current project  
6 budget expenditure amount of \$4,177,195 as described in Exhibit "A".  
7  
8

9           **ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

10  
11  
12 ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

13  
14  
15 \_\_\_\_\_  
Dana Brown-Davis, Clerk of the Council

\_\_\_\_\_  
Barry Buchanan, Chair of the Council

16  
17  
18  
19 APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE  
WHATCOM COUNTY, WASHINGTON

20  
21  
22 Approved Electronically CQ/ *CPK* 11-09-2020  
23 Christopher Quinn  
24 Senior Civil Deputy Prosecuting Attorney

\_\_\_\_\_  
Satpal Singh Sidhu, County Executive

(    ) Approved      (    ) Denied

Date Signed: \_\_\_\_\_

Exhibit "A"

**Project Based Budget - Budget Request Tracking Sheet**

11/6/2020  
BW/JPK

Project Title: **Marine Drive (Locust Ave to Alderwood Ave) Reconstruction and Bicycle/Pedestrian Facilities**

Project Codes: **CRP No. 917001; Cost Center 380100**

Project Based Budget Request: **No. 2**

Duration Requested: **3 yrs (2020-2022)**

Budget Account	Project Activity	Current Approved Project Budget	Amended Project Budget Request	New Approved Project Budget
595110	Preliminary Engineering (In-House & Design Consultant)	\$747,500	\$0	\$747,500
595200	Right of Way	\$50,000	\$0	\$50,000
595300	Construction - Federal STBG, TA, and Local Funds		\$3,000,000	\$3,000,000
595120	Construction Engineering (In-House & Consultant)		\$379,695	\$379,695
<b>TOTAL</b>		<b>\$797,500</b>	<b>\$3,379,695</b>	<b>\$4,177,195</b>

Object Account	Project Funding	Current Approved Project Revenue	Amended Project Revenue Request	New Approved Project Revenue
4333	Federal STBG (Reimbursement for construction)*		\$1,304,695	\$1,304,695
4333	Federal TA (Reimbursement for construction)*		\$205,000	\$205,000
8301	Local Funds (transfer from Road Fund)	\$797,500	\$1,870,000	\$2,667,500
<b>TOTAL</b>		<b>\$797,500</b>	<b>\$3,379,695</b>	<b>\$4,177,195</b>

\* Funds committed, but not yet obligated



**Jon Hutchings**  
Director

## MEMORANDUM

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

**Through:** Jon Hutchings, Director *JH*

**From:** James P. Karcher, P.E., County Engineer *JK*

**Date:** November 6, 2020

**Subject:** Marine Dr. (Locust Ave to Alderwood Ave) Reconstruction & Bicycle/Pedestrian Facilities  
CC 380100; CRP No 917001  
**Project Based Budget Amendment No. 1 to Ordinance 2018-070**

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Enclosed for your review and signature is Amendment No. 1 to Ordinance 2018-070 associated with the Marine Drive, Locust Ave to Alderwood Ave, Reconstruction Fund.

### **Requested Action**

Public Works respectfully requests that the County Council and the County Executive sign Amendment No. 1 to Ordinance No. 2018-70 for the aforementioned Project Based Budget Fund.

### **Background and Purpose**

Current status of the preliminary engineering/design phase for this roadway reconstruction project is at approximately 90% complete, with project permitting and right-of-way acquisitions in progress. The initial Project Based Budget Fund was established by Ordinance 2018-070 in the amount of \$797,500 for the purpose of preliminary engineering and right-of-way. This request will increase the Project Based Budget fund amount by \$3,379,695 to cover the construction contract, the consultant construction services, and in-house construction engineering & contract administration. The request includes a contingency to address the fact that the remaining construction phase items are an estimate. The total project budget authority will be \$4,177,195.

### **Funding Amount and Source**

The construction contract and construction engineering work will be funded with Surface Transportation Block Grant (STBG) and Transportation Alternatives (TA) federal grant fund programs, and the balance paid with Local Road Funds as detailed in the attached documents.

Please contact Jim Karcher at extension 6271, if you have any questions or concerns regarding the details of this Project Based Budget Amendment No. 1.

# Supplemental Budget Request


**Public Works**

**Engineering Design/Const**

Suppl ID # 3133    **Fund** 380    **Cost Center** 380100    **Originator:** Jim Karcher

**Expenditure Type:** One-Time    **Year 1** 2021    **Add'l FTE**     **Add'l Space**     **Priority** 1

**Name of Request:** Fund 380 Marine Drive Locust to Alderwood Req 2

<b>X</b>		11/9/20
<b>Department Head Signature (Required on Hard Copy Submission)</b>		<b>Date</b>

Costs:	<b>Object</b>	<b>Object Description</b>	<b>Amount Requested</b>
	4333.2022	STP (Surface Trans Prog	(\$1,304,695)
	4333.2026	Federal Aid Other	(\$205,000)
	6110	Regular Salaries & Wages	\$190,000
	6290	Applied Benefits	\$139,695
	6630	Professional Services	\$50,000
	7380	Other Improvements	\$3,000,000
	8301	Operating Transfer In	(\$1,870,000)
	<b>Request Total</b>		<b>\$0</b>

**1a. Description of request:**

This project is located on Marine Drive between Locust Ave and Alderwood Ave, in Section 15 of T38N, R2E. The work involves reconstruction of approximately 0.5 miles of roadway with emphasis on bicycle/pedestrian and stormwater quality enhancements. This project is listed #R3 on the 2021-2026 Six-Year Transportation Improvement Program, with construction proposed for 2021. This request is to provide the funding needed in the project based budget for the construction and construction engineering work related to this project.

**1b. Primary customers:**

Citizens of Whatcom County including the traveling public in motor vehicles, pedestrians and bicyclists.

**2. Problem to be solved:**

The main purpose of the roadway corridor improvement is to increase safety for vehicle drivers, bicyclists, and pedestrians. Additionally, having sufficient budget capacity, with contingency in the Project Based Budget, will allow Public Works to address construction concerns in a timely and cost effective manner.

**3a. Options / Advantages:**

The project shall improve safety by the addition of street lighting, bicycle lanes, concrete curb/gutter and sidewalks, and a pedestrian actuated crosswalk at the western end of the project. ADA accessible routes in the corridor shall be improvement with the removal of existing obstructions and barriers including the replacement of non-compliant driveway and intersection ramps and updating stormwater and sewer manhole castings with slip-resistant covers. Roadway design options are limited as the project is located within the City of Bellingham Urban Growth Area boundary, and is being constructed to City Urban Arterial roadway standards per the Interlocal Agreement between the City of Bellingham and Whatcom County. Advantages provided by the projects improvements include establishing a continuous multimodal roadway corridor, by advancing ADA accessible routes and bicycle lanes consistent with existing improvements in the urban area.

**3b. Cost savings:**

The project improvements shall provide a significantly improved level of safety for bicycle and pedestrian users of the roadway corridor, resulting in reducing the likelihood of future accidents and mitigating the risk of claims against the County. The civil design has been conducted in a manner that efficiently

## Supplemental Budget Request

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### Public Works

### Engineering Design/Const

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Suppl ID # 3133

**Fund** 380

**Cost Center** 380100

**Originator:** Jim Karcher

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improves the roadway corridor to City Urban Arterial roadway standards and minimizing costs associate with construction.

**4a. Outcomes:**

The approval of budget authority will allow for the completion of the project by funding the construction contract, construction engineering, and provide contingency funds for unseen contract issues.

**4b. Measures:**

The measures of success will be the obligation of construction grant funds of \$1.5 million, and completing of construction in the summer of 2021.

**5a. Other Departments/Agencies:**

The project is located within the City of Bellingham Urban Growth Area boundary, and is being constructed to City Urban Arterial roadway standards per the Interlocal Agreement between the City of Bellingham and Whatcom County.

**5b. Name the person in charge of implementation and what they are responsible for:**

N/A

**6. Funding Source:**

The construction contract and construction engineering work will be funded primarily with Surface Transportation Block Grant (STBG) and Transportation Alternatives (TA) Federal grant funds. The remainder will be covered with local Road funds.

Current Funding:

Road Funds: \$797,500

Proposed Additional Funding:

Federal STBG funds: \$1,304,695

Federal TA grant funds: \$205,000

Road Funds: \$1,870,000

Total Project Budget: \$4,177,195

**Marine Drive  
Locust Avenue to Alderwood Avenue  
Reconstruction and Bike/Ped Facilities  
CRP # 917001**

**Construction Funding Year(s):** 2021 - 2022

**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 #R3 on the 2021-2026 Six-Year Transportation Improvement Program.

**Project Status:**

Survey completed and design initiated in 2019. Design to be completed in late 2020, with ROW acquisition and environmental permitting to be completed in early 2021. Construction is expected to begin in summer of 2021.

<b>Total Estimated Project Cost:</b> \$4,177,200	<b>Funding Sources:</b>	
	Federal	\$1,510,000 (STBG) Available in 2021
<b>Expenditures to Date:</b> \$350,000	State	\$0
	Local	\$2,667,200

<b>Environmental Permitting</b>	ECS, BA, SEPA, CLR/CAO, Corps of Engrs
<b>Right-of-Way Acquisition (Estimate)</b>	\$50,000
<b>County Forces (Estimate)</b>	N/A







# Whatcom County

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

## Agenda Bill Master Report

**File Number: AB2020-542**

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<b>File ID:</b>	AB2020-542	<b>Version:</b>	1	<b>Status:</b>	Introduced
<b>File Created:</b>	11/10/2020	<b>Entered by:</b>	MCaldwel@co.whatcom.wa.us		
<b>Department:</b>	Finance Division	<b>File Type:</b>	Ordinance		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

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Primary Contact Email: [mcaldwel@co.whatcom.wa.us](mailto:mcaldwel@co.whatcom.wa.us)

### **TITLE FOR AGENDA ITEM:**

Ordinance amending Silver Lake Park Improvement Fund, request no. 2

### **SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

Requests project budget appropriation of \$1,565,000 to fund replacement of shower and restroom facility at Maple Creek campground to be funded by a transfer from Real Estate Excise Tax II Fund.

### **HISTORY OF LEGISLATIVE FILE**

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<b>Date:</b>	<b>Acting Body:</b>	<b>Action:</b>	<b>Sent To:</b>
11/24/2020	Council	INTRODUCED	Council Finance and Administrative Services Committee

---

**Attachments:** Proposed Ordinance, Exhibit A, Supplemental Request

PROPOSED BY: Executive  
INTRODUCTION DATE: 11/24/20

**ORDINANCE NO.** \_\_\_\_\_

**AMENDING SILVER LAKE PARK IMPROVEMENT FUND, REQUEST NO. 2**

**WHEREAS**, Ordinance No. 2014-077 established the project budget for the 2015 Silver Lake Park Improvement Fund; and

**WHEREAS**, initial funding was used to realign the entrance area for better traffic flow; reconstruct the dump station; widen and rebuild the main road; resurface the group picnic parking lot and provide for drainage improvements; design, engineer and permit campground improvements and provide for a dry hydrant and mitigation area; plus other improvements; and

**WHEREAS**, additional funding in the 2019-2020 biennium has provided for full renovation of the Maple Creek campground and is currently providing for design, engineering, permitting and construction of a new shower and restroom building for the Red Mountain campground; and

**WHEREAS**, the next phase of the Silver Lake improvement project is construction of a new shower and restroom facility at the park's Maple Creek campground; and

**WHEREAS**, continued funding for this project is available by transfer from Real Estate Excise Tax Fund II,

**NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that Ordinance 2014-077 is hereby amended by adding \$1,565,000 of expenditure authority, effective January 1, 2021, as presented in Exhibit A, to the amended project budget for a total project budget of \$6,138,300.

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2020.

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

\_\_\_\_\_  
Dana Brown-Davis, Council Clerk

\_\_\_\_\_  
Barry Buchanan, Chair of the Council

APPROVED AS TO FORM:

( ) Approved      ( ) Denied

Approved by email/C Quinn/M Caldwell  
Civil Deputy Prosecutor

\_\_\_\_\_  
Satpal Sidhu, County Executive  
Date: \_\_\_\_\_

**EXHIBIT A**

**SILVER LAKE PARK IMPROVEMENTS FUND AMENDMENT #2 (Fund 361)**

Account	Description	Current Amended Project Budget	2021 Amendment #2 to Ord. 2014-077	Total Amended Project Budget
<b>Expenditures</b>				
6190	Direct Billing Rate	\$108,250	\$43,000	\$151,250
6330	Printing	\$4,400	\$0	\$4,400
6630	Professional Services	\$428,000	\$0	\$428,000
6810	Advertising	\$3,250	\$0	\$3,250
7060	Repairs and Maintenance	\$880,000	\$0	\$880,000
7350	Buildings & Structures	\$0	\$1,500,000	\$1,500,000
7380	Other Improvements	\$3,149,400	\$22,000	\$3,171,400
		<b>\$4,573,300</b>	<b>\$1,565,000</b>	<b>\$6,138,300</b>
<b>Revenues</b>				
8301.324	Operating Transfer In - REET II	\$4,573,300	\$1,565,000	\$6,138,300
		<b>\$4,573,300</b>	<b>\$1,565,000</b>	<b>\$6,138,300</b>

# Supplemental Budget Request

## Parks & Recreation

Suppl ID # 3126    **Fund** 361    **Cost Center** 361100    **Originator:** Rod Lamb

**Expenditure Type:** One-Time    **Year** 2    2020    **Add'l FTE**     **Add'l Space**     **Priority** 1

**Name of Request:** Silver Lake Restroom & Day-Use Improvements

**X**     11-9-20  
**Department Head Signature (Required on Hard Copy Submission)**    **Date**

Costs:	Object	Object Description	Amount Requested
	6190	Direct Billing Rate	\$43,000
	7350	Buildings & Structures	\$1,500,000
	7380	Other Improvements	\$22,000
	8301	Operating Transfer In	(\$1,565,000)
	<b>Request Total</b>		<b>\$0</b>

**1a. Description of request:**

This project continues improvement efforts currently funded and underway at Silver Lake Park. This request will fund construction of a new shower and restroom facility at the park's Maple Creek Campground. This campground is currently serviced only by vault toilets with no running water for hand washing and the parks existing showers are located outside of the campground in the group picnic area.

The new facility will be connected to the existing water system and be serviced with a new on-site septic system. The building will be approximately 1,600 square feet and contain eight restroom stalls, and six shower stalls. Two of the shower stalls are family friendly and include a toilet and sink increasing operational flexibility. The building will be constructed from precast concrete masonry and have a metal roof that will provide durability and easy maintenance.

**1b. Primary customers:**

Whatcom County residents are the primary customers of this new service. Silver Lake park has seen a large increase in park usage over the last six years, with visitation more than tripling since 2014. The last two years have seen more than 200,000 visitors each year and through September 30 of 2020 the park has had more than 275,000 visitors. Camping at Silver Lake generates more than \$200,000 per year and appears to be trending upwards.

**2. Problem to be solved:**

Silver Lake Park was constructed in 1969, and is currently serviced by a single shower facility. Because of the age of the facility the existing septic system is challenged to handle current demand. The new shower & restroom facility at Maple Creek Campground will take a great deal of pressure off of the existing shower building while providing a convenient facility to campers at Maple Creek Campground and Group Camp. Visitor feedback, collected through surveys, has identified improved shower and restroom facilities as the number one way to improve visitor experience at the park. Aging vault toilets and a shower building located outside of the campground no longer meets the needs of our large customer base.

**3a. Options / Advantages:**

There are few feasible options. Visitation has dramatically increased over the last several years, and overnight camping is becoming even more popular. For example, more than 275,000 visitors in 2020 so far, an increase of nearly 40 percent over 2019. This increase in use has allowed staff to get visitor feedback for ways to improve their experience at the park. The feedback has been clear, improved shower & restroom facilities are consistently identified as needing improvement. The park currently has only one shower facility, but three campgrounds and a group camp area.

# Supplemental Budget Request

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## Parks & Recreation

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Suppl ID # 3126    **Fund** 361    **Cost Center** 361100    **Originator:** Rod Lamb

### **3b. Cost savings:**

This proposal doesn't specifically include a cost savings component except that maintenance and repair efforts on the existing bath facility and associated septic system will be reduced.

### **4a. Outcomes:**

When completed, this proposal will result in the construction of a new shower & restroom building at Silver Lake Park. The new facility will offer greater convenience and services to the visitors of Silver Lake Park, and meet current Health Code (24.04.030) requirements for number of toilet, lavatory and bathing facilities for camping units at Maple Creek Campground.

### **4b. Measures:**

Once the buildings are open for public use, the project objective will be realized. Success will be measured in visitor feedback that is solicited by the Parks Dept. by online visitor surveys, comment cards, and staff interactions with park users.

### **5a. Other Departments/Agencies:**

Yes, Planning & Development Services and the Health will be involved in regulatory review and approval.

### **5b. Name the person in charge of implementation and what they are responsible for:**

Unknown at this time.

### **6. Funding Source:**

REET II



# Whatcom County

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

## Agenda Bill Master Report

File Number: **AB2020-543**

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<b>File ID:</b>	AB2020-543	<b>Version:</b>	1	<b>Status:</b>	Introduced
<b>File Created:</b>	11/10/2020	<b>Entered by:</b>	MCaldwel@co.whatcom.wa.us		
<b>Department:</b>	Finance Division	<b>File Type:</b>	Ordinance		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

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Primary Contact Email: [mcaldwel@co.whatcom.wa.us](mailto:mcaldwel@co.whatcom.wa.us)

### TITLE FOR AGENDA ITEM:

Ordinance amending the 2021 Whatcom County Budget, request no. 1, in the amount of \$14,781,015

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Supplemental #1 requests funding from the Road Fund:

1. To appropriate \$13,216,015 to fund 2021 Annual Road Construction Program.  
From Real Estate Excise Tax II Fund:
2. To appropriate \$1,565,000 to fund transfer out to Silver Lake Park Improvement Fund for Maple Creek campground restroom and shower building replacement.

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
11/24/2020	Council	INTRODUCED	Council Finance and Administrative Services Committee

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**Attachments:** Proposed Ordinance, Summary, Supplemental Requests

**ORDINANCE NO.  
AMENDMENT NO. 1 OF THE 2021 BUDGET**

**WHEREAS**, the 2021-2022 budget was adopted November 24, 2020; and,  
**WHEREAS**, changing circumstances require modifications to the approved 2021-2022 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 2021-2022  
Whatcom County Budget Ordinance #2020-\_\_\_ is hereby amended by adding the following additional  
amounts to the 2021 budget included therein:

Fund	Expenditures	Revenues	Net Effect
Road Fund	13,216,015	(1,086,000)	12,130,015
Real Estate Excise Tax II Fund	1,565,000	-	1,565,000
<b>Total Supplemental</b>	<b>14,781,015</b>	<b>(1,086,000)</b>	<b>13,695,015</b>

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2020.

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

\_\_\_\_\_  
Dana Brown-Davis, Council Clerk

\_\_\_\_\_  
Barry Buchanan, Chair of Council

APPROVED AS TO FORM:

( ) Approved      ( ) Denied

\_\_\_\_\_  
Approved by email/C Quinn/M Caldwell  
Civil Deputy Prosecutor

\_\_\_\_\_  
Satpal Sidhu, County Executive

Date: \_\_\_\_\_

<b>WHATCOM COUNTY</b>				
<b>Summary of the 2021 Supplemental Budget Ordinance No. 1</b>				
Department/Fund	Description	Increased (Decreased) Expenditure	(Increased) Decreased Revenue	Net Effect to Fund Balance (Increase) Decrease
<b>Road Fund</b>	To fund 2021 Annual Road Construction Program.	<u>13,216,015</u>	<u>(1,086,000)</u>	<u>12,130,015</u>
<b>Real Estate Excise Tax II Fund</b>	To fund transfer out to Silver Lake Park Improvement Fund for Maple Creek campground restroom and shower building replacement.	<u>1,565,000</u>	<u>-</u>	<u>1,565,000</u>
<b>Total Supplemental</b>		<u><b>14,781,015</b></u>	<u><b>(1,086,000)</b></u>	<u><b>13,695,015</b></u>



Jon Hutchings  
DIRECTOR



**Randy Rydel**  
Financial Services Manager  
322 N. Commercial Street, Suite 210  
Bellingham, WA 98225-4042  
Telephone: (360) 778-6217  
[www.whatcomcounty.us](http://www.whatcomcounty.us)  
RRydel@co.whatcom.wa.us

## MEMORANDUM

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

Through: Jon Hutchings, Public Works Director *JH*

From: James P. Karcher, P.E., County Engineer *JK*  
Randy Rydel, Public Works Financial Services Manager *RR*

Date: November 9, 2020

Re: Supplemental Budget Request #3134 for the implementation of the 2021 Annual Construction Program

The attached Supplemental Budget Request #3134 grants expenditure authority for the capital budget associated with the approved 2021 Annual Construction Program (approved by Council 10/27/20). The Annual Construction Program has been summarized in the following schedule:

<b>Total Approved 2021 Annual Construction Program</b>	<b>\$21,360,000</b>
Project based budgets (less funding transfers in)	-7,005,000
Previously budgeted wage and benefits	<u>-1,138,985</u>
<b>Remaining ACP Expenditure to be budgeted</b>	<b>\$13,216,015</b>
<b>Current Budget Expenditure Request</b>	
Prelim./Const. Engineering	\$1,926,015
Right of Way Acquisition	195,000
Contract and County Forces Construction	<u>7,300,000</u>
<b>Capital Expenditure Request Total</b>	<b>\$9,421,015</b>
<b>Transfers to fund Project Based Budgets (PBB)</b>	
East Smith/Hannegan Rd Fund 382	\$1,925,000
Marine Drive Locust to Alderwood Fund 380	<u>1,870,000</u>
<b>Transfer to PBB Total</b>	<b>\$3,795,000</b>
<b>Remove Offsetting Federal/State Grant Funding</b>	<u>-1,086,000</u>
<b>Net Change/SBR Total</b>	<b>\$12,130,015</b>

Please contact Randy Rydel at extension 6217 with any questions.

Enclosures: Supplementary Budget Request #3134  
Exhibit A – Budget Distribution Detail  
Exhibit B – Annual Construction Program as Approved 10/27/2020

# Supplemental Budget Request

**Public Works**

**Engineering Design/Const**

Suppl ID # 3134    Fund 108    Cost Center    Originator: Randy Rydel

Expenditure Type: One-Time    Year 1 2021    Add'l FTE     Add'l Space     Priority 1

**Name of Request: 2021 Annual Road Construction Program**

**X**  11/10/20  
 Department Head Signature (Required on Hard Copy Submission)    Date

Costs:	Object	Object Description	Amount Requested
	4333.2021	Bridge Replacement (BR/BRR)	(\$200,000)
	4333.2026	Federal Aid Other	(\$521,000)
	4334.0312	River Improvement	(\$200,000)
	4334.0371	CRAB Arterial Projects	(\$165,000)
	6630	Professional Services	\$195,000
	6630	Professional Services	\$1,876,015
	7380	Other Improvements	\$2,650,000
	7380	Other Improvements	\$1,050,000
	7380	Other Improvements	\$3,450,000
	8351	Operating Transfer Out	\$3,795,000
	8351	Operating Transfer Out	\$200,000
	<b>Request Total</b>		<b>\$12,130,015</b>

**1a. Description of request:**

This supplemental follows council's approval of the 2021 Annual Road Construction Program. The requested funding will provide the expenditure authority to move forward with the approved Annual Construction Program.

The County Road Administration Board (CRAB) requires that an Annual Construction Program (ACP) be approved prior to approving a capital budget to fund the program. Council reviewed and approved the 2021 ACP at the October 27th council meeting. This request summarizes the budgetary impacts of the ACP and supplements the Road Fund's 2021 budget to account for the included capital projects.

This request also authorizes the transfer of \$3,795,000 into Project Based Funds for construction funding of two multi-year projects, East Smith Hannegan Intersection Improvements and Marine Drive Reconstruction and Bicycle/Pedestrian Facilities.

**1b. Primary customers:**

Users of Whatcom County roads.

**2. Problem to be solved:**

**3a. Options / Advantages:**

**3b. Cost savings:**

**4a. Outcomes:**

## Supplemental Budget Request

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**Public Works**

**Engineering Design/Const**

---

Supp'l ID # 3134

**Fund** 108

**Cost Center**

**Originator:** Randy Rydel

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**4b. Measures:**

**5a. Other Departments/Agencies:**

**5b. Name the person in charge of implementation and what they are responsible for:**

**6. Funding Source:**

Road Fund, State and Federal Grants

**Budget Distribution Detail**

ACP Number	Cost Center	Expense	Account	Description	Revenue	Account	Description
4	919005	\$10,000	6630.595200	Right-of-Way			
4	919005	\$40,000	7380.595300	Construction			
5	919018	\$1,000,000	7380.595300	Construction	(\$165,000)	4334.0371	Rural Arterial Program
12	910002	\$100,000	7380.595300	Construction			
13	916007	\$1,300,000	7380.595300	Construction			
17	915013	\$25,000	6630.595200	Right-of-Way			
17	915013	\$30,000	8351.169114	Transfer to Flood			
18	921003	\$20,000	8351.169114	Transfer to Flood			
19	919002	\$150,000	8351.169114	Transfer to Flood			
24	921006	\$200,000	7380.595300	Construction			
26	917004	\$50,000	6630.595200	Right-of-Way			
28	920003	\$20,000	6630.595200	Right-of-Way	(\$200,000)	4333.2021	Bridge Advisory Committee Funding
29	919006	\$10,000	6630.595200	Right-of-Way			
29	919006	\$500,000	7380.595510	Construction			
30	919007	\$20,000	6630.595200	Right-of-Way	(\$200,000)	4334.0312	Fish Barrier Removal Board
31	920004	\$5,000	6630.595200	Right-of-Way			
31	920004	\$300,000	7380.595510	Construction			
32	921008	\$5,000	6630.595200	Right-of-Way			
34	919021	\$750,000	7380.595810	Construction			
35	914015	\$1,900,000	7380.595810	Construction	(\$521,000)	4333.2026	Ferry Boat Discretionary Program
37	921009	\$250,000	7380.595510	Construction			
38	921010	\$50,000	6630.595200	Right-of-Way			
39	921011	\$270,000	7380.595300	Construction			
40	921012	\$100,000	7380.595300	Construction			
41	921013	\$50,000	7380.595300	Construction			
43	921015	\$90,000	7380.595300	Construction			
44	921016	\$150,000	7380.595300	Construction			
46	921018	\$150,000	7380.595300	Construction			
2	108920	\$1,925,000	8351.382	Transfer to PBB			
3	108920	\$1,870,000	8351.380	Transfer to PBB			
0	108920	\$1,876,015	6630.595110	Engineering by Consultant			
		<u>\$13,216,015</u>					
			\$12,130,015	Net Impact	(\$1,086,000)		

Whatcom County  
2021  
**Annual Construction Program**  
WAC 136-16

(A) TOTAL CONSTRUCTION DONE (total sum of column 13 + column 14): \$16,300,000.00  
 (B) COMPUTED COUNTY FORCES LIMIT: \$1,801,002.00  
 (C) TOTAL COUNTY FORCES CONSTRUCTION (total sum of column 14): \$1,600,000.00

Date of Environmental Assessment: Oct 27, 2020  
 Date of Final Adoption: 2020-044  
 Ordinance/Resolution Number:

(1) Annual Program Item No.	(2) 6 Year Road Program Item No.	(3) Project Name	(4) Road Segment Information Road # Road Name	(5) Project Length(mi.)	(6) Project Type Code	(7) Environmental Assessment	(8) County Road Funds	(9) Sources of Funds		(11) PE & CE (595.10)	(12) Right of Way (595.20)	(13) Estimated Expenditures Dollars		(15) Grand Total (All 595)
								Amount	Other Funds			Construction Contract	County Forces	
1	R1	CRP #907001 Birch Bay Drive & Pedestrian Facility from Lon Lane to Cedar Avenue	Road Name: Birch Bay Drive From: Lora Lane To: Cedar Avenue	1.58	P&T FP DR Other	S	\$1,700,000	\$200,000	\$200,000	\$1,500,000	\$1,700,000	\$1,500,000	\$1,700,000	
2	R2	CRP #914002 East Smith Road & Hannegan Road	Road Name: East Smith Road From: East Smith Road To: Hannegan Road Road Name: Hannegan Road From: East Smith Road To: Hannegan Road	0.40	3R IS Ilim Safety	S	\$1,500,000	\$2,000,000.00	STP(E)	\$400,000	\$100,000	\$3,000,000	\$3,500,000	
3	R3	CRP #917001 Marine Drive, Locust Avenue to Alderwood Avenue	Road Name: Marine Drive From: Locust Avenue To: Alderwood Avenue	0.65	RC SW P&T Safety	S	\$1,941,000	\$1,509,000.00	STP(U,L)	\$400,000	\$50,000	\$3,000,000	\$3,450,000	
4	R4	CRP #919005 Samish Way/Galbraith Lane	Road Name: Samish Way From: Samish Way To: Galbraith Lane Road Name: Galbraith Lane From: 0 To: 0	0.27	IS Other Safety Ilim	S	\$60,000			\$10,000	\$10,000	\$30,000	\$60,000	
5	R5	CRP #919015 Birch Bay Lynden Rd., Enterprise Rd. to Rathbone Rd.	Road Name: Birch Bay Lynden Rd. From: Enterprise Rd. To: Rathbone Rd.	2.03	2R Safety	E	\$985,000	\$165,000.00	WA Misc	\$150,000		\$1,000,000	\$1,150,000	
6	R6	CRP #906001 Birch Bay Lynden Rd. & Blaine Rd.	Road Name: Birch Bay Lynden Rd. From: Birch Bay Lynden Rd. To: Blaine Rd.	0.25	IS Ilim SW Safety 3R	S	\$400,000			\$400,000			\$400,000	
7	R7	CRP #918019 Smith Road & Northwest Drive	Road Name: Smith Road From: 0 To: 0 Road Name: Northwest Drive From: 0 To: 0	0.40	RC IS Ilim Safety	S	\$25,000			\$25,000			\$25,000	
8	R8	CRP #920016 Chief Martin Road, Cugey Road to Kwina Road	Road Name: Chief Martin Road From: Cugey Road To: Kwina Road	2.50	3R Safety	S	\$200,000			\$200,000			\$200,000	
9	R9	CRP #914001 Slater Road & Northwest Drive	Road Name: Slater Road From: Slater Road To: Northwest Drive Road Name: Northwest Drive From: Slater Road To: Northwest Drive	0.40	RC FP IS Ilim Safety	S	\$5,000			\$5,000			\$5,000	
10	R10	CRP #916002 Horton Road, Northwest Drive to Aldrich Road	Road Name: Horton Road From: Horton Road To: Aldrich Road	0.70	NEW SW DR IS	S	\$10,000			\$10,000			\$10,000	
11	R11	CRP #912017 Lummi Nation Transportation Projects	N/A	N/A			\$2,000,000			\$350,000	\$150,000	\$1,500,000	\$2,000,000	
12	R12	CRP 910002 Point Roberts Transportation Improvements	N/A	N/A			\$150,000			\$50,000		\$90,000	\$150,000	
13	R13	CRP #916007 Hemmi Road Flood Mitigation	Road Name: East Hemmi Road From: East Hemmi Road To: East Hemmi Road	0.30	2R DR Other	S	\$1,450,000			\$150,000		\$1,290,000	\$1,450,000	

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)		(9)		(10)	(11)	(12)	(13)		(14)	(15)
							County Funds	Other Road Amount	Other Funds Amount	PE & CE (595,10)				Right of Way (595,20)	Construction Contract		
Annual Program Item No.	6 Year Road Program Item No.	Project Name	Road #	Road Segment Information	EMP	FFC	Project Length(mi.)	Project Type Code	Environmental Assessment	County Funds	Other Road Amount	Other Funds Amount	PE & CE (595,10)	Right of Way (595,20)	Construction Contract	County Forces	Grand Total (All 595)
14	R14	CRP #915014 Innis Creek Road	88850	Road Name: Innis Creek Road From: Innis Creek Road To: Innis Creek Road	2.45	09	0.20	2R DR Other Safety	S	\$10,000			\$10,000				\$10,000
15	R15	CRP #921001 Birch Bay Drive, Jackson Road to Shintaffer Road	20010	Road Name: Birch Bay Drive From: Jackson Road To: Shintaffer Road	2.10	07	2.43	3R Safety	E	\$15,000			\$15,000				\$15,000
16	R16	CRP #921002 Marine Drive II, Alderwood Avenue to Bridge No. 172	12790	Road Name: Marine Drive From: Alderwood Avenue To: Bridge No. 172	3.37	06	0.55	RC P&T	S	\$15,000			\$15,000				\$15,000
17	R17	CRP #915013 Turkington Road/Jones Creek	89200	Road Name: Turkington Road From: Turkington Road To: Turkington Road	0.40	09	0.20	RC Other	S	\$55,000			\$30,000	\$25,000			\$55,000
18	R18	CRP #921003 Truck Road, 2020 Flood Damage Repair	89200	Road Name: Truck Road From: Truck Road To: Truck Road	0.40	16	0.20	3R K	S	\$100,000			\$100,000				\$100,000
19	R19	CRP #919002 Abbott Road/Levee Improvements	55560	Road Name: Abbott Road From: Abbott Road To: Abbott Road	1.70	09	0.20	RC Other	S	\$150,000			\$150,000				\$150,000
20	R20	CRP #919001 Ferrndale Road/Levee Improvements	12800	Road Name: Ferrndale Road From: Ferrndale Road To: Ferrndale Road	2.50	08	1.32	Other	S	\$50,000			\$50,000				\$50,000
21	R21	CRP #921004 Lake Louise, Austin Street to Lake Whatcom Boulevard	46010	Road Name: Lake Louise Road From: Austin Street To: Lake Whatcom Blvd.	0.00	18	4.06	3R Safety	E	\$25,000			\$25,000				\$25,000
22	R22	CRP #921005 Austin Street/Lake Louise Street to Cable Street	46020	Road Name: Austin Street From: Lake Louise To: Cable Street	0.00	16	0.37	3R SW Safety	S	\$25,000			\$25,000				\$25,000
23	R28	CRP #921019 Lakeway Drive Corridor Improvements	45690	Road Name: Lakeway Drive From: Lakeway Drive To: Lakeway Drive	0.00	16	1.39	Other P&T Safety	E	\$50,000			\$50,000				\$50,000
24	R31	CRP #921006 Small Area Paving, Various locations	66040	Road Name: South Pass Road From: South Pass Road To: South Pass Road	3.50	16	0.15	2R Safety	E	\$25,000			\$25,000		\$200,000		\$250,000
25	R34	CRP #91007 South Pass Road, 2020 Flood Damage Repair	66040	Road Name: South Pass Road From: South Pass Road To: South Pass Road	3.50	16	0.15	2R Safety	E	\$25,000			\$25,000				\$25,000
26	B2	CRP #917004 Jackson Road/Terrill Creek Bridge No. 81	21950	Road Name: Jackson Road From: Jackson Road To: Jackson Road	0.00	18	0.10	Br	S	\$250,000			\$200,000	\$50,000			\$250,000
27	B4	CRP #913006 North Lake Samish Road Bridge No. 107	44170	Road Name: North Lake Samish From: North Lake Samish To: North Lake Samish	0.01	08	0.10	P&T Br	S	\$150,000			\$100,000	\$50,000			\$150,000
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	0.56	08	0.20	Br	S	\$20,000	\$200,000.00	BR	\$200,000	\$20,000			\$220,000
29	B10	CRP #919006 Mosquito Lake Road/Hutchinson Creek Tributary	84190	Road Name: Mosquito Lake Road From: Mosquito Lake Road To: Mosquito Lake Road	3.10	08	0.10	FP	S	\$560,000			\$50,000	\$10,000	\$0	\$500,000	\$560,000
30	B11	CRP #919007 North Fork Road/Kamey Creek	89510	Road Name: North Fork Road From: North Fork Road To: North Fork Road	1.00	09	0.10	FP	S	\$70,000	\$200,000.00	FBRB	\$250,000	\$20,000			\$270,000
31	B12	CRP #920004 Truck Road Fish Passage	89370	Road Name: Truck Road From: Truck Road To: Truck Road	0.90	09	0.01	FP	S	\$330,000			\$25,000	\$5,000	\$0	\$300,000	\$330,000
32	B13	CRP #921008 Deal Road, Fish Passage	89300	Road Name: Deal Road From: Deal Road To: Deal Road	0.20	09	0.01	FP	S	\$80,000			\$75,000	\$5,000			\$80,000
33	F1	CRP #919008 Replacement of Whatcom Chief & Terminal Modification					N/A	Ferry	E	\$300,000			\$300,000				\$300,000
34	F2	CRP #919021 Gooseberry Pt. Terminal Preservation Project					N/A	Ferry	S	\$800,000			\$50,000		\$750,000		\$800,000
35	F3	CRP #914015 Lummi Island Breakwater Replacement					N/A	Ferry	E	\$1,529,000	\$521,000.00	FBP	\$150,000		\$1,900,000		\$2,050,000

(1) Annual Program Item No.	(2) 6 Year Road Program Item No.	(3) Project Name	(4) Road Segment Information Road Name	(5) Project Length(mi.)	(6) Project Type Code	(7) Environmental Assessment	(8) Sources of Funds		(9) Other Funds Amount	(10) Program Source	(11) PE & CE (\$95,10)	(12) Right of Way (\$95,20)	(13) Estimated Expenditures Dollars		(14) County Forces	(15) Grand Total (All 95)
							County Road Funds	Environmental Assessment					Construction Contract	County Forces		
36	F4	CRP #919009 Relocation of Gooseberry Terminal		N/A	Ferry	E	\$50,000				\$50,000					\$50,000
37	Y1	CRP #921009 Various Bridge Rehabilitation/Replacement		N/A	Br	S	\$300,000				\$50,000		\$0	\$250,000		\$300,000
38	Y2	CRP #921010 Right of Way Acquisition		N/A		E	\$50,000				\$50,000					\$50,000
39	Y3	CRP #921011 Unanticipated Site Improvements		N/A		E	\$300,000				\$30,000		\$0	\$270,000		\$300,000
40	Y4	CRP #921012 Unanticipated Stormwater Quality Improvements		N/A		S	\$120,000				\$20,000		\$90,000	\$10,000		\$120,000
41	Y5	CRP #921013 Unanticipated Non- motorized Transportation Improvements		N/A	SW P&T Safety	I	\$60,000				\$10,000		\$50,000			\$60,000
42	Y6	CRP #921014 Fish Passage Project		N/A	EP	S	\$50,000				\$50,000					\$50,000
43	Y7	CRP #921015 Swift Creek Transportation Impact		N/A			\$100,000				\$10,000		\$0	\$90,000		\$100,000
44	Y8	CRP #921016 Railroad Crossing Improvements		N/A	Other 2R Safety	I	\$200,000				\$50,000		\$0	\$150,000		\$200,000
45	Y9	CRP #921017 Beam Guardrail Replacements/Upgrades		N/A	Safety	I	\$50,000				\$50,000					\$50,000
46	Y10	CRP #921018 ADA Barrier Removal		N/A	SW	E	\$200,000				\$50,000		\$150,000			\$200,000
							<b>\$16,765,000</b>	<b>\$4,595,000</b>	<b>\$4,515,000</b>	<b>\$545,000</b>	<b>\$14,700,000</b>	<b>\$1,600,000</b>	<b>\$21,360,000</b>			

# Supplemental Budget Request

Status: Pending

## Non-Departmental

Suppl ID # 3138 Fund 324 Cost Center 32400 Originator: M Caldwell

Year 1 2019

Add'l FTE

Priority 1

Name of Request: REET trf in support of Silver Lake PB

X

Department Head Signature (Required on Hard Copy Submission)

Date

Costs:	Object	Object Description	Amount Requested
	8351.106	Operating Transfer Out	\$1,565,000
	<b>Request Total</b>		<b>\$1,565,000</b>

**1a. Description of request:**

Companion request to Silver Lake Park Improvement Fund request no. 2, supplemental ID #3126 to fund transfer in support of Maple Creek campground shower and restroom construction project.

**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:**

REET II





# Whatcom County

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

## Agenda Bill Master Report

File Number: **AB2020-556**

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<b>File ID:</b>	AB2020-556	<b>Version:</b>	1	<b>Status:</b>	Introduced
<b>File Created:</b>	11/19/2020	<b>Entered by:</b>	MCaldwel@co.whatcom.wa.us		
<b>Department:</b>	Finance Division	<b>File Type:</b>	Ordinance		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

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Primary Contact Email: [mcaldwel@co.whatcom.wa.us](mailto:mcaldwel@co.whatcom.wa.us)

### TITLE FOR AGENDA ITEM:

Ordinance amending the 2020 Whatcom County Budget, request no. 22, in the amount of \$3,524,769

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Supplemental #22 requests funding from the Countywide Emergency Medical Services Fund:

1. To appropriate \$3,524,769 to fund ambulance equipment - ALS 360 capital purchase.

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### HISTORY OF LEGISLATIVE FILE

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<b>Date:</b>	<b>Acting Body:</b>	<b>Action:</b>	<b>Sent To:</b>
11/24/2020	Council	INTRODUCED	Council Finance and Administrative Services Committee

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**Attachments:** Proposed Ordinance, Supplemental Request

**ORDINANCE NO.  
AMENDMENT NO. 22 OF THE 2020 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 2020 budget included therein:

Fund	Expenditures	Revenues	Net Effect
Countywide Emergency Medical Services Fund	<u>3,524,769</u>	-	<u>3,524,769</u>
<b>Total Supplemental</b>	<b><u>3,524,769</u></b>	<b>-</b>	<b><u>3,524,769</u></b>

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2020.

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

\_\_\_\_\_  
Dana Brown-Davis, Council Clerk

\_\_\_\_\_  
Barry Buchanan, Chair of Council

APPROVED AS TO FORM:

( ) Approved      ( ) Denied

Approved by email/C Quinn/M Caldwell  
Civil Deputy Prosecutor

\_\_\_\_\_  
Satpal Sidhu, County Executive

Date: \_\_\_\_\_

# Supplemental Budget Request

*Status:* Pending

## Non-Departmental

<i>Suppl ID #</i> 3118	<i>Fund</i> 130	<i>Cost Center</i> 130100	<i>Originator:</i> Tawni Helms
<i>Year 2</i> 2020		<i>Add'l FTE</i> <input type="checkbox"/>	<i>Priority</i> 1

**Name of Request:** Ambulance Equipment - ALS 360 Capital Purchase

X

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**Department Head Signature (Required on Hard Copy Submission)** **Date**

<i>Costs:</i>	<i>Object</i>	<i>Object Description</i>	<i>Amount Requested</i>
	6625	Software Maint Contracts	\$5,596
	7060	Repairs & Maintenance	\$111,636
	7210.001	Intergov Prof Svcs	(\$113,640)
	7210	Intergov Prof Svcs	(\$284,100)
	7410	Equipment-Capital Outlay	\$3,805,277
	<i>Request Total</i>		<i>\$3,524,769</i>

**1a. Description of request:**

On March 24, 2020 Council approved the request to purchase replacement gurneys and load lifters for the EMS Advanced Life Support (ALS) Units. This request was approved through Budget Ordinance 2020-012. While this vendor was working with EMS Administration to fulfill the acquisition of the new gurneys, several Fire Agencies were also negotiating for replacement of the durable equipment housed within the ambulances. This equipment includes Life Paks, Vacuum Splints and LUCAS devices. The vendor presented a new rental program that affords a package deal for the replacement gurneys, loadlifts, lifepaks, and LUCAS devices to outfit the ambulances. This program known as the ALS 360 program includes automatic technology and equipment upgrades in approximately 3 years.

This rental agreement is expected to save the county \$1.7M dollars in capital investments over the term of the 10 year agreement. This new proposal would allow all of the equipment under a single replacement plan and fulfill a system wide capital equipment plan. In many ways, this capital lease program will help to define the capital reserve policies EMS has been working towards.

This proposal is presented net of budget authority authorized for gurneys in the March supplemental request.

**1b. Primary customers:**

Whatcom County residents and those seeking ambulance services.

**2. Problem to be solved:**

Whatcom County Emergency Medical Services (WCEMS) supports major equipment and capital purchases for the six Advanced Life Support (ALS) units (4 Primary units and 2 Backup units). All WCEMS response vehicles have enjoyed the flexibility and efficiency of utilizing an interchangeable gurney system for the transfer and transportation of patients. However, the current gurney is nearing the end of its service life, is out of compliance with current safety requirement and is not crash rated for use in the newer ambulances. In addition, the new generation of patient transportation systems is designed with a higher level of patient safety for patients over 250 lbs while using the power lift. This system is also shown to reduce Labor and Industries claims for back/shoulder and lifting injuries.

**3a. Options / Advantages:**

A singular purchase of the gurneys as originally approved in January 2020. This ensures WCEMS is consistently using integrated, standardized and updated technology throughout the system. The savings

# Supplemental Budget Request

Status: Pending

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## Non-Departmental

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Suppl ID # 3118

**Fund** 130

**Cost Center** 130100

**Originator:** Tawni Helms

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is achieved through locking in a fixed price for the duration of the agreement, discounted pricing through the package deal, and most critically, upgrades and maintenance costs are included. This agreement will allow the EMS system to budget a fixed cost over the next 10 years.

**3b. Cost savings:**

Approximately \$1.7M in savings at the end of the 10 year rental agreement.

**4a. Outcomes:**

WCEMS will receive new equipment including Life Pak monitors/defibrillators, gurneys, Lucas Mechanical CPR devices and software associated with quality assurance through the interconnected technologies.

**4b. Measures:**

**5a. Other Departments/Agencies:**

ALS Providers; Bellingham Fire Department and Fire District 7

**5b. Name the person in charge of implementation and what they are responsible for:**

**6. Funding Source:**

EMS Levy Fund



# Whatcom County

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

## Agenda Bill Master Report

File Number: **AB2020-561**

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<b>File ID:</b>	AB2020-561	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/20/2020	<b>Entered by:</b>	BBushaw@co.whatcom.wa.us		
<b>Department:</b>	Public Works Department	<b>File Type:</b>	Interlocal		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an interlocal agreement amendment 1 of Whatcom County contract 201909004 between Whatcom County and the City of Bellingham for the Lake Whatcom Homeowner Incentive Program, in the amount of \$200,000

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This agreement defines City of Bellingham (City) and the Whatcom County (County) obligations for the administration of the Lake Whatcom Homeowner Incentive Program (HIP). Whatcom County Contract 201909004 Amendment Number 1 extends the agreement through 2021 with redefined County and City funding responsibilities. This amendment allows the County to seek City reimbursement for specific tasks completed by the Whatcom Conservation District (WCD) under Whatcom County Contract number 201903001-2 and a new HIP agreement between the County and WCD in 2021

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** 2019-20 201909004 Amend1 Memo.pdf, 2019-20 201909004 Amend1.pdf

**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](http://www.whatcomcounty.us)

**MEMORANDUM**

**TO:** The Honorable Satpal Singh Sidhu, Whatcom County Executive, and  
The Honorable Members of the Whatcom County Council

**THROUGH:** Jon Hutchings, Public Works Director *JH*

**FROM:** Gary Stoyka, Natural Resources Program Manager *GS*  
Kraig Olason, Stormwater Program Manager *KO*

**DATE:** November 17, 2020

**RE:** Amendment No. 1 to the 2019-2020 Interlocal Agreement between Whatcom County and  
the City of Bellingham for the Lake Whatcom Homeowner Incentive Program

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**Requested Action**

Please find attached for your review and signature two (2) copies of Amendment No. 1 to the 2019-2020 interlocal agreement between Whatcom County and the City of Bellingham for implementation of the Lake Whatcom Homeowner Incentive Program (HIP) (Whatcom County Contract No. 201909004).

**Background and Purpose**

HIP is a non-regulatory program that provides technical assistance and financial incentives to homeowners who voluntarily install stormwater best management practices (BMP) that reduce phosphorus runoff into Lake Whatcom. HIP helps meet Lake Whatcom Total Maximum Daily Load (TMDL) requirements. Whatcom County (County) and City of Bellingham (City) have been jointly implementing a single, unified version of the HIP since late 2016 through interlocal agreement.

Starting in 2021, the County and City are transitioning to coordinated but separate and self-funded HIPs for each jurisdiction. This amendment extends the County and City HIP agreement through the end of 2021 with modified funding responsibilities to allow each jurisdiction time to transition to separate programs.

**Funding Amount and Source**

This agreement amendment outlines the terms for reimbursement from the City to the County for costs incurred to implement HIP in 2021. County HIP funding in 2021 is \$200,000 in cost center 123211. This amendment allows the County to seek reimbursement from the City for an additional \$200,000 in 2021 for specific tasks defined in the amendment including work performed by the Whatcom Conservation District under Whatcom County Contract No. 201903001-1 and task 2 of a new interlocal agreement between the County and Whatcom Conservation District for HIP in 2021.

Please contact Ingrid Enschede at extension 6229, if you have any questions or concerns regarding the terms of this agreement.

Encl.

**WHATCOM COUNTY CONTRACT  
INFORMATION SHEET**

Whatcom County Contract No.  
**201909004-1**

Originating Department:	Public Works
Division/Program: <i>(i.e. Dept. Division and Program)</i>	Stormwater/Homeowner Incentive Program (907620)
Contract or Grant Administrator:	Ingrid Enschede
Contractor's / Agency Name:	City of Bellingham
Is this a New Contract?    If not, is this an Amendment or Renewal to an Existing Contract?    Yes <input checked="" type="radio"/> No <input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:    201909004	
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?    Contract _____ Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____ Cost Center: 123211	
Is this agreement excluded from E-Verify?    No <input type="radio"/> Yes <input checked="" type="radio"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below: <input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Goods and services provided due to an emergency <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): \$ 350,000 (original agreement funding)	Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b> 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: \$ 200,000 (amended amount of funding for 2021)	
Total Amended Amount: \$ 200,000	
Summary of Scope:	This agreement defines City of Bellingham (City) and Whatcom County (County) obligations for the administration of the Lake Whatcom Homeowner Incentive Program (HIP). Amend. No. 1 extends the agreement through 2021 with redefined County and City funding responsibilities. This amendment allows the County to seek City reimbursement for specific tasks completed by the Whatcom Conservation District (WCD) under WC Contract No. 201903001-1 and a new HIP agreement between the County and WCD in 2021.
Term of Contract: 28 months (September 2019 - December 2021)	Expiration Date: December 31, 2021

Contract Routing:	1. Prepared by: <u>Ingrid Enschede</u>	Date: <u>11/10/20</u>
	2. Attorney signoff: <u>Christopher Quinn</u>	Date: <u>11/16/2020</u>
	3. AS Finance reviewed: <u>M Caldwell</u>	Date: <u>11/12/2020</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: _____

**AMENDMENT No. 1  
TO  
2019-2020 INTERLOCAL AGREEMENT  
CITY OF BELLINGHAM – WHATCOM COUNTY  
LAKE WHATCOM HOMEOWNER INCENTIVE PROGRAM**

**WHEREAS**, an interlocal agreement (“Agreement”) was entered into between the City of Bellingham (“City”) and Whatcom County (“County”) on September 11, 2019 (City Contract No. 2019-0540 and County Contract No. 201909004) for the purpose of working cooperatively to administer the Lake Whatcom Homeowner Incentive Program (HIP) within Basins 1 and 2 of the Lake Whatcom watershed; and,

**WHEREAS**, the City agreed to reimburse the County for County-incurred expenses related to management and administration of the HIP according to the terms described in the Agreement; and,

**WHEREAS**, the County is transitioning to a revised, self-funded version of the HIP starting in 2021; and,

**WHEREAS**, the County desires an extension of the Agreement for the purpose of completing HIP management and administration tasks from 2020 and providing assistance to county homeowners currently engaged in the HIP to install water quality best management practices (BMPs) on Tier 1 High Priority properties as described in Exhibit “B” through December 31, 2020; and,

**WHEREAS**, the City desires an extension of the Agreement for the purpose of completing HIP management and administration tasks from 2020 and to provide technical assistance and homeowner reimbursements to city homeowners currently engaged in the HIP to install water quality BMPs on both Tier 1 High Priority properties and Tier 2 Low Priority properties as described in Exhibit “B” through May 31, 2021.

**NOW, THEREFORE, the City and the County agree as follows:**

**1. COUNTY RESPONSIBILITIES.** That Section 3.4 of the Agreement is amended as follows:

3.4 (Amended): The County will budget funding of \$200,000 in 2021 to complete HIP management and administration tasks from 2020, assist homeowners currently engaged in the HIP to install native landscaping on Tier 2 Low Priority properties, and administer and implement a revised, self-funded version of the HIP.

**2. CITY RESPONSIBILITIES.** That Sections 4.1 and 4.2 of the Agreement are amended as follows:

4.1 (Amended): The City will provide funding of \$200,000 to Whatcom County in 2021 to reimburse the County for County-incurred expenses including: (1) 50% of County costs to complete HIP management and administration tasks from 2020; (2) expenses related to providing assistance to city homeowners currently engaged in the HIP to install water quality BMPs on both Tier 1 High Priority and Tier 2 Low Priority properties through May 31, 2021; and (3) expenses related to providing assistance to county homeowners currently engaged in the



HIP to install water quality BMPs on Tier 1 High Priority properties through December 31, 2020. Such HIP-related expenses may include, but are not limited to, interlocal agreements, equipment, outreach activities, specific material purchases related to HIP-approved activities, and homeowner reimbursements as described in 4.2. The City will also provide funding to administer and implement a self-funded version of the HIP for city homeowners after May 31, 2021.

4.2 (Amended): The City will reimburse the County for payments made to landowners as reimbursement of landowner-incurred expenses to complete an approved HIP project on Tier 1 High Priority properties as described in the Guidelines and Tier 2 Low Priority properties located within city limits as described in Exhibit "B".

**3. TERM.** That Section 6 of the Agreement is amended as follows:

6.0 (Amended): This Agreement shall be effective for services performed from the approval date of this Agreement through **December 31, 2021**. It may be terminated by either party upon the giving of 30 days' written notice to the other, at which time any remaining financial obligations for services rendered shall be paid in full according to the provisions of **Section 5** of this Agreement. Immediately upon receipt of a termination notice, the County shall cease incurring or authorizing additional expenditures pursuant to this Agreement.

**FURTHER**, that this Amendment No. 1 shall be made part of the original interlocal agreement by and between the City and the County effective January 1, 2021. Unless specifically stated herein, all other terms and conditions of the original agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have signed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**EXECUTED**, this the \_ day of \_\_\_\_\_, 2020, for **WHATCOM COUNTY**

By \_\_\_\_\_  
Satpal Singh Sidhu, County Executive

Approved as to form:

CQ/emailed /BB 11/20/2020  
Christopher Quinn, Senior Civil Deputy Prosecuting Attorney

  
Jon Hutchings, Director of Public Works

**EXECUTED**, this the \_\_\_\_\_ day of \_\_\_\_\_, 2020, for the **CITY OF BELLINGHAM**:

**Departmental Approval:**

\_\_\_\_\_  
*Mayor*

\_\_\_\_\_  
*Department Head*

**Attest:**

**Approved as to Form:**

\_\_\_\_\_  
*Finance Director*

\_\_\_\_\_  
*Office of the City Attorney*

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF WHATCOM )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared SATPAL SINGH SIDHU, to me known to be the County 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 \_\_\_\_\_.  
My commission expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF WHATCOM )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared, to me SETH FLEETWOOD known to be the Mayor of CITY OF BELLINGHAM, 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 \_\_\_\_\_.  
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: **AB2020-562**

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<b>File ID:</b>	AB2020-562	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/20/2020	<b>Entered by:</b>	BBushaw@co.whatcom.wa.us		
<b>Department:</b>	Public Works Department	<b>File Type:</b>	Interlocal		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

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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 the Whatcom Conservation District for the Lake Whatcom Homeowner Incentive Program assistance, in the amount of \$92,095

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

The Lake Whatcom Homeowner Incentive Program provides technical assistance and cost share incentives for homeowners to install best management practices that reduce phosphorus runoff into Lake Whatcom. The Whatcom Conservation District will provide technical assistance to homeowners and program implementation assistance through this agreement. With the Amendment number 1 of Whatcom County Contract 201909004, the County can seek reimbursement from the City of Bellingham for work completed under this scope of work task 2

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### HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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**Attachments:** WC-WCD HIP ILA 2021 Memo.pdf, WC-WCD HIP ILA 2021 Contract.pdf

**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](http://www.whatcomcounty.us)

**MEMORANDUM**

**TO:** The Honorable Satpal Singh Sidhu, 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*  
Ingrid Enschede, Program Specialist *IE*

**DATE:** November 17, 2020

**RE:** 2021 Interlocal Agreement between Whatcom County and the Whatcom  
Conservation District for Lake Whatcom Homeowner Incentive Program  
Assistance

---

**Requested Action**

Please find attached for your review and signature two (2) original copies of the 2021 Interlocal Agreement between Whatcom County (County) and the Whatcom Conservation District (WCD) for Lake Whatcom Homeowner Incentive Program Assistance.

**Background and Purpose**

HIP is a non-regulatory program that provides technical assistance and financial incentives to homeowners who voluntarily install stormwater best management practices (BMP) that reduce phosphorus runoff into Lake Whatcom. HIP helps meet Lake Whatcom Total Maximum Daily Load (TMDL) requirements. The County and City of Bellingham (City) have been jointly implementing a single, unified version of the HIP since late 2016 with assistance from the WCD.

Starting in 2021, the County and City are transitioning to coordinated but separate and self-funded HIPs for each jurisdiction. This agreement provides continued assistance from the WCD to the County to implement HIP in the County, assist homeowners in stalling HIP projects in the County, and help County homeowners complete HIP 2.0 target program projects initiated before October 1, 2020.

**Funding Amount and Source**

The total cost of this agreement is \$92,095 and is included in the 2021 Stormwater Budget (cost center 123211). Work performed under task 2 to complete HIP 2.0 target program projects will be eligible for reimbursement by City with Amendment No. 1 of the 2019-2020 agreement between Whatcom County and the City of Bellingham for the Lake Whatcom Homeowner Incentive Program (Whatcom County Contract No. 201909004).

Please contact Ingrid Enschede at extension 6229, 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>(i.e. Dept. Division and Program)</i>	Stormwater/Homeowner Incentive Program (907620)
Contract or Grant Administrator:	Ingrid Enschede
Contractor's / Agency Name:	Whatcom Conservation District
Is this a New Contract?    If not, is this an Amendment or Renewal to an Existing Contract?    Yes <input type="radio"/> No <input checked="" type="radio"/>	
Yes <input checked="" type="radio"/> No <input type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval?    Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____	
Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement?	
Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, grantor agency contract number(s): _____ CFDA#: _____	
Is this contract grant funded?	
Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, Whatcom County grant contract number(s): _____	
Is this contract the result of a RFP or Bid process?	
Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____ Contract Cost Center: 123211	
Is this agreement excluded from E-Verify?    No <input type="radio"/> Yes <input checked="" type="radio"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below:	
<input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Goods and services provided due to an emergency	
<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): \$ 92,095 This Amendment Amount: \$ _____ Total Amended Amount: \$ _____	Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b> <ol style="list-style-type: none"> <li>1. Exercising an option contained in a contract previously approved by the council.</li> <li>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.</li> <li>3. Bid or award is for supplies.</li> <li>4. Equipment is included in Exhibit "B" of the Budget Ordinance.</li> <li>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.</li> </ol>
Summary of Scope:	
The Lake Whatcom Homeowner Incentive Program provides technical assistance and cost share incentives for homeowners to install best management practices that reduce phosphorus runoff into Lake Whatcom. The Whatcom Conservation District will provide technical assistance to homeowners and program implementation assistance through this agreement. With Amend. No. 1 of contract 201909004, the County can seek reimbursement from the City of Bellingham for work completed under this scope of work task 2.	
Term of Contract: 12 months	Expiration Date: December 31, 2021

Contract Routing:	1. Prepared by: Ingrid Enschede	Date: 11/10/20
	2. Attorney signoff: Christopher Quinn	Date: 11/16/2020
	3. AS Finance reviewed: M Caldwell	Date: 11/13/2020
	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: _____

Last edited 07/06/20

**2021 INTERLOCAL AGREEMENT  
WHATCOM COUNTY & WHATCOM CONSERVATION DISTRICT  
LAKE WHATCOM HOMEOWNER INCENTIVE PROGRAM ASSISTANCE**

This Interlocal AGREEMENT (“AGREEMENT”) is between the Whatcom Conservation District (“WCD”) and the Whatcom County (“COUNTY”) as public agencies pursuant to the Interlocal Cooperation Act (RCW 39.34) for implementation of the Lake Whatcom Homeowner Incentive Program (HIP) in cooperation with the City of Bellingham (“CITY”).

WHEREAS, the Washington State Department of Ecology (“ECOLOGY”) issued the final Lake Whatcom Watershed Total Maximum Daily Load (TMDL) study for phosphorus and fecal coliform bacteria in 2008, which requires the CITY and the COUNTY to develop a response strategy; and,

WHEREAS, the CITY and COUNTY established HIP as a pilot program in 2011 with assistance from ECOLOGY to promote homeowner stewardship within the Lake Whatcom watershed and provide technical assistance and financial incentives to help homeowners install phosphorus-reducing best management practices (BMPs) to meet TMDL objectives; and,

WHEREAS, the CITY and County committed to cooperatively administering a locally funded revised and expanded version of HIP in 2016 through Interlocal Agreement (Whatcom County Contract No. 201611031) and again in 2019 (Whatcom County Contract No. 201909004); and,

WHEREAS, the WCD was formed in 1946 pursuant to RCW 89.08 as a public agency to undertake the conservation of renewable resources in all of Whatcom County; and,

WHEREAS, the CITY and the COUNTY requested assistance from the WCD beginning in 2016 to provide homeowner outreach, technical assistance, and program implementation assistance for the installation of phosphorus-reducing BMPs through HIP to the mutual advantage of all jurisdictions; and,

WHEREAS, the COUNTY and the WCD established an Interlocal Agreement to provide funding to the WCD to provide assistance for HIP in 2016 (Whatcom County Contract No. 201610015) and again in 2019 (Whatcom County Contract No. 201903001) in cooperation with the CITY; and,

WHEREAS, the Lake Whatcom Management Program 2020-2024 Work Plan (Resolution 2020-023) calls for continuing to provide technical and/or financial assistance for residential-scale retrofits of private property that results in phosphorus-or flow-limiting projects through HIP or similar programs; and,

WHEREAS, the CITY and COUNTY request continued assistance for HIP from the WCD in 2021 to complete tasks identified in their current Interlocal Agreement as amended (Whatcom County Contract No. 201909004-1); and,

WHEREAS, COUNTY requests additional assistance for HIP from the WCD for the COUNTY'S new self-funded version of the program beginning in 2021.

NOW, THEREFORE, the WCD and COUNTY agree as follows:

- I. *Purpose:* The purpose of this AGREEMENT is to set the terms whereby the COUNTY will make available funds to the WCD to implement tasks to support the Lake Whatcom Homeowner Incentive Program as described in Exhibit A attached hereto.
- II. *Administration:* No new or separate legal or administrative entity is created to administer the provisions of this AGREEMENT.
- III. *Whatcom Conservation District Responsibilities:* The WCD hereby agrees to provide support for the Lake Whatcom Homeowner Incentive Program as described in Exhibit A attached hereto.
- IV. *Whatcom County Responsibilities:* The COUNTY hereby agrees to reimburse the WCD, not to exceed the total budget amount allocated to the WCD as shown in Exhibit B attached hereto, for the costs in providing and performing the services stated.
- V. *Payment:* The WCD shall submit itemized invoices in a format approved by the COUNTY in accordance with the requirements of Exhibit B. The COUNTY will compensate the WCD for services rendered within thirty (30) days following receipt of an approved invoice, provided all other terms and conditions of the contract have been met and are certified as such by the Contract Administrator.
- VI. *Term:* This AGREEMENT shall be effective for services performed from the date of signature through December 31, 2021.
- VII. *Responsible Persons:* The persons responsible for administration of this AGREEMENT shall be the Whatcom County Public Works (WCPW) Department Director and the WCD Executive Director or their respective designees.
- VIII. *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.
- IX. *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.
- X. *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.



- XI. *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 and regulations of the State of Washington and the federal government, both as to interpretation and performance. The venue of any action arising herefrom shall be in the Superior Court of the State of Washington in and for Whatcom County.
- XII. *Severability:* In the event any term or condition of this AGREEMENT or application thereof to any person or circumstance 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.
- XIII. *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.
- XIV. *Recordation:* Upon execution of this Agreement, Whatcom County shall file a copy of it with the office of its County Auditor pursuant to the requirements of RCW 39.34.040.
- XV. *Performance:* The parties agree to satisfy all aspects of this AGREEMENT in a timely and professional manner. The WCD shall notify the COUNTY as soon as problems, delays or adverse conditions become known which will materially impair its ability to meet the deliverables described in Exhibit A.
- XVI. *Audit and Inspection:* The COUNTY and WCD shall maintain records pursuant to this AGREEMENT in accordance with generally accepted accounting principles and practices consistently applied. Records shall be subject at all reasonable times to inspection and audit and State auditor. The COUNTY and WCD shall preserve and make such records available to said parties until expiration of three (3) years from the date of final payment under this AGREEMENT.
- XVII. *Dispute Resolution:* The parties to this AGREEMENT shall first attempt to resolve disputes informally at the staff level. In the event that the dispute cannot be resolved at the staff level, a dispute resolution procedure shall be followed under the guidance of the Whatcom Dispute Resolution Center.
- XVIII. *Discrepancies.* If there is any discrepancy between any provision of this AGREEMENT and any provision of Whatcom County Contract No. 201909004, the provisions of this Agreement shall prevail.
- XIX. *Rights and Remedies:* In no event shall a making by the COUNTY of any payment to the WCD constitute or be construed as a waiver by the COUNTY of any breach of covenant or any default that may then exist on the part of the WCD. The making of any such payment by the COUNTY while any such breach or default shall exist shall in no way impair or prejudice any of the COUNTY's rights, which are hereby expressly recognized, to recover payments or portions thereof, to which the WCD has not entitled under this AGREEMENT, or where any payments were made by

mistake, or to pursue any other remedy available to the COUNTY in respect to breach or default of this AGREEMENT.

This AGREEMENT shall not relieve the COUNTY or the WCD of any obligation or responsibility imposed by law except that performance pursuant to this AGREEMENT may, where appropriate, be offered in satisfaction of an obligation or responsibility conveyed to the COUNTY or the WCD by law.

- XX. *Proof of Insurance:* WCD shall carry for the duration of this AGREEMENT insurance with the coverage and limits provided in the attached certificate of insurance. For the commercial general liability insurance, Whatcom County shall be named as an additional insured. WCD's insurance shall be primary and non-contributory, and shall waive all rights of subrogation against Whatcom County and its coverage. Whatcom County's insurance shall not serve as a source of contribution.

In the alternative, either party to this agreement may fulfill the insurance obligations contained herein by maintaining membership in a joint self-insurance program authorized by RCW 48.62. In this regard, the parties understand that the party to this agreement who is a member of such a program is not able to name the other party as an "additional insured" under the liability coverage provided by the joint self-insurance program.

- XXI. *Miscellaneous:* No obligation in this AGREEMENT shall limit the WCD in fulfilling its responsibilities otherwise defined by law. No obligation in this AGREEMENT shall limit the COUNTY in fulfilling its responsibilities otherwise defined by law.

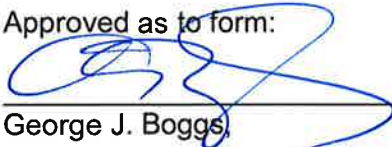
- XXII. *Signatures:* The undersigned representatives accept the provisions of this AGREEMENT. This AGREEMENT shall be in effect when signed by both parties.

IN WITNESS WHEREOF, the parties have signed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**WHATCOM CONSERVATION DISTRICT**

By   
Heather Christianson, Chair

11/24/2020  
Date

Approved as to form:  
  
George J. Boggs,  
WCD Attorney

STATE OF WASHINGTON )  
COUNTY OF WHATCOM ) ss

On this 24<sup>th</sup> day of November, 2020, before me personally appeared HEATHER CHRISTIANSON to me known to be the Chair of the Whatcom Conservation District and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.



Beth Boshaw  
NOTARY PUBLIC in and for the State of Washington,  
residing at: Whatcom County  
My commission expires 6/29/2021

**WHATCOM COUNTY**

By: \_\_\_\_\_  
Satpal Singh Sidhu, Whatcom County Executive Date \_\_\_\_\_

Recommended for Approval:

[Signature]  
Jon Hutchings  
Public Works Director  
Date 11/20/20

Approved as to form:

CQ/mailed/BS 11/20/2020  
Christopher Quinn Date  
Civil Senior Deputy Prosecuting Attorney

STATE OF WASHINGTON )  
COUNTY OF WHATCOM ) ss

On this \_\_\_ day of \_\_\_\_\_, 2020, before me personally appeared SATPAL SINGH SIDHU to me known to be the County 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: \_\_\_\_\_  
My commission expires \_\_\_\_\_

## **EXHIBIT A - SCOPE OF WORK**

### **Lake Whatcom Homeowner Incentive Program Assistance**

#### **Project Background and Description**

The Lake Whatcom Homeowner Incentive Program (HIP) is a City of Bellingham (City) and Whatcom County (County) non-regulatory program that provides technical assistance and cost share incentives for homeowners who voluntarily elect to install stormwater best management practices (BMPs) that reduce phosphorus runoff into Lake Whatcom. HIP was originally developed under a Washington State Department of Ecology grant from 2011 to 2015. Findings from an evaluation of the pilot program were used to develop a revised HIP, which began in 2017.

From 2017 to 2020, this revised HIP has been a jointly implemented, two-tier program for city and county homeowners in basins one and two of the Lake Whatcom watershed. The target program tier offers a higher level of assistance and financial incentives to owners of shoreline parcels, parcels draining directly to streams, and parcels with large lawns. The DIY native landscaping program tier offers technical assistance and reimbursement for materials to install native landscaping on all other parcels in the program area.

Starting in 2021, additional HIP changes will be phased in. The City and County will continue to offer coordinated programs but no longer offer a single, unified HIP for both city and county homeowners. Instead, each jurisdiction will modify the program to adapt to their different circumstances.

The WCD has provided HIP implementation assistance since October 2016 through interlocal agreements with the County. The County requests continued assistance from the WCD to implement HIP in 2021 as described in this scope of work including: program administration assistance, working with county homeowners who initiated HIP projects prior to 2021 in the HIP target and DIY native landscaping programs, and assistance with a new small HIP projects program available to all Lake Whatcom watershed landowners outside of city limits whose properties are not built to current stormwater code standards.

#### **Task 1. Program Administration**

The WCD will provide program administration and coordinate with County staff. Program administration tasks will include:

- Invoicing
- Attending regular coordination meetings, providing communication of program activities, and contacting County staff with questions and/or problems in a timely manner
- Managing databases to support HIP in order to ensure accurate tracking of customers, projects, and data for analysis and reporting
- Providing input to County staff on program improvement and adaptive management
- Developing a process and administering annual self-inspection and maintenance reports for completed HIP county projects
- Assisting with program outreach, supporting HIP ambassadors, and updating HIP website
- Revising existing HIP materials to work with 2021 program changes

- Providing communication with local businesses interested in supporting HIP project installation and help developing a new HIP professionals list
- Providing HIP Project Coordinator training including attending trainings or participating in activities that support the WCD's ability to perform tasks outlined in the scope of work.
- Other administrative support as needed

**Deliverables and Timelines:**

- Submit invoices with a progress report summarizing work performed during the invoice period every month
- Attend coordination meetings with County staff monthly or as needed
- Participate in program evaluation annually or as needed
- Maintain a HIP project database with monthly and annual reporting capability
- Maintain self-inspection and maintenance report records and provide a copy to the County year by June
- Review outreach plan and outreach materials developed and provide feedback as requested
- Recruit and support HIP ambassadors as needed
- Revise existing HIP materials as requested

**Task 2. HIP 2.0 Target Project Closeout Homeowner Assistance**

The WCD will provide assistance to all county target program homeowners who had an initial site visit before October 1, 2020 and help them complete projects in 2021 following existing HIP 2.0 target program requirements. All work assisting HIP 2.0 target program participants in 2021 will be completed pursuant to this 2021 AGREEMENT instead of the 2019 agreement (Whatcom County Contract No. 201903001-2). If there is any discrepancy or inconsistency between this provision (Task 2) of the AGREEMENT and any provision of Whatcom County Contract No. 201909004, the provisions of this AGREEMENT shall control and prevail.

Homeowner assistance responsibilities include:

- Communicating program changes and deadlines to homeowners
- Conducting site visits
- Facilitating the Homeowner Acknowledgement process
- Providing assistance to design and install approved HIP BMPs including:
  - Identifying site constraints, including soil investigations, and completing feasibility studies
  - Completing critical areas checklists; identifying and mapping critical areas as needed
  - Providing HIP certified professionals list to homeowners
  - Responding to questions from designers and contractors

- Providing HIP application assistance; reviewing applications to ensure proposal meets HIP standards; providing instructions on how to submit application to Whatcom County Planning and Development Services
- Overseeing BMP installation; responding to questions about installation
- Providing project closeout assistance including:
  - Conducting final project inspections for project close out
  - Completing easement and maintenance agreement
  - Facilitating reimbursement request process

**Deliverables and Timelines:**

- Work with homeowners and their agents to submit HIP project application forms to County staff for review and approval no later than July 1, 2021
- Conduct final project inspections for project close out; complete inspection forms
- Develop and submit HIP project reimbursement requests to County staff no later than November 1, 2021. Reimbursement requests to include: final “as built” map and complete easement and maintenance agreement with homeowner signature, final inspection report, reimbursement forms, and copies of paid invoices.
- Maintain project records and finalize by December 31, 2021

**Task 3. Small HIP Projects Homeowner Assistance**

Whatcom County is offering a single, revised version of HIP for owners of developed properties in the county portion of the Lake Whatcom watershed that do not meet current stormwater management code standards starting in 2021. The focus for these small HIP projects will be on the native landscaping BMP; however, WCD staff can suggest other HIP BMPs for the homeowner to consider if they are feasible for the site and the homeowner is interested in additional options. The WCD will provide a HIP Project Coordinator who will serve as the primary point of contact for homeowners voluntarily participating in HIP.

Homeowner assistance responsibilities include:

- Responding to homeowner inquiries
- Enrolling new participants in HIP
- Facilitating signing of homeowner acknowledgement forms
- Conducting site visits
- Providing project design assistance as needed
- Providing application assistance including developing proposed improvements maps and completing HIP application forms as needed
- Providing installation assistance as needed
- Providing project closeout assistance including:
  - Conducting final project inspections for project close out

- Completing maintenance agreement
- Facilitating reimbursement request process
- Other HIP project facilitation activities as needed

**Deliverables and Timelines:**

- Provide HIP project application forms to homeowner for submittal to County
- Complete final project inspection forms
- Complete maintenance agreements for homeowner and County signature
- Facilitate the reimbursement request submittal process
- Maintain project records

**Task 4. Shoreline Program Homeowner Assistance**

Whatcom County is offering owners of county shoreline properties draining to the lake without interception by a public stormwater system the option to complete a HIP project under the current HIP 2.0 target program rules. The WCD will provide a HIP Project Coordinator who will serve as the primary point of contact for homeowners voluntarily participating in HIP.

Homeowner assistance responsibilities include:

- Responding to homeowner inquiries; answering questions via email, phone, and in person
- Clearly explaining program purpose, opportunities, and limitations; eligible and ineligible improvements; facilitating the Homeowner Acknowledgement process
- Conducting site visits
- Providing assistance to design and install approved HIP BMPs including:
  - Identifying site constraints, including soil investigations, and completing feasibility studies
  - Completing critical areas checklists; identifying and mapping critical areas as needed
  - Developing HIP project designs and completing HIP application forms; providing instructions on how to submit application to Whatcom County Planning and Development Services
- Overseeing BMP installation; responding to questions about installation
- Providing project closeout assistance including:
  - Conducting final project inspections for project close out
  - Completing easement and maintenance agreement
  - Facilitating reimbursement request process

**Deliverables and Timelines:**

- Complete HIP project feasibility study and provide to homeowners
- Submit HIP project application forms to County staff for review and approval
- Conduct final project inspections for project close out; complete inspection forms
- Maintain project records



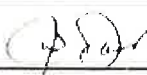

**EXHIBIT B - BUDGET**  
**Lake Whatcom Homeowner Incentive Program Assistance**

As consideration for services provided in Exhibit A, Scope of Work, the County agrees to compensate the contractor according to the actual composite hourly rates of personnel working on this project, estimated hourly rates provided below\*. Composite rates are subject to Whatcom Conservation District adjustments, annually or as needed. Revised Composite Rate forms will be provided to the County for any rate changes upon adjustment. The total budget is not to exceed **\$92,095**. Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed including mileage at the current IRS rate. For mileage reimbursement submit: copies of mileage records, including the name of staff member, date of travel, starting point and destination of travel, number of miles traveled, and a brief description of the purpose of travel. Lodging and per diem for training shall not exceed the GSA rate for the location where training is provided. Other expenditures such as supplies, postage, and rentals shall be reimbursed at actual cost. Expense reimbursement requests must be accompanied by copies of paid invoices. Contractor certifies that all personnel charging to this contract are program personnel and are not also included in the Contractor's overhead rate. 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.

<b>Title</b>	<b>Maximum 2021 composite Rate*</b>	
Administration	\$45.75	
HIP Coordinator	\$48.50	
Resource Specialist	\$45.50	
GIS Technician	\$53.80	
Outreach Coordinator	\$56.49	
Wetlands Specialist	\$56.86	
Subtotal salaries/benefits		68,920
Overhead (30% of salaries/benefits)		20,676
<b>Total Personnel</b>		<b>89,595</b>
Supplies/Postage/Rentals	Actual costs	1,000
Training	Actual costs	500
Mileage	Actual costs	1,000
Other (contract specific)		
<b>Totals</b>		<b>92,095</b>

\*WCD staff listed may work on any task, not to exceed \$89,595 for salaries/benefits and overhead.

**EXHIBIT C - INSURANCE**  
**Lake Whatcom Homeowner Incentive Program Assistance**

Enduris EVIDENCE OF COVERAGE		
<b>INSURED/PARTICIPANT:</b> Whatcom Conservation District 6975 Hannegan Rd Lynden, WA 98264  <b>CERTIFICATE HOLDER:</b> Whatcom County 311 Grand Avenue Bellingham, WA 98225	<b>MEMORANDUM#: 2021-00-271</b>  <b>EFFECTIVE: September 1, 2020 through August 31, 2021</b> <i>This is to certify that the Memorandum of Coverage has been issued to the Insured/Participant for the period indicated.</i>	
<p><i>The Evidence of Coverage does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.</i></p>		
COVERAGE:	PER OCCURRENCE LIMIT	AGGREGATE LIMIT
<b>COMPREHENSIVE GENERAL LIABILITY</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>
Professional Liability	\$1,000,000	\$1,000,000
Personal Liability	\$1,000,000	\$1,000,000
Products – Complete Operation	\$1,000,000	\$1,000,000
<b>AUTO LIABILITY</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>
Combined Single Limit; Hired and Non-Owned; Temporary Substitute	\$1,000,000	\$1,000,000
<b>CRIME BLANKET COVERAGE WITH FAITHFUL PERFORMANCE OF DUTY</b>	<b>N/A</b>	<b>N/A</b>
Per Occurrence Aggregate	N/A	N/A
<b>PROPERTY/MOBILE EQUIPMENT/BOILER AND MACHINERY</b>	<b>N/A</b>	<b>N/A</b>
Property	N/A	N/A
Mobile Equipment	N/A	N/A
<b>AUTOMOBILE PHYSICAL DAMAGE</b>	<b>N/A</b>	<b>N/A</b>
<b>OTHER COVERAGE: N/A</b>	<b>N/A</b>	<b>N/A</b>
<b>CANCELLATION:</b> Should any of the above described coverage be cancelled before the expiration date of thereof. Notice will be delivered in accordance with the provisions of the MOC.		
<b>MEMO:</b> <div style="border: 1px solid black; padding: 5px; min-height: 60px;">           Evidence of Member Coverage to contracted party             Reference: 2021 Interlocal Agreement, Lake Whatcom Homeowner Incentive Program Assistance         </div>		
 _____ Authorized Representative November 10, 2020		
		
1610 S Technology Blvd, Suite 100 - Spokane Washington – 99224 Tel: (509) 838-0910 - Toll Free (800) 462-8418 - Fax (509) 747-3875		



# Whatcom County

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

## Agenda Bill Master Report

File Number: **AB2020-563**

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<b>File ID:</b>	AB2020-563	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/20/2020	<b>Entered by:</b>	BBushaw@co.whatcom.wa.us		
<b>Department:</b>	Public Works Department	<b>File Type:</b>	Contract (FCZDBS)		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

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Primary Contact Email: [sdraper@co.whatcom.wa.us](mailto:sdraper@co.whatcom.wa.us) <mailto: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 Whatcom Conservation District for Pollution Identification and Correction Program Non-Dairy Agricultural Best Management Practices Outreach and Cost Share, in the amount of \$57,000 (Council acting as the Whatcom County Flood Control District Board of Supervisors)

### **SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

This interlocal agreement between the Whatcom County Flood Control Zone District and Whatcom Conservation District will enhance and support elements of Whatcom County's Pollution Identification and Correction (PIC) Program. This agreement will provide storm event sampling and community outreach and financial assistance and incentives to landowners and operators with non-dairy agricultural operations in PIC areas

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### **HISTORY OF LEGISLATIVE FILE**

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<b>Date:</b>	<b>Acting Body:</b>	<b>Action:</b>	<b>Sent To:</b>
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**Attachments:** PIC WCD ILA Memo.pdf, PIC 2021 ILA Contract submit.pdf

**Jon Hutchings  
Director**



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

**MEMORANDUM**

**TO:** The Honorable Satpal Singh Sidhu, County Executive for the Whatcom County Flood Control Zone District (FCZD)  
Honorable Members of the Whatcom County FCZD Board of Supervisors

**THROUGH:** Jon Hutchings, Public Works Director *JH*

**FROM:** Gary Stoyka, Natural Resources Manager *GS*  
Erika Douglas, Senior Planner *ED*

**DATE:** November 17, 2020

**RE:** Interlocal Agreement with the Whatcom Conservation District for Pollution Identification and Correction (PIC) Program Non-Dairy Agriculture Outreach and Financial Assistance

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Please find enclosed for your review and signature two (2) originals of an interlocal agreement between Whatcom County Flood Control Zone District and the Whatcom Conservation District in the amount of \$57,000 to provide storm event sampling and community outreach and cost-share to support the Pollution Identification and Correction (PIC) Program.

**Requested Action**

Public Works respectfully requests that the County Executive, acting for the Whatcom County Flood Control Zone District (FCZD) Board of Supervisors, execute the attached interlocal agreement.

**Background and Purpose**

This interlocal agreement will provide funding to the Whatcom Conservation District to implement storm event sampling, community outreach activities, and manage the financial assistance and incentives program for landowners and operators with non-dairy agricultural operations in Whatcom County PIC areas.

**Funding Amount and Source**

This interlocal agreement with the Whatcom Conservation District will provide \$57,000 to support the non-dairy agriculture component of the Whatcom County PIC program through a partnership with the Whatcom Conservation District. This agreement will be funded through the 2021 FCZD budget for Public Works- Natural Resources programs.

Please contact Erika Douglas at extension 6294 or Gary Stoyka at extension 6218, 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)	Natural Resources- PIC Program (950530)
Contract or Grant Administrator:	Erika Douglas
Contractor's / Agency Name:	Whatcom Conservation District

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#: \_\_\_\_\_

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: 813002

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): \$ 57,000	Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b> 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: The purpose of this interlocal agreement is to identify the activities that will be conducted by the WCD to provide stormwater monitoring and outreach and financial assistance to landowners/operators with non-dairy agriculture in support of and in coordination with the Whatcom County PIC Program.

Term of Contract: 1/1/21-12/31/21	Expiration Date: 12/31/21
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Contract Routing:	1. Prepared by: ED	Date: 11/17/20
	2. Attorney signoff: Christopher Quinn	Date: 11/17/2020
	3. AS Finance reviewed: M Caldwell	Date: 11/18/2020
	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: _____

**2021 INTERLOCAL AGREEMENT**  
**WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT- WHATCOM CONSERVATION DISTRICT**  
**Pollution Identification and Correction (PIC) Program**  
**Non- Dairy Agricultural Best Management Practices Outreach and Cost-Share**

WHEREAS, Whatcom County Flood Control Zone District, hereinafter referred to as the "County" and the Whatcom Conservation District, hereinafter referred to as the "WCD", desire to establish an arrangement wherein the County will provide funding to the WCD to provide storm event monitoring, community outreach and financial assistance programs for the non-dairy agriculture best management practices component of the Whatcom County Pollution Identification and Correction (PIC) program to the mutual advantage of each jurisdiction; and,

WHEREAS, the Drayton Harbor Shellfish Recovery Plan identified a coordinated water quality monitoring program to identify pollution sources and increased capacity for following up on monitoring findings as high priorities; and,

WHEREAS, the Portage Bay Shellfish Recovery Plan identified a Whatcom County PIC program as the highest priority recommendation; and,

WHEREAS, a PIC program is a data-driven program guiding pollution-tracking activities to areas with the greatest water quality problems, followed by technical and financial assistance offered to landowners to implement fixes to improve and protect water quality; and,

WHEREAS, agricultural activities have been identified as one priority source of bacteria in the Drayton Harbor, Portage Bay, and Birch Bay Shellfish Protection Districts and other coastal watersheds; and,

WHEREAS, the WCD provides local expertise and technical assistance to landowners with farm animals to support development and implementation of farm plans; and,

WHEREAS, the WCD also administers landowner incentive and cost-share programs including CREP and Washington State Conservation Commission (WSCC) Livestock Cost-share Program for Whatcom County; and

WHEREAS, a more flexible cost-share option is needed to provide financial assistance to landowners with small farms that do not meet the requirements of existing federal and state cost-share programs; and

WHEREAS, the most efficient use of resources is to have the WCD supplement its research, outreach and cost-share programs consistent with the specific needs of the Whatcom County PIC program as described in Exhibit A to help improve and protect water quality in the Drayton Harbor, Portage Bay, and Birch Bay Shellfish Protection Districts as well as other coastal watersheds; and

WHEREAS, it is in the best interest of each party to enter into this Interlocal Agreement;

NOW THEREFORE, the WCD and County agree as follows:

- I. *Purpose:* The purpose of this agreement is to set the terms whereby the County will make funds available to the WCD to implement an outreach and cost-share program for landowners/operators with non-dairy agricultural operations in PIC program focus areas as described in Exhibit A attached hereto.
- II. *Administration:* No new or separate legal or administrative entity is created to administer the provisions of this agreement.
- III. *Whatcom Conservation District Responsibilities:* The WCD hereby agrees to implement the non-dairy agriculture outreach and cost-share program as described in Exhibit A attached hereto.
- IV. *Whatcom County Responsibilities:* The County hereby agrees to reimburse the WCD, not to exceed the total budget amount allocated to the WCD as shown in Exhibit B attached hereto, for the costs of providing and performing the services stated.
- V. *Payment:* Contractor shall submit itemized invoices in a format approved by the County. Each request for payment shall include invoices which detail work performed and supplies or materials purchased. Each request for reimbursement of payments to landowners will include copies of equipment, supply or vendor receipts and substantiation for equipment and labor hours paid. The County will compensate the WCD for services rendered within thirty (30) days following receipt of an approved invoice, provided all other terms and conditions of the contract have been met and are certified as such by the Contract Administrator.
- VI. *Term:* This Agreement shall be effective for services performed from January 1, 2021 through December 31, 2021.
- VII. *Responsible Persons:* The persons responsible for administration of this Agreement shall be the Whatcom County Public Works (WCPW) Department Director and the WCD Executive Director or their respective designees.
- VIII. *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.
- IX. *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 agrees 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.
- X. *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.
- XI. *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 and regulations of the State of Washington and the federal government, both as to interpretation and performance. The venue of any action arising herefrom shall be in the Superior Court of the State of Washington in and for Whatcom County.

- XII. *Severability:* In the event any term or condition of this Agreement or application thereof to any person or circumstance 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.
- XIII. *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.
- XIV. *Recordation:* Upon execution of this Agreement, and prior to its entry into force, Whatcom County shall file a copy of it with the office of its County Auditor or alternatively list it by subject on its web site or other electronically retrievable public source, pursuant to the requirements of RCW 39.34.040.



IN WITNESS WHEREOF, the parties have signed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

WHATCOM CONSERVATION DISTRICT

By *Heather Christianson*  
Heather Christianson, WCD Chair

WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT

By \_\_\_\_\_  
Satpal Singh Sidhu, County Executive

Approved as to form:

*[Signature]*  
Office of the WCD Attorney

Approved as to form:

*ca/mailed/BB 11/20/2020*  
Whatcom County Senior Prosecuting Attorney

*[Signature]*  
Director of Public Works

STATE OF WASHINGTON )  
COUNTY OF WHATCOM ) ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me personally appeared Satpal Singh Sidhu, acting on behalf of the Whatcom County Flood Control Zone District Board of Supervisors, 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 \_\_\_\_\_  
My commission expires: \_\_\_\_\_

STATE OF WASHINGTON )  
COUNTY OF WHATCOM ) ss.

On this *24th* day of *November*, 2020, before me personally appeared Heather Christianson, to me known to be the Chair of the Whatcom Conservation District and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

*Beth Bushaw*  
NOTARY PUBLIC in and for the State of  
Washington, residing at *Whatcom County*  
My commission expires: *6/29/2021*



**EXHIBIT A- SCOPE OF WORK**  
**Pollution Identification and Correction (PIC) Program**  
**Non-Dairy Agriculture Best Management Practices Outreach and Cost-Share**

**PROJECT DESCRIPTION**

The purpose of this interlocal agreement is to identify the activities that will be conducted by the WCD to provide outreach and financial assistance to landowners/operators with non-dairy agriculture in support of and in coordination with the Whatcom County PIC Program.

**Task 1: Community Outreach (\$34,000)**

WCD will develop and implement a community outreach program for landowners/operators with non-dairy agricultural operations in Whatcom County PIC focus areas. This will include:

- Developing and implementing educational strategies and frameworks in coordination with WCPW to support the PIC.
- Organizing and hosting non-dairy agriculture workshops/trainings. These may include virtual workshops and small group farm tours.
- Developing and distributing educational materials (including social media posts), hosting displays and providing presentations at other community events (in person or virtual).
- Offering incentives for technical assistance programs such as tarps for covering manure storage or soil tests. Other incentives may be jointly agreed upon by WCD and WCPW.

**Deliverables and Timelines:**

- Activities will be tracked through progress reports.
  - Monthly reports will be submitted with invoices and include a list of events, materials, and social media posts.
  - Quarterly reports will include the type and location of outreach events, number of participants, and a description of educational materials, social media posts, and programs developed and coordinated.
- Electronic files of advertisements, educational materials, social media screenshots, and workshop evaluations will be provided.

**Task 2: Non-Dairy Agricultural Operations Cost-Share (\$21,000)**

- WCD and WCPW staff will develop an agreed upon list of eligible cost-share projects. Guidance and application documents created for the 2014 non-dairy agriculture cost-share program have been adapted for this program. WCD and WCPW staff will develop an agreed-upon phased approach for advertising, receiving applications, and selecting priority projects for funding.
- WCD will direct landowners/operators to the most appropriate sources of cost-share funding including funding provided by the County under this agreement, funding provided to the WCD from other sources, and other options through the Whatcom Clean Water program (WCWP).
- WCD staff will assist landowners/operators in completing cost-share applications and provide copies to WCPW for approval of cost-share funding prior to submission to the WCD Director. WCD Director will approve cost-share applications awarded funding by WCPW. No reimbursement will be made where the implementation of BMPs has begun before WCPW and WCD approval. WCD will assist landowners with BMP installation and recordkeeping according to the cost-share program requirements. WCD will receive notification of project completion from landowner/operator and schedule a site visit to verify that BMPs have been installed according to plan specifications. Following the site visit, WCD will approve or deny reimbursement of funds. If reimbursement is denied, the WCD will provide the landowner with information on what is required to improve the BMP to meet specifications needed to sign off as

complete and to be approved for reimbursement. The County will reimburse WCD for eligible cost-share expenses as specified in Exhibit B of this Agreement and landowner/operator cost-share agreement contract.

**Deliverables:**

- Progress will be tracked through quarterly reports summarizing the location, type of pollution sources identified, and type and number of BMPs installed. These statistics will be summarized on a quarterly basis by PIC focus area.
- Final cost-share report including approved applications, installed BMPs, date and findings of site visit, and cost-share reimbursement (with background invoices) by December 31, 2021. Requests from the WCD to the County for reimbursement for cost-share on qualified projects must be submitted with all necessary documentation no later than December 17, 2021.

**Task 3. Storm Event Monitoring (\$2,000)**

- WCD will develop Standard Operating Procedures (SOPs) for time series sample collection. These will be complementary to WCPW SOP for fecal bacteria sampling and analysis. WCD will coordinate and implement storm event time-series monitoring for bacterial analysis.

**Deliverables:**

- SOP for time series sample collection and analysis.
- Storm event samples collected.
- Summary of results will be provided to WCWP Data Team by May 2021.

**EXHIBIT B- BUDGET**  
**Pollution Identification and Correction (PIC) Program**  
**Non-Dairy Agriculture Best Management Practices Outreach and Cost-Share**

As consideration for the services provided pursuant to the Scope of Work, the total budget is not to exceed **\$57,000** with additional details provided below. The County agrees to compensate the contractor according to the actual composite hourly rates of personnel working on this project, estimated hourly rates provided below. Composite rates are subject to Whatcom Conservation District adjustments, annually or as needed. Revised Composite Rate forms will be provided to the County for any rate changes upon adjustment. Requests for payment and reimbursement by the County will coincide and be based on the successful completion of services described in Exhibit A.

Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed including mileage at the current IRS rate. Copies of mileage records, including the name of staff member, date of travel, starting point and destination of travel, number of miles traveled, and a brief description of the purpose of travel. Requests for reimbursement of expenses must be accompanied by copies of paid invoices itemizing costs incurred. The County does not reimburse the cost of alcoholic beverages. 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.

Title	Maximum 2021 Composite Rate*	Totals
GIS Tech	\$ 54.24	\$ 25,192
Admin	\$ 46.10	
Executive Director	\$ 101.05	
Ed Specialist	\$ 57.93	
Ed Assistant	\$ 32.61	
Fire Prevention	\$ 45.26	
HIP Coordinator	\$ 48.48	
Wetland Specialist	\$ 56.17	
CREP Coordinator	\$ 63.27	
CREP Tech	\$ 51.67	
Livestock Coordinator	\$ 51.92	
Planner	\$ 44.44	
Planner	\$ 46.21	
Assistant	\$ 37.02	
WQ Data Coordinator	\$ 50.61	
Science Coordinator	\$ 64.66	
Scientist	\$ 43.94	
Overhead (30% of salaries/benefits)		\$ 7,558
<b>Total Personnel</b>		<b>\$ 32,750</b>
Supplies/postage/rental	Actual costs	\$ 3,000
Mileage	Actual costs	\$ 250
Training	Actual costs	
Cost Share	Actual costs	\$ 21,000
<b>Total Not to Exceed</b>		<b>\$ 57,000</b>

\*WCD staff listed may work on any task, not to exceed \$32,750 for salaries/benefits and overhead.

**Non-Dairy Livestock Cost-Share Reimbursement Description:**

Eligible landowners with applications that are approved by the WCD and WCPW will receive the designated percentage cost-share towards a maximum project cost of \$4,000 (maximum \$3,000 reimbursement). Approved BMPs will be reimbursed through the cost-share program utilizing actual costs and the established rate table. Landowners have the option to do labor themselves. The reimbursable rate for owner/operator services are based upon the established rate sheet (below). Whatcom Conservation District will submit invoices to the County which for each project shall include the landowner cost-share approval form, field inspection sign off / maintenance agreement, landowner reimbursement form (including landowner timesheet), and copies of all receipts.

**Reimbursement Rates for Producer Labor and Producer Owned Machinery/Equipment**

Description	Rate
Individual labor/operator labor	\$22.00/hr
Equipment only, without operator:	
Small tractor, 20Hp-59Hp	\$17.00/hr
Medium Tractor, 60Hp-99Hp	\$28.00/hr
Large Tractor, 100+Hp	\$55.00/hr
Front end loading	\$17.00/hr
Excavator, Light	\$50.00/hr
Excavator, Med	\$88.00/hr
Excavator, heavy	\$132.00/hr
Chain saw	\$11.00/day

Landowners eligible for cost-share assistance through the PIC Non-Dairy Livestock BMP cost-share program can utilize this rate sheet if they choose to do their own labor. Rates will be reimbursed at 75%. Landowner pays 25% of the project costs (labor and materials). An invoice with hours, description of work, and rate must be submitted with cost-share.



# Whatcom County

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

## Agenda Bill Master Report

**File Number: AB2020-564**

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<b>File ID:</b>	AB2020-564	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/23/2020	<b>Entered by:</b>	BBushaw@co.whatcom.wa.us		
<b>Department:</b>	Public Works Department	<b>File Type:</b>	Contract (FCZDBS)		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

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Primary Contact Email: [sdraper@co.whatcom.wa.us](mailto:sdraper@co.whatcom.wa.us) <<mailto:sdraper@co.whatcom.wa.us>>

### **TITLE FOR AGENDA ITEM:**

Request authorization for the County Executive to enter into a contract between Whatcom County and GSI Water Solutions, Inc. to conduct a peer review of the Lynden-Everson-Nooksack-Sumas numerical groundwater model, provide recommendations for improvements and additional work, in the amount of \$103,700 (Council acting as the Whatcom Flood Control District Board of Supervisors)

### **SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

This contract between Whatcom County Flood Control Zone District and GSI Water Solutions, Inc. is to conduct a peer review of the Lynden-Everson-Nooksack-Sumas numerical groundwater model, provide recommendations for improvements and additional work

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### **HISTORY OF LEGISLATIVE FILE**

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<b>Date:</b>	<b>Acting Body:</b>	<b>Action:</b>	<b>Sent To:</b>
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**Attachments:** Memo, Contract

Jon Hutchings  
Director



## MEMORANDUM

**TO:** The Honorable Satpal Singh Sidhu, County Executive, and  
Whatcom County Flood Control Zone District Board of Supervisors

**THROUGH:** Jon Hutchings, Public Works Director *JH*

**FROM:** Gary Stoyka, Natural Resources Manager *GS*

**DATE:** November 18, 2020

**RE:** Contract with GSI Water Solutions, Inc and Whatcom County Flood Control Zone District  
to Conduct a Peer Review of the Lynden-Everson-Nooksack-Sumas Numerical  
Groundwater Model

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### Requested Action

Enclosed are two (2) originals of a contract between the Whatcom County Flood Control Zone District (FCZD) and GSI Water Solutions, Inc. (GSI) for your review and signature.

### Background and Purpose

The work in this contract includes a peer review of the Lynden-Everson-Nooksack-Sumas (LENS) numerical groundwater model. The initial numerical model was completed in 2019 on behalf of WRIA 1 Watershed Management Board agencies and other partners (Whatcom County, Whatcom PUD, City of Bellingham, Nooksack Indian Tribe, Lummi Nation, Bertrand Watershed Improvement District, and Washington Department of Ecology), with the Whatcom County Flood Control Zone District acting as the contracting agent and project manager. Following completion of the initial numerical model, the group recognized the need for additional work necessary for full utilization of the model; however, it was decided that a peer review of the current model should be conducted to ensure it is scientifically sound and meets industry standards prior to conducting further modeling work. The goal of the project is to develop a model which will adequately assess the impacts to surface water flow from groundwater pumping and to inform the development of a water management plan that balances the needs of salmon and other aquatic resources with out-of-stream water needs. The model is envisioned to be a crucial tool in developing solutions that are necessary to resolve the long-standing water management issues in Whatcom County.

### Funding Amount and Source

The estimated budget for this contract is \$103,700. The FCZD Board of Supervisors approved funding for this project in the 2020 FCZD Budget (Cost Center 169121) approved on November 19, 2019.

Please contact Gary Stoyka at extension 6218, 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)	Natural Resources - 907010
Contract or Grant Administrator:	Gary Stoyka
Contractor's / Agency Name:	GSI Water Solutions, Inc.

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes  No   
 Yes  No  If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: \_\_\_\_\_

Does contract require Council Approval? Yes  No  If No, include WCC: \_\_\_\_\_  
 Already approved? Council Approved Date: \_\_\_\_\_ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

Is this a grant agreement? Yes  No  If yes, grantor agency contract number(s): \_\_\_\_\_ CFDA#: \_\_\_\_\_

Is this contract grant funded? Yes  No  If yes, Whatcom County grant contract number(s): \_\_\_\_\_

Is this contract the result of a RFP or Bid process? Yes  No  If yes, RFP and Bid number(s): 20-49 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:
- Professional services agreement for certified/licensed professional.
  - Contract work is for less than \$100,000.
  - Contract work is for less than 120 days.
  - Interlocal Agreement (between Governments).
  - Contract for Commercial off the shelf items (COTS).
  - Work related subcontract less than \$25,000.
  - Public Works - Local Agency/Federally Funded FHWA.

Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>103,700.00</u> This Amendment Amount: \$ _____ Total Amended Amount: \$ _____	Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b> <ol style="list-style-type: none"> <li>Exercising an option contained in a contract previously approved by the council.</li> <li>Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance.</li> <li>Bid or award is for supplies.</li> <li>Equipment is included in Exhibit "B" of the Budget Ordinance</li> <li>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.</li> </ol>
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Summary of Scope: Contract with GSI Water Solutions, Inc. and Whatcom County Flood Control Zone District to conduct a peer review of the Lynden-Everson-Nooksack-Sumas numerical groundwater model and provide recommendations for improvements and additional work.

Term of Contract:	Time and materials/Not to exceed	Expiration Date:	6/30/21
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Contract Routing:	1. Prepared by: <u>Gary Stoyka</u>	Date: <u>11/17/20</u>
	2. Attorney signoff: <u>Christopher Quinn</u>	Date: <u>11/19/2020</u>
	3. AS Finance reviewed: <u>M Caldwell</u>	Date: <u>11/19/2020</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 FLOOD CONTROL ZONE DISTRICT:**

**Recommended for Approval:**

 11/23/20  
Department Director Date

**Approved as to form:**

CA/mailed/BB 11/23/2020  
Senior Deputy Prosecuting Attorney – Civil Division Date

**Approved:**

Accepted for Whatcom County Flood Control Zone District:

By: \_\_\_\_\_  
Satpal Singh Sidhu, Whatcom County Executive

STATE OF WASHINGTON )  
  ) ss  
COUNTY OF WHATCOM )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_, before me personally appeared Satpal Singh Sidhu, 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:**

GSI Water Solutions, Inc.  
John Porcello, Principal  
(Type in Name & Title of Signatory Authorized by Firm Bylaws, if applicable)

Address:  
55 SW Yamhill Street, Suite 300 \_\_\_\_\_  
Portland, OR 97204 \_\_\_\_\_

Mailing Address:  
same  
\_\_\_\_\_

## 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:

The duration of this Agreement may be extended by mutual written consent of the parties, for a period of up to one year, and for a total of no longer than three years.

#### 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 and Public Records Act:

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. If 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. This paragraph does not apply to changes made to the commercial software known as "Groundwater Vistas."

Ownership. Any and all data, writings, programs, public records, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor's subcontractors or consultants for delivery to the County under this Contract shall be the sole and absolute property of the County. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Contract but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of this Agreement. This paragraph does not apply to changes made to the commercial software known as "Groundwater Vistas."

Public Records Act. This Contract and all records associated with this Contract shall be available for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County at no cost to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

The Contractor shall be liable to the requester for any and all fees, costs, penalties or damages imposed or alleged as a result of the Contractor's failure to provide adequate or timely records.

This provision and the obligations it establishes shall remain in effect after the expiration of this contract.

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 Insurance:

The Contractor shall, at its own expense, obtain and continuously maintain the following insurance coverage for the duration of this contract, which shall include insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, subcontractors or employees. All insurers providing such insurance shall have an A.M. Best Rating of not less than A- (or otherwise be acceptable to the County) and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. Coverage limits shall be the minimum limits identified in this Contract or the coverage limits provided or available under the policies maintained by the Contractor without regard to this Contract, whichever are greater.

**1. Commercial General Liability**

Property Damage	\$500,000.00, per occurrence
General Liability & bodily injury	\$500,000.00, per occurrence
Annual Aggregate	\$1,000,000.00

At least as broad as ISO form CG 00 01 or the equivalent, which coverage shall include personal injury, bodily injury and property damage for Premises Operations, Products and Completed Operations, Personal/Advertising Injury, Contractual Liability, Independent Contractor Liability, medical payments and Stop Gap/Employer's Liability. Coverage shall not exclude or contain sub-limits less than the minimum limits required, unless approved in writing by the County.

**2. Professional Liability (Errors and Omissions) \$1,000,000 per claim or in the aggregate**

**3. Additional Insurance Requirements and Provisions**

- a. All insurance policies shall provide coverage on an occurrence basis, or if coverage is on a "claims made" basis, Contractor shall furnish proof of continuous "tail" coverage for 3 years after Agreement completion.
- b. Additional Insureds. Whatcom County, its departments, elected and appointed officials, employees, agents and volunteers shall be included as additional insureds on Contractor's and Contractor's subcontractors' Commercial General Liability insurance policies by way of endorsement for the full available limits of insurance required in this contract or maintained by the Contractor and subcontractor, whichever is greater.
- c. Primary and Non-contributory Insurance. Contractor shall provide primary insurance coverage and the County's insurance shall be non-contributory. Any insurance, self-insured retention, deductible, risk retention or insurance pooling maintained or participated in by the County shall be excess and non-contributory to Contractor's insurance.
- d. Waiver of Subrogation. The insurance policy shall provide a waiver of subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor agrees to notify the insurer and obtain

such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the Contractor enter into such a waiver of subrogation on a pre-loss basis.

- e. **Review of and Revision of Policy Provisions.** Upon request, the Contractor shall provide a full and complete certified copy of all requested insurance policies to the County. The County reserves the right, but not the obligation, to revise any insurance requirement, including but not limited to limits, coverages and endorsements, or to reject any insurance policies which fail to meet the requirements of this Contract. Additionally, the County reserves the right, but not the obligation, to review and reject any proposed insurer providing coverage based upon the insurer's financial condition or licensing status in Washington.
- f. **Verification of Coverage/Certificates and Endorsements.** The Contractor shall furnish the County with a certificate of insurance and endorsements required by this contract. The certificates and endorsements for each policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. The certificate and endorsements for each insurance policy are to be on forms approved by the County prior to commencement of activities associated with the contract. The certificate and endorsements, and renewals thereof, shall be attached hereto as Exhibit "C". If Exhibit C is not attached, the Contractor must submit the certificate and endorsements required in this contract to the County prior to the commencement of any work on the contracted project. A certificate alone is insufficient proof of the required insurance; endorsements must be included with the certificate. The certificate of insurance must reflect the insurance required in this contract, including appropriate limits, insurance coverage dates, per occurrence, and in the description of operations, include the County project, Whatcom County, its departments, officials, employees, agents and volunteers as additional insureds, primary, non-contributory, and waiver of subrogation.
- g. The County must be notified immediately in writing of any cancellation of the policy, exhaustion of aggregate limits, notice of intent not to renew insurance coverage, expiration of policy or change in insurer carrier. Contractor shall always provide the County with a current copy of the certificate and endorsements throughout the duration of the contract.
- h. **No Limitation on Liability.** The insurance maintained under this Contract shall not in any manner limit the liability or qualify the liabilities or obligations of the Contractor to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or equity.
- i. **Payment Conditioned on Insurance and Failure to Maintain Insurance.** Compensation and/or payments due to the Contractor under this Contract are expressly conditioned upon the Contractor's compliance with all insurance requirements. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract. Payment to the Contractor may be suspended in the event of non-compliance, upon which the County may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the County on demand or offset against funds due the Contractor. Upon receipt of evidence of Contractor's compliance, payments not otherwise subject to withholding or set-off will be released to the Contractor.
- j. **Workers' Compensation.** The Contractor shall maintain Workers' Compensation coverage as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Contractors' employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act.
- k. **Failure of the Contractor to take out and/or maintain required insurance shall not relieve the Contractor or subcontractors from any liability under the contract, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification.** The County does not waive any insurance requirements even in the event the certificate or endorsements provided by the Contractor were insufficient or inadequate proof of coverage but not objected to by the County. The County's failure to confirm adequate proof of insurance requirements does not constitute a waiver of the Contractor's insurance requirements under this Contract.
- l. **Availability of Contractor Limits.** If the Contractor maintains higher insurance limits than the minimums shown above, the County shall be insured for the full available limits, including Excess or Umbrella liability maintained by the Contractor,

irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate furnished to the County evidences limits of liability lower than those maintained by the Contractor.

- m. Insurance for Subcontractors. If the Contractor subcontracts (if permitted in the contract) any portion of this Contract, the Contractor shall include all subcontractors as insureds under its policies or shall require separate certificates of insurance and policy endorsements from each subcontractor. Insurance coverages by subcontractors must comply with the insurance requirements of the Contractor in this contract and shall be subject to all of the requirements stated herein, including naming the County as additional insured.
- n. The Contractor agrees Contractor's insurance obligation shall survive the completion or termination of this Contract for a minimum period of three years.

### 34.3 Defense & Indemnity Agreement:

To the fullest extent permitted by law, the Contractor agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees, and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease, or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which: 1) are caused in whole or in part by any error, act or omission, negligent or otherwise, of the Contractor, its employees, agents or volunteers or Contractor's subcontractors and their employees, agents or volunteers; or 2) directly or indirectly arise out of or occur in connection with performance of this Contract or 3) are based upon the Contractor's or its subcontractors' use of, presence upon, or proximity to the property of the County. This indemnification obligation of the Contractor shall not apply in the limited circumstance where the claim, damage, loss, or expense is caused by the sole negligence of the County.

Should a court of competent jurisdiction determine that this contract is subject to RCW 4.24.115, then in the event of concurrent Negligence of the Contractor, its subcontractors, employees or agents, and the County, its employees or agents, this indemnification obligation of the Contractor shall be valid and enforceable only to the extent of the negligence of the Contractor, its subcontractors, employees, and agents. This indemnification obligation of the Contractor shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Contractor hereby expressly waives any immunity afforded by such acts.

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 Contract is for the benefit of the parties only and this Contract shall create no rights in any third party. The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses, or expenses, and such participation shall not constitute a waiver of Contractor's indemnity obligations under this Agreement.

In the event the Contractor enters into subcontracts to the extent allowed under this Contract, the Contractor's subcontractors shall indemnify the County on a basis equal to or exceeding Contractor's indemnity obligations to the County. The Contractor shall pay all attorney's fees and expenses incurred by the County in establishing and enforcing the County's rights under this indemnification provision, whether or not suit was instituted.

The Contractor agrees all Contractor's indemnity obligations shall survive the completion, expiration or termination of this Agreement. The foregoing indemnification obligations of the Contractor are a material inducement to County to enter into this Agreement and are reflected in the Contractor's compensation.

By signing this contract, the Contractor acknowledges that it has freely negotiated and agreed to the indemnification requirements to defend, indemnify and hold harmless the County from all claims and suits including those brought against the County by the Contractor's own employees, arising from this contract.



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, Natural Resources Program Manager, Public Works Department, 322 N. Commercial St., Bellingham, WA 98225

37.2 Notice:

Any notices or communications required or permitted to be given by this Contract must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party as follows:

GSI Water Solutions, Inc.  
55 SW Yamhill Street, Suite 300, Portland, OR 97204  
Attention: John Porcello  
Telephone: (971) 200-8523  
Email: jporcello@gsiws.com

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A party may, for purposes of this Agreement, change his, her or its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other party pursuant to this Section.

37.3 If agreed by the parties, this Contract may be executed by Email transmission and PDF signature and Email transmission and PDF signature shall constitute an original for all purposes.

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

If applicable, 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:

If applicable, 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. If applicable, 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](http://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.

Contract for Services  
GSI Water Solutions, Inc.

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, temporary restraining order, or other provisional remedy to preserve the status quo or prevent irreparable harm, 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 Contract 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 Contract 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 but shall not have the power to award punitive damages. Each Party shall pay all their own costs, attorney fees and expenses of arbitration and the parties shall share equally in the Arbitrator's fees and costs. 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.

Any arbitration proceeding commenced to enforce or interpret this Contract shall be brought within six years after the initial occurrence giving rise to the claim, dispute, or issue for which arbitration is commenced, regardless of the date of discovery or whether the claim, dispute, or issue was continuing in nature. Claims, disputes, or issues arising more than six years prior to a written request or demand for arbitration issued under this Contract are not subject to arbitration.

- e. The parties may agree in writing signed by both parties that a claim or dispute may be brought in Whatcom County Superior Court rather than mediation or arbitration.

Unless otherwise specified herein, this Contract 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)

## Project Objectives

The County and its project team (herein referred to as the client team) have developed an initial working groundwater flow model in both a steady-state (SS) simulation mode and a seasonal-average-transient (SAT) simulation mode. The client team has developed the model to facilitate watershed planning and to provide a regional model that can be the platform for evaluating specific projects and management actions in the study area. The client team envisions that most uses of the model will focus primarily on evaluating groundwater/surface water interactions and exchanges, including interactions with the primary rivers in the study area, their tributaries, agricultural drainage systems, and surface recharge projects that are under consideration within the study area. The groundwater flow simulation is conducted using the MODFLOW-OWHM software, and the model is loosely coupled to software (Topnet-WM) that simulates streamflow and land surface processes and which provides recharge estimates to the groundwater flow model.

The primary objective for the peer review is to provide the client team with a comprehensive independent assessment of the regional model's readiness for its intended uses and applications—both from a technical perspective and with regards to usability for stakeholders who collectively have a range of experiences and familiarity with hydrogeology and the use of modeling software. The review process will focus primarily on the groundwater flow model itself, but will also consider its consistency with the conceptual model and its coupling with the existing Topnet-WM surface water model for the study area. The review will be conducted to help the client team understand the status, capabilities, and limitations of the groundwater model in its current form; its overall readiness for its intended uses; and whether changes, improvements, or enhancements should be considered before the model is used for watershed management decision-making, planning efforts or project-specific planning, design, and operational studies. This effort will comprise Phase 1 of the project and will be conducted with the goal of developing recommendations that are sufficient to help inform (but not define) next steps (if any) for consideration by the client team. It is anticipated that a Phase 2 project effort may be conducted in the future (under a separate scope of work) to provide a graphical user interface capability and other model enhancement services that might be requested by the client team after completion of Phase 1.

## Approach

The review will consider both the model's technical attributes and its usability.

- **Review of Technical Attributes.** The review of the model's technical attributes will focus on the client team's need to understand the model's use, application, and reliability as a watershed management decision-making tool, and to provide clarity on the questions that can be addressed by the outputs from the existing model or an improved version of the model. This aspect of the review will focus on the model's consistency with the conceptual model, its calibration quality, the need (if any) for further testing, and the types of changes (if any) to its spatial and temporal resolution that are needed considering its future intended uses. This portion of the review will include consideration of industry standards and common practices that are currently used in constructing and calibrating numerical groundwater flow models.
- **Review of Model Usability.** This aspect of the review will examine the client team's questions about whether new supporting tools are needed to (1) allow for efficiently making changes to hydrologic variables and surface and groundwater uses during model applications and (2) make the model practical for use by stakeholders with a range of skills in hydrogeology and groundwater modeling. The review will be conducted by John Porcello (GSI Water Solutions), Jim Rumbaugh (ESI), and Dr. Sorab Panday (GSI Environmental). John Porcello is a Washington Licensed Hydrogeologist (LHG) who will serve as the project manager and will lead the conceptual model review and documentation of the review (in the form of a presentation and a report). Jim Rumbaugh will focus on groundwater model review, including evaluating the

model's calibration quality and readiness with respect to industry standards and common practices. Jim will also evaluate methods for using the model with existing graphical user interfaces, including identifying enhancements that can enhance model usability. Sorab Panday will focus on evaluating the numerical simulation methods and techniques that are used in the groundwater model itself, and will also evaluate the model's coupling with the Topnet-WM model in terms of its technical consistency and its usefulness for future applications in project-specific studies and watershed planning efforts. The work will be conducted in three discrete tasks which are described in the scope of work below.

## Scope of Work

### Task 1 – Project Management

GSI will manage the project. Task 1 consists of managing the scope, schedule, and budget, and periodically communicating with the County's project manager. GSI will prepare a succinct narrative and project budget status on a monthly basis to accompany each monthly project invoice.

The County will act as the project coordinator, including coordinating the involvement of the client team's other project stakeholders, as appropriate, to engage in reviews, presentations, and meetings. During the course of conducting the core project activities (under Tasks 2 and 3), GSI will provide the County with support in the form of (1) developing (with County input) documents and meeting materials, (2) helping the County lead client team meetings, and (3) documenting, tracking, and incorporating the comments and input received from the client team into documents generated during Phase 1 of the project.

### Task 2 – Model Peer Review

Task 2 activities will involve compiling and reviewing electronic files, conducting a preliminary review, identifying objectives and anticipated uses for the model with the client team, conducting the core in-depth technical review of the existing model, and holding a meeting with the client team to present the findings of the review and discuss a preliminary set of recommendations for further analysis and/or modifications to the model.

#### Subtask 2.1 – Obtain and Review Electronic Files

Model input files, geographic information system (GIS) files, and database files will be obtained from the County and reviewed for their overall structure and setup. Jim Rumbaugh/ESI will work with the consultant who developed the groundwater flow model (S.S. Papadopoulos & Associates [SSPA]) to obtain reformatted input files for the streamflow routing (SFR) package that is used by MODFLOW-OWHM, for the existing SS and SAT simulations. The revised SFR files and other MODFLOW-OWHM input files will be imported into Groundwater Vistas to facilitate the remainder of the peer review team's work, including running the model in other more widely-known versions of MODFLOW (MODFLOW-NWT and MODFLOW-USG).

#### Subtask 2.2 – Preliminary Review

A first-pass look at the model will be conducted to develop impressions and questions for discussion with the County at an early stage of review. This effort will include periodic communication with the lead personnel at Associated Earth Sciences, Inc. (AESI) and SSPA who developed the models and their loose coupling. We will discuss with the AESI/SSPA team (1) the methods for incorporating and linking land-use processes and aerial recharge terms generated by the Topnet-WM model and other available tools, and (2) the loose coupling of MODFLOW results to Topnet-WM for evaluating streamflow.

#### Subtask 2.3 – Objectives and Anticipated Uses

After conducting the initial review under Subtask 2.2, the GSI team will work with the client team to develop a document identifying the future anticipated model uses and their relationship to the objectives for the simulation capabilities for land surface processes, groundwater/surface water interactions, and groundwater flow processes. This stakeholder engagement work will consist of the following activities:

- GSI will work with the County to prepare a draft document outlining the current understanding of WRIA modeling objectives. GSI will prepare an initial draft document for the County's review, followed by a revised draft document that will be sent to the client team members for their review.

- An online meeting lasting 2 hours will be held approximately two weeks later with the client team to obtain and discuss their input on the draft document, and to present our initial impressions of the model based on the preliminary review conducted under Subtask 2.2.
- GSI will prepare a revised draft version of the document based on input received in writing and during the meeting from the client team. This will include documentation of the client team member comments and how each comment is addressed in the revised draft document. This revised draft document will be sent to client team members for another round of review.
- A second online meeting lasting 2 hours will be held with the client team members to obtain their input on the revised draft document.
- GSI will finalize the document based on the input from this second meeting.

It is assumed that meetings will be scheduled and coordinated by the County. GSI will lead each meeting with assistance from the County. GSI will lead the document preparation work, and the tracking of, reconciliation of, and responses to comments and input from members of the client team. If further reengagement with the client team becomes necessary beyond the steps described above under this subtask, then GSI will coordinate with the County on the reengagement effort (to obtain follow-up input or to address any conflicting comments).

#### Subtask 2.4 – Detailed Technical Peer Review

An in-depth review will be conducted that focuses on the SS and SAT simulations in MODFLOW, with a more modest level of review of the supporting data, conceptual model, and Topnet-WM model as deemed appropriate during review of the MODFLOW simulations. Areas of emphasis will include:

- The adequacy of the temporal resolution in the SAT simulation, particularly with respect to simulating groundwater/surface water exchanges (which we understand to be a primary focus of future model simulations)
  - The spatial and vertical resolution, including consideration of (1) the layering that will best facilitate future simulations of water exchanges between groundwater, streams, and drainage systems and (2) the spatial resolution that will allow groundwater management decisions to be made at multiple scales ranging from individual wells/wellfields/land parcels to the region-wide or sub-regional scales
    - The basis for the areal recharge terms that are used in the MODFLOW simulation
    - The types of boundary conditions that are used to represent groundwater inflow and outflow processes, and the manner in which they are implemented numerically in the MODFLOW simulation
    - The calibration quality of the model, including the calibration results, the methods of evaluating calibration quality, the degree of spatial bias geographically and by layer, the adequacy of the data sets that support the calibration process, and the consistency of the calibration (i.e., the calibrated values for aquifer and stream parameters) and the simulated water budgets with the understanding of the aquifer and aquitard systems that are described in the conceptual model report for the study area
      - The overall condition of the model’s construction and calibration with respect to industry standards and generally accepted practices in the groundwater modeling industry, including identification of further testing (e.g., sensitivity analyses) and/or other modifications that would be warranted to better meet these standards and practices
        - The numerical performance of the groundwater flow model itself, including how this might be enhanced by using more widely-supported versions of MODFLOW that provide greater user control over the solution techniques and can improve model run-times and numerical convergence
          - The ease of use of the groundwater flow model and the tools that support information exchange related to land use processes and groundwater/surface water interactions
          - The need for and opportunities for development of a more fully integrated surface water and groundwater model, with a specific focus on recommendations for maintaining or improving the coupling with Topnet-WM or with a different model

This review effort will include a meeting with AESI and SSPA to review and obtain their input on an initial draft list of comments, which we will then update in preparation for the work to be conducted under Subtask 2.5.

#### Subtask 2.5 – Recommendations and Presentation

The peer review team will develop recommendations for improvements it identifies (if any) to (1) the model's representation of hydrologic processes in the land, surface water, and groundwater systems at appropriate scales to meet objectives, (2) the model's ease of use, and (3) activities that should be considered for long-term management and maintenance of the model and for its usefulness as a source/repository for data and knowledge about the regional groundwater system. As part of developing its recommendations, the peer review team will evaluate other codes and graphical user interfaces that might warrant consideration to improve the model's simulation capability, performance, and/or ease of use – including evaluations of other versions of MODFLOW and other surface water simulation tools that are widely known and used (such as PRMS) or are currently of interest to local stakeholders (such as GSFLOW, DHSVM, and VELMA).

The peer review team will prepare a presentation summarizing the findings of the review and containing a list of model improvement recommendations for discussion with the County. A 2-hour online meeting will be held with the County to present, discuss, and obtain County feedback on this material, and to discuss the reporting needs for Phase 1 of this review effort.

#### Task 3 – Report

A draft technical memorandum will be prepared and submitted to the County after work under Task 2 has been completed. A final version of the technical memorandum will be prepared after receipt of comments from the County, and will be stamped by John Porcello, a Washington licensed hydrogeologist. A 2-hour online meeting will be held with the client team to obtain comments on the draft technical memorandum. The final report will document the comments received, the responses to the comments, and the resulting changes that are made to the document as it is finalized.



## Schedule

The following anticipated project schedule provides an estimate for the durations and time frames under which the peer review team currently anticipates conducting its work. This schedule assumes that the contract will be finalized on or before December 11, 2020.

Anticipated Project Schedule		
Event	Duration	Anticipated Dates
Notice to Proceed		December 11, 2020
<b>Task 1 - Project Management</b>	<b>23 weeks</b>	<b>December 14, 2020 - May 21, 2021</b>
<b>Task 2 - Model Peer Review</b>	<b>16 weeks</b>	<b>December 14, 2020 - April 2, 2021</b>
Subtask 2.1 - Obtain/Review Electronic Files	4 weeks	December 14, 2020 - January 8, 2021
Subtask 2.2 - Preliminary Review	5 weeks	December 14, 2020 - January 15, 2021
Subtask 2.3 - Objectives and Anticipated Uses	16 weeks	December 14, 2020 - April 2, 2021
Develop initial draft document	4 weeks	December 14, 2020 - January 8, 2021
County review	2 weeks	January 11-22, 2021
Address comments, revise document, transmit first review draft to client team	1 week	January 25-29, 2021
Review period for client team	2 weeks	February 1-12, 2021
Meeting with client team	1 week	Week of February 15-19, 2021
Address comments, revise document, transmit second review draft to client team	2 weeks	February 22 - March 5, 2021
Review period for client team	1 week	March 8-12, 2021
Meeting with client team	1 week	Week of March 15-19, 2021
Address comments, revise and finalize document, transmit to client team	2 weeks	March 22 - April 2, 2021
Subtask 2.4 - Detailed Technical Peer Review	2 weeks	January 18, 2021 - February 12, 2021
Subtask 2.5 - Recommendations and Presentation	2 weeks	February 15, 2021 - March 19, 2021
• Presentation to client team (coincides with second meeting under Subtask 2.3)	1 week	Week of March 15-19, 2021
<b>Task 3 - Report</b>	<b>14 weeks</b>	<b>February 15, 2021 - May 21, 2021</b>
Subtask 3.1 - Draft Report	10 weeks	February 15, 2021 - April 23, 2021
Prepare draft report	4 weeks	February 15 - March 12, 2021
County review	2 weeks	March 15-26, 2021
Address comments, revise document, transmit review draft to client team	1 week	March 29 - April 2, 2021
Client team review period	2 weeks	April 5-16, 2021
Meeting with client team	1 week	Week of April 19-23, 2021
Subtask 3.2 - Final Report	4 weeks	April 26, 2021 - May 21, 2021

**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. Other expenditures such as printing, postage, telephone charges, and outreach supplies shall be reimbursed at actual cost plus 10%. Charges for subconsultant (outside) services shall be reimbursed at actual cost plus 6.5%.

Contractor will invoice monthly. Invoices will include hours work 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 \$103,700.** 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.

Tasks	GSI Labor Hours	GSI Labor Cost	Outside Services	GSI Direct Expenses	Total
Task 1 - Project Management	27	\$4,700	\$2,800	\$0	\$7,500
Task 2 - Model Peer Review	82	\$17,600	\$47,800	\$0	\$65,400
Task 3 - Report	77	\$15,500	\$15,300	\$0	\$30,800
Project Totals	186	\$37,800	\$65,900	\$0	\$103,700

### Hourly Rates of Key Personnel

Hourly rates for the three personnel conducting the peer review work are as follows.

Team Member	Rate
John Porcello, Principal, GSI Water Solutions	\$215
Jim Rumbaugh, Owner, Environmental Simulations	\$150
Sorab Panday, Principal, GSI Environmental	\$285



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/20/2020

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).

<b>PRODUCER</b> Dealey, Renton & Associates P. O. Box 12675 Oakland, CA 94604-2675 License #0020739	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): 510-465-3090 FAX (A/C, No): 510-452-2193 E-MAIL ADDRESS: Certificates@Dealeyrenton.com													
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Hartford Accident and Indemnity Company</td> <td>22357</td> </tr> <tr> <td>INSURER B : Crum &amp; Forster Specialty Insurance Company</td> <td>44520</td> </tr> <tr> <td>INSURER C : Sentinel Insurance Company</td> <td>11000</td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Hartford Accident and Indemnity Company	22357	INSURER B : Crum & Forster Specialty Insurance Company	44520	INSURER C : Sentinel Insurance Company	11000	INSURER D :		INSURER E :		INSURER F :
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INSURER E :														
INSURER F :														

**INSURED** Groundwater Solutions, Inc. GROUSOL-03  
 dba GSI Water Solutions, Inc.  
 55 SW Yamhill Street, Suite 300  
 Portland, OR 97204


**COVERAGES**                      **CERTIFICATE NUMBER:** 1434740318                      **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
C	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> WA Stop Gap GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	72SBWAR6619	11/1/2020	11/1/2021	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	72UECVK6212	11/1/2020	11/1/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
B	Professional & Contractors Pollution Liability			EPK132775	11/1/2020	11/1/2021	Per Claim \$1,000,000 Annual Aggregate \$2,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
GSI Project #0884.001 - LENS Groundwater Model Review

Whatcom County, its departments, elected and appointed officials, employees, agents and volunteers is an additional insured as respects general liability or as endorsed to the applicable policy and attached to this certificate. Waiver or Subrogation, Primary and Non-contributory, and Severability of Interest coverage applies as endorsed to each applicable policy and attached to this certificate. Additional Insured status does not apply to the professional liability policy.

<b>CERTIFICATE HOLDER</b>  Whatcom County Attn: Gary Stoyka 311 Grand Ave. Bellingham WA 98225	<b>CANCELLATION 30 Day Notice of Cancellation</b>  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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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
CONTRACTORS POLLUTION LIABILITY COVERAGE PART

### **SCHEDULE**

<b>Name Of Additional Insured Person(s) or Organization(s)</b>
Blanket when specifically required in a written contract with the named insured.

**SECTION III – WHO IS AN INSURED** within the Common Provisions is amended to include as an additional insured the person(s) or organization(s) indicated in the Schedule shown above, but only with respect to liability caused, in whole or in part, by “your work” for that insured which is performed by you or by those acting on your behalf.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS –  
COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

<b>Name of Additional Person(s) or Organization(s):</b>	<b>Location And Description Of Completed Operations</b>
Blanket when specifically required in a written contract with the named insured.	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section III – Who Is An Insured** within the Common Provisions is amended to include as an insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for “bodily injury” or “property damage” caused, in whole or in part, by “your work” at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the “products-completed operations hazard”.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**PRIMARY AND NON-CONTRIBUTORY ADDITIONAL INSURED  
WITH WAIVER OF SUBROGATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
CONTRACTORS POLLUTION LIABILITY COVERAGE PART  
ERRORS AND OMISSIONS LIABILITY COVERAGE PART  
THIRD PARTY POLLUTION LIABILITY COVERAGE PART

**SCHEDULE**

<b>Name of Additional Insured Person(s) or Organization(s)</b>
Blanket when specifically required in a written contract with the named insured

- A. **SECTION III – WHO IS AN INSURED** within the Common Provisions is amended to include as an additional insured the person(s) or organization(s) indicated in the Schedule shown above, but solely with respect to “claims” caused in whole or in part, by “your work” for that person or organization performed by you, or by those acting on your behalf.  
This insurance shall be primary and non-contributory, but only in the event of a named insured’s sole negligence.
- B. We waive any right of recovery we may have against the person(s) or organization(s) indicated in the Schedule shown above because of payments we make for “damages” arising out of “your work” performed under a designated project or contract with that person(s) or organization(s).
- C. This Endorsement does not reinstate or increase the Limits of Insurance applicable to any “claim” to which the coverage afforded by this Endorsement applies.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **BUSINESS AUTO COVERAGE FORM**

To the extent that the provisions of this endorsement provide broader benefits to the "insured" than other provisions of the Coverage Form, the provisions of this endorsement apply.

#### **1. BROAD FORM INSURED**

##### **A. Subsidiaries and Newly Acquired or Formed Organizations**

The Named Insured shown in the Declarations is amended to include:

- (1) Any legal business entity other than a partnership or joint venture, formed as a subsidiary in which you have an ownership interest of more than 50% on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary that is an "insured" under any other automobile policy or would be an "insured" under such a policy but for its termination or the exhaustion of its Limit of Insurance.
- (2) Any organization that is acquired or formed by you and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:
  - (a) That is a partnership or joint venture,
  - (b) That is an "insured" under any other policy,
  - (c) That has exhausted its Limit of Insurance under any other policy, or
  - (d) 180 days or more after its acquisition or formation by you, unless you have given us notice of the acquisition or formation.

Coverage does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you formed or acquired the organization.

##### **B. Employees as Insureds**

Paragraph A.1. - WHO IS AN INSURED - of SECTION II - LIABILITY COVERAGE is amended to add:

- d. Any "employee" of yours while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

##### **C. Lessors as Insureds**

Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:

- e. The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:
  - (1) The agreement requires you to provide direct primary insurance for the lessor and
  - (2) The "auto" is leased without a driver.

Such a leased "auto" will be considered a covered "auto" you own and not a covered "auto" you hire.

##### **D. Additional Insured if Required by Contract**

- (1) Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:
  - f. When you have agreed, in a written contract or written agreement, that a person or organization be added as an additional insured on your business auto policy, such person or organization is an "insured", but only to the extent such person or organization is liable for "bodily injury" or "property damage" caused by the conduct of an "insured" under paragraphs a. or b. of Who Is An Insured with regard to the ownership, maintenance or use of a covered "auto."

The insurance afforded to any such additional insured applies only if the "bodily injury" or "property damage" occurs:

- (1) During the policy period, and
- (2) Subsequent to the execution of such written contract, and
- (3) Prior to the expiration of the period of time that the written contract requires such insurance be provided to the additional insured.

(2) How Limits Apply

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the most we will pay on behalf of such additional insured is the lesser of:

- (a) The limits of insurance specified in the written contract or written agreement; or
- (b) The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to Limits of Insurance shown in the Declarations and described in this Section.

(3) Additional Insureds Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance.

(4) Duties in The Event Of Accident, Claim, Suit or Loss

If you have agreed in a written contract or written agreement that another person or organization be added as an additional insured on your policy, the additional insured shall be required to comply with the provisions in LOSS CONDITIONS 2. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM , SUIT OR LOSS – OF SECTION IV – BUSINESS AUTO CONDITIONS, in the same manner as the Named Insured.

**E. Primary and Non-Contributory if Required by Contract**

Only with respect to insurance provided to an additional insured in 1.D. - Additional Insured If Required by Contract, the following provisions apply:

(3) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in Other Insurance 5.d.

(4) Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (3) and (4) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, by the method described in Other Insurance 5.d.

**2. AUTOS RENTED BY EMPLOYEES**

Any "auto" hired or rented by your "employee" on your behalf and at your direction will be considered an "auto" you hire.

The OTHER INSURANCE Condition is amended by adding the following:



If an "employee's" personal insurance also applies on an excess basis to a covered "auto" hired or rented by your "employee" on your behalf and at your direction, this insurance will be primary to the "employee's" personal insurance.

**3. AMENDED FELLOW EMPLOYEE EXCLUSION**

EXCLUSION 5. - FELLOW EMPLOYEE - of SECTION II - LIABILITY COVERAGE does not apply if you have workers' compensation insurance in-force covering all of your "employees".

Coverage is excess over any other collectible insurance.

**4. HIRED AUTO PHYSICAL DAMAGE COVERAGE**

If hired "autos" are covered "autos" for Liability Coverage and if Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form for any "auto" you own, then the Physical Damage Coverages provided are extended to "autos" you hire or borrow, subject to the following limit.

The most we will pay for "loss" to any hired "auto" is:

- (1) \$100,000;
- (2) The actual cash value of the damaged or stolen property at the time of the "loss"; or
- (3) The cost of repairing or replacing the damaged or stolen property,

whichever is smallest, minus a deductible. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. No deductible applies to "loss" caused by fire or lightning. Hired Auto Physical Damage coverage is excess over any other collectible insurance. Subject to the above limit, deductible and excess provisions, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

We will also cover loss of use of the hired "auto" if it results from an "accident", you are legally liable and the lessor incurs an actual financial loss, subject to a maximum of \$1000 per "accident".

This extension of coverage does not apply to any "auto" you hire or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.

**5. PHYSICAL DAMAGE - ADDITIONAL TEMPORARY TRANSPORTATION EXPENSE COVERAGE**

Paragraph A.4.a. of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to provide a limit of \$50 per day and a maximum limit of \$1,000.

**6. LOAN/LEASE GAP COVERAGE**

Under SECTION III - PHYSICAL DAMAGE COVERAGE, in the event of a total "loss" to a covered "auto", we will pay your additional legal obligation for any difference between the actual cash value of the "auto" at the time of the "loss" and the "outstanding balance" of the loan/lease.

"Outstanding balance" means the amount you owe on the loan/lease at the time of "loss" less any amounts representing taxes; overdue payments; penalties, interest or charges resulting from overdue payments; additional mileage charges; excess wear and tear charges; lease termination fees; security deposits not returned by the lessor; costs for extended warranties, credit life Insurance, health, accident or disability insurance purchased with the loan or lease; and carry-over balances from previous loans or leases.

**7. AIRBAG COVERAGE**

Under Paragraph B. EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

The exclusion relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

**8. ELECTRONIC EQUIPMENT - BROADENED COVERAGE**

a. The exceptions to Paragraphs B.4 - EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE are replaced by the following:

Exclusions 4.c. and 4.d. do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto";
- (2) Removable from a housing unit which is permanently installed in or upon the covered "auto";
- (3) An integral part of the same unit housing any electronic equipment described in Paragraphs (1) and (2) above; or

- (4) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.

b. Section III – Version CA 00 01 03 10 of the Business Auto Coverage Form, Physical Damage Coverage, Limit of Insurance, Paragraph C.2 and Version CA 00 01 10 01 of the Business Auto Coverage Form, Physical Damage Coverage, Limit of Insurance, Paragraph C are each amended to add the following:

\$1,500 is the most we will pay for "loss" in any one "accident" to all electronic equipment (other than equipment designed solely for the reproduction of sound, and accessories used with such equipment) that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:

- (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
- (2) Removable from a permanently installed housing unit as described in Paragraph 2.a. above or is an integral part of that equipment; or
- (3) An integral part of such equipment.

c. For each covered "auto", should loss be limited to electronic equipment only, our obligation to pay for, repair, return or replace damaged or stolen electronic equipment will be reduced by the applicable deductible shown in the Declarations, or \$250, whichever deductible is less.

#### **9. EXTRA EXPENSE - BROADENED COVERAGE**

Under Paragraph A. - COVERAGE - of SECTION III - PHYSICAL DAMAGE COVERAGE, we will pay for the expense of returning a stolen covered "auto" to you.

#### **10. GLASS REPAIR - WAIVER OF DEDUCTIBLE**

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

No deductible applies to glass damage if the glass is repaired rather than replaced.

#### **11. TWO OR MORE DEDUCTIBLES**

Under Paragraph D. - DEDUCTIBLE - of SECTION III - PHYSICAL DAMAGE COVERAGE, the following is added:

If another Hartford Financial Services Group, Inc. company policy or coverage form that is not an automobile policy or coverage form applies to the same "accident", the following applies:

- (1) If the deductible under this Business Auto Coverage Form is the smaller (or smallest) deductible, it will be waived;
- (2) If the deductible under this Business Auto Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

#### **12. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS**

The requirement in LOSS CONDITIONS 2.a. - DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS - of SECTION IV - BUSINESS AUTO CONDITIONS that you must notify us of an "accident" applies only when the "accident" is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership;
- (3) A member, if you are a limited liability company; or
- (4) An executive officer or insurance manager, if you are a corporation.

#### **13. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS**

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure.

#### **14. HIRED AUTO - COVERAGE TERRITORY**

Paragraph e. of GENERAL CONDITIONS 7. - POLICY PERIOD, COVERAGE TERRITORY - of SECTION IV - BUSINESS AUTO CONDITIONS is replaced by the following:

- e. For short-term hired "autos", the coverage territory with respect to Liability Coverage is anywhere in the world provided that if the "insured's" responsibility to pay damages for "bodily injury" or "property damage" is determined in a "suit," the "suit" is brought in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

#### **15. WAIVER OF SUBROGATION**

TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - of SECTION IV - BUSINESS AUTO CONDITIONS is amended by adding the following:

We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damages under this Coverage Form.

**16. RESULTANT MENTAL ANGUISH COVERAGE**

The definition of "bodily injury" in SECTION V-DEFINITIONS is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by any person, including mental anguish or death resulting from any of these.

**17. EXTENDED CANCELLATION CONDITION**

Paragraph 2. of the COMMON POLICY CONDITIONS - CANCELLATION - applies except as follows:

If we cancel for any reason other than nonpayment of premium, we will mail or deliver to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation.

**18. HYBRID, ELECTRIC, OR NATURAL GAS VEHICLE PAYMENT COVERAGE**

In the event of a total loss to a "non-hybrid" auto for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended as follows:

a. If the auto is replaced with a "hybrid" auto or an auto powered solely by electricity or natural gas, we will pay an additional 10%, to a maximum of \$2,500, of the "non-hybrid" auto's actual cash value or replacement cost, whichever is less,

b. The auto must be replaced and a copy of a bill of sale or new lease agreement received by us within 60 calendar days of the date of "loss,"

c. Regardless of the number of autos deemed a total loss, the most we will pay under this Hybrid, Electric, or Natural Gas Vehicle Payment Coverage provision for any one "loss" is \$10,000.

For the purposes of the coverage provision,

a. A "non-hybrid" auto is defined as an auto that uses only an internal combustion engine to move the auto but does not include autos powered solely by electricity or natural gas.

b. A "hybrid" auto is defined as an auto with an internal combustion engine and one or more electric motors; and that uses the internal combustion engine and one or more electric motors to move the auto, or the internal combustion engine to charge one or more electric motors, which move the auto.

**19. VEHICLE WRAP COVERAGE**

In the event of a total loss to an "auto" for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, then such Physical Damage Coverages are amended to add the following:

In addition to the actual cash value of the "auto", we will pay up to \$1,000 for vinyl vehicle wraps which are displayed on the covered "auto" at the time of total loss. Regardless of the number of autos deemed a total loss, the most we will pay under this Vehicle Wrap Coverage provision for any one "loss" is \$5,000. For purposes of this coverage provision, signs or other graphics painted or magnetically affixed to the vehicle are not considered vehicle wraps.

## Oregon Workers' Compensation Certificate of Insurance

**Certificate holder:**

WHATCOM COUNTY  
ATTN: GARY STOYKA  
311 GRAND AVE.  
BELLINGHAM, WA 98225

**The policy of insurance listed below has been issued to the insured named below for the policy period indicated. The insurance afforded by this policy is subject to all the terms, exclusions and conditions of such policy; this policy is subject to change or cancellation at any time.**

<b>Insured</b>		<b>Producer/contact</b>	
Groundwater Solutions Inc Gsi Water Solutions Inc 55 SW Yamhill St Ste 300 Portland, Or 97204-3331		SAIF Corporation Gabrielle N Kliewer 503.673.5239 gabkli@saif.com	
<b>Issued</b>	11/20/2020	<b>Limits of liability</b>	
<b>Policy</b>	738154	Bodily Injury by Accident	\$1,000,000 each accident
<b>Period</b>	11/01/2020 to 11/01/2021	Bodily Injury by Disease	\$1,000,000 each employee
		Body Injury by Disease	\$1,000,000 policy limit

**Description of operations/locations/special items**  
GSI Project #0884.001 - LENS Groundwater Model Review

**Important**

This certificate is issued as a matter of information only and confers no rights to the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies above. This certificate does not constitute a contract between the issuing insurer, authorized representative or producer and the certificate holder.

**CANCELLATION:**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED TO THE POLICYHOLDER AND CERTIFICATE HOLDER IN ACCORDANCE WITH THE POLICY PROVISIONS AND OREGON LAW. SAIF WILL ENDEAVOR TO PROVIDE WRITTEN NOTICE WITHIN 30 DAYS WHENEVER POSSIBLE.

Authorized representative



Kerry Barnett  
President and CEO



# Whatcom County

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

## Agenda Bill Master Report

**File Number: AB2020-584**

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<b>File ID:</b>	AB2020-584	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/25/2020	<b>Entered by:</b>	THelms@co.whatcom.wa.us		
<b>Department:</b>	County Executive's Office	<b>File Type:</b>	Resolution		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020	<b>Enactment #:</b>			

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

**TITLE FOR AGENDA ITEM:**

Resolution approving the 2021 recommended Convention Center allocations for tourism-related facilities and activities as defined through RCW 67.28.1816

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

See attached

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**HISTORY OF LEGISLATIVE FILE**

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<b>Date:</b>	<b>Acting Body:</b>	<b>Action:</b>	<b>Sent To:</b>
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**Attachments:** Resolution, Attachment A

**RESOLUTION NO. \_\_\_\_\_**

**APPROVING THE 2020 RECOMMENDED CONVENTION CENTER  
ALLOCATIONS FOR TOURISM-RELATED FACILITIES AND ACTIVITIES  
AS DEFINED THROUGH RCW 67.28.1816**

**WHEREAS** on October 22, 2020, the Whatcom County Lodging Tax Advisory Committee (LTAC) held a virtual public meeting to consider 2021 funding for use of Convention Center Funds; and

**WHEREAS**, the committee recognized the extraordinary environment shaped from the COVID-19 pandemic that resulted in a significant decrease in tax revenue achieved through the Lodging Tax; and

**WHEREAS**, it was recognized that the Chambers and Bellingham Whatcom Tourism continue to provide support and education for safe travel and guidance on business closures and openings; and

**WHEREAS**, the annual call for applications was suspended due to the COVID-19 pandemic which resulted in the cancellation of a majority of 2020 scheduled events and festivals supported by the Lodging Tax Fund and it was determined a competitive 2021 application process may occur when a more definitive outlook is available for large group gatherings; and

**WHEREAS**, the committee recommended continued funding for the Chambers and Bellingham Whatcom Tourism in the amount of \$527,00 as they work to support our communities striving safely open for tourism; and

**WHEREAS**, the LTAC further recommends a 10% contingency in the amount of \$100,000 to be used in the event an eligible tourism promoting activity is brought forward later in the year; and

**WHEREAS**, the committee recommends funding increased maintenance costs for the Glacier restrooms. This high traffic restroom is used by locals and visitors seeking adventures outdoors. The additional maintenance support in the amount of \$7,500 for a total of \$19,500 annually will ensure twice daily cleaning and grounds keeping in the immediate area, septic tank/field maintenance and inspections and cleaning supplies; and

**WHEREAS**, the committee unanimously agreed to the 2021 funding recommendations totaling \$646,500 which were determined based on the ability to promote and serve tourism activities in Whatcom County as defined in RCW 67.28; and

**WHEREAS**, the 2021 Convention Center Fund revenue is projected at \$610,000 and the 2020 fund balance is projected to be \$2,047,999; and

**NOW, THEREFORE, BE IT RESOLVED**, that the Whatcom County Council hereby authorizes the County Administration to allocate \$646,500 from the Lodging Tax Fund for the purposes of tourism related activities as recommended by the Lodging Tax Advisory Committee and detailed in attachment A.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

\_\_\_\_\_  
Dana Brown-Davis, Council Clerk

\_\_\_\_\_  
Barry Buchanan, Council Chair

APPROVED as to form:

Chris Quinn per email 11/30/2020

\_\_\_\_\_  
Civil Deputy Prosecutor

CONVENTION CENTER - HOTEL/MOTEL TAX FUNDS - 2021

Tab	Requesting Agency	2020 Funded	2021 Committee Recommended	Notes
	<b>Chamber VIC or Tourism Bureau</b>			
2	Bellingham Regional Chamber of Commerce	\$25,000	\$25,000	
3	Bellingham/Whatcom County Tourism	\$290,000	\$290,000	
5	Birch Bay Chamber of Commerce - VIC	\$100,000	\$100,000	
6	Ferndale Chamber of Commerce	\$12,000	\$12,000	
7	Mt. Baker Foothills Chamber/Visitor Center	\$100,000	\$100,000	
	<b>Chambers &amp; Tourism SUBTOTAL</b>	<b>\$527,000</b>	<b>\$527,000</b>	
	Whatcom County Glacier Restrooms cc: 14131	\$12,000	\$19,500	
	<b>TOTAL ANNUAL FUNDING REQUESTS</b>	<b>\$539,000</b>	<b>\$546,500</b>	
	10% Contingency used for mid-year allocations	<b>\$33,475</b>	<b>\$100,000</b>	
	<b>PROPOSED EXPENDITURE BUDGET</b>	<b>\$572,475</b>	<b>\$646,500</b>	





# Whatcom County

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

## Agenda Bill Master Report

File Number: **AB2020-551**

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<b>File ID:</b>	AB2020-551	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/18/2020	<b>Entered by:</b>	DEbergso@co.whatcom.wa.us		
<b>Department:</b>	Facilities Management Division	<b>File Type:</b>	Contract		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	12/08/2020	<b>Enactment #:</b>			

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Primary Contact Email: [debergso@co.whatcom.wa.us](mailto:debergso@co.whatcom.wa.us) <mailto:debergso@co.whatcom.wa.us>

### **TITLE FOR AGENDA ITEM:**

Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Action Cleaning for providing custodial services to Whatcom County’s satellite buildings, also to include Sheriff Laurel Street station, WUECC, and extra Covid-19 sanitization, in the amount of \$50,667.80

### **SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

See Attached

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### **HISTORY OF LEGISLATIVE FILE**

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<b>Date:</b>	<b>Acting Body:</b>	<b>Action:</b>	<b>Sent To:</b>
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**Attachments:** Memo, Information Sheet, Contract Amendment

**WHATCOM COUNTY  
ADMINISTRATIVE SERVICES**  
Whatcom County Courthouse  
311 Grand Ave, Suite 108  
Bellingham, WA 98225-4083



**FACILITIES MANAGEMENT**  
3720 Williamson Way  
Bellingham, WA 98226-9156  
Phone: 360.778.5360  
Fax: 360.778.5361  
Facilities@co.whatcom.wa.us

**ROB NEY**  
Project & Operations Manager

## MEMORANDUM

**TO:** Satpal Singh Sidhu, County Executive

**FROM:** Rob Ney, Project & Operations Manager

**RE:** Contract – Custodial Services - Amendment

**DATE:** November 17, 2020

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Enclosed for your review and signature is the Contract Amendment #7 between Whatcom County and Action Cleaning Services for the purpose of providing custodial services for eight of Whatcom County's satellite buildings also to include Sheriff Laurel Street station and WUECC and extra Covid-19 sanitization.

### ▪ **Background and Purpose**

Whatcom County utilizes contract custodial services for most satellite buildings. Prior to the economic downturn of 2009, these services were provided by Whatcom County staff.

A contract was put in place for the 2020 calendar year, and pre-Covid. The non Covid activities on this contract are anticipated to fall within the original scope and contracted amount (Covid expenses have been tracked separately). Facilities Management increased the overall contract in June to account for the additional Covid expenses. That increase was for \$15,000. It was not known at that time if that amount was going to cover future Covid expenses.

Covid expenses include: 1) EOC cleaning, which included mid-day cleaning during the height of the EOC emergency, 2) Mid-day cleaning at open offices for several months during the pandemic, and upon request, 3) Special Cleanings upon request should a staff member go home sick with Covid symptoms, and other Covid related additional work.

This contract amendment #7 is for additional funding for the custodial services to continue with the COVID-19 sanitizing cleaning effort through the end of December 31, 2020. Facilities Management intends to advertise and solicit bids for contract custodial services for the 2021 calendar year.

This amendment also corrects the amount for the WUECC & Sheriff's Laurel Street Office for the first three months of the year not included in previous amendments. (\$3,667.80)

▪ **Funding Amount and Source**

The additional funding needed for this amendment is \$50,667.80 for a new contract total of \$986,500.62

The Contracted custodial services were approved in the 2019-2020 budgets in the amount of \$168,888.00/year. Sheriff's Office budget covers the cost of the Laurel Street Station and WUECC. Facilities Management will cover the cost of the COVID-19 costs and seek reimbursement when appropriate.

▪ **Differences from Previous Contract**

This project is a one-time agreement.

Please contact Rob Ney at extension 5365, 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: _____	
Division/Program: <i>(i.e. Dept. Division and Program)</i> _____	
Contract or Grant Administrator: _____	
Contractor's / Agency Name: _____	

Is this a New Contract?    If not, is this an Amendment or Renewal to an Existing Contract?    Yes    No  
 Yes    No    If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: \_\_\_\_\_

Does contract require Council Approval?    Yes    No    If No, include WCC: \_\_\_\_\_  
 Already approved? Council Approved Date: \_\_\_\_\_ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

Is this a grant agreement?  
 Yes    No    If yes, grantor agency contract number(s): \_\_\_\_\_ CFDA#: \_\_\_\_\_

Is this contract grant funded?  
 Yes    No    If yes, Whatcom County grant contract number(s): \_\_\_\_\_

Is this contract the result of a RFP or Bid process?    Contract  
 Yes    No    If yes, RFP and Bid number(s): \_\_\_\_\_ Cost Center: \_\_\_\_\_

Is this agreement excluded from E-Verify?    No    Yes    If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:

Professional services agreement for certified/licensed professional.  
 Contract work is for less than \$100,000.     Contract for Commercial off the shelf items (COTS).  
 Contract work is for less than 120 days.     Work related subcontract less than \$25,000.  
 Interlocal Agreement (between Governments).     Public Works - Local Agency/Federally Funded FHWA.

Contract Amount:(sum of original contract amount and any prior amendments): \$ _____ This Amendment Amount: \$ _____ Total Amended Amount: \$ _____	Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b> <ol style="list-style-type: none"> <li>1. Exercising an option contained in a contract previously approved by the council.</li> <li>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.</li> <li>3. Bid or award is for supplies.</li> <li>4. Equipment is included in Exhibit "B" of the Budget Ordinance.</li> <li>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.</li> </ol>
Summary of Scope: _____	

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Term of Contract: _____	Expiration Date: _____
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Contract Routing:	1. Prepared by: _____	Date: _____
	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: _____

**CONTRACT AMENDMENT #7  
ACTION CLEANING SERVICES  
Between Whatcom County and Action Cleaning Services**

This AMENDMENT is to the Contract made between Whatcom County and Action Cleaning Services, dated March 23, 2016 and designated "Whatcom County Contract No. 201603005." In consideration of the mutual benefits to be derived, the parties agree to the following:

This Amendment increases the original Exhibit A, scope of work and Exhibit B, compensation, the attached document referred to as Exhibit B will be considered an addition to the original contract document, hereby referenced and made a part of this Agreement.

This amendment will increase the original contract amount by \$50,667.80 for Action Cleaning to continue to perform extra daytime sanitizing services for COVID-19 response for Health Department Girard, State Street Annex and WUECC or other buildings as needed through the end of the year and correct the funding for WUECC & Sheriff's Laurel Street office for the first three months of the year not included in previous amendments.

Maximum consideration for this contract amendment is increased by no more than \$50,667.80 including applicable Washington State Sales Tax. The total of the contract including amendments will be for \$986,500.62 including applicable WSST.

Unless specifically amended by this agreement all other terms and conditions of the original contract shall remain in full force and effect.

This Amendment takes effect November 1<sup>st</sup>, regardless of the date of signature.

**IN WITNESS WHEREOF**, Whatcom County and Action Cleaning have executed this Agreement on the date and year below written.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

**CONTRACTOR:**

**Action Cleaning Services**

Address:  
2009 Iron Street  
Bellingham WA 98225

Mailing Address:  
2009 Iron Street  
Bellingham WA 98225

Each signatory below this Contract warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and to bind the party thereto.

\_\_\_\_\_  
Chad Parker, Owner

**WHATCOM COUNTY:**

**Approved as to form:**

\_\_\_\_\_  
Prosecuting Attorney                      Date

**Approved:**

Accepted for Whatcom County:

By: \_\_\_\_\_  
Satpal Sidhu, Whatcom County Executive

**CONTRACTOR INFORMATION:**

**Action Cleaning Services**

Mailing Address:  
2009 Iron Street  
Bellingham WA 98225

Contact Name:  
Chad Parker, Owner

Contact Phone:  
(360) 647-3226

Contact Fax:  
(360) 671-9184

**EXHIBIT "A"**

*(Scope of Work)*

Action Cleaning agrees to continue to perform extra daytime sanitizing services for COVID-19 response for Health Department Girard, State Street Annex and WUECC or other buildings as needed.

**EXHIBIT "B"**  
**(COMPENSATION)**

The maximum consideration for this amendment shall not exceed fifty thousand six hundred sixty seven dollars and eighty cents (\$50,667.80) for a contract total of nine hundred eighty six thousand five hundred dollars and sixty-two cents per year (\$986,500.62) including applicable Washington State Sales Tax.

Extra Cleaning COVID-19	\$25.00/hr. Not to exceed \$47,000
WUECC/Sheriff Laurel	\$1,222.60 per month for January, February and March 2020; Not to exceed \$3,667.80

The Contract Number, set forth, shall be included on all billings or correspondence in connection therewith.

Contractor may bill the County progressively not more than once per month (30 days).

Progressive billings will be for the amount of work completed.

Contractor must submit a Payment Form, to be provided by Whatcom County facilities management, as an invoice for payment in addition to contractor's own invoice for payment in addition to supporting documentation as to the level of work completed on this project.





# Whatcom County

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

## Agenda Bill Master Report

**File Number: AB2020-554**

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<b>File ID:</b>	AB2020-554	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/19/2020	<b>Entered by:</b>	JThomson@co.whatcom.wa.us		
<b>Department:</b>	Health Department	<b>File Type:</b>	Contract		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

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

### **TITLE FOR AGENDA ITEM:**

Request authorization for the County Executive to enter into a contract between Whatcom County and Pioneer Human Services to operate the City Gate Permanent Supportive Housing Program, in the amount of \$490,948

### **SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

See attachments

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### **HISTORY OF LEGISLATIVE FILE**

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<b>Date:</b>	<b>Acting Body:</b>	<b>Action:</b>	<b>Sent To:</b>
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**Attachments:** Memo to County Executive, Pioneer Human Services City Gate Contract.pdf



**MEMORANDUM**

**TO:** Satpal Sidhu, County Executive  
**FROM:** Erika Lautenbach, Director  
**RE:** Pioneer Human Services – City Gate Permanent Supportive Housing Contract  
**DATE:** November 19, 2020

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Attached is a contract between Whatcom County and Pioneer Human Services for your review and signature.

▪ **Background and Purpose**

This contract provides funding for Pioneer Human Services to operate a permanent supportive housing program known as City Gate. City Gate provides ten housing units dedicated to veterans experiencing chronic homelessness and 26 units to ex-offenders who are in need of housing and are returning to Whatcom County under the supervision of the Washington State Department of Corrections, exiting the Whatcom County Jail, or individuals who are experiencing chronic homelessness. Up to 6 units at a time may be occupied by participants of the Mental Health Court Program. Case management and behavioral health services are also provided so that program participants can access necessary services and achieve housing stability.

▪ **Funding Amount and Source**

Funding for this contract, in an amount not to exceed \$490,948, is provided by Mental Health millage, HB 2060 low-income housing funds, local document recording fees, and the Behavioral Health Program Fund. These funds will be included in the 2021 budget. Council approval is required as funding exceeds \$40,000.

▪ **Differences from Previous Contract**

This is a new contract, however, funding for these services has been provided through previous contracts between Whatcom County and Pioneer Human Services since 2011. This contract includes no significant changes from the contract that is currently in place (Whatcom County Contract #201611027). The Contractor maintains its determination as a sole source contractor for the services provided in this contract.

Please contact Kathleen Roy at extension #6007 if you have any questions regarding this agreement.

Encl.



<b>WHATCOM COUNTY CONTRACT INFORMATION SHEET</b>				Whatcom County Contract No. _____	
Originating Department:			85 Health		
Division/Program: (i.e. Dept. Division and Program)			8550 Human Services / 855040 Housing		
Contract or Grant Administrator:			Chris D'Onofrio		
Contractor's / Agency Name:			Pioneer Human Services		
Is this a New Contract?		If not, is this an Amendment or Renewal to an Existing Contract?		Yes <input type="checkbox"/>	No <input checked="" 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?		If yes, grantor agency contract number(s):		CFDA#:	
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>				
Is this contract grant funded?		If yes, Whatcom County grant contract number(s):			
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>				
Is this contract the result of a RFP or Bid process?		If yes, RFP and Bid number(s):		Contract Cost	122200 / 124112 /
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	sole source		Center:	121100 / 127100
Is this agreement excluded from E-Verify?		No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>		
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 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):			Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b>		
\$	490,948				
This Amendment Amount:					
\$					
Total Amended Amount:					
\$					
Summary of Scope: This contract provides funding for Pioneer Human Services' City Gate permanent supportive housing program for homeless ex-offenders and chronically homeless veterans.					
Term of Contract:		1 Year		Expiration Date: 12/31/2021	
Contract Routing:		1. Prepared by: JT		Date:	10/07/2020
		2. Health Budget Approval: KR/JG		Date:	11/5/20 / 11/13/20
		3. Attorney signoff: RB		Date:	11/13/2020
		4. AS Finance reviewed: M Caldwell		Date:	11/19/2020
		5. IT reviewed (if IT related):		Date:	
		6. Contractor approved:		Date:	
		7. Submitted to Exec.:		Date:	
		8. Council approved (if necessary):		Date:	
		9. Executive signed:		Date:	
		10. Original to Council:		Date:	

Whatcom County Contract No.

**CONTRACT FOR SERVICES**  
**Between Whatcom County and Pioneer Human Services**

Pioneer Human Services, hereinafter called **Contractor** and Whatcom County, hereinafter referred to as **County**, agree and contract as set forth in this Agreement, including:

- General Conditions, pp. 3 to 12,
- Exhibit A (Scope of Work), pp. 13 to 16,
- Exhibit B (Compensation), pp. 17 to 18,
- Exhibit C (Certificate of Insurance), p. 19,
- Exhibit D (Whatcom County Flex Fund Guidelines), pp. 20 to 21,
- Exhibit E (Types of Income to Count and Calculating Adjusted Income).

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 1<sup>st</sup> day of January, 2021 and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31<sup>st</sup> day of December, 2021

The general purpose or objective of this Agreement is to **provide a permanent supportive housing facility**, 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 \$490,948. 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.

Each person signing this Contract represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Contract.

**IN WITNESS WHEREOF**, the parties have executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**CONTRACTOR:**

Pioneer Human Services  
7440 W Marginal Way S  
Seattle, WA 98108

Each signatory below to this Contract warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and to bind the party thereto.

\_\_\_\_\_  
Karen Lee, CEO



## 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:

The duration of this Agreement may be extended by mutual written consent of the parties, for a period of up to one year, and for a total of no longer than three years.

#### 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 and Public Records Act:

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. If 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.

Ownership. Any and all data, writings, programs, public records, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor's subcontractors or consultants for delivery to the County under this Contract shall be the sole and absolute property of the County. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Contract but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of this Agreement.

Public Records Act. This Contract and all records associated with this Contract shall be available for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County at no cost to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

The Contractor shall be liable to the requester for any and all fees, costs, penalties or damages imposed or alleged as a result of the Contractor's failure to provide adequate or timely records.

This provision and the obligations it establishes shall remain in effect after the expiration of this contract.

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 Insurance:

The Contractor shall, at its own expense, obtain and continuously maintain the following insurance coverage for the duration of this contract, which shall include insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, subcontractors or employees. All insurers providing such insurance shall have an A.M. Best Rating of not less than A- (or otherwise be acceptable to the County) and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. Coverage limits shall be the minimum limits identified in this Contract or the coverage limits provided or available under the policies maintained by the Contractor without regard to this Contract, whichever are greater.

**1. Commercial General Liability**

Property Damage	\$500,000.00, per occurrence
General Liability & bodily injury	\$1,000,000.00, per occurrence
Annual Aggregate	\$2,000,000.00

At least as broad as ISO form CG 00 01 or the equivalent, which coverage shall include personal injury, bodily injury and property damage for Premises Operations, Products and Completed Operations, Personal/Advertising Injury, Contractual Liability, Independent Contractor Liability, medical payments and Stop Gap/Employer's Liability. Coverage shall not exclude or contain sub-limits less than the minimum limits required, unless approved in writing by the County.

**2. Business Automobile Liability**

\$1,000,000.00	Minimum, per occurrence
\$2,000,000.00	Minimum, Annual Aggregate

Contractor shall provide auto liability coverage for owned, non-owned and hired autos using ISO Business Auto Coverage form CA 00 01 or the exact equivalent with a limit of no less than \$1,000,000 per accident. If Contractor owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

**3. Professional Liability - \$1,000,000 per occurrence:**

Obtain professional liability insurance covering the negligent acts, errors, or omissions of the professional in connection with the performance of services to the County. If any insurance policy or the professional liability insurance is written on a claims made form, its retroactive date, and that of all subsequent renewals, shall be no later than the effective date of this contract. The policy shall state that coverage is claims made, and state the retroactive date. Claims-made form coverage shall be maintained by the Contractor for a minimum of 36 months following the Completion Date or earlier termination of this Contract, and the Contractor shall annually provide the Contracting Agency with proof of renewal. If renewal of the claims made form of coverage becomes unavailable, economically prohibitive, the Contractor shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the Contracting Agency to assure financial responsibility for liability for services performed.

#### **4. Additional Insurance Requirements and Provisions**

- a. All insurance policies shall provide coverage on an occurrence basis.
- b. Additional Insureds. Whatcom County, its departments, elected and appointed officials, employees, agents and volunteers shall be included as additional insureds on Contractor's and Contractor's subcontractors' insurance policies by way of endorsement for the full available limits of insurance required in this contract or maintained by the Contractor and subcontractor, whichever is greater.
- c. Primary and Non-contributory Insurance. Contractor shall provide primary insurance coverage and the County's insurance shall be non-contributory. Any insurance, self-insured retention, deductible, risk retention or insurance pooling maintained or participated in by the County shall be excess and non-contributory to Contractor's insurance.
- d. Waiver of Subrogation. The insurance policy shall provide a waiver of subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the Contractor enter into such a waiver of subrogation on a pre-loss basis.
- e. Review of and Revision of Policy Provisions. Upon request, the Contractor shall provide a full and complete certified copy of all requested insurance policies to the County. The County reserves the right, but not the obligation, to revise any insurance requirement, including but not limited to limits, coverages and endorsements, or to reject any insurance policies which fail to meet the requirements of this Contract. Additionally, the County reserves the right, but not the obligation, to review and reject any proposed insurer providing coverage based upon the insurer's financial condition or licensing status in Washington.
- f. Verification of Coverage/Certificates and Endorsements. The Contractor shall furnish the County with a certificate of insurance and endorsements required by this contract. The certificates and endorsements for each policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. The certificate and endorsements for each insurance policy are to be on forms approved by the County prior to commencement of activities associated with the contract. The certificate and endorsements, and renewals thereof, shall be attached hereto as Exhibit "C". If Exhibit C is not attached, the Contractor must submit the certificate and endorsements required in this contract to the County prior to the commencement of any work on the contracted project. A certificate alone is insufficient proof of the required insurance; endorsements must be included with the certificate. The certificate of insurance must reflect the insurance required in this contract, including appropriate limits, insurance coverage dates, per occurrence, and in the description of operations, include the County project, Whatcom County, its departments, officials, employees, agents and volunteers as additional insureds, primary, non-contributory, and waiver of subrogation.
- g. The County must be notified immediately in writing of any cancellation of the policy, exhaustion of aggregate limits, notice of intent not to renew insurance coverage, expiration of policy or change in insurer carrier. Contractor shall always provide the County with a current copy of the certificate and endorsements throughout the duration of the contract.
- h. No Limitation on Liability. The insurance maintained under this Contract shall not in any manner limit the liability or qualify the liabilities or obligations of the Contractor to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or equity.

- i. Payment Conditioned on Insurance and Failure to Maintain Insurance. Compensation and/or payments due to the Contractor under this Contract are expressly conditioned upon the Contractor's compliance with all insurance requirements. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract. Payment to the Contractor may be suspended in the event of non-compliance, upon which the County may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the County on demand or offset against funds due the Contractor. Upon receipt of evidence of Contractor's compliance, payments not otherwise subject to withholding or set-off will be released to the Contractor.
- j. Workers' Compensation. The Contractor shall maintain Workers' Compensation coverage as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Contractors' employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act.
- k. Failure of the Contractor to take out and/or maintain required insurance shall not relieve the Contractor or subcontractors from any liability under the contract, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification. The County does not waive any insurance requirements even in the event the certificate or endorsements provided by the Contractor were insufficient or inadequate proof of coverage but not objected to by the County. The County's failure to confirm adequate proof of insurance requirements does not constitute a waiver of the Contractor's insurance requirements under this Contract.
- l. Availability of Contractor Limits. If the Contractor maintains higher insurance limits than the minimums shown above, the County shall be insured for the full available limits, including Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate furnished to the County evidences limits of liability lower than those maintained by the Contractor.
- m. Insurance for Subcontractors. If the Contractor subcontracts (if permitted in the contract) any portion of this Contract, the Contractor shall include all subcontractors as insureds under its policies or shall require separate certificates of insurance and policy endorsements from each subcontractor. Insurance coverages by subcontractors must comply with the insurance requirements of the Contractor in this contract and shall be subject to all of the requirements stated herein, including naming the County as additional insured.
- n. The Contractor agrees Contractor's insurance obligation shall survive the completion or termination of this Contract for a minimum period of three years.

#### 34.3 Defense & Indemnity Agreement:

To the fullest extent permitted by law, the Contractor agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees, and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease, or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which: 1) are caused in whole or in part by any error, act or omission, negligent or otherwise, of the Contractor, its employees, agents or volunteers or Contractor's subcontractors and their employees, agents or volunteers; or 2) directly or indirectly arise out of or occur in connection with performance of this Contract or 3) are based upon the Contractor's or its subcontractors' use of, presence upon, or proximity to the property of the County. This indemnification obligation of the Contractor shall not apply in the limited circumstance where the claim, damage, loss, or expense is caused by the sole negligence of the County.

Should a court of competent jurisdiction determine that this contract is subject to RCW 4.24.115, then in the event of concurrent negligence of the Contractor, its subcontractors, employees or agents, and the County, its employees or agents, this indemnification obligation of the Contractor shall be valid and enforceable only to the extent of the negligence of the Contractor, its subcontractors, employees, and agents. This indemnification obligation of the Contractor shall not be limited in any way by the

Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Contractor hereby expressly waives any immunity afforded by such acts.

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 Contract is for the benefit of the parties only and this Contract shall create no rights in any third party. The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses, or expenses, and such participation shall not constitute a waiver of Contractor's indemnity obligations under this Agreement.

In the event the Contractor enters into subcontracts to the extent allowed under this Contract, the Contractor's subcontractors shall indemnify the County on a basis equal to or exceeding Contractor's indemnity obligations to the County. The Contractor shall pay all attorney's fees and expenses incurred by the County in establishing and enforcing the County's rights under this indemnification provision, whether or not suit was instituted.

The Contractor agrees all Contractor's indemnity obligations shall survive the completion, expiration or termination of this Agreement. The foregoing indemnification obligations of the Contractor are a material inducement to County to enter into this Agreement and are reflected in the Contractor's compensation.

By signing this contract, the Contractor acknowledges that it has freely negotiated and agreed to the indemnification requirements to defend, indemnify and hold harmless the County from all claims and suits including those brought against the County by the Contractor's own employees, arising from this contract.

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:

Christopher D'Onofrio, Program Specialist  
Whatcom County Health Department

37.2 Notice:

Any notices or communications required or permitted to be given by this Contract must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party as follows:

To: Whatcom County  
Attn: Christopher D'Onofrio  
509 Girard Street  
Bellingham, WA 98225

To: Pioneer Human Services  
7440 W Marginal Way S  
Seattle, WA 98108

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A party may, for purposes of this Agreement, change his, her or its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other party pursuant to this Section.

37.3 If agreed by the parties, this Contract may be executed by Email transmission and PDF signature and Email transmission and PDF signature shall constitute an original for all purposes.

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

If applicable, 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:

If applicable, 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. If applicable, 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](http://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, temporary restraining order, or other provisional remedy to preserve the status quo or prevent irreparable harm, 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 Contract 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 Contract 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 but shall not have the power to award punitive damages. Each Party shall pay all their own costs, attorney fees and expenses of arbitration and the parties shall share equally in the Arbitrator's fees and costs. 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.
- Any arbitration proceeding commenced to enforce or interpret this Contract shall be brought within six years after the initial occurrence giving rise to the claim, dispute, or issue for which arbitration is commenced, regardless of the date of discovery or whether the claim, dispute, or issue was continuing in nature. Claims, disputes, or issues arising more than six years prior to a written request or demand for arbitration issued under this Contract are not subject to arbitration.
- e. The parties may agree in writing signed by both parties that a claim or dispute may be brought in Whatcom County Superior Court rather than mediation or arbitration.

*Unless otherwise specified herein, this Contract 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)

**I. Background**

In 2009, Whatcom County established the Whatcom County Offender Re-Entry Housing Program as a pilot project funded primarily by Department of Commerce Homeless Grant Assistance Program. This project has become a permanent supportive housing program for homeless ex-offenders who are returning to Whatcom County under the supervision of the Washington State Department of Corrections, for homeless ex-offenders exiting the Whatcom County Jail, for individuals experiencing homelessness, Mental Health Court participants, and chronically homeless veterans. The Contractor will provide permanent housing, housing case management, and behavioral health services to enable program participants' access to services and achieve housing stability. Behavioral health services are also offered to the Lighthouse Mission through this contract.

By entering into this agreement, it is not intended to create a benefit or cause of action for any third person not a signatory to this agreement, except a program participant. By providing services to a program participant, the Contractor does not enter into a take charge relationship for anything other than making services available to the participant. It is not meant to provide protection to any third person or the public in general.

**Definitions:**

AMI	Area Median Income
DOC	Washington State Department of Corrections
HMIS	Homeless Management Information System
SHP	U.S. Department of Housing and Urban Development Supportive Housing Program
WHSC	Whatcom Homeless Service Center
VA	United States Department of Veteran Affairs
VASH	Veteran Affairs Supportive Housing program combines Housing Choice Voucher rental assistance for homeless Veterans with case management and clinical services provided by the VA
S+C	Shelter Plus Care Program – a U.S. Department of Housing and Urban Development Supportive Housing Program

**II. Statement of Work**

The Contractor will be responsible for the operation of the permanent supportive housing program at City Gate which provides housing for:

- A. Homeless ex-offenders who are returning to Whatcom County under the supervision of the Washington State Department of Corrections.
- B. Homeless ex-offenders exiting the Whatcom County Jail.
- C. Individuals and veterans experiencing chronic homelessness.
- D. Mental Health Court participants (up to 6 units).

The re-entry residents eligible to reside at City Gate must have a mental health disability and/or be disabled due to a history of substance use disorder with an income at or below 50% of Area Median Income (AMI). The contractor will also



provide rental assistance vouchers through the use of Whatcom County flex funds to ex-offenders under DOC supervision. By operating this program, the Contractor will be responsible for the following, as well as any other activities identified by the Contractor as being necessary to meet the program objective of increased housing stability for ex-offenders and homeless individuals and veterans:

1. Provide a resident manager to oversee the safety and security of the building. Facility staff will be available on site at all times to monitor resident behavior and compliance with lease agreements.
2. Provide 36 permanent housing units at the City Gate apartment building: 10 to be used for VASH participants, 5 for SHP participants, and up to 5 for S+C participants. An additional 6 units may be used for Mental Health Court participants.
3. Develop leases and program agreements with all participating clients, including master lease with the SHP provider.
4. Operate and provide property management services of the permanent supportive housing program, including rent determination and collection, facility maintenance, and unit turnover.
5. Establish rental amounts that are no more than 30 percent of resident's adjusted monthly income in compliance with Exhibit E (Types of Income to Count and Calculating Adjusted Income). Establish deposit and minimum rent amounts.
6. Continue to further develop and refine the referral protocol in conjunction with Whatcom County Housing Specialist for ex-offenders released from the Whatcom County Jail.
7. Accept referrals from the Whatcom Homeless Service Center to consider for placement in City Gate.
8. Determine and document client eligibility.
9. Coordinate Housing Quality Standard (HQS) inspections for Housing Authority funded units or conduct Housing Safety Standard (HSS) inspections for all other occupied City Gate units receiving assistance under this contract.
10. Respond in a timely manner to a City Gate program participant's report of a housing quality problem.
11. Develop a permanent housing plan for re-entry clients accepted into the program and coordinate a Housing Service Plan for the VASH, S+C, and SHP residents with their case managers.
12. Work closely and collaboratively with DOC staff, Whatcom County Jail staff, law enforcement, criminal justice staff, County staff, WHSC, VA, local government staff, other community service providers, and community groups in managing the program, ensuring that offender accountability to DOC release plans is maintained and Housing Service Plans are followed, and increasing the likelihood of program participants' housing success.
13. Use reasonable care to notify DOC in the event of known violations of community supervision provisions, the VA social worker in the event of VASH program violations, and the housing case manager of the SHP clients in the case of program violations.
14. Participate as a member of a Re-Entry Coordination Team to help determine acceptance of potential residents into the program and to develop and implement a re-entry plan. This will include conferring with the program participant and his or her assigned Department of Corrections Community Corrections Officer to discuss housing and service needs, obtain available documentation, and explain the housing program.
15. Make necessary arrangements to ensure that a housing unit is available to an accepted program participant.
16. Link program participants to other needed services (e.g., mental health services, substance abuse treatment; health care; education and training; employment; parenting classes; social networks; family/community reconciliation, etc.).
17. Conduct a criminal background check on all potential residents of City Gate.
18. Ensure that no convicted sex offenders are considered for acceptance into the City Gate program.

19. Provide housing case management services to program participants. Housing case management services include but are not limited to:
  - a. Educating clients about:
    - i. The cleaning and maintenance of housing units.
    - ii. Tenant responsibilities under Landlord-Tenant Law.
    - iii. Financial literacy and money management.
  - b. Communicating with landlords and other residents.
  - c. Linking clients to employment and training programs.
  - d. Assisting clients in life skills and/or activities of daily living training.
  - e. Monitoring each program participant and his/her adherence to tenant responsibilities.
  - f. Assisting in addressing issues that threaten continued program participation, housing status, and safety of other residents or the immediate neighborhood.
20. Provide onsite behavioral health services by a Behavioral Health Professional for residents at City Gate and guests of The Lighthouse Mission. The position will coordinate with City Gate resident manager and case managers, VASH case manager, Mental Health Court Manager, SHP case manager, and S+C staff acting as part of the service provider team. This position will require compliance with state and federal confidentiality laws. Behavioral health services to be provided by Pioneer Human Services may include:
  - a. Screening residents to determine behavioral health needs; screen potential residents' behavioral health needs as they relate to housing placement and stability.
  - b. Conducting an assessment of behavioral health issues, including mental health and substance abuse history for residents who are not engaged with a mental health or substance use disorder treatment provider.
  - c. Developing a file and charting all provider contacts on residents engaged in formal behavioral health services.
  - d. Completing an Individualized Treatment Plan conjointly with each resident engaged in behavioral health treatment with PHS behavioral health staff.
  - e. Providing treatment and case management activities.
  - f. Coordinating ongoing care with other professionals.
  - g. Providing for an after-hours response system in the event of an emergency.
  - h. Follow relevant state statutes for provision of mental health treatment.
21. Providing monitoring for security with an operational interior and exterior camera system, and the use of a single entrance for all residents in units accessible from the building interior.
22. Distribute rental assistance voucher flex funds as appropriate up to a maximum of \$1,500 per household, according to the Whatcom County Flex Fund Guidelines set forth in Exhibit D.
23. Participate in Homeless Management Information System (HMIS) data collection efforts, coordinated through the WHSC.
24. Comply with state and federal confidentiality laws and regulations.
25. Comply with Landlord-Tenant Law.
26. Develop all administrative and programmatic policies and procedures required for the administration and operation of the program.
27. Attend Whatcom County Homeless Coalition meetings and Pioneer corporate staff meetings as required.

28. Ensure that common area bathrooms comply with standards set by the Americans with Disabilities Act (ADA).

### **III. Program Requirements**

If on average over the course of the year, occupancy at City Gate falls below 95%, the Contractor shall meet with County staff to address occupancy rates with the goal of keeping the units at City Gate fully occupied.

### **IV. Program Outcomes**

1. Facility strives to fill vacancies and maintain occupancy level of at least 95%
2. No more than two residents will exit per quarter to unstable housing destinations
3. Facility will be well integrated into community and there will be no more than two complaints from neighbors in any given quarter
4. City Gate staff will make at least four outreach efforts with neighbors and nearby businesses to proactively maintain good neighborhood relationships
5. At least 50% of residents will engage with a behavioral health clinician each quarter
6. At least 35% of residents (including those participating in the VA Supportive Housing program) will participate in pro-social community activities facilitated by City Gate staff

### **V. Reporting Requirements**

The Behavioral Health Professional will submit separate monthly reports\* by the 15<sup>th</sup> of each month to the Health Department for clients seen at the Lighthouse Mission and at City Gate. These monthly reports will provide the following numbers: Clients assessed; clients that received services; contacts made with clients; average number of contacts with clients; client contacts during 1:1 sessions; and client contacts during group sessions.

City Gate staff will report quarterly on occupancy, exits to homelessness, neighborhood encounters, and behavioral health stability of residents through submission of quarterly reports due by the 15<sup>th</sup> of April, July, October, and January. The County reporting form for permanent supportive housing is to be used for this purpose as follows:

Current reporting templates will be posted on the Whatcom County Health Department Housing Program website which may be accessed at:

<http://www.whatcomcounty.us/DocumentCenter/View/37564/WCHDquarterlyPSHreportCityGate>

\*Contractors will be notified via email of updates to reporting templates.

**EXHIBIT "B"**  
(COMPENSATION)

**I. Budget and Source of Funding:** The source of funding for this contract, in an amount not to exceed \$490,948, is, HB 2060, local document recording fees, Mental Health Millage, and the Behavioral Health Program fund. The budget for this contract is as follows:

Item	Documents Required Each Invoice	Budget
<b>Program Services</b>		
Resident Manager/Case Managers – 3 FTE	GL Detail	\$133,070
Resident Monitor – 1 FTE		\$36,522
Mental Health Professional – 1 FTE		\$59,072
Supervisor (.25 FTE)		\$20,801
<b>Wages Subtotal</b>		<b>\$249,465</b>
Indirect Program Administration	27.5% on salaries only, not to exceed budget	\$68,603
<b>Wages Total</b>		<b>\$318,068</b>
Resident Manager / Case Manager Benefits		\$44,729
Resident Monitor Benefits		\$13,083
Mental Health Professional Benefits		\$16,900
Supervisor Benefits		\$5,068
Medical/UA	GL Detail	\$600
Operational Supplies (office, food, etc.)		\$4,500
Travel/Training/Mileage	Receipts for fees related to registration training, licenses and dues. Ground transportation, parking, coach airfare, and ferries will be reimbursed at cost when accompanied by receipts. Reimbursement requests for allowable travel must include name of staff member, copies of mileage records (if applicable), dates of travel, starting point and destination, and a brief description of purpose. Lodging and meal costs for training are not to exceed the U.S. General Services Administration (GSA) Domestic Per Diem rates, specific to location ( <a href="http://www.gsa.gov">www.gsa.gov</a> ).	\$7,000
Flex Funds – Internal	Detail log with client ID with date and amount listed	\$3,000
Flex Funds – External		\$6,000
<b>Subtotal (excluding salaries)</b>		<b>\$100,880</b>
<b>Total Facility Staffing &amp; Services Costs</b>		<b>\$418,948</b>
<b>Facility Costs</b>		
City Gate Apartment Rent @ \$6,000/month		\$72,000
<b>Total Facility Costs</b>		<b>\$72,000</b>
<b>TOTAL</b>		<b>\$490,948</b>

Changes to the line item budget that exceed 10% of the line item amount must be approved in writing by the County. Under no circumstances shall program administration costs exceed the above specified budgeted amount.

**II. Invoicing**

1. The Contractor shall submit itemized invoices on a monthly basis in a format approved by the County. The Contractor shall submit invoices to (include contract/PO #) [HL-BusinessOffice@whatcomcounty.us](mailto:HL-BusinessOffice@whatcomcounty.us). Monthly

invoices must be submitted by the 10<sup>th</sup> of the month, following the month of service. Invoices submitted for payment must include the items identified in the table above.

2. Contractor must submit quarterly financial reports detailing all costs and program income no later than April 30<sup>th</sup>, July 31<sup>st</sup>, October 31<sup>st</sup>, and January 31<sup>st</sup>. Reports will be sent to [HL-BusinessOffice@co.whatcom.wa.us](mailto:HL-BusinessOffice@co.whatcom.wa.us).
3. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.
4. Invoices must include the following statement, with an authorized signature and date:

**I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.**

5. Duplication of Billed Costs or Payments for Service: The Contractor shall not bill the County for services performed or provided under this contract, and the County shall not pay the Contractor, if the Contractor has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract. The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.

**EXHIBIT "C"**  
(CERTIFICATE OF INSURANCE)





# ADDITIONAL REMARKS SCHEDULE

AGENCY Arthur J. Gallagher Risk Management Services, Inc.		NAMED INSURED Pioneer Human Services 7440 W. Marginal Way Seattle WA 98108
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

### ADDITIONAL REMARKS

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**  
**FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE**

Waiver of Subrogation applies in favor of the Additional Insured as respects to General Liability, Professional Liability, Umbrella Liability and Automobile Liability.



**Exhibit D**  
**WHATCOM COUNTY FLEX FUNDS GUIDELINES**

“Flex funds” are funds that may be used at the discretion of the Contractor, following the policies described below, to purchase goods or services directly related to the service needs of the Contractor’s clients, when no other funding source is available. **Such goods or services must be reasonable and necessary to meet a client’s emergent service needs or contribute to the stabilization or self-sufficiency of the client.**

**Allowable Costs:** Allowable uses of client-specific expenditures of flex funds include the following:

- Clothing
- Food
- Housing/rental assistance
- Bus passes or taxi fare
- Car repairs
- Driver’s license or ID card fees
- Educational or training program registration fees
- Household supplies, including furniture
- Medications
- Health care
- Other, as approved by Whatcom County

**Limitations:** Flex fund expenditures must be within the allowable criteria established by the County, as identified above, must be based upon the service needs as documented in the client’s individual service plan, and must have no other funding available from any other source. Flex funds distributed to any one client cannot exceed \$1,500 per year, except with written authorization from the County. No flex fund disbursements are to be made directly to the client but rather will be made on behalf of a client.

**Documentation:** Requests for reimbursement of flex funds must include the attached form including the following:

- A. The person or organization funds were paid to.
- B. Date of transaction.
- C. A list of the goods and/or services purchased.
- D. The cost of the goods and/or services purchased.
- E. The initials of the client and/or unique identifying number of the client for whom the goods and/or services were purchased.
- F. The total amount of flex funds distributed to the client during the year.
- G. The service need addressed by the expenditure.
- H. Accompanying invoices and/or receipts.
- I. Evidence of administrative review of expenditures

**See Attached Form**



**EXHIBIT "E"**  
(TYPES OF INCOME TO COUNT AND CALCULATING ADJUSTED INCOME)

Annual income is made up of the types of household income that are A) included in the definition ("inclusions") or B) excluded in the definition ("exclusions"). The table below shows income inclusions and exclusions.

**Inclusions**

	<b>General Category</b>	<b>Amounts Anticipated to be Received During the Coming 12 Months</b>
1	Income from wages, salaries, tips, etc.	The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services.
2	Business Income	The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight-line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the household.
3	Interest, Dividend Income & Income from Assets	Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in number 2 (above). Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the household. Where the household has net household assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net household assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD.
4	Retirement & Insurance Income	The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in number 14 of Discretionary Items).
5	Unemployment & Disability Income	Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay (except as provided in number 3 of Discretionary Items of Income Exclusions).
6	Welfare Assistance	Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income: a. Qualify as assistance under the TANF program definitions at 45 CFR 260.31; and b. Are otherwise excluded from the calculation of annual income.
7.	Periodic and Determinable Allowances & Gift Income	Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling.
8.	Armed Forces Income	All regular pay, special day and allowances of a member of the Armed Forces (except as provided in number 8 of Income Exclusions).

**Exclusions**

<b>General Category</b>	<b>Description</b>
1	Income from employment of children (including foster children) under the age of 18 years.
2	Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone).
3	Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in number 5 of Income Inclusions).
4	Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member.
5	Income of a live-in aide (as defined in 24 CFR 5.403).
6	Certain increases in income of a disabled member of qualified families residing in HOME-assisted housing or receiving HOME tenant-based rental assistance (24 CFR 5.671(a)).
7	The full amount of student financial assistance paid directly to the student or to the educational institution for tuition and books.
8	The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.
9	<ul style="list-style-type: none"> <li>a. Amounts received under training programs funded by HUD.</li> <li>b. Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS).</li> <li>c. Amounts received by a participant in other publicly-assisted programs that are specifically for, or in reimbursement of, out-of-pocket expenses incurred (special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program.</li> <li>d. Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for a Public Housing Authority (PHA) or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time.</li> <li>e. Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program.</li> </ul>
10	Temporary, nonrecurring, or sporadic income (including gifts).
11	Reparation payments paid by a foreign government pursuant to claims files under the laws of that government by persons who

		were persecuted during the Nazi era.
12	Income from Full-time Students	Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household or spouse).
13	Adoption Assistance Payments	Adoption assistance payments in excess of \$480 per adopted child.
14	Social Security & SSI Income	Deferred periodic amounts from SSI and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts.
15	Property Tax	Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit.
16	Home Care Assistance	Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep this developmentally disabled family member at home.
17	Other Federal Exclusions	<p>Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits, including:</p> <ol style="list-style-type: none"> <li>a. The value of the allotment made under the Food Stamp Act of 1977;</li> <li>b. Payments received under programs funded in whole or in part under the Job Training Partnership Act (employment and training programs for Native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, state job training programs and career intern programs, AmeriCorps);</li> <li>c. Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998;</li> <li>d. Payments received under the Domestic Volunteer Service Act of 1973 (employment through VISTA, Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions);</li> <li>e. Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program;</li> <li>f. Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under the Federal work study program or under the Bureau of Indian Affairs student assistance programs;</li> <li>g. Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990;</li> <li>h. Payments received under the Alaskan Native Claims Settlement Act;</li> <li>i. Income derived from the disposition of funds to the Grand River Band of Ottawa Indians;</li> <li>j. Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes;</li> <li>k. Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721);</li> <li>l. The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U.S. Claims Court and the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands;</li> <li>m. Payments received from programs funded under Title V of the Older Americans Act of 1985 (Green Thumb, Senior Aids, Older American Community Service Employment Program);</li> <li>n. Payments received on or after January 1, 1989 from the Agent Orange Settlement Fund or any other fund established</li> </ol>

	<p>pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);</p> <ul style="list-style-type: none"> <li>o. Earned income tax credit refund payments received on or after January 1, 1991, including advanced earned income credit payments;</li> <li>p. The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990;</li> <li>q. Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation;</li> <li>r. Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran;</li> <li>s. Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act.</li> </ul>
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**Treatment of Assets: What to Include**

In general terms, an asset is cash or no cash item that can be converted to cash. Note that when assets are included in the calculation of annual income, it is the income earned from the asset – not the value of the asset – that is counted.

**Inclusions**

1. Cash held in savings accounts, checking accounts, safe deposit boxes, homes, etc. For savings accounts, use the current balance. For checking accounts, use the average six-month balance.
2. Cash value of revocable trusts available to the applicant.
3. Equity in rental property or other capital investments. Equity is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and all reasonable costs (e.g., broker fees) that would be incurred in selling the asset. Under HOME, equity in the family's primary residence is not considered in the calculation of assets for owner-occupied rehabilitation projects.
4. Cash value of stocks, bonds, Treasury bills, certificates of deposit, and money market accounts.
5. Individual retirement and Keogh accounts (even though withdrawal would result in a penalty).
6. Retirement and pension funds.
7. Cash value of life insurance policies available to the individual before death (e.g., surrender value of a whole life or universal life policy).
8. Personal property held as an investment such as gems, jewelry, coin collections, antique cars, etc.
9. Lump sum or one-time receipts, such as inheritances, capital gains, lottery winnings, victim's restitution, insurance settlements, and other amounts not intended as periodic payments.
10. Mortgages or deeds of trust held by an applicant.

## Exclusions

1. Necessary personal property, except as noted in number 8 of Inclusions, such as clothing, furniture, cars, and vehicles specially equipped for persons with disabilities.
2. Interest in Indian trust lands.
3. Assets not effectively owned by the applicant. That is, when assets are held in an individual's name, but the assets and any income they earn accrue to the benefit of someone else who is not a member of the household and that other person is responsible for income taxes incurred on income generated by the asset.
4. Equity in cooperatives in which the family lives.
5. Assets not accessible to and that provide no income for the applicant.
6. Term life insurance policies (i.e. where there is no cash value).
7. Assets that are part of an active business. "Business" does not include rental of properties that are held as an investment and not a main occupation.

## CALCULATING ADJUSTED INCOME

Adjusted income is used to determine total tenant payment (TTP), which is a measure of a household's ability to pay housing costs. It is derived by subtracting any of four deductions (or allowances) that apply to the household from the household's annual (gross) income.

### Allowable Deductions

Elderly or Disabled Household Deduction: A household that meets the elderly or disabled definition is entitled to a deduction of \$400 per household. An elderly household is any household in which the head, spouse, or sole member is 62 years of age or older; two or more persons who are at least 62 years of age live together; or one or more persons who are at least 62 years of age live with one or more live-in aides. A disabled household is one in which the head, spouse, or sole member is a person with disabilities. Two or more persons with disabilities living together and one or more persons with disabilities living with one or more live-in aides also qualify as disabled households.

Dependent Deduction: Deduct \$480 from annual income for each household dependent. A dependent is any household member who is not the head, co-head, or spouse, but is under the age of 18 years or disabled (of any age) or a full-time student (of any age). The household member must qualify for the deduction at the time the income certification is made.

Child Care Expenses Deduction: Deduct reasonable child care expenses (anticipated to be incurred during the coming year) for the care of a child age 12 or under if the childcare (1) enables the participant to seek or become employed, or further his/her education and (2) expenses are not reimbursed.

Medical Expenses Deduction: Deduct medical expenses (anticipated to be incurred during the coming year and are not covered by insurance) that are in excess of three percent of annual income. Medical expenses can include such items as:

- a. Services of a physician or other health care professional.
- b. Services of a hospital or other health care facility.

- c. Medical insurance premiums.
- d. Prescription and nonprescription medicines.
- e. Dental expenses.
- f. Eyeglasses and eye examinations.
- g. Medical or health products or apparatus (e.g., hearing aids or batteries).
- h. Live-in or periodic medical care assistance (e.g., visiting nurses or care attendants).
- i. Periodic payments on accumulated medical bills.

The medical expenses allowance is the amount by which total medical expenses exceed 3% of annual income.

For example, a youth has an anticipated annual income of \$10,000 and anticipated medical expenses of \$3,000 (not covered by insurance). The calculation for the medical expense deduction would be:

Total medical expenses	\$3000
Less 3% of annual income	<u>300</u>
Medical expense deduction	\$2,700





# Whatcom County

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

## Agenda Bill Master Report

File Number: **AB2020-557**

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<b>File ID:</b>	AB2020-557	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/20/2020	<b>Entered by:</b>	JThomson@co.whatcom.wa.us		
<b>Department:</b>	Health Department	<b>File Type:</b>	Contract		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

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Primary Contact Email: [ADeacon@co.whatcom.wa.us](mailto:ADeacon@co.whatcom.wa.us) <mailto:ADeacon@co.whatcom.wa.us>

### **TITLE FOR AGENDA ITEM:**

Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Pacific Security to continue security services at the COVID-19 Temporary Housing Facility, in the amount of \$41,000 for a total amended contract amount of \$156,000

### **SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

See attachments

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### **HISTORY OF LEGISLATIVE FILE**

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<b>Date:</b>	<b>Acting Body:</b>	<b>Action:</b>	<b>Sent To:</b>
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**Attachments:** Memo to County Executive, Pacific Security COVID Temporary Housing Facility Contract Amendment #2.pdf



**MEMORANDUM**

**TO:** Satpal Sidhu, County Executive

**FROM:** Erika Lautenbach, Director

**RE:** Parker Corporate Services, Inc. dba Pacific Security – Temporary Housing Facility Security Contract Amendment #2

**DATE:** November 20, 2020

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Attached is a contract amendment between Whatcom County and Pacific Security for your review and signature.

▪ **Background and Purpose**

This contract provides funding for 24/7 security services to temporary guests of the COVID-19 Temporary Housing Facility located at 3701 Byron Avenue in Bellingham. The purpose of this amendment is to clarify additional requirements for access control into the Facility and add \$41,000 in funding in order to extend the contract through 12/30/2020.

▪ **Funding Amount and Source**

Funding for this contract may not exceed \$156,000. Funds under this contract are made available by a grant awarded by the US Department of Treasury and subject to Section 601(a) of the Social Security Act, as amended by section 5001 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and Title V and VI of the CARES Act, passed through the Washington State Department of Commerce Local Government Coronavirus Relief Fund (CFDA 21.016) and the Washington State Department of Health Emergency Preparedness & Response COVID-19 Local CARES Grant (CFDA 21.019). These funds are included in the 2020 budget. Council approval is required as additional funding exceeds 10% of the approved budget.

Please contact Kathleen Roy at extension #6007 if you have any questions regarding this agreement.

Encl.

**WHATCOM COUNTY  
CONTRACT INFORMATION SHEET**

Whatcom County Contract Number:  
202004010 – 2

Originating Department:		85 Health	
Division/Program: (i.e. Dept. Division and Program)		8550 Human Services / 855040 Housing Program	
Contract or Grant Administrator:		Kathleen Roy	
Contractor's / Agency Name:		Parker Corporate Services, Inc. dba Pacific Security	
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? If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
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#: 21.016 / 21.019
Is this contract grant funded? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	If yes, Whatcom County grant contract number(s):		202006003 / 201801023
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: 134150 / 660430
Is this agreement excluded from E-Verify? No <input type="checkbox"/> Yes <input checked="" type="checkbox"/>			
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 type="checkbox"/> Interlocal Agreement (between Governments).			
Contract Amount:(sum of original contract amount and any prior amendments): \$ 115,000		Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when</b> : 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: \$ 41,000			
Total Amended Amount: \$ 156,000			
Summary of Scope: This contract provides funding for 24/7 security services at Whatcom County's COVID-19 Temporary Housing Facility.			
Term of Contract:	9 Months	Expiration Date:	12/30/2020
Contract Routing:	1. Prepared by:	JT	Date: 11/12/2020
	2. Health Budget Approval	KR/JG	Date: 11/19/2020
	3. Attorney signoff:	RB	Date: 11/20/2020
	4. AS Finance reviewed:	M Caldwell	Date: 11/19/2020
	5. IT reviewed (if IT related):		Date:
	6. Contractor signed:		Date:
	7. Submitted to Exec.:		Date:
	8. Council approved (if necessary):		Date:
	9. Executive signed:		Date:
	10. Original to Council:		Date:

Whatcom County Contract Number:

202004010 – 2

## WHATCOM COUNTY CONTRACT AMENDMENT

### PARTIES:

Whatcom County  
Whatcom County Health Department  
509 Girard Street  
Bellingham, WA 98225

### AND CONTRACTOR:

Parker Corporate Services, Inc. dba Pacific Security  
2009 Iron Street  
Bellingham, WA 98225

### AMENDMENT NUMBER: 2

### CONTRACT PERIODS:

Original: 04/07/2020 – 07/05/2020  
Amendment #1: 04/07/2020 – 10/31/2020  
Amendment #2: 11/01/2020 – 12/30/2020

THE CONTRACT IDENTIFIED HEREIN, INCLUDING ANY PREVIOUS AMENDMENTS THERETO, IS HEREBY AMENDED AS SET FORTH IN THE DESCRIPTION OF THE AMENDMENT BELOW BY MUTUAL CONSENT OF ALL PARTIES HERETO

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### DESCRIPTION OF AMENDMENT:

1. Extend the term of the contract through 12/30/2020.
2. Amend the designated Administrative Officer in the original contract under “General Terms, Section 37.2, Notice” to:  
  
Anne Deacon, Human Services Manager  
Whatcom County Health Department  
509 Girard Street  
Bellingham, WA 98225  
360-778-6054  
[ADeacon@co.whatcom.wa.us](mailto:ADeacon@co.whatcom.wa.us)
3. Amend Exhibit A – Scope of Work, to include issuance of ID to facility guests by Contractor and assurance that visitors of facility guests are not allowed access to the facility at any time; revised Exhibit A is attached.
4. Amend Exhibit B – Compensation, to update total funding and revise the invoice deadline; revised Exhibit B is attached.
5. Funding for the extended contract period (11/01/2020 – 12/30/2020) is not to exceed \$41,000.
6. Funding for the total contract period (04/07/2020 – 12/30/2020) is not to exceed \$156,000
7. All other terms and conditions remain unchanged.
8. The effective start date of the amendment is 11/01/2020.

ALL OTHER TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AND ANY PREVIOUS AMENDMENTS THERETO REMAIN IN FULL FORCE AND EFFECT. ALL PARTIES IDENTIFIED AS AFFECTED BY THIS AMENDMENT HEREBY ACKNOWLEDGE AND ACCEPT THE TERMS AND CONDITIONS OF THIS AMENDMENT. Each signatory below to this Contract warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and bind the party thereto.

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APPROVAL AS TO PROGRAM: \_\_\_\_\_  
Anne Deacon, Human Services Manager Date

DEPARTMENT HEAD APPROVAL: \_\_\_\_\_  
Erika Lautenbach, Health Department Director Date

APPROVAL AS TO FORM: \_\_\_\_\_  
Royce Buckingham, Prosecuting Attorney Date

FOR THE CONTRACTOR:

_____	Bud Tweten, Sales & Development	_____
Contractor Signature	Print Name and Title	Date

FOR WHATCOM COUNTY:

\_\_\_\_\_ Date  
Satpal Singh Sidhu, County Executive

**CONTRACTOR INFORMATION:**

**Pacific Security**  
Bud Tweten, Sales & Development  
2009 Iron Street  
Bellingham, WA 98225  
425-330-1341  
[bud@parkercorporation.com](mailto:bud@parkercorporation.com)

**EXHIBIT "A" – Amendment #2**  
(SCOPE OF WORK)

**BACKGROUND**

To provide adequate response to the COVID-19 emergency and emergency shelter needs in Whatcom County, the County has entered into a lease with Motel 6 located at 3701 Byron Avenue, Bellingham, WA 98225. The motel is a 60-unit facility and will be used as a COVID-19 Temporary Housing Facility for those in need of separate housing services due to COVID-19 exposure and emergency shelter for individuals and families in need. Services are needed to provide security for the temporary guests at this facility.

**STATEMENT OF WORK**

Contractor will provide 24/7 services. Law enforcement will provide instruction on security responsibilities. Initially contractor will provide surveillance only on site. Once operations begin, contractor will perform the duties specified below. Upon request, contractor will provide additional staff or adjust duties.

Contractor will:

- A. Follow law enforcement instructions.
- B. Be responsible for access control:
  - i. Contractor will issue ID to each adult guest of the facility to verify access into the facility.
  - ii. Each additional contractor, Whatcom County, or Unified Command personnel will also carry ID to access the facility.
  - iii. Ensure that no visitors of facility guests are allowed to enter the premises at any time, unless pre-approved by Whatcom County Health Department.
  - iv. Assist with access and egress for guests who are receiving temporary shelter services at the facility and who are NOT housed in isolation or quarantine status.
- C. Provide a visible deterrent to criminal behavior by providing routine security patrols around the exterior of the grounds on an hourly basis.
- D. Observe and report suspected criminal activity to WhatComm Dispatch:
  - i. Law enforcement will exercise their discretion as to whether or not to send officers to the facility based on the nature of the report.
  - ii. Contractor will compile reports of incidents or significant events to be provided to law enforcement, Unified Command, or Whatcom County, upon request.
  - iii. The on-duty site Security Officer should contact WhatComm Dispatch at the beginning of each shift and provide their name and contact number as the responsible party for that rotation.
- E. Perform duties in a courteous and professional manner.
- F. Report all incidents to the on-site manager.

Contractor is responsible for providing uniforms, n95 masks, gloves, and eye protection and supervising all security personnel in the proper performance of their duties. Security officers assigned to perform work under this contract shall wear uniforms at all times. These uniforms must clearly identify the name of the security contractor. This

identification may be accomplished through the use of shoulder patches, silk screening, or stitched company emblems, insignias, or logos.

Security officers employed by the contractor under this contract shall:

- A. Be able to communicate effectively in both written and oral English.
- B. Possess a cell phone and have such on their person while on duty.
- C. Be a legal resident of the United States of America.
- D. Be physically and emotionally capable of performing the assigned tasks.
- E. Have no criminal record.

The County retains the right to run background checks for each of the contractor's employees. County is not required to provide any reason for requested removal of specified contracted personnel.

**EXHIBIT “B” – Amendment #2**  
**(COMPENSATION)**

**I. Budget and Source of Funding:** Funding for this contract may not exceed \$156,000. Funds under this contract are made available and are subject to Section 601(a) of the Social Security Act, as amended by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and Title V and VI of the CARES Act. This project was supported by a grant awarded by the US Department of the Treasury. Grant funds are administered by the Local Government Coronavirus Relief Fund thru the Washington State Department of Commerce (CFDA 21.016) and the Washington State Department of Health Emergency Preparedness & Response COVID-19 Local CARES Grant (CFDA 21.019). Commerce and the State of Washington are not liable for claims or damages arising from Subcontractor’s performance of this contract.

**Compensation:**

Contractor will be paid \$27.35 per hour and \$41.03 per hour on Federal Holidays.

**II. Invoicing**

1. The Contractor shall submit itemized invoices on a monthly basis in a format approved by the County. The Contractor shall submit invoices to *(include contract/PO #)* [HL-BusinessOffice@co.whatcom.wa.us](mailto:HL-BusinessOffice@co.whatcom.wa.us). Monthly invoices must be submitted by the 15<sup>th</sup> of the month following the month of service **except final invoices which must be received by January 8, 2021**. Invoices submitted for payment must include the items identified in the table above.
2. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.
3. Invoices must include the following statement, with an authorized signature and date:

**I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.**

4. Duplication of Billed Costs or Payments for Service: The Contractor shall not bill the County for services performed or provided under this contract, and the County shall not pay the Contractor, if the Contractor has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract. The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.





# Whatcom County

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

## Agenda Bill Master Report

**File Number: AB2020-558**

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<b>File ID:</b>	AB2020-558	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/20/2020	<b>Entered by:</b>	JThomson@co.whatcom.wa.us		
<b>Department:</b>	Health Department	<b>File Type:</b>	Contract		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

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

**TITLE FOR AGENDA ITEM:**

Request authorization for the County Executive to enter into a contract between Whatcom County and Lydia Place to provide emergency housing for families experiencing unsheltered homelessness, in the amount of \$114,172

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

See attachments

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### HISTORY OF LEGISLATIVE FILE

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<b>Date:</b>	<b>Acting Body:</b>	<b>Action:</b>	<b>Sent To:</b>
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**Attachments:** Memo to County Executive, Lydia Place Shelter Grant Contract.pdf



## MEMORANDUM

**TO:** Satpal Sidhu, County Executive

**FROM:** Erika Lautenbach, Director

**RE:** Lydia Place – Shelter Grant Contract

**DATE:** November 20, 2020

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Attached is a contract between Whatcom County and Lydia Place for your review and signature.

- **Background and Purpose**

Creating new interim shelter beds for individuals experiencing homelessness is one of the seven key strategies in the *Strategic Plan to End Homelessness in Whatcom County* and provides alternatives to unhealthy and unsafe sleeping locations. This contract provides year-round funding for four motel rooms to be used as emergency housing for families experiencing unsheltered homelessness and also funds supportive services to help those families exit their motel rooms into permanent housing.

- **Funding Amount and Source**

Funding for this contract, in an amount not to exceed \$114,172, is provided by the Washington State Department of Commerce Shelter Program and Emergency Solutions COVID-19 (CFDA 14.231) Grants. These funds are included in the 2020 budget. Council approval is required as funding exceeds \$40,000.

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
Contract or Grant Administrator:	Chris D'Onofrio
Contractor's / Agency Name:	Lydia Place

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?	If yes, grantor agency contract number(s):	CFDA#:	14.231
Yes <input type="checkbox"/>			
Is this contract grant funded?	If yes, Whatcom County grant contract number(s):	202009033 / 202008014	
Yes <input checked="" type="checkbox"/>			

Is this contract the result of a RFP or Bid process?	If yes, RFP and Bid number(s):	20-53	Contract Cost
Yes <input checked="" type="checkbox"/>			No <input type="checkbox"/>
			122900 / 122800

Is this agreement excluded from E-Verify?	No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>	If no, include Attachment D Contractor Declaration form.
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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 type="checkbox"/> Interlocal Agreement (between Governments).	

Contract Amount:(sum of original contract amount and any prior amendments):	Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b> 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.
\$ 114,172	
This Amendment Amount:	
\$	
Total Amended Amount:	
\$	

Summary of Scope: This contract provides funding for four motel rooms to be used as emergency housing for families experiencing unsheltered homelessness.

Term of Contract:	15 Months	Expiration Date:	12/31/2021	
Contract Routing:	1. Prepared by:	JT	Date:	11/04/2020
	2. Health Budget Approval:	KR/JG	Date:	11/16/2020
	3. Attorney signoff:	RB	Date:	11/20/2020
	4. AS Finance reviewed:	M Caldwell	Date:	11/16/2020
	5. IT reviewed (if IT related):		Date:	
	6. Contractor approved:		Date:	
	7. Submitted to Exec.:		Date:	
	8. Council approved (if necessary):		Date:	
	9. Executive signed:		Date:	
	10. Original to Council:		Date:	

Whatcom County Contract No.  
\_\_\_\_\_

**CONTRACT FOR SERVICES**  
**Between Whatcom County and Lydia Place**

Lydia Place, hereinafter called **Contractor** and Whatcom County, hereinafter referred to as **County**, agree and contract as set forth in this Agreement, including:

- General Conditions, pp. 3 to 14,
- Exhibit A (Scope of Work), pp. 15 to 16,
- Exhibit B (Compensation), p. 17,
- Exhibit C (Insurance), p. 18,
- Exhibit D (Special Terms and Conditions of Commerce Grants).

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 1<sup>st</sup> day of October, 2020, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30<sup>th</sup> day of December, 2021.

The general purpose or objective of this Agreement is to **provide funding for emergency housing for families experiencing unsheltered homelessness**, 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 \$114,172. 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.

Each person signing this Contract represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Contract.

**IN WITNESS WHEREOF**, the parties have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2020.

**CONTRACTOR:**

Lydia Place  
PO Box 28487  
Bellingham, WA 98228

Each signatory below to this Contract warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and to bind the party thereto.

\_\_\_\_\_  
Emily O'Connor, Executive Director



## 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:

The duration of this Agreement may be extended by mutual written consent of the parties, for a period of up to one year, and for a total of no longer than three years.

#### 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 and Public Records Act:

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. If 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.

Ownership. Any and all data, writings, programs, public records, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor's subcontractors or consultants for delivery to the County under this Contract shall be the sole and absolute property of the County. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the



ownership of the copyright and any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Contract but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of this Agreement.

Public Records Act. This Contract and all records associated with this Contract shall be available for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County at no cost to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

The Contractor shall be liable to the requester for any and all fees, costs, penalties or damages imposed or alleged as a result of the Contractor's failure to provide adequate or timely records.

This provision and the obligations it establishes shall remain in effect after the expiration of this contract.

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 Insurance:

The Contractor shall, at its own expense, obtain and continuously maintain the following insurance coverage for the duration of this contract, which shall include insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, subcontractors or employees. All insurers providing such insurance shall have an A.M. Best Rating of not less than A- (or otherwise be acceptable to the County) and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. Coverage limits shall be the minimum limits identified in this Contract or the coverage limits provided or available under the policies maintained by the Contractor without regard to this Contract, whichever are greater.

**1. Commercial General Liability**

Property Damage	\$500,000.00, per occurrence
General Liability & bodily injury	\$1,000,000.00, per occurrence
Annual Aggregate	\$2,000,000.00

At least as broad as ISO form CG 00 01 or the equivalent, which coverage shall include personal injury, bodily injury and property damage for Premises Operations, Products and Completed Operations, Personal/Advertising Injury, Contractual Liability, Independent Contractor Liability, medical payments and Stop Gap/Employer's Liability. Coverage shall not exclude or contain sub-limits less than the minimum limits required, unless approved in writing by the County.

**2. Business Automobile Liability**

\$1,000,000.00	Minimum, per occurrence
\$2,000,000.00	Minimum, Annual Aggregate

Contractor shall provide auto liability coverage for owned, non-owned and hired autos using ISO Business Auto Coverage form CA 00 01 or the exact equivalent with a limit of no less than \$1,000,000 per accident. If Contractor owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

**3. Professional Liability - \$1,000,000 per occurrence:**

Obtain professional liability insurance covering the negligent acts, errors, or omissions of the professional in connection with the performance of services to the County. If any insurance policy or the professional liability insurance is written on a claims made form, its retroactive date, and that of all subsequent renewals, shall be no later than the effective date of this contract. The policy shall state that coverage is claims made, and state the retroactive date. Claims-made form coverage shall be maintained by the Contractor for a minimum of 36 months following the Completion Date or earlier termination of this Contract, and the Contractor shall annually provide the Contracting Agency with proof of renewal. If renewal of the claims made form of coverage becomes unavailable, economically prohibitive, the Contractor shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the Contracting Agency to assure financial responsibility for liability for services performed.

**4. Additional Insurance Requirements and Provisions**

- a. All insurance policies shall provide coverage on an occurrence basis.
- b. Additional Insureds. Whatcom County, its departments, elected and appointed officials, employees, agents and volunteers shall be included as additional insureds on Contractor's and Contractor's subcontractors' insurance policies by way of endorsement for the full available limits of insurance required in this contract or maintained by the Contractor and subcontractor, whichever is greater.
- c. Primary and Non-contributory Insurance. Contractor shall provide primary insurance coverage and the County's insurance shall be non-contributory. Any insurance, self-insured retention, deductible, risk retention

or insurance pooling maintained or participated in by the County shall be excess and non-contributory to Contractor's insurance.

- d. **Waiver of Subrogation.** The insurance policy shall provide a waiver of subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the Contractor enter into such a waiver of subrogation on a pre-loss basis.
- e. **Review of and Revision of Policy Provisions.** Upon request, the Contractor shall provide a full and complete certified copy of all requested insurance policies to the County. The County reserves the right, but not the obligation, to revise any insurance requirement, including but not limited to limits, coverages and endorsements, or to reject any insurance policies which fail to meet the requirements of this Contract. Additionally, the County reserves the right, but not the obligation, to review and reject any proposed insurer providing coverage based upon the insurer's financial condition or licensing status in Washington.
- f. **Verification of Coverage/Certificates and Endorsements.** The Contractor shall furnish the County with a certificate of insurance and endorsements required by this contract. The certificates and endorsements for each policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. The certificate and endorsements for each insurance policy are to be on forms approved by the County prior to commencement of activities associated with the contract. The certificate and endorsements, and renewals thereof, shall be attached hereto as Exhibit "C". If Exhibit C is not attached, the Contractor must submit the certificate and endorsements required in this contract to the County prior to the commencement of any work on the contracted project. A certificate alone is insufficient proof of the required insurance; endorsements must be included with the certificate. The certificate of insurance must reflect the insurance required in this contract, including appropriate limits, insurance coverage dates, per occurrence, and in the description of operations, include the County project, Whatcom County, its departments, officials, employees, agents and volunteers as additional insureds, primary, non-contributory, and waiver of subrogation.
- g. The County must be notified immediately in writing of any cancellation of the policy, exhaustion of aggregate limits, notice of intent not to renew insurance coverage, expiration of policy or change in insurer carrier. Contractor shall always provide the County with a current copy of the certificate and endorsements throughout the duration of the contract.
- h. **No Limitation on Liability.** The insurance maintained under this Contract shall not in any manner limit the liability or qualify the liabilities or obligations of the Contractor to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or equity.
- i. **Payment Conditioned on Insurance and Failure to Maintain Insurance.** Compensation and/or payments due to the Contractor under this Contract are expressly conditioned upon the Contractor's compliance with all insurance requirements. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract. Payment to the Contractor may be suspended in the event of non-compliance, upon which the County may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the County on demand or offset against funds due the Contractor. Upon receipt of evidence of Contractor's compliance, payments not otherwise subject to withholding or set-off will be released to the Contractor.
- j. **Workers' Compensation.** The Contractor shall maintain Workers' Compensation coverage as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Contractors' employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act.
- k. Failure of the Contractor to take out and/or maintain required insurance shall not relieve the Contractor or subcontractors from any liability under the contract, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification. The County does not waive any

insurance requirements even in the event the certificate or endorsements provided by the Contractor were insufficient or inadequate proof of coverage but not objected to by the County. The County's failure to confirm adequate proof of insurance requirements does not constitute a waiver of the Contractor's insurance requirements under this Contract.

- I. Availability of Contractor Limits. If the Contractor maintains higher insurance limits than the minimums shown above, the County shall be insured for the full available limits, including Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate furnished to the County evidences limits of liability lower than those maintained by the Contractor.
- m. Insurance for Subcontractors. If the Contractor subcontracts (if permitted in the contract) any portion of this Contract, the Contractor shall include all subcontractors as insureds under its policies or shall require separate certificates of insurance and policy endorsements from each subcontractor. Insurance coverages by subcontractors must comply with the insurance requirements of the Contractor in this contract and shall be subject to all of the requirements stated herein, including naming the County as additional insured.
- n. The Contractor agrees Contractor's insurance obligation shall survive the completion or termination of this Contract for a minimum period of three years.

#### 34.3 Defense & Indemnity Agreement:

To the fullest extent permitted by law, the Contractor agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees, and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease, or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which: 1) are caused in whole or in part by any error, act or omission, negligent or otherwise, of the Contractor, its employees, agents or volunteers or Contractor's subcontractors and their employees, agents or volunteers; or 2) directly or indirectly arise out of or occur in connection with performance of this Contract or 3) are based upon the Contractor's or its subcontractors' use of, presence upon, or proximity to the property of the County. This indemnification obligation of the Contractor shall not apply in the limited circumstance where the claim, damage, loss, or expense is caused by the sole negligence of the County.

Should a court of competent jurisdiction determine that this contract is subject to RCW 4.24.115, then in the event of concurrent negligence of the Contractor, its subcontractors, employees or agents, and the County, its employees or agents, this indemnification obligation of the Contractor shall be valid and enforceable only to the extent of the negligence of the Contractor, its subcontractors, employees, and agents. This indemnification obligation of the Contractor shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Contractor hereby expressly waives any immunity afforded by such acts.

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 Contract is for the benefit of the parties only and this Contract shall create no rights in any third party. The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses, or expenses, and such participation shall not constitute a waiver of Contractor's indemnity obligations under this Agreement.

In the event the Contractor enters into subcontracts to the extent allowed under this Contract, the Contractor's subcontractors shall indemnify the County on a basis equal to or exceeding Contractor's indemnity obligations to the County. The Contractor shall pay all attorney's fees and expenses incurred by the County in establishing and enforcing the County's rights under this indemnification provision, whether or not suit was instituted.

The Contractor agrees all Contractors' indemnity obligations shall survive the completion, expiration or termination of this Agreement. The foregoing indemnification obligations of the Contractor are a material inducement to County to enter into this Agreement and are reflected in the Contractor's compensation.

By signing this contract, the Contractor acknowledges that it has freely negotiated and agreed to the indemnification requirements to defend, indemnify and hold harmless the County from all claims and suits including those brought against the County by the Contractor's own employees, arising from this contract.

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:

Ann Beck, Human Services Supervisor

37.2 Notice:

Any notices or communications required or permitted to be given by this Contract must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party as follows:

To: Whatcom County  
Attn: Chris D'Onofrio, Program Specialist  
509 Girard Street  
Bellingham, WA 98225  
360-778-6049  
[CDonofri@co.whatcom.wa.us](mailto:CDonofri@co.whatcom.wa.us)

To: Lydia Place  
PO Box 28487  
Bellingham, WA 98228  
Attn: Emily O'Connor, Executive Director  
(360) 671-7663  
[eoconnor@lydiaplace.org](mailto:eoconnor@lydiaplace.org)

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A party may, for purposes of this Agreement, change his, her or its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other party pursuant to this Section.

37.3 If agreed by the parties, this Contract may be executed by Email transmission and PDF signature and Email transmission and PDF signature shall constitute an original for all purposes.

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

If applicable, 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:

If applicable, 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. If applicable, 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](http://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, temporary restraining order, or other provisional remedy to preserve the status quo or prevent irreparable harm, 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 Contract 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 Contract 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 but shall not have the power to award punitive damages. Each Party shall pay all their own costs, attorney fees and expenses of arbitration and the parties shall share equally in the Arbitrator's fees and costs. 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.

Any arbitration proceeding commenced to enforce or interpret this Contract shall be brought within six years after the initial occurrence giving rise to the claim, dispute, or issue for which arbitration is commenced, regardless of the date of discovery or whether the claim, dispute, or issue was continuing in nature. Claims, disputes, or issues arising more than six years prior to a written request or demand for arbitration issued under this Contract are not subject to arbitration.

- e. The parties may agree in writing signed by both parties that a claim or dispute may be brought in Whatcom County Superior Court rather than mediation or arbitration.

*Unless otherwise specified herein, this Contract 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)

**I. Background**

The 2020 Whatcom County Point In Time Count confirmed that unsheltered homelessness continues to be detrimental to the wellbeing of families with children in Whatcom County. The Whatcom Homeless Service Center's monthly housing pool reports have shown that the number of families waiting for permanent housing placements, including families living in cars and other places not meant for human habitation, has grown in recent years. Homelessness is a traumatic experience that is associated with a wide range of negative health outcomes; however there are very few resources in our community dedicated to families who are experiencing homelessness together. This contract provides year-round funding for four motel rooms to be used as emergency housing for families experiencing unsheltered homelessness and also funds supportive services to help those families exit their motel rooms into permanent housing. The shelter provided to these families, as well as the case management services, will allow them to avoid the dangerous conditions of unsheltered homelessness and give them opportunities to connect with services that improve their odds of achieving long term housing stability.

**II. Statement of Work**

Lydia Place will utilize funding in this contract to make four motel rooms available throughout the year to local families with children who are experiencing unsheltered homelessness. The anticipated number of families to be served is between 16 and 24 households. While the families are staying in the motel rooms, they will benefit from supportive services from Lydia Place staff who will help the families identify and overcome their barriers to stable housing.

Lydia Place staff will connect clients to case managers within 48 hours of their referral from Whatcom County's coordinated entry homelessness response system. Weekly meetings between families and Lydia Place staff will outline goals and objectives that are important to the client. The program will strive to find permanent housing within 30 days, although some families will require more time to locate appropriate housing and resolve challenges to housing placement.

**III. Program Requirements**

Client referrals will be issued by the Whatcom Homeless Service Center's coordinated entry homelessness response system. All services will be provided in compliance with the Washington State Department of Commerce guidelines for the shelter program grant, as found here: <https://www.commerce.wa.gov/serving-communities/homelessness/office-of-family-and-adult-homelessness/shelter-program-grant/>, and the Washington State Department of Commerce ESG-CV Emergency Solutions Grant Guidelines, including periodic updates to the guidelines which can be accessed at: <https://www.commerce.wa.gov/wp-content/uploads/2020/06/Commerce-ESG-CV-Overview.pdf> and <https://www.commerce.wa.gov/wp-content/uploads/2016/10/hau-esg-guidelines-2017-2019.pdf>.

#### **IV. Reporting Requirements**

The contractor shall submit quarterly reports\* utilizing the Interim Housing Facility Report template accessed on the Whatcom County Health Department Housing Program website at the following link: <https://www.whatcomcounty.us/DocumentCenter/View/51905/WCHDQuarterlyESreportLPmotelshelter>

Quarterly reports are due April 15<sup>th</sup>, July 15<sup>th</sup>, October 15<sup>th</sup>, and January 15<sup>th</sup>.

\*Contractors will be notified via email of updates to this quarterly reporting template, which will be posted on the website.

Reports will include the following information:

- A. Unique households sheltered over the quarter.
- B. Number of nights that the four rooms were in use.
- C. Length of stay for each household at their time of exit (mean and median).
- D. Percent of exiting guests that are enrolled or participated in new activities/programs that have been shown to increase housing retention.
- E. Number of exits over the quarter and the destination type for each exiting household.
- F. Number of new households that became sheltered over the quarter and the type of housing condition they were in prior to entry to motel room.

**EXHIBIT "B"**  
(COMPENSATION)

- I. **Budget and Source of Funding:** The source of funding for this contract, in an amount not to exceed \$114,172, is the Washington State Department of Commerce Shelter Program and Emergency Solutions COVID-19 (CFDA 14.231) Grants. COMMERCE and the State of Washington are not liable for claims or damages arising from Subcontractor's performance of this contract. The budget for this contract is as follows:

Cost Description	Documents Required Each Invoice	Budget
Personnel	GL Detail	\$22,719
Operating resources (including office/program supplies, phone service, internet, utilities, etc.)		\$1,083
Indirect (personnel and resources) @ 7%		\$1,666
<b>Subtotal</b>		<b>\$25,468</b>
Motel Rooms	GL Detail	\$88,704
<b>TOTAL</b>		<b>\$114,172</b>

The Contractor may transfer funds among budget line items in an amount up to 10% of the total budget. Changes to the line item budget that exceed 10% of the contract amount must be approved in writing by the County. In no instance shall indirect costs exceed the amount indicated above.

II. **Invoicing**

1. The Contractor shall submit itemized invoices on a monthly basis in a format approved by the County. Monthly invoices must be submitted by the 15<sup>th</sup> of the month, following the month of service. Invoices submitted for payment must include the items identified in the table above.
2. Contractor shall submit invoices to (include contract/PO#) to [HL-BusinessOffice@co.whatcom.wa.us](mailto:HL-BusinessOffice@co.whatcom.wa.us).
3. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.
4. Invoices must include the following statement, with an authorized signature and date:  
**I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.**
5. Duplication of Billed Costs or Payments for Service: The Contractor shall not bill the County for services performed or provided under this contract, and the County shall not pay the Contractor, if the Contractor has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract. The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.

EXHIBIT "C"  
INSURANCE

**“Exhibit D”**  
(Special Terms and Conditions for Commerce Emergency Solutions Grant  
– COVID 19 ESG-CV – CFDA #14.231)

The funds allocated for services performed under this grant are Washington State Department of Commerce funds. The terms included in this agreement and any additional agreements herein are a result of the grant funding requirements. Commerce and the State of Washington are liable for claims or damages arising from the Contractor’s performance of this subgrant.

**1. DEFINITIONS**

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

- A. “Authorized Representative” shall mean the Director and/or the designee authorized in writing to act on the Director’s behalf.
- B. “COMMERCE” shall mean the Department of Commerce.
- C. “Grant” or “Agreement” means the entire written agreement between COMMERCE and the Grantee, including any attachments, documents, or materials incorporated by reference. E-mail or facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. “Grantee” shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Grantee.
- E. “Personal Information” shall mean information identifiable to any person, including, but not limited to, information that relates to a person’s name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- F. “State” shall mean the state of Washington.
- G. “Subgrantee/Subcontractor” shall mean one not in the employment of the Grantee, who is performing all or part of those services under this Grant under a separate Grant with the Grantee. The terms “subgrantee/subcontractor” refers to any tier.
- H. “Subrecipient” shall mean a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. It also excludes vendors that receive federal funds in exchange for goods and/or services in the course of normal trade or commerce

**2. ACKNOWLEDGMENT OF FEDERAL FUNDS**

The Contractor agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the Contractor describing programs or projects funded in whole or in part with federal funds under this Contract, shall contain the following statements:

“This project was supported by Grant No. E-20-DW-53-0001 awarded by U.S. Department of Housing and Urban Development (HUD) as a supplemental appropriation through the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act). Points of view in this document are those of the author and do not necessarily represent the official position or policies of the HUD. Grant funds are administered by the Housing Assistance Unit in the Community Services and Housing Division, Washington State Department of Commerce.”

**3. ALL WRITINGS CONTAINED HEREIN**

This Grant contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Grant shall be deemed to exist or to bind any of the parties hereto.

**4. AMENDMENTS**

This Grant 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**

Neither this Grant, nor any claim arising under this Grant, shall be transferred or assigned by the Grantee without prior written consent of COMMERCE.

## 6. **AUDIT**

If the Grantee is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Grantee shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Grantee shall:

- A. Submit to COMMERCE the reporting package specified in OMB Super Circular 2 CFR 200.501, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.
- B. Submit to COMMERCE follow-up and developed corrective action plans for all audit findings.

If the Grantee is a subrecipient and expends less than \$750,000 in federal awards from any and/or all sources in any fiscal year, the Grantee shall notify COMMERCE they did not meet the single audit requirement.

The Grantee shall send all single audit documentation to [auditreview@commerce.wa.gov](mailto:auditreview@commerce.wa.gov).

## 7. **CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION**

### A. "Confidential Information" as used in this section includes:

- i. All material provided to the Grantee by COMMERCE that is designated as "confidential" by COMMERCE;
- ii. All material produced by the Grantee that is designated as "confidential" by COMMERCE; and
- iii. All personal information in the possession of the Grantee that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

B. The Grantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Grantee shall use Confidential Information solely for the purposes of this Grant and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Grantee shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Grantee shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Grant whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Grantee shall make the changes within the time period specified by COMMERCE. Upon request, the Grantee shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Grantee against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Grantee shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

## 8. **COPYRIGHT**

Unless otherwise provided, all Materials produced under this Grant shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Grantee hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

"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.

For Materials that are delivered under the Grant, but that incorporate pre-existing materials not produced under the Grant, the Grantee hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Grantee warrants and represents that the Grantee has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Grantee shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Grant, of all known or potential invasions of privacy contained therein and of any portion of such document which was not

produced in the performance of this Grant. The Grantee shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Grantee with respect to any Materials delivered under this Grant. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Grantee.

**9. DUPLICATE PAYMENT**

COMMERCE shall not pay the Grantee, if the Grantee has charged or will charge the State of Washington or any other party under any other Grant, subgrant/subcontract, or agreement, for the same services or expenses.

**10. GOVERNING LAW AND VENUE**

This Grant shall be construed and interpreted in accordance with the laws of the state of Washington, and any applicable federal laws, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

**11. INDEMNIFICATION**

To the fullest extent permitted by law, the Grantee shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, agencies of the state and all officials, agents and employees of the state from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim" as used in this contract, means any financial loss, claim, suite, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The Grantee's obligation to indemnify, defend, and hold harmless includes any claim by Grantee's agents, employees, representatives, or any subgrantee/subcontractor or its employees.

Grantee expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Grantee's or any subgrantee's/sucontractor's performance or failure to perform the Grant. Grantee's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees, and officials.

The Grantee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless the state and its agencies, officers, agents, or employees.

**12. LAWS**

The Grantee shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended.

**13. LICENSING, ACCREDITATION AND REGISTRATION**

The Grantee shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

**14. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS**

A Grantee which is a local government or Indian Tribal government must establish procurement policies and procedures in accordance with 2 CFR Part 200, for all purchases funded by this Grant.

A Grantee which is a nonprofit organization shall establish procurement policies in accordance with 2 CFR Part 200, for all purchases funded by this Contract.

The Grantee's procurement system should include at least the following:

- A. A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.
- B. Procedures that ensure all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.
- C. Minimum procedural requirements, as follows:
  - i. Follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items.
  - ii. Solicitations shall be based upon a clear and accurate description of the technical requirements of the procured items.
  - iii. Positive efforts shall be made to use small and minority-owned businesses.



- iv. The type of procuring instrument (fixed price, cost reimbursement) shall be determined by the Contractor, but must be appropriate for the particular procurement and for promoting the best interest of the program involved.
  - v. Contracts shall be made with only reasonable subgrantees/subcontractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.
  - vi. Some form of price or cost analysis should be performed in connection with every procurement action.
  - vii. Procurement records and files for purchases shall include all of the following:
    - 1) Contractor selection or rejection
    - 2) The basis for the cost or price
    - 3) Justification for lack of competitive bids if offers are not obtained
  - viii. A system for contract administration to ensure Contractor conformance with terms, conditions and specifications of this Contract, and to ensure adequate and timely follow-up of all purchases.
- D. Contractor and Subgrantee/subcontractor must receive prior approval from COMMERCE for using funds from this Contract to enter into a sole source contract or a contract where only one bid or proposal is received when value of this Contract is expected to exceed \$5,000.

**15. PUBLICITY**

The Grantee agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE's name is mentioned, or language used from which the connection with the state of Washington's or COMMERCE'S name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

**16. RECAPTURE**

In the event that the Grantee fails to perform this Grant in accordance with state laws, federal laws, and/or the provisions of this Grant, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Grantee of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this Grant.

**17. RECORDS MAINTENANCE**

The Grantee shall maintain books, records, documents, data and other evidence relating to this Grant and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Grant.

The Grantee 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 Grant, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

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.

**18. SAVINGS**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Grant and prior to normal completion, COMMERCE may suspend or terminate the Grant under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Grant may be amended to reflect the new funding limitations and conditions.

**19. SEVERABILITY**

The provisions of this Grant are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Grant.

**20. SUBGRANTING/SUBCONTRACTING**

The Grantee may only subcontract work contemplated under this Grant if it obtains prior written approval of COMMERCE.

If COMMERCE approves subcontracting, the Grantee shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Grantee to amend its subcontracting procedures as they relate to this Grant; (b) prohibit the Grantee from subcontracting with a particular person or entity; or (c) require the Grantee to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Grant. The Grantee is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Grant. The Grantee shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Grant. In no event shall the existence of a subcontract operate to release or reduce the liability of the Grantee to COMMERCE for any breach in the performance of the Grantee's duties.

Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

#### **21. SITE SECURITY**

While on COMMERCE premises, Grantee, its agents, employees, or subcontractors shall conform in all respects with physical, fire, or other security policies or regulations.

#### **22. SURVIVAL**

The terms, conditions, and warranties contained in this Grant that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Grant shall so survive.

#### **23. TREATMENT OF ASSETS**

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Grantee, for the cost of which the Grantee is entitled to be reimbursed as a direct item of cost under this Grant, shall pass to and vest in COMMERCE upon delivery of such property by the Grantee. Title to other property, the cost of which is reimbursable to the Grantee under this Grant, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this Grant, or (ii) commencement of use of such property in the performance of this Grant, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

- A. Any property of COMMERCE furnished to the Grantee shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this Grant.
- B. The Grantee shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Grantee or which results from the failure on the part of the Grantee to maintain and administer that property in accordance with sound management practices.
- C. If any COMMERCE property is lost, destroyed or damaged, the Grantee shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D. The Grantee shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this Grant.

All reference to the Grantee under this clause shall also include Grantee's employees, agents, or Subgrantees/Subcontractors.

#### **24. 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 Grant unless stated to be such in writing and signed by Authorized Representative of COMMERCE.



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2020-559

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<b>File ID:</b>	AB2020-559	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/20/2020	<b>Entered by:</b>	JThomson@co.whatcom.wa.us		
<b>Department:</b>	Health Department	<b>File Type:</b>	Contract		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

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Primary Contact Email: [CDonofri@co.whatcom.wa.us](mailto:CDonofri@co.whatcom.wa.us) <mailto:CDonofri@co.whatcom.wa.us>

### **TITLE FOR AGENDA ITEM:**

Request authorization for the County Executive to enter into a contract between Whatcom County and YWCA Bellingham to provide additional shelter beds for women aged 55 or older, in the amount of \$122,020

### **SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

See attachments

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### **HISTORY OF LEGISLATIVE FILE**

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<b>Date:</b>	<b>Acting Body:</b>	<b>Action:</b>	<b>Sent To:</b>
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**Attachments:** Memo to County Executive, YWCA Shelter Grant Contract.pdf



## **MEMORANDUM**

**TO:** Satpal Sidhu, County Executive

**FROM:** Erika Lautenbach, Director

**RE:** YWCA Bellingham – Shelter Grant Contract

**DATE:** November 20, 2020

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Attached is a contract between Whatcom County and YWCA Bellingham for your review and signature.

- **Background and Purpose**

Creating new interim shelter beds for individuals experiencing homelessness is one of the seven key strategies in the *Strategic Plan to End Homelessness in Whatcom County* and provides alternatives to unhealthy and unsafe sleeping locations. This contract provides funding to YWCA to provide five new shelter beds for unaccompanied women aged 55 or older, who are experiencing homelessness.

- **Funding Amount and Source**

Funding for this contract, in an amount not to exceed \$122,020, is provided by HB 2060 funds and the Washington State Department of Commerce Shelter Program Grant. These funds are included in the 2020 budget. Council approval is required as funding exceeds \$40,000.

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
Contract or Grant Administrator:	Chris D'Onofrio
Contractor's / Agency Name:	YWCA

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?	If yes, grantor agency contract number(s):	CFDA#:
Yes <input type="checkbox"/>		
Is this contract grant funded?	If yes, Whatcom County grant contract number(s):	202009033
Yes <input checked="" type="checkbox"/>		

Is this contract the result of a RFP or Bid process?	If yes, RFP and Bid number(s):	20-53	Contract Cost Center:	121100 / 122900
Yes <input checked="" type="checkbox"/>			No <input type="checkbox"/>	

Is this agreement excluded from E-Verify?	No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>	If no, include Attachment D Contractor Declaration form.
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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 type="checkbox"/> Interlocal Agreement (between Governments).	

Contract Amount:(sum of original contract amount and any prior amendments):	Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b> 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.
\$ 122,020	
This Amendment Amount:	
\$	
Total Amended Amount:	

Summary of Scope: This contract provides funding for additional shelter beds for women aged 55 or older who are experiencing homelessness.

Term of Contract:	15 Months	Expiration Date:	12/31/2021
Contract Routing:	1. Prepared by:	JT	Date: 11/04/2020
	2. Health Budget Approval:	KR/JG	Date: 11/16/2020
	3. Attorney signoff:	RB	Date: 11/20/2020
	4. AS Finance reviewed:	M Caldwell	Date: 11/16/2020
	5. IT reviewed (if IT related):		Date:
	6. Contractor approved:		Date:
	7. Submitted to Exec.:		Date:
	8. Council approved (if necessary):		Date:
	9. Executive signed:		Date:
	10. Original to Council:		Date:

Whatcom County Contract No.  
\_\_\_\_\_

**CONTRACT FOR SERVICES**  
**Between Whatcom County and YWCA Bellingham**

YWCA Bellingham, hereinafter called **Contractor** and Whatcom County, hereinafter referred to as **County**, agree and contract as set forth in this Agreement, including:

- General Conditions, pp. 3 to 14,
- Exhibit A (Scope of Work), pp. 15 to 16,
- Exhibit B (Compensation), p. 17,
- Exhibit C (Insurance), p. 18,
- Exhibit D (Special Terms and Conditions of Commerce Grants).

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 1<sup>st</sup> day of October, 2020, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30<sup>th</sup> day of December, 2021.

The general purpose or objective of this Agreement is to **provide funding for additional shelter beds for women aged 55 or older**, 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 \$122,020. 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.

Each person signing this Contract represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Contract.

**IN WITNESS WHEREOF**, the parties have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2020.

**CONTRACTOR:**

YWCA Bellingham  
1026 N Forest Street  
Bellingham, WA 98225

Each signatory below to this Contract warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and to bind the party thereto.

\_\_\_\_\_  
Karen Burke, Interim Executive Director



## 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:

The duration of this Agreement may be extended by mutual written consent of the parties, for a period of up to one year, and for a total of no longer than three years.

#### 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 and Public Records Act:

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. If 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.

Ownership. Any and all data, writings, programs, public records, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor's subcontractors or consultants for delivery to the County under this Contract shall be the sole and absolute property of the County. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the

ownership of the copyright and any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Contract but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of this Agreement.

Public Records Act. This Contract and all records associated with this Contract shall be available for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County at no cost to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

The Contractor shall be liable to the requester for any and all fees, costs, penalties or damages imposed or alleged as a result of the Contractor's failure to provide adequate or timely records.

This provision and the obligations it establishes shall remain in effect after the expiration of this contract.

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 Insurance:

The Contractor shall, at its own expense, obtain and continuously maintain the following insurance coverage for the duration of this contract, which shall include insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, subcontractors or employees. All insurers providing such insurance shall have an A.M. Best Rating of not less than A- (or otherwise be acceptable to the County) and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. Coverage limits shall be the minimum limits identified in this Contract or the coverage limits provided or available under the policies maintained by the Contractor without regard to this Contract, whichever are greater.

**1. Commercial General Liability**

Property Damage	\$500,000.00, per occurrence
General Liability & bodily injury	\$1,000,000.00, per occurrence
Annual Aggregate	\$2,000,000.00

At least as broad as ISO form CG 00 01 or the equivalent, which coverage shall include personal injury, bodily injury and property damage for Premises Operations, Products and Completed Operations, Personal/Advertising Injury, Contractual Liability, Independent Contractor Liability, medical payments and Stop Gap/Employer's Liability. Coverage shall not exclude or contain sub-limits less than the minimum limits required, unless approved in writing by the County.

**2. Business Automobile Liability**

\$1,000,000.00	Minimum, per occurrence
\$2,000,000.00	Minimum, Annual Aggregate

Contractor shall provide auto liability coverage for owned, non-owned and hired autos using ISO Business Auto Coverage form CA 00 01 or the exact equivalent with a limit of no less than \$1,000,000 per accident. If Contractor owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

**3. Professional Liability - \$1,000,000 per occurrence:**

Obtain professional liability insurance covering the negligent acts, errors, or omissions of the professional in connection with the performance of services to the County. If any insurance policy or the professional liability insurance is written on a claims made form, its retroactive date, and that of all subsequent renewals, shall be no later than the effective date of this contract. The policy shall state that coverage is claims made, and state the retroactive date. Claims-made form coverage shall be maintained by the Contractor for a minimum of 36 months following the Completion Date or earlier termination of this Contract, and the Contractor shall annually provide the Contracting Agency with proof of renewal. If renewal of the claims made form of coverage becomes unavailable, economically prohibitive, the Contractor shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the Contracting Agency to assure financial responsibility for liability for services performed.

**4. Additional Insurance Requirements and Provisions**

- a. All insurance policies shall provide coverage on an occurrence basis.
- b. Additional Insureds. Whatcom County, its departments, elected and appointed officials, employees, agents and volunteers shall be included as additional insureds on Contractor's and Contractor's subcontractors' insurance policies by way of endorsement for the full available limits of insurance required in this contract or maintained by the Contractor and subcontractor, whichever is greater.
- c. Primary and Non-contributory Insurance. Contractor shall provide primary insurance coverage and the County's insurance shall be non-contributory. Any insurance, self-insured retention, deductible, risk retention

or insurance pooling maintained or participated in by the County shall be excess and non-contributory to Contractor's insurance.

- d. **Waiver of Subrogation.** The insurance policy shall provide a waiver of subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the Contractor enter into such a waiver of subrogation on a pre-loss basis.
- e. **Review of and Revision of Policy Provisions.** Upon request, the Contractor shall provide a full and complete certified copy of all requested insurance policies to the County. The County reserves the right, but not the obligation, to revise any insurance requirement, including but not limited to limits, coverages and endorsements, or to reject any insurance policies which fail to meet the requirements of this Contract. Additionally, the County reserves the right, but not the obligation, to review and reject any proposed insurer providing coverage based upon the insurer's financial condition or licensing status in Washington.
- f. **Verification of Coverage/Certificates and Endorsements.** The Contractor shall furnish the County with a certificate of insurance and endorsements required by this contract. The certificates and endorsements for each policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. The certificate and endorsements for each insurance policy are to be on forms approved by the County prior to commencement of activities associated with the contract. The certificate and endorsements, and renewals thereof, shall be attached hereto as Exhibit "C". If Exhibit C is not attached, the Contractor must submit the certificate and endorsements required in this contract to the County prior to the commencement of any work on the contracted project. A certificate alone is insufficient proof of the required insurance; endorsements must be included with the certificate. The certificate of insurance must reflect the insurance required in this contract, including appropriate limits, insurance coverage dates, per occurrence, and in the description of operations, include the County project, Whatcom County, its departments, officials, employees, agents and volunteers as additional insureds, primary, non-contributory, and waiver of subrogation.
- g. The County must be notified immediately in writing of any cancellation of the policy, exhaustion of aggregate limits, notice of intent not to renew insurance coverage, expiration of policy or change in insurer carrier. Contractor shall always provide the County with a current copy of the certificate and endorsements throughout the duration of the contract.
- h. **No Limitation on Liability.** The insurance maintained under this Contract shall not in any manner limit the liability or qualify the liabilities or obligations of the Contractor to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or equity.
- i. **Payment Conditioned on Insurance and Failure to Maintain Insurance.** Compensation and/or payments due to the Contractor under this Contract are expressly conditioned upon the Contractor's compliance with all insurance requirements. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract. Payment to the Contractor may be suspended in the event of non-compliance, upon which the County may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the County on demand or offset against funds due the Contractor. Upon receipt of evidence of Contractor's compliance, payments not otherwise subject to withholding or set-off will be released to the Contractor.
- j. **Workers' Compensation.** The Contractor shall maintain Workers' Compensation coverage as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Contractors' employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act.
- k. Failure of the Contractor to take out and/or maintain required insurance shall not relieve the Contractor or subcontractors from any liability under the contract, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification. The County does not waive any

insurance requirements even in the event the certificate or endorsements provided by the Contractor were insufficient or inadequate proof of coverage but not objected to by the County. The County's failure to confirm adequate proof of insurance requirements does not constitute a waiver of the Contractor's insurance requirements under this Contract.

- I. Availability of Contractor Limits. If the Contractor maintains higher insurance limits than the minimums shown above, the County shall be insured for the full available limits, including Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate furnished to the County evidences limits of liability lower than those maintained by the Contractor.
- m. Insurance for Subcontractors. If the Contractor subcontracts (if permitted in the contract) any portion of this Contract, the Contractor shall include all subcontractors as insureds under its policies or shall require separate certificates of insurance and policy endorsements from each subcontractor. Insurance coverages by subcontractors must comply with the insurance requirements of the Contractor in this contract and shall be subject to all of the requirements stated herein, including naming the County as additional insured.
- n. The Contractor agrees Contractor's insurance obligation shall survive the completion or termination of this Contract for a minimum period of three years.

#### 34.3 Defense & Indemnity Agreement:

To the fullest extent permitted by law, the Contractor agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees, and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease, or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which: 1) are caused in whole or in part by any error, act or omission, negligent or otherwise, of the Contractor, its employees, agents or volunteers or Contractor's subcontractors and their employees, agents or volunteers; or 2) directly or indirectly arise out of or occur in connection with performance of this Contract or 3) are based upon the Contractor's or its subcontractors' use of, presence upon, or proximity to the property of the County. This indemnification obligation of the Contractor shall not apply in the limited circumstance where the claim, damage, loss, or expense is caused by the sole negligence of the County.

Should a court of competent jurisdiction determine that this contract is subject to RCW 4.24.115, then in the event of concurrent negligence of the Contractor, its subcontractors, employees or agents, and the County, its employees or agents, this indemnification obligation of the Contractor shall be valid and enforceable only to the extent of the negligence of the Contractor, its subcontractors, employees, and agents. This indemnification obligation of the Contractor shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Contractor hereby expressly waives any immunity afforded by such acts.

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 Contract is for the benefit of the parties only and this Contract shall create no rights in any third party. The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses, or expenses, and such participation shall not constitute a waiver of Contractor's indemnity obligations under this Agreement.

In the event the Contractor enters into subcontracts to the extent allowed under this Contract, the Contractor's subcontractors shall indemnify the County on a basis equal to or exceeding Contractor's indemnity obligations to the County. The Contractor shall pay all attorney's fees and expenses incurred by the County in establishing and enforcing the County's rights under this indemnification provision, whether or not suit was instituted.

The Contractor agrees all Contractors' indemnity obligations shall survive the completion, expiration or termination of this Agreement. The foregoing indemnification obligations of the Contractor are a material inducement to County to enter into this Agreement and are reflected in the Contractor's compensation.

By signing this contract, the Contractor acknowledges that it has freely negotiated and agreed to the indemnification requirements to defend, indemnify and hold harmless the County from all claims and suits including those brought against the County by the Contractor's own employees, arising from this contract.

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:

Ann Beck, Human Services Supervisor

37.2 Notice:

Any notices or communications required or permitted to be given by this Contract must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party as follows:

To: Whatcom County  
Attn: Chris D'Onofrio, Program Specialist  
509 Girard Street  
Bellingham, WA 98225  
360-778-6049  
[CDonofri@co.whatcom.wa.us](mailto:CDonofri@co.whatcom.wa.us)

To: YWCA Bellingham  
1026 N Forest Street  
Bellingham, WA 98225  
Attn: Karen Burke  
(360) 734-4820  
[ed@ywcabellingham.org](mailto:ed@ywcabellingham.org)

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A party may, for purposes of this Agreement, change his, her or its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other party pursuant to this Section.

37.3 If agreed by the parties, this Contract may be executed by Email transmission and PDF signature and Email transmission and PDF signature shall constitute an original for all purposes.

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

If applicable, 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:

If applicable, 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. If applicable, 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](http://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, temporary restraining order, or other provisional remedy to preserve the status quo or prevent irreparable harm, 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 Contract 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 Contract 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 but shall not have the power to award punitive damages. Each Party shall pay all their own costs, attorney fees and expenses of arbitration and the parties shall share equally in the Arbitrator's fees and costs. 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.

Any arbitration proceeding commenced to enforce or interpret this Contract shall be brought within six years after the initial occurrence giving rise to the claim, dispute, or issue for which arbitration is commenced, regardless of the date of discovery or whether the claim, dispute, or issue was continuing in nature. Claims, disputes, or issues arising more than six years prior to a written request or demand for arbitration issued under this Contract are not subject to arbitration.

- e. The parties may agree in writing signed by both parties that a claim or dispute may be brought in Whatcom County Superior Court rather than mediation or arbitration.

*Unless otherwise specified herein, this Contract 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)

**I. Background**

The 2020 Point In Time annual census of individuals experiencing homelessness in Whatcom County revealed that at least 707 people were homeless in January of 2020. Of these individuals, 218 reported that they were experiencing unsheltered homelessness – sleeping in tents, cars, on the streets, in abandoned buildings, or other places not meant for human habitation. Creating new interim shelter beds for individuals experiencing homelessness is one of the seven key strategies of the *Strategic Plan to End Homelessness in Whatcom County* and will provide alternatives to unhealthy and unsafe sleeping locations.

This contract funds five new shelter beds and supportive services for women in Whatcom County who are at least 55 years old and are experiencing homelessness. Older adults, aged 55 or older, now account for 29% of all unaccompanied individuals experiencing homelessness in Whatcom County. The provision of new shelter beds at the Bellingham YWCA will increase opportunities for homeless women to find respite while benefiting from the services and support of the YWCA staff. The goal of this program will be to bring homeless women (age 55+) out of the cold so that they can be connected to the support services they need to achieve long-term stable housing. This program is intended to connect women with resources that will lead them to permanent housing and improved health outcomes.

**II. Statement of Work**

The Contractor will use these funds to provide five shelter beds for unaccompanied women experiencing homelessness who are aged 55 years or older. These emergency shelter beds will provide interim shelter for approximately ten different women each year, with each woman staying for approximately six months. While staying at the YWCA, clients will be provided with food, clothing, bedding, and other hygiene supplies as well as support to access permanent housing. Support services will include assistance in accessing healthcare services (including medical, mental, and substance use disorder services), employment support programs, and enrolling in medical insurance.

This program will accept client referrals from Whatcom County's Coordinated Entry homeless service system. Referrals will prioritize those in greatest need and will not create barriers or preconditions to admittance. After their stays at the YWCA, at least 85% of shelter residents will move on to long-term or permanent housing.

**III. Program Requirements**

All services will be provided in compliance with the Washington State Department of Commerce guidelines for the shelter program grant, as found here: <https://www.commerce.wa.gov/serving-communities/homelessness/office-of-family-and-adult-homelessness/shelter-program-grant/>.

- A. Shelter programs must have realistic and clear expectations for clients. Rules and policies must be narrowly focused on maintaining a safe environment for residents and the community and avoiding exits to homelessness.

- B. Shelters must be oriented toward exiting people to permanent housing, and may not have length-of-stay limits. Residents must not be exited to homelessness solely due to the number of days spent residing at the shelter.
- C. Shelter programs may not require residents to pay a share of rent.
- D. Programs must offer housing stability focused services and case management.
- E. Shelter programs must develop and implement strategies to prevent racial inequities in program outcomes.

#### **IV. Reporting Requirements**

The contractor shall submit quarterly reports\* utilizing the current Emergency Shelter and Transitional Housing Report template accessed on the Whatcom County Health Department Housing Program website at the following link:

<https://www.whatcomcounty.us/DocumentCenter/View/51351/WCHDquarterlyESreport2021YWCA>

Quarterly reports are due on April 15<sup>th</sup>, July 15<sup>th</sup>, October 15<sup>th</sup>, and January 15<sup>th</sup>.

\*Contractors will be notified via email of updates to this quarterly reporting template, which will be posted on the website.

Reports will include:

- A. Number of unduplicated households that stayed at shelter during the reporting quarter
- B. Number of beds or units of capacity at the shelter housing this quarter, with changes in capacity noted in reports
- C. Utilization of facility's capacity expressed as number of units in use
- D. Average length of stay for all households that exited the facility during the quarter
- E. Median length of stay for all households that exited the facility during the quarter
- F. Percent of households that exited the facility this quarter that had at least one household member enrolled in community and/or social support services or training programs at the time of their exit
- G. Total number of household exits, and the destination type (new living situation) for each exit from the shelter
- H. Total entries from any origin
- I. For each entry, the specific living situation of the household immediately prior to their arrival, as listed on report template

**EXHIBIT "B"**  
(COMPENSATION)

- I. **Budget and Source of Funding:** The source of funding for this contract, in an amount not to exceed \$122,020, is HB 2060 funds and the Washington State Department of Commerce Shelter Program Grant. COMMERCE and the State of Washington are not liable for claims or damages arising from Subcontractor's performance of this contract. The budget for this contract is as follows:

Cost Description	Documents Required Each Invoice	Budget
Personnel	County approved hourly billing rate and timesheet showing total hours and hours charged to this contract.	\$93,119
Program equipment (to include laundry machines, refrigerator, beds, mattresses, partitions, stove)	GL Detail; paid invoices	\$7,676
Program supplies (to include chairs, dressers, kitchen items, essential furniture and supplies) and operating costs		\$8,832
Phone Service	GL Detail	\$325
Mileage	Mileage will be billed at the current IRS rate available at <a href="http://www.gsa.gov/category/104715">www.gsa.gov/category/104715</a> . Mileage log will include name of traveler, dates, start and end point, and purpose.	\$975
<b>Subtotal</b>		<b>\$110,927</b>
Indirect costs @ 10%		\$11,093
<b>TOTAL</b>		<b>\$122,020</b>

The Contractor may transfer funds among budget line items in an amount up to 10% of the total budget. Changes to the line item budget that exceed 10% of the contract amount must be approved in writing by the County. In no instance shall indirect costs exceed the amount indicated above.

II. **Invoicing**

- The Contractor shall submit itemized invoices on a monthly basis in a format approved by the County. Monthly invoices must be submitted by the 15<sup>th</sup> of the month, following the month of service. Invoices submitted for payment must include the items identified in the table above.
- Contractor shall submit invoices to (include contract/PO#) to [HL-BusinessOffice@co.whatcom.wa.us](mailto:HL-BusinessOffice@co.whatcom.wa.us).
- Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.
- Invoices must include the following statement, with an authorized signature and date:  
**I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.**
- Duplication of Billed Costs or Payments for Service:** The Contractor shall not bill the County for services performed or provided under this contract, and the County shall not pay the Contractor, if the Contractor has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract. The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.

EXHIBIT "C"  
INSURANCE

**“Exhibit D ”**

(SPECIAL TERMS AND CONDITIONS FOR COMMERCE GRANTS)

The funds allocated for services performed under this contract are Washington State Department of Commerce funds. The terms included in this agreement and any additional agreements herein are a result of the grant funding requirements. Commerce and the State of Washington are not liable for claims or damages arising from the Contractor’s performance of this subgrant.

**1. ACCESS TO DATA**

In compliance with RCW 39.26.180, the Grantee shall provide access to data generated under this Grant to COMMERCE, the Joint Legislative Audit and Review Committee, and the Office of the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Grantee’s reports, including computer models and the methodology for those models.

**2. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the “ADA” 28 CFR Part 35**

The Grantee must 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. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

A. “Confidential Information” as used in this section includes:

1. All material provided to the Grantee by COMMERCE that is designated as “confidential” by COMMERCE;
2. All material produced by the Grantee that is designated as “confidential” by COMMERCE; and
3. All personal information in the possession of the Grantee that may not be disclosed under state or federal law. “Personal information” includes but is not limited to information related to a person’s name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver’s license number and other identifying numbers, and “Protected Health Information” under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

B. The Grantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Grantee shall use Confidential Information solely for the purposes of this Grant and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Grantee shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Grantee shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Grant whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Grantee shall make the changes within the time period specified by COMMERCE. Upon request, the Grantee shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Grantee against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Grantee shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.



#### **4. CONFLICT OF INTEREST**

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the COMMERCE may, in its sole discretion, by written notice to the CONTRACTOR terminate this contract if it is found after due notice and examination by COMMERCE that there is a violation of the Ethics in Public Service Act, Chapters 42.52 RCW and 42.23 RCW; or any similar statute involving the CONTRACTOR in the procurement of, or performance under this contract.

In the event this contract is terminated as provided above, COMMERCE shall be entitled to pursue the same remedies against the Grantee as it could pursue in the event of a breach of the contract by the Grantee. The rights and remedies of COMMERCE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which COMMERCE makes any determination under this clause shall be an issue and may be reviewed in the "Disputes" clause of this contract.

#### **5. COPYRIGHT**

Unless otherwise provided, all Materials produced under this Grant shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Grantee hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such materials.

"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.

For Materials that are delivered under the Grant, but that incorporate pre-existing materials not produced under the Grant, the Grantee hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Grantee warrants and represents that the Grantee has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Grantee shall exert all reasonable efforts to advise COMMERCE, at the time of delivery of Materials furnished under this Grant, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Grant. The Grantee shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Grantee with respect to any Materials delivered under this Grant. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Grantee.

#### **6. INDEMNIFICATION**

To the fullest extent permitted by law, the Grantee shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, agencies of the state and all officials, agents and employees of the state, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim" as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The Grantee's obligation to indemnify, defend, and hold harmless the State includes any claim by Grantee's agents, employees, representatives, or any subgrantee/subcontractor or its employees.

Grantee expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Grantee's or any subgrantee's/subcontractor's performance or failure to perform the Grant. Grantee's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

The Grantee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

**7. LAWS**

The Grantee shall comply with all applicable laws, ordinances, codes, regulations and policies of local and state and federal governments, as now or hereafter amended.

**8. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

During the performance of this Grant, the Contractor shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Grant may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further Grants with COMMERCE. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

**9. POLITICAL ACTIVITIES**

Political activity of Contractor employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17A RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

**10. PUBLICITY**

The Grantee agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE's name is mentioned, or language used from which the connection with the state of Washington's or COMMERCE's name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

**11. RECORDS MAINTENANCE**

The Grantee shall maintain books, records, documents, data and other evidence relating to this Grant and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Grant.

The Grantee 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 Grant, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

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.

**12. REGISTRATION WITH DEPARTMENT OF REVENUE**

If required by law, the Grantee shall complete registration with the Washington State Department of Revenue.

**13. RIGHT OF INSPECTION**

The Grantee shall provide right of access to its facilities to COMMERCE, 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 Grant.



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2020-560

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<b>File ID:</b>	AB2020-560	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/20/2020	<b>Entered by:</b>	JThomson@co.whatcom.wa.us		
<b>Department:</b>	Health Department	<b>File Type:</b>	Interlocal		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Meridian School District for reimbursement of eligible COVID-related technology expenses, in the amount of \$79,560

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Memo to County Executive, Meridian School District COVID-Related Reimbursement Contract.pdf



**MEMORANDUM**

**TO:** Satpal Sidhu, County Executive  
**FROM:** Erika Lautenbach, Director  
**RE:** Meridian School District – COVID-related Support Contract  
**DATE:** November 20, 2020

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Attached is a contract between Whatcom County and Meridian School District for your review and signature.

▪ **Background and Purpose**

This contract is in response to a notification from Whatcom County Health Department to Whatcom County School Districts of federal grant funding available to help mitigate the impacts of COVID-19. Each district has worked with Health to specify COVID-related expenditure reimbursement needs. The purpose of this contract to provide reimbursement of necessary technology expenditures incurred as a response to COVID-19. Each district requires their individual school board's approval and Council review of each of these contracts may occur on different dates.

▪ **Funding Amount and Source**

Funding for this contract may not exceed \$79,560. Funds under the contract are made available by a grant awarded by the US Department of Treasury and subject to Section 601(a) of the Social Security Act, as amended by section 5001 of the Coronavirus Aid, Relief, and Economic Security act (CARES Act), and Title V and VI of the CARES Act, passed through the Washington State Department of Health Emergency Preparedness & Response COVID-19 Local CARES Grant (CFDA 21.019). 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.



<b>WHATCOM COUNTY CONTRACT INFORMATION SHEET</b>		Whatcom County Contract No. _____	
Originating Department:		85 Health	
Division/Program: (i.e. Dept. Division and Program)		8510 Administration / 851000 Administration	
Contract or Grant Administrator:		Kathleen Roy	
Contractor's / Agency Name:		Meridian School District	
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?			
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	If yes, grantor agency contract number(s):		CFDA#: 21.019
Is this contract grant funded?			
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	If yes, Whatcom County grant contract number(s):		201801023
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: 660430
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):		Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b> <ol style="list-style-type: none"> <li>1. Exercising an option contained in a contract previously approved by the council.</li> <li>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.</li> <li>3. Bid or award is for supplies.</li> <li>4. Equipment is included in Exhibit "B" of the Budget Ordinance</li> <li>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.</li> </ol>	
\$	79,560		
This Amendment Amount:			
\$			
Total Amended Amount:			
\$			
Summary of Scope: This contract provides funding for necessary expenditures incurred due to the COVID-19 pandemic.			
Term of Contract:	10 Months	Expiration Date:	12/30/2020
Contract Routing:	1. Prepared by:	JT	Date: 10/20/2020
	2. Health Budget Approval:	KR/JG	Date: 11/17/20 / 11/18/20
	3. Attorney signoff:	RB	Date: 11/20/2020
	4. AS Finance reviewed:	M Caldwell	Date: 11/18/2020
	5. IT reviewed (if IT related):		Date:
	6. Contractor signed:		Date:
	7. Submitted to Exec.:		Date:
	8. Council approved (if necessary):		Date:
	9. Executive signed:		Date:
	10. Original to Council:		Date:

**CONTRACT FOR SERVICES**  
**Between Whatcom County and Meridian School District**

Whatcom County Contract No.  _____
--

Meridian School District, hereinafter called **Contractor** and Whatcom County, 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), p. 10,
- Exhibit B (Compensation), p. 11

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 1<sup>st</sup> day of March, 2020, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30<sup>th</sup> day of December, 2020.

The general purpose or objective of this Agreement is to **provide reimbursement for COVID-19 related expenditures**, 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 \$79,560. 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.

Each person signing this Contract represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Contract.

**IN WITNESS WHEREOF**, the parties have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2020.

**CONTRACTOR:**

**Meridian School District**  
214 W Laurel Road  
Bellingham, WA 98226

Each signatory below to this Contract warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and to bind the party thereto.

\_\_\_\_\_  
Dr. James Everett, Superintendent



## 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:

The duration of this Agreement may be extended by mutual written consent of the parties, for a period of up to one year, and for a total of no longer than three years.

#### 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 and Public Records Act:

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. If 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.

Ownership. Any and all data, writings, programs, public records, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor's subcontractors or consultants for delivery to the County under this Contract shall be the sole and absolute property of the County. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Contract but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of this Agreement.

Public Records Act. This Contract and all records associated with this Contract shall be available for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County at no cost to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely

obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

The Contractor shall be liable to the requester for any and all fees, costs, penalties or damages imposed or alleged as a result of the Contractor's failure to provide adequate or timely records.

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 Insurance: Not Applicable

37.2 Notice:

Any notices or communications required or permitted to be given by this Contract must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party as follows:

To: Whatcom County Health Department  
509 Girard Street  
Bellingham, WA 98225  
Attention: Kathleen Roy, Assistant Director  
(360) 778-6007  
[KRoy@co.whatcom.wa.us](mailto:KRoy@co.whatcom.wa.us)

To: Meridian School District  
214 W Laurel Road  
Bellingham, WA 98226  
360-318-2153  
[jeverett@meridian.wednet.edu](mailto:jeverett@meridian.wednet.edu)

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A party may, for purposes of this Agreement, change his, her or its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other party pursuant to this Section.

37.3 If agreed by the parties, this Contract may be executed by Email transmission and PDF signature and Email transmission and PDF signature shall constitute an original for all purposes.

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

If applicable, 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:

If applicable, 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. If applicable, 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](http://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, temporary restraining order, or other provisional remedy to preserve the status quo or prevent irreparable harm, 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 Contract 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 Contract 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 but shall not have the power to award punitive damages. Each Party shall pay all their own costs, attorney fees and expenses of arbitration and the parties shall share equally in the Arbitrator's fees and costs. 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.

Any arbitration proceeding commenced to enforce or interpret this Contract shall be brought within six years after the initial occurrence giving rise to the claim, dispute, or issue for which arbitration is commenced, regardless of the date of discovery or whether the claim, dispute, or issue was continuing in nature. Claims, disputes, or issues arising more than six years prior to a written request or demand for arbitration issued under this Contract are not subject to arbitration.

- e. The parties may agree in writing signed by both parties that a claim or dispute may be brought in Whatcom County Superior Court rather than mediation or arbitration.

*Unless otherwise specified herein, this Contract 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)

Eligible Expenses

The District shall ensure that the funds cover only those costs that are necessary and eligible to comply with public health measures and restrictions arising from the COVID-19 public health emergency. Expenses reimbursed through this agreement must not have been, or will be paid by any other source of funding. Under this agreement, eligible expenses include:

- A. Technology (to include software, online curriculum, subscriptions, licenses, supplies, devices, equipment, and support services) necessary to facilitate distance learning in connection with school closings to enable compliance with COVID-19 precautions.

Guidance to recipients of funding available under section 601(a) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") shall be reviewed at:

- <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>

**EXHIBIT "B"**  
(COMPENSATION)

- I. Budget and Source of Funding:** Funding for this contract may not exceed \$79,560. Funds under this Contract are made available and are subject to Section 601(a) of the Social Security Act, as amended by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and Title V and VI of the CARES Act. This project was supported by a grant awarded by the US Department of the Treasury. Funds are administered by the Washington State Department of Health Emergency Preparedness & Response COVID-19 Local CARES Grant (CFDA 21.019)

Item	Invoice Documentation Required	Budget
Technology (to include software, online curriculum, subscriptions, licenses, supplies, devices, equipment, and support services)	Copies of paid invoices or receipts	\$79,560
<b>TOTAL</b>		<b>\$79,560</b>

**I. Invoicing**

1. The Contractor shall submit invoices (to include contract/PO #) to [HL-BusinessOffice@co.whatcom.wa.us](mailto:HL-BusinessOffice@co.whatcom.wa.us). Monthly invoices must be submitted by the 15<sup>th</sup> of the month following the month of services **except final invoices which must be received by January 8, 2021**. Invoices submitted for payment must include the items identified in the table above.
2. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.
3. Invoices must include the following statement, with an authorized signature and date:  
  

**I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.**
4. Duplication of Billed Costs or Payments for Service: The Contractor shall not bill the County for costs reimbursed under this contract, and the County shall not pay the Contractor, if the Contractor has been or will be paid by any other source, including grants, for those costs reimbursed through this contract. The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this Contract.





# Whatcom County

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

## Agenda Bill Master Report

File Number: **AB2020-568**

<b>File ID:</b>	AB2020-568	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/24/2020	<b>Entered by:</b>	SBatdorf@co.whatcom.wa.us		
<b>Department:</b>	Parks and Recreation Department	<b>File Type:</b>	Agreement		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee	<b>Final Action:</b>			
<b>Agenda Date:</b>	12/08/2020	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract between Whatcom County and the Jet Oldsters Association of Ferndale to provide custodial services and supervision when the Ferndale Senior Activity Center is reserved after program hours

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

In this long-standing partnership, the Jet Oldsters provide custodial services and supervision for activities that take place in the Ferndale Senior Activity Center outside of the centers programming and hours. In exchange for these services, the Jet Oldsters will be reimbursed 75% of the revenue generated from reservation of the senior center, less County expenses.

### HISTORY OF LEGISLATIVE FILE


Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Memorandum, Contract



## **MEMORANDUM**

**TO:** Satpal Sidhu, County Executive

**FROM:** Michael McFarlane, Director 

**DATE:** November 23, 2020

**RE:** Public Use and Scheduling Contract – Ferndale Senior Activity Center

---

Enclosed is an Agreement between Whatcom County Parks & Recreation and the Jet Oldsters Association of Ferndale for your review and signature.

In this long-standing partnership, the Jet Oldsters provide custodial services and supervision for activities that take place in the Ferndale Senior Activity Center outside of the centers programming and hours.

In exchange for these services, the Jet Oldsters will be reimbursed 75% of the revenue from reservation of the senior center, less County expenses.



**PUBLIC USE SCHEDULING AGREEMENT  
FERNDALE SENIOR ACTIVITY CENTER**

**BETWEEN**

**JET OLDSTERS ASSOCIATION OF FERNDALE**

**AND**

**WHATCOM COUNTY PARKS & RECREATION DEPARTMENT**

This Agreement is entered into by Whatcom County Parks & Recreation Department (Parks / County) and the Jet Oldsters Association of Ferndale (Jet Oldsters) a not-for-profit organization operating in the State of Washington. Parks and Jet Oldsters have maintained a long standing partnership to jointly maintain and operate the Ferndale Senior Activity Center. The County owns the facility and covers major maintenance, repairs and most utility expenses. Jet Oldsters staff members and volunteers provide custodial services, supervise the reception desk and oversee program activities that take place at the Center separate from the Senior Activity Center Programs and hours. This Agreement is separate and distinct from the Whatcom County's Park's Contract for Services Agreement at the Ferndale Senior Activity Center for Senior Activities, staffing and operations.

**1. PURPOSE**

This Agreement outlines the responsibilities of both parties in regards to the scheduling and supervision of Public Rentals at Ferndale Senior Activity Center located at 1998 Cherry Street, Ferndale, WA 98264. These rentals may be scheduled when the facility is not used for senior citizen activities including evenings, weekends and occasional weekdays.

**2. PARKS RESPONSIBILITIES**

Parks will be responsible for the following functions related to Public Rentals of the Ferndale Senior Activity Center.

- A. Establish fees & charges for the Ferndale Senior Activity Center for public use and rentals separate from the Senior Activity Center events and activities.
- B. Post Ferndale Senior Activity Center rental information and room availability on the Whatcom County Parks & Recreation website online reservation system.
- C. Manage and process all Ferndale Senior Activity Center public reservations and payments.
- D. Account for all receipts and disbursements related to public rentals.
- E. Reimburse the Ferndale Jet Oldsters on a quarterly basis at the rate of 75% of all receipts minus expenses including convenience fees, taxes, alarm response, and other charges to the County.

**3. JET OLDSTERS RESPONSIBILITIES**

Jet Oldsters will be responsible for the following duties related to the Public Rentals of the Ferndale Senior Activity Center.

- A. Show prospective renters the facility and available equipment.
- B. Check out and return keys prior to each rental. Maintain all keys in a secure location.
- C. Provide orientation on open and closing procedures including deactivating and activating the alarm system.
- D. If necessary set up the facility for each rental and make sure that the building is adequately cleaned after each event. All furniture and equipment is to be returned to its regular or assigned facility location or in facility storage.



Personal/Advertising Injury, Contractual Liability, Independent Contractor Liability, medical payments and Stop Gap/Employer's Liability. Coverage shall not exclude or contain sub-limits less than the minimum limits required, unless approved in writing by the County.

Contractor shall maintain Workers Compensation Insurance as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Contractor's employees, agents, and volunteers eligible for such coverage under the Industrial Insurance Act.  
Fraud Insurance covering employees

Comprehensive Automobile Liability  
\$1,000,000 minimum, per occurrence  
\$2,000,000 minimum, annual aggregate

Contractor shall provide auto liability coverage for owned, non-owned and hired autos using ISO Business Auto Coverage form CA 00 01 or the exact equivalent with a limit of no less than \$1,000,000 per accident. If Contractor owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

A certificate of such insurance, with attached endorsement providing proof of all required insurance provisions, including Contractor's insurance must name the County, officials, employees, agents and volunteers, as additional insureds on this contract; Contractor's insurance is primary and County's insurance is non-contributory. The insurance policy shall provide a waiver of subrogation with respect to each insurance policy maintained under this contract. Proof of said insurance is attached hereto as Exhibit "C". Contractor shall maintain in effect all insurance coverages required under this Agreement, at Contractor's sole expense and with insurance carriers licensed to do business in the State of Washington in which the Project is located and having a current A.M. Best rating of no less than A-, unless another A.M. Best rating is specifically accepted by the County in writing and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. The Contractor must provide a Certificate of Insurance and Endorsements which identifies clearly and readily proof of insurance as required under this Agreement, including the endorsements that the County, employees, agents and volunteers are named additional insureds on the Contractor's policy; the Contractor's insurance is primary and the County's insurance is non-contributory; and the waiver of subrogation. Coverage limits shall be the minimum.

The Contractor shall provide annual proof of insurance to the County. The County shall not be obligated to review such certificates, endorsements, or other evidence of insurance, or to advise Contractor of any deficiencies in such documents, and receipt thereof shall not relieve Contractor from, nor be deemed a waiver of the County's right to enforce, the terms of Contractor's obligations hereunder. The Contractor agrees Contractor's insurance obligations shall survive the completion or termination of this Contract for a minimum period of three years.

## **7. TERMINATION**

Any party hereto may terminate this Agreement upon thirty (30) days notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

## **8. NONDISCRIMINATION**

During the term of this Agreement, the Jet Oldsters shall comply with all applicable Federal, State and local provisions with regard to hiring and employment practices, and providing program services. In the event of the Jet Oldsters noncompliance or refusal to comply with the above provisions, this Agreement may be rescinded, cancelled, or terminated in whole or in part without penalty to Parks. The Jet Oldsters shall, however, be given a reasonable time in which to cure such noncompliance.

**9. CHANGES, MODIFICATION, AMENDMENTS AND WAIVERS**

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 the Agreement shall not be considered a waiver of any prior or subsequent breach.

**10. SEVERABILITY**

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

**11. 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 the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement this 16 day of October 2020.

**APPROVED**

**JET OLDSTERS ASSOCIATION OF FERNDALE**

*Linda Cline*

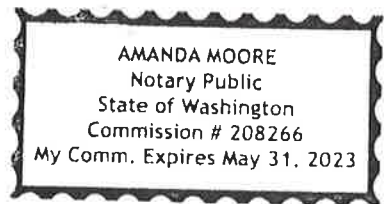
Linda Cline, President  
Sr. Center phone no: 360-384-5113  
Personal Contact phone: 360-384-4262.

STATE OF WASHINGTON) )ss  
COUNTY OF WHATCOM

On this 16 day of October, 2020, before me personally appeared President, authorized to sign for the Jet Oldsters Association of Ferndale and who executed the above instrument and acknowledged to me the act of signing and sealing thereof.

*Amanda Moore*  
Notary Public in and for the State of Washington, residing at Whatcom

My Commission expires: MAY 31, 2023



~~WHATCOM COUNTY~~  
~~Satpal Sidhu, County Executive~~

~~STATE OF WASHINGTON) )ss  
COUNTY OF WHATCOM~~

**WHATCOM COUNTY**

\_\_\_\_\_  
Satpal Sidhu, County Executive

STATE OF WASHINGTON)

)ss

COUNTY OF WHATCOM

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me personally appeared Satpal Sidhu, to be known to be County Executive of Whatcom County and who executed the above instrument and acknowledged to me the act of signing and sealing thereof.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Washington,

Residing in \_\_\_\_\_

My Commission expires: \_\_\_\_\_

**WHATCOM COUNTY PARKS & RECREATION DEPARTMENT**

  
\_\_\_\_\_  
Michael McFarlane, Director

APPROVED AS TO FORM

Approved via email / B. Waldron  
Deputy Prosecuting Attorney





# Whatcom County

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

## Agenda Bill Master Report

File Number: **AB2020-570**

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<b>File ID:</b>	AB2020-570	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/24/2020	<b>Entered by:</b>	SBatdorf@co.whatcom.wa.us		
<b>Department:</b>	Parks and Recreation Department	<b>File Type:</b>	Agreement		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an agreement between Whatcom County and the Jet Oldsters Association of Ferndale for staffing and operation of the Ferndale Senior Activity Center, in the amount of \$123,748

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This two-year agreement provides funding to the Jet Oldsters Association of Ferndale to staff and operate the Ferndale Senior Activity Center, including coordination of daily on-site operations, programming, enforcement of safety procedures, and management of volunteer opportunities. The funding consists of \$61,874 paid in both 2021 and 2022.

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### HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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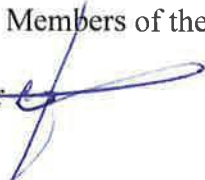
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**Attachments:** Memorandum, Contract for Services



## MEMORANDUM

**TO:** County Executive Sidhu and Members of the Council

**FROM:** Michael McFarlane, Director 

**DATE:** November 23, 2020

**RE:** Contract for Services – Ferndale Senior Activity Center

---

Enclosed is a Contract for Services Agreement between Whatcom County Parks & Recreation and the Jet Oldsters Associate of Ferndale for your review and signature.

This contract provides funding to the Jet Oldsters Associate of Ferndale to staff and operate the Ferndale Senior Activity Center. The Scope of Work for this agreement includes coordination of daily on-site operations, programming, enforcement of safety procedures, and management of volunteer opportunities.

Included in the Parks Senior Services budget, this contract will be funded by the General Fund in the amount of \$123,748; \$61,874 for each 2021 and 2022.



Whatcom County Contract No.  
\_\_\_\_\_

**CONTRACT FOR SERVICES AGREEMENT  
FERNDALE SENIOR ACTIVITY CENTER STAFFING AND OPERATIONS**

Jet Oldsters Association of Ferndale, hereinafter called **Contractor**, and Whatcom County, hereinafter referred to as **County**, agree and contract as set forth in this Agreement, including:

- General Conditions, pp.3 to 8,
- Exhibit A (Scope of Work), pp. 9,
- Exhibit B (Compensation), pp. 10,
- Exhibit C (Certificate of Insurance & Endorsements).

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 1<sup>st</sup> day of January, 2021, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31<sup>st</sup> day of December, 2022.

The general purpose or objective of this Agreement is to: provide onsite staffing to assist in the operation of the Ferndale Jet Oldsters Association's Ferndale Senior Activity Program, housed in the County owned Ferndale Senior Activity Center facility, 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 \$123,748. 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, 30.2 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 16 day of October, 2020

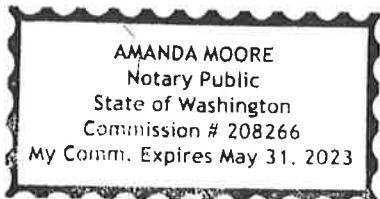
**CONTRACTOR:**


JET OLDSTERS ASSOCIATION OF FERNDALE

  
Linda Cline, President

STATE OF WASHINGTON            )  
  ) ss.  
COUNTY OF WHATCOM         )

On this 16 day of October, 2020 before me personally appeared Ruth Bergman to me known to be the President of the Jet Oldsters Association of 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  
whatcom. My commission expires May 31, 2023

WHATCOM COUNTY:  
Recommended for Approval:

Department Director

Date

*[Handwritten signature]* 11-23-20

Approved as to form:

Approved via email / B. Waldron

11/20/2020

Prosecuting Attorney

Date

**Approved:**

Accepted for Whatcom County:

By: \_\_\_\_\_

Satpal Sidhu, 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:**

Jet Oldsters Association of Ferndale

Address:  
1998 Cherry Street  
Ferndale, WA 98248

Contact Name: Linda Cline, President

Contact Phone: (360) 384-5113

Contact FAX: (360) 384-5113

Contract for Services Agreement  
Ferndale Senior Activity Center Staffing and Operations

## GENERAL CONDITIONS

### 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, beyond county supplied custodian and/or work crews, or facilities, other than the Ferndale Senior Activity Center building and grounds will be furnished by the County, unless otherwise provided for in the Agreement.

### 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.

### 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 by default, the Contractor shall not be entitled to receive any further payments under the contract until all work called for has been fully performed.

### 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 continuation of the programs covered by this Agreement is no longer in the best interests of the County, the County may summarily terminate this Agreement in whole, notwithstanding any other termination provision of this Agreement. Termination under this section shall be effective upon written notice as specified herein, or within three days of the mailing of the notice, whichever occurs first.

### 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 of the County's Administrative Officer determines that the Contractor has failed to perform any obligations under this Agreement within the times set forth in this Agreement, then the County may withhold from amount 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 amount 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 Dispute 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 the amounts due or to become due to the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to the Contractor by reason of the good faith withholding by the County under this clause.

23.1 Labor Standards:

The Contractor agrees to comply with all applicable local, state and federal requirements laws.

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 on a Schedule C, 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 accessible and made available to the County.

.Public Records Act. This Agreement and all public records associated with this Agreement shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

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 the contract termination, and shall make them available for such review, within Whatcom County, State of Washington, upon request.

34.1 Proof of Insurance:

The Contractor is required to meet the following Insurance Coverage Requirements for the duration of this contract.

Commercial General Liability Insurance

Property Damage	\$500,000 per occurrence
General Liability and Bodily Injury	\$1,000,000 per occurrence
Annual Aggregate	\$2,000,000

At least as broad as ISO form CG 00 01 or the equivalent, which coverage shall include personal injury, bodily injury and property damage for Premises Operations, Products and Completed Operations, Personal/Advertising Injury, Contractual Liability, Independent Contractor Liability, medical payments and Stop Gap/Employer's Liability. Coverage shall not exclude or contain sub-limits less than the minimum limits required, unless approved in writing by the County.

Contractor shall maintain Workers Compensation Insurance as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Contractor's employees, agents, and volunteers eligible for such coverage under the Industrial Insurance Act.  
Fraud Insurance covering employees

Comprehensive Automobile Liability

\$1,000,000 minimum, per occurrence
\$2,000,000 minimum, annual aggregate

Contractor shall provide auto liability coverage for owned, non-owned and hired autos using ISO Business Auto Coverage form CA 00 01 or the exact equivalent with a limit of no less than \$1,000,000 per accident. If Contractor owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

A certificate of such insurance, with attached endorsement providing proof of all required insurance provisions, including Contractor's insurance must name the County, officials, employees, agents and volunteers, as additional insureds on this contract; Contractor's insurance is primary and County's insurance in non-contributory. The insurance policy shall provide a waiver of subrogation with respect to each insurance policy maintained under this contract. Proof of said insurance is attached hereto as Exhibit "C". Contractor shall maintain in effect all insurance coverages required under this Agreement, at Contractor's sole expense and with insurance carriers licensed to do business in the State of Washington in which the Project is located and having a current A.M. Best rating of no less than A-, unless another A.M. Best rating is specifically accepted by the County in writing and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. The Contractor must provide a Certificate of Insurance and Endorsements



which identifies clearly and readily proof of insurance as required under this Agreement, including the endorsements that the County, employees, agents and volunteers are named additional insureds on the Contractor's policy; the Contractor's insurance is primary and the County's insurance is non-contributory; and the waiver of subrogation. Coverage limits shall be the minimum

The Contractor shall provide annual proof of insurance to the County. The County shall not be obligated to review such certificates, endorsements, or other evidence of insurance, or to advise Contractor of any deficiencies in such documents, and receipt thereof shall not relieve Contractor from, nor be deemed a waiver of the County's right to enforce, the terms of Contractor's obligations hereunder. The Contractor agrees Contractor's insurance obligations shall survive the completion or termination of this Contract for a minimum period of three years.

34.3 Indemnification by Contractor:

To the fullest extent permitted by law, the Contractor (also identified as Provider) agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which 1) are caused in whole or in part by any act or omission, negligent or otherwise, of the Provider, its employees, agents or volunteers or Provider's subcontractors and their employees, agents or volunteers; or 2) are directly or indirectly arising out of, resulting from, or in connection with performance of this Agreement; or 3) are based upon the Provider's or its subcontractors' use of, presence upon or proximity to the property of the County, or 4) Provider's breach of this Agreement. This indemnification obligation of the Provider shall not apply in the limited circumstance where the claim, damage, loss or expense is caused by the sole negligence of the County. This indemnification obligation of the Provider shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Provider hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the Provider are a material inducement to County to enter into this Agreement, are reflected in the Provider's compensation, and have been mutually negotiated by the parties.

The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of Provider's indemnity obligations under this Agreement.

The Provider agrees all Provider's indemnity obligations shall survive the completion, expiration or termination of this Agreement.

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, veteran status or any other protected classes. 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, veteran status or any other protected classes, 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, veteran status or any other protected classes, 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, creed, religion, sex, national origin, sexual orientation, age, marital status, disability, veteran status, or any other protected classes

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, veteran status, or any other protected classes; 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 based on color, creed, religion, natural origin, sex, age, marital status, sexual orientation, disability, veteran status or any other protected classes.

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:

Shannon Batdorf, Administrative Supervisor

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.

38.3 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](http://www.uscis.gov)

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.

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), but shall not have the power to award punitive damages. All costs, expenses and attorney's fees for arbitration shall be at each party's own expense, unless agreed otherwise in writing by both parties. 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. The parties shall equally share in the cost of the mediator or arbitrators fees and expenses.

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**

Contractor will be required to staff the Ferndale Senior Activity Center at a minimum of Monday through Friday 8:00 a.m. to 4:00p.m. Any change in these hours of operation will need to be coordinated with the County Parks & Recreation Department.

Contractor may offer additional hours of operation and duties that they feel are necessary to effectively operate the Ferndale Senior Activity Center. Additional hours of operation will need to be coordinated with the County Parks & Recreation Department so as not to interfere with other scheduled events.

Contractor will be expected to fulfill the following duties and responsibilities.

- A. Daily On-site Operations
- Open, close and lock the facility
  - Schedule the use of the Center space for all programs
  - Set-up and take-down of furniture and equipment for daily programs and special events
  - Perform custodial duties when the county provided staff person is not available
  - Immediately report in writing and verbally any building and grounds maintenance problems or unsafe conditions to the County Parks & Recreation Department
  - Oversee use of the building and ensure activities are conducted in a safe organized manner
- B. Assist with Center programming in the following areas
- Develop a variety of healthy lifestyle and educational programs, along with other activities of interest to older adults
  - Help with creating, and running fund raising events used to cover Center operating costs
  - Provide daily dining room assistance for the Council on Aging Nutrition Program
  - Prepare and distribute a monthly Schedule of Center Programs and Activities that also promotes the Ferndale Senior Activity Center
  - Establish a process whereby participants provide input on desire programming and feedback regarding existing programming at the Ferndale Senior Activity Center
- C. Implement and enforce safety procedures for:
- Inclement weather
  - Unsafe conditions on the center grounds and parking lot
  - Closing the facility when necessary in conjunction with the County Parks & Recreation Department
  - Fire Department evacuation plans
  - Conducting evacuation drills as recommended by the Fire Department A code of Conduct for the Center
  - Resolving staff and participant behavior issues
  - Responding to accidents and medical emergencies
- D. Coordinate volunteer activities in support of Center operations. This includes the following:
- Maintaining existing volunteer programs and actively involve participants in the operation of the Ferndale Senior Activity Center
  - Developing volunteer job descriptions to accommodate programming needs
  - Recruit, train, schedule and supervise volunteers
  - Conduct Criminal Background Checks on prospective volunteers using the Safe of Washington WATCH Program
  - Contractor shall arrange and provide for volunteer insurance coverage
- E. Submit the following reports to the County Parks & Recreation Department:
- Monthly attendance Reports
  - Monthly Volunteer Reports
  - Annual Financial Reports documenting the expenditure of Whatcom county contracted funds
  - Meet with the County Parks & Recreation Department on a quarterly basis to evaluate how the service contract is working
- F. Contractor is responsible for paying their employee payroll and benefits as well as maintaining proper records. The contractor is also responsible for payment of State Labor & Industries cost for volunteers

- G. Contractor will maintain the insurance coverage required in section 34 Proof of Insurance and provide annually a Certificate of Insurance and Endorsements to the County Parks & Recreation Department covering the terms and requirements in this Agreement.

**EXHIBIT "B"**  
**COMPENSATION**

Whatcom County Parks & Recreation Department will provide \$61,874 for the twelve (12) month period January 1, 2021 through December 31, 2021 and \$61,874 for the twelve (12) month period January 1, 2022 through December 31, 2022.

Jet Oldsters Association of Ferndale shall invoice Whatcom County Parks & Recreation Department by the last working day of each month during the term of this Agreement for services rendered as outlined in Exhibit "A" Scope of Work. Whatcom County Parks & Recreation Department shall reimburse the Ferndale Jet Oldsters for twelve (12) equal payments in 2021 and 2022. Reimbursements may be reduced on a pro-rated basis if the Senior Center programming is discontinued for an extended period due to emergencies or natural disasters.

**EXHIBIT "C"**  
**CERTIFICATE OF INSURANCE & ENDORSEMENTS**



# Whatcom County

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

## Agenda Bill Master Report

File Number: **AB2020-571**

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<b>File ID:</b>	AB2020-571	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/24/2020	<b>Entered by:</b>	SBatdorf@co.whatcom.wa.us		
<b>Department:</b>	Parks and Recreation Department	<b>File Type:</b>	Interlocal		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020	<b>Enactment #:</b>			

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Primary Contact Email: sbatdorf@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 Lynden for staffing and operation of the Lynden Senior Activity Center, in the amount of \$123,748

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This two-year agreement provides funding to the City of Lynden to staff and operate the Lynden Senior Activity Center, including coordination of daily on-site operations, programming, enforcement of safety procedures, and management of volunteer opportunities. The funding consists of \$61,874 paid in both 2021 and 2022.

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Memorandum, Contract for Services





## MEMORANDUM

**TO:** County Executive Sidhu and Members of the Council

**FROM:** Michael McFarlane, Director 

**DATE:** November 23, 2020

**RE:** Contract for Services – Lynden Senior Activity Center

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Enclosed is an Interlocal Agreement between Whatcom County Parks & Recreation and the City of Lynden for your review and signature.

This contract provides funding to the City of Lynden to staff and operate the Lynden Senior Activity Center. The Scope of Work for this agreement includes coordination of daily on-site operations, programming, enforcement of safety procedures, and management of volunteer opportunities.

Included in the Parks Senior Services budget, this contract will be funded by the General Fund in the amount of \$123,748; \$61,874 for each 2021 and 2022.

**WHATCOM COUNTY CONTRACT  
INFORMATION SHEET**

Whatcom County Contract No. \_\_\_\_\_

Originating Department:	Parks & Recreation
Division/Program: <i>(i.e. Dept. Division and Program)</i>	803000 Senior Services
Contract or Grant Administrator:	Michael McFarlane
Contractor's / Agency Name:	City of Lynden
Is this a New Contract?    If not, is this an Amendment or Renewal to an Existing Contract?    Yes <input type="radio"/> No <input checked="" type="radio"/>	
Yes <input checked="" type="radio"/> No <input type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval?    Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____	
Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement?	
Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, grantor agency contract number(s): _____ CFDA#: _____	
Is this contract grant funded?	
Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, Whatcom County grant contract number(s): _____	
Is this contract the result of a RFP or Bid process?	
Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____ Contract Cost Center: _____	
Is this agreement excluded from E-Verify?    No <input checked="" type="radio"/> Yes <input type="radio"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below:	
<input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Goods and services provided due to an emergency	
<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 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): \$ 123,748	Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b> <ol style="list-style-type: none"> <li>1. Exercising an option contained in a contract previously approved by the council.</li> <li>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.</li> <li>3. Bid or award is for supplies.</li> <li>4. Equipment is included in Exhibit "B" of the Budget Ordinance.</li> <li>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.</li> </ol>
This Amendment Amount: \$ _____	
Total Amended Amount: \$ 123,748	
Summary of Scope:	
This contract provides the funding for the City of Lynden to staff and operate the Lynden Senior Activity Center. Last year the center served 33,322 seniors. The Scope of Work for this agreement includes coordination of daily on-site operations, programming, enforcing safety procedures, and managing volunteer opportunities.	
Term of Contract: 2 years	Expiration Date: 12/31/2022

Contract Routing:	1. Prepared by: Shannon Batdorf	Date: 11/23/2020
	2. Attorney signoff: Brandon Waldron	Date: 11/20/2020
	3. AS Finance reviewed: Marianne Caldwell	Date: 11/23/2020
	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 COOPERATIVE AGREEMENT**

**BETWEEN**

**CITY OF LYNDEN**

**AND**

**WHATCOM COUNTY PARKS & RECREATION**

THIS AGREEMENT is made and entered into by Whatcom County Parks & Recreation Department (County) and the City of Lynden, Washington (City or Provider) pursuant to the authority granted by chapter 39.34 RCW, INTERLOCAL COOPERATION ACT.

**1. PURPOSE:**

The County will provide funding to the City to assist with the provision of Senior Services at the Lynden Community Center. This funding is intended to provide on-site staffing to assist with the operation of the Lynden Community Center. Individual/s hired may be employed by the Lynden Council on Aging, a local not-for profit organization that is currently under contract with the City.

**2. RESPONSIBILITIES:**

**WHATCOM COUNTY PARKS & RECREATION RESPONSIBILITIES**

The County will provide funding in 2021 and 2022 for the City to contract with the Lynden Council on Aging for provision of staff assigned to the Lynden Community Center. This funding is intended to provide staffing and operational support for Senior Services at the Lynden Senior Center.

**CITY OF LYNDEN RESPONSIBILITIES**

The City contracts by separate agreement with the Lynden Council on Aging to operate and maintain the Lynden Senior Center and its programs at the Lynden Community Center. "Senior Center management", "Senior Center employees", or "Senior Center staff" referred to herein are employees of the Lynden Council on Aging. The City will utilize the funds provided for in this Agreement to contract with the Lynden Council on Aging to continue to provide Senior Services Monday through Friday of each week from 8:00 a.m. to 4:30 p.m. at the Lynden Community Center, except holidays. At a minimum, the City and/or the Lynden Council on Aging will be expected to provide the following services:

**A. Daily On-Site Operations**

- B. Assistance to Senior Center management and staff in order to provide a variety of healthy lifestyle programs and activities of interest to older adults
- C. Develop safety policies and monitor procedures
- D. Employee and volunteer opportunities to support Senior Center operations.
- E. Provide progress reports to the County

In addition the City will continue to provide support to the Senior Center including use of the city owned facility located at 401 Grover Street, Lynden, Washington, 98264 and/or continued funding to cover programming and utilities expenses at the facility.

**3. TERM OF AGREEMENT:**

The term of this Agreement shall be from January 1, 2021 through December 31, 2022.

**4. AVAILABLE FUNDING AND MANNER OF FINANCING:**

The County will provide a total of \$61,874 for the twelve (12) month period of January 1, 2021 through December 31, 2021, and \$61,874 for the twelve (12) month period of January 1, 2022 through December 31, 2022.

The City shall invoice the County by the last working day of each month during the term of this agreement for services rendered as outlined in Section 2. The County shall reimburse the City for twelve (12) equal payments in 2021 and twelve (12) equal payments in 2022.

**5. ADMINISTRATION:**

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

- A. The City of Lynden representative shall be the City Administrator
- B. Whatcom County's representative shall be Shannon Batdorf

**6. Indemnification by Provider.** To the fullest extent permitted by law, the Provider agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which 1) are caused in whole or in part by any act or omission, negligent

or otherwise, of the Provider, its employees, agents or volunteers or Provider's subcontractors and their employees, agents or volunteers; or 2) are directly or indirectly arising out of, resulting from, or in connection with performance of this Agreement; or 3) are based upon the Provider's or its subcontractors' use of, presence upon or proximity to the property of the County. This indemnification obligation of the Provider shall not apply in the limited circumstance where the claim, damage, loss or expense is caused by the sole negligence of the County. This indemnification obligation of the Provider shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Provider hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the Provider are a material inducement to County to enter into this Agreement, are reflected in the Provider's compensation, and have been mutually negotiated by the parties.

Provider's initials acknowledging indemnity terms: SR

The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of Provider's indemnity obligations under this Agreement.

The Provider agrees all Provider's indemnity obligations shall survive the completion, expiration or termination of this Agreement.

7. In the event the Provider enters into subcontracts to the extent allowed under this Agreement, the Provider's subcontractors shall indemnify the County on a basis equal to or exceeding Provider's indemnity obligations to the County.

The City is required to provide proof of insurance for the following minimum coverage:

- A. General Liability coverage @ \$1,000,000 per occurrence
- B. Workers Compensation Coverage and listed amounts for bodily injury by accident, bodily injury by disease, policy limits.
- C. Directors and Officers coverage if applicable.
- D. Fraud coverage for employees.

The City waives all rights of Subrogation against the County. The City's insurance is primary and the County's insurance is non-contributory except as required under the terms of Indemnification. The City shall name Whatcom County and its officials, employees, agents, and volunteers as ADDITIONAL INSUREDS on their insurance policy.

The City, in a written contract with the designated contractor that provides senior services, shall require the designated contractor to indemnify, defend, and hold harmless the County to the same extent as required in this Agreement.

Additionally, the City shall require the designated contractor to carry the insurance of Commercial General Liability per occurrence of \$1,000,000.00 or greater and vehicle insurance of \$1,000,000.00 or greater per occurrence. The Designated contractor's insurance shall name the City and Whatcom County and its officials, employees, agents, and volunteers as ADDITIONAL INSUREDS on the designated contractor's insurance policy. The designated contractor shall provide proof of these insurance requirements by submitting a Certificate of Liability with Endorsements to the City. The contracting organization's insurance shall waive all rights of Subrogation against the County and its insurance shall be primary and the County's insurance shall be non-contributory.

**8. TERMINATION:**

This Agreement may be terminated by either party upon one-hundred and twenty (120) days written notice, mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

**9. INDEPENDENCE OF PARTIES AND EMPLOYEES:**

The CITY shall be deemed to be the sole operator of the Lynden Community Center. All employees and volunteers engaged with or serving in the operation of the Lynden Community Center shall not by this Agreement be construed to be employees, agents or volunteers serving the County.

**10. NONDISCRIMINATION:**

During the term of the Agreement, the CITY, or designated contractor, shall comply with all applicable Federal, State and local provisions with regard to hiring and employment practices, and providing program services.

In the event of the CITY'S noncompliance or refusal to comply with the above provisions, this Agreement may be rescinded, cancelled, or terminated in whole or in part without penalty to the COUNTY. The CITY shall, however, be given a reasonable time in which to cure such noncompliance.

**11. NEW CONTRACTOR**

Nothing herein shall prevent the City from entering into a contract with a different qualified contractor to perform the services described herein by the Lynden Council on Aging, or from performing said services itself.

**12. CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS:**

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 the Agreement shall not be considered a waiver of any prior or subsequent breach.

**13. SEVERABILITY:**

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

**14. 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.









# Whatcom County

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

## Agenda Bill Master Report

File Number: **AB2020-572**

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<b>File ID:</b>	AB2020-572	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/24/2020	<b>Entered by:</b>	SBatdorf@co.whatcom.wa.us		
<b>Department:</b>	Parks and Recreation Department	<b>File Type:</b>	Interlocal		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020	<b>Enactment #:</b>			

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Primary Contact Email: sbatdorf@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 Blaine for staffing and operation of the Blaine Senior Activity Center, in the amount of \$123,748

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This two-year agreement provides funding to the City of Blaine to staff and operate the Blaine Senior Activity Center, including coordination of daily on-site operations, programming, enforcement of safety procedures, and management of volunteer opportunities. The funding consists of \$61,874 paid in both 2021 and 2022.

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Memorandum, Interlocal Agreement

**WHATCOM COUNTY**

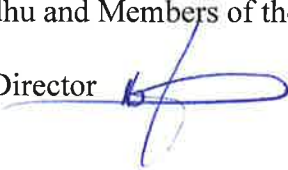
**Parks & Recreation**

3373 Mount Baker Highway  
Bellingham, WA 98226-7500



**Michael G. McFarlane**, Director  
**Christ Thomsen**, Parks Operations Manager

**MEMORANDUM**

**TO:** County Executive Sidhu and Members of the Council  
**FROM:** Michael McFarlane, Director   
**DATE:** November 23, 2020  
**RE:** Contract for Services – Blaine Senior Activity Center

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Enclosed are two (2) Interlocal Agreement originals between Whatcom County Parks & Recreation and the City of Blaine for your review and signature.

This contract provides funding to the City of Blaine to staff and operate the Blaine Senior Activity Center. The Scope of Work for this agreement includes coordination of daily on-site operations, programming, enforcement of safety procedures, and management of volunteer opportunities.

Included in the Parks Senior Services budget, this contract will be funded by the General Fund in the amount of \$123,748; \$61,874 for each 2021 and 2022.

**WHATCOM COUNTY CONTRACT  
INFORMATION SHEET**

Whatcom County Contract No. \_\_\_\_\_

Originating Department:	Parks & Recreation
Division/Program: <i>(i.e. Dept. Division and Program)</i>	803000 Senior Services
Contract or Grant Administrator:	Michael McFarlane
Contractor's / Agency Name:	City of Blaine
Is this a New Contract?    If not, is this an Amendment or Renewal to an Existing Contract?    Yes <input type="radio"/> No <input checked="" type="radio"/>	
Yes <input checked="" type="radio"/> No <input type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval?    Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____	
Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement?	
Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, grantor agency contract number(s): _____ CFDA#: _____	
Is this contract grant funded?	
Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, Whatcom County grant contract number(s): _____	
Is this contract the result of a RFP or Bid process?	
Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____ Contract Cost Center: _____	
Is this agreement excluded from E-Verify?    No <input checked="" type="radio"/> Yes <input type="radio"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below:	
<input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Goods and services provided due to an emergency	
<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 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): \$ 123,748 This Amendment Amount: \$ _____ Total Amended Amount: \$ 123,748	Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b> <ol style="list-style-type: none"> <li>1. Exercising an option contained in a contract previously approved by the council.</li> <li>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.</li> <li>3. Bid or award is for supplies.</li> <li>4. Equipment is included in Exhibit "B" of the Budget Ordinance.</li> <li>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.</li> </ol>
Summary of Scope:	
This contract provides the funding for the City of Blaine to staff and operate the Blaine Senior Activity Center. Last year the center served 32,070 seniors. The Scope of Work for this agreement includes coordination of daily on-site operations, programming, enforcing safety procedures, and managing volunteer opportunities.	
Term of Contract: 2 years	Expiration Date: 12/31/2022

Contract Routing:	1. Prepared by: Shannon Batdorf 2. Attorney signoff: Brandon Waldron 3. AS Finance reviewed: Marianne Caldwell 4. IT reviewed (if IT related): _____ 5. Contractor signed: _____ 6. Submitted to Exec.: _____ 7. Council approved (if necessary): _____ 8. Executive signed: _____ 9. Original to Council: _____	Date: 11/23/2020 Date: 11/20/2020 Date: 11/23/2020 Date: _____ Date: _____ Date: _____ Date: _____ Date: _____
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**INTERLOCAL COOPERATIVE AGREEMENT**

**BETWEEN**

**CITY OF BLAINE**

**AND**

**WHATCOM COUNTY PARKS & RECREATION**

THIS AGREEMENT is made and entered into by Whatcom County Parks & Recreation Department (County) and the City of Blaine, Washington (City or Provider) pursuant to the authority granted by chapter 39.34 RCW, INTERLOCAL COOPERATION ACT.

**1. DEFINITION / REFERENCES:**

- 1.1 The Blaine Senior Center, a not-for-profit organization, is referred to as "local not-for-profit organization" for the purposes of this agreement.
- 1.2 The Blaine Facilities, located at 763 G Street, Blaine, WA, is referred to as "Blaine Community/Senior Center" for the purposes of this agreement.

**2. PURPOSE:**

The County will provide funding to the City to assist with the provision of Senior Services at the Blaine Community/Senior Center. This funding is intended to provide on-site staffing to assist with the operation of senior activities by the local not-for-profit organization.

**3. RESPONSIBILITIES:**

**WHATCOM COUNTY PARKS & RECREATION RESPONSIBILITIES**

The County will provide funding in 2021 and 2022 for the City to provide staffing and operational support at the Blaine Senior Center.

**CITY OF BLAINE RESPONSIBILITIES**

The City contracts by separate agreement with the local not-for-profit organization to operate and maintain the Blaine Senior Center and its programs at the Blaine Community/Senior Center. "Senior Center management", "Senior Center employees", or "Senior Center staff" referred to herein are employees of the local not-for-profit organization. The City will utilize the funds provided for in this Agreement to contract with the local not-for-profit organization to continue to provide Senior Services Monday through Saturday of each week at the Blaine

Community/Senior Center. At a minimum, the City will be expected to provide the following services:

- A. Daily On-Site Operations
- B. Assistance to the local not-for-profit organization management and staff in order to provide a variety of healthy lifestyle programs and activities of interest to older adults
- C. Develop safety policies and monitor procedures
- D. Employee and volunteer opportunities to support Senior Center operations.
- E. Provide progress reports to the County

In addition the City will continue to provide support to the Senior Center including use of the city owned facility located at 763 G Street, Blaine, Washington, 98230 and/or continued funding to cover programming and utilities expenses at the facility.

**4. TERM OF AGREEMENT:**

The term of this Agreement shall be from January 1, 2021 through December 31, 2022.

**5. AVAILABLE FUNDING AND MANNER OF FINANCING:**

- Whatcom County Parks & Recreation will provide a total of \$61,874 for the twelve (12) month period of January 1, 2021 through December 31, 2021, and \$61,874 for the twelve (12) month period of January 1, 2022 through December 31, 2022.

The City shall invoice the County by the last working day of each month during the term of this agreement for services rendered as outlined in Section 2. The County shall reimburse the City for twelve (12) equal payments in 2021 and twelve (12) equal payments in 2022.

**6. ADMINISTRATION:**

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

- A. The City representative shall be Jeffrey Lazenby, or successor
- B. The County representative shall be Shannon Batdorf, or successor

- 7. INDEMNIFICATION BY PROVIDER:** To the fullest extent permitted by law, the Provider agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and

volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which 1) are caused in whole or in part by any act or omission, negligent or otherwise, of the Provider, its employees, agents or volunteers or Provider's subcontractors and their employees, agents or volunteers; or 2) are directly or indirectly arising out of, resulting from, or in connection with performance of this Agreement; or 3) are based upon the Provider's or its subcontractors' use of, presence upon or proximity to the property of the County. This indemnification obligation of the Provider shall not apply in the limited circumstance where the claim, damage, loss or expense is caused by the sole negligence of the County. This indemnification obligation of the Provider shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Provider hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the Provider are a material inducement to County to enter into this Agreement, are reflected in the Provider's compensation, and have been mutually negotiated by the parties.

Provider's initials acknowledging indemnity terms:



The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of Provider's indemnity obligations under this Agreement.

The Provider agrees all Provider's indemnity obligations shall survive the completion, expiration or termination of this Agreement.

8. In the event the Provider enters into subcontracts to the extent allowed under this Agreement, the Provider's subcontractors shall indemnify the County on a basis equal to or exceeding Provider's indemnity obligations to the County.

In the event the Provider enters into subcontracts to the extent allowed under this Agreement, the Provider's subcontractors shall indemnify the County on a basis equal to or exceeding Provider's indemnity obligations to the County.

The City is required to provide proof of insurance for the following minimum coverage:

- A. General Liability coverage @ \$1,000,000 per occurrence
- B. Workers Compensation Coverage and listed amounts for bodily injury by accident, bodily injury by disease, policy limits.
- C. Directors and Officers coverage if applicable.
- D. Fraud coverage for employees.

The City waives all rights of Subrogation against the County. The City's insurance is primary and the County's insurance is non-contributory except as required under the terms of Indemnification. The City shall name Whatcom County and its officials, employees, agents, and volunteers as ADDITIONAL INSUREDS on their insurance policy.

The City, in a written contract with the designated contractor that provides senior services, shall require the designated contractor to indemnify, defend, and hold harmless the County to the same extent as required in this Agreement.

Additionally, the City shall require the designated contractor to carry the insurance of Commercial General Liability per occurrence of \$1,000,000.00 or greater and vehicle insurance of \$1,000,000.00 or greater per occurrence. The Designated contractor's insurance shall name the City and Whatcom County and its officials, employees, agents, and volunteers as ADDITIONAL INSUREDS on the designated contractor's insurance policy. The designated contractor shall provide proof of these insurance requirements by submitting a Certificate of Liability with Endorsements to the City. The contracting organization's insurance shall waive all rights of Subrogation against the County and its insurance shall be primary and the County's insurance shall be non-contributory.

**9. TERMINATION:**

This Agreement may be terminated by either party upon one-hundred and twenty (120) days written notice, mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purpose of giving notice under this paragraph. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

**10. NONDISCRIMINATION:**

During the term of the Agreement, the CITY, or designated contractor, shall comply with all applicable Federal, State and local provisions with regard to hiring and employment practices, and providing program services.



In the event of the CITY'S noncompliance or refusal to comply with the above provisions, this Agreement may be rescinded, cancelled, or terminated in whole or in part without penalty to the COUNTY. The CITY shall, however, be given a reasonable time in which to cure such noncompliance.

**11. NEW CONTRACTOR**

Nothing herein shall prevent the City from entering into a contract with a different qualified contractor to perform the services described herein by the Lynden Council on Aging, or from performing said services itself.

**12. CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS:**

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 the Agreement shall not be considered a waiver of any prior or subsequent breach.

**13. SEVERABILITY:**

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

**14. 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.







# Whatcom County

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

## Agenda Bill Master Report

File Number: **AB2020-573**

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<b>File ID:</b>	AB2020-573	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/24/2020	<b>Entered by:</b>	SBatdorf@co.whatcom.wa.us		
<b>Department:</b>	Parks and Recreation Department	<b>File Type:</b>	Agreement		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an agreement between Whatcom County and the Whatcom Council on Aging for staffing and operation of the Bellingham Senior Activity Center, in the amount of \$123,748

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This two-year agreement provides funding to the Whatcom Council on Aging to staff and operate the Bellingham Senior Activity Center, including coordination of daily on-site operations, programming, enforcement of safety procedures, and management of volunteer opportunities. The funding consists of \$61,874 paid in both 2021 and 2022.

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Memorandum, Contract for Services



## MEMORANDUM

**TO:** County Executive Sidhu and Members of the Council

**FROM:** Michael McFarlane, Director 

**DATE:** November 23, 2020

**RE:** Contract for Services – Bellingham Senior Activity Center

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Enclosed are two (2) Contract for Services Agreement originals between Whatcom County Parks & Recreation Department and the Council on Aging for your review and signature.

The renewal of this contract will provide funding to the Whatcom Council on Aging to staff and operate the Bellingham Senior Activity Center. The Scope of Work for this agreement includes coordination of daily on-site operations, programming, enforcement of safety procedures, and management of volunteer opportunities.

The contract is included in the Parks Senior Services budget and will be funded by the General Fund in the amount of \$123,748; \$61,874 for each 2021 and 2022.

**WHATCOM COUNTY CONTRACT  
INFORMATION SHEET**

Whatcom County Contract No. \_\_\_\_\_

Originating Department:	Parks & Recreation
Division/Program: <i>(i.e. Dept, Division and Program)</i>	803000 Senior Services
Contract or Grant Administrator:	Michael McFarlane
Contractor's / Agency Name:	Whatcom Council on Aging
Is this a New Contract?    If not, is this an Amendment or Renewal to an Existing Contract?    Yes <input type="radio"/> No <input checked="" type="radio"/>	
Yes <input checked="" type="radio"/> No <input type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a))    Original Contract #: _____	
Does contract require Council Approval?    Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____	
Already approved?    Council Approved Date: _____    (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?    Contract _____ Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____    Cost Center: _____	
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 type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Goods and services provided due to an emergency	
<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 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): \$ <u>123,748</u>	Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b> <ol style="list-style-type: none"> <li>1. Exercising an option contained in a contract previously approved by the council.</li> <li>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.</li> <li>3. Bid or award is for supplies.</li> <li>4. Equipment is included in Exhibit "B" of the Budget Ordinance.</li> <li>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.</li> </ol>
This Amendment Amount: \$ _____	
Total Amended Amount: \$ <u>123,748</u>	
<b>Summary of Scope:</b>	
This contract provides the funding for the Council on Aging to staff and operate the Bellingham Senior Activity Center. Last year the center served 73,815 seniors. The Scope of Work for this agreement includes coordination of daily on-site operations, programming, enforcing safety procedures, and managing volunteer opportunities.	
Term of Contract: 2 years	Expiration Date: 12/31/2022

Contract Routing:	1. Prepared by: <u>Shannon Batdorf</u>	Date: <u>11/23/2020</u>
	2. Attorney signoff: <u>Brandon Waldron</u>	Date: <u>11/20/2020</u>
	3. AS Finance reviewed: <u>Marianne Caldwell</u>	Date: <u>11/23/2020</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: _____

**CONTRACT FOR SERVICES AGREEMENT  
BELLINGHAM SENIOR ACTIVITY CENTER STAFFING AND OPERATIONS**

Whatcom Council on Aging, hereinafter called **Contractor**, and Whatcom County, hereinafter referred to as **County**, agree and contract as set forth in this Agreement, including:

- General Conditions, pp. 3 to 8,
- Exhibit A (Scope of Work), pp. 9 to 11,
- Exhibit B (Compensation), pp. 12,
- Exhibit C (Certificate of Insurance & Endorsements).

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 1<sup>st</sup> day of January 1, 2021, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31<sup>st</sup> day of December, 2022.

The general purpose or objective of this Agreement is to: provide onsite staffing to assist in the operation of the Whatcom Council on Aging's Bellingham Senior Activity Program housed in the County owned Bellingham Senior Activity Center facility, 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 \$123,748. 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, 30.2 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 23 day of NOVEMBER, 2020

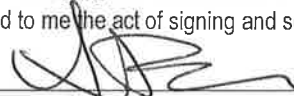
**CONTRACTOR:**

COUNCIL ON AGING

  
Chris Orr, Executive Director

STATE OF WASHINGTON            )  
  ) ss.  
COUNTY OF WHATCOM         )

On this 23 day of November, 2020, before me personally appeared Chris Orr to me known to be the Executive Director of Council on Aging 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 4/27/2022.



**WHATCOM COUNTY:  
Recommended for Approval:**

\_\_\_\_\_  
Department Director

\_\_\_\_\_  
Date

11-23-20

**Approved as to form:**

Approved by email / B. Waldron 11/20/2020

\_\_\_\_\_  
Prosecuting Attorney

\_\_\_\_\_  
Date

**Approved:**

Accepted for Whatcom County:

By: \_\_\_\_\_

Satpal Sidhu, 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:**

Whatcom Council on Aging  
Bellingham Senior Activity Address:  
315 Halleck Street  
Bellingham, Washington, 98225

Mailing Address:  
315 Halleck Street  
Bellingham, Washington 98225

Contact Name: Chris Orr  
Contact Phone: 360.360.733.4030 ext. 1026  
Contact Email: corr@whatcomcoa.org



## GENERAL CONDITIONS

### 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, beyond county supplied custodian and/or work crews, or facilities, other than the Bellingham Senior Activity Center building and grounds will be furnished by the County, unless otherwise provided for in the Agreement.

### 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.

### 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 thirty (30) days of the mailing of the notice, whichever occurs first. If the contract is terminated by default, the Contractor shall not be entitled to receive any further payments under the contract until all work called for has been fully performed.

### 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 continuation of the programs covered by this Agreement is no longer in the best interests of the County, the County may summarily terminate this Agreement in whole, notwithstanding any other termination provision of this Agreement. Termination under this section shall be effective upon written notice as specified herein, or within thirty (30) days of the mailing of the notice, whichever occurs first.

### 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 according to the Scope of Work in Exhibit A, 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 of the County's Administrative Officer determines that the Contractor has failed to perform any obligations under this Agreement within the times set forth in this Agreement, then the County may withhold from amount 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 amount 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 Dispute 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 the amounts due or to become due to the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to the Contractor by reason of the good faith withholding by the County under this clause.

23.1 Labor Standards:

The Contractor agrees to comply with all applicable local, state and federal requirements laws.

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 on an IRS Form 990, 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 accessible and made available to the County.

Public Records Act. This Agreement and all public records associated with this Agreement shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or

proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

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 the contract termination, and shall make them available for such review, within Whatcom County, State of Washington, upon request.

34.1 Proof of Insurance:

The Contractor is required to meet the following Insurance Coverage Requirements for the duration of this contract.

Commercial General Liability Insurance	
Property Damage	\$500,000 per occurrence
General Liability and Bodily Injury	\$1,000,000 per occurrence
Annual Aggregate	\$2,000,000

At least as broad as ISO form CG 00 01 or the equivalent, which coverage shall include personal injury, bodily injury and property damage for Premises Operations, Products and Completed Operations, Personal/Advertising Injury, Contractual Liability, Independent Contractor Liability, medical payments and Stop Gap/Employer's Liability. Coverage shall not exclude or contain sub-limits less than the minimum limits required, unless approved in writing by the County.

Contractor shall maintain Workers Compensation Insurance as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Contractor's employees, agents, and volunteers eligible for such coverage under the Industrial Insurance Act.  
Fraud Insurance covering employees

Comprehensive Automobile Liability	
	\$1,000,000 minimum, per occurrence
	\$2,000,000 minimum, annual aggregate

Contractor shall provide auto liability coverage for owned, non-owned and hired autos using ISO Business Auto Coverage form CA 00 01 or the exact equivalent with a limit of no less than \$1,000,000 per accident. If Contractor owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

A certificate of such insurance, with attached endorsement providing proof of all required insurance provisions, including Contractor's insurance must name the County, officials, employees, agents and volunteers, as additional insureds on this contract; Contractor's insurance is primary and County's insurance in non-contributory. The insurance policy shall provide a waiver of subrogation with respect to each insurance policy maintained under this contract. Proof of said insurance is attached hereto as Exhibit "C". Contractor shall maintain in effect all insurance coverages required under this Agreement, at Contractor's sole expense and with insurance carriers licensed to do business in the State of Washington in which the Project is located and having a current A.M. Best rating of no less than A-, unless another A.M. Best rating is specifically accepted by the County in writing and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. The Contractor must provide a Certificate of Insurance and Endorsements which identifies clearly and readily proof of insurance as required under this Agreement, including the endorsements

that the County, employees, agents and volunteers are named additional insureds on the Contractor's policy; the Contractor's insurance is primary and the County's insurance is non-contributory; and the waiver of subrogation. Coverage limits shall be the minimum

The Contractor shall provide annual proof of insurance to the County. The County shall not be obligated to review such certificates, endorsements, or other evidence of insurance, or to advise Contractor of any deficiencies in such documents, and receipt thereof shall not relieve Contractor from, nor be deemed a waiver of the County's right to enforce, the terms of Contractor's obligations hereunder. The Contractor agrees Contractor's insurance obligations shall survive the completion or termination of this Contract for a minimum period of three years.

34.3 Indemnification by Contractor:

To the fullest extent permitted by law, the Contractor (also identified as Provider) agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which 1) are caused in whole or in part by any act or omission, negligent or otherwise, of the Provider, its employees, agents or volunteers or Provider's subcontractors and their employees, agents or volunteers; or 2) are directly or indirectly arising out of, resulting from, or in connection with performance of this Agreement; or 3) are based upon the Provider's or its subcontractors' use of, presence upon or proximity to the property of the County, or 4) Provider's breach of this Agreement. This indemnification obligation of the Provider shall not apply in the limited circumstance where the claim, damage, loss or expense is caused by the sole negligence of the County. This indemnification obligation of the Provider shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Provider hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the Provider are a material inducement to County to enter into this Agreement, are reflected in the Provider's compensation, and have been mutually negotiated by the parties.

The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of Provider's indemnity obligations under this Agreement.

The Provider agrees all Provider's indemnity obligations shall survive the completion, expiration or termination of this Agreement.

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, veteran status or any other protected classes. 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, veteran status or any other protected classes, 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, veteran status or any other protected classes, 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, creed, religion, sex national origin, sexual orientation, age, marital status, disability, veteran status, or any other protected classes.

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, veteran status or any other protected classes; 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 based on color, creed, religion, natural origin, sex, age, marital status, sexual orientation, disability, veteran status or any other protected classes.

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:

Michael McFarlane, Director

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.*

38.3 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](http://www.uscis.gov)

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.

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:

42.2

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), but shall not have the power to award punitive damages. All costs, expenses and attorney's fees for arbitration shall be at each party's own expense, unless agreed otherwise in writing by both parties. 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. The parties shall equally share in the cost of the mediator or arbitrators fees and expenses.

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

Contractor will be required to staff and open the Bellingham Senior Activity Center at a minimum of Monday through Friday 8:00 a.m. to 4:30 p.m., except for holidays and during inclement weather. Any change in these hours of operation will need to be coordinated with the County Parks & Recreation Department. Contractor will have building access on Mondays, Wednesdays, Thursdays and Fridays from 7:00 a.m. to 6:00 p.m. and on Tuesdays from 7:00 a.m. to 9:00 p.m. for programs that occur outside of normal operating hours. Contractor will also have building access on Saturdays from 5:00 a.m. to 3:00 p.m. for programs and activities. In addition Contractor may offer additional hours of operation and duties that they feel are necessary to effectively operate the Bellingham Senior Activity Center. Additional hours of operation will need to be coordinated with the County Parks & Recreation Department so as not to interfere with other scheduled events. Contractor will be expected to fulfill the following duties and responsibilities.

- A. Daily On-site Operations during the hours of 8:00 a.m. to 4:30 p.m. , Monday through Friday
  - Open, close and lock the facility
  - Schedule the use of the Center space for all programs
  - Perform set-up and take-down of furniture and equipment for daily programs and special events
  - Perform limited custodial duties when the county provided staff person is not available for up to 10 days of intermittent absences, and provide contracted custodial services (3 hours / Day) for up to four weeks for longer term custodial absences for vacation and sick leave
  - Immediately report in writing and verbally any building and grounds maintenance problems or unsafe conditions to the County Parks & Recreation Department
  - Oversee use of the building and ensure activities are conducted in a safe organized manner
  
- B. Develop and conduct center programming
  - Develop a variety of healthy lifestyle and educational programs, along with other activities of interest to older adults
  - Develop a senior gardening program on Bellingham Senior Activity Center property with the program operation plan being approved annual by the Parks and Recreation Operations Manager
  - Provide daily dining room assistance for the Council on Aging Nutrition Program
  - Prepare and distribute a monthly schedule of center programs and activities that also promotes the Bellingham Senior Activity Center
  - Establish a process whereby participants provide input on desire programming and feedback regarding existing programming at the Bellingham Senior Activity Center
  
- C. Implement and enforce safety procedures for:
  - Inclement weather
  - Unsafe conditions on the center grounds and parking lot
  - Closing the facility when necessary in conjunction with other Council on Aging Programs. Notify the County Parks & Recreation Department
  - Fire and emergency evacuation plans
  - Conducting evacuation drills as recommended by the Fire Department and in conjunction with other Council on Aging Programs.
  - A code of Conduct for the Center
  - Resolving participant behavior issues
  - Responding to accidents and medical emergencies
  - Reporting and documenting accidents and incidents and providing copies of such to the County Parks & Recreation Department
  
- D. Coordinate volunteer activities in support of Center operations. This includes the following:
  - Maintaining existing and develop new volunteer programs as appropriate and actively involve participants in the operation of the Bellingham Senior Activity Center
  - Developing volunteer job descriptions to accommodate programming needs
  - Recruit, train, schedule and supervise volunteers
  - Conduct Criminal Background Checks on prospective volunteers using the State of Washington WATCH Program
  - Contractor shall arrange and provide for volunteer insurance coverage
  
- E. Submit the following reports to the County Parks & Recreation Department:



- Monthly attendance Reports
  - Monthly Volunteer Reports
  - Annual Financial Reports documenting the expenditure of Whatcom County contracted funds
  - Meet with the County Parks & Recreation Department on a semi-annual basis to evaluate how the service contract is working
  - Regularly review and respond to any County incident reports regarding participants or Contractor staff
  - Work cooperatively with County staff and report any staff behavior issues to the County Parks & Recreation Operations Manager.
- F. Contractor is responsible for managing Contractor personnel and for:
- Paying employee payroll and benefits as well as maintaining proper records
  - Ensuring that employees are properly screened through the State of Washington WATCH program and trained
  - Resolving staff behavior issues.
  - Comply with Federal, State and local laws
- G. Contractor will maintain the insurance coverage required in section 34 Proof of Insurance and provide annually a Certificate of Insurance and Endorsements to the County Parks & Recreation Department covering the terms and requirements in this Agreement.

**EXHIBIT "B"**  
**COMPENSATION**

Whatcom County Parks & Recreation Department will provide \$61,874 for the twelve (12) month period January 1, 2021 through December 31, 2021, and \$61,874 for the twelve (12) month period January 1, 2022 through December 31, 2022.

Whatcom Council on Aging shall invoice Whatcom County Parks & Recreation Department by the last working day of each month during the term of this Agreement for services rendered as outlined in Exhibit "A" Scope of Work. Whatcom County Parks & Recreation Department shall reimburse the Whatcom Council on Aging for twelve (12) equal payments in 2021 and twelve (12) equal payments in 2022. Reimbursements may be reduced on a pro-rated basis if the Senior Center programming is discontinued for an extended period due to emergencies or natural disasters.

**EXHIBIT "C"**  
**CERTIFICATE OF INSURANCE & EDORSEMENTS**

**Non Profit Insurance Program  
CERTIFICATE OF COVERAGE**

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONVERTS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF COVERAGE 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 be endorsed. If SUBROGRATION IS WAIVED, subject to the terms and conditions of the policy, certain coverage may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b>  Clear Risk Solutions 451 Diamond Drive Ephrata, WA 98823	<b>COMPANIES AFFORDING COVERAGE</b>  <b>GENERAL LIABILITY</b> American Alternative Insurance Corporation, et al.  <b>AUTOMOBILE LIABILITY</b> American Alternative Insurance Corporation, et al.  <b>PROPERTY</b> American Alternative Insurance Corporation, et al.  <b>MISCELLANEOUS PROFESSIONAL LIABILITY</b> Princeton Excess and Surplus Lines Insurance Company
<b>INSURED</b>  Whatcom County Council on Aging 315 Halleck Street Bellingham, WA 98225	

**COVERAGES**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE COVERAGE PERIOD INDICATED, NOT WITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF 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.

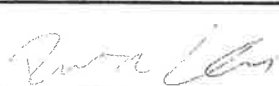
TYPE OF INSURANCE	POLICY NUMBER	POLICY EFF DATE	POLICY EXP DATE	DESCRIPTION	LIMITS
<b>GENERAL LIABILITY</b>					
COMMERCIAL GENERAL LIABILITY	N1-A2-RL-0000013-10	6/01/2020	6/01/2021	PER OCCURRENCE	\$5,000,000
OCCURRENCE FORM INCLUDES STOP GAP				PER MEMBER AGGREGATE	\$10,000,000
				PRODUCT-COMP/OP	\$5,000,000
				PERSONAL & ADV. INJURY	\$5,000,000
(LIABILITY IS SUBJECT TO A \$100,000 SIR PAYABLE FROM PROGRAM FUNDS)				ANNUAL POOL AGGREGATE	\$50,000,000
<b>AUTOMOBILE LIABILITY</b>					
ANY AUTO	N1-A2-RL-0000013-10	6/01/2020	6/01/2021	COMBINED SINGLE LIMIT	\$5,000,000
(LIABILITY IS SUBJECT TO A \$100,000 SIR PAYABLE FROM PROGRAM FUNDS)				ANNUAL POOL AGGREGATE	NONE
<b>PROPERTY</b>					
	N1-A2-RL-0000013-10	6/01/2020	6/01/2021	ALL RISK PER OCC EXCL EQ & FL	\$75,000,000
				EARTHQUAKE PER OCC	Excluded
				FLOOD PER OCC	Excluded
(PROPERTY IS SUBJECT TO A \$100,000 SIR PAYABLE FROM PROGRAM FUNDS)				ANNUAL POOL AGGREGATE	NONE
<b>MISCELLANEOUS PROFESSIONAL LIABILITY</b>					
	N1-A3-RL-0000060-10	6/01/2020	6/01/2021	PER CLAIM	\$5,000,000
(LIABILITY IS SUBJECT TO A \$100,000 SIR PAYABLE FROM PROGRAM FUNDS)				ANNUAL POOL AGGREGATE	\$40,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / SPECIAL ITEMS**

Regarding contract for staffing to assist Whatcom County Council on Aging's Bellingham Senior Activity Program. Whatcom County, its officials, employees and agents are named as Additional Insureds regarding this contract only and are subject to policy terms, conditions, and exclusions. NPIP's retained limit is primary and non-contributory. Waiver of subrogation endorsement is attached.

**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.

<b>CERTIFICATE HOLDER</b>  Whatcom County 311 Grand Ave Bellingham, WA 98225	<b>AUTHORIZED REPRESENTATIVE</b>  
--	---

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION  
(GENERAL LIABILITY)

Named Insured Non Profit Insurance Program (NPIP)	
Policy Number N1-A2-RL-0000013-10	Endorsement Effective 6/1/2020

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

This endorsement modifies insurance provided under the following:

GENERAL LIABILITY COVERAGE PART

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated above.  
Schedule

Person or Organization (Additional Insured): As Per Schedule on file with Clear Risk Solutions, Underwriting Administrator

Whatcom County  
311 Grand Ave  
Bellingham, WA 98225

Regarding contract for staffing to assist Whatcom County Council on Aging's Bellingham Senior Activity Program. Whatcom County, its officials, employees and agents are named as Additional Insureds regarding this contract only and are subject to policy terms, conditions, and exclusions. NPIP's retained limit is primary and non-contributory. Waiver of subrogation endorsement is attached.

A. With respects to the General Liability Coverage Part only, the definition of **Insured** in the Liability Conditions, Definitions and Exclusions section of this policy is amended to include as an **Insured** the Person or Organization shown in the above Schedule. Such Person or Organization is an **Insured** only with respect to liability for **Bodily Injury, Property Damage, or Personal and Advertising Injury** caused in whole or in part by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In performance of your ongoing operations; or
2. In connection with your premises owned or rented to you.

B. The Limits of Insurance applicable to the additional **Insured** are those specified in either the:

1. Written contract or written agreement; or
2. Declarations for this policy,

whichever is less. These Limits of Insurance are inclusive and not in addition to the Limits Of Insurance shown in the Declarations.

All other terms and conditions remain unchanged.

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**AMERICAN ALTERNATIVE  
INSURANCE COMPANY**

**WAIVER OF TRANSFER OF RIGHTS AND RECOVERY  
AGAINST OTHERS TO US**

Named Insured <b>Non Profit Insurance Program (NPIP)</b>	
Policy Number N1-A2-RL-0000013-10	Endorsement Effective 6/1/2020

**This endorsement modifies insurance provided under the following:**

GENERAL LIABILITY COVERAGE PART

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated above.

**Schedule**

Name of Person or Organization: As Per Schedule on file with Clear Risk Solutions, Underwriting Administrator

Whatcom County  
311 Grand Ave  
Bellingham, WA 98225

The Our Right To Recovery Condition in the Liability Conditions, Definitions and Exclusions form is amended by addition of the following:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or **Your Work** done under contract with that person or organization. This waiver only applies to the person or organization shown in the Schedule above; however, this waiver does not apply if the injury or damage is due to the sole negligence of such scheduled person or organization.

All other terms and conditions remain unchanged.

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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: AB2020-574

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<b>File ID:</b>	AB2020-574	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/24/2020	<b>Entered by:</b>	JThomson@co.whatcom.wa.us		
<b>Department:</b>	Health Department	<b>File Type:</b>	Agreement		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an agreement between Whatcom County and Pioneer Human Services to lease a portion of the Crisis Stabilization Center, in the amount of \$24,500

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Memo, Lease Agreement



## **MEMORANDUM**

**TO:** Satpal Sidhu, County Executive

**FROM:** Erika Lautenbach, Director

**RE:** Pioneer Human Services – Crisis Stabilization Center Lease Agreement

**DATE:** September 28, 2020

---

Attached is a lease agreement between Whatcom County and Pioneer Human Services for your review and signature.

- **Background and Purpose**

This lease agreement is for a treatment unit and associated common spaces within the newly-constructed Crisis Stabilization Center. Pioneer Human Services will operate the Withdrawal Management and Food Preparation services at the facility, located at 2026 Division St, Bellingham, WA 98226. Rent for the period of 12/15/20 – 12/31/2020 will be charged at \$500 as Pioneer prepares to open the facility.

- **Funding Amount and Source**

Rent will be charged at \$2,000/month. Utilities are not included in this contract and will be paid by Pioneer Human Services directly to the utility companies. This income is included in the 2020 and 2021 budgets. Council approval is required because this is a lease agreement.

Please contact Kathleen Roy at extension #6007 if you have any questions regarding this agreement.

Encl.



<b>WHATCOM COUNTY CONTRACT INFORMATION SHEET</b>				Whatcom County Contract No.	
Originating Department:			85 Health		
Division/Program: (i.e. Dept. Division and Program)			8550 Human Services / 855020 Mental Health		
Contract or Grant Administrator:			Perry Mowery		
Contractor's / Agency Name:			Pioneer Human Services		
Is this a New Contract?		If not, is this an Amendment or Renewal to an Existing Contract?		Yes	No
Yes X	No	If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:			
Does contract require Council Approval?		Yes X	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?		If yes, grantor agency contract number(s):		CFDA#:	
Yes	No X				
Is this contract grant funded?		If yes, Whatcom County grant contract number(s):			
Yes	No X				
Is this contract the result of a RFP or Bid process?			Contract Cost Center:		
Yes X	No	If yes, RFP and Bid number(s):	19-05	675300/124116	
Is this agreement excluded from E-Verify?			No	Yes X	If no, include Attachment D Contractor Declaration form.
If YES, indicate exclusion(s) below:					
Professional services agreement for certified/licensed professional.					
X Contract work is for less than \$100,000.			Contract for Commercial off the shelf items (COTS).		
Contract work is for less than 120 days.			Work related subcontract less than \$25,000.		
Interlocal Agreement (between Governments).			Public Works - Local Agency/Federally Funded FHWA.		
Contract Amount:(sum of original contract amount and any prior amendments):			Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except <b>when</b> : 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.		
\$	24,500				
This Amendment Amount:					
\$					
Total Amended Amount:					
\$					
Summary of Scope: The purpose of this agreement is to lease a portion of the County-owned Crisis Stabilization Center to Pioneer Human Services for withdrawal management services and food preparation services. The location of the Crisis Stabilization Center is 2026 Division St, Bellingham, WA 98226					
Term of Contract:		12.5 Months		Expiration Date: 12/31/2021	
Contract Routing:		1. Prepared by: PM		Date:	11/24/2020
		2. Attorney signoff:		Date:	
		3. AS Finance reviewed: M Caldwell		Date:	11/24/2020
		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:	





DEPARTMENT APPROVAL

\_\_\_\_\_  
Anne Deacon, Human Services Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Erika Lautenbach, Director

\_\_\_\_\_  
Date

WHATCOM COUNTY

\_\_\_\_\_  
SATPAL SIDHU  
County Executive

STATE OF WASHINGTON     )  
  )  
COUNTY OF WHATCOM     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me personally appeared Satpal Sidhu, to me known to be the Executive of Whatcom County and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington,  
residing at Bellingham.

My Commission expires: \_\_\_\_\_

APPROVED AS TO FORM

\_\_\_\_\_  
Royce Buckingham, Deputy Prosecuting Attorney

## GENERAL CONDITIONS

### **Series 00-09: Provisions Related to Scope and Nature of Lease**

#### 0.1 Nature of Lease

The purpose of the lease is to provide a location for the provision of withdrawal management and food preparation services to adults in need of this service. Services must be available and operational 24 hours per day, 365 days per year. The Lessee will have dedicated space within the Crisis Stabilization Center, and will share common areas with the co-located tenant who provides mental health crisis stabilization services.

#### 0.2 Property Description:

County, in consideration of the covenants and conditions herein set forth to be performed by Lessee, does hereby demise and let unto Lessee, the mental health crisis stabilization area and associated common areas of the following-described property: Whatcom County Crisis Stabilization Center located at 2026 Division St, Bellingham, WA 98226.

#### 0.3 Condition of Property:

Lessee has inspected the above-described property and accepts the premises in the condition prevailing on the date of the execution of this Lease.

#### 0.4 Use of Premises:

Lessee, in consideration of the granting of this lease by County for the benefit of the citizens of Whatcom County, hereby understands and agrees that the only type of use or activity to be conducted upon the leased premises by Lessee shall be that of withdrawal management services, food preparation services and other ancillary behavioral health interventions. Lessee agrees to operate a withdrawal management program licensed under WAC 246-341 or, if updated, current relevant WAC/RCW requirements. Failure of Lessee to perform this type of business within the Center, or cessation of such services, or carrying on other uses or activities without first obtaining a lease modification with County's written approval, shall constitute cause for default under the terms of this lease.

In consideration of the co-location of withdrawal management/food services, and mental health crisis stabilization services at the Crisis Stabilization Center, Lessee agrees to develop and enter into a mutual Memo of Understanding (MOU) with the mental health stabilization services Provider that includes division of utilities costs, food service, custodial services, reception services, smoking policies and establishment of a single, central telephone access number for the public and First Responders. A copy of the executed MOU will be provided to the County within 30 days of occupancy and an updated MOU will be provided annually.

### **Series 10-19: Provisions Related to Term and Termination**

#### 10.1 Term:

This lease shall commence on December 1, 2020 through December 31, 2021, unless sooner terminated according to this agreement. Lessee has an option for renewal of the lease annually for an additional four (4) years following completion of initial year, providing that terms under 0.4 are met.

#### 11.1 Termination for Default:

If the Lessee defaults by failing to perform any of the obligations of this lease 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 Lessee in the U.S. mail, first class postage prepaid, terminate the lease. Termination shall be effective as provided in section 11.4 below. 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 Lessee. The Lessee shall bear any extra expenses incurred by the County in terminating the lease, including all costs for any damage sustained, or which may be sustained by the County by reason of such default.

#### 11.4 Termination of Lease:

This lease shall terminate as follows:

- A. At the expiration of the term of this lease.

- B. Upon the failure of Lessee to correct violations of any condition of this lease after 90 days written notice from the County.
- C. Upon the failure of Lessee to correct violations, after 90 days written notice from the County, of any condition of the Memo of Understanding outlining basic Service Agreement components of providing withdrawal management services.
- D. It is mutually agreed that Lease can be cancelled and terminated by either party provided that written notice of such cancellation and termination shall have been given at least ninety (90) days prior to the effective date of termination.

**Series 30-39: Provisions Related to Administration of Agreement**

30.2 Sub-lease:

Lessee may sublet a portion of the leased facility to other organizations providing compatible services upon written approval of County.

33.1 Right to Review:

This lease is subject to review by any Federal, State, or County auditor.

34.1 Proof of Insurance:

The Lessee 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
- Professional Liability insurance - \$1,000,000 occurrence/\$1,000,000 aggregate

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.

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 Lease:

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 County hereby appoints, and the Lessee 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:

Perry Mowery, Human Services Supervisor  
 Whatcom County Health Department  
 509 Girard Street  
 Bellingham, WA 98225  
 360-778-6059  
[PMowery@co.whatcom.wa.us](mailto:PMowery@co.whatcom.wa.us)

37.2 Laws, Permits, and Regulations:

Lessee agrees to comply with all applicable federal, state, county, or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals. Lessee agrees to conform to and abide by all lawful rules, codes, laws and regulations in connection with its use of said premises and the construction of improvements and operation of Lessee's business thereon and not to permit said premises to be used in violation of any lawful rule, code, law, regulation or other authority.

**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.

40.3 Disposition of Improvements at End of Lease:

Lessee shall have the right to remove all equipment, personal property and improvements which may have been placed upon the premises by Lessee during the period of this lease provided that the same are removed before the lease is terminated and while the lease is in good standing. Any improvements not removed from the premises at the conclusion of the lease shall revert to the County. Leased premises shall be restored by Lessee to conditions prevailing at the time of commencement of the lease, normal wear excepted.

40.4 Utilities:

Utilities are the responsibility of the Lessee through direct contract with utilities companies. County will have no involvement with utilities contracts as a provision of this lease.

40.5 Janitorial Services:

Janitorial services will be provided for by Lessee. Lessee may enter into an agreement with co-tenant to provide some or all of these services. Services shall comply with standards established by Whatcom County Facilities Management. Failure of Lessee to meet these standards will result in County performing services and billing the cost of such service to Lessee.

Lessee shall be responsible for routine daily cleaning and housekeeping in the Crisis Stabilization Center and shall on a continuing basis maintain high standards for sanitation as specified by Whatcom County Facilities Management. Lessee shall be responsible for providing all cleaning supplies, light bulbs, paper products, and any other consumable supplies to be used inside the Center.

Inspections of the Center by County will occur as deemed necessary by County. Any deficiencies in housekeeping noted during such inspections or at any other time will be corrected by Lessee in a timely manner. Failure of Lessee to respond in a timely manner will result in County performing services and billing the cost of such service to Lessee. For the purposes of this lease "timely manner" means 5 days or less unless a different duration is mutually agreed to.

Lessee shall be responsible for depositing all trash and garbage in the area marked for such purpose and providing for its removal on a regular basis. Lessee shall be responsible for the proper disposal of any bio-hazardous wastes in the Center.

40.6 Maintenance of Facilities:

A. County shall maintain the Crisis Stabilization Center in good repair and tenantable condition during the term of this Lease, except in the case of damage caused by the Lessee, its clients, agents, or employees. For the purposes of maintaining the Center, the County reserves the right at reasonable times to enter and inspect the Center and to make any necessary repairs to the building. Lessee agrees to reimburse County for damages caused by its employees, contractors, licensees, invitees, clients and agents. This paragraph shall not be construed as making Lessee responsible for the repair of normal wear and tear.

B. County shall perform preventive maintenance on the Facility throughout the year. Examples include but are not limited to air filter changes; heating unit checks, electrical and plumbing system checks.

C. Corrective maintenance is performed by County upon request by Lessee to restore facility components to operational condition. Lessee shall submit a work order to request corrective maintenance.

D. County shall maintain landscaping and parking lot.

E. Furniture and equipment that is not part of the structure of the building is the Lessee's responsibility for upkeep and replacement.

40.7 Access:

County reserves the right of access to the premises for the purpose of securing compliance with the terms of this lease.

- 40.8 Commit No Waste:  
Lessee agrees not to allow conditions of waste and refuse to exist on the above-described premises and to keep the premises in a neat, clean and orderly condition and to be responsible for all damages caused to the leased premises by Lessee, its agents or any third party on the premises at the instance of Lessee.
- 40.9 Alterations:  
No alterations may be made to the Crisis Stabilization Center without written County authorization. County will perform or contract for any alterations. All improvements shall be made at the sole cost and expense of the Lessee.
- 40.10 Signs:  
Lessee agrees that all signs will be designed and placed in accordance with County policy.
- 40.11 Hazardous Substances:  
Lessee shall not keep on or about the premises, for use, disposal, treatment, generation, storage or sale any substances which are hazardous, toxic, harmful, or dangerous, and/or which are subject to regulation as hazardous or toxic, dangerous, or as a pollutant by any federal, state, or local law, regulation, statute, or ordinance (collectively referred to herein as "hazardous substances"). Lessee shall be fully liable to County and shall indemnify, defend and save harmless the County and its officials and employees, with respect to any and all damages, costs, fees (including attorneys' fees and costs), civil and criminal penalties, or clean-up costs assessed against or imposed as a result of Lessee's use, disposal, generation, storage, or sale of hazardous substances or that of Lessee's employees, agents or invitees. Breach of this provision shall entitle County to terminate this Lease. This provision shall not apply to properly stored cleaning or office supplies.
- 41.1 Severability:  
If any term or condition of this lease 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 lease are declared severable.
- 41.2 Waiver:  
Waiver of any breach or condition of this lease shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this lease 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 Lessee 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.
- 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 if utilized, 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, 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"**  
**(INSURANCE)**



# Whatcom County

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

## Agenda Bill Master Report

File Number: **AB2020-575**

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<b>File ID:</b>	AB2020-575	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/24/2020	<b>Entered by:</b>	JThomson@co.whatcom.wa.us		
<b>Department:</b>	Health Department	<b>File Type:</b>	Agreement		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into an agreement between Whatcom County and Compass Health to lease a portion of the Crisis Stabilization Center, in the amount of \$24,000 annually

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Memo, Lease Agreement





**MEMORANDUM**

**TO:** Satpal Sidhu, County Executive

**FROM:** Erika Lautenbach, Director

**RE:** Compass Health – Crisis Stabilization Center Lease Agreement

**DATE:** July 14, 2020

---

Attached is a lease agreement between Whatcom County and Compass Health for your review and signature.

▪ **Background and Purpose**

This lease agreement is for a treatment unit and associated common spaces within the newly-constructed Crisis Stabilization Center. Compass Health will operate the Triage /Mental Health Crisis Stabilization services at the facility, located at 2026 Division St, Bellingham, WA 98226.

▪ **Funding Amount and Source**

Rent will be charged at \$2,000/month for an annual amount of \$24,000. Utilities are not included in this contract and will be paid by Compass Health directly to the utility companies. This income is included in the 2021 budget. Council approval is required because this is a lease agreement.

Please contact Kathleen Roy at extension #6007 if you have any questions regarding this agreement.

Encl.



<b>WHATCOM COUNTY CONTRACT INFORMATION SHEET</b>		Whatcom County Contract No.																																					
Originating Department:		85 Health																																					
Division/Program: (i.e. Dept. Division and Program)		8550 Human Services / 855020 Mental Health																																					
Contract or Grant Administrator:		Kathleen Roy																																					
Contractor's / Agency Name:		Compass Health																																					
Is this a New Contract? Yes X      No		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 X      No      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      No X		If yes, grantor agency contract number(s): _____ CFDA#: _____																																					
Is this contract grant funded? Yes      No X		If yes, Whatcom County grant contract number(s): _____																																					
Is this contract the result of a RFP or Bid process? Yes X      No		Contract Cost Center: 19-06      124116																																					
Is this agreement excluded from E-Verify? No      Yes X		If no, include Attachment D Contractor Declaration form.																																					
If YES, indicate exclusion(s) below:																																							
Professional services agreement for certified/licensed professional.																																							
X Contract work is for less than \$100,000.		Contract for Commercial off the shelf items (COTS).																																					
Contract work is for less than 120 days.		Work related subcontract less than \$25,000.																																					
Interlocal Agreement (between Governments).		Public Works - Local Agency/Federally Funded FHWA.																																					
Contract Amount:(sum of original contract amount and any prior amendments):		Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except <b>when</b> :																																					
\$ 24,000																																							
This Amendment Amount:																																							
\$																																							
Total Amended Amount:																																							
\$		<ol style="list-style-type: none"> <li>Exercising an option contained in a contract previously approved by the council.</li> <li>Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance.</li> <li>Bid or award is for supplies.</li> <li>Equipment is included in Exhibit "B" of the Budget Ordinance</li> <li>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.</li> </ol>																																					
Summary of Scope: The purpose of this agreement is to lease a portion of the County-owned Crisis Stabilization Center to Compass Health for mental health crisis stabilization Services. The location of the Crisis Stabilization Center is 2026 Division St, Bellingham, WA 98226																																							
Term of Contract:		1 Year      Expiration Date: 12/31/2021																																					
Contract Routing:		<table border="1"> <tr> <td>1. Prepared by:</td> <td>JT</td> <td>Date:</td> <td>11/24/2020</td> </tr> <tr> <td>2. Attorney signoff:</td> <td></td> <td>Date:</td> <td></td> </tr> <tr> <td>3. AS Finance reviewed:</td> <td>M Caldwell</td> <td>Date:</td> <td>11/24/2020</td> </tr> <tr> <td>4. IT reviewed (if IT related):</td> <td></td> <td>Date:</td> <td></td> </tr> <tr> <td>5. Contractor signed:</td> <td></td> <td>Date:</td> <td></td> </tr> <tr> <td>6. Submitted to Exec.:</td> <td></td> <td>Date:</td> <td></td> </tr> <tr> <td>7. Council approved (if necessary):</td> <td></td> <td>Date:</td> <td></td> </tr> <tr> <td>8. Executive signed:</td> <td></td> <td>Date:</td> <td></td> </tr> <tr> <td>9. Original to Council:</td> <td></td> <td>Date:</td> <td></td> </tr> </table>		1. Prepared by:	JT	Date:	11/24/2020	2. Attorney signoff:		Date:		3. AS Finance reviewed:	M Caldwell	Date:	11/24/2020	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:	
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9. Original to Council:		Date:																																					



DEPARTMENT APPROVAL

\_\_\_\_\_  
Anne Deacon, Human Services Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Erika Lautenbach, Director

\_\_\_\_\_  
Date

WHATCOM COUNTY

\_\_\_\_\_  
SATPAL SIDHU  
County Executive

STATE OF WASHINGTON     )  
  )  
COUNTY OF WHATCOM     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me personally appeared Satpal Sidhu, to me known to be the Executive of Whatcom County and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington,  
residing at Bellingham.

My Commission expires: \_\_\_\_\_

APPROVED AS TO FORM

\_\_\_\_\_  
Royce Buckingham, Deputy Prosecuting Attorney

## GENERAL CONDITIONS

### **Series 00-09: Provisions Related to Scope and Nature of Lease**

#### 0.1 Nature of Lease

The purpose of the lease is to provide a location for the provision of mental health stabilization services to adults in need of this service. Services must be available and operational 24 hours per day, 365 days per year. The Lessee will have dedicated space within the Crisis Stabilization Center, and will share common areas with the co-located tenant who provides substance withdrawal management services.

#### 0.2 Property Description:

County, in consideration of the covenants and conditions herein set forth to be performed by Lessee, does hereby demise and let unto Lessee, the mental health crisis stabilization area and associated common areas of the following-described property: Whatcom County Crisis Stabilization Center located at 2026 Division St, Bellingham, WA 98226.

#### 0.3 Condition of Property:

Lessee has inspected the above-described property and accepts the premises in the condition prevailing on the date of initial occupancy.

#### 0.4 Use of Premises:

Lessee, in consideration of the granting of this lease by County for the benefit of the citizens of Whatcom County, hereby understands and agrees that the only type of use or activity to be conducted upon the leased premises by Lessee shall be that of mental health crisis stabilization and other ancillary behavioral health interventions. Lessee agrees to operate a Triage program licensed under WAC 246-341 or, if updated, current relevant WAC/RCW requirements. Failure of Lessee to perform this type of business within the Center, or cessation of such services, or carrying on other uses or activities without first obtaining a lease modification with County's written approval, shall constitute cause for default under the terms of this lease.

In consideration of the co-location of mental health crisis stabilization and withdrawal management services at the Crisis Stabilization Center, Lessee agrees to develop and enter into a mutual Memo of Understanding (MOU) with the withdrawal management/food service Provider that includes division of utilities costs, food service, custodial services, reception services, smoking policies and establishment of central telephone access number for the public and First Responders. A copy of the executed MOU will be provided to the County within 30 days of occupancy and an updated MOU will be provided annually.

### **Series 10-19: Provisions Related to Term and Termination**

#### 10.1 Term:

This lease shall commence on December 1, 2020 through December 31, 2021, unless sooner terminated according to this agreement. Lessee has an option for renewal of the lease annually for an additional four (4) years following completion of initial year, providing that terms under 0.4 are met.

#### 11.1 Termination for Default:

If the Lessee defaults by failing to perform any of the obligations of this lease 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 Lessee in the U.S. mail, first class postage prepaid, terminate the lease. Termination shall be effective as provided in section 11.4 below. 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 Lessee. The Lessee shall bear any extra expenses incurred by the County in terminating the lease, including all costs for any damage sustained, or which may be sustained by the County by reason of such default.

#### 11.4 Termination of Lease:

This lease shall terminate as follows:

- A. At the expiration of the term of this lease

- B. Upon the failure of Lessee to correct violations of any condition of this lease after 90 days written notice from the County.
- C. Upon the failure of Lessee to correct violations, after 90 days written notice from the County, of any condition of the Memo of Understanding outlining basic service agreement components of providing crisis stabilization services.
- D. It is mutually agreed that Lease can be cancelled and terminated by either party provided that written notice of such cancellation and termination shall have been given at least ninety (90) days prior to the effective date of termination.

**Series 30-39: Provisions Related to Administration of Agreement**

30.2 Sub-lease:

Lessee may sublet a portion of the leased facility to other organizations providing compatible services upon written approval of County.

33.1 Right to Review:

This lease is subject to review by any Federal, State, or County auditor.

34.1 Proof of Insurance:

The Lessee 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
- Professional Liability insurance - \$1,000,000 occurrence/\$1,000,000 aggregate

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.

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 Lease:

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 County hereby appoints, and the Lessee 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:

Perry Mowery, Human Services Supervisor  
 Whatcom County Health Department  
 509 Girard Street  
 Bellingham, WA 98225  
 360-778-6059  
[PMowery@co.whatcom.wa.us](mailto:PMowery@co.whatcom.wa.us)

37.2 Laws, Permits, and Regulations:

Lessee agrees to comply with all applicable federal, state, county, or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals. Lessee agrees to conform to and abide by all lawful rules, codes, laws and regulations in connection with its use of said premises and the construction of improvements and operation of Lessee's business thereon and not to permit said premises to be used in violation of any lawful rule, code, law, regulation or other authority.

**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.

40.3 Disposition of Improvements at End of Lease:

Lessee shall have the right to remove all equipment, personal property and improvements which may have been placed upon the premises by Lessee during the period of this lease provided that the same are removed before the lease is terminated and while the lease is in good standing. Any improvements not removed from the premises at the conclusion of the lease shall revert to the County. Leased premises shall be restored by Lessee to conditions prevailing at the time of commencement of the lease, normal wear excepted.

40.4 Utilities:

Utilities are the responsibility of the Lessee through direct contract with utilities companies. County will have no involvement with utilities contracts as a provision of this lease.

40.5 Janitorial Services:

Janitorial services will be provided for by Lessee. Lessee may enter into an agreement with co-tenant to provide some or all of these services. Services shall comply with standards established by Whatcom County Facilities Management. Failure of Lessee to meet these standards will result in County performing services and billing the cost of such service to Lessee.

Lessee shall be responsible for routine daily cleaning and housekeeping in the Crisis Stabilization Center and shall on a continuing basis maintain high standards for sanitation as specified by Whatcom County Facilities Management. Lessee shall be responsible for providing all cleaning supplies, light bulbs, paper products, and any other consumable supplies to be used inside the Center.

Inspections of the Center by County will occur as deemed necessary by County. Any deficiencies in housekeeping noted during such inspections or at any other time will be corrected by Lessee in a timely manner. Failure of Lessee to respond in a timely manner will result in County performing services and billing the cost of such service to Lessee. For the purposes of this lease "timely manner" means 5 days or less unless a different duration is mutually agreed to.

Lessee shall be responsible for depositing all trash and garbage in the area marked for such purpose and providing for its removal on a regular basis. Lessee shall be responsible for the proper disposal of any bio-hazardous wastes in the Center.

40.6 Maintenance of Facilities:

A. County shall maintain the Crisis Stabilization Center in good repair and tenantable condition during the term of this Lease, except in the case of damage caused by the Lessee, its clients, agents, or employees. For the purposes of maintaining the Center, the County reserves the right at reasonable times to enter and inspect the Center and to make any necessary repairs to the building. Lessee agrees to reimburse County for damages caused by its employees, contractors, licensees, invitees, clients and agents. This paragraph shall not be construed as making Lessee responsible for the repair of normal wear and tear.

B. County shall perform preventive maintenance on the Facility throughout the year. Examples include but are not limited to air filter changes; heating unit checks, electrical and plumbing system checks.

C. Corrective maintenance is performed by County upon request by Lessee to restore facility components to operational condition. Lessee shall submit a work order to request corrective maintenance.

D. County shall maintain landscaping and parking lot.

E. Furniture and equipment that is not part of the structure of the building is the Lessee's responsibility for upkeep and replacement.

40.7 Access:

County reserves the right of access to the premises for the purpose of securing compliance with the terms of this lease.

40.8 Commit No Waste:

Lessee agrees not to allow conditions of waste and refuse to exist on the above-described premises and to keep the premises in a neat, clean and orderly condition and to be responsible for all damages caused to the leased premises by Lessee, its agents or any third party on the premises at the instance of Lessee.

40.9 Alterations:

No alterations may be made to the Crisis Stabilization Center without written County authorization. County will perform or contract for any alterations. All improvements shall be made at the sole cost and expense of the Lessee.

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Lessee agrees that all signs will be designed and placed in accordance with County policy.

40.11 Hazardous Substances:

Lessee shall not keep on or about the premises, for use, disposal, treatment, generation, storage or sale any substances which are hazardous, toxic, harmful, or dangerous, and/or which are subject to regulation as hazardous or toxic, dangerous, or as a pollutant by any federal, state, or local law, regulation, statute, or ordinance (collectively referred to herein as "hazardous substances"). Lessee shall be fully liable to County and shall indemnify, defend and save harmless the County and its officials and employees, with respect to any and all damages, costs, fees (including attorneys' fees and costs), civil and criminal penalties, or clean-up costs assessed against or imposed as a result of Lessee's use, disposal, generation, storage, or sale of hazardous substances or that of Lessee's employees, agents or invitees. Breach of this provision shall entitle County to terminate this Lease. This provision shall not apply to properly stored cleaning or office supplies.

41.1 Severability:

If any term or condition of this lease 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 lease are declared severable.

41.2 Waiver:

Waiver of any breach or condition of this lease shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this lease 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 Lessee 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.

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 if utilized, 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, 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"**  
**(INSURANCE)**



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2020-576

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<b>File ID:</b>	AB2020-576	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/24/2020	<b>Entered by:</b>	JThomson@co.whatcom.wa.us		
<b>Department:</b>	Health Department	<b>File Type:</b>	Contract		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract between Whatcom County and Opportunity Council to operate the Whatcom Homeless Service Center, in the amount of \$796,701

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Memo to County Executive, Opportunity Council Whatcom Homeless Service Center Contract.pdf



**MEMORANDUM**

**TO:** Satpal Sidhu, County Executive  
**FROM:** Erika Lautenbach, Director  
**RE:** Opportunity Council – Whatcom Homeless Service Center Contract  
**DATE:** December 1, 2020

---

Attached is a contract between Whatcom County and Opportunity Council for your review and signature.

▪ **Background and Purpose**

The Whatcom Homeless Service Center (WHSC) provides coordinated entry for the homeless housing system. The WHSC makes referrals to partner agencies for housing case management services, cultivates and maintains relationships with local landlords, and serves as liaison for homeless housing activities to the network of service providers and other community stakeholders.

▪ **Funding Amount and Source**

Funding for this contract, in an amount not to exceed \$796,701 for the 01/01/2021 through 06/30/2021 contract period, is provided by the WA State Department of Commerce Consolidated Homeless Grant, the federal Emergency Solutions Grant-COVID (CFDA #14.231), HB 2060 Low-Income Housing Funds, local document recording fees, and the Veteran's Assistance Fund. These funds will be included in the 2021 budget. Council approval is required as funding exceeds \$40,000.

▪ **Differences from Previous Contract**

This is a new contract; however, funding for these services has been provided through previous contracts between Whatcom County and the Opportunity Council since 2008. This contract adds federal Emergency Solutions Grant-COVID funding for rental assistance and personnel to the contract that is currently in place (Whatcom County Contract #201611024). ESG-CV funding is intended to be used to prevent, prepare for, and respond to the Coronavirus pandemic, among individuals and families who are homeless or receiving homeless assistance. The Contractor maintains its determination as a sole source contractor for the services provided in this contract.

Please contact Kathleen Roy at extension #6007 if you have any questions regarding this agreement.

Encl.



<b>WHATCOM COUNTY CONTRACT INFORMATION SHEET</b>		Whatcom County Contract No.	
Originating Department:		85 Health	
Division/Program: (i.e. Dept. Division and Program)		8550 Human Services / 855040 Housing Program	
Contract or Grant Administrator:		Barbara Johnson-Vinna	
Contractor's / Agency Name:		Opportunity Council	
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?	If yes, grantor agency contract number(s):	CFDA#:	14.231
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			
Is this contract grant funded?	If yes, Whatcom County grant contract number(s):	202008014	
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			
Is this contract the result of a RFP or Bid process?	If yes, RFP and Bid number(s):	Sole Source	Contract Cost Center:
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			
Is this agreement excluded from E-Verify?	No <input checked="" type="checkbox"/> Yes <input 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 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):		Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b> 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.	
\$	\$796,701		
This Amendment Amount:			
\$			
Total Amended Amount:			
\$			
Summary of Scope: This contract provides funding for the Whatcom Homeless Service Center (WHSC), a centralized point of entry for homeless prevention and re-housing services for Whatcom County residents.			
Term of Contract:	6 months	Expiration Date:	06/30/2021
Contract Routing:	1. Prepared by:	JT	Date:
	2. Health Budget Approval:	JG	Date:
	3. Attorney signoff:	RB	Date:
	4. AS Finance reviewed:	M Caldwell	Date:
	5. IT reviewed (if IT related):		Date:
	6. Contractor approved:		Date:
	7. Submitted to Exec.:		Date:
	8. Council approved (if necessary):		Date:
	9. Executive signed:		Date:
	10. Original to Council:		Date:

Whatcom County Contract No.  
\_\_\_\_\_

**CONTRACT FOR SERVICES**  
**Between Whatcom County and Opportunity Council**

Opportunity Council, hereinafter called **Contractor** and Whatcom County, hereinafter referred to as **County**, agree and contract as set forth in this Agreement, including:

- General Conditions, pp. 3 to 13,
- Exhibit A (Scope of Work), pp. 14 to 21,
- Exhibit B (Compensation), pp. 22 to 23,
- Exhibit C (Certificate of Insurance), p. 24,
- Exhibit D (Business Associate Agreement), pp. 25 to 31,
- Exhibit E (Special Terms & Conditions of Commerce Grants), pp. 32 to 35,
- Exhibit F (Certification Regarding Lobbying).

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 1<sup>st</sup> day of January, 2021, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30<sup>th</sup> day of June, 2021.

The general purpose or objective of this Agreement is to **operate the Whatcom Homeless Service Center**, 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 \$796,701. 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.

Each person signing this Contract represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Contract.

**IN WITNESS WHEREOF**, the parties have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2020.

**CONTRACTOR:**

Each signatory below to this Contract warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and to bind the party thereto.

**Opportunity Council**

\_\_\_\_\_  
Greg Winter, Executive Director



## 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:

The duration of this Agreement may be extended by mutual written consent of the parties, for a period of up to one year, and for a total of no longer than three years.

#### 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 and Public Records Act:

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. If 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.

Ownership. Any and all data, writings, programs, public records, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor's subcontractors or consultants for delivery to the County under this Contract shall be the sole and absolute property of the County. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Contract but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of this Agreement.

Public Records Act. This Contract and all records associated with this Contract shall be available for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County at no cost to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to

inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

The Contractor shall be liable to the requester for any and all fees, costs, penalties or damages imposed or alleged as a result of the Contractor's failure to provide adequate or timely records.

This provision and the obligations it establishes shall remain in effect after the expiration of this contract.

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 Insurance

The Contractor shall, at its own expense, obtain and continuously maintain the following insurance coverage for the duration of this contract, which shall include insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, subcontractors or employees. All insurers providing such insurance shall have an A.M. Best Rating of not less than A- (or otherwise be acceptable to the County) and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. Coverage limits shall be the minimum limits identified

in this Contract or the coverage limits provided or available under the policies maintained by the Contractor without regard to this Contract, whichever are greater.

**1. Commercial General Liability**

Property Damage	\$500,000.00, per occurrence
General Liability & bodily injury	\$1,000,000.00, per occurrence
Annual Aggregate	\$2,000,000.00

At least as broad as ISO form CG 00 01 or the equivalent, which coverage shall include personal injury, bodily injury and property damage for Premises Operations, Products and Completed Operations, Personal/Advertising Injury, Contractual Liability, Independent Contractor Liability, medical payments and Stop Gap/Employer's Liability. Coverage shall not exclude or contain sub-limits less than the minimum limits required, unless approved in writing by the County.

**2. Business Automobile Liability**

\$1,000,000.00	Minimum, per occurrence
\$2,000,000.00	Minimum, Annual Aggregate

Contractor shall provide auto liability coverage for owned, non-owned and hired autos using ISO Business Auto Coverage form CA 00 01 or the exact equivalent with a limit of no less than \$1,000,000 per accident. If Contractor owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

**3. Additional Insurance Requirements and Provisions**

- a. All insurance policies shall provide coverage on an occurrence basis.
- b. Additional Insureds. Whatcom County, its departments, elected and appointed officials, employees, agents and volunteers shall be included as additional insureds on Contractor's and Contractor's subcontractors' insurance policies by way of endorsement for the full available limits of insurance required in this contract or maintained by the Contractor and subcontractor, whichever is greater.
- c. Primary and Non-contributory Insurance. Contractor shall provide primary insurance coverage and the County's insurance shall be non-contributory. Any insurance, self-insured retention, deductible, risk retention or insurance pooling maintained or participated in by the County shall be excess and non-contributory to Contractor's insurance.
- d. Waiver of Subrogation. The insurance policy shall provide a waiver of subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the Contractor enter into such a waiver of subrogation on a pre-loss basis.
- e. Review of and Revision of Policy Provisions. Upon request, the Contractor shall provide a full and complete certified copy of all requested insurance policies to the County. The County reserves the right, but not the obligation, to revise any insurance requirement, including but not limited to limits, coverages and endorsements, or to reject any insurance policies which fail to meet the requirements of this Contract. Additionally, the County reserves the right, but not the obligation, to review and reject any proposed insurer providing coverage based upon the insurer's financial condition or licensing status in Washington.
- f. Verification of Coverage/Certificates and Endorsements. The Contractor shall furnish the County with a certificate of insurance and endorsements required by this contract. The certificates and endorsements for each policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. The certificate and endorsements for each insurance policy are to be on forms approved by the County prior to commencement of activities associated with the contract. The certificate and endorsements, and renewals thereof, shall be attached hereto as Exhibit "C". If Exhibit C is not attached, the Contractor must submit the certificate and endorsements required in this contract to the County prior to the commencement of any work on the contracted project. A certificate alone is insufficient proof of the required insurance; endorsements

must be included with the certificate. The certificate of insurance must reflect the insurance required in this contract, including appropriate limits, insurance coverage dates, per occurrence, and in the description of operations, include the County project, Whatcom County, its departments, officials, employees, agents and volunteers as additional insureds, primary, non-contributory, and waiver of subrogation.

- g. The County must be notified immediately in writing of any cancellation of the policy, exhaustion of aggregate limits, notice of intent not to renew insurance coverage, expiration of policy or change in insurer carrier. Contractor shall always provide the County with a current copy of the certificate and endorsements throughout the duration of the contract.
- h. No Limitation on Liability. The insurance maintained under this Contract shall not in any manner limit the liability or qualify the liabilities or obligations of the Contractor to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or equity.
- i. Payment Conditioned on Insurance and Failure to Maintain Insurance. Compensation and/or payments due to the Contractor under this Contract are expressly conditioned upon the Contractor's compliance with all insurance requirements. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract. Payment to the Contractor may be suspended in the event of non-compliance, upon which the County may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the County on demand or offset against funds due the Contractor. Upon receipt of evidence of Contractor's compliance, payments not otherwise subject to withholding or set-off will be released to the Contractor.
- j. Workers' Compensation. The Contractor shall maintain Workers' Compensation coverage as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Contractors' employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act.
- k. Failure of the Contractor to take out and/or maintain required insurance shall not relieve the Contractor or subcontractors from any liability under the contract, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification. The County does not waive any insurance requirements even in the event the certificate or endorsements provided by the Contractor were insufficient or inadequate proof of coverage but not objected to by the County. The County's failure to confirm adequate proof of insurance requirements does not constitute a waiver of the Contractor's insurance requirements under this Contract.
- l. Availability of Contractor Limits. If the Contractor maintains higher insurance limits than the minimums shown above, the County shall be insured for the full available limits, including Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate furnished to the County evidences limits of liability lower than those maintained by the Contractor.
- m. Insurance for Subcontractors. If the Contractor subcontracts (if permitted in the contract) any portion of this Contract, the Contractor shall include all subcontractors as insureds under its policies or shall require separate certificates of insurance and policy endorsements from each subcontractor. Insurance coverages by subcontractors must comply with the insurance requirements of the Contractor in this contract and shall be subject to all of the requirements stated herein, including naming the County as additional insured.
- n. The Contractor agrees Contractor's insurance obligation shall survive the completion or termination of this Contract for a minimum period of three years.

#### 34.3 Defense & Indemnity Agreement:

To the fullest extent permitted by law, the Contractor agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all

claims, damages, losses and expenses, including but not limited to court costs, attorney's fees, and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease, or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which: 1) are caused in whole or in part by any error, act or omission, negligent or otherwise, of the Contractor, its employees, agents or volunteers or Contractor's subcontractors and their employees, agents or volunteers; or 2) directly or indirectly arise out of or occur in connection with performance of this Contract or 3) are based upon the Contractor's or its subcontractors' use of, presence upon, or proximity to the property of the County. This indemnification obligation of the Contractor shall not apply in the limited circumstance where the claim, damage, loss, or expense is caused by the sole negligence of the County.

Should a court of competent jurisdiction determine that this contract is subject to RCW 4.24.115, then in the event of concurrent negligence of the Contractor, its subcontractors, employees or agents, and the County, its employees or agents, this indemnification obligation of the Contractor shall be valid and enforceable only to the extent of the negligence of the Contractor, its subcontractors, employees, and agents. This indemnification obligation of the Contractor shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Contractor hereby expressly waives any immunity afforded by such acts.

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 Contract is for the benefit of the parties only and this Contract shall create no rights in any third party. The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses, or expenses, and such participation shall not constitute a waiver of Contractor's indemnity obligations under this Agreement.

In the event the Contractor enters into subcontracts to the extent allowed under this Contract, the Contractor's subcontractors shall indemnify the County on a basis equal to or exceeding Contractor's indemnity obligations to the County. The Contractor shall pay all attorney's fees and expenses incurred by the County in establishing and enforcing the County's rights under this indemnification provision, whether or not suit was instituted.

The Contractor agrees all Contractor's indemnity obligations shall survive the completion, expiration or termination of this Agreement. The foregoing indemnification obligations of the Contractor are a material inducement to County to enter into this Agreement and are reflected in the Contractor's compensation.

By signing this contract, the Contractor acknowledges that it has freely negotiated and agreed to the indemnification requirements to defend, indemnify and hold harmless the County from all claims and suits including those brought against the County by the Contractor's own employees, arising from this contract.

#### 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:

Barbara Johnson-Vinna, Program Specialist  
Whatcom County Health Department  
509 Girard Street  
Bellingham, WA 98225  
360-778-6046  
[BJJohnso@co.whatcom.wa.us](mailto:BJJohnso@co.whatcom.wa.us)

37.2 Notice:

Any notices or communications required or permitted to be given by this Contract must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party as follows:

To: Whatcom County Health Department  
Attn: Barbara Johnson-Vinna  
509 Girard Street  
Bellingham, WA 98225

360-778-6046  
[BJJohnso@co.whatcom.wa.us](mailto:BJJohnso@co.whatcom.wa.us)

To: Opportunity Council  
Attn: Greg Winter  
1111 Cornwall Avenue  
Bellingham, WA 98225  
[greg\\_winter@oppco.org](mailto:greg_winter@oppco.org)

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A party may, for purposes of this Agreement, change his, her or its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other party pursuant to this Section.

37.3 If agreed by the parties, this Contract may be executed by Email transmission and PDF signature and Email transmission and PDF signature shall constitute an original for all purposes.

38.1 Certification of Public Works Contractor's Status under State Law:  
If applicable, 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:  
If applicable, 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. If applicable, 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](http://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, temporary restraining order, or other provisional remedy to preserve the status quo or prevent irreparable harm, 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 Contract 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 Contract 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 but shall not have the power to award punitive damages. Each Party shall pay all their own costs, attorney fees and expenses of arbitration and the parties shall share equally in the Arbitrator's fees and costs. 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.

Any arbitration proceeding commenced to enforce or interpret this Contract shall be brought within six years after the initial occurrence giving rise to the claim, dispute, or issue for which arbitration is commenced, regardless of the date of discovery or whether the claim, dispute, or issue was continuing in nature. Claims, disputes, or issues arising more than six years prior to a written request or demand for arbitration issued under this Contract are not subject to arbitration.

- e. The parties may agree in writing signed by both parties that a claim or dispute may be brought in Whatcom County Superior Court rather than mediation or arbitration.

*Unless otherwise specified herein, this Contract 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)**

**I. Background**

According to the annual Point in Time Count of homeless adults conducted in January 2020, 707 people in Whatcom County were homeless. Throughout the year, hundreds more face the prospect of losing their homes. The Whatcom Homeless Service Center (WHSC) was established in 2008 to serve as a centralized point of entry for homelessness prevention and re-housing services for Whatcom County residents. The WHSC implements programs and services identified in Whatcom County's Plan to End Homelessness. The WHSC authorizes and coordinates service delivery among partner agencies.

The WHSC is modeled upon evidence-based approaches to homelessness diversion, permanent supportive housing and rapid re-housing (RRH). WHSC housing services work to shift the focus from reliance upon emergency shelters and costly institutional facilities in meeting the needs of those experiencing or at risk of homelessness to diversion and permanent housing. By serving as a centralized coordinating system of access to homeless services and by transitioning homeless individuals and families as quickly as possible to permanent housing, WHSC will improve outcomes for homeless individuals and families and ensure more efficient use of public resources.

WHSC programs include both rental assistance and case management components. WHSC staff manages the Housing Pool list, authorizes and distributes rent subsidies to local landlords on behalf of participating clients, makes referrals to partner agencies for housing case management services, manages the Homeless Management Information Services (HMIS) data collection and reporting requirements, cultivates and maintains relationships with local landlords, and serves as liaison for homeless housing activities to the network of service providers and other community stakeholders.

Services will be provided to low-income and/or homeless individuals and households residing in Whatcom County. Individuals and households served must meet the eligibility requirements of the program funding sources as further referenced in Section IV. – Program Requirements.

**II. Definitions**

Diversion	Diversion can be the first response to resolving a homelessness episode by focusing on re-housing without a family entering a longer-term housing program. Diversion starts with problem-solving conversations to identify a household's own strengths and resources, and services are tailored to meet each family's most critical needs to quickly move into housing. Diversion services can include short-term/one-time financial support (i.e., deposit assistance, flex funding, etc.).
Housing Pool	Quasi wait list that serves clients waiting for housing services based on their needs and available resources instead of a first come, first served basis.
HMIS	Washington's Homeless Management Information Services – A database used by housing service providers to collect and manage data gathered during the course of providing housing assistance to homeless people or households at risk of losing their housing.
Partner Agencies	Agencies that contract with Whatcom County for the delivery of housing case management services, in connection with the WHSC.
Permanent Supportive Housing Population	Chronically homeless individuals/households with significant barriers to permanent housing; will receive deep rent subsidies and intensive housing case management. Chronically Homeless Families (CHF) have one head of household that meets the definition of chronic homelessness (as stated in CHG Guidelines), and one or more dependents defined as minor children, disabled dependents, or full time students. Household income may not exceed 50% of area median gross income as defined by HUD.
ESG-CV Prevention	An intervention providing financial assistance including rent, utilities, and case management, for households at imminent risk of or at-risk of, homelessness.
Rapid Re-housing (RRH)	An intervention in which families and individuals experiencing homelessness are rapidly connected to permanent housing through a tailored package of assistance that may include the use of time-limited financial assistance including rent and utilities, and targeted supportive services including case management.

ESG-CV Rapid Rehousing and Prevention Other Financial Assistance	Inclusive of: rental application fees charge by the owner to all applicants; security deposits; last month's rent; moving costs; utility deposits; utility payments; landlord and volunteer incentives.
Whatcom Homeless Service Center (WHSC)	WHSC programs provide (1) centralized coordinated system of access (2) re-housing of those who become homeless (3) supportive services promoting housing stability and self-sufficiency, and (4) data management and tracking information for people receiving homeless housing services in Whatcom County and according to the Washington State Department of Commerce HIMIS data collection requirements. WHSC works in conjunction with Partner Agencies to operate all activities necessary to operate as a system.

**III. Statement of Work**

The Contractor will be responsible for programmatic and administrative services associated with the operation of the Whatcom Homeless Service Center. Administrative and programmatic services include all activities necessary to operate the WHSC as set forth in Sections 1 and 2, below:

**1. Administrative Responsibilities**

The Contractor will:

- A. Provide all Human Resource and administrative services to WHSC employees (e.g., payroll, office supplies and equipment, space rental, IT support, etc.).
- B. Perform all disbursement, accounting, financial management, and reporting functions necessary to manage the funds allocated to WHSC operations. Contractor will maintain a strong internal control system over rental subsidy disbursements to assure funds are used as intended by this contract. Contractor will maintain written policies and procedures describing how these transactions are processed.
- C. Support WHSC in the management of the HMIS, providing troubleshooting and technical assistance, as needed.
- D. Maintain all client financial and eligibility documentation as described/referenced in Exhibit E.
- E. Maintain all financial documentation as required in Exhibits B and E.
- F. Ensure that the processes and internal controls are operating as planned and make policy adjustments, as needed.
- G. Conduct program evaluation as directed by the Whatcom County Health Department to ensure WHSC programs are meeting the Whatcom County Plan to End Homelessness and subsequent Local Plan Updates.
- H. Send staff to trainings, conferences, and technical assistance events related to carrying out the functions of WHSC and the goals of Whatcom County's Plan to End Homelessness and subsequent Local Plan Updates.

**2. Programmatic Services**

The Contractor will:

- A. Manage a coordinated, centralized homeless housing intake system working collaboratively with Opportunity Council's Community Service Division and Northwest Youth Services intake staff.
- B. Maintain a Housing Pool, which includes prioritizing households for services according to need and available resources and managing a wait list.

- C. Determine and document client eligibility for WHSC rent subsidies and case management services based on funding source requirements.
- D. Refer eligible clients to partner agencies for housing case management services.
- E. Administer rental assistance – authorize and disburse subsidies based on housing assessment and determination of need and eligibility. Authorize and disburse emergency assistance per procedures as outlined in the WHSC Policies and Procedures Manual.
- F. Develop the local permanent housing inventory component of the homeless housing system – Search out new housing stock, cultivate and maintain relationships with participating landlords; provide housing search assistance to partner agencies as needed; work to create innovative housing models using best and promising practices as identified by the National Alliance to End Homelessness or other nationally recognized homeless housing organization.
- G. Manage the community-wide HMIS data system in compliance with the standards set forth by the Washington Department of Commerce.
- H. Provide guidance to the partner agency staff to ensure effective operations of the WHSC system; keeping partner agencies updated in policies and procedures, HMIS requirements, research and best practices related to homeless housing, specific program requirements, and confidentiality laws.
- I. Provide leadership to community stakeholders regarding activities focused on homelessness and housing stability.
- J. Compile and keep up-to-date WHSC Policies and Procedures Manual consistent with the Washington State Department of Commerce Consolidated Homeless Grant and the Emergency Solutions Grant-CV.
- K. Chair Whatcom County Coalition to End Homelessness meetings and sponsored activities in partnership with Whatcom County Health Department.
- L. Complete the Whatcom County Coalition to End Homelessness Annual Report (Point In Time Count Report). This annual report shall be completed and ready for distribution no later than June 1. An exception to this will be made in extenuating circumstances when the annual Point in Time Count is not required by the WA State Department of Commerce.

#### IV. Program Requirements

**Under the terms of this contract, the Contractor will:**

- A. Comply with all Washington State Department of Commerce Consolidated Homeless Grant requirements, policies and procedures in the Consolidated Homeless Grant Guidelines including periodic updates to the Guidelines which can be accessed at: <http://www.commerce.wa.gov/serving-communities/homelessness/consolidated-homeless-grant/>
- B. Comply with all of the Department of Housing and Urban Development (HUD) coordinated entry requirements as per the HUD Notice Establishing Additional Requirements for a Continuum of Care Centralized or Coordinated Assessment System regarding the development and implementation of coordinated entry. This Notice, under the authority of 24 CFR 578.7(a)(8), establishes new requirements that Continuums of Care (CoC) and recipients of CoC Program and Emergency Solutions Grant (ESG) Program funding must meet and relate to development and use of a coordinated entry system. This Notice can be accessed at: <https://www.hudexchange.info/resource/5208/notice-establishing-additional-requirements-for-a-continuum-of-care-centralized-or-coordinated-assessment-system/>
- C. Comply with relevant State of Washington, Department of Commerce Emergency Solutions COVID-19 Grant guidelines, including periodic updates to the guidelines which can be accessed at: <https://deptofcommerce.app.box.com/s/s2w7o65zm4buhz2bk7t0n3femanl7tml> and

<https://www.commerce.wa.gov/serving-communities/homelessness/emergency-solutions-grant/>

- D. Commit to ending homelessness in Whatcom County by:
- i. Prioritizing unsheltered homeless households for services (as per CHG Guidelines)
  - ii. Assessing each household's housing needs and facilitating housing stability with the goal of obtaining or maintaining a permanent housing (as per CHG Guidelines)
  - iii. Employing a progressive engagement service model (as per CHG Guidelines)
  - iv. Prioritizing households that are literally homeless when using diversion rent assistance
- E. Comply with eligibility requirements for serving veterans as set forth in Whatcom County Code 2.150 and 2.152, and RCW 73.08.005 and incorporated into this contract by reference. Contractor shall determine eligibility based on Items A and B of WCC 2.150.025 and shall not have utilization of Item C for determining veteran eligibility. The point of contact for the Veteran's Assistance Fund is:
- Elizabeth Harmon-Craig, Veterans Specialist  
Whatcom County Health Department  
360-778-6050  
[EHarmonC@co.whatcom.wa.us](mailto:EHarmonC@co.whatcom.wa.us)
- F. Comply with Special Conditions of Commerce Grants incorporated herein as Exhibit E.
- G. Comply with Business Associate Agreement incorporated herein as Exhibit D.
- H. Comply with state confidentiality laws and regulations.
- I. Ensure that all costs incurred comply with CHG Guidelines as specified in Section IV.(A.) and IV.(C.) above and Exhibit E.
- J. Commit to reporting complete quality data that is timely, truthful and accurate (as per CHG Guidelines and HMIS User Agreement).
- K. Consequences of non-compliance with CHG and ESG-CV Guidelines as per the WA State Department of Commerce:
- i. If Commerce determines that a Grantee is failing to comply with Guidelines, Terms and Conditions, Commerce will notify Grantee that Grantee will receive technical assistance and be required to respond to a corrective action plan to address and remedy the non-compliance.
  - ii. If the Grantee is still out of compliance after the technical assistance, Commerce may move the Grantee into a probationary period with a second corrective action plan and may reduce the grant total by 20%.
  - iii. If the Grantee remains out of compliance after the probation period, Commerce may terminate the grant per the General Terms and Conditions TERMINATION FOR CAUSE.

## V. **Program Outcomes**

The following are the expected outcomes of WHSC in conjunction with its partner agencies. These outcomes are for a calendar year period. The WHSC must ensure rental subsidies are available to support the expected numbers of households served as follows:

1. Re-Housing
  - a. At least 150 new households that have become homeless receive short term rent subsidies and case management.
  - b. Fewer than 15% of re-housing households will re-enter homelessness one year after stable exit from the program.
2. Permanent Supportive Housing Population

- a. At least 62 households receive housing subsidies and case management.
  - i. Two units will be from Opportunity Council owned housing units.
- b. At least two to three chronically homeless (CH) families with children (FWC) will receive housing subsidies funded by a special category of CHG funding designated specifically for permanent supportive housing for CH FWC. Case management for these families will be provided by the Opportunity Council Community Services Program.
- c. At least 85% retain their housing for six months.

**3. Emergency Shelter**

- a. At least 50 households will receive emergency shelter assistance.
- b. At least 50% of those households are placed in permanent housing after receiving shelter services.

**4. Veterans**

- a. At least 110 Veterans will receive housing subsidies and case management support. These outcomes will be achieved by leveraging additional funding resources.
- b. Fewer than 15% of Veterans served will re-enter homelessness one year after stable exit from the program.

**VI. Reporting Requirements**

1. The Contractor shall submit two quarterly reports in formats approved by the County showing the Contractor's progress toward achieving the outcomes identified above. Quarterly reports are due on April 30<sup>th</sup>, July 31<sup>st</sup>, October 31<sup>st</sup>, and January 31<sup>st</sup>.

The quarterly fund reports will include:

**A. Re-Housing:**

- i. # of households that have received short term rent subsidies and case management this quarter and year to date
- ii. # of households who re-enter homelessness after stably exiting from re-housing services
- iii. # of households that are Veterans
- iv. # and % of households who re-enter homelessness within one year after stably exiting from re-housing services

**B. Permanent Supportive Housing Assistance**

- i. # of households receiving housing subsidies and case management this quarter and year to date
- ii. # of units will be from Opportunity Council owned housing units
- iii. # and % who retain their housing for six months

**C. Permanent Supportive Housing for Chronically Homeless Families with Children**

- i. # of households receiving housing subsidies and case management this quarter and year to date
- ii. # and % who retain their housing for six months
- iii. # of households who re-entered homelessness after receiving PSH for CH FWC subsidies

**D. Emergency Shelter**

- i. # of households who received emergency shelter assistance this quarter and year to date
- ii. # and % of households who received emergency shelter were placed in permanent housing

**E. Veterans**

- i. # of Veterans who received housing assistance this quarter and year to date
- ii. # of Veterans who re-enter homelessness one y
- iii. ear after stably exiting the program
- iv. # of honorably discharged Veterans with at least 180 days of service provided housing assistance
- v. # of honorably discharged Veterans with less than 180 days of service provided housing assistance
- vi. # of general or under-honorably discharged Veterans with at least 180 days of service provided housing assistance

2. The quarterly coordinated entry reports will include the following measures and targets:

- A. Number of households (HHs) added to Housing Pool (HP): Annual Target 600
- B. Number of households (HHs) added to Housing Pool (HP) this quarter:
- C. Number of HHs removed from HP due to successful project referral: Annual Target 450
- D. Number of HHs removed from HP due to inactivity: Annual Target 150
- E. Of all HHs removed from HP over reporting quarter, the percent that accepted a project referral: Annual Target 75%
- F. Number of partner agency referral requests made for households that included minors: Annual Target 150
- G. Number of partner agency referral requests made for households that did not include minors: Annual Target 200
- H. Number of partner agency referral requests made during this quarter (total): Annual Target 350
- I. Mean number of days to complete referral requests for households that include minors: 3
- J. Median number of days to complete referral requests for households that include minors: 1
- K. Mean number of days to fill referral for households that do not include minors: 4
- L. Median number of days to fill referral for households that do not include minors: 1
- M. Number of new staff trained to conduct intake assessments: 20
- N. Number of multi-agency housing partner meetings to improve function of local homeless/housing system with participation from WHSC staff:36
- O. Number of community stakeholder meetings with participation from WHSC staff: 36
- P. Amount of rental assistance money dispersed on behalf of partner agency's low-income households: \$700,000
- Q. Number of motel stays for homeless households coordinated by WHSC staff: 30
- R. Dates and descriptions of community or partner meetings with significant input from WHSC staff

Additionally, projects falling under specific intervention types and funded by the Consolidated Homeless Grant (CHG) will be expected to meet or make progress meeting the System Performance Measures and benchmarks as required by the Washington State Department of Commerce. System-wide performance measures and benchmarks specific to intervention type (HMIS Project type) are provided on the CHG System Performance Measures Chart on our website at: [http://www.whatcomcounty.us/910/Housing\\_Program](http://www.whatcomcounty.us/910/Housing_Program). Changes to the CHG System-wide Mandatory Performance Measures may be made without contract amendment. In the event of an update, the County will provide email notification with a link to the current chart on the County's website. CHG Grantees must meet or demonstrate progress towards established performance measure targets by meeting the indicated benchmarks. Targeted Prevention performance measures are exempted from the Department of Commerce's "Consequences of Non-Compliance" listed in IV.(K.) above wherein "Grantee" refers to the County being the CHG recipient.

**EXHIBIT "B"**  
**(COMPENSATION)**

**I. Budget and Source of Funding:** The source of funding for this contract, in an amount not to exceed \$796,701, is HB 2060, local document recording fees, Washington State Department of Commerce Consolidated Homeless and Emergency Solutions COVID-19 (CFDA 14.231) Grants, and the Veterans Fund. COMMERCE and the State of Washington are not liable for claims or damages arising from Subcontractor's performance of this contract. The budget for this contract period (01/01/21 – 06/30/21) is as follows:

<b>Document Recording Fees, Veteran's and Consolidated Homeless Grant Funding</b>			
<b>Line Item</b>	<b>Documentation Required with Invoice</b>	<b>Budget</b>	
Project Manager	Expanded GL report for the period	\$18,696	
HMIS Coordinator		\$12,875	
Housing Retention Manager		\$20,236.50	
Housing Resource Coordinator		\$34,428.50	
50% Fringe Benefits Rate	Expanded GL based on federally approved fringe rate	\$50,118	
Direct Program Space Costs	Expanded GL Report for the period	\$4,900	
Direct Program Supplies, Telephone, Postage and Printing		\$2,700	
Travel & Training	Ground transportation, coach airfare, and ferries will be reimbursed at cost when accompanied by receipts. Reimbursement requests for allowable travel must include name of staff member, dates of travel, starting point and destination, and a brief description of purpose. Receipts for registration fees or other documentation of professional training expenses. Lodging and meal costs for training are not to exceed the U.S. General Services Administration Domestic Per Diem Rates ( <a href="http://www.gsa.gov">www.gsa.gov</a> ), specific to location. Receipts for meals are not required. For mileage Include name of traveler, dates, start & end point, and purpose. Receipts required for transportation costs, registration fees, etc. Lodging & meal costs follow federal guidelines ( <a href="http://www.gsa.gov">www.gsa.gov</a> ).	\$1,000	
Rental Assistance	Expanded GL Report for the period plus documentation including client ID, payee, and amount of payment	\$85,623	
Rental Assistance – Veteran's funds		33,660	
<b>Document Recording Fees, Veteran's Fund &amp; CHG Subtotal:</b>		<b>\$264,237</b>	
<b>ESG COVID-19 Funding</b>			
<b>RRH &amp; Prevention Rental Assistance:</b>			
Rental assistance, rental arrears, late fees	Expanded GL Report for the period plus documentation including client ID, payee, purpose and amount of payment.	\$310,000	
<b>RRH &amp; Prevention Other Financial Assistance (excludes volunteer incentives):</b>			
Rent fees, security deposits, last month's rent		\$40,000	
Moving costs		\$10,000	
Utility deposits & payments		\$40,000	
Landlord incentives		\$10,000	
<b>Total RRH &amp; Prevention Other Financial Assistance</b>		\$100,000	
<b>Housing Stability Case Management:</b>			
Case Manager		\$6,667	
50% Fringe Benefit Rate		\$3,333	
<b>Total Housing Stability Case Management</b>		\$10,000	
<b>HMIS Coordination:</b>			
HMIS Coordinator		\$2,667	
50% Fringe Benefit Rate		\$1,333	
<b>Total HMIS Coordination</b>		\$4,000	
<b>Emergency Shelter Operations:</b>			
Motel Vouchers		\$29,853	
<b>ESG COVID-19 Funding Subtotal</b>		<b>\$453,853</b>	



2060 funding		
Emergency Shelter Motel Assistance	Expanded GL Report for the period plus documentation including client ID, payee, and amount of payment.	\$11,066
<b>2060 Funding Subtotal:</b>		<b>\$11,066</b>
Indirect and Admin. Expenses		
DRF & CHG Funding (12%)		\$29,857
2060 Admin (12%)		\$1,328
ESG-CV Funding (Admin. 7%)		\$31,770
Veteran's Fund (Admin. 12%)		\$4,590
<b>TOTAL BUDGET:</b>		<b>\$796,701</b>

\*\* During this contract period, a minimum of 36% of Rental Assistance – CHG Funds - must be paid out to for-profit or nonprofit private landlords, as required by the Washington Department of Commerce.

All allocated direct costs must be based on approved cost allocation plan.

Changes to the line item budget that exceed 10% of the line item amount must be approved in writing by the County. Indirect and fringe benefit cost rates shall not the current federally approved rates.

## II. Invoicing

1. The Contractor shall submit itemized invoices on a monthly basis in a format approved by the County. Monthly invoices must be submitted by the 15<sup>th</sup> of the month following the month of service. Invoices submitted for payment must include the items identified in the table above. Send invoice-related communication to Barbara Johnson-Vinna.
2. The Contractor shall submit the following monthly deliverables on time with truthful, accurate information:
  - a. 2019-2021 Report from HMIS included with the Invoice (section 2.3.3.1 of the CHG Guidelines)
3. The Contractor shall submit invoices to (include contract/PO #) [HL-BusinessOffice@co.whatcom.wa.us](mailto:HL-BusinessOffice@co.whatcom.wa.us).
4. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.

This is not research and development.

5. Invoices must include the following statement, with an authorized signature and date:

**I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.**

6. Duplication of Billed Costs or Payments for Service: The Contractor shall not bill the County for services performed or provided under this contract, and the County shall not pay the Contractor, if the Contractor has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract. The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.

**EXHIBIT "C"**  
**(INSURANCE)**

**Exhibit "D"**  
(Business Associate Agreement)

This Business Associate Agreement (the "Agreement") is made effective the 1<sup>st</sup> day of January, 2021, by and between Opportunity Council hereinafter referred to as "Covered Entity" and Whatcom County, hereinafter referred to as "Business Associate" (individually, a "Party" and collectively, the "Parties").

**RECITALS:**

WHEREAS, the Parties wish to enter into a Business Associate Agreement to ensure compliance with the Privacy and Security Rules of the Health Insurance Portability and Accountability Act of 1996 (HIPAA Privacy and Security Rules) (45 CFR Parts 160 and 164); and

WHEREAS, the Health Information Technology for Economic and Clinical Health (HITECH) Act of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, modified the HIPAA Privacy and Security Rules (hereinafter, all references to the "HIPAA Privacy and Security Rules" include all amendments there to set forth in the HITECH Act and any accompanying regulations); and

WHEREAS, the Parties have entered into a written or oral arrangement or arrangements (the "Agreements") whereby Business Associate will provide certain services to Covered Entity and, pursuant to such Agreements, Business Associate may be considered a "Business Associate" of Covered Entity as defined in the HIPAA Privacy and Security Rules; and

WHEREAS, Business Associate may have access to Protected Health Information (hereinafter "PHI") or Electronic Protected Health Information (as defined below) in fulfilling its responsibilities under the Agreements; and

WHEREAS, Covered Entity wishes to comply with the HIPAA Privacy and Security Rules, and Business Associate wishes to honor its obligations as a Business Associate to Covered Entity.

THEREFORE, in consideration of the Parties' continuing obligations under the Agreements, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement.

**I. DEFINITIONS**

Except as otherwise defined herein, any and all capitalized terms in this Agreement shall have the definitions set forth in the HIPAA Privacy and Security Rules. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Privacy and Security Rules, as amended, the HIPAA Privacy and Security Rules in effect at the time shall control. Where provisions of this Agreement are different than those mandated by the HIPAA Privacy and Security Rules, but are nonetheless permitted by the HIPAA Privacy and Security Rules, the provisions of this Agreement shall control.

The term "Breach" means the unauthorized acquisition, access, use, or disclosure of PHI which compromises the security or privacy of such information. The term "Breach" does not include: (1) any unintentional acquisition, access, or use of PHI by any employee or individual acting under the authority of a covered entity or business associate if (a) such acquisition, access, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual, respectively, with the covered entity or business associate, and (b) such information is not further impermissibly acquired, used, or disclosed by any person; (2) any inadvertent disclosure by an individual who is otherwise authorized to access PHI at a facility operated by a covered entity or business associate to another similarly situated individual at the same facility, where the information disclosed is not further impermissibly acquired, accessed, used, or disclosed by any person; or (3) an impermissible disclosure of PHI where Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information. The term "HIPAA Privacy and Security Rules" refers to 45 CFR Parts 160 and 164 as currently in effect or hereafter amended.

The term “Protected Health Information” or “PHI” means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is reasonable basis to believe the information can be used to identify the individual. “Protected Health Information” includes without limitation, “Electronic Protected Health Information”, as defined below.

The term “Electronic Protected Health Information” means PHI which is transmitted by or maintained in Electronic Media (as now or hereafter defined in the HIPAA Privacy and Security Rules).

The term “Secretary” means the Secretary of the Department of Health and Human Services.

The term “Unsecured Protected Health Information” means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in guidance published in the Federal Register at 74 Fed. Reg. 19006 on April 27, 2009 and in annual guidance published thereafter.

## **II. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

- A. Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreements, provided that such use or disclosure would not violate the HIPAA Privacy and Security Rules if done by Covered Entity.
- B. Business Associate may use PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of Business Associate, provided that such uses are permitted under state and federal confidentiality laws.
- C. Business Associate may disclose PHI in its possession to third parties for the purposes of its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate, provided that:
  - 1. The disclosures are required by law; or
  - 2. Business Associate obtains reasonable assurances from the third parties to whom the PHI is disclosed that the information will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party, and that such third parties will notify Business Associate of any instances of which they are aware in which the confidentiality of the information has been breached.
- D. Until such time as the Secretary issues regulations pursuant to the HITECH Act specifying what constitutes “minimum necessary” for purposes of the HIPAA Privacy and Security Rules, Business Associate shall, to the extent practicable, access, use, and request only PHI that is contained in a limited data set (as defined in Section 164.514(e)(2) of the HIPAA Privacy and Security Rules), unless Business Associate requires certain direct identifiers in order to accomplish the intended purpose of the access, use or request, in which the Business Associate may access, use, or request only the minimum necessary amount of PHI to accomplish the intended purpose of the access, use, or request. The Parties shall collaborate in determining what quantum of information constitutes the “minimum necessary” amount for Business Associate to accomplish its intended purposes.

## **III. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

- A. Business Associate acknowledges and agrees that all PHI that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and

electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity's behalf shall be subject to this Agreement.

- B. Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Agreement or as required by law.
- C. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement. Specifically, Business Associate will:
  - 1. Implement the administrative, physical and technical safeguards set forth in Sections 164.308, 164.310, and 164.312 of the HIPAA Privacy and Security Rules that reasonably and appropriately protect the confidentiality, integrity, and availability of any PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity, and, in accordance with Section 164.316 of the HIPAA Privacy and Security Rules, implement and maintain reasonable and appropriate policies and procedures to enable it to comply with the requirements outlined in Sections 164.308, 164.310, and 164.312; and
  - 2. Report to Covered Entity any use or disclosure of PHI not provided for by this Agreement, including any Security Incident, of which Business Associate becomes aware, regardless of whether the Security Incident rises to the level of a Breach. For purposes of this Agreement, "Security Incident" means the successful unauthorized access, use, disclosure, modification, or destruction of PHI or interference with system operations in an information system, of which Business Associate has knowledge or should, with the exercise of reasonable diligence, have knowledge, excluding (i) "pings" on an information system firewall; (ii) port scans; (iii) attempts to log on to an information system or enter a database with an invalid password or user name; (iv) denial-of-service attacks that do not result in a server being taken offline; or (v) "malware" (e.g., a worm or a virus) that does not result in unauthorized access, use, disclosure, modification or destruction of PHI. The report shall be made as soon as practical and in any event within ten (10) days of Business Associate's discovery of the Security Incident. A Security Incident shall be treated as discovered by Business Associate as of the first day on which such Security Incident is known to Business Associate or, through the exercise of reasonable diligence, would have been known to Business Associate.
- D. Business Associate agrees to ensure any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- E. Business Associate agrees to comply with any requests for restrictions on certain disclosures of PHI to which Covered Entity has agreed in accordance with Section 164.522 of the HIPAA Privacy and Security Rules of which Business Associate has been notified by Covered Entity. In addition, and notwithstanding the provisions of Section 164.522 (a)(1)(ii), Business Associate agrees to comply with an individual's request to restrict disclosure of PHI to a health plan for purposes of carrying out payment or health care operations if the PHI pertains solely to a health care item or service for which Covered Entity has been paid in full by the individual's representative. The restriction can only apply to disclosures beginning the next business day after the request for restriction is received.
- F. At the request of the Covered Entity, in a reasonable time and manner, Business Associate agrees to make available PHI required for Covered Entity to respond to an individual's request for access to his or her PHI in accordance with Section 164.524 of the HIPAA Privacy and Security Rules. If Business Associate maintains PHI electronically, it agrees to make such PHI available electronically to the applicable individual or to a person or entity specifically designated by such individual, upon such individual's request.
- G. At the request of the Covered Entity, and in a reasonable time and manner, Business Associate agrees to make available PHI required for amendment by Covered Entity in accordance with the requirements of Section 164.526 of the HIPAA Privacy and Security Rules.
- H. Business Associate agrees to document any disclosures of, and make PHI available, for purposes of accounting of disclosures, as required by Section 164.528 of the HIPAA Privacy and Security Rules.

- I. Business Associate agrees that it will make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity, available to the Secretary for the purpose of determining Covered Entity's compliance with the HIPAA Privacy and Security Rules, in a time and manner designated by the Secretary.
- J. Business Associate agrees that, while present at any Covered Entity facility and/or when accessing Covered Entity's computer network(s), it and all of its employees, agents, representatives, and subcontractors will at all times comply with any network access and other security practices, procedures and/or policies established by Covered Entity including, without limitation, those established pursuant to the HIPAA Privacy and Security Rules.
- K. Business Associate agrees that it will not directly or indirectly receive remuneration in exchange for any PHI of an individual without the written authorization of the individual or the individual's representative, except where the purpose of the exchange is:
  - 1. For public health activities as described in Section 164.512(b) of the HIPAA Privacy and Security Rules;
  - 2. For research described in Sections 164.501 and 164.512(i) of the HIPAA Privacy and Security Rules, and the price charged reflects the costs of preparation and transmittal of the data for such purpose;
  - 3. For treatment of the individual, subject to any further regulation promulgated by the Secretary to prevent inappropriate access, use, or disclosure of PHI;
  - 4. For the sale, transfer, merger, or consolidation of all or part of Business Associate and due diligence related to that activity;
  - 5. For an activity that Business Associate undertakes on behalf of and at the specific request of Covered Entity;
  - 6. To provide an individual with a copy of the individual's PHI pursuant to Section 164.524 of the HIPAA Privacy and Security Rules; or
  - 7. Other exchanges that the Secretary determines in regulations to be similarly necessary and appropriate as those described in this Section III.K.
- L. Business Associate agrees that it will not directly or indirectly receive remuneration for any written communication that encourages an individual to purchase or use a product or service without first obtaining the written authorization of the individual or the individual's representative, unless:
  - 1. Such payment is for a communication regarding a drug or biologic currently prescribed for the individual and is reasonable in amount (as defined by the Secretary); or
  - 2. The communication is made on behalf of Covered Entity and is consistent with the terms of this Agreement.
- M. Business Associate agrees that if it uses or discloses patients' PHI for marketing purposes, it will obtain Covered Entity's written approval and such patients' authorization before making any such use or disclosure.

#### **IV. BUSINESS ASSOCIATE'S MITIGATION AND BREACH NOTIFICATION OBLIGATIONS**

- A. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- B. Following the discovery of a Breach of Unsecured Protected Health Information, Business Associate shall notify Covered Entity of such Breach without unreasonable delay and in no case later than ten (10) calendar days after discovery of the Breach. A Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known to Business Associate or, through the exercise of reasonable diligence, would have been known to Business Associate.

- C. Notwithstanding the provisions of Section IV.B., above, if a law enforcement official states to Business Associate that notification of a Breach would impede a criminal investigation or cause damage to national security, then:
1. If the statement is in writing and specifies the time for which a delay is required, Business Associate shall delay such notification for the time period specified by the official; or
  2. If the statement is made orally, Business Associate shall document the statement, including the identity of the official making it, and delay such notification for no longer than thirty (30) days from the date of the oral statement unless the official submits a written statement during that time.

Following the period of time specified by the official, Business Associate shall promptly deliver a copy of the official's statement to Covered Entity.

- D. The Breach notification provided shall include, to the extent possible:
1. The identification of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach;
  2. A brief description of what happened, including the date of the Breach and the date of discovery of the Breach, if known;
  3. A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
  4. Any steps individuals should take to protect themselves from potential harm resulting from the Breach;
  5. A brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches and when such steps were taken; and
  6. Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
- E. Business Associate shall provide the information specified in Section IV.D. above, to Covered Entity at the time of the Breach notification, if possible, or promptly thereafter as information becomes available. Business Associate shall not delay notification to Covered Entity that a Breach has occurred in order to collect the information described in Section IV.D., and shall provide such information to Covered Entity even if the information becomes available after the ten (10)-day period provided for initial Breach notification.

## **V. OBLIGATIONS OF COVERED ENTITY**

- A. Upon request of Business Associate, Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with Section 164.520 of the HIPAA Privacy and Security Rules.
- B. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- C. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI to which Covered Entity has agreed in accordance with Section 164.522 of the HIPAA Privacy and Security Rules, and Covered Entity shall inform Business Associate of the termination of any such restriction, and the effect that such termination shall have, if any, upon Business Associate's use and disclosure of such PHI. Business Associate shall have a reasonable period of time to act on such notice.

## **VI. TERM AND TERMINATION**

- A. Term. The Term of this Agreement shall be effective as of the date first written above, and shall terminate upon the later of the following events: (i) in accordance with Section VI.C., when all of the PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity or, if such return or destruction is infeasible, when protections are extended to such information; or (ii) upon the expiration or termination of the last of the Agreements.
- B. Termination. Upon either Party's knowledge of a material breach by the other Party of its obligations under this Agreement, the non-breaching Party shall, within twenty (20) days of that determination, notify the breaching Party, and the breaching Party shall have thirty (30) days from receipt of that notice to cure the breach or end the violation. If the breaching Party fails to take reasonable steps to affect such a cure within such time period, the non-breaching Party may terminate this Agreement and the Agreements.

Where either Party has knowledge of a material breach by the other Party and determines that cure is infeasible, prior notice of the breach is not required, and the non-breaching Party shall terminate the portion of the Agreements affected by the breach.

Where neither cure nor termination is feasible, the non-breaching Party shall report the violation to the Secretary.

C. Effect of Termination.

1. Except as provided in paragraph (2) of this subsection C., upon termination of this Agreement, the Agreements or upon request of Covered Entity, whichever occurs first, Business Associate shall within ten (10) days return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Neither Business Associate nor its subcontractors or agents shall retain copies of the PHI.
2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide within ten (10) days to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible; Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

## VII. MISCELLANEOUS

- A. Indemnification. Each Party shall indemnify and hold the other harmless from and against all claims, liabilities, judgments, fines, assessments, penalties, awards, or other expenses, of any kind or nature whatsoever, including, without limitations, attorneys' fees, expert witness fees, and costs of investigation, litigation or dispute resolution, relating to or arising out of any breach or alleged breach of this Agreement, or any Breach, by that Party or its subcontractors or agents.
- B. No Rights in Third Parties. Except as expressly stated herein, in the HIPAA Privacy and Security Rules, the Parties to this Agreement do not intend to create any rights in any third parties.
- C. Survival. The obligations of Business Associate under Section VI.C. of this Agreement shall survive the expiration, termination, or cancellation of this Agreement, the Agreements, and/or the business relationship of the Parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein. Furthermore, the Parties' indemnification obligations pursuant to Section VII.A. of this Agreement shall survive the expiration, termination, or cancellation of this Agreement, the Agreements, and/or the business relationship of the Parties, and shall continue to bind the Parties, their agents, employees, contractors, successors, and assigns as set forth herein.
- D. Amendment. This Agreement may be amended or modified only in a writing signed by the Parties. The Parties agree that they will negotiate amendments to this Agreement to conform to any changes in the HIPAA Privacy and Security Rules as are necessary for Covered Entity to comply with the current



requirements of the HIPAA Privacy and Security Rules. In addition, in the event that either Party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Privacy and Security Rules or any other applicable legislation, then such Party shall notify the other Party of its belief in writing. For a period of up to thirty (30) days, the Parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such thirty (30)-day period, the Agreement fails to comply with the HIPAA Privacy and Security Rules or any other applicable legislation, then either Party has the right to terminate this Agreement and the underlying arrangement upon written notice to the other Party.

- E. Assignment. Neither Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party.
- F. Independent Contractor. None of the provisions of this Agreement are intended to create, nor will they be deemed to create, any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship.
- G. Governing Law. To the extent this Agreement is not governed exclusively by the HIPAA Privacy and Security Rules or other provisions of federal statutory or regulatory law, it will be governed by and construed in accordance with the laws of the State of Washington.
- H. No Waiver. No change, waiver, or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
- I. Interpretation. Any ambiguity of this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Privacy and Security Rules.
- J. Severability. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.
- K. Notice. Any notification required in this Agreement shall be made in writing to the representative of the other Party who signed this Agreement or the person currently serving in that representative's position with the other Party.
- L. Certain Provisions Not Effective in Certain Circumstances. The provisions of this Agreement relating to the HIPAA Security Rule shall not apply to Business Associate if Business Associate does not receive any Electronic PHI from or on behalf of Covered Entity.
- M. Entire Agreement. This Agreement constitutes the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written. In the event of any inconsistency between this Agreement and any other agreement between the Parties concerning the use and disclosure of PHI and the Parties' obligations with respect thereto, the terms of this Agreement shall control.

## **“Exhibit E”**

### (Special Terms and Conditions for Commerce Emergency Solutions Grant – COVID 19 ESG-CV – CFDA #14.231)

The funds allocated for services performed under this grant are Washington State Department of Commerce funds. The terms included in this agreement and any additional agreements herein are a result of the grant funding requirements. Commerce and the State of Washington are liable for claims or damages arising from the Contractor’s performance of this subgrant.

#### **1. DEFINITIONS**

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

- A. “Authorized Representative” shall mean the Director and/or the designee authorized in writing to act on the Director’s behalf.
- B. “COMMERCE” shall mean the Department of Commerce.
- C. “Grant” or “Agreement” means the entire written agreement between COMMERCE and the Grantee, including any attachments, documents, or materials incorporated by reference. E-mail or facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. “Grantee” shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Grantee.
- E. “Personal Information” shall mean information identifiable to any person, including, but not limited to, information that relates to a person’s name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- F. “State” shall mean the state of Washington.
- G. “Subgrantee/Subcontractor” shall mean one not in the employment of the Grantee, who is performing all or part of those services under this Grant under a separate Grant with the Grantee. The terms “subgrantee/subcontractor” refers to any tier.
- H. “Subrecipient” shall mean a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. It also excludes vendors that receive federal funds in exchange for goods and/or services in the course of normal trade or commerce

#### **2. ACKNOWLEDGMENT OF FEDERAL FUNDS**

The Contractor agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the Contractor describing programs or projects funded in whole or in part with federal funds under this Contract, shall contain the following statements:

“This project was supported by Grant No. E-20-DW-53-0001 awarded by U.S. Department of Housing and Urban Development (HUD) as a supplemental appropriation through the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act). Points of view in this document are those of the author and do not necessarily represent the official position or policies of the HUD. Grant funds are administered by the Housing Assistance Unit in the Community Services and Housing Division, Washington State Department of Commerce.”

#### **3. ALL WRITINGS CONTAINED HEREIN**

This Grant contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Grant shall be deemed to exist or to bind any of the parties hereto.

#### **4. AMENDMENTS**

This Grant 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**

Neither this Grant, nor any claim arising under this Grant, shall be transferred or assigned by the Grantee without prior written consent of COMMERCE.

#### **6. AUDIT**

If the Grantee is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Grantee shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Grantee shall:

- A. Submit to COMMERCE the reporting package specified in OMB Super Circular 2 CFR 200.501, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.
- B. Submit to COMMERCE follow-up and developed corrective action plans for all audit findings.

If the Grantee is a subrecipient and expends less than \$750,000 in federal awards from any and/or all sources in any fiscal year, the Grantee shall notify COMMERCE they did not meet the single audit requirement.

The Grantee shall send all single audit documentation to [auditreview@commerce.wa.gov](mailto:auditreview@commerce.wa.gov).

#### **7. CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION**

A. "Confidential Information" as used in this section includes:

- i. All material provided to the Grantee by COMMERCE that is designated as "confidential" by COMMERCE;
- ii. All material produced by the Grantee that is designated as "confidential" by COMMERCE; and
- iii. All personal information in the possession of the Grantee that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

B. The Grantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Grantee shall use Confidential Information solely for the purposes of this Grant and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Grantee shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Grantee shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Grant whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Grantee shall make the changes within the time period specified by COMMERCE. Upon request, the Grantee shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Grantee against unauthorized disclosure.

- C. Unauthorized Use or Disclosure. The Grantee shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

**8. COPYRIGHT**

Unless otherwise provided, all Materials produced under this Grant shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Grantee hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

"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.

For Materials that are delivered under the Grant, but that incorporate pre-existing materials not produced under the Grant, the Grantee hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Grantee warrants and represents that the Grantee has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Grantee shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Grant, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Grant. The Grantee shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Grantee with respect to any Materials delivered under this Grant. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Grantee.

**9. DUPLICATE PAYMENT**

COMMERCE shall not pay the Grantee, if the Grantee has charged or will charge the State of Washington or any other party under any other Grant, subgrant/subcontract, or agreement, for the same services or expenses.

**10. GOVERNING LAW AND VENUE**

This Grant shall be construed and interpreted in accordance with the laws of the state of Washington, and any applicable federal laws, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

**11. INDEMNIFICATION**

To the fullest extent permitted by law, the Grantee shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, agencies of the state and all officials, agents and employees of the state from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim" as used in this contract, means any financial loss, claim, suite, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The Grantee's obligation to indemnify, defend, and hold harmless includes any claim by Grantee's agents, employees, representatives, or any subgrantee/subcontractor or its employees.

Grantee expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Grantee's or any subgrantee's/subcontractor's performance or failure to perform the Grant. Grantee's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees, and officials.

The Grantee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless the state and its agencies, officers, agents, or employees.

**12. LAWS**

The Grantee shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended.

**13. LICENSING, ACCREDITATION AND REGISTRATION**

The Grantee shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

**14. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS**

A Grantee which is a local government or Indian Tribal government must establish procurement policies and procedures in accordance with 2 CFR Part 200, for all purchases funded by this Grant.

A Grantee which is a nonprofit organization shall establish procurement policies in accordance with 2 CFR Part 200, for all purchases funded by this Contract.

The Grantee's procurement system should include at least the following:

- A. A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.
- B. Procedures that ensure all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.
- C. Minimum procedural requirements, as follows:
  - i. Follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items.
  - ii. Solicitations shall be based upon a clear and accurate description of the technical requirements of the procured items.
  - iii. Positive efforts shall be made to use small and minority-owned businesses.
  - iv. The type of procuring instrument (fixed price, cost reimbursement) shall be determined by the Contractor, but must be appropriate for the particular procurement and for promoting the best interest of the program involved.
  - v. Contracts shall be made with only reasonable subgrantees/subcontractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.
  - vi. Some form of price or cost analysis should be performed in connection with every procurement action.
  - vii. Procurement records and files for purchases shall include all of the following:
    - 1) Contractor selection or rejection
    - 2) The basis for the cost or price
    - 3) Justification for lack of competitive bids if offers are not obtained

viii. A system for contract administration to ensure Contractor conformance with terms, conditions and specifications of this Contract, and to ensure adequate and timely follow-up of all purchases.

D. Contractor and Subgrantee/subcontractor must receive prior approval from COMMERCE for using funds from this Contract to enter into a sole source contract or a contract where only one bid or proposal is received when value of this Contract is expected to exceed \$5,000.

**15. PUBLICITY**

The Grantee agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE's name is mentioned, or language used from which the connection with the state of Washington's or COMMERCE'S name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

**16. RECAPTURE**

In the event that the Grantee fails to perform this Grant in accordance with state laws, federal laws, and/or the provisions of this Grant, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Grantee of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this Grant.

**17. RECORDS MAINTENANCE**

The Grantee shall maintain books, records, documents, data and other evidence relating to this Grant and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Grant.

The Grantee 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 Grant, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

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.

**18. SAVINGS**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Grant and prior to normal completion, COMMERCE may suspend or terminate the Grant under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Grant may be amended to reflect the new funding limitations and conditions.

**19. SEVERABILITY**

The provisions of this Grant are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Grant.

**20. SUBGRANTING/SUBCONTRACTING**

The Grantee may only subcontract work contemplated under this Grant if it obtains prior written approval of COMMERCE.

If COMMERCE approves subcontracting, the Grantee shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Grantee to amend its subcontracting procedures as they relate to this Grant; (b) prohibit the Grantee from subcontracting with a particular person or entity; or (c) require the Grantee to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Grant. The Grantee is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Grant. The Grantee shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Grant. In no event shall the existence of a subcontract operate to release or reduce the liability of the Grantee to COMMERCE for any breach in the performance of the Grantee's duties.

Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

**21. SITE SECURITY**

While on COMMERCE premises, Grantee, its agents, employees, or subcontractors shall conform in all respects with physical, fire, or other security policies or regulations.

**22. SURVIVAL**

The terms, conditions, and warranties contained in this Grant that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Grant shall so survive.

**23. TREATMENT OF ASSETS**

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Grantee, for the cost of which the Grantee is entitled to be reimbursed as a direct item of cost under this Grant, shall pass to and vest in COMMERCE upon delivery of such property by the Grantee. Title to other property, the cost of which is reimbursable to the Grantee under this Grant, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this Grant, or (ii) commencement of use of such property in the performance of this Grant, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

- A. Any property of COMMERCE furnished to the Grantee shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this Grant.
- B. The Grantee shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Grantee or which results from the failure on the part of the Grantee to maintain and administer that property in accordance with sound management practices.
- C. If any COMMERCE property is lost, destroyed or damaged, the Grantee shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D. The Grantee shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this Grant.

All reference to the Grantee under this clause shall also include Grantee's employees, agents, or Subgrantees/Subcontractors.

**24. 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 Grant unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

**“Exhibit F”**  
(CERTIFICATION REGARDING LOBBYING)

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 office or employee of an 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 entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, 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 office or employee of any agency, a Member of Congress, an office or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure of Lobbying Activities,” in accordance with its instructions.
  
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, and cooperative agreements) and that all subrecipients 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.

**Agency Name:** Opportunity Council

**Authorized Representative:** Greg Winter, Executive Director

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_





# Whatcom County

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

## Agenda Bill Master Report

File Number: **AB2020-577**

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<b>File ID:</b>	AB2020-577	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/24/2020	<b>Entered by:</b>	SWinger@co.whatcom.wa.us		
<b>Department:</b>	Finance Division	<b>File Type:</b>	Bid Award		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Request approval for the County Executive to authorize the purchase of body worn cameras, and enter into a contract for associated services with Axon Enterprise, Inc., using the Washington State Contract #06316, in an amount not to exceed \$381,437.85

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Per WCC 3.08.100(A), the Sheriff's Office requests approval for the County Executive to authorize the purchase of body worn cameras, and for the County Executive to enter into a contract for up to 5 years for associated services, including software, cloud storage, and a technical assurance plan with Axon Enterprise, Inc., using the Washington State Contract #06316 (expires 01/31/2022), in an amount not to exceed \$381,437.85. Funding in the amount of \$128,285.00 for the equipment, software, and first year of associated services was approved in the current Sheriff's Office base budget on ASR #2019-5735. The Sheriff's Office will include funding for the subsequent four (4) years of services fees (\$66,591.15 annually) in future biennial budgets

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Memo and Bid Documents

**WHATCOM COUNTY  
ADMINISTRATIVE SERVICES**



**FINANCE/ACCOUNTING**  
Whatcom County Courthouse  
311 Grand Avenue, Suite #503  
Bellingham WA 98225-4082  
Brad Bennett, Finance Manager

**DATE:** November 24, 2020  
**TO:** Tyler Schroeder, Director of Administrative Services  
**FROM:** Brad Bennett, AS Finance Manager  
**SUBJECT:** Approval to Purchase Body Worn Cameras

**BACKGROUND**

The Whatcom County Sheriff's Office requests approval to purchase body worn cameras and associated services (software, cloud storage, and technical assurance plan), using the Washington State Contract #06316 (expires 01/31/2022). These cameras will be worn by all deputies in the performance of their duties for public safety.

The vendor is Axon Enterprise, Inc., and the total cost for this purchase is \$381,437.85, including the equipment and accessories, five (5) years of cloud storage, five (5) years of technical assurance, freight, and sales tax.

**FUNDING**

This is a planned purchase, and \$128,285.00 for the equipment, software, and first year of associated services, was approved in the current Sheriff's Office base budget on ASR #2019-5735. The Sheriff's Office will include funding for the subsequent four (4) years of service fees (\$66,591.15 annually) in their future biennial budgets. I recommend approval.

  
AS Finance Manager


Approved as recommended:

\_\_\_\_\_  
Director of Administrative Services

Date of Council Action \_\_\_\_\_



## MEMORANDUM

**TO:** Brad Bennett, AS Finance Manager  
**FROM:** Bill Elfo, Sheriff   
**DATE:** November 18, 2020  
**RE:** Purchase Hardware and Services for Year 1 Implementation of Body Worn Camera Program in 2020  
(NASPO ValuePoint Washington Master Contract No. 06316)

### Requested Action

The Sheriff's Office has researched the cost of body worn cameras (BWCs), tested several products, and requests approval to purchase hardware (BWCs) and services (software, cloud storage, and professional services) from Axon Enterprise, Inc. using NASPO ValuePoint For Public Safety Video Equipment, Washington Master Contract No. 06316.

### Background and Purpose

Recent events and increased tension between law enforcement and the communities we serve have been highly publicized in the national media. BWCs will be used by Sheriff's Office deputies to increase transparency and accountability, improve behavior of both law enforcement and the public, expedite resolution of complaints and allegations of misconduct, enhance evidence to aid in prosecution, and reduce time spent resolving criminal cases.

### Funding Amount and Source

Funding of \$128,285 was budgeted during the 2019-2020 biennial budget cycle for implementation of a BWC Program in 2020 using General Fund dollars, ASR# 2019-5735, approved by County Council on 11/20/2018, Ordinance No. 2018-064.

The Sheriff's Office will include funding in future biennial budgets for the annual payments for year two (2) – five (5) for Cloud storage and technical assurance plans (\$66,591.15/annually)

### Recommended Action

Please approve this purchase and forward to the County Executive and Whatcom County Council for approval at the December 8, 2020 Whatcom County Council meeting.

Please contact Undersheriff Chadwick at extension 6618 if you have any questions or concerns.

Thank you.



# REQUISITION

WHATCOM COUNTY  
Administrative Services  
(360) 778-5320

NO. SHR-20- 080

PURCHASE ORDER NUMBER

VENDOR NUMBER	If no vendor number exists, please complete a Request for Vendor Number Form
1368122	

COST CENTER NAME
Sheriff Admin

Name	Axon Enterprise, Inc.
	17800 N 85th St.
	Scottsdale, Arizona 85255
Phone	800-978-2737

SHIP TO
IT

COST CENTER	ACCOUNT	SUB	Amount
2900	6510		\$ 73,554.31
2900	6520		\$ 41,766.88
2900	6630		\$ 2,750.00

IT REVIEW (IF APPLICABLE)

DESCRIPTION/INSTRUCTIONS	QUANTITY	UNIT PRICE	TOTAL PRICE
Axon Body Cam 3 per attached quote Q-234091-44137.940SP			-
Year 1 (Pages 2-3 of attached quote)			-
Hardware (taxable)	1	45,227.75	45,227.75
Axon Plans & Packages (taxable)	1	17,976.00	17,976.00
Axon Plans & Packages Item #80123 (non taxable)	1	20,448.00	20,448.00
Technology Assurancwe Plan AB3 Annual Payment (taxable)	1	23,856.00	23,856.00
Axon Starter (taxable)	1	2,750.00	2,750.00
			-
			-
NASPO ValuePoint For Public Safety Video Equipment			-
Master Agreement No.: OK-MA-145-015			-
Washington Master Contytract No. 06316			-
			-
			-
SUBTOTAL			107499.75
SALES TAX 8.70%			110,257.75
SALES TAX AMOUNT			1513.98
TOTAL			118,071.19
			115013.25

*See quote*

WRITTEN BY	DATE	APPROVED BY	DATE
D. Pierce <i>DMF</i>	11/18/2020	<i>[Signature]</i>	11/19/20

Note: Attach copies of all quotes to this requisition.

Quote #1	Quote #2	Quote #3
<b>WatchGuard</b>	<b>Visual Labs</b>	Vendor <b>Getac</b> did not provide quote
Vendor	Vendor	Vendor <b>Reveal</b> did not respond
Phone	Phone	Vendor <b>Motorolla</b> did not respond
Email	Email	
Contact Name	Contact Name	
Details/Price	Details/Price	
Year 1: 216,897.50	Not a comparable product	
	Product quality was poor and unacceptable	

Purchasing's comparison to WSC/Naspo contract price list:

Public Safety/Law Enforcement Video and Vehicle Mounted Equipment

Attachment D Band 1 and 3 - Pricing Workbook

OK- MA - 145 Band 1 - Body Worn Video Cameras and Recording Devices

OK - MA - 145 - Band 3 - Video Storage, Data Security, Software, and Peripherals

SKU	Product Description	Medium (26-200 Officers)	Qty on Quote	Ext Amt	Axon Quote (Year 1)	Axon Quote (Year 2-5)	Comments
11507	MOLLE MOUNT, SINGLE, AXON RAPIDLOCK	\$ 31.30	13	\$ 406.90	\$ -	\$ -	
70033	Wall mount, Axon Dock for Axon Flex and Axon Body	\$ 43.90	4	\$ 175.60	\$ -	\$ -	
73202	AXON BODY 3 - NA10	\$ 699.00	75	\$ 52,425.00	\$ 37,221.75	\$ -	
73830	EVIDENCE.COM UNLIMITED AXON DEVICE STORAGE PAYMENT	\$ 24.00	4260	\$ 102,240.00	\$ 20,448.00	\$ 81,792.00	Not subject to sales tax
73837	EVIDENCE.COM PROFESSIONAL LICENSE PAYMENT	\$ 39.00	300	\$ 11,700.00	\$ 2,340.00	\$ 9,360.00	
73841	EVIDENCE.COM BASIC LICENSE PAYMENT	\$ 15.00	4680	\$ 70,200.00	\$ 14,040.00	\$ 56,160.00	
74210	AXON BODY 3 - 8 BAY DOCK	\$ 1,495.00	4	\$ 5,980.00	\$ 5,980.00		
74211	AXON BODY 3 - 1 BAY DOCK	\$ 200.00	7	\$ 1,400.00	\$ 1,400.00		
85144	AXON STARTER	\$ 2,750.00	2	\$ 5,500.00	\$ -	\$ -	
87061	TECH ASSURANCE PLAN 1-BAY BODY 3 DOCK PAYMENT	\$ 9.50	420	\$ 3,990.00	\$ 798.00	\$ 3,192.00	
87062	TECH ASSURANCE PLAN 8-BAY BODY 3 DOCK PAYMENT	\$ 57.50	240	\$ 13,800.00	\$ 1,416.00	\$ 5,664.00	
87063	TECH ASSURANCE PLAN BODY 3 CAMERA PAYMENT	\$ 28.00	4380	\$ 122,640.00	\$ 23,856.00	\$ 95,424.00	
				\$ 390,457.50	\$ 107,499.75	\$ 251,592.00	Subtotal
				\$ 25,074.92	\$ 7,573.50	\$ 14,772.60	Sales tax (Item 73830 not subject to sales tax)
				\$ 415,532.42	\$ 115,073.25	\$ 266,364.60	Total Quote: \$381,437.85



# AXON

**Whatcom County Sheriff's Office - WA**

**AXON SALES REPRESENTATIVE**

Sam Phillips

480-272-3784

sphillips@axon.com

**ISSUED**

11/24/2020

Q-277438-44159.046SP

1





**Axon Enterprise, Inc.**  
 17800 N 85th St.  
 Scottsdale, Arizona 85255  
 United States  
 Phone: (800) 978-2737

**Q-277438-44159.046SP**

Issued: 11/24/2020

Quote Expiration: 12/31/2020

Account Number: 109193

Payment Terms: Net 30  
 Delivery Method: Fedex - Ground

**SHIP TO**

Rodger Funk  
 Whatcom County Sheriff's Office - WA  
 311 GRAND AVENUE,PUBLIC SAFETY BLDG-  
 BSMT  
 Bellingham, WA 98225  
 US

**BILL TO**

Whatcom County Sheriff's Office - WA  
 311 GRAND AVENUE,PUBLIC SAFETY  
 BLDG-BSMT  
 Bellingham, WA 98225  
 US

**SALES REPRESENTATIVE**

Sam Phillips  
 Phone: 480-272-3784  
 Email: sphillips@axon.com  
 Fax:

**PRIMARY CONTACT**

Rodger Funk  
 Phone: (360) 676-6650  
 Email: rfunk@co.whatcom.wa.us

**Year 1**

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
<b>Axon Plans &amp; Packages</b>						
73683	10 GB EVIDENCE.COM A-LA-CART STORAGE	60	78	0.00	0.00	0.00
73840	EVIDENCE.COM BASIC ACCESS LICENSE	60	78	0.00	0.00	0.00
73683	10 GB EVIDENCE.COM A-LA-CART STORAGE	60	15	0.00	0.00	0.00
73746	PROFESSIONAL EVIDENCE.COM LICENSE	60	5	0.00	0.00	0.00
73686	EVIDENCE.COM UNLIMITED AXON DEVICE STORAGE	60	71	0.00	0.00	0.00
<b>Hardware</b>						
73202	AXON BODY 3 - NA10		71	699.00	524.25	37,221.75
74210	AXON BODY 3 - 8 BAY DOCK		4	1,495.00	1,495.00	5,980.00
70033	WALL MOUNT BRACKET, ASSY, EVIDENCE.COM DOCK		4	43.90	0.00	0.00
74211	AXON BODY 3 - 1 BAY DOCK		7	200.00	200.00	1,400.00
74021	MAGNET MOUNT, THICK OUTERWEAR, AXON RAPIDLOCK		71	0.00	0.00	0.00
11507	MOLLE MOUNT, SINGLE, AXON RAPIDLOCK		7	0.00	0.00	0.00
11534	USB-C to USB-A CABLE FOR AB3 OR FLEX 2		71	0.00	0.00	0.00
11507	MOLLE MOUNT, SINGLE, AXON RAPIDLOCK		13	31.30	0.00	0.00

**Year 1 (Continued)**

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
<b>Hardware (Continued)</b>						
87063	TECH ASSURANCE PLAN BODY 3 CAMERA PAYMENT	12	71	336.00	336.00	23,856.00
87062	TECH ASSURANCE PLAN 8-BAY BODY 3 DOCK PAYMENT	12	4	354.00	354.00	1,416.00
87060	TECH ASSURANCE PLAN 1-BAY BODY 3 DOCK WARRANTY	60	7	0.00	0.00	0.00
87061	TECH ASSURANCE PLAN 1-BAY BODY 3 DOCK PAYMENT	12	7	114.00	114.00	798.00
73202	AXON BODY 3 - NA10		2	699.00	0.00	0.00
74021	MAGNET MOUNT, THICK OUTERWEAR, AXON RAPIDLOCK		2	0.00	0.00	0.00
11534	USB-C to USB-A CABLE FOR AB3 OR FLEX 2		2	0.00	0.00	0.00
<b>Other</b>						
71019	NORTH AMER POWER CORD FOR AB3 8-BAY, AB2 1-BAY / 6-BAY DOCK		4	0.00	0.00	0.00
71104	NORTH AMER POWER CORD FOR AB3 1-BAY DOCK		7	0.00	0.00	0.00
73827	AB3 CAMERA TAP WARRANTY	60	71	0.00	0.00	0.00
73828	AB3 8 BAY DOCK TAP WARRANTY	60	4	0.00	0.00	0.00
73841	EVIDENCE.COM BASIC LICENSE PAYMENT	12	78	180.00	180.00	14,040.00
73837	EVIDENCE.COM PROFESSIONAL LICENSE PAYMENT	12	5	468.00	468.00	2,340.00
73830	EVIDENCE.COM UNLIMITED AXON DEVICE STORAGE PAYMENT	12	71	288.00	288.00	20,448.00
<b>Services</b>						
85144	AXON STARTER		1	2,750.00	0.00	0.00
85144	AXON STARTER		1	2,750.00	0.00	0.00
					Subtotal	107,499.75
					Estimated Shipping	0.00
					Estimated Tax	7,573.50
					Total	115,073.25

**Spares**

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
<b>Hardware</b>						
73202	AXON BODY 3 - NA10		2	699.00	0.00	0.00



### Spares (Continued)

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
<b>Hardware (Continued)</b>						
74021	MAGNET MOUNT, THICK OUTERWEAR, AXON RAPIDLOCK		2	0.00	0.00	0.00
11534	USB-C to USB-A CABLE FOR AB3 OR FLEX 2		2	0.00	0.00	0.00
87063	TECH ASSURANCE PLAN BODY 3 CAMERA PAYMENT	60	2	1,680.00	0.00	0.00
<b>Other</b>						
73827	AB3 CAMERA TAP WARRANTY	12	2	0.00	0.00	0.00
					Subtotal	0.00
					Estimated Tax	0.00
					Total	0.00

### Year 2

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
<b>Hardware</b>						
87063	TECH ASSURANCE PLAN BODY 3 CAMERA PAYMENT	12	71	336.00	336.00	23,856.00
87062	TECH ASSURANCE PLAN 8-BAY BODY 3 DOCK PAYMENT	12	4	354.00	354.00	1,416.00
87061	TECH ASSURANCE PLAN 1-BAY BODY 3 DOCK PAYMENT	12	7	114.00	114.00	798.00
<b>Other</b>						
73841	EVIDENCE.COM BASIC LICENSE PAYMENT	12	78	180.00	180.00	14,040.00
73837	EVIDENCE.COM PROFESSIONAL LICENSE PAYMENT	12	5	468.00	468.00	2,340.00
73830	EVIDENCE.COM UNLIMITED AXON DEVICE STORAGE PAYMENT	12	71	288.00	288.00	20,448.00
					Subtotal	62,898.00
					Estimated Tax	3,693.15
					Total	66,591.15

### Year 3

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
<b>Hardware</b>						
87063	TECH ASSURANCE PLAN BODY 3 CAMERA PAYMENT	12	71	336.00	336.00	23,856.00
87062	TECH ASSURANCE PLAN 8-BAY BODY 3 DOCK PAYMENT	12	4	354.00	354.00	1,416.00

**Year 3 (Continued)**

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
<b>Hardware (Continued)</b>						
87061	TECH ASSURANCE PLAN 1-BAY BODY 3 DOCK PAYMENT	12	7	114.00	114.00	798.00
<b>Other</b>						
73309	AXON CAMERA REFRESH ONE		71	0.00	0.00	0.00
73689	MULTI-BAY BWC DOCK 1ST REFRESH		4	0.00	0.00	0.00
73313	1-BAY DOCK AXON CAMERA REFRESH ONE		7	0.00	0.00	0.00
73841	EVIDENCE.COM BASIC LICENSE PAYMENT	12	78	180.00	180.00	14,040.00
73837	EVIDENCE.COM PROFESSIONAL LICENSE PAYMENT	12	5	468.00	468.00	2,340.00
73830	EVIDENCE.COM UNLIMITED AXON DEVICE STORAGE PAYMENT	12	71	288.00	288.00	20,448.00
73309	AXON CAMERA REFRESH ONE		2	0.00	0.00	0.00
					Subtotal	62,898.00
					Estimated Tax	3,693.15
					Total	66,591.15

**Year 4**

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
<b>Hardware</b>						
87063	TECH ASSURANCE PLAN BODY 3 CAMERA PAYMENT	12	71	336.00	336.00	23,856.00
87062	TECH ASSURANCE PLAN 8-BAY BODY 3 DOCK PAYMENT	12	4	354.00	354.00	1,416.00
87061	TECH ASSURANCE PLAN 1-BAY BODY 3 DOCK PAYMENT	12	7	114.00	114.00	798.00
<b>Other</b>						
73841	EVIDENCE.COM BASIC LICENSE PAYMENT	12	78	180.00	180.00	14,040.00
73837	EVIDENCE.COM PROFESSIONAL LICENSE PAYMENT	12	5	468.00	468.00	2,340.00
73830	EVIDENCE.COM UNLIMITED AXON DEVICE STORAGE PAYMENT	12	71	288.00	288.00	20,448.00
					Subtotal	62,898.00
					Estimated Tax	3,693.15
					Total	66,591.15

**Year 5**

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
<b>Hardware</b>						
87063	TECH ASSURANCE PLAN BODY 3 CAMERA PAYMENT	12	71	336.00	336.00	23,856.00
87062	TECH ASSURANCE PLAN 8-BAY BODY 3 DOCK PAYMENT	12	4	354.00	354.00	1,416.00
87061	TECH ASSURANCE PLAN 1-BAY BODY 3 DOCK PAYMENT	12	7	114.00	114.00	798.00
<b>Other</b>						
73310	AXON CAMERA REFRESH TWO		71	0.00	0.00	0.00
73688	MULTI-BAY BWC DOCK 2ND REFRESH		4	0.00	0.00	0.00
73314	1-BAY DOCK AXON CAMERA REFRESH TWO		7	0.00	0.00	0.00
73841	EVIDENCE.COM BASIC LICENSE PAYMENT	12	78	180.00	180.00	14,040.00
73837	EVIDENCE.COM PROFESSIONAL LICENSE PAYMENT	12	5	468.00	468.00	2,340.00
73830	EVIDENCE.COM UNLIMITED AXON DEVICE STORAGE PAYMENT	12	71	288.00	288.00	20,448.00
73310	AXON CAMERA REFRESH TWO		2	0.00	0.00	0.00
					Subtotal	62,898.00
					Estimated Tax	3,693.15
					Total	66,591.15

**Grand Total | 381,437.85**

## Discounts (USD)

Quote Expiration: 12/31/2020

List Amount	383,737.50
Discounts	24,645.75
<b>Total</b>	<b>359,091.75</b>

*\*Total excludes applicable taxes*

## Summary of Payments

Payment	Amount (USD)
Year 1	115,073.25
Spares	0.00
Year 2	66,591.15
Year 3	66,591.15
Year 4	66,591.15
Year 5	66,591.15
<b>Grand Total</b>	<b>381,437.85</b>

**Notes**

NASPO Contract No. OK-MA-145-015 used for pricing and purchasing justification.

Tax is subject to change at order processing with valid exemption.

**Axon's Sales Terms and Conditions**

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at [www.axon.com/legal/sales-terms-and-conditions](http://www.axon.com/legal/sales-terms-and-conditions)), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Name (Print):** \_\_\_\_\_ **Title:** \_\_\_\_\_

**PO# (Or write N/A):** \_\_\_\_\_

Please sign and email to Sam Phillips at [sphillips@axon.com](mailto:sphillips@axon.com) or fax to

Thank you for being a valued Axon customer. For your convenience on your next order, please check out our online store [buy.axon.com](http://buy.axon.com)

The trademarks referenced above are the property of their respective owners.

**\*\*\*Axon Internal Use Only\*\*\***

		SFDC Contract #:
		Order Type:
		RMA #:
		Address Used:
		SO #:

Comments: \_\_\_\_\_



# Whatcom County

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

## Agenda Bill Master Report

File Number: **AB2020-578**

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<b>File ID:</b>	AB2020-578	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/24/2020	<b>Entered by:</b>	MKeeley@co.whatcom.wa.us		
<b>Department:</b>	Human Resources Division	<b>File Type:</b>	Contract		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to renew a Collective Bargaining Agreement between Whatcom County and General Teamsters' Local Union 231 Master Collective Bargaining Unit for the period January 1, 2021 through December 31, 2021

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Please refer to Staff Memo for background and more information

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Staff Memo AB2020-578, MCBA - Quick Settlement, Contract Information Sheet MCBA



**MEMO TO:** County Council Members

**CC:** Satpal Sidhu, County Executive  
Tyler Schroeder, Deputy Executive

**FROM:** Melissa Keeley, Employee Relations Manager

**DATE:** November 25, 2020

**SUBJECT:** Teamsters Local 231 – Master Collective Bargaining Agreement 2021

A handwritten signature in blue ink, appearing to read "M. Keeley", is written over the "CC:" and "FROM:" lines of the memo.

---

The County and Union have agreed to renew all terms and conditions of the 2019-2020 Collective Bargaining Agreement through 2021 with a few amendments. We are pleased to have reached a quick settlement agreement consistent with budget authority.

The successor collective bargaining agreement represents 453 employees throughout the County and includes Administrative Services, the Elected Offices, the Courts staff, clerical staff in the Health Department, Parks & Recreation, Planning, Public Defender, Public Works, clerical staff in the Sheriff's Office, and clerical staff in the WSU Extension office.

Highlights are summarized below:

**Wages**

- 2020 Salary Matrices shall remain as is. No cost of living increases.

**Health and Welfare Benefits**

- Monthly County contribution to medical increased from \$1,271 to \$1,291.
- Transition from WTWT Dental Plan B to Dental Plan A.

**Future Cost Savings**

- County agrees to consider future necessary cost savings in the following order
  - Hiring freeze;
  - Reduction of Expenditures;
  - Furloughs and closure days; subject to good faith bargaining as required;
  - As a last resort and only if necessary, layoffs

I'm available to answer any questions at extension 5309 or by email.



**LETTER OF UNDERSTANDING  
BY AND BETWEEN  
WHATCOM COUNTY, WASHINGTON  
AND  
TEAMSTERS LOCAL 231**

This Letter of Understanding is by and between Whatcom County ("the County") and Teamsters Local 231 ("the Union") regarding the Master Collective Bargaining Agreement ("CBA") dated April 23, 2019 - December 31, 2020.

The parties have met, conferred, and bargained as required by law to extend the CBA through December 31, 2021 as follows:

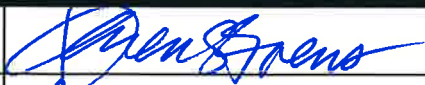
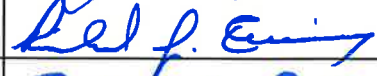

The parties agree to renew all terms and conditions of the 2019-2020 CBA as provided below:

1. Each wage step in all ranges of the 2020 hourly matrix shall remain as is (Addendum B).
2. Section **8.03 Health and Welfare** will be modified as follows:  
"The County agrees to make monthly contributions towards the following plans:
  - a. **Medical** – Washington Teamsters Welfare Trust Plan "B".
  - b. **Dental** – Washington Teamsters Welfare Trust Dental Plan "A".
  - c. **Vision** – Washington Teamsters Welfare Trust Extended Benefit Plan.
  - d. **Life** – Life Insurance through a carrier to be selected by the County in the amount of \$50,000.
  - e. **Waiver of Contributions** – Washington Teamsters Welfare Trust Employee 9-month Disability Waiver of Contributions Extension.
  - f. **Plan D Time Loss** – Washington Teamsters Welfare Trust Employee \$100 per week time loss."
3. Section **8.04a(1) County Contribution** will be modified as follows:  
For the calendar year 2021, based on the preceding month's hours, the County shall pay the monthly premium cost of \$1,291 to fund the Washington Teamsters Welfare Trust Plan "B" and optional Plan "D" Time Loss Plan.
4. The County is committed to mitigating the negative budgeting impacts of the COVID-19 pandemic while balancing the priority of job stability for its employees.
5. The County agrees to consider future necessary cost savings in the following order:
  - Hiring Freeze;
  - Reduction of Expenditures;
  - Furloughs and closure days; subject to good faith bargaining as required;
  - As a last resort and only if necessary, layoffs
6. The Parties agree to continue negotiations in good faith during 2021 for a 2022 Agreement.
7. Any disputes regarding application of this LOU are subject to the CBA grievance procedure.
8. During the life of this agreement, should the County provide an increase in wages to any group of employees not currently bound by a collective bargaining agreement, represented or non-represented, not including interest arbitration, the County shall apply the same wage increase to employees covered by the Teamsters Master CBA.



9. This LOU may be amended at any time with mutual agreement of the County and the Union.

The foregoing being the agreement of the Parties is in addition to such other provisions in the CBA. This Letter of Understanding shall be effective as of the date of Council approval and shall supersede any conflicting provision in the CBA.

Name	Signature	Date
Karen Sterling Goens, HR Manager		11/22/2020
Rich Ewing, Teamsters Local 231		11-19-2020
Satpal Sidhu, County Executive		11/23/2020

Approved as to Form:

  
\_\_\_\_\_  
George Roche, Senior Civil Deputy Prosecuting Attorney

11/20/20  
\_\_\_\_\_  
Date

Date Approved by Council: \_\_\_\_\_





# Whatcom County

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

## Agenda Bill Master Report

File Number: **AB2020-579**

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<b>File ID:</b>	AB2020-579	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/25/2020	<b>Entered by:</b>	KGoens@co.whatcom.wa.us		
<b>Department:</b>	Human Resources Division	<b>File Type:</b>	Contract		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

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

**TITLE FOR AGENDA ITEM:**

Request authorization for the County Executive to accept Midwest Employer Casualty renewal option 1 for insurance protection for the self-insured workers' compensation program in 2021

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

Please refer to Staff memo and Client Authorization to Bind Coverage for background and more information.

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Staff Memo, Client Authorization to Bind Coverage, Contract Information Sheet



**Karen Sterling Goens**  
Manager

## MEMORANDUM

**TO:** Satpal Singh Sidhu, County Executive

**FROM:** Karen Goens, Human Resources Manager 

**RE:** **Workers Compensation – Stop Loss Insurance Policy**

**DATE:** November 24, 2020

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Enclosed is a Client Authorization to Bind Coverage for excess/stop loss coverage for workers' compensation claims over \$500,000 for non-law enforcement and over \$600,000 for law enforcement claims for your review and signature.

The estimated premium is \$73,964 for 2021 coverage plus a \$6,286 Broker Fee. Final premium will be based on worker hours during 2021.

### **Background and Purpose**

The County protects its financial assets in the self-insured workers' compensation program with reserves and with insurance coverage for very large claims (also called stop loss or excess insurance). Each year, Arthur J. Gallagher, broker for the Washington Counties Risk Pool, seeks bids from the market, analyzes quotes, and provides options for coverage.

Coverage for 2020 is with Midwest Employers Casualty Company which proposed the best renewal pricing for 2021. The new rate per worker hour of 0.0451 represents a 48% increase. Although Whatcom County's two largest claims over the past five years are less than \$150,000, the insurance market was extremely tough this year. The other insurance company that typically submits a bid for our business would require a \$100,000 minimum premium regardless of our claims experience.

### **Funding Amount and Source**

The workers' compensation program is funded through internal rates charged to departments based on hours worked by risk classification (law enforcement, laborers, office, etc.). Premiums are paid from cost center 507300.

Please feel free to contact me at (360) 778-5305 if you have any questions or concerns regarding my recommendation.

## Client Authorization to Bind Coverage

After careful consideration of Gallagher's proposal dated 11/24/2020, we accept the following coverage(s). Please check the desired coverage(s) and note any coverage amendments below:

COVERAGE/CARRIER	
<input checked="" type="checkbox"/> Accept <input type="checkbox"/> Reject	<b>Excess Workers' Compensation</b>
<input checked="" type="checkbox"/> Option # 1	Midwest Employers Casualty Company – Excess WC - Retention: \$500k/\$600k - \$73,964
<input type="checkbox"/> Option # 2	Midwest Employers Casualty Company - Excess WC – Retention: \$500k/\$750K - \$69,044
<input type="checkbox"/> Option # 3	Midwest Employers Casualty Company – Excess WC – Retention \$500k/\$1M - \$66,429
<input type="checkbox"/> Option # 4	Midwest Employers Casualty Company – Excess WC – Retention: \$750k - \$65,928
<input type="checkbox"/> Option # 5	Midwest Employers Casualty Company – Excess WC – Retention: \$750k/\$1M - \$63,632
<i>TRIA Cannot Be Rejected</i>	
<input checked="" type="checkbox"/> Accept <input type="checkbox"/> Reject	<b>Broker Fee - \$6,286</b>

The above coverage may not necessarily represent the entirety of available insurance products. If you are interested in pursuing additional coverages other than those addressed in the coverage considerations included in this proposal, please list below:

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**Producer/ Insured Coverage Amendments and Notes:**

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**Exposures and Values**

We confirm the payroll, values, schedules, and other data contained in the proposal, and submitted to the underwriters, are compiled from information provided by you and we acknowledge it is our responsibility to see that such information is updated and maintained accurately. For renewal policies, if no updates were provided to Gallagher, the values, exposures and operations used were based on the expiring policies.

**Provide Quotations or Additional Information on the Following Coverage Considerations:**

Gallagher recommends that you purchase the following additional coverages for which you have exposure. By rejecting a quotation for this valuable coverage, you understand that there will be no coverage and agree to hold Gallagher harmless in the event of a loss.

**Other Coverages to Consider**

Yes  No – Excess Cyber Liability

**Other Services to Consider**

Yes  No - CORE360™ Loss Control Portal

Yes  No - eRiskHub

**Fee Agreement:** In lieu of commission received by Gallagher for the policy term reflected herein, Gallagher will receive a fee of: **\$6,286** for placement of annual insurance policies, including Excess Workers' Compensation, and two Storage Tank Pollution Liability policies.

This fee IS NOT refundable, is fully earned by signing below, and is due and payable within thirty (30) days of such signing. Any placements that require the payment of additional state or federal taxes and/or fees are the client's responsibility.

By accepting this fee agreement, we agree and understand that it reflects services to be provided that have been discussed with and fully disclosed to us, and the above fee is consistent with our understanding. This agreement and any disputes that arise out of this fee agreement shall be governed by the laws of the state of Illinois.

Gallagher's liability to Client arising from any acts or omissions of Gallagher shall not exceed \$20 million in the aggregate. Gallagher shall only be liable for actual damages incurred by Client, and shall not be liable for any indirect, consequential or punitive damages or attorneys' fees. No claim or cause of action, regardless of form (tort, contract, statutory, or otherwise), arising out of, relating to or in any way connected with this Agreement or any Services provided hereunder may be brought by either party any later than two (2) years after the accrual of such claim or cause of action.

Gallagher has established security controls to protect Client confidential information from unauthorized use or disclosure. For additional information, please review Gallagher's Privacy Policy located at <https://www.ajg.com/privacy-policy/>.

I have read, understand and agree that the above information is correct and has been disclosed to us prior to authorizing Gallagher to bind coverage and/or provide services to us.

By: **Satpal Singh Sidhu, County Executive**  
Print Name (Specify Title)

**Whatcom County**  
Company

\_\_\_\_\_  
Signature

Date: **December 9, 2020**

**WHATCOM COUNTY CONTRACT  
INFORMATION SHEET**

Whatcom County Contract No. \_\_\_\_\_

Originating Department:	Administrative Services								
Division/Program: (i.e. Dept. Division and Program)	Human Resources (HR)								
Contract or Grant Administrator:	Karen S. Goens, HR Manager								
Contractor's / Agency Name:	Midwest Employers Casualty								
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="radio"/> No <input checked="" type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____									
Does contract require Council Approval? Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____									
Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)									
Is this a grant agreement? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, grantor agency contract number(s): _____ CFDA#: _____									
Is this contract grant funded? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, Whatcom County grant contract number(s): _____									
Is this contract the result of a RFP or Bid process? Yes <input checked="" type="radio"/> No <input type="radio"/> If yes, RFP and Bid number(s): <u>AJGallagher conducted process</u> Contract Cost Center: <u>507300</u>									
Is this agreement excluded from E-Verify? No <input type="radio"/> Yes <input checked="" type="radio"/> If no, include Attachment D Contractor Declaration form.									
If YES, indicate exclusion(s) below: <table style="width:100%; border:none;"> <tr> <td><input checked="" type="checkbox"/> Professional services agreement for certified/licensed professional.</td> <td><input type="checkbox"/> Goods and services provided due to an emergency</td> </tr> <tr> <td><input type="checkbox"/> Contract work is for less than \$100,000.</td> <td><input type="checkbox"/> Contract for Commercial off the shelf items (COTS).</td> </tr> <tr> <td><input type="checkbox"/> Contract work is for less than 120 days.</td> <td><input type="checkbox"/> Work related subcontract less than \$25,000.</td> </tr> <tr> <td><input type="checkbox"/> Interlocal Agreement (between Governments).</td> <td><input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.</td> </tr> </table>		<input checked="" type="checkbox"/> Professional services agreement for certified/licensed professional.	<input type="checkbox"/> Goods and services provided due to an emergency	<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 type="checkbox"/> Interlocal Agreement (between Governments).	<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.
<input checked="" type="checkbox"/> Professional services agreement for certified/licensed professional.	<input type="checkbox"/> Goods and services provided due to an emergency								
<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 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): \$ <u>80,250</u> This Amendment Amount: \$ _____ Total Amended Amount: \$ _____	Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b> <ol style="list-style-type: none"> <li>1. Exercising an option contained in a contract previously approved by the council.</li> <li>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.</li> <li>3. Bid or award is for supplies.</li> <li>4. Equipment is included in Exhibit "B" of the Budget Ordinance.</li> <li>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.</li> </ol>								
Stop loss protection for the self-insured workers' compensation program with Midwest Employers Casualty.									
RECOMMENDED MOTION: Request authorization for the County Executive to accept Midwest Employer Casualty renewal option 1 for insurance protection for the self-insured workers' compensation program for 2021.									
Term of Contract: One year	Expiration Date: December 31, 2021								

Contract Routing:	1. Prepared by: <u>Karen Goens</u>	Date: <u>11/24/2020</u>
	2. Attorney signoff: <u>George Roche</u>	Date: _____
	3. AS Finance reviewed: _____	Date: _____
	4. IT reviewed (if IT related): <u>N/A</u>	Date: _____
	5. Contractor signed: <u>Proposal received from Arthur J. Gallagher</u>	Date: <u>11/24/2020</u>
	6. Submitted to Exec.: _____	Date: <u>11/24/2020</u>
	7. Council approved (if necessary): _____	Date: _____
	8. Executive signed: _____	Date: _____
	9. Original to Council: _____	Date: _____



# Whatcom County

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

## Agenda Bill Master Report

File Number: **AB2020-581**

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<b>File ID:</b>	AB2020-581	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/25/2020	<b>Entered by:</b>	SBatdorf@co.whatcom.wa.us		
<b>Department:</b>	Parks and Recreation Department	<b>File Type:</b>	Agreement		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a residential lease agreement between Whatcom County and Wayne and Michelle Moses and Barbara Jackson to reside at 7981 Blaine Road, Blaine, for monthly rent of \$1,639.00

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

This is a one-year lease agreement between Whatcom County and Wayne Moses, Michelle Moses, and Barbara Jackson to reside at 7981 Blaine Road, Blaine, WA, located within Sunset Farm Park. The rental rate is \$1639.00 per month and the lease converts to a month-to-month basis after the initial one-year period.

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Memorandum, Residential Lease Agreement





## MEMORANDUM

**TO:** County Executive Sidhu and Members of the Council

**FROM:** Michael McFarlane, Director 

**DATE:** November 25, 2020

**RE:** 7981 Blaine Road Residential Rental Lease

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Enclosed find two copies of a residential rental lease for the house located, within Sunset Farm Park, at 7981 Blaine Road, Blaine, for your review and signature. This is a one-year lease agreement for a rate of \$1,639.00 per month that changes to a month-to-month basis after the initial one-year period.

Should you have any questions or need additional information, please contact me at 5855.

Thank you.

**WHATCOM COUNTY CONTRACT  
INFORMATION SHEET**

Whatcom County Contract No. \_\_\_\_\_

Originating Department:	Parks & Recreation
Division/Program: <i>(i.e. Dept. Division and Program)</i>	M&O
Contract or Grant Administrator:	Christ Thomsen
Contractor's / Agency Name:	Wayne Moses, Michelle Moses, and Barbara Jackson
Is this a New Contract?    If not, is this an Amendment or Renewal to an Existing Contract?    Yes <input type="radio"/> No <input checked="" type="radio"/> Yes <input checked="" type="radio"/> No <input type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval?    Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____ Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, grantor agency contract number(s): _____ CFDA#: _____	
Is this contract grant funded? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, Whatcom County grant contract number(s): _____	
Is this contract the result of a RFP or Bid process? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____ Contract Cost Center: _____	
Is this agreement excluded from E-Verify?    No <input checked="" type="radio"/> Yes <input type="radio"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below: <input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Goods and services provided due to an emergency <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 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): \$ <u>1,639.00</u> per month This Amendment Amount: \$ <u>0</u> Total Amended Amount: \$ <u>1,639.00</u>	Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b> 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 is a one-year lease agreement for a rate of \$1,639.00 per month that changes to a month-to-month basis after the initial one-year period.	
Term of Contract: One year	Expiration Date: October 31, 2021

Contract Routing:	1. Prepared by: <u>Christ Thomsen</u>	Date: <u>11/12/2020</u>
	2. Attorney signoff: <u>Brandon Waldron / Approved via email</u>	Date: <u>11/12/2020</u>
	3. AS Finance reviewed: <u>Brad Bennett</u> <i>BB</i>	Date: <u>11/20/20</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: _____

Last edited 07/06/20

**RESIDENTIAL LEASE AGREEMENT**  
**Whatcom County**

**THIS AGREEMENT**, dated as of *October 19, 2020*, is made and entered into between **WHATCOM COUNTY (PARKS AND RECREATION DEPARTMENT)**, a municipal corporation in the State of Washington, hereinafter referred to as "Landlord", and *Wayne E. Moses, Michelle A. Moses, and Barbara L. Jackson*, hereinafter referred to as "Tenant".

In consideration of the covenants and agreements hereinafter set forth, Landlord does hereby lease to Tenant those certain premises situated at *7981 Blaine Road, Blaine, WA*, located within *Sunset Farm Park*, hereinafter referred to as "Premises." The premises are described as *a two-story single-family residence*. See Addendum A for illustration of property and lease boundary.

This agreement is for a term of one (1) year commencing on *October 19, 2020* and ending on *October 31, 2021* upon the following terms and conditions. Upon expiration of one (1) year from commencement date, this lease agreement reverts to a month-to-month lease agreement. In the event a month-to-month lease results, rent shall be at a rate agreed to by Landlord and Tenant; all other terms and conditions of this lease agreement shall remain in full force and effect. The County may require an additional one year lease for continued occupancy.

1. **OCCUPANCY SHALL BE LIMITED** to the following persons (adults and children).

*Wayne E. Moses, Michelle A. Moses, Barbara L. Jackson, and two minor children.* Note: Landlord/agent must approve sublet of premises, or over-night visitors staying more than 7 consecutive days or a total of over twenty (20) days in any 12-month period.

Provision for pets/animals: *No pets or animals allowed.*

Number of vehicles, make, model and license plate(s): *Two vehicles; Dodge, Caravan, WA BHP 5661;*

*Toyota, Camry, WA AOU 6654*

RV/Boats and license plate: *Not Applicable*

2. **RENT:** Rent is joint and several with all adult tenants. **Tenant shall pay monthly rent of *\$1,639.00* (*\$1,452.50 rent and \$186.50 leasehold tax of 12.84%*), in advance on or before the first day of each month to Landlord or to such other person(s) as Landlord from time to time designates in writing.**
3. **UTILITIES:** paid by landlord (checked):  electric,  gas,  water,  sewer,  garbage,  (other) . *Tenant must pay all other utilities; failure to promptly call in for service may result in a \$35 charge. See Addendum B for a list of utility providers if applicable.* Upon vacating the premises, Tenant is responsible for filling the propane tank. If this does not occur Landlord will deduct the cost to fill the tank from the Tenant's Damage, Cleaning and Security Deposit.
4. **SECURITY/Damage Deposit:** Tenant shall pay a security/damage deposit in the amount of *\$1,639.00*. Of this deposit, none shall be retained by Landlord as an automatic non-refundable cleaning fee. Upon termination of this tenancy, all or a portion of the remainder of this deposit may be retained by Landlord, and any refund to the Tenant is conditioned as follows:
- a. Tenant shall have fully performed the obligations hereunder and those set forth in the 1973 Residential Landlord-Tenant Act as amended, or as subsequently amended.
  - b. Tenant shall have occupied the premises for a minimum of six months or longer.
  - c. Tenant shall have returned to Landlord all keys provided during the tenancy. *A charge of \$10.00 will be assessed for each key not returned by Tenant.*

- d. Tenant shall have cleaned and restored premises to its original condition at commencement of this tenancy, except for normal wear and tear resulting from ordinary use. Cleaning shall include thorough commercial cleaning of all carpets.
- e. Tenant shall have remedied or repaired to Landlord's satisfaction any damage to premises or furnishings.
- f. Unpaid utilities which are billed to the County.
- g. Within twenty-one (21) days after termination of tenancy and vacation of the premises, Landlord will give Tenant a written statement of the basis for retaining any or all of the deposit together with the payment of any refund due.

Any refundable pre-paid rent shall first apply to final balances due landlord not covered by security fee. Refund checks void if not cashed or deposited within 90 days. For tenant-responsible damages or neglect during tenancy, costs may be deducted anytime from the security fee following 10-day written notice to cure, with 30-day deadline for tenant to replenish fee.

- 5. **TENANT AGREES AND UNDERSTANDS:** That any of said security /damage deposit may not be applied by the tenant toward rent at any time. Any security fee refund or shortage, as per itemized statement (or estimate), shall be processed between 2 and 21 days following rental agreement termination and vacation of premises. The security deposit is held in trust per RCW 59.18.270 at Key bank.
- 6. **DELIVERY OF RENT AND NOTICES:** All due on the first day of each monthly rental period, it is the responsibility of the tenant to mail/deliver rent payment (cash, check, money order/cashier check, at landlord/agent option; checks should be made payable to Whatcom County Parks and Recreation) to the following address or location: Parks Operations Manager, Whatcom County Parks & Recreation, 3373 Mt. Baker Highway, Bellingham WA 98226. Landlord/agent will not be responsible for any lost or missing cash payments not personally handed to landlord/agent. If by commencement date, tenant fails to call/show up, get keys, and pay all move-in money due, landlord/agent may immediately terminate agreement with no refunds.
- 7. **LATE/NSF/DEFAULT RENT:** Any rent due not paid by the 5th day of the monthly rental period is subject to a \$75.00 late fee charge. Late fees assessed concurrent with rent due shall be considered rent as due. *NSF checks shall be assessed \$30.00 each.* If tenant defaults in rent payment, is absent from the premises without notice, and there is reason or cause to believe tenant is terminating occupancy, the premises will be considered abandoned, entitling landlord or agent to post notice, take immediate possession, change locks, and store of any remaining items in a manner and time required by law.
- 8. **NOTICES:** Tenant shall give the landlord or agent at least 20 days' written notice *prior to the end of the rental period* of intention to vacate the premises. (Shorter notices, or notices other than for the end of the period, require approval of landlord.) Landlord or agent may also give 20-day no-cause notice to tenant to terminate tenancy. Tenant shall, at the expiration of either and all notices, surrender the premises and keys to the landlord or agent in accordance with this agreement.
  - a. **Maintenance & Showing:** Except in the case of emergency or if it is impracticable to do so, following 48 hour landlord/agent notice, tenant shall allow access to unit at reasonable times. Tenant failure to so

honor access is cause to assess tenant for any service cancellation costs, and \$100 per RCW 59.18.150(5).

9. **SIGNS/ACCESS:** Landlord/agent may enter yard and place/maintain business signs/postings (e.g. rent, lease, sale) on the premises as deemed necessary for business operations. Additionally, landlord or agent may enter the tenant's premises for purposes of: (1) inspection; (2) cleaning, repairs or alterations; (3) other services; or (4) showing premises; *provided*, access is at reasonable times with proper notice (*no notice* required for emergency, end/term or abandonment). Tenant notice to vacate, or request for service or repairs, shall constitute tenant-approved notice of respective access by landlord or agent (in absence of tenant objection).
10. **PUBLIC SAFETY:** Dwelling is equipped with three battery-operated smoke/heat detectors, and three Carbon Monoxide (CO) alarms in working order. Maintenance of smoke detection devices and CO alarms, including the replacement of batteries when needed, shall be the responsibility of the tenant, who shall maintain the devices as specified by the manufacturer. Tenant is responsible to maintain the devices in working order and conduct a monthly check to determine that the devices are in working order. Tenant(s) failure to comply includes a \$200 fine per RCW 43.44.110(4). *If any device is later found inoperable, landlord may charge tenant \$50 compliance fee/each.* The tenant(s) must immediately notify the County if the tenant is unable to repair or determine if the smoke alarms or CO alarms are operable.
11. **OPERABLE FIRE EXTINGUISHERS ARE LOCATED IN THE FOLLOWING LOCATION(S):**  
Kitchen. The tenant is required to check the fire extinguisher(s) monthly to determine if they are fully charged. The tenant(s) must immediately notify the County if there is not a full charge or there is a need for repair or replacement.
12. **CHANGE IN TERMS OR RENT:** effective anytime upon written approval of all affected parties, *or upon 30 days written notice* by landlord/agent effective at the end of the corresponding rental month. All other provisions shall remain intact.
13. **INSURANCE/REPAIRS:** Tenant is not insured under Landlord's insurance (*Landlord/agent is not responsible for damaged/missing tenant property*). Tenants should obtain insurance on their personal property to include theft, vandalism, pests, accident, storm, cold or heat, mold, flood, water, and electrical damages, as a minimum. (*Landlord/agent not responsible for damaged/missing tenant property.*) Landlord/agent will promptly respond to tenant written requested repairs, but will not be monetarily responsible for: (1) tenant disruptions or inconveniences during habitable periods of repair, drying, scheduling or bidding of same; (2) tenant/guest injuries incurred in or around obvious areas of maintenance, repair, or construction; nor (3) housing or other costs incurred by tenant during good-faith periods of landlord repairs or other activities.
14. **ATTORNEY'S FEES:** In the event suit shall be brought regarding the performance of the terms and provisions of this Agreement or because of a breach of any of Tenant's obligations, then Tenant agrees to pay to Landlord reasonable attorney's fees as authorized by RCW Chapter 59.18. Attorney's fees as required and/or allowed by law will apply equally to both tenant and landlord.
15. **PREMISES USE:** Tenant shall not use said or neighboring premises for any illegal purpose, or for any other purpose than that of a residence. No excessive traffic or visitors (e.g. more than 3-4 drive-ups or walk-ins per day) without landlord/agent approval. Tenant shall not allow entry of anyone in violation of court protection

orders. Tenant to conform to all covenants, codes, statutes, ordinances; and landlord/agent rules regarding occupancy. Absolutely no unlawful drugs, excessive drinking, public disturbances, verbal abuse, spiteful threats, unauthorized pets/firearms/smoking on premises. Violations are cause for eviction.

16. **OPERATION, MAINTENANCE, STORAGE, ALTERATIONS TO PREMISES:** On a *continuing* basis, tenant agrees to:

- a. **Keep premises** in a clean, neat, and sanitary condition; **no parking**, storage or accumulation of debris on lawn or yard;
- b. **Dispose of** all rubbish, garbage, and waste in a clean and sanitary manner--at reasonable intervals--and assume all costs of extermination and fumigation for infestation caused by tenant; not feed straying pets or animals; not temporarily host pets;
- c. **Properly ventilate and operate** all electrical, gas, heating, plumbing, septic, facilities, fixtures, doors, windows, locks, and
- d. **No portable kerosene/gas/incense burning**; **keep** hot water tank at 120 degree maximum; all burning candles must be kept in a non-flammable container; all candles must be extinguished if tenant leaves the residence; no excessive odorous chemicals/sprays/vapors; **restrict** toilets to biological waste and tissue paper; keep drains clear;
- e. **No BBQs** or open fires in units or under eaves, canopies, balcony over-heads, in public areas, or under building structures or covers; (*Note: Carbon monoxide (CO) is a very poisonous combustion gas that cannot be seen or smelled, and can afflict or kill!*)
- f. **Pay for, replace or repair** in a **landlord-approved** manner, all items (including doors, windows, locks, smoke/heat/CO alarms) damaged or made inoperable during occupancy; **correct or repair** plumbing and fixtures clogged or broken by misuse or neglect; and where applicable, **use due precaution** against freezing or stoppage of water pipes in and around the premises;
- g. **Report all** plumbing/roof/water leaks, **and** all mold, code and other hazardous conditions to landlord/agent within 48 hours to avoid charges for inspections, presumptive damages, and increased utility fees **caused by** lack of timely reporting **to landlord**;
- h. **Not deface, damage, impair, or remove** any property, facilities, equipment, and appliances; **not install** TV/radio antennas, decorations, signs, postings, nor other equipment without landlord/agent approval except as authorized under FCC regulations; For any installations, landlord/agent may assess an added refundable \$250 security fee to cover removal costs;
- i. **Not grow** medically-approved or other marijuana in or around the premises; **Limit supply** for own medical purposes per RCW 69.51A.040; **Not smoke/vaporize** same anywhere inside premises, nor in any unauthorized outside areas;
- j. **Not make unauthorized alterations**, climb ladders/roofs, paint/wallpaper, change fixtures/locks, or run dangerous equipment; any alteration must be pre-approved in writing by the Parks Operations Manager or their designee.

- k. *Not store non-operating vehicles*, nor boats, RV's, motor cycles, trailers, firearms, equipment, tools, hazardous materials, liquids, paints, fuels/oils, chemicals, waste or non-using items *on premises* without landlord/agent approval; no waterbeds;
  - l. *Maintain reasonable peace and quiet* with other tenants/neighbors and *pay* for any caused damages therein; no fireworks; No disturbing TV's, sound systems, musical instruments, or other disturbing activities; No fireworks of any kind.
17. **MOLD/LEAD PAINT:** XX Copy of State-approved mold information hand-out is provided per RCW 59.18.060(12). For pre-1978 housing, XX a federal-approved pamphlet on lead poison prevention is also provided. BEWARE: Touching, breathing or eating lead paint chips/construction dust can be hazardous to people...especially children!
  18. **YARD/OUTSIDE PREMISES:** Where applicable (y/n)YES, tenant agrees to mow, water, weed, and maintain grounds in good condition (subject to any landlord specifics); and to keep own driveways, walks, porches, and garages clean and clear of obstructions, and pay costs of any used utility. Failure to comply following notice will result in charges to tenant for necessary remedy. Landlord/agent may reasonably enter yard/buildings without notice to service common areas and outside yard/structures. No trampolines, swimming pools, swing or climbing sets, or other such "attractive nuisances" without written approval of landlord/agent. Unauthorized parking, storage, or accumulation of waste may be assessed up to \$10.00 per day per violation.
  19. **FURNISHINGS PROVIDED:** Included (if checked) are XX stove, XX refrigerator, \_\_\_ drapes, shades, \_\_\_\_\_ curtains, XX blinds, XX smoke/CO alarms, and also the following: Not applicable.
  20. **CONDITION REPORT UP-DATE:** Tenant to complete and return any/all condition report up-dates by 30 days of move in.
  21. **DELIVERY OF POSSESSION:** If for any reason landlord or agent fails to deliver possession of these premises at the start of this agreement, rent shall be abated until tenant possession. All other aspects of this agreement shall remain in full force. In no event shall landlord or agent be liable for damages caused by failure to deliver possession of the premises. If possession is not given tenant within 7 days of the start date, tenant may terminate this agreement with full refund by giving written notice.
  22. **EVICITION PURSUANT TO WRIT OF RESTITUTION:** Tenant(s) HEREBY OBJECTS to the storage of their personal property. Tenant(s) understand this will result in their property being placed on the nearest public right-of-way.
  23. **RECEIPT OF MONEY PAID:** 1. Tenant has paid \$1,639.00 in check for security/damage deposit. 2. Tenant has paid \$687.32 in check for rent covering period October 19, 2020 through October 31, 2020. In addition: Not applicable.
  24. **TENANT'S DEFAULT AND LANDLORD'S RE-ENTRY:** The occurrence of any of the following constitutes a material default and breach of this agreement:
    - a. Failure to pay rent.
    - b. Failure to observe and perform any other required provisions of this agreement.

- c. Committing waste, maintaining a nuisance, being declared a sex-offender or convicted of a crime; tenants and or guests which cause law enforcement contact as a result of a violation of the law which results in an arrest.
  - d. Landlord may terminate tenancy prior to the end of the agreement if Tenant receives three notices for “3-day pay or vacate” or three notices for “10-day comply-or-vacate” within a 12-month period.
25. **LANDLORD’S DUTY:** Landlord agrees to keep the shared and common premises clean and fit for human habitation and to comply with all state and local laws regarding maintenance and repair of the premises, unless otherwise agreed to in this agreement.
26. **OTHER CONDITIONS:** This agreement also is subject to these other conditions:
- a. *Not Applicable*
27. **NO WAIVER:** Failure of Landlord to insist upon the strict performance of the terms, covenants, agreements and conditions herein contained, or any of them, shall not constitute or be construed as a waiver or relinquishment of Landlord's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.
28. **HOLD HARMLESS:** Tenants shall indemnify and hold Landlord harmless from claims of loss or damage to real and personal property and of injury or death to persons caused by the acts or negligence or wrongful acts of Tenants, Tenants’ family, guests, licensee or invitees. Tenants expressly releases Landlord from any and all liability for any loss or damage to property or effects arising out of water leakage, breaking in or theft, or other causes beyond the reasonable control of Landlord. There is no warrant that there will be no criminal acts or that Tenants will be free from the violent tendencies of third parties.
29. **JOINT AND SEVERAL LIABILITY:** It is understood and agreed that each party signing this Agreement as Tenant is liable for the full amount of rent provided herein. The obligation of Tenants is joint and several.
30. **SEVERABILITY:** The construction validity and effect of this Agreement shall be governed by the laws of the State of Washington. Any provision of this agreement prohibited by such laws shall be ineffective to the extent of such prohibition without invalidating the remaining provisions thereof.
31. **KEYS:** Four (4) keys will be provided at time of possession. Keys may not be duplicated or provided to other persons, nor locks replaced, without the permission of the Landlord.
32. **REPORT TO CREDIT/TENANT AGENCIES:** Tenants are hereby notified that a nonpayment, late payment or breach of any of the terms of this residential lease agreement may be submitted/reported to a credit and/or tenant reporting agency, and may create a negative credit record on your credit report.
33. **ADDENDA TO AGREEMENT:** The following Exhibits are attached:
- A. Residential Lease Boundary Diagram
  - B. Utilities Contacts List
  - C. Condition of premises to be signed by tenant(s) and County
  - D. Mold and mildew
  - E. Lead pamphlet
  - F. Sunset Farm Water Bill Management



Tenants acknowledge that they have read this agreement and will abide by its terms and will comply with all rules and regulations adopted by Landlord.

TENANTS

Wayne Moses  
Wayne E. Moses, Tenant

Phone(s): 360-305-0643

Email: DewitheDude@yahoo.com

Michelle Moses  
Michelle A. Moses, Tenant

Phone(s): 360-224-4329

Email: Cherrybombs1987@gmail.com

Barbara L Jackson  
Barbara L. Jackson, Tenant

Phone(s): 360 298 8158

Email: barbaraljackson45@gmail.com

STATE OF WASHINGTON)  
) ss.  
COUNTY OF WHATCOM )

On this 19 day of October, 2020 before me personally appeared Michelle & Eli Moses and Barbara Jackson to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledges that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 19 day of October, 2020.



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

My Commission expires: 4/27/2022

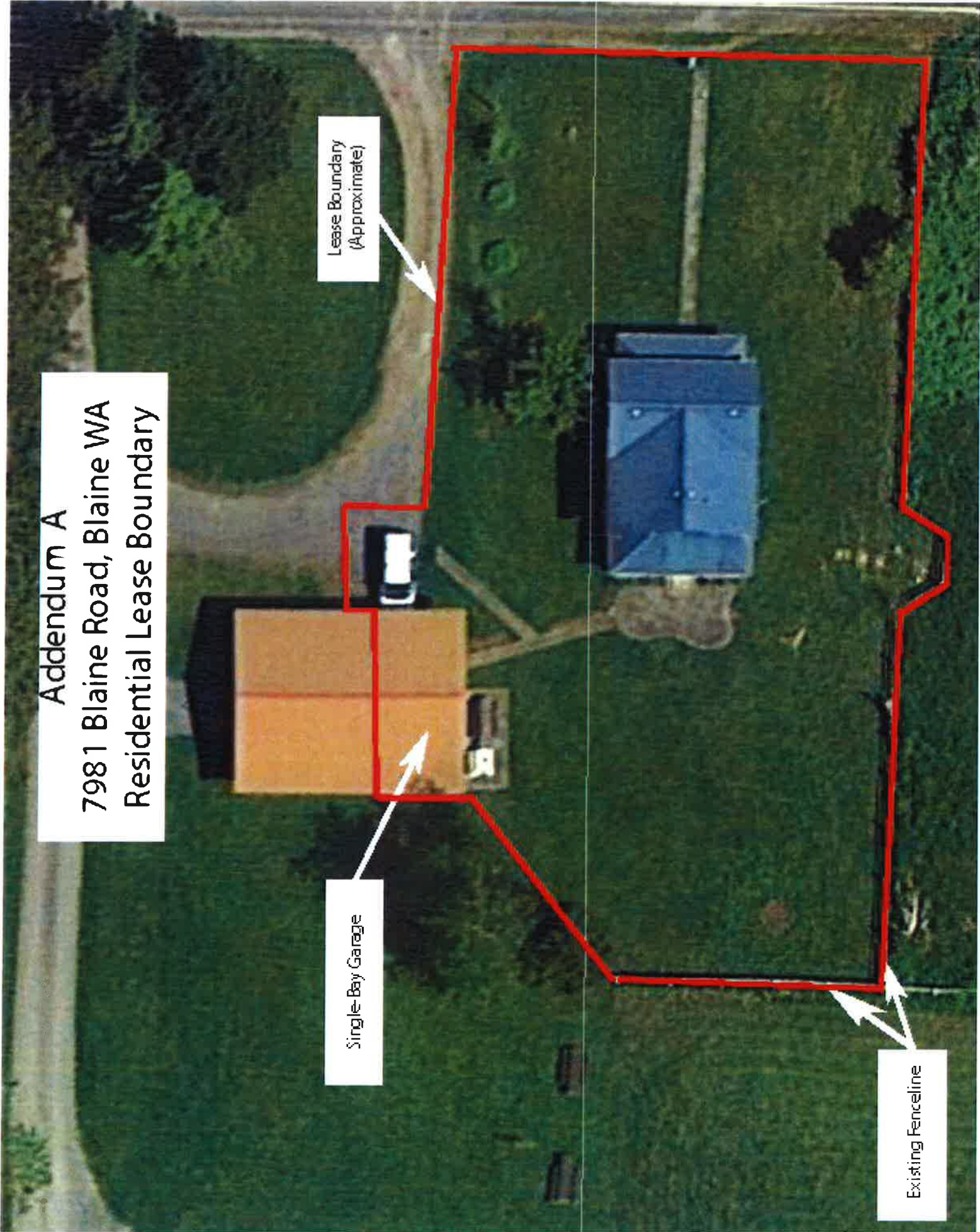


Addendum A  
7981 Blaine Road, Blaine WA  
Residential Lease Boundary

Lease Boundary  
(Approximate)

Single-Bay Garage

Existing Fenceline



# Addendum B

## 7981 Blaine Road, Blaine, WA

### Renters Utilities Contacts List

- Water Service: Birch Bay Water & Sewer District at 360-371-7100
- Electric Service: Puget Sound Energy at 1-888-225-5773
  - Property Meter Number: H75098857
- Trash and Recycling Service: Sanitary Service Corp. at 360-734-3490
- Natural Gas Service: Cascade Natural Gas at 1-888-522-1130

*Reminder: failure to promptly call in for service may result in a \$35 charge.*

# Addendum C

Conditions Report

(To be attached post property inspection)

# Addendum B

## 7981 Blaine Road, Blaine, WA

### Renters Utilities Contacts List

- Water Service: Birch Bay Water & Sewer District at 360-371-7100
- Electric Service: Puget Sound Energy at 1-888-225-5773
  - Property Meter Number: H75098857
- Trash and Recycling Service: Sanitary Service Corp. at 360-734-3490
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*Reminder: failure to promptly call in for service may result in a \$35 charge.*

# Addendum C

Conditions Report

(To be attached post property inspection)





# Got Mold?

## Frequently Asked Questions About Mold

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### **What are molds?**

Molds are tiny microscopic organisms that digest organic matter and reproduce by releasing spores. Molds are a type of fungi and there are over 100,000 species. In nature, mold helps decompose or break-down leaves, wood and other plant debris. Molds become a problem when they go where they are not wanted and digest materials such as our homes.

### **What makes molds grow in my home?**

Mold enters your home as tiny spores. The spores need moisture to begin growing, digesting and destroying. Molds can grow on almost any surface, including; wood, ceiling tiles, wallpaper, paints, carpet, sheet rock, and insulation. The mold grows best when there is lots of moisture from a leaky roof, high humidity, or flood. There is no way to get rid of all molds and mold spores from your home. But you can control mold growth by keeping your home dry.

### **Can I be exposed to mold?**

When molds are disturbed, they release spores into the air. You can be exposed by breathing air containing these mold spores. You can also be exposed through touching moldy items, eating moldy food or accidental hand to mouth contact.

### **Do molds affect my health?**

Most molds do not harm healthy people. But people who have allergies or asthma may be more sensitive to molds. Sensitive people may experience skin rash, running nose, eye irritation, cough, nasal congestion, aggravation of asthma or difficulty breathing. People with an immune suppression or underlying lung disease, may be at increased risk for infections from molds.

A small number of molds produce toxins called mycotoxins. When people are exposed to high levels of mold mycotoxins they may suffer toxic effects, including fatigue, nausea, headaches, and irritation to the lungs and eyes. If you or your family members have health problems that you suspect are caused by exposure to mold, you should consult with your physician.

### **When is mold a problem?**

You know you have mold when you smell the “musty” odor or see small black or white specks along your damp bathroom or basement walls. Some mold is hidden growing behind wall coverings or ceiling tiles. Even dry, dead mold can cause health problems, so always take precautions when you suspect mold.

Mold is often found in areas where water has damaged building materials and furniture from flooding or plumbing leaks. Mold can also be found growing along walls where warm moist air condenses on cooler wall surfaces, such as inside cold exterior walls, behind dressers, headboards, and in closets where articles are stored against walls. Mold often grows in rooms with both high water usage and humidity, such as kitchens, bathrooms, laundry rooms, and basements. If you notice mold or know of water damaged areas in your home, it is time to take action to control its growth.

### **When should I sample for mold?**

You don't need to sample for mold because in most cases you can see or smell mold. Even a clean, dry house will have some mold spores, but not enough to cause health problems. If you smell mold it may be hidden behind wallpaper, in the walls or ceiling or under the carpet. If you suspect you have hidden mold be very careful when you investigate, protect yourself from exposure in the same manner as you would for a clean-up.



## Can I control mold growth in my home?

Yes you can. Dry out the house and fix any moisture problems in your home:

- Stop water leaks, repair leaky roofs and plumbing. Keep water away from concrete slabs and basement walls.
- Open windows and doors to increase air flow in your home, especially along the inside of exterior walls. Use a fan if there are no windows available.
- Make sure that warm air flows into all areas of the home. Move large objects a few inches away from the inside of exterior walls to increase air circulation.
- Install and use exhaust fans in bathrooms, kitchens, and laundry rooms.
- Ventilate and insulate attic and crawl spaces. Use heavy plastic to cover earth floors in crawl spaces.
- Clean and dry water damaged carpets, clothing, bedding, and upholstered furniture within 24 to 48 hours, or consider removing and replacing damaged furnishings.
- Vacuum and clean your home regularly to remove mold spores.
- Check around your windows for signs of condensation and water droplets. Wipe them up right away so mold can't start to grow.

## What can I use to clean up mold?

Clean up mold and take care of the problem by following the advice above to keep your home dry and keep mold out. Act fast! Mold damages your home as it grows. Clean it up as soon as possible.

### Size the Moldy Area

Decide if you have a large or small area of mold. A small area is less than about ten square feet, or a patch three feet by three feet square. To clean a small area, follow the advice below. You may use a cotton face mask for protection.

If you have a lot of mold damage (more than ten square feet) consider hiring a cleaning professional. If the moldy area has been contaminated by sewage or is in hidden places hire a professional. To find a professional, check under "Fire and Water Damage Restoration" in your Yellow Pages. If you decide to clean up on your own, follow the guidance below.

### Use Protection

Wear goggles, gloves, and breathing protection while working in the area. For large consolidated areas of mold growth, you should wear an Occupational Safety and Health Administration (OSHA) approved particle mask.

### Seal the Area

Seal off area from the rest of your home. Cover heat registers or ventilation ducts/grills. Open a window before you start to clean up.

### Remove Items

Remove all your furnishings to a mold-free area. Clean the surrounding moldy area then follow cleaning directions below for the items you removed and the new space.

### Bag Moldy Trash

Bag all moldy materials and tie off the top of the bag. Bring them outdoors and place in your garbage container right away.

### Scrub Surfaces

Scrub hard surfaces:

- First wash with a mild detergent solution, such as laundry detergent and warm water. Allow to dry.
- (Optional step) Then wipe with a solution of 1/4 cup bleach to one gallon of water. Wait 20 minutes and repeat. Wait another 20 minutes.
- Last apply a borate-based detergent solution and don't rinse. This will help prevent mold from growing again. A borate-based laundry or dish washer detergent has "borate" listed on the ingredients label.

### Clean and Wash

Give the entire area a good cleaning, vacuum floors, and wash any exposed bedding or clothing.

### Monitor

Check regularly to make sure mold has not returned to the clean-up area.

## What cleans up moldy furniture?

How to clean you moldy furniture depends on how it reacts to water. See chart below:

Reaction to Water	Items	Recommendations
Doesn't absorb water and is washable.	Wood, metal, plastic, glass, and ceramics objects.	Wipe with a solution of lukewarm water and laundry detergent.
Absorbs water and is washable.	Clothes and bedding.	Wash in laundry.
Absorbs water but not washable.	Beds, sofas and other furniture.	These items may have to be discarded. Or, try to save by vacuuming well and allowing to air out. If there is no odor it may be okay. Mold can come back, so watch for any mold growth or mold related health problems. Discard the item if you suspect mold is growing inside or outside the item.

## Should I paint over mold?

No. Don't paint or caulk over mold. The mold will grow under the paint and the paint will peel.

## Must landlords tell tenants about mold?

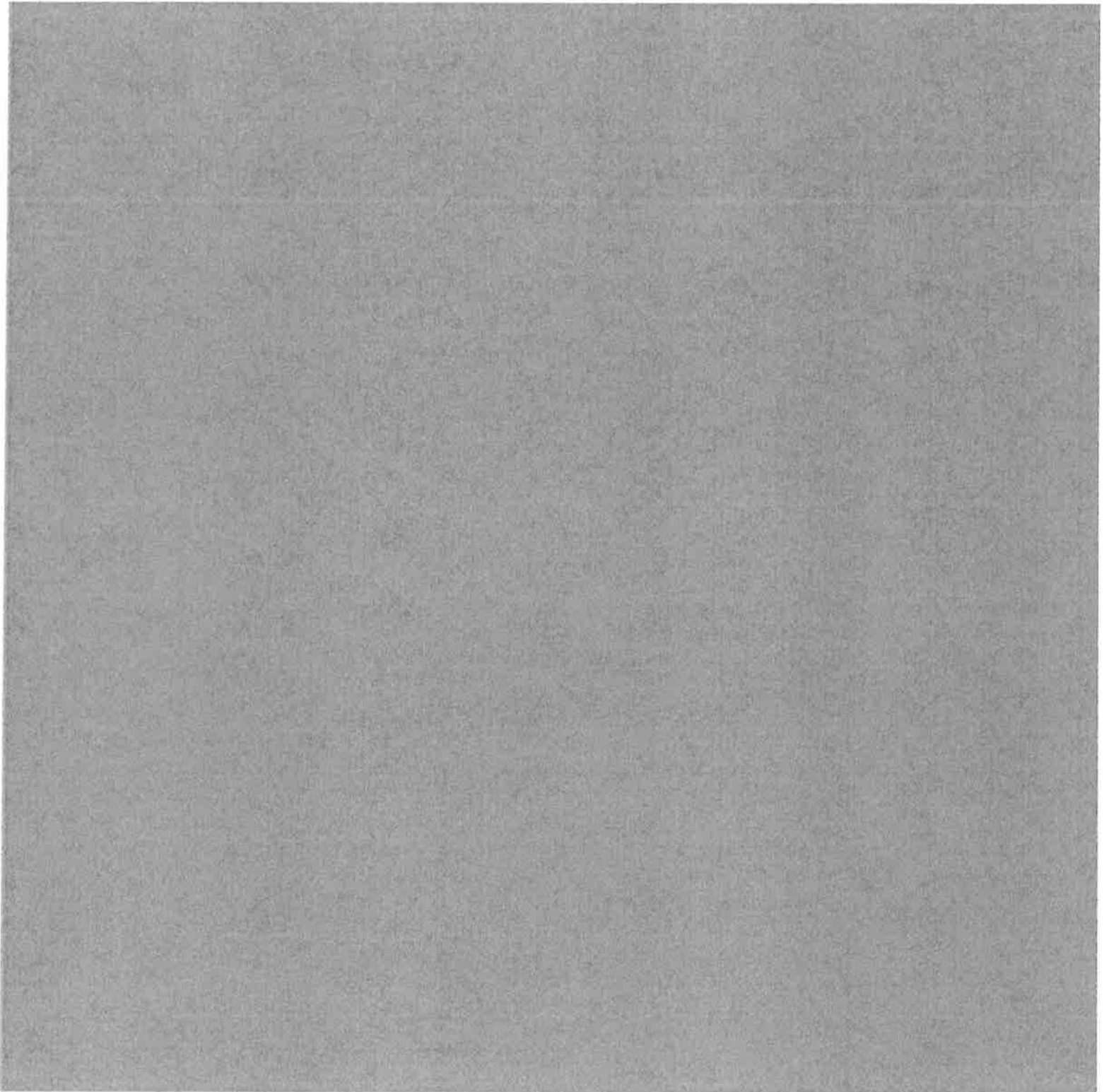
Yes! In 2005, the Washington State legislature approved Senate Bill 5049 which requires landlords to notify their tenants about mold. See our resources landlords can use to comply with this mold notification requirement at [www.doh.wa.gov/ehp/ts/iaq/renter.htm](http://www.doh.wa.gov/ehp/ts/iaq/renter.htm).

## Who are my local contacts for more information about mold?

In Washington, you can contact your county health department ([www.doh.wa.gov/LHJMap/LHJMap.htm](http://www.doh.wa.gov/LHJMap/LHJMap.htm)) for more information about mold. If you live outside of Washington State, try contacting your county or state health department ([www.doh.wa.gov/Links/links2.htm#State](http://www.doh.wa.gov/Links/links2.htm#State)).

## Need more mold information?

- CDC has frequently asked questions, identifying mold problems and cleanup, and workplace resources at [www.cdc.gov/mold](http://www.cdc.gov/mold).
- EPA offers resources for homeowners, schools, and building managers at [www.epa.gov/mold](http://www.epa.gov/mold).
- Northwest Clean Air Agency "Mold in Your Home" videos are available in English and Spanish at [www.nwcleanair.org/aqPrograms/indoorAir.htm](http://www.nwcleanair.org/aqPrograms/indoorAir.htm).



# Simple Steps To Protect Your Family From Lead Hazards

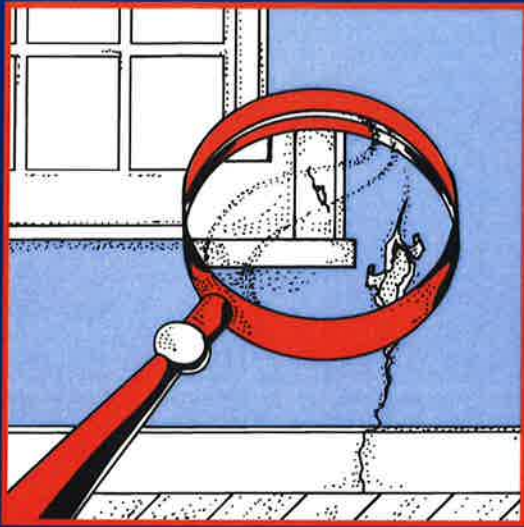
## If you think your home has high levels of lead:

- ◆ Get your young children tested for lead, even if they seem healthy.
- ◆ Wash children's hands, bottles, pacifiers, and toys often.
- ◆ Make sure children eat healthy, low-fat foods.
- ◆ Get your home checked for lead hazards.
- ◆ Regularly clean floors, window sills, and other surfaces.
- ◆ Wipe soil off shoes before entering house.
- ◆ Talk to your landlord about fixing surfaces with peeling or chipping paint.
- ◆ Take precautions to avoid exposure to lead dust when remodeling or renovating (call 1-800-424-LEAD for guidelines).
- ◆ Don't use a belt-sander, propane torch, high temperature heat gun, scraper, or sandpaper on painted surfaces that may contain lead.
- ◆ Don't try to remove lead-based paint yourself.



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# Protect Your Family From Lead In Your Home



 **EPA** United States Environmental Protection Agency



United States Consumer Product Safety Commission



United States Department of Housing and Urban Development



## Are You Planning To Buy, Rent, or Renovate a Home Built Before 1978?

---

**M**any houses and apartments built before 1978 have paint that contains high levels of lead (called lead-based paint). Lead from paint, chips, and dust can pose serious health hazards if not taken care of properly.



**OWNERS, BUYERS, and RENTERS** are encouraged to check for lead (see page 6) before renting, buying or renovating pre-1978 housing.

**F**ederal law requires that individuals receive certain information before renting, buying, or renovating pre-1978 housing:



**LANDLORDS** have to disclose known information on lead-based paint and lead-based paint hazards before leases take effect. Leases must include a disclosure about lead-based paint.



**SELLERS** have to disclose known information on lead-based paint and lead-based paint hazards before selling a house. Sales contracts must include a disclosure about lead-based paint. Buyers have up to 10 days to check for lead.



**RENOVATORS** disturbing more than 2 square feet of painted surfaces have to give you this pamphlet before starting work.

# IMPORTANT!

## Lead From Paint, Dust, and Soil Can Be Dangerous If Not Managed Properly

- FACT:** Lead exposure can harm young children and babies even before they are born.
- FACT:** Even children who seem healthy can have high levels of lead in their bodies.
- FACT:** People can get lead in their bodies by breathing or swallowing lead dust, or by eating soil or paint chips containing lead.
- FACT:** People have many options for reducing lead hazards. In most cases, lead-based paint that is in good condition is not a hazard.
- FACT:** Removing lead-based paint improperly can increase the danger to your family.

If you think your home might have lead hazards, read this pamphlet to learn some simple steps to protect your family.

## Lead Gets in the Body in Many Ways

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**Childhood lead poisoning remains a major environmental health problem in the U.S.**

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**Even children who appear healthy can have dangerous levels of lead in their bodies.**

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**People can get lead in their body if they:**

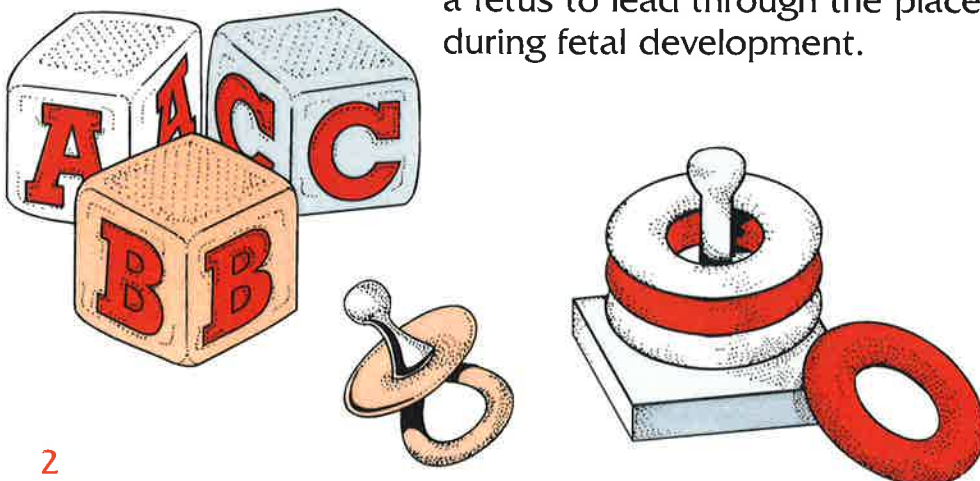
- ◆ Breathe in lead dust (especially during renovations that disturb painted surfaces).
- ◆ Put their hands or other objects covered with lead dust in their mouths.
- ◆ Eat paint chips or soil that contains lead.

**Lead is even more dangerous to children under the age of 6:**

- ◆ At this age children's brains and nervous systems are more sensitive to the damaging effects of lead.
- ◆ Children's growing bodies absorb more lead.
- ◆ Babies and young children often put their hands and other objects in their mouths. These objects can have lead dust on them.

**Lead is also dangerous to women of childbearing age:**

- ◆ Women with a high lead level in their system prior to pregnancy would expose a fetus to lead through the placenta during fetal development.





## Lead's Effects

It is important to know that even exposure to low levels of lead can severely harm children.

### In children, lead can cause:

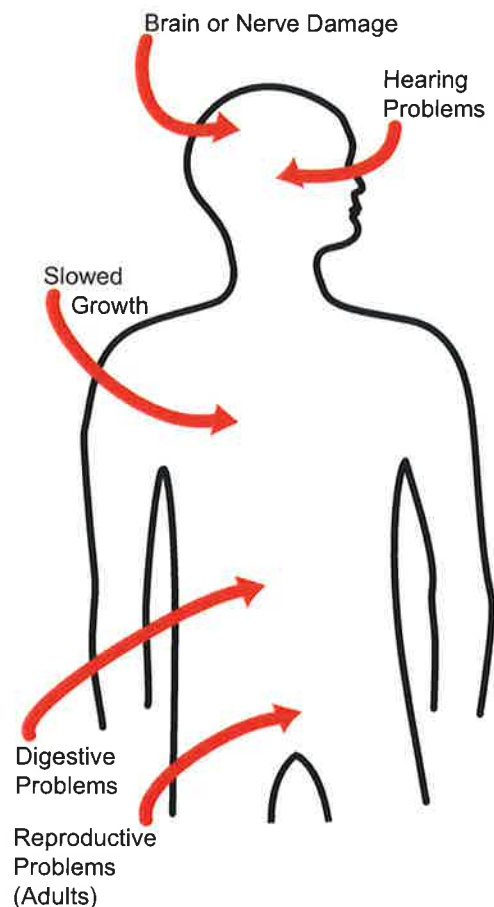
- ◆ Nervous system and kidney damage.
- ◆ Learning disabilities, attention deficit disorder, and decreased intelligence.
- ◆ Speech, language, and behavior problems.
- ◆ Poor muscle coordination.
- ◆ Decreased muscle and bone growth.
- ◆ Hearing damage.

While low-lead exposure is most common, exposure to high levels of lead can have devastating effects on children, including seizures, unconsciousness, and, in some cases, death.

Although children are especially susceptible to lead exposure, lead can be dangerous for adults too.

### In adults, lead can cause:

- ◆ Increased chance of illness during pregnancy.
- ◆ Harm to a fetus, including brain damage or death.
- ◆ Fertility problems (in men and women).
- ◆ High blood pressure.
- ◆ Digestive problems.
- ◆ Nerve disorders.
- ◆ Memory and concentration problems.
- ◆ Muscle and joint pain.



---

**Lead affects  
the body in  
many ways.**

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## Where Lead-Based Paint Is Found

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**In general, the older your home, the more likely it has lead-based paint.**

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**Many homes built before 1978 have lead-based paint.** The federal government banned lead-based paint from housing in 1978. Some states stopped its use even earlier. Lead can be found:

- ◆ In homes in the city, country, or suburbs.
- ◆ In apartments, single-family homes, and both private and public housing.
- ◆ Inside and outside of the house.
- ◆ In soil around a home. (Soil can pick up lead from exterior paint or other sources such as past use of leaded gas in cars.)

## Checking Your Family for Lead

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**Get your children and home tested if you think your home has high levels of lead.**

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**To reduce your child's exposure to lead, get your child checked, have your home tested (especially if your home has paint in poor condition and was built before 1978), and fix any hazards you may have.** Children's blood lead levels tend to increase rapidly from 6 to 12 months of age, and tend to peak at 18 to 24 months of age.

Consult your doctor for advice on testing your children. A simple blood test can detect high levels of lead. Blood tests are usually recommended for:

- ◆ Children at ages 1 and 2.
- ◆ Children or other family members who have been exposed to high levels of lead.
- ◆ Children who should be tested under your state or local health screening plan.

Your doctor can explain what the test results mean and if more testing will be needed.

## Identifying Lead Hazards

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**Lead-based paint** is usually not a hazard if it is in good condition, and it is not on an impact or friction surface, like a window. It is defined by the federal government as paint with lead levels greater than or equal to 1.0 milligram per square centimeter, or more than 0.5% by weight.

**Deteriorating lead-based paint (peeling, chipping, chalking, cracking or damaged)** is a hazard and needs immediate attention. It may also be a hazard when found on surfaces that children can chew or that get a lot of wear-and-tear, such as:

- ◆ Windows and window sills.
- ◆ Doors and door frames.
- ◆ Stairs, railings, banisters, and porches.

**Lead dust** can form when lead-based paint is scraped, sanded, or heated. Dust also forms when painted surfaces bump or rub together. Lead chips and dust can get on surfaces and objects that people touch. Settled lead dust can re-enter the air when people vacuum, sweep, or walk through it. The following two federal standards have been set for lead hazards in dust:

- ◆ 40 micrograms per square foot ( $\mu\text{g}/\text{ft}^2$ ) and higher for floors, including carpeted floors.
- ◆ 250  $\mu\text{g}/\text{ft}^2$  and higher for interior window sills.

**Lead in soil** can be a hazard when children play in bare soil or when people bring soil into the house on their shoes. The following two federal standards have been set for lead hazards in residential soil:

- ◆ 400 parts per million (ppm) and higher in play areas of bare soil.
- ◆ 1,200 ppm (average) and higher in bare soil in the remainder of the yard.

The only way to find out if paint, dust and soil lead hazards exist is to test for them. The next page describes the most common methods used.

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**Lead from paint chips, which you can see, and lead dust, which you can't always see, can both be serious hazards.**

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## Checking Your Home for Lead

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**Just knowing that a home has lead-based paint may not tell you if there is a hazard.**

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You can get your home tested for lead in several different ways:

- ◆ A paint **inspection** tells you whether your home has lead-based paint and where it is located. It won't tell you whether or not your home currently has lead hazards.
- ◆ A **risk assessment** tells you if your home currently has any lead hazards from lead in paint, dust, or soil. It also tells you what actions to take to address any hazards.
- ◆ A combination risk assessment and inspection tells you if your home has any lead hazards and if your home has any lead-based paint, and where the lead-based paint is located.

Hire a trained and certified testing professional who will use a range of reliable methods when testing your home.

- ◆ Visual inspection of paint condition and location.
- ◆ A portable x-ray fluorescence (XRF) machine.
- ◆ Lab tests of paint, dust, and soil samples.

There are state and federal programs in place to ensure that testing is done safely, reliably, and effectively. Contact your state or local agency (see bottom of page 11) for more information, or call **1-800-424-LEAD (5323)** for a list of contacts in your area.

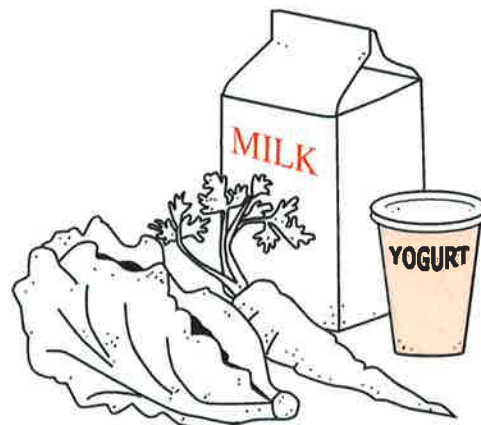
**Home test kits for lead are available, but may not always be accurate.** Consumers should not rely on these kits before doing renovations or to assure safety.

## What You Can Do Now To Protect Your Family

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If you suspect that your house has lead hazards, you can take some immediate steps to reduce your family's risk:

- ◆ **If you rent, notify your landlord of peeling or chipping paint.**
- ◆ **Clean up paint chips immediately.**
- ◆ **Clean floors, window frames, window sills, and other surfaces weekly.** Use a mop or sponge with warm water and a general all-purpose cleaner or a cleaner made specifically for lead. **REMEMBER: NEVER MIX AMMONIA AND BLEACH PRODUCTS TOGETHER SINCE THEY CAN FORM A DANGEROUS GAS.**
- ◆ **Thoroughly rinse sponges and mop heads after cleaning dirty or dusty areas.**
- ◆ **Wash children's hands often, especially before they eat and before nap time and bed time.**
- ◆ **Keep play areas clean.** Wash bottles, pacifiers, toys, and stuffed animals regularly.
- ◆ **Keep children from chewing window sills or other painted surfaces.**
- ◆ **Clean or remove shoes before entering your home to avoid tracking in lead from soil.**
- ◆ **Make sure children eat nutritious, low-fat meals high in iron and calcium, such as spinach and dairy products.** Children with good diets absorb less lead.





## Reducing Lead Hazards In The Home

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**Removing lead improperly can increase the hazard to your family by spreading even more lead dust around the house.**

**Always use a professional who is trained to remove lead hazards safely.**



In addition to day-to-day cleaning and good nutrition:

- ◆ You can **temporarily** reduce lead hazards by taking actions such as repairing damaged painted surfaces and planting grass to cover soil with high lead levels. These actions (called “interim controls”) are not permanent solutions and will need ongoing attention.
- ◆ To **permanently** remove lead hazards, you should hire a certified lead “abatement” contractor. Abatement (or permanent hazard elimination) methods include removing, sealing, or enclosing lead-based paint with special materials. Just painting over the hazard with regular paint is not permanent removal.

Always hire a person with special training for correcting lead problems—someone who knows how to do this work safely and has the proper equipment to clean up thoroughly. Certified contractors will employ qualified workers and follow strict safety rules as set by their state or by the federal government.

Once the work is completed, dust cleanup activities must be repeated until testing indicates that lead dust levels are below the following:

- ◆ 40 micrograms per square foot ( $\mu\text{g}/\text{ft}^2$ ) for floors, including carpeted floors;
- ◆ 250  $\mu\text{g}/\text{ft}^2$  for interior windows sills; and
- ◆ 400  $\mu\text{g}/\text{ft}^2$  for window troughs.

Call your state or local agency (see bottom of page 11) for help in locating certified professionals in your area and to see if financial assistance is available.

## Remodeling or Renovating a Home With Lead-Based Paint

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Take precautions before your contractor or you begin remodeling or renovating anything that disturbs painted surfaces (such as scraping off paint or tearing out walls):

- ◆ **Have the area tested for lead-based paint.**
- ◆ **Do not use a belt-sander, propane torch, high temperature heat gun, dry scraper, or dry sandpaper** to remove lead-based paint. These actions create large amounts of lead dust and fumes. Lead dust can remain in your home long after the work is done.
- ◆ **Temporarily move your family** (especially children and pregnant women) out of the apartment or house until the work is done and the area is properly cleaned. If you can't move your family, at least completely seal off the work area.
- ◆ **Follow other safety measures to reduce lead hazards.** You can find out about other safety measures by calling 1-800-424-LEAD. Ask for the brochure "Reducing Lead Hazards When Remodeling Your Home." This brochure explains what to do before, during, and after renovations.

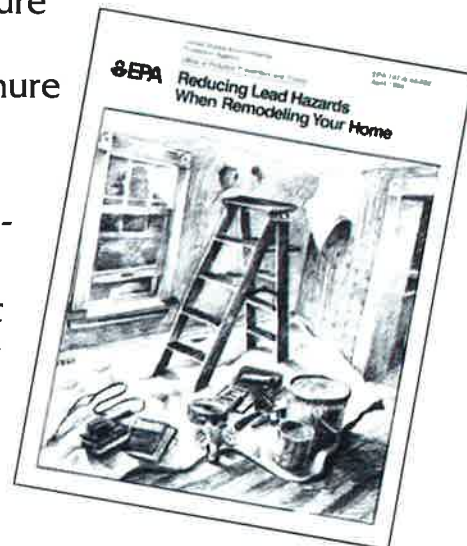
If you have already completed renovations or remodeling that could have released lead-based paint or dust, get your young children tested and follow the steps outlined on page 7 of this brochure.



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**If not conducted properly, certain types of renovations can release lead from paint and dust into the air.**

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## Other Sources of Lead

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**While paint, dust, and soil are the most common sources of lead, other lead sources also exist.**

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◆ **Drinking water.** Your home might have plumbing with lead or lead solder. Call your local health department or water supplier to find out about testing your water. You cannot see, smell, or taste lead, and boiling your water will not get rid of lead. If you think your plumbing might have lead in it:

- Use only cold water for drinking and cooking.
- Run water for 15 to 30 seconds before drinking it, especially if you have not used your water for a few hours.

◆ **The job.** If you work with lead, you could bring it home on your hands or clothes. Shower and change clothes before coming home. Launder your work clothes separately from the rest of your family's clothes.

- ◆ Old painted **toys** and **furniture**.
- ◆ Food and liquids stored in **lead crystal** or **lead-glazed pottery or porcelain**.
- ◆ **Lead smelters** or other industries that release lead into the air.
- ◆ **Hobbies** that use lead, such as making pottery or stained glass, or refinishing furniture.
- ◆ **Folk remedies** that contain lead, such as "greta" and "azarcon" used to treat an upset stomach.



## For More Information

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### The National Lead Information Center

Call **1-800-424-LEAD (424-5323)** to learn how to protect children from lead poisoning and for other information on lead hazards. To access lead information via the web, visit **[www.epa.gov/lead](http://www.epa.gov/lead)** and **[www.hud.gov/offices/lead/](http://www.hud.gov/offices/lead/)**.

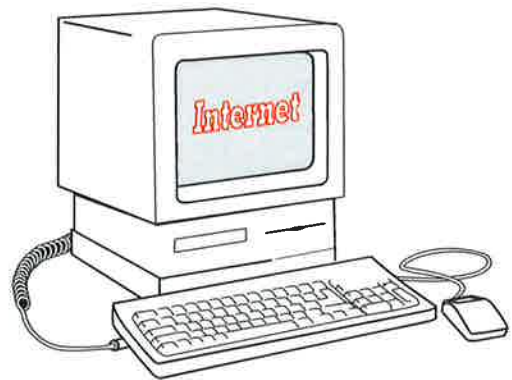


### EPA's Safe Drinking Water Hotline

Call **1-800-426-4791** for information about lead in drinking water.

### Consumer Product Safety Commission (CPSC) Hotline

To request information on lead in consumer products, or to report an unsafe consumer product or a product-related injury call **1-800-638-2772**, or visit CPSC's Web site at: **[www.cpsc.gov](http://www.cpsc.gov)**.



### Health and Environmental Agencies

Some cities, states, and tribes have their own rules for lead-based paint activities. Check with your local agency to see which laws apply to you. Most agencies can also provide information on finding a lead abatement firm in your area, and on possible sources of financial aid for reducing lead hazards. Receive up-to-date address and phone information for your local contacts on the Internet at **[www.epa.gov/lead](http://www.epa.gov/lead)** or contact the National Lead Information Center at **1-800-424-LEAD**.

For the hearing impaired, call the Federal Information Relay Service at **1-800-877-8339** to access any of the phone numbers in this brochure.

## EPA Regional Offices

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Your Regional EPA Office can provide further information regarding regulations and lead protection programs.

### EPA Regional Offices

**Region 1** (Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, Vermont)

Regional Lead Contact  
U.S. EPA Region 1  
Suite 1100 (CPT)  
One Congress Street  
Boston, MA 02114-2023  
1 (888) 372-7341

**Region 2** (New Jersey, New York, Puerto Rico, Virgin Islands)

Regional Lead Contact  
U.S. EPA Region 2  
2890 Woodbridge Avenue  
Building 209, Mail Stop 225  
Edison, NJ 08837-3679  
(732) 321-6671

**Region 3** (Delaware, Maryland, Pennsylvania, Virginia, Washington DC, West Virginia)

Regional Lead Contact  
U.S. EPA Region 3 (3WC33)  
1650 Arch Street  
Philadelphia, PA 19103  
(215) 814-5000

**Region 4** (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

Regional Lead Contact  
U.S. EPA Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303  
(404) 562-8998

**Region 5** (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)

Regional Lead Contact  
U.S. EPA Region 5 (DT-8J)  
77 West Jackson Boulevard  
Chicago, IL 60604-3666  
(312) 886-6003

**Region 6** (Arkansas, Louisiana, New Mexico, Oklahoma, Texas)

Regional Lead Contact  
U.S. EPA Region 6  
1445 Ross Avenue, 12th Floor  
Dallas, TX 75202-2733  
(214) 665-7577

**Region 7** (Iowa, Kansas, Missouri, Nebraska)

Regional Lead Contact  
U.S. EPA Region 7  
(ARTD-RALI)  
901 N. 5th Street  
Kansas City, KS 66101  
(913) 551-7020

**Region 8** (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)

Regional Lead Contact  
U.S. EPA Region 8  
999 18th Street, Suite 500  
Denver, CO 80202-2466  
(303) 312-6021

**Region 9** (Arizona, California, Hawaii, Nevada)

Regional Lead Contact  
U.S. Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
(415) 947-4164

**Region 10** (Alaska, Idaho, Oregon, Washington)

Regional Lead Contact  
U.S. EPA Region 10  
Toxics Section WCM-128  
1200 Sixth Avenue  
Seattle, WA 98101-1128  
(206) 553-1985

## CPSC Regional Offices

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Your Regional CPSC Office can provide further information regarding regulations and consumer product safety.

### **Eastern Regional Center**

Consumer Product Safety Commission  
201 Varick Street, Room 903  
New York, NY 10014  
(212) 620-4120

### **Western Regional Center**

Consumer Product Safety Commission  
1301 Clay Street, Suite 610-N  
Oakland, CA 94612  
(510) 637-4050

### **Central Regional Center**

Consumer Product Safety Commission  
230 South Dearborn Street, Room 2944  
Chicago, IL 60604  
(312) 353-8260

## HUD Lead Office

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Please contact HUD's Office of Healthy Homes and Lead Hazard Control for information on lead regulations, outreach efforts, and lead hazard control and research grant programs.

### **U.S. Department of Housing and Urban Development**

Office of Healthy Homes and Lead Hazard Control  
451 Seventh Street, SW, P-3206  
Washington, DC 20410  
(202) 755-1785

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U.S. EPA Washington DC 20460  
U.S. CPSC Washington DC 20207  
U.S. HUD Washington DC 20410

EPA747-K-99-001  
June 2003

# Addendum F

## Sunset Farm Water Bill Management

Sunset Farm Park is serviced by a single connection to the Birch Bay Water and Sewer District (BBWSD). This connection provides potable water to the residential rental unit located within the park as well as the public portions of the park. The Friends of Sunset Farm compensate the Department for water used within the public portion of the park. The tenant of the rental house is responsible for the portion of the bill for water used at the rental unit.

In addition to the BBWSD water meter, Whatcom County Parks & Recreation (WCPR) has installed a secondary meter to measure the water used within the public portion of the park.

WCPR receives the bill from BBWSD and pays the bill every two months. WCPR then bills the Friends of Sunset Farm and the rental unit tenants.

### Elements of Bill:

Water Usage – water usage as measured by Birch Bay Water & Sewer

Water Base – Base service charge

Handling – Billing and handling charge

### Breakout of bill for billing purposes:

- 1) Tenant is responsible for the base service charge
- 2) Tenant is responsible for the handling charge
- 3) Water usage is billed by use:
  - a. Parks will read the secondary meter on, or about, the first of every month.
  - b. The secondary meter readings will be added together for the billing period. This provides the secondary meter readings total for the billing period.
  - c. This secondary meter readings total is subtracted from the Water Usage total as presented on the BBWSD bill.
  - d. This provides the portion of water use by the rental unit tenants.
  - e. Total water usage billed dollar amount is divided by usage as presented on the bill
  - f. This provides the rate per unit.
  - g. Multiply the rate per unit by the number of units used each party to determine their portion of the water usage bill.

### Tenant Water Bill: $TWU+WB+H =$ Tenant bill total

Tenant Water Usage (TWU) = (total Water Usage billed / total Usage volume on bill) \* (total Usage volume – secondary meter readings total)

Water Base (TWB) = Water Base rate as it is provided on bill

Handling (H) = Handling rate as is presented on bill

### Friends of Sunset Farm Water Bill: $FWU =$ Friends bill total

Friends Water Usage (FWU) = (total Water Usage billed / total Usage volume on bill) \* (secondary meter readings total)



# Whatcom County

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

## Agenda Bill Master Report

File Number: **AB2020-582**

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<b>File ID:</b>	AB2020-582	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/25/2020	<b>Entered by:</b>	MKeeley@co.whatcom.wa.us		
<b>Department:</b>	Human Resources Division	<b>File Type:</b>	Contract		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

---

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

### TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to renew a Collective Bargaining Agreement between Whatcom County and PROTEC17 for the period January 1, 2021 through December 31, 2021

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Please refer to Staff Memo for background and more information

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Staff Memo, Agreement, Contract Information Sheet



**KAREN STERLING GOENS**  
Manager

**MEMO TO:** County Council Members  
**CC:** Satpal Sidhu, County Executive  
Tyler Schroeder, Deputy Executive  
**FROM:** Melissa Keeley, Employee Relations Manager  
**DATE:** November 25, 2020  
**SUBJECT:** PROTEC17 Collective Bargaining Agreement 2021

A handwritten signature in blue ink, appearing to read "M. Keeley", is written over the "CC:" and "FROM:" lines of the memo header.

---

The County and Union have agreed to renew all terms and conditions of the 2019-2020 Collective Bargaining Agreement through 2021 with a few amendments. We are pleased to have reached a quick settlement agreement consistent with budget authority.

The collective bargaining agreement represents 21 professional and technical employees in the Health Department.

Highlights are summarized below:

**Wages**

- 2020 Salary Matrices shall remain as is. No cost of living increases.

**Health and Welfare Benefits**

- Transition from self-insured medical plan to Teamsters Medical Plan B.

**Future Cost Savings**

- County agrees to consider future necessary cost savings in the following order
  - Hiring freeze;
  - Reduction of Expenditures;
  - Furloughs and closure days; subject to good faith bargaining as required;
  - As a last resort and only if necessary, layoffs

I'm available to answer any questions at extension 5309 or by email.

TA 11/20/20

County: 

Union: 

**LETTER OF AGREEMENT  
2020 Extension  
BY AND BETWEEN  
WHATCOM COUNTY, WASHINGTON  
AND  
PROFESSIONAL AND TECHNICAL EMPLOYEES, PROTEC17**

This Letter of Understanding is by and between Whatcom County ("the County") and PROTEC17 ("the Union") regarding the Master Collective Bargaining Agreement ("CBA") dated May 21, 2019 - December 31, 2020.

The parties have met, conferred, and bargained as required by law to extend the CBA through December 31, 2021 as follows:

The parties agree to renew all terms and conditions of the 2019-2020 CBA as provided below:

1. Each wage step in all ranges of the 2020 hourly matrix shall remain as is (Addendum B).
2. Section **23.1 Health & Welfare** will be modified as follows:  
The County agrees to make monthly contributions towards the following plans:
  - A. Medical – Washington Teamsters Welfare Trust Plan "B", to include a 3-month Disability Waiver of Contribution in addition to subsection E. Waiver of Contributions below.
  - B. Dental - Washington Counties Insurance Fund (WCIF) Plan D-3, or any successor plan
  - C. Vision – Washington Counties Insurance Fund (WCIF) Standard Plan, or any successor plan
  - D. Life Insurance – employee only coverage through a carrier to be selected by the County in the face amount of \$50,000
  - E. Waiver of Contributions – Washington Teamsters Welfare Trust Employee 9-month Disability Waiver of Contributions Extension
  - F. Plan D Time Loss – Washington Teamsters Welfare Trust \$100 per week
  - G. Long-Term Disability - employee only coverage through a carrier to be selected by the County comparable to the current level of benefit
3. Section **23.1.1 Life** will be struck from the agreement and covered in **Section 23.1 Health & Welfare**.  
~~The County agrees to pay the entire employee only premium for life insurance through a carrier to be selected by the County. Life insurance benefits for employees will be equivalent to \$50,000.~~
4. Section **23.1.2 Long-Term Disability** will be struck from the agreement and covered in **Section 23.1 Health & Welfare**.  
~~The County agrees to pay the entire employee premium for long-term disability insurance coverage for eligible bargaining unit employees through a carrier to be selected by the County comparable to the current level of benefit.~~



5. Section **23.1.3 Disputes** will be struck from the agreement because the County will not deny coverage:  
The County and the Union agree that any dispute over a denial of coverage under the medical plan provided in Article 23.1a may be appealed, through Human Resources to the County Executive for final resolution.
6. Section **23.2 Premium Payments** will be modified as follows:
  - a. **County Contribution.** For Plan Year 2021, based on the preceding month's hours, the County shall pay the monthly premium cost of \$1,291 towards A. Medical and F. Plan D Time Loss. The County agrees to pay the appropriate monthly contribution amount necessary to provide B. Dental, C. Vision, D. Life Insurance, E. Waiver of Contributions, and G. Long-Term Disability during the life of this agreement. For Plan Year 2019, the County shall fund a Medical plan up to \$1,297 per month for each eligible employee for full family medical coverage. For Plan Year 2020, the County shall fund the self-insured Medical Plan at \$1,362 per month for each eligible employee for full family medical coverage. Employees will elect their next year's plan choice during open enrollment period in November.
  - b. **Employee Contribution.** Should funds designated in Section 23.2 Premium Payments a. County Contribution not be adequate to cover the full contribution for A. Medical and F. Plan D Time Loss, payment via payroll deductions in the amount needed to fully fund the contribution for both Medical Plan B and Time Loss Plan D shall be the obligation of the employee. Any employee obligation shall be satisfied through payroll deduction utilizing the Flex 125 program.  
**Medical Schedule of Benefits.** The schedule of benefits for the Self-insured Plans may require modification during the life of the agreement in order that coverage can be provided within the County's contribution as established above. The parties agree that at any time the County may change the schedule of benefits in order to be legally compliant with applicable law or changes in plan administrator or administration. The parties agree the County is not required to enhance the Medical Plan.
  - c. **Dental, Vision, Life & LTD.** The County agrees to pay the appropriate monthly premium amounts and such increases as required to maintain the dental, vision, life and LTD benefits listed above.
7. Section **23.3 Eligibility Criteria** will be modified as follows:  
Contributions will begin the first of the month following eighty (80) compensated hours of employment in one (1) calendar month. The term compensation as used herein is defined to be payment of wages for work performed, vacation, accrued sick leave, or other paid leave; provided that said work, vacation and/or other paid leave must equal or exceed payment for eighty (80) hours in a calendar month. Income resulting from an industrial injury to a maximum of twelve (12) months from the date of the injury shall be credited as compensation. Lump sum cash out of accruals upon termination of employment is not considered compensable hours for any purpose of eligibility or contribution. Compensation earned in one (1) month provides benefit coverage in the following month unless stipulated otherwise in plan documents. The County agrees to make contribution into the Benefit Trust Funds, in order to provide the benefits outlined in Article 23 – Group Insurance on behalf of all eligible employees covered by this Agreement. The County obligation shall not exceed an initial two (2) months of contribution to establish coverage under the Washington Teamsters Welfare Trust. Benefits shall include the employee, spouse, and dependent children in accordance with the Washington Teamsters Welfare Trust and other Plans.
8. **LOU #2 Job Share Agreement** will be struck from the agreement and the existing job share will be replaced with a one time Grandfathering Agreement.

9. The following sections which pertain to self-insurance will be struck from the agreement:
- 23.2.1 Plan 2000 – Non-Qualified High Deductible
  - 23.2.1 a. Non-Qualified High Deductible
  - 23.2.2 Qualified High Deductible Plan and Health Savings Account
  - a. Qualified High Deductible Plan
  - b. Part-time Employees
  - c. New Hires
  - 23.2.3 Optional Contributory Plan
  - 23.2.4 Employee HSA Contribution
  - 23.5 Advisory Committee

10. The County is committed to mitigating the negative budgeting impacts of the COVID-19 pandemic while balancing the priority of job stability for its employees.

11. The County agrees to consider future necessary cost savings in the following order:

- Hiring Freeze;
- Reduction of Expenditures;
- Furloughs and closure days; subject to good faith bargaining as required;
- As a last resort and only if necessary, layoffs

12. The Parties agree to continue negotiations in good faith during 2021 for a 2022 Agreement.

13. Any disputes regarding application of this LOU are subject to the CBA grievance procedure.

14. During the life of this agreement, should the County provide an increase in wages to any group of employees not currently bound by a collective bargaining agreement, represented or non-represented, excluding those subject to interest arbitration, the County shall apply the same wage increase to employees covered by PROTEC17

15. This LOU may be amended at any time with mutual agreement of the County and the Union.

The foregoing being the agreement of the Parties is in addition to or replacing such other provisions in the CBA. This Letter of Understanding shall be effective as of the date of Council approval and shall supersede any conflicting provision in the CBA.

Name	Signature	Date
Karen S. Goens, Human Resources		
Alexis Young, PROTEC17		
Karen Estevenin, Executive Director		
Satpal Sidhu, County Executive		

Approved as to Form:

\_\_\_\_\_  
George Roche, Senior Civil Deputy Prosecuting Attorney

\_\_\_\_\_  
Date





# Whatcom County

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

## Agenda Bill Master Report

File Number: **AB2020-583**

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<b>File ID:</b>	AB2020-583	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/25/2020	<b>Entered by:</b>	THelms@co.whatcom.wa.us		
<b>Department:</b>	County Executive's Office	<b>File Type:</b>	Contract		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a two year agreement between Whatcom County and Whatcom Humane Society to provide animal control and shelter services, in an amount not to exceed \$796,260

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attached

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Memo and Agreement, Attachment F



## MEMORANDUM

**TO:** Satpal Singh Sidhu, County Executive  
Whatcom County Council

**FROM:** Tawni Helms, Administrative Coordinator

**RE:** Animal Control Services Agreement

**DATE:** November 24, 2020

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Enclosed are two (2) originals of a contract for services agreement between Whatcom County and the Whatcom Humane Society for your review and signature.

▪ **Background and Purpose**

Whatcom County will contract with Whatcom Humane Society for the purpose of providing animal control and shelter services in compliance with Whatcom County Code and statutes as described in Exhibit A.

▪ **Funding Amount and Source**

Beginning January 1, 2021 through December 31, 2022 an annual sum not to exceed Three Hundred Ninety-Eight One Hundred Thirty Dollars per year is to be paid in 12 monthly installments (\$33,177,50).

Total compensation for a 2-year service contract shall not exceed \$398,130 per year, for a total not to exceed \$796,260 in 2 years.

▪ **Differences from Previous Contract**

This contract terms and compensation are consistent with the previous agreement. No change in compensation.

Please contact Tawni Helms at extension 5208, if you have any questions or concerns regarding the terms of this agreement.

**WHATCOM COUNTY CONTRACT  
INFORMATION SHEET**

Whatcom County Contract No. \_\_\_\_\_

Originating Department:		Executive Office	
Contract or Grant Administrator:		Tawni Helms, Administrative Coordinator	
Contractor's / Agency Name:		Whatcom Humane Society	
Is this a New Contract?    If not, is this an Amendment or Renewal to an Existing Contract?		Yes	No
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does contract require Council Approval?    Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		If No, include WCC: _____ <small>(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)</small>	
Is this a grant agreement?		If yes, grantor agency contract number(s):	
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	CFDA#: _____	
Is this contract grant funded?		If yes, Whatcom County grant contract number(s):	
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	_____	
Is this contract the result of a RFP or Bid process?		Contract Cost Center:	
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	If yes, RFP and Bid number(s):	4300
If yes, RFP and Bid number(s):		RFP 16-44	
Is this agreement excluded from E-Verify?    No <input checked="" type="checkbox"/> Yes <input 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 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): \$ 398,130		<b>Council approval required</b> 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, <b>except when:</b> 1. Exercising an option obtained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, professional services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies or equipment included approved in the budget. 4. 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: Whatcom Humane Society will provide animal control and shelter services to Whatcom County. Services include but are not exclusive to: housing, administering regulations, enforcement and penalties pursuant to County ordinances, statutes and local code as described in Exhibit A.			
Term of Contract:    Two Years		Expiration Date:    12/31/2022	

Contract Routing:

1. Prepared by: <u>Twh</u>	Date: <u>11/24/2020</u>
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: _____

**CONTRACT FOR SERVICES AGREEMENT  
Whatcom Humane Services**

Whatcom Humane Society, hereinafter called **Contractor**, and Whatcom County, hereinafter referred to as **County**, agree and contract as set forth in this Agreement, including:

- General Conditions, pp. 3 to 7,
- Exhibit A (Scope of Work), pp. 8 to 12,
- Exhibit B (Compensation), pp. 13 to 14,
- Exhibit C (Budget). pp. 15,
- Exhibit D (E-Verify Declaration) pp. 16,
- Exhibit E (Certificate of Insurance) pp. 17,
- Exhibit F (Brady Policies and Protocols), pp. 18-24

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 January, 2021, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31 day of December, 2022.

The general purpose or objective of this Agreement is to: provide animal control and shelter services throughout unincorporated Whatcom County, 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 Three Hundred Ninety Eight Thousand One Hundred Thirty. 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 \_\_\_\_.

**Each signatory below to this Contract warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and bind the party thereto.**

**CONTRACTOR:**

Whatcom Humane Society

\_\_\_\_\_  
Laura Clark, Executive Director

Address:  
2172 Division Street  
Bellingham, WA 98226

Contact Name: Laura Clark, Executive Director

Contact Phone: 360-733-2080 ext.: 3026

Contact FAX: 360-733-4746

Contact Email: director@whatcomhumane.org

**WHATCOM COUNTY:**  
**Approved as to form:**

\_\_\_\_\_  
Prosecuting Attorney                      Date

**Approved:**  
Accepted for Whatcom County:

By: \_\_\_\_\_  
Satpal Singh Sidhu, Whatcom County Executive



## GENERAL CONDITIONS

### ANIMAL CONTROL SERVICES AGREEMENT BETWEEN WHATCOM COUNTY AND WHATCOM HUMANE SOCIETY

**THIS AGREEMENT** is made this \_\_\_\_\_ day of December, 2020 by and between **WHATCOM COUNTY**, a municipal corporation, hereinafter referred to as the "County", and Whatcom Humane Society, hereinafter referred to as the "Contractor" for the purpose of animal control services as described herein.

1. **Intent:** The intent of this document is for the County to obtain animal control services such as housing, administering regulations, enforcement and penalties pursuant to the following statutes and local code:

*RCW 9.08 Crimes Relating to Animals*

*RCW 16.04 Trespass of Animals*

*RCW 16.08 Dogs*

*RCW 16.10 Dogs-Licensing- Control Zones*

*RCW 16.24 Stock Restricted Areas*

*RCW 16.52 Prevention of Cruelty to Animals*

*RCW 16.54 Abandoned Animals*

*RCW 16.68 Disposal of Dead Animals*

*RCW 16.70 Control Of Pet Animals Infected With Disease Communicable To Humans*

*WCC 6.04 Animal Control*

*WCC 6.08 Restriction of Livestock*

2. **Description of Services:** The Contractor agrees to provide and the County agrees to accept the services as described in Exhibit A attached hereto and incorporated herein by reference.
3. **Consideration:** As consideration for the services provided, the County agrees to reimburse the Contractor as set forth in Exhibit B attached hereto and incorporated herein by reference.
4. **Term and Extensions:** The term of this Agreement shall be for a period of twenty four months beginning January 1, 2021. The term shall be as stated regardless of the date of signature. At the conclusion of the contract, the County may extend the agreement for two consecutive two year terms. At the conclusion of the contract and any extension, the contract shall be reopened for bidding. The County reserves the right to terminate the contract at any time for substandard performance or non-compliance with contract terms.
5. **Records and Reports:** The Contractor agrees to maintain all books, records, documents, reports and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed under this Agreement, including a complete system of records that shall show the kinds and number of animals in its custody obtained from the unincorporated areas of Whatcom County, the locations where such animals were found, the reasons for confinement and final disposition. On a quarterly basis the Contractor shall provide the County Executive, or his or her designee, a report detailing all fees collected and all expenses and cash balances, with a comprehensive year-end report due thirty (30) days after the end of the fiscal year. The Contractor also agrees to provide the County Executive, or his or her designee, a quarterly report detailing the levels of service provided over the quarter, together with a report on the license program in accordance with Section 3.1 in Exhibit A.

All income and expenditures shall be recorded in accordance with generally accepted accounting principles. The financial records shall be subject to audit by any governmental agency with jurisdiction at a time and place mutually convenient to the parties.

6. **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, onsite 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 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.
7. **Contracts with other Governmental Jurisdictions:** The County agrees to permit the Contractor to extend its services within Whatcom County. The County does not agree to provide a financial subsidy, either directly or indirectly to any city or any other local government. The Contractor guarantees that it will manage its affairs so that any agency contracting with it for services bears that agency's pro-rata share of costs incurred.
8. **Licensing:** The contractor 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 Contractor shall also be responsible for obtaining any necessary approvals and permits and shall be given a reasonable period of time to bring operations into compliance with all laws and standards.
9. **Communications:** Communications between the Contractor and the County shall be addressed to the regular places of business. In the case of the Contractor, the address shall be:

Director, Whatcom Humane Society  
Laura Clark or designee  
Whatcom Humane Society  
2172 Division Street  
Bellingham, WA 98226  
Phone: 360-733-2080-x3026

In the case of the County, communications shall be sent to:

Whatcom County Executive's Office  
Administrative Coordinator  
Tawni Helms or designee  
311 Grand Ave, Suite 108  
Bellingham, WA 98225  
Phone: 360-778-5208

**10. Administration of Agreement:**

- a. This agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions. 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.
- b. The County hereby appoints, and Contractor hereby accepts, the Whatcom County Executive, and her or his designee, as the County representative, hereinafter referred to as the Administrative Officer, for purposes of administering the provisions of this Agreement, including the County's right to receive and act upon all reports and documents, and any auditing performed by the County related to this Agreements. The Administrative Officer for purposes of this Agreement is:

Tawni Helms  
Administrative Coordinator  
Whatcom County Executive's Office  
311 Grand Ave, Suite 108  
Bellingham, WA 98225  
Phone: 360-778-5208

11. **Relationship to Parties:** The parties intend that an independent Contractor/County relationship will be created by the Agreement. The County is interested only in the results to be achieved; the implementation of services will lie solely with the Contractor. Neither the Contractor, nor any agent, employee or representative of the Contractor shall be deemed to be an agent, employee, or representative of the County for any purpose. Employees of the Contractor are not entitled to any of the benefits the County provides for County employees. The Contractor will be solely and entirely responsible for its acts, and for the acts of its agents, employees, subcontractors or others during the performance of this Agreement. In the performance of services herein contemplated, the Contractor is an Independent Contractor as to the performance of the details of the work; however, the results of the work contemplated herein must meet the approval of the County and shall be subject to the County's general rights of inspection and review to secure the satisfactory completion thereof.
12. **Indemnification and Hold Harmless:** The Contractor agrees and covenants to indemnify, defend and save harmless the County and those persons who were, now are, or shall be duly elected or appointed officials or members or employees thereof, hereinafter referred to as the County, against and from any loss, damage, cost, charge, expense, liability, claim, demand or judgment, of whatsoever kind or nature, whether to persons or property, arising wholly or partially out of any act, action, neglect, omission or default on the part of the Contractor, his subcontractors, and/or employees, except to the extent such injury or damage shall have been caused by or resulted from the negligence of the County. In case any suit or cause of action shall be brought against the County on account of any act, action, neglect, omission or default on the part of the Contractor, his agents, subcontractors, and/or employees, the Contractor hereby agrees and covenants to appear and assume the defense thereof and to pay any and all costs, charges, attorney's fees and other expenses and any and all judgments that may be incurred or obtained against the County.
- In the event the County is required to institute legal action and/or participate in legal action to enforce this indemnification and hold harmless clause, the Contractor agrees to pay the County's legal fees, costs and disbursements incurred in establishing the right to indemnification.
13. **Social Security and Other Taxes:** Contractor assumes full responsibility for the payment of all payroll taxes, use, sales, income, other form of taxes, fee, licenses, excises, or payments required by any City, County, Federal or State legislation which are now or may, during the term of this Agreement, be enacted as to the Contractor and all persons employed by the Contractor as to all duties, activities, and requirements by the Contractor in performance of the work pursuant to this Agreement and shall assume exclusive liability therefore, and meet all requirements thereunder pursuant to any rules and regulations that are now and may be promulgated in connection therewith.
14. **Proof of Insurance:** The Contractor shall maintain the following insurance coverage and shall provide the County with certificates of insurance, naming the County as additional insured on all the following policies:
- a. *General Liability:* Comprehensive general liability, premises, operations, contractual and personal injury coverage, for a minimum of \$1,000,000.
  - b. *Automobile Liability:* Comprehensive bodily injury and property damage combined limit of at least \$1,000,000.
  - c. *Automobile Collision:* Coverage adequate to replace vehicles.
  - d. *Law Enforcement Professional:* False arrest, assault and battery, unlawful search and seizure, and related law enforcement coverage, for a combined policy limit of at least \$1,000,000.

The Contractor's insurance shall be considered primary, and it shall waive all rights of subrogation. The County's insurance shall not be required to contribute in any way.

15. **Suspension/Termination:** The County reserves the right to terminate the Agreement at any time for substandard performance or non-compliance with the terms of this Agreement. If the Contractor fails to comply fully with the terms and conditions of this Agreement, the County may pursue such remedies as are legally available, including but not limited to, the suspension or termination of the Agreement in the manner specified herein.

- a. Suspensions: If either party is unable to substantiate full compliance with the provisions of this Agreement, or full cooperation in its performance, the non-breaching party may suspend the Agreement pending corrective acts or investigation, which suspension shall be effective upon seven (7) days written notification to the other party.
- b. Termination – Just cause: For just cause, this Agreement may be terminated by either party hereto upon thirty (30) days advance written notice to the other party unless circumstances warrant the immediate termination of the Agreement. Said written notice shall include a detailed statement of “just cause.”

16. **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, age, marital status, Vietnam era or disabled veteran status, or disability. 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, age, marital status, Vietnam-era or disabled veteran status, or disability, 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, Vietnam-era or disabled veteran status, or disability, 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 without employees.

17. **Non-Discrimination in Client Services:** The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, Vietnam-era or disabled veteran status, or disability, 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 of 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.

18. **Assignment and/or 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.

19. **Modification:** No change or addition to this Agreement shall be valid or binding upon either party unless such change or addition is in writing, executed by both parties.

20. **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

21. **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.

22. **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.

23. **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](http://www.uscis.gov)

24. **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 **SERVICES**

**A-1. Description of Services:** The Contractor agrees to provide the following described services:

A1.1. *Operate Animal Shelter Facility:* The Contractor shall provide and operate such animal control shelter and care facilities as may be necessary to receive, maintain, care for and provide for the appropriate disposition of all animals that come within the legal animal control authority and responsibility of the County.

A1.2. *Conduct Animal-Related Investigations and Enforcement:* The Contractor shall provide all necessary investigation, enforcement, testimony, follow up and administrative services, including hearings, as may be required to fulfill the County's legal responsibility regarding animals, violations of law and animal control issues.

A1.3. *Conduct Animal Control Patrol and Impoundment:* The Contractor shall provide all necessary services associated with the control of strays, dangerous or unsupervised animals including receiving reports, responding to complaints, addressing animal-related issues, receiving and impounding animals and conducting such activities as may be reasonably necessary to ensure the effective control of animals that come under the legal authority and responsibility of the County.

A1.4. *Administer Animal Licensing Programs:* The Contractor shall provide for the administration and operation of all animal licensing programs necessary for the County to fulfill its legal licensing responsibility under state law or county ordinance.

**A-2. Legislation:** The Contractor shall provide continuing assistance and advice to the County on the updating and revision of its animal control code.

**A-3. Animal License Program:** The Contractor is solely responsible for administration of all licensing programs.

A3.1. *License Issuance:* The Contractor shall issue animal licenses as required by the Whatcom County Code, shall collect the required fees, and shall maintain a comprehensive set of records on all animal licenses issued by it. At the close of each month the Contractor shall submit a report to the County Executive of licenses issued. The report shall include a list of each license sold showing the name and address of the owner, any associated fees received by the Contractor and the description of the animal licensed. Similar information shall be submitted for all animals impounded.

A3.2. *Stray Animal Licenses:* Stray animals picked up in the County and sold or adopted to private individuals residing in the County shall not be released to their new owners until a valid County license is obtained.

A3.3. *Education:* Education programs for the general public to encourage the licensing of dogs shall be conducted at the discretion of the Contractor at no additional cost to the County.

A3.4. *Purchase Point:* The Contractor shall have an outlet where people may purchase required licenses for their animals.

**A-4. Animal Shelter Facility and Operations:**

A4.1. *Shelter Hours:* The shelter or a shelter representative shall be available for contact 24 hours a day, seven days a week on an emergency-response basis. The shelter must be open at least thirty (30) hours per week on a normal basis. Current hours the animal shelter facility is open to the public are Wednesday through Saturday from 10:00 noon to 6:00 p.m. and Sundays and Mondays from 11:00 a.m. through 5 p.m. The animal shelter is currently closed to the public on Tuesdays and major holidays. Animal care staff and animal control staff are available to respond to emergencies at the animal shelter facility 7 days a week, 365 days per year.

A4.2. *Telephones:* Telephones must be answered during regular business hours and there must be an emergency number or rotating contact whereby the shelter may be contacted 24 hours a day, seven days a week on an emergency-response basis.

A4.3. *Animal Shelter Facility:* The shelter shall have an adequate number of dog kennels and cat cages, isolation facilities for sick dogs and cats, quarantine facilities for biting, dangerous or injured animals which are not necessarily sick, and access to large animal housing. The animal shelter shall be maintained in a clean and sanitary condition and the Contractor will not permit any condition to exist which might constitute a public nuisance. The kennel shall comply with the standards set forth in the Humane Society's Uniform Standards Guidelines (HSUS) for the operation of the animal shelter. The Contractor shall provide a facility that has year round fenced and drained hard surface pads to be used as outdoor exercise yards for the animals. At a minimum there shall be two (2) exercise yards with minimum dimensions of 8 x 20 feet that comply with HSUS guidelines. The outside exercise areas are to be located within viewable distance of Contractor's employees to maintain security of the animals within. The facility site shall be in conformance with the local zoning regulations and shall comply with all federal, state and local regulations.

A4.4. *Acceptance and Care of Animals:* The best possible care and treatment shall be given to all animals held in custody. Adequate housing and food shall be provided and the shelter shall not be overpopulated. The Contractor shall be responsible for the care, medical treatment, medication and inoculation required to assure the humane treatment of the animals received into the Contractor's facility. Any injured animals coming in to the shelter must be seen by a veterinarian for treatment or decision regarding euthanasia within 24 hours of entry. The shelter shall accept unwanted small domestic pets (i.e., dogs and cats) from County residents, including strays and owner-released animals for humane euthanasia. The Contractor shall also accept pigs, goats, sheep, cattle, horses, ferrets, llamas, rabbits, hamsters, guinea pigs, snakes and domestic birds and other animals as circumstances require.

A4.5. *Adoption:* The Contractor shall be responsible for making every reasonable effort to prepare and present animals for adoption by the public and to facilitate the same. All animals released for adoption shall be vaccinated and either spayed or neutered. Spaying or neutering may be suspended depending on the health and age of the animal at the discretion of a licensed veterinarian associated with the Contractor.

A4.6. *Disposal of Unclaimed Animals:* The Contractor shall provide for the humane disposal of unclaimed animals after holding them for no fewer than 72 hours, unless sickness or injury requires earlier disposal. Under no circumstances shall unadopted animals be sold for purposes of medical research or other activities, which may harm them. The Contractor shall be responsible for maintaining animals beyond the minimum 72-hour period as may be required for the completion of any judicial process or to the extent required by law.

A4.7. *Euthanasia:* Humane euthanasia and disposal of unwanted animals must be by lethal injection of sodium pentobarbital or other approved method administered by a licensed veterinarian or by an agency which has obtained a Washington State and Federal Drug License and certification for staff to administer same.

A4.8. *Certification:* The Contractor assumes full responsibility for complying with all licensing, certification, or accreditation as required by law including regulation of facilities, programs, and euthanasia certification and licensing. All animal control and animal care managers and supervisors, and the executive director will be certified to assist with euthanasia under the direction of a veterinarian.

A4.9 *Volunteer Program:* The Contractor will actively promote a volunteer program to assist with the animals, supported through the shelter as described below. Any and all volunteer programs outlined herein, created during the term of the agreement, and/or affiliated with the Contractor must be in compliance with state employment laws, and subject to any and all special insurance requirements.

1. Volunteers must be at least 12 years of age to volunteer at the shelter.
2. Students between the ages of 12 and 16 must be accompanied by an adult.
3. All volunteers must attend a two-hour volunteer orientation and complete animal handling classes before working directly with the shelter animals.
4. Volunteers are supervised and managed by the WHS Volunteer Coordinator.

**A-5. Enforcement and Field Operations:** The Contractor shall be fully responsible for taking animals into custody, transportation of animals, administration and enforcement of animal control regulations, investigation of animal control complaints, as well as imposing penalties in accordance with Whatcom County Code and the Revised Code of Washington. Full services are required in all of rural Whatcom County, including Point Roberts, Lummi Island, and Newhalem. Dog control zones are established in all of the unincorporated areas of Whatcom County except areas designed R-5, R-10 and AG.

A5.1. *Enforcement Hours:* The Contractor shall provide for a minimum/maximum range of field operation services each week to include patrol, enforcement, investigation of complaints and impoundment of animals, including Sheriff approved after-hours call-outs. The County recognizes that the amount of field operation hours may vary and, therefore, requires that the Contractor's animal control officers provide a minimum of 80 hours of field operation services per week and be capable and responsive to levels of activity, including Sheriff approved call-outs, that may require up to 120 hours per week, as need dictates. Within this inclusive range, the Contractor shall be responsible for all such services.

A5.2. *Emergency Response:* With regard to animal control enforcement, the Contractor shall be available twenty-four (24) hours a day, seven (7) days a week, on an emergency-response basis. Emergency response shall be for:

1. Vicious animals, animals running at large, or animals that may reasonably constitute a hazard to persons or other animals or threaten public safety.
2. Injured or very sick domestic animals.
3. Domestic animals in distress, such as those caught in traps.
4. Hardship cases or law enforcement (Sheriff) assistance matters.

Note: The Sheriff's shift sergeant or duty staff officer shall review and authorize any questioned after-hours call-out of Contractor's staff.

A5.3. *Complaints and Referrals:* The Contractor shall investigate and follow up on all animal control complaints referred to it by the public, appropriate officers, health services or other entities where the complaints constitute violations of Whatcom County Code Title 6.

A5.4. *Distressed Animals:* Animals in distress, including hardship cases such as owner arrest or house fires, must be taken to the shelter facilities. Vicious animals at large must be impounded. If distressed or vicious animals cannot be safely impounded, they may be destroyed.

A5.5. *Hazard Removal:* Dead domestic animals whose owners are unknown and which constitute traffic hazards on County roadways must be removed. In other instances where violations of the Code are observed, the animal shall be impounded.

A5.6. *Disposal of Dead Animals:* The Contractor shall pick up and dispose of small or large dead domestic animals from County roads within 24 hours of notification.

A5.7. *Vehicles and Equipment:* Contractor shall own and maintain the number and type of vehicles necessary to provide services as described. Contractor shall maintain appropriate insurance on all vehicles.

A5.8. *Court Appearances:* The Contractor's personnel may, on occasion, be required to appear in court in support of enforcement action. The Contractor shall not receive additional compensation under this Agreement for these appearances.

A5.9. *Quarantine Services:* The Contractor shall provide quarantine services within incorporated and unincorporated areas of Whatcom County in accordance with the procedures outlined in WCC 6.04.140 Control of Rabid or Potentially Rabid Animals, when requested by the Health Department or when an animal of a species which may transmit disease through its saliva, bites and breaks the skin of any person. Specifically, the Contractor shall:

1. Notify the Health Department of:
  - unusual behavior of a recently captured domestic animal;



- unusual behavior or death of a quarantined domestic animal; or
  - any non-domestic animal bite report if it is of a species which may transmit disease through its bite.
2. Notify caretakers of a quarantined animal of their duty to report unusual behavior or the death of a quarantined animal.
  3. Follow-up on the status of a quarantined animal at the end of the quarantine period.
  4. Obtain authorization from the Health Department prior to euthanizing any quarantined animal.
  5. Remove and transport the head of any potentially rabid animal only as directed by the Health Department.
  6. Assist in the capture and transport of potentially rabid bats upon request of the Health Department.

**A-6. Animal Control Officers:**

A6.1. *Authority:* The Contractor shall provide animal care and control services pursuant to Contractor's authority under state and county law on behalf of the County.

A6.2. *Qualifications and Training:* The Contractor assumes full responsibility for the selection, qualification, and training of its animal control officers. Contractor shall ensure all animal control officers are properly authorized pursuant to Washington State law to carry out their duties and responsibilities. Proof of current authorization for all animal control officers working for Contractor shall be provided to the County upon 1) issuance of statutorily-required authorization or 2) renewal of statutorily-required authorization, or 3) otherwise upon request of the County.

A6.3. *Patrol Strength:* The Contractor shall provide at least a minimum of eighty (80) hours and up to one hundred twenty (120) hours weekly of field service time to carry out its obligations under this Agreement and shall ensure that sufficient staff and vehicles are available Monday through Saturday between the hours of 9:00 a.m. and 5:00 p.m. or on an alternate schedule approved by the County Executive.

**A-7. Other:**

A7.1. From time to time, special assistance may be required to respond to unique circumstances and/or animal care needs. Normally, such special assistance or care shall be the responsibility of the Contractor. Excessive cases may be addressed to the Executive's Office for special consideration.

A7.2. The Contractor will make every reasonable effort to establish and maintain a positive working relationship with all organizations concerned with animal welfare in Whatcom County.

A7.3. The Contractor shall represent the County as its primary animal control service provider for the unincorporated areas of Whatcom County. As such, the Contractor will be expected to provide excellent customer service and public relations. The Contractor shall not be expected to operate beyond the scope of this Agreement in the County's interest unless specifically requested to do so by an appropriate representative of the County. The County will not agree to any expense beyond the terms of this Agreement without preauthorization by an official of the County empowered to so bind the County.

A7.4. The Contractor under this Agreement is acting in a law enforcement capacity. As such, animal control officers may be called as government witnesses in criminal prosecutions. Contractor is thus responsible to provide Brady evidence pursuant to the Whatcom County Prosecuting Attorney Office's *Brady Policy and Protocol*, **Exhibit F**.

**A-8. Activities Not Covered:** The Contractor shall not be responsible under the terms of this agreement for the following items:

A8.1. Receiving wild, non-domestic animals into the shelter facility or care of the Contractor.

A8.2. Responding to complaints or incidents involving wild animals, except where it is in the interest of public safety. Contractor will stand by to assist a state agency, law enforcement agency or any wild life animal rescue group when the presence of a wild animal, dead or alive, is on a public roadway or within the right-of-way. Contractor will attempt to move the animal from the right of way traffic lanes.

A8.3. Rehabilitating and restoring to health animals that have been injured, neglected or abused that is not required by state law or county ordinance.

A8.4. Responding to non-emergent calls or complaints that have not been reviewed and approved for after-hours call-out by the Sheriff's office.

A8.5. Providing other services or activities that are not reasonably related to the contracted services or the intent of this Agreement, and that create an undue finance burden on the Contractor.

**EXHIBIT "B"**  
(COMPENSATION)

As consideration for the services provided pursuant to Exhibit A. Scope of work, the county agrees to compensate the contractor \$33,177.50 per month consistent with exhibit C. Program Budget. Contractor will provide quarterly activity reports and upon request provide source documents such as payroll summaries identifying employee, hours worked and amount of compensation. Compensation shall not exceed a total of \$398,130.

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.

**B-1. Animal Control & License Fees:**

B1.1. The following animal control and license fees are authorized in the Whatcom County Unified Fee Schedule, effective January 1, 2019, through Budget Ordinance # 2018-076:

Description	Fee	Comments
Board/Care - Domestic Animals	\$15	Per Day
Board/Care - Large Livestock	\$40	Per Day after 24 hours
Board/Care - Small Livestock	\$40	Per Day after 24 hours
Boarding Fee/Special Requirements	\$40	Per Day
Call Out Fee (Livestock at Large)	\$50	
Impoundment - Cats and other small animals 1st - Altered and wearing ID	\$25	Per Imp/12 mo period
Impoundment - Cats and other small animals 2nd - Altered and wearing ID	\$45	Per Imp/12 mo period
Impoundment - Cats and other small animals 3rd - Altered and wearing ID	\$65	Per Imp/12 mo period
Impoundment - Cats and other small animals 4th + - Altered and wearing ID	\$100	Per Imp/12 mo period
Impoundment - Cats and other small animals 1st - Altered and w/o ID	\$45	Per Imp/12 mo period
Impoundment - Cats and other small animals 2nd - Altered and w/o ID	\$65	Per Imp/12 mo period
Impoundment - Cats and other small animals 3rd - Altered and w/o ID	\$85	Per Imp/12 mo period
Impoundment - Cats and other small animals 4th + - Altered and w/o ID	\$120	Per Imp/12 mo period
Impoundment - Cats and other small animals 1st - Unaltered and wearing ID	\$45	Per Imp/12 mo period
Impoundment - Cats and other small animals 2nd - Unaltered and wearing ID	\$65	Per Imp/12 mo period
Impoundment - Cats and other small animals 3rd - Unaltered and wearing ID	\$85	Per Imp/12 mo period
Impoundment - Cats and other small animals 4th + - Unaltered and wearing ID	\$120	Per Imp/12 mo period
Impoundment - Cats and other small animals 1st - Unaltered and w/o ID	\$65	Per Imp/12 mo period
Impoundment - Cats and other small animals 2nd - Unaltered and w/o ID	\$85	Per Imp/12 mo period
Impoundment - Cats and other small animals 3rd - Unaltered and w/o ID	\$105	Per Imp/12 mo period
Impoundment - Cats and other small animals 4th + - Unaltered and w/o ID	\$140	Per Imp/12 mo period
Impoundment - Dogs 1st - Altered and wearing current license	\$40	Per Imp/12 mo period
Impoundment - Dogs 2nd - Altered and wearing current license	\$60	Per Imp/12 mo period
Impoundment - Dogs 3rd - Altered and wearing current license	\$80	Per Imp/12 mo period
Impoundment - Dogs 4th + - Altered and wearing current license	\$150	Per Imp/12 mo period
Impoundment - Dogs 1st - Altered and unlicensed or not wearing license	\$60	Per Imp/12 mo period
Impoundment - Dogs 2nd - Altered and unlicensed or not wearing license	\$80	Per Imp/12 mo period
Impoundment - Dogs 3rd - Altered and unlicensed or not wearing license	\$100	Per Imp/12 mo period
Impoundment - Dogs 4th + - Altered and unlicensed or not wearing license	\$170	Per Imp/12 mo period
Impoundment - Dogs 1st - Unaltered and wearing current license	\$60	Per Imp/12 mo period
Impoundment - Dogs 2nd - Unaltered and wearing current license	\$80	Per Imp/12 mo period
Impoundment - Dogs 3rd - Unaltered and wearing current license	\$100	Per Imp/12 mo period
Impoundment - Dogs 4th + - Unaltered and wearing current license	\$170	Per Imp/12 mo period
Impoundment - Dogs 1st - Unaltered and unlicensed or not wearing license	\$80	Per Imp/12 mo period
Impoundment - Dogs 2nd - Unaltered and unlicensed or not wearing license	\$100	Per Imp/12 mo period
Impoundment - Dogs 3rd - Unaltered and unlicensed or not wearing license	\$120	Per Imp/12 mo period
Impoundment - Dogs 4th + - Unaltered and unlicensed or not wearing license	\$190	Per Imp/12 mo period
Impoundment - Large Livestock 1st	\$75	Per Imp/12 mo period
Impoundment - Large Livestock 2nd	\$100	Per Imp/12 mo period

Impoundment - Large Livestock 3rd	\$125	Per Imp/12 mo period
Impoundment - Large Livestock 4th +	\$200	Per Imp/12 mo period
Impoundment - Small Livestock 1st	\$60	Per Imp/12 mo period
Impoundment - Small Livestock 2nd	\$80	Per Imp/12 mo period
Impoundment - Small Livestock 3rd	\$100	Per Imp/12 mo period
Impoundment - Small Livestock 4th +	\$150	Per Imp/12 mo period
License Fee - Wild or Exotic Animal - Initial License	\$500	
License Fee - Wild or Exotic Animal - Annual Renewal	\$100	
License Fee - Altered Dog	\$11	
License Fee - Unaltered Dog	\$41	
License Fee - Past Due - Additional	\$10	Added to License Fee
Multi-Dog License	\$65	
Owner Release Fee	\$50	
Owner Release Fee - Additional for Litter w/Mother	\$10	
Pickup/Disposition Fee	\$55	
Pickup/Disposition Fee - Each Additional Animal and/or Litter w/Mother	\$25	Same trip
Registration Fee - Potentially Dangerous Dog	\$100	
Registration Fee - Dangerous Dog	\$150	
Veterinarian Fees and Medications during Boarding/Impoundment if required	Cost	Actual Costs Charged

B1.2. Accounting requirements imposed by the State of Washington require that all fees included in the Unified Fee Schedule be appropriately accounted for. To comply with this requirement the Contractor will be required to submit a monthly report detailing all fees collected. This report will be delivered to the County Executive.

B1.3. Contractor's Fees: The Contractor shall report the amount of fees collected on the quarterly report submitted to the County. The Contractor shall be solely responsible for the collection of the following fees as approved through the County Unified Fee Schedule:

1. License fees.
2. Spay/neuter clinic revenue paid to the Contractor/veterinarian.
3. Purchase charges related to the adoption of animals.
4. Vaccination clinic revenue paid to the Contractor/veterinarian.
5. Other similar or like fees as approved by the County.

B1.4. The County shall assist the Contractor in recovering exceptional costs from owners or other responsible parties, for the care of animals taken into custody or maintained by the Contractor, on behalf of the County. The appropriateness and the extent of action taken or to be taken by the County shall be determined by and at the sole discretion of the County.

**B-2. Consideration:** As consideration for the services provided the County agrees to reimburse the Contractor as follows:

B2.1. Unless specifically approved by County Council as a part of animal control and license fees, the Contractor shall be responsible for the administration of any and all animal licensing programs. All animal control and license fees, listed in Section B1.1 will be collected and retained by the Contractor as outlined in B1.3 and reported to the County as outlined in B1.2.

B2.2. The Contractor shall not receive any additional compensation for after-hours call-outs. Necessity for questioned after-hours call-outs shall be determined and authorized by the Sheriff's sergeant, shift supervisor, or duty staff officer.

B2.3. All payments under this Agreement are considered reimbursement for services rendered. Request for each monthly payment shall be by invoice showing what services were rendered so as to comply with auditing requirements. The County agrees to make payment for services provided promptly in accordance with the County's customary procedures.

**EXHIBIT "C"**  
Program Budget

WHATCOM HUMANE SOCIETY Budget Narrative	<b>Annual Budget 1/1/2021 – 12/31/2022</b>
Wages-Shelter Services	168,267.19
Wages-Animal Control & Licensing	179,376.48
Wages-Administration	57,738.85
Subtotal-Wages	<u>399,382.52</u>
Animal Food	5,550.00
Disposal-Dead Animals	4,000.00
Insurance	
Insurance-Animal Control & Licensing	18,346.
Postage	2,500.00
Professional Services-Shelter Services	8,625.00
Professional Services-Animal Ctrl & Lic	200.00
Professional Services-Administration	5,250.00
Radio/Pager-Animal Control	1,500.00
Supplies-Medical	18,000.00
Supplies-Shelter Services	15,000.00
Supplies-Animal Control & Licensing	1,000.00
Telephone-Animal Control	2,700.00
Uniforms	500.00
Utilities	7,000.00
Vehicle fuel and maintenance	15,000.00
Subtotal-Expenses	<u>106,121</u>
<b>Total</b>	<b>505,503.52</b>
<b>Income (Contractor collects and retains fees)</b>	
License	27,000
License Late Fee	1,750.00
Impound	20,000
Board	4,800.00
Owner Release	4473.52
Dog Adoptions	20,800.00
Cat Adoptions	23,000.00
Microchip	2,500.00
Other Animal Adoption	2,600.00
Trap Rental	450.00
<b>Total</b>	<u>107,373.52</u>
<b>TOTAL (each year)</b>	<b>398,130</b>

**Exhibit D**  
**Whatcom County Contractor's E-Verify Declaration Form**

**I. CONTRACTOR INFORMATION**

Contractor Name:	Phone:
Contact Person:	Fax:
Address:	

**II. E-VERIFY ENROLLMENT** (check box and submit copy of MOU for verification)

Contractors with funded contracts of \$100,000 or more must be enrolled in E-Verify system. Work related subcontract is \$25,000. or higher. [www.uscis.gov/e-verify](http://www.uscis.gov/e-verify)

**Contractor is enrolled in E-Verify; copy of the signed E-Verify Memorandum of Understanding is attached.**

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

**EXHIBIT E  
CERTIFICATE OF INSURANCE**

**Exhibit "F"**  
**Brady Policies and Protocols**  
**(Attached)**







**WHATCOM COUNTY PROSECUTING ATTORNEY**

**ERIC J. RICHEY**

**Whatcom County Courthouse  
311 Grand Avenue, Suite 201  
Bellingham, Washington 98225-4079  
(360) 778-5710 /Main Office FAX (360)778-5711  
Appellate FAX (360) 778-5712**



*Brady* Policies and Protocols

~~Adopted April, 9 2019~~

A handwritten signature in black ink, which appears to be "Eric J. Richey", is written over a horizontal line. The signature is written in a cursive style.

Eric J. Richey WSBA# 22860

## I. Overview

In *Brady v. Maryland*, the United States Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Strickler v. Green*, 527 U.S. 263 (1999); *Kyles v. Whitley*, 514 U.S. 419 (1995); *Brady*, 373 U.S. 83, 87 (1963). It is the policy of the Whatcom County Prosecutor's Office to strictly adhere to our *Brady* obligations, while remaining mindful of the statutory and privacy rights of peace officers involved.

It is the policy of this office to resolve questions related to *Brady* in favor of disclosure, and this protocol does not change that policy or our interpretation of our obligations under CrR 4.7. This protocol focuses on how this office will handle and retain *Brady* material regarding witnesses who, due to their profession, are likely to testify in future cases. This will most often occur with police officers or other recurring government witnesses, such as employees of the crime lab or other experts who routinely testify for the State.

Allegations of misconduct by recurring government witnesses may come to our attention in a number of ways. For example, cases are sometimes submitted to the Prosecuting Attorney in which the recurring government witness is a suspect in a crime. Or, a deputy prosecuting attorney may develop concerns about whether certain conduct -- observed, reported or documented by others -- falls within the purview of *Brady*. At other times, a court may enter a factual finding, or rule on a request to disclose disciplinary information, that implicates *Brady*.

This written protocol is designed to achieve this goal, and to foster clarity and uniformity in the way *Brady* issues regarding recurring government witnesses are resolved. All Whatcom County deputy prosecuting attorneys are required to know and follow this protocol and all relevant law concerning *Brady* obligations. Internal training events will be held in addition to the regular trainings provided by the Washington Association of Prosecuting Attorneys.

This area of law is dynamic, so this protocol may be refined as further guidance is received from courts or the legislature, or as justice may require.

## II. Basics of *Brady*

The United States Supreme Court's decision in *Brady v. Maryland* requires the prosecution to disclose to the defense any evidence that is "favorable to the accused" and "material" on the issue of guilt or punishment. *Brady*, 373 U.S. at 87. Failure to disclose violates the defendant's right to due process. *Id.* 86-87. The prosecutor's duty to disclose applies even if the defense has not requested that piece of information. Information known to law enforcement is deemed to be information within the prosecutor's knowledge, even if it is unknown to the prosecutor.

## **VII. The *Brady* List**

A secure electronic database shall be maintained by the Panel with copies of all *Brady* material. Hard copies of any *Brady* material will be kept in a secure location. Access to the *Brady* materials will be limited to the members of the *Brady* panel and their support staff. The *Brady* materials will be considered to be attorney work product and will, in general, be considered to be exempt from disclosure under the Public Records Act (PRA), chapter 42. RCW. However, nothing in this policy shall affect the rights provided for by the PRA.

The *Brady* panel will conduct an audit of the *Brady* list immediately upon its formation. Witnesses on the *Brady* list will be classified as having either potential impeachment evidence (*Brady* material), or criminal convictions that do not encompass a crime of dishonesty or false statement. The only other information provided on the *Brady* list will be the name of the witness, the employing agency, and the date they were added to the list.

Ten years after a witness is added to the *Brady* list, and every five years thereafter, the *Brady* Panel will conduct a review of the witness's placement on the *Brady* list. The purpose of the review will be the consideration of whether the witness still satisfies the potential impeachment disclosure standard, by a preponderance of the evidence, presented upon review. The review will include, but not be limited to: a review of the initial materials that resulted in placement on the *Brady* list, any substantiated or unsubstantiated reports that would constitute *Brady* material occurring after placement on the *Brady* list, instances of impeachment with *Brady* information that occurred after placement on the *Brady* list, any ascertainable impact that impeachment had on factfinders after placement on the *Brady* list, and the potential vacation/expungement of criminal convictions. If the panel is satisfied that the witness no longer meets the standard for potential impeachment disclosure, by a preponderance of the evidence, the witness may be removed from the *Brady* list, or the *Brady* Panel may reserve the right to keep or remove the officer from the list as necessary to comply with our *Brady* obligations.

## **VIII. Procedures To Follow When A Deputy Prosecuting Attorney Discovers That A Potential Trial Witness Is On The *Brady* List**

In all cases, and as early as is practical in the course of discovery, DPAs should cross reference the potential witnesses that might be called in their cases with the *Brady* List. When a DPA becomes aware that a subpoenaed witness is on the *Brady* list, the DPA should request more detail from the Panel about the nature of the *Brady* material. If the Chief Criminal Deputy and the DPA determine that the potential *Brady* material is not discoverable, due to the specific facts of the case and the witness's anticipated testimony, the DPA shall notify the *Brady* Panel.

In all other instances, the DPA should discuss with the Chief Criminal Deputy whether the material should be disclosed directly to the defense attorney, or if it should be submitted to the court for an in camera review. The DPA should also discuss with the Chief Criminal Deputy the need for a protective order. The DPA shall notify the *Brady* Panel if (1) they receive any new

information about the *Brady* material and/or (2) if a judge in their case makes a ruling regarding the admissibility of the *Brady* material.

#### **IX. When Potential *Brady* Material Is Discovered During Trial Or Under Time Constraints**

The DPA should talk to the Chief Criminal Deputy to determine an appropriate action. When time permits, the formal procedure should be utilized.

#### **X. When A Deputy Prosecuting Attorney Learns About A Pending Investigation Of A Recurring Government Witness.**

When a DPA is advised that an investigation is pending concerning a recurring government witness, the DPA shall notify the Chief Criminal Deputy immediately. The Chief Criminal Deputy will then notify the *Brady* Panel. That witness will then be added to a “pending review” list to be monitored regularly for sustained findings of misconduct related to dishonesty or falsehood. On pending cases involving the recurring government witness, the DPA shall notify defense counsel of the existence of the open investigation and direct further inquiry to the investigating agency. If the allegations are sustained and they involve misconduct related to dishonesty or falsehood, the investigating agency shall notify the *Brady* Panel pursuant to section IV of this protocol. The witness will then be added to the “*Brady* List.” If the allegations are determined to be unfounded, the witness will be removed from the “pending review” status.

“Exculpatory evidence” is evidence favorable to the defendant and likely to change the result on an issue of a defendant’s guilt or his or her eventual punishment if convicted. “Favorable evidence” includes not only exculpatory evidence but also evidence that may impeach the credibility of a government witness, whether that witness is a law enforcement officer or a civilian. *Strickler v. Greene*, 527 U.S. at 281-82. “Impeachment evidence” is defined by Evidence Rules 607, 608, and 609. It generally includes any evidence that can be used to impeach the credibility of a witness.

*Brady* evidence regarding recurring government witnesses usually falls into one of several general categories: misconduct involving dishonesty; evidence tending to show a bias or some motive to lie; and -- for expert witnesses -- a pattern of confirmed performance errors that could compromise the expert's conclusions.

The prosecution does not have an obligation to disclose preliminary, challenged or speculative information. *United States v. Agurs*, 427 U.S. 97, 109 n.16 (1976). Nevertheless, the United States Supreme Court has stated that “the prudent prosecutor will resolve doubtful questions in favor of disclosure.” *Id.* at 108. See also *United States v. Acosta*, 357 F.Supp.2d 1228, 1233 (2005) (recognizing that because it is extremely difficult, if not impossible, to discern before trial what evidence will be deemed “material” after trial, the government should resolve doubts in favor of full disclosure). Thus, we should err on the side of disclosing evidence that might be exculpatory, or that could serve as impeachment evidence, as early in discovery as is possible.

Information that is disclosed is not necessarily admissible; these issues must be kept separate. See *State v. Gregory*, 158 Wn.2d 759, 797 (2006). Thus, there will be many times when we disclose *Brady* material, but argue strenuously against its admissibility. The mere fact that a recurring government witness has been added to the *Brady* list is not necessarily a comment by this office on: the admissibility of evidence, that individual's future viability as a witness, on his or her reputation, or on the person's ability to serve in his or her current capacity.

### **III. Whatcom County Prosecutor’s *Brady* Panel Composition**

A *Brady* Panel will be established to implement this protocol. The Panel will be comprised of four Senior Deputy Prosecuting Attorneys and led by the Whatcom County Prosecutor or his designee. A quorum shall consist of three or more members; a majority vote of those present shall determine a given issue. The Panel will keep a record of all the decisions made in the review proceedings described in section VI.

### **IV. Information Submitted To Us By Law Enforcement And Government Agencies**

Law enforcement agencies will be asked to provide the *Brady* Panel with information on sustained findings of misconduct involving officer dishonesty. This includes any sustained findings of false verbal or written statements. The *Brady* Panel will also request all criminal convictions pursuant to CrR 4.7 and *Brady*. The *Brady* Panel will also request any sustained findings for biased policing, racial profiling, malicious harassment, or any other misconduct that

suggests bias against a class of people (e.g. race, ethnicity, age, sexual orientation, gender, disability, economic status, or other personal characteristic).

Officers with sustained findings of misconduct involving dishonesty, bias, or criminal convictions pursuant to ER 609, will be added to the *Brady* list without additional review by the *Brady* Panel. If new evidence comes to light or if the finding of misconduct is later dismissed, the *Brady* Panel should be informed so it can decide whether the officer should be removed from the *Brady* list or if other modifications need to be made. In general, negotiated resolutions in lieu of discipline will not result in an officer being removed from the list. In general, dismissals of an allegation obtained through recognized due process procedures will result in the officer being removed from the list. In both scenarios, we reserve the right to keep or remove the officer from the list as necessary to comply with our *Brady* obligations.

Government agencies, such as crime labs, will also be asked to provide the *Brady* Panel with information on sustained findings of dishonesty, bias, and criminal convictions pursuant to CrR 4.7. In addition, government agencies will be asked to provide the *Brady* Panel with information on a confirmed performance error that compromises the expert's final conclusions. As with officers, State expert witnesses with sustained findings of misconduct involving dishonesty, bias, criminal convictions pursuant to ER 609, or confirmed performance errors that compromise the expert's conclusions, will be added to the *Brady* list without additional review by the *Brady* Panel. If new evidence comes to light or the finding is overturned, the *Brady* Panel should be informed so it can decide whether the employee should be removed from the *Brady* list.

The *Brady* Panel conclusions will be limited to whether the recurring government witness will be added to the *Brady* list. The Panel will not give advisory opinions.

#### **V. Deputy Prosecuting Attorney Responsibilities**

1. If a DPA or any staff member becomes aware of potential *Brady* material regarding a recurring government witness, the deputy or staff member shall inform the Chief Criminal Deputy.
2. If the Chief Criminal Deputy believes that the information could constitute *Brady* material, he or she will direct the DPA to prepare a memorandum summarizing the material. The memo should focus only on facts and avoid conclusions or speculation.
3. The Chief Criminal Deputy shall present the memorandum and all related material/evidence to the *Brady* Panel.

#### **VI. *Brady* Panel Review Procedure**

1. When the Panel receives a notification form from the Chief Criminal Deputy, it will make an initial determination by asking the following question:



If proven true, does the allegation constitute *Brady* material?

- a. If the answer is no, the inquiry is finished.
- b. If the answer is yes, the formal review will continue.

2. The Panel may conduct any additional investigation it deems necessary. The Panel will review the memorandum, related materials, and any additional evidence it obtains, to answer the following question:

Is the Panel convinced by a preponderance of the evidence that the allegation is true?

- a. If the answer is no, the inquiry is finished.
- b. If the answer is yes, the government witness and the relevant agency will be notified per section 3.

3. The Panel will notify the relevant agency that potential *Brady* material has been found. It will be left to the discretion of the relevant agency to notify the witness.

a. The witness and the relevant agency will be allowed to submit a response, with additional evidence they would like the Panel to consider, in writing within 30 days from the date of notification.

\* Witnesses should be aware that if a trial date is pending, the Panel may decide that it is necessary to disclose the material in its possession before a response has been submitted.

b. If no response is received within 30 days, the government witness shall be added to the *Brady* list and notification should be sent to the witness and the relevant agency.

4. If a response is received, the Panel will review the additional evidence and again ask the following question:

Is the Panel convinced by a preponderance of the evidence that the allegation is true?

a. If the answer is no, the inquiry is finished. The relevant agency will be informed of the decision.

If new evidence comes to light after the time period provided for a response under section 3(a) has expired, the witness may send that evidence to the Panel and ask it to reconsider its decision. Additionally, the Panel may reconsider a witness's placement on the *Brady* list based upon court rulings that help define or clarify the issue. The Panel may modify this procedure when necessary.



# Whatcom County

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

## Agenda Bill Master Report

File Number: **AB2020-585**

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<b>File ID:</b>	AB2020-585	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/25/2020	<b>Entered by:</b>	THelms@co.whatcom.wa.us		
<b>Department:</b>	County Executive's Office	<b>File Type:</b>	Contract		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Request authorization for the County to Executive to enter into a 10 year lease agreement between Whatcom County and Stryker for the acquisition of capital equipment including gurneys, powerlifts, LifePaks and more to outfit EMS Advanced Life Support Units in an amount of 10 equal payments of \$468,316.48 over 10 years totaling \$4,683,164.80

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attached

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Stryker Memo.pdf, Agreement, Routing Form, Capital Equipment Plan



# MEMORANDUM

**To:** Whatcom County Council  
**From:** Mike Hilley, EMS Manager  
**Subject:** EMS – Rental Agreement with Stryker for Gurney Replacement  
**Date:** November 25, 2020

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## **BACKGROUND**

At their January 22, 2020 meeting, the EMS Oversight Board (EOB) approved for recommendation to the County Council the purchase of 7 new power lift gurneys from the Stryker Corporation. This new generation of gurneys includes a power load system that is designed with a higher level of patient safety. The acquisition was approved by the council through Budget Ordinance 2020-009.

The Stryker Corporation has since presented Whatcom County EMS (WCEMS) with the ALS 360 program which owns technology integration between Physio-Control and other products. Whatcom County EMS is highly integrated with these products which include Life Pak monitor/defibrillators, gurneys, Lucas Mechanical CPR devices and software associated with quality assurance through these connected technologies. The ALS 360 program is offered as a rental program for a 10-year subscription that includes maintenance, calibration and an upgrade to new technologies expected to be offered in 2 to 3 years. This captures the cost for the capital equipment for the Paramedic Units including the equipment for the 5<sup>th</sup> medic unit which is expected to deploy in 2021.

As the Finance Committee begins to develop capital reserve policies, this rental agreement is expected to save the county \$1.7M dollars over the next 10 years while also ensuring WCEMS is consistently using integrated, standardized and updated technology throughout the system. This savings is achieved through locking in a fixed price for the duration of the agreement, discounted pricing through the package deal, and most critically, upgrades and maintenance costs are included. This agreement will allow the EMS system to budget a fixed cost over the next 10 years.

On July 15, 2020 the EOB unanimously approved for recommendation to the County Council, WCEMS entering into this 10-year rental agreement utilizing the budget authority for the purchase of the gurneys.

## **FUNDING**

EMS Levy Fund.

Flex Financial, a division of Stryker Sales Corporation  
1901 Romence Road Parkway  
Portage, MI 49002  
t: 1-888-308-3146 f: 877-204-1332  
www.stryker.com



Date: September 11, 2020

RE: Reference no: 2110108727

Whatcom County, Washington  
800 East Chestnut Street Suite 3C  
Bellingham, Washington 98225

Thank you for choosing Stryker for your equipment needs. Enclosed please find the documents necessary to enter into the arrangement. Once all of the documents are completed, properly executed and returned to us, we will issue an order for the equipment.

**PLEASE COMPLETE ALL ENCLOSED DOCUMENTS TO EXPEDITE THE SHIPMENT OF YOUR ORDER.**

**Master Agreement  
Rental Schedule to Master Agreement  
Exhibit A - Detail of Equipment  
Insurance Authorization and Verification  
State and Local Government Rider  
Opinion of Counsel**

**\*\*Conditions of Approval: Insurance Authorization and Verification, Federal ID , State and Local Government Rider , Opinion of Counsel**

**PLEASE PROVIDE THE FOLLOWING WITH THE COMPLETED DOCUMENTS:**

<b>Federal tax ID number:</b> _____	<b>AP address:</b> _____
<b>Purchase order number:</b> _____	<b>Contact name:</b> _____
<b>Phone number:</b> _____	<b>Email address:</b> _____

**Please fax completed documents to (877) 204-1332. Return original documents to 1901 Romence Road Parkway Portage, MI 49002 (using Fed-Ex Shipping ID# 612-309469)**

Your personal documentation specialist is Michelle Warren and can be reached at 269-389-1909 or by email [michelle.warren@stryker.com](mailto:michelle.warren@stryker.com) for any questions regarding these documents.

The proposal evidenced by these documents is valid through the last business day of **September, 2020**

Sincerely,

**Flex Financial, a division of Stryker Sales Corporation**

**Notice: To help the government fight the funding of terrorism and money laundering activities, U.S. Federal law requires financial institutions to obtain, verify and record information that identifies each person (individuals or businesses) who opens an account. What this means for you: When you open an account or add any additional service, we will ask you for your name, address, federal employer identification number and other information that will allow us to identify you. We may also ask to see other identifying documents. For your records, the federal employer identification number for Flex Financial, a Division of Stryker Sales Corporation is 38-2902424.**

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MASTER AGREEMENT No. 2110108727

<p>Owner: Flex Financial, a division of Stryker Sales Corporation 1901 Romence Road Parkway Portage, MI 49002</p>	<p>Customer: Whatcom County, Washington 800 East Chestnut Street Suite 3C Bellingham, Washington 98225</p>
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**1. Master agreement.** The undersigned Customer ("**Customer**") unconditionally and irrevocably agrees with the above referenced Owner (together with all of its successors and Assignees, collectively, "**Owner**") to use or acquire, as applicable, the equipment and other personal property and services, if any (together with all additions and attachments to it and all substitutions for it, collectively, the "**Equipment**") described in each Equipment Schedule referencing this Agreement (which may be in the form of an Equipment Lease Schedule, Equipment Rental Schedule, Equipment Use Schedule, Fee Per Disposable Schedule, Fee Per Implant Schedule, Equipment Purchase Schedule or other schedule referencing this Agreement, each, together with any attachments thereto, an "**Equipment Schedule**") and purchased from the Supplier(s) noted in the applicable Equipment Schedule (each a "**Supplier**"). Each Equipment Schedule shall incorporate by reference all of the terms of this Agreement and shall constitute a separate agreement (each such Equipment Schedule, together with such incorporated terms of this Agreement, collectively, a "**Schedule**") that is assignable separately from each other Schedule. In the event of a conflict between this Agreement and the terms of an Equipment Schedule, the terms of the Equipment Schedule shall prevail. No provision of a Schedule may be amended except in a writing signed by Owner's and Customer's duly authorized representatives.

**2. Risk of loss.** Effective upon delivery to Customer and continuing until the Equipment is returned to Owner in accordance with the terms of each Schedule, Customer shall bear all risks of loss or damage to the Equipment and if any loss occurs Customer is nevertheless required to satisfy all of its obligations under each Schedule.

**3. Payments/fees.** All periodic payments, "Semi-Annual Differential" (if a Fee Per Disposable Schedule or Fee Per Implant Schedule) and other amounts due from Customer to Owner under a Schedule are collectively referred to as "**Payments**". Unless otherwise instructed by Owner in writing, all Payments shall be made to Owner's address in the applicable Schedule. Any payment by or on behalf of Customer that purports to be payment in full for any obligation under any Schedule may only be made after Owner's prior written agreement to accept such payment amount. If Customer fails to pay any amount due under a Schedule within ten (10) days after its due date, Customer agrees to pay a late charge equal to (as reasonable liquidated damages and not as a penalty) five percent (5%) of the amount of each such late payment. If any check or funds transfer request for any Payment is returned to Owner unpaid, Customer shall pay Owner a service charge of \$55 for each such returned check or request. Customer authorizes Owner to adjust the Payments at any time if taxes included in the Payments differ from Owner's estimate. Customer agrees that the Payments under a Schedule were calculated by Owner based, in part, on an interest rate equivalent as quoted on the Intercontinental Exchange website, at <https://www.theice.com/marketdata/reports/180>, under the USD Rates 1100 Series, that would have a repayment term equivalent to the initial term (or an interpolated rate if a like-term is not available) as reasonable determined by us and in the event the date the Equipment is delivered to Customer under any Schedule is more than 30 days after Owner sends the Schedule to Customer, Owner may adjust the Payments once to compensate Owner, in good faith, for any increase in such rate.

**4. Equipment.** Customer shall keep the Equipment free of liens, claims and encumbrances, and shall not modify, move, sell, transfer, or otherwise encumber any Equipment or permit any Equipment to be used by others or become attached to any realty, in each case without the prior written consent of Owner, which consent shall not be unreasonably withheld. Any modification or addition to any Equipment shall automatically become the sole property of Owner, unless the Schedule is an Equipment Purchase Schedule or Customer selects \$1.00 Buyout for any Schedule. Owner shall have the right to enter Customer's premises during business hours to inspect any Equipment and observe its use upon at least one (1) day's prior written or verbal notice. Customer shall comply with all applicable laws, rules and regulations concerning the operation, ownership, use and/or possession of the Equipment.

**5. Obligations absolute.** Customer's Payments and other obligations under each Schedule are absolute and unconditional and non-cancelable regardless of any defect or damage to the Equipment (or Disposables/Implants, if applicable) or loss of possession, use or destruction of the Equipment (or Disposables/Implants, if applicable) and are not subject to any set-offs, recoupment, claims, abatements or defenses, provided that neither this Agreement nor any Equipment Schedule shall impair any express warranties or indemnifications, written service agreements or other obligations of Stryker Corporation or any of its subsidiaries to Customer regarding the Equipment and Owner hereby assigns all of its rights in any Equipment warranties to Customer. Customer waives all rights to any indirect, punitive, special or consequential damages in connection with the Equipment or any Schedule.

**6. Use/assignment/disclaimers.** All Equipment shall be used solely for business purposes, and not for personal or household use. Customer shall maintain the Equipment in good repair in accordance with the instructions of the Supplier so that it shall be able to operate in accordance with the manufacturer's specifications. **CUSTOMER SHALL NOT TRANSFER OR ASSIGN ANY OF ITS RIGHTS OR OBLIGATIONS UNDER ANY SCHEDULE OR EQUIPMENT** without Owner's prior written consent, which consent shall not be unreasonably withheld. Customer shall promptly notify Owner in writing of any loss or damage to any Equipment. Owner shall own the Equipment (unless the Schedule is an Equipment Purchase Schedule or Customer selects \$1.00 Buyout for any Schedule). Owner may sell, assign, transfer or grant a security interest to any third party (each, an "**Assignee**") in any Equipment, Payments and/or Schedule, or interest therein, in whole or in part, without notice to or consent by Customer. Customer agrees that Owner may assign its rights under and/or interest in each Schedule and the related Equipment to an Assignee immediately upon or any time after Owner's acceptance of each Schedule and upon such assignment, Customer consents to such assignment and acknowledges that references herein to "Owner" shall mean the Assignee. No Assignee shall assume or be liable for any of the Original Owner's (as defined below) obligations to Customer even though an Assignee may continue to bill and collect all of Customer's obligations under this Agreement in the name of "Flex Financial, a division of Stryker Sales Corporation". Customer acknowledges that such Assignee is not the manufacturer or supplier of any Equipment and is not responsible for its delivery, installation, repair, maintenance or servicing and no Assignee shall have any obligations or liabilities of any kind whatsoever concerning or relating to the Equipment. Customer has selected each Supplier and manufacturer and all of the Equipment. Neither the Original Owner, Supplier nor any manufacturer is an agent of any Assignee, and no representative of the Original Owner, manufacturer or any Supplier is authorized to bind any Assignee for any purpose or make any representation on Assignee's behalf. Customer agrees to look only to Stryker Sales Corporation (the "**Original Owner**"), the Supplier(s) or the manufacturer(s) for any defect or breach of warranty regarding the Equipment. **AS TO ANY ASSIGNEE, CUSTOMER TAKES AND USES THE EQUIPMENT ON AN "AS-IS", "WHERE-IS" BASIS. ASSIGNEE MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, REGARDING ANY EQUIPMENT, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. TO THE EXTENT, IF ANY, THAT CUSTOMER HAS ANY CLAIMS, RIGHTS OR DEFENSES AGAINST THE ORIGINAL OWNER, ANY MANUFACTURER AND/OR ANY SUPPLIER, CUSTOMER SHALL RAISE SUCH CLAIMS, RIGHTS OR DEFENSES ONLY AGAINST THE ORIGINAL OWNER, MANUFACTURER OR SUPPLIER AND NOT AGAINST ASSIGNEE AND SHALL NONE-THE-LESS PAY ALL PAYMENTS AND OTHER AMOUNTS DUE UNDER A SCHEDULE TO THE ASSIGNEE ON THEIR RESPECTIVE DUE DATES WITHOUT ANY DEFENSE, RECOUPMENT, SETOFF, ABATEMENT, CLAIM OR COUNTERCLAIM OF ANY NATURE. THE ORIGINAL OWNER (INCLUDING FLEX FINANCIAL, A DIVISION OF STRYKER SALES CORPORATION, ITS DIVISION) MAKES NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE REGARDING ANY EQUIPMENT.**

**7. Insurance/indemnification.** Customer shall at all times maintain and provide Owner with certificates of insurance evidencing (i) third-party general liability insurance (covering death and personal injury and damage to third party property) with a minimum limit of \$1 million combined single limit per occurrence and (ii) property insurance covering the Equipment against fire, theft, and other loss, damage or casualty for the full replacement value of the Equipment in each case with insurers acceptable to Owner. Such policies shall list Owner and each Assignee as an additional insured and sole loss payee, as applicable, for such insurance. Such insurance policies shall require the insurer to provide Owner with at least 30 days' prior written notice of any material change in or cancellation of the insurance. In the event that Owner determines that the insurance is not in effect, Owner may (but shall not be required to) obtain such insurance and add an insurance fee (which may include a profit) to the amounts due from Customer under the applicable Schedule. Upon any loss or damage to any Equipment, Customer shall continue to pay all Payments due under the related Schedule for the remainder of its term and shall, at Owner's sole election, either repair such Equipment or replace it with comparable equipment satisfactory to Owner. Proceeds of insurance shall be paid to Owner with respect to any Equipment loss, damage, theft or other casualty and shall, at the election of Owner, be applied either to the repair of the Equipment by payment by Owner directly to the party completing the repairs, or to the reimbursement of Customer for the cost of such repairs; provided, however, that Owner shall have no obligation to make such payment or any part thereof until receipt of such evidence as Owner shall deem satisfactory that such repairs have been completed and further provided that Owner may apply such proceeds to the payment of any Payments or other sum due or to become due hereunder if at the time such proceeds are received by Owner there shall have occurred any Event of Default or any event which with lapse of time or notice, or both, would become an Event of Default. To the extent not expressly prohibited by applicable law, Customer will reimburse and defend Owner, including each Assignee for and against any losses, injuries, damages, liabilities, expenses, claims or legal proceedings asserted against or incurred by Owner, including any Assignee, relating to the Equipment and which relate to or arise out of Customer's act or omission or the act or omission of Customer's agents or employees or others (excluding Owner) with access to the Equipment. All Taxes and indemnity obligations shall survive the termination, cancellation or expiration of a Schedule.

**8. UCC filings.** CUSTOMER WAIVES ANY AND ALL RIGHTS AND REMEDIES GRANTED TO CUSTOMER BY SECTIONS 2A-508 THROUGH 2A-522 OF THE UNIFORM COMMERCIAL CODE ("**UCC**"). If and to the extent that this Agreement or a Schedule is deemed a security agreement (or if the Schedule is an Equipment Purchase Schedule or Customer selects \$1.00 Buyout for any Schedule), Customer hereby grants to Owner, its successors and assigns, a security interest in all of Customer's rights under and interest in the Equipment, all additions to the Equipment and all proceeds of the foregoing. Such security interest secures all Payments and other obligations owing by Customer to Owner under the applicable Schedule. Customer authorizes Owner and any Assignee to file UCC financing statements disclosing Owner's or Assignee's interest in the Equipment. Customer shall provide Owner with at least 45 days' prior written notice of any change to Customer's principal place of business, organization or incorporation.

**9. Taxes.**

(a) Reporting and Payment. If permitted by applicable law and except as noted below, Owner shall pay when and as due all sales, use, property, excise and other taxes, and all license and registration fees now or hereafter imposed by any governmental body or agency upon any Schedule or the ownership, use, possession, or sale of the Equipment, together with all interest and penalties for their late payment or non-payment ("Taxes"). Customer shall indemnify and hold Owner harmless from any such Taxes. Owner shall prepare and file all tax returns relating to Taxes for which Owner is responsible hereunder or which Owner is permitted to file under the laws of the applicable taxing jurisdiction. Except with respect to Equipment subject to an Equipment Purchase Schedule or \$1.00 Buyout, Customer will not list any of the Equipment for property tax purposes or report any property tax assessed against the Equipment. Upon receipt of any tax bill pertaining to the Equipment from the appropriate taxing authority, Owner will pay such tax and will invoice Customer for the expense. Upon receipt of such invoice, Customer will promptly reimburse Owner for such expense. If the Equipment is subject to an Equipment Purchase Schedule or \$1.00 Buyout, Customer shall report and pay all applicable property taxes on such Equipment. Nothing in this Subsection shall be deemed to prohibit Customer from reporting, for informational purposes only and to the extent required under applicable law, that it uses the Equipment.

(b) Tax Ownership.

(i) If Customer selects \$1.00 Buyout for any Schedule, the parties intend that Customer shall be considered the owner of the Equipment for tax purposes; provided, however, that Owner shall not be deemed to have violated this Agreement or any Schedule by taking a tax position inconsistent with the foregoing to the extent such a position is required by law or is taken though inadvertence so long as such inadvertent tax position is reversed by Owner promptly upon its discovery.

(ii) If Customer selects the Fair Market Value Option or the Fixed Purchase Option for any Schedule, the parties intend that the Schedule will not be a "conditional sale", and that Owner shall at all times and for all purposes be considered the owner of the Equipment (including for income taxes purposes), and that such Schedule will convey to Customer no right, title or interest in any of the Equipment excepts the right to use the Equipment as described in the Schedule. Customer will not take any actions or positions inconsistent with treating Owner as the owner of the Equipment on or with respect to any income tax return.

Should either the United States government (or agency thereof) or any state or local tax authority disallow, eliminate, reduce, recapture, or disqualify, in whole or in part, the Equipment tax benefits claimed under a Schedule by Owner as a result of any act or omission of Customer (collectively, "Tax Loss"), to the extent not prohibited by applicable law, Customer will indemnify Owner (on a net after tax basis) against all Tax Losses suffered, including the amount of any interest or penalties which might be assessed on Owner by the governmental authority(ies) with respect to such Tax Loss. All references to Owner in this Section include Owner and the consolidated taxpayer group of which Owner is a member. All of Owner's (including any Assignee's) rights, privileges and indemnities contained in this Section shall survive the expiration or other termination of this Agreement. The rights, privileges and indemnities contained herein are expressly made for the benefit of, and shall be enforceable by Owner (including any Assignee), or its respective successors and assigns.

**10. Facsimile copies.** Owner may from time to time, in its sole discretion, accept a photocopy or facsimile of this Agreement and/or any Schedule (bearing a photocopied or electronically transmitted copy of Customer's signature) as the binding and effective record of such agreement(s) whether or not an ink signed counterpart thereof is also received by Owner from Customer, provided, however, that no Schedule shall be binding on Owner unless and until executed by Owner. Any such photocopy or electronically transmitted facsimile received by Owner shall when executed by Owner, constitute an original document for the purposes of establishing the provisions thereof and shall be legally admissible under the "best evidence rule" and binding on Customer as if Customer's manual ink signature was personally delivered.

**11. Notices.** All notices required or provided for in any Schedule, shall be in writing and shall be addressed to Customer or Owner, as the case may be, at its address set forth above or such other address as either such party may later designate in writing to the other party. Such notice shall be considered delivered and effective: (a) upon receipt, if delivered by hand or overnight courier, or (b) three (3) days after deposit with the U.S. Postal Service, if sent certified mail, return receipt requested with postage prepaid. No other means of delivery of notices shall be permitted.

**12. Default; remedies.** Customer will be in "default" under a Schedule, if any one or more of the following shall occur: (a) Customer or any Guarantor of any Schedule ("Guarantor") fails to pay Owner any Payment due under any Schedule within ten (10) days after it is due, or (b) Customer or any such Guarantor breaches any other term of any Schedule, or (c) Customer or any such Guarantor makes any misrepresentation to Owner, or (d) Customer or any such Guarantor fails to pay any other material obligation owed to Owner, any of Owner's affiliates, or any other party, or (e) Customer or any such Guarantor shall consent to the appointment of a receiver, trustee or liquidator of itself or a substantial part of its assets, or (f) there shall be filed by or against Customer or any

**MASTER AGREEMENT No. 2110108727**

such Guarantor a petition in bankruptcy, or (g) Customer's articles of incorporation or other formation documents shall be amended to change Customer's name and Customer fails to give Owner written notice of such change (including a copy of any such amendment) on or before the date such amendment becomes effective, or (h) Customer's legal existence in its state of incorporation or formation shall have lapsed or terminated, or (i) Customer shall dissolve, sell, transfer or otherwise dispose of all or substantially all of its assets, without Owner's prior written consent, which consent shall not be unreasonably withheld, or (j) without prior written consent of Owner, which consent shall not be unreasonably withheld, Customer merges or consolidates with any other entity and Customer is not the survivor of such merger or consolidation. Upon default, Owner may do any one or more of the following: (1) recover from Customer the sum of (A) any and all Payments, late charges and other amounts then due and owing under any or all Schedules, (B) accelerate and collect the unpaid balance of the remaining Payments scheduled to be paid under any or all Schedules, together with Owner's anticipated residual interest in any or all Equipment subject to them, both discounted to present value at a rate of 3% per annum, and (C) Owner's related reasonable attorneys' fees, collection costs and expenses; (2) enter upon Customer's premises and take possession of any or all of such Equipment; (3) terminate any or all Schedules; and/or (4) utilize any other right or remedy provided by applicable law. Customer shall also pay to Owner interest on all unpaid amounts due under a Schedule from the due date of such amounts until paid in full, at a rate per annum equal to the lower of 1-1/2% per month or the highest rate of interest permitted by applicable law (the "**Default Interest Rate**"). In the event the Equipment is returned or repossessed by Owner, Owner will, if commercially reasonable, sell or otherwise dispose of the Equipment, with notice as required by law, and apply the net proceeds after deducting the costs and expenses of such sale or other disposition, to Customer's obligations hereunder with Customer remaining liable for any deficiency and with any excess being retained by Owner or applied as required by law. If Customer fails to perform or comply with any of its agreements or obligations, Owner may perform or comply with such agreements or obligations in its own name or in Customer's name as attorney-in-fact and the amount of any payments and expenses of Owner incurred in connection with such performance or compliance, together with interest thereon at the Default Interest Rate, shall be payable by Customer to Owner upon demand. No express or implied waiver by Owner of any default or breach of Customer's obligations hereunder shall constitute a waiver of any other default or breach of Customer's obligations hereunder.

**13. Miscellaneous.** All Schedules shall be binding on Customer's successors and permitted assigns, and shall be for the benefit of Owner and its successors and Assignees. **EACH SCHEDULE SHALL BE GOVERNED BY THE LAWS OF MICHIGAN, WITHOUT REGARD TO ITS PRINCIPLES OF CONFLICT OF LAWS OR CHOICE OF LAW. THE PARTIES WAIVE THE RIGHT TO A JURY TRIAL IN ANY ACTION OR PROCEEDING RELATING TO ANY SCHEDULE OR EQUIPMENT. The parties do not intend to exceed any applicable usury laws. If for any reason a Schedule is held to constitute a loan of money, any amounts payable under such Schedule in excess of the applicable highest lawful rate of interest shall be deemed a prepayment of any principal amount due under the Schedule and, if such principal is paid in full, such excess amounts shall be immediately refunded to Customer.** Customer agrees that it shall upon request from Owner, promptly provide to Owner a copy of Customer's most recent annual financial statements and any other financial information of Customer (including interim financial statements) that Owner may request. Customer authorizes Owner to share such information with Owner's affiliates for purposes of credit approval. Customer expressly authorizes credit reporting agencies and other persons to furnish credit information to Owner and its Assignees (and prospective Assignees), separately or jointly with other creditors or Owners, for use in connection with this Agreement or any Schedule. Customer agrees that Owner may provide any information or knowledge Owner may have about Customer or about any matter relating to this Agreement or any Schedule to any one or more Assignees (and prospective Assignees). Owners and joint users of such information are authorized to receive and exchange credit information and to update such information as appropriate during the term of this Agreement and each Schedule. Information about Customer may be used for marketing and administrative purposes and shared with Owner's affiliates. Customer may direct Owner not to share that information (except transaction and experience information and information needed for credit approval) with Owner's affiliates by writing to the Owner's address referenced above. This Agreement will not be valid until accepted by Owner (as evidenced by Owner's signature below). Customer represents and warrants to Owner, that effective on the date on which Customer executes this Agreement and each Schedule: (i) if Customer is a partnership, corporation, limited liability company or other legal entity, the execution and delivery of this Agreement and each Schedule and the performance of Customer's obligations hereunder and thereunder have been duly authorized by all necessary action on the part of the Customer; (ii) the person signing this Agreement and each Schedule on behalf of Customer is duly authorized; (iii) all information provided by Customer to Owner in connection with this Agreement and each Schedule is true and correct; and (iv) this Agreement and each Schedule constitute legal, valid and binding obligations of Customer, enforceable against Customer in accordance with their terms. This Agreement and each Schedule may be executed in counterparts and any facsimile, photographic or other electronic transmission and/or electronic signing of this Agreement and each Schedule by Customer and when manually countersigned by Owner or attached to Owner's original signature counterpart and/or in Owner's possession shall constitute the sole original chattel paper as defined in the UCC for all purposes and will be admissible as legal evidence thereof. No security interest in this Agreement and each Schedule can be perfected by possession of any counterpart other than the counterpart bearing Owner's original signature. Customer agrees not to raise as a defense to the enforcement of this Agreement or any related documents hereto the fact that such documents were executed by electronic means. Any provision of a Schedule which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions of the Schedule, and any such unenforceability in any jurisdiction shall not render unenforceable such provision in any other jurisdiction. Paragraph headings are for convenience only, are not part of the Schedule and shall not be deemed to affect the meaning or construction of any of the provisions hereof. Customer has not received any tax or accounting advice from Owner. This Agreement, any Schedules, any attachments to this Agreement or any Schedules and any express warranties made by Stryker Sales Corporation constitute the entire agreement between the parties hereto regarding the Equipment and its use and possession and supersede all prior agreements and discussions regarding the Equipment and any prior course of conduct. There are no agreements, oral or written, between the parties which are contrary to the terms of this Agreement and such other documents.

**CUSTOMER HAS READ THIS AGREEMENT AND EACH SCHEDULE BEFORE SIGNING IT.**

Customer signature	
Signature:	Date:
Print name:	
Title:	

Accepted by Flex Financial, a division of Stryker Sales Corp.	
Signature:	Date:
Print name:	
Title:	

**EQUIPMENT SCHEDULE NO. 001 TO MASTER AGREEMENT NO. 2110108727  
(Equipment Rental Schedule)**

<b>Owner:</b> Flex Financial, a division of Stryker Sales Corporation 1901 Romence Road Parkway Portage, MI 49002		<b>Customer:</b> Whatcom County, Washington 800 East Chestnut Street Suite 3C Bellingham, Washington 98225	
<b>Supplier:</b> Stryker Sales Corporation 3800 E. Centre Avenue Portage, MI 49002			
<b>Equipment description: see part I on attached Exhibit A (and/or as described in invoice(s) or equipment list attached hereto and made a part hereof collectively, the "Equipment")</b>			
<b>Equipment location: 800 East Chestnut Street Suite 3C Bellingham, Washington 98225, Bellingham, Washington 98225</b>			
<b>Schedule of periodic rent payments:</b>			
<b>10 Annual payments of \$468,316.48 (First payment due 30 days after Agreement is commenced), (Plus Applicable Sales/Use Tax)</b>			
<b>Term in months: 109</b>		<b>Minimum monthly uses: n/a</b>	<b>Fee per use: n/a</b>
<b>TERMS AND CONDITIONS</b>			
<p><b>1. Rental agreement/term/acceptance/payments.</b> The undersigned Customer ("<b>Customer</b>") unconditionally and irrevocably agrees to rent from the Owner whose name is listed above ("<b>Owner</b>") the Equipment described above, on the terms specified in this Schedule, including all attachments to this Schedule and in the Master Agreement referred to above (as amended from time to time, the "<b>Agreement</b>"). Except as modified herein, the terms of the Agreement are hereby ratified and incorporated into this Schedule as if set forth herein in full, and shall remain fully enforceable throughout the Term of this Schedule (as defined below). Capitalized terms used and not otherwise defined in this Schedule have the respective meanings given to those terms in the Agreement. The term of this Schedule ("<b>Term</b>") shall start on the day the Equipment is delivered to Customer and shall continue for the number of months set forth above beginning with the Rent Commencement Date (as defined below). Customer shall be deemed to have accepted the Equipment for rent under this Schedule on the date that is ten (10) days after the date it is shipped to Customer by the Supplier ("<b>Acceptance Date</b>") and, at Owner's request, Customer shall confirm for Owner such acceptance in writing. <b>No acceptance of any item of Equipment may be revoked by Customer.</b> The Periodic Rent Payments described above ("<b>Periodic Rent</b>") shall be paid commencing on (i) the first day of the month following the month in which the Acceptance Date occurs, if the Acceptance Date is on or before the 15th of the month, or (ii) the first day of the second month following the month in which the Acceptance Date occurs, if the Acceptance Date is after the 15th day of the month ("<b>Rent Commencement Date</b>"). Unless otherwise instructed by Owner in writing, all Periodic Rent and other amounts due hereunder shall be made to Owner's address above. Any payment by or on behalf of Customer that purports to be payment in full for any obligation under this Schedule may only be made after Owner's prior written agreement to accept such payment amount. Periodic Rent is due monthly beginning on the Rent Commencement Date and continuing on the same day of each consecutive month thereafter during the Term regardless of whether or not Customer receives an invoice for it. The Minimum Monthly Uses and Fee Per Use described above shall not affect the amount of any monthly payment.</p>			
<p><b>2. Return of equipment.</b> Customers will give Owner at least 90 days but not more than 180 days written notice (the "Return Notice") (to Owner's address above) before the initial Term (or any renewal term) expiration of Customer's intention to return the Equipment, whereupon Customers shall: return all of the Equipment in good working condition at Customer's cost how, when and where Owner directs. If Customer fails to give Return Notice or the Return Notice is not sent timely, the Term will be automatically extended (upon the same terms and payments) until the first Periodic Rent payment date which is more than 90 days after Customer has given Owner written notice by certified mail that Customer will return Equipment to Owner and at the end of such extended Term, Customer shall return the Equipment as described above. All Equipment upon return to Owner shall be in the same condition and appearance as when delivered to Customer, excepting only reasonable wear and tear from proper use and all such equipment shall be eligible for manufacturer's maintenance. If Customer fails to return the Equipment as and when required, Customer shall continue to remit Periodic Rent ("<b>Remedial Payments</b>") to Owner on the dates such payments would be payable under this Schedule as if this Schedule had not expired or terminated.</p>			



**3. Miscellaneous.** If Customer fails to pay (within thirty days of invoice date) any freight, sales tax or other amounts related to the Equipment which are not financed hereunder and are billed directly by Owner to Customer, such amounts shall be added to the Periodic Rent Payments set forth above (plus interest or additional charges thereon) and Customer authorizes Owner to adjust such Periodic Rent Payments accordingly. Customer agrees that this Schedule is intended to be a "finance lease" as defined in §2A-103(1)(g) of the Uniform Commercial Code. This Schedule will not be valid until signed by Owner. Customer acknowledges that Customer has not received any tax or accounting advice from Owner. If Customer is required to report the components of its payment obligations hereunder to certain state and/or federal agencies or public health coverage programs such as Medicare, Medicaid, SCHIP or others, and such amounts are not adequately disclosed in any attachment hereto, then Stryker Sales Corporation will, upon Customer's written request, provide Customer with a detailed outline of the components of its payments which may include equipment, software, service and other related components.

**CUSTOMER HAS READ (AND UNDERSTANDS THE TERMS OF) THIS SCHEDULE BEFORE SIGNING IT:**

<b>Customer signature</b>	
<b>Signature:</b>	<b>Date:</b>
<b>Print name:</b>	
<b>Title:</b>	

<b>Accepted by Flex Financial, a division of Stryker Sales Corp.</b>	
<b>Signature:</b>	<b>Date:</b>
<b>Print name:</b>	
<b>Title:</b>	

**Exhibit A to Rental Schedule 001 to Master Agreement No. 2110108727  
Description of equipment**

**Customer name:** Whatcom County, Washington

**Delivery address:** 800 East Chestnut Street Suite 3C Bellingham, Washington 98225, Bellingham, Washington 98225

**Part I - Equipment/Service Coverage (if applicable)**

<b>Model number</b>	<b>Equipment description</b>	<b>Quantity</b>
6506000000	POWER PRO AMBULANCE COT	54
639005550001	MTS POWER LOAD	7
99577-001957	LP15,EN,SPO2CO,3L/12L,EX,NIBP,CO2,TR,VR,BT,V4	18
41577-000288	LP15 ACCRY SHIPKIT,AHA,S	18
11577-000004	LI-ION CHARGER, STATION, STD POWER CORD	18
21330-001176	BATTERY PACK-LI-ION	54
11171-000082	RC-4, EMS, RAINBOW, PATIENT CABLE, 4FT, REF 4481	18
11171-000050	RAINBOW DCIP PED REUSABLE SENSOR, REF 2697,ROHS	18
11160-000019	NIBP CUFF- REUSEABLE,X-LARGE ADULT, BAYONET	18
11160-000017	NIBP CUFF-REUSEABLE,LARGE ADULT, BAYONET	18
11160-000013	NIBP CUFF-REUSEABLE,CHILD, BAYONET	18
11577-000002	KIT - CARRY BAG, MAIN BAG	18
11220-000028	TOP POUCH	18
11260-000039	KIT - CARRY BAG, REAR POUCH, 3RD EDITION	18
11996-000480	ASSEMBLY,GATEWAY,4G,WIFI,VOICE	18
99576-000063	LUCAS 3, 3.1, IN SHIPPING BOX, EN	10
11576-000060	LUCAS BATTERY CHARGER,MAINS PLUG,US-CAN-JA	10
11576-000071	LUCAS POWER SUPPLY WITHCORD,REDEL,CANADA,US	10
11576-000080	BATTERY,LUCAS,DARK GRAY	10
6252000000	STAIR PRO - MODEL 6252	7
78000171	LIFENET Asset	28
11600-000030	CODE-STAT 11 DATA REVIEWSEAT LICENSE	3

**Service coverage:**

<b>Model number</b>	<b>Service coverage description</b>	<b>Quantity</b>	<b>Years</b>
71061PT	PREVENT - Power Cot	54	10.0
76011PT	PREVENT - PowerLOAD	7	10.0
78000008	LP15 On Site Prevent w batt	18	10.0
78000020	LUC On Site Prevent w batt	10	10.0
73071PT	PREVENT - Stair Chair	7	10.0

<b>Customer signature</b>	
<b>Signature:</b>	<b>Date:</b>
<b>Print name:</b>	
<b>Title:</b>	

<b>Accepted by Flex Financial, a division of Stryker Sales Corp.</b>	
<b>Signature:</b>	<b>Date:</b>
<b>Print name:</b>	
<b>Title:</b>	

# Insurance Authorization and Verification



Date: September 11, 2020

Schedule 001 to Master Agreement Number 2110108727

To: Whatcom County, Washington ("Customer")  
800 East Chestnut Street Suite 3C Bellingham, Washington 98225  
Bellingham, Washington 98225

From: Flex Financial, a division of Stryker Sales Corporation ("Creditor")  
1901 Romence Road Parkway  
Portage, MI 49002

**TO THE CUSTOMER:** In connection with one or more financing arrangements, Creditor may require proof in the form of this document, executed by both Customer\* and Customer's agent, that Customer's insurable interest in the financed property (the "Property") meets the requirements as follows, with coverage including, but not limited to, fire, extended coverage, vandalism, and theft:

Creditor, and its successors and assigns shall be covered as both **ADDITIONAL INSURED** and **LENDER'S LOSS PAYEE** with regard to all equipment financed or acquired for use by policy holder through or from Creditor.

Customer must carry **GENERAL LIABILITY** (and/or, for vehicles, Automobile Liability) in the amount of **no less than \$1,000,000.00** (one million dollars).

Customer must carry **PROPERTY Insurance** (or, for vehicles, Physical Damage Insurance) in an amount **no less than the 'Insurable Value' \$3,656,162.80** with deductibles **no more than \$10,000.00**.

\*PLEASE PROVIDE THE INSURANCE AGENTS INFORMATION REQUESTED BELOW & SIGN WHERE INDICATED

By signing, Customer authorizes the Agent named below: 1) to complete and return this form as indicated; and 2) to endorse the policy and subsequent renewals to reflect the required coverage as outlined above.

Insurance agency: \_\_\_\_\_

Agent name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone/fax: \_\_\_\_\_

Email address: \_\_\_\_\_

Whatcom County, Washington	
Signature: _____	Date: _____
Print name: _____	
Title: _____	

\*Customer: Creditor will fax the executed form to your insurance agency for endorsement. In Lieu of agent endorsement, Customer's agency may submit insurance certificates demonstrating compliance with all requirements. If fully executed form (or Customer-executed form plus certificates) is not provided within 15 days, we have the right but not the obligation to obtain such insurance at your expense. Should you have any questions please contact Michelle Warren at 269-389-1909.

**TO THE AGENT:** In lieu of providing a certificate, please execute this form in the space below and promptly fax it to Creditor at 877-204-1332. This fully endorsed form shall serve as proof that Customer's insurance meets the above requirements.

Agent hereby verifies that the above requirements have been met in regard to the Property listed below.

Agent signature	
Signature: _____	Date: _____
Print name: _____	
Title: _____	
Carrier name: _____	
Carrier policy number : _____	
Policy expiration date: _____	

Insurable value: \$3,656,162.80

ATTACHED: PROPERTY DESCRIPTION FOR Schedule 001 to Master Agreement Number 2110108727

See Exhibit A to Schedule 001 to Master Agreement Number 2110108727

TOGETHER WITH ALL REPLACEMENTS, PARTS, REPAIRS, ADDITIONS, ACCESSIONS AND ACCESSORIES INCORPORATED THEREIN OR AFFIXED OR ATTACHED THERETO AND ANY AND ALL PROCEEDS OF THE FOREGOING, INCLUDING, WITHOUT LIMITATION, INSURANCE RECOVERIES.

## State and Local Government Customer Rider

This State and Local Government Customer Rider (the "Rider") is an addition to and hereby made a part of **Schedule 001 to Master Agreement Number 2110108727** (the "Agreement") between **Flex Financial**, a division of Stryker Sales Corporation ("**Owner**") and Whatcom County, Washington ("**Customer**") to be executed simultaneously herewith and to which this Rider is attached. Capitalized terms used but not defined in this Rider shall have the respective meanings provided in the Agreement. Owner and Customer agree as follows:

1. Customer represents and warrants to Owner that as of the date of, and throughout the Term of, the Agreement: (a) Customer is a political subdivision of the state or commonwealth in which it is located and is organized and existing under the constitution and laws of such state or commonwealth; (b) Customer has complied, and will comply, fully with all applicable laws, rules, ordinances, and regulations governing open meetings, public bidding and appropriations required in connection with the Agreement, the performance of its obligations under the Agreement and the acquisition and use of the Equipment; (c) The person(s) signing the Agreement and any other documents required to be delivered in connection with the Agreement (collectively, the "Documents") have the authority to do so, are acting with the full authorization of Customer's governing body, and hold the offices indicated below their signatures, each of which are genuine; (d) The Documents are and will remain valid, legal and binding agreements, and are and will remain enforceable against Customer in accordance with their terms; and (e) The Equipment is essential to the immediate performance of a governmental or proprietary function by Customer within the scope of its authority and will be used during the Term of the Agreement only by Customer and only to perform such function. Customer further represents and warrants to Owner that, as of the date each item of Equipment becomes subject to the Agreement and any applicable schedule, it has funds available to pay all Agreement payments payable thereunder until the end of Customer's then current fiscal year, and, in this regard and upon Owner's request, Customer shall deliver in a form acceptable to Owner a resolution enacted by Customer's governing body, authorizing the appropriation of funds for the payment of Customer's obligations under the Agreement during Customer's then current fiscal year.
2. To the extent permitted by applicable law, Customer agrees to take all necessary and timely action during the Agreement Term to obtain and maintain funds appropriations sufficient to satisfy its payment obligations under the Agreement (the "Obligations"), including, without limitation, providing for the Obligations in each budget submitted to obtain applicable appropriations, causing approval of such budget, and exhausting all available reviews and appeals if an appropriation sufficient to satisfy the Obligations is not made.
3. Notwithstanding anything to the contrary provided in the Agreement, if Customer does not appropriate funds sufficient to make all payments due during any fiscal year under the Agreement and Customer does not otherwise have funds available to lawfully pay the Agreement payments (a "Non-Appropriation Event"), and provided Customer is not in default of any of Customer's obligations under such Agreement as of the effective date of such termination, Customer may terminate such Agreement effective as of the end of Customer's last funded fiscal year ("Termination Date") without liability for future monthly charges or the early termination charge under such Agreement, if any, by giving at least 60 days' prior written notice of termination ("Termination Notice") to Owner.
4. If Customer terminates the Agreement prior to the expiration of the end of the Agreement's initial (primary) term, or any extension or renewal thereof, as permitted under Section 3 above, Customer shall (i) on or before the Termination Date, at its expense, pack and insure the related Equipment and send it freight prepaid to a location designated by Owner in the contiguous 48 states of the United States and all Equipment upon its return to Owner shall be in the same condition and appearance as when delivered to Customer, excepting only reasonable wear and tear from proper use and all such Equipment shall be eligible for manufacturer's maintenance, (ii) provide in the Termination Notice a certification of a responsible official that a Non-Appropriation Event has occurred, (iii) deliver to Owner, upon request by Owner, an opinion of Customer's counsel (addressed to Owner) verifying that the Non-Appropriation Event as set forth in the Termination Notice has occurred, and (iv) pay Owner all sums payable to Owner under the Agreement up to and including the Termination Date.
5. Any provisions in this Rider that are in conflict with any applicable statute, law or rule shall be deemed omitted, modified or altered to the extent required to conform thereto, but the remaining provisions hereof shall remain enforceable as written.

Customer signature	
Signature:	Date:
Print name:	
Title:	

Accepted by Flex Financial, a division of Stryker Sales Corp.	
Signature:	Date:
Print name:	
Title:	

## Opinion of Counsel Letter

September 11, 2020

Flex Financial, a division of Stryker Sales Corporation  
1901 Romence Road Parkway  
Portage, MI 49002

Gentlemen/Ladies:

Reference is made to Schedule 001 to Master Agreement Number 2110108727 (collectively, the "Agreement") between Flex Financial a division of Stryker Sales Corporation, and Whatcom County, Washington (herein called "Customer") for the use of certain equipment, goods and/or services as described in the Agreement. Unless otherwise defined herein, terms which are defined or defined by reference in the Agreement or any exhibit or schedule thereto shall have the same meaning when used herein as such terms have therein.

The undersigned is Counsel for the Customer in connection with the negotiation, execution and delivery of the Agreement, and as such I am able to render a legal opinion as follows:

1. The Customer is a public body corporate and politic of the State of Washington and is authorized by the Constitution and laws of the State of Washington to enter into the transactions contemplated by the Agreement and to carry out its obligations thereunder. The Customer's name set forth above is the full, true and correct legal name of the Customer.
2. The Agreement set forth above has been duly authorized, executed and delivered by the Customer and constitutes a valid, legal and binding agreement, enforceable in accordance with its terms.
3. No further approval, consent or withholding of objections is required from any federal, state or local governmental authority and the Customer complied with all open meeting and public bidding laws with respect to the entering into or performance by the Customer of the Agreement and the transactions contemplated thereby.
4. The Customer has no authority (statutory or otherwise) to terminate the Agreement prior to the end of its term for any reason other than pursuant to the State and Local Government Customer Rider (if there is such a Rider attached to the Agreement) for the nonappropriation of funds to pay the Agreement payments for any fiscal period during the term of the Agreement.

Very truly yours,

<b>Signature</b>	
<b>Signature:</b>	<b>Date:</b>
<b>Print name:</b>	
<b>Title:</b>	

# ADDENDUM TO MASTER AGREEMENT NO. 110108 AND EQUIPMENT SCHEDULE NO. 001 THERETO BETWEEN FLEX FINANCIAL, A DIVISION OF STRYKER SALES CORPORATION AND

This Addendum is hereby made a part of the Master Agreement described above (the "Agreement"), and the Schedule described above (the "Schedule"). In the event of a conflict between the provisions of this Addendum and the provisions of the Agreement, or the provisions of this Addendum and the provisions of the Schedule, the provisions of this Addendum shall control.

The parties hereby agree as follows:

1. The fourth sentence of Section 3 of the Agreement, which reads as follows, is hereby deleted in its entirety:

If Customer fails to pay any amount due under a Schedule within ten (10) days after its due date, Customer agrees to pay a late charge equal to (as reasonable liquidated damages and not as a penalty) five percent (5%) of the amount of each such late payment.

2. The last sentence of Section 5 of the Agreement is hereby amended in its entirety to read as follows:

*Except as relates to Customer's indemnification obligations hereunder*, Owner and Customer waive all rights to any indirect, punitive, special or consequential damages in connection with the Equipment or any Schedule.

3. The following language is hereby added after the eighth sentence of Section 6 of the Agreement:

Notwithstanding Owner's assignment to an Assignee of Equipment, Payments and/or a Schedule, Stryker Sales Corporation shall retain all obligations to Customer hereunder.

4. The first sentence of Section 12 of the Agreement is hereby amended in its entirety to read as follows:

Customer will be in "default" under a Schedule, if any one or more of the following shall occur: (a) Customer or any Guarantor of any Schedule ("Guarantor") fails to pay Owner any Payment due under any Schedule within ten (10) days after it is due, or (b) Customer or any such Guarantor breaches any other term of any Schedule *after the applicable cure period thereunder, if any, has lapsed*, or (c) Customer or any such Guarantor makes any misrepresentation to Owner, or (d) Customer or any such Guarantor fails to pay any other material obligation owed to Owner any of Owner's affiliates, or any other party, *after notice by Owner of such failure and thirty (30) days to cure such failure*, or (e) Customer or any such Guarantor shall consent to the appointment of a receiver, trustee or liquidator of itself or a substantial part of its assets, or (f) there shall be filed by or against Customer or any such Guarantor a petition in bankruptcy, or (g) Customer's articles of incorporation or other formation documents shall be amended to change Customer's name and Customer fails to give Owner written notice of such change (including a copy of any such amendment) on or before the date such amendment becomes effective, or (h) Customer's legal existence in its state of incorporation or formation shall have lapsed or terminated, or (i) Customer shall dissolve, sell, transfer or otherwise dispose of all or substantially all of its assets, without Owner's prior written consent, which consent shall not be unreasonably withheld, or (j) without prior written consent of Owner, which consent shall not be unreasonably withheld, Customer merges or consolidates with any other entity and Customer is not the survivor of such merger or consolidation.

5. The second sentence of Section 13 of the Agreement is hereby amended in its entirety to read as follows:

EACH SCHEDULE SHALL BE GOVERNED BY THE LAWS OF WASHINGTON, WITHOUT REGARD TO ITS PRINCIPLES OF CONFLICT OF LAWS OR CHOICE OF LAW.

6. The fifth sentence of Section 1 of the Schedule is hereby replaced in its entirety with the following:

Within twenty (20) days after the date the Equipment is delivered to Customer under this Schedule, Customer shall either: (i) accept the Equipment by executing and delivering to Owner a Certificate of Acceptance in form acceptable to Owner (and the date such written acceptance is delivered to Owner is hereinafter referred to as the "Acceptance Date"); or (ii) reject the Equipment and promptly return the Equipment to Owner at which time this Schedule shall terminate. If Customer fails within twenty (20) days after the Equipment is delivered to Customer under this Schedule to execute and deliver to Owner a Certificate of Acceptance or reject and promptly return the Equipment to Owner the Customer shall be deemed to have accepted the Equipment for all purposes hereunder.

7. A new Section 4 is hereby added to the end of the Schedule which shall read as follows:

**Upgrade.** Provided no default or event of default has occurred and is continuing under this Agreement, Customer shall have the option to upgrade (the "Upgrade Option") any of the Equipment with the exception of the 11996-000393 McGrath Video Laryngoscopes, in the event Owner releases for sale in the United States a new product model ("**New Product**") that replaces some of the Equipment (the "**Superseded Equipment**"). This option can be exercised by Customer one time for each Equipment line item listed on Exhibit A during the Term. The New Product must have substantially similar functionality and specification and be of equal or greater value as the related item of Superseded Equipment, all as reasonably determined by Owner. If, Customer elects to exercise the upgrade option, Customer

shall notify Owner of such election, in writing, and include in such notice a description of the Superseded Equipment. Owner will provide a one-time, one-for-one, trade-up with equipment of similar configurations and functionality. Immediately upon Customer's receipt of the New Product, Customer shall return the Superseded Equipment to Owner at Customer's expense and in the condition and otherwise provided for as required under this Schedule.

If Customer chooses to exercise the one-time, one-for-one trade up with equipment that includes emerging or enhanced technologies with greater functionality with a value greater than 110% of the list price of the Superseded Equipment's when originally placed with Customer, as determined by Owner, then Owner may increase the Periodic Rent Payment of the New Product in its reasonable discretion.

Customer signature		Accepted by Flex Financial, a division of Stryker Sales Corp.	
Signature:	Date:	Signature:	Date:
Print name:		Print name:	
Title:		Title:	

Whatcom County Contract  
No.

Originating Department:	Executive Office	
Division/Program: (i.e. Dept, Division and Program)	EMS	
Contract or Grant Administrator:	Mike Hilley, EMS Manager	
Firm's / Agency Name:	Stryker Corporation	
Is this a New Contract?    If not, is this an Amendment or Renewal to an Existing Contract?		Yes    No
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____		<input type="checkbox"/> <input checked="" type="checkbox"/>
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?		Contract
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If yes, RFP and Bid number(s): <u>COB process</u>		Cost Center: <u>130100</u>
Is this agreement excluded from E-Verify?    No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> If no, include Attachment D Firm Declaration form.		
If YES, indicate exclusion(s) below:		
<input type="checkbox"/> Professional services agreement for certified/licensed professional.		
<input type="checkbox"/> Contract work is for less than \$100,000.		
<input checked="" type="checkbox"/> Contract 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 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): \$ <u>\$468,316.48/year for 10 years</u>	Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b>	
This Amendment Amount: \$ _____	1. Exercising an option contained in a contract previously approved by the council.	
Total Amended Amount: \$ _____	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: Whatcom County Emergency Medical Services will enter into a 10-year lease agreement for capital and durable equipment for outfitting the ALS units which includes upgraded gurneys with power load technology.		
Term of Contract:	10 uears	Expiration Date:    12-31-30

Contract Routing:	1. Prepared by: <u>T. Helms /M. Hilley</u>	Date: <u>11/24/2020</u>
	2. Attorney signoff: <u>Christopher Quinn</u>	Date: <u>11/24/2020</u>
	3. AS Finance reviewed: <u>bbennett</u>	Date: <u>11/25/2020</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Firm signed: _____	Date: _____
	6. Submitted to Exec.: _____	Date: _____
	7. Council approved (if necessary): _____	Date: _____
	8. Executive signed: _____	Date: _____



9. Original to Council: \_\_\_\_\_ Date: \_\_\_\_\_

## Whatcom County Emergency Medical Services ALS360 Capital Equipment Management Program

Proposed Ten Year Capital Equipment Replacement Program and Capital Expenditures Policy; EMS Oversight Board Recommendation to the Whatcom County Council.



**Background:** Whatcom County has been invested with Physio-Control technology (Life Paks, LUCAs and Automatic External Defibrillators) for more than 20 years. This is integrated technology shared across the county and is familiar and dependable equipment to first responders. Sometime around 2014, the Stryker Company merged with Physio-Control rebranding those products under the Stryker name.

In late 2019, the regions fire districts and departments began evaluating a new patient transport system for WCEMS. After several months of evaluation and comparisons by the Bellingham Fire Department and Whatcom County Fire District 7, the Whatcom County Fire Chiefs Association, Whatcom County EMS and Trauma Council, Fire Chief Operations Committee and the EMS Technical Advisory Committee agreed to standardize the patient transport system using the Stryker Power Load and Power Cot system. It was also agreed to begin the project by purchasing seven of the patient transport systems for the Advanced Life Support units knowing that the Basic Life Support Units would also need upgraded patient transport equipment in 2020.

***“The overarching goal of this project is to achieve interoperability among all the Whatcom County fire agencies, to increase the safety for patients and EMS providers and to provide standardization of equipment.”***

At the same time in early 2020, both of the Advanced Life Support agencies (BFD and FD7) began working on a Capital Equipment Replacement plan for the aging cardiac heart monitors/defibrillators known as the Life Pak range of monitors (LP12 and 15) and the LUCAS mechanical CPR device. While all of the current cardiac monitors, mechanical CPR devices, AED’s and Continuous Quality Improvement software are Stryker products, there is a range of models that are approaching the end of available service life or will not be supported products in the next couple of years. The same is true for the LUCAS mechanical CPR devices. Realizing that Whatcom County EMS was considering a significant number of upgrades and replacement of this equipment over the next five years, WCEMS was approached by the Stryker Corporation with a unique opportunity to upgrade the entire line of Stryker products that would achieve huge savings through a centralized purchasing program. These are suggested strategies from the 2016 EMS Work Group Plan.

**County Ordinance 2013-074** Attachment A sets the guidelines for the Administration of the EMS system with goals and tasks exemplified.



Ordinance  
2013-074 (PDF)\_2014

**ATTACHMENT "A"**

**d. Coordinating EMS system development with local health care providers, EMS Trauma Care Council(s) and the State Department of Health**

Ensure the EMS system operates in coordinated partnerships between the BLS agencies and ALS Service Providers through regionalization, collaboration and cross-jurisdictional coordination; including by way of example:

- ii. Equipment exchange
- iii. Equipment research
- iv. Group purchasing
- v. Equipment specifications
- vi. Paramedic/EMT interaction training

**2016 EMS Levy Work Group Plan**

Explore expansion of the Equipment Exchange program.

This program has been lauded for its effectiveness. Partnering with the hospital could provide cost savings through purchase contracts and management of expiration dates. Continue the Education Committee's evaluation of equivalent equipment throughout the county.

Examine functions and services common to COB and FD7 for consistency, centralization, consolidation, or development.

Explore Shared Services

- Procurement
- Small Equipment, Supplies, and Drug inventory
- Warehousing
- Billing and Collections
- Medical Program Director/Supervising Physicians
- Training
- Equipment Tracking
- Dispatch
- Policy and Procedure Development
- Software Platforms

Equipment Exchange Program

This program permits equipment and consumables exchange when a patient is transferred between units. The Exchange Program was developed in the early years of Whatcom Medic One through the Whatcom County EMS Trauma Care Council. There is an agreement with all EMS providers and the Emergency Department at St Joseph Hospital.

Advantages:

- The first response agency returns to service quicker
- Standardizes EMS equipment
- Enhances the care provided to the public
- Minimizes waste
- Cost effective.

## Currently Owned Equipment Identified For Upgrade/Replacement

This project involves the upgrade of currently owned equipment as related to the Physio/Stryker family of technology products. This highly integrated technology is connected to the Electronic Patient Care Records System called Image Trend through cloud based bi-directional information sharing. Image Trend is the centralized patient care record system for the county which includes integrated patient information held in the "hospital hub". The technology is also connected the county-wide Continuous Quality Improvement Program that measures provider performance during cardiac arrest resuscitation efforts. This integration is critical to understanding how to increase the survival from sudden cardiac arrest. Transition to another brand of technology and equipment would be a multi-year project with costs well above our current investment.



10 LUCAS Mechanical CPR units



18 Life Pak 15 Units



Code Stat - 3 licenses  
Data Link - 10 4G Units  
Life-Net - 26 Units

**Stryker Power Cot and Load System** was chosen after several months of comparisons of systems between September and November 2019. Fire District 7 and the Bellingham Fire Department evaluated both systems and the county departments/districts agreed to standardize with Stryker.

*(See attached PPT of Gurney System by WC Fire Chiefs Ops Group)*



Stryker Power Cot  
and Power Load System



7 Power Loads



54 Power Cots



7 Stair Chairs



### **Capital Equipment Program Expenditure Policy**

The Whatcom ALS360 program will serve as the Capital Equipment Program and Expenditure Policy for WCEMS with the exception of vehicle replacement. As an integrated Emergency Medical Services System supported by the county-wide levy, this policy provides the framework in which capital equipment purchases will be considered. This policy will be memorialized in the 2023 Strategic Plan.

- Agreed centralized purchasing for Capital Equipment (ALS and BLS)
- Agreed standardization and numbers of equipment for both ALS/BLS
- Agreed replacement schedule as approved by the EOB.
- Asset management provided WCEMS and Stryker
- Medical Program Director approval of standardized medical equipment.

### **Equipment Inventories and Asset Management**

This project means that Whatcom County EMS will enter into a 10-year agreement with the Flex Financial Corp. (Stryker) where ownership of the equipment will be transferred to the county agencies in 2030 or WCEMS can continue with the ALS 360 program. WCEMS will provide asset management through the Image Trend EPCR equipment tracking and maintenance module already deployed. Image Trend is already integrated with the current equipment. Yearly inventories and maintenance schedules are centralized with this system. In addition, Stryker provides annual maintenance, equipment tracking and inspections as well as emergency repair reporting through similar Stryker tracking systems. Technology equipment such as heart monitors, stair chairs, Code Stat software and peripherals' will be assigned to specific units and fire departments/districts for asset tracking. The Power Cot's will be allowed to move through the system.

After 10-years, the Advanced Life Support Equipment that is assigned to the individual department will be transferred to that departments asset management system. (FD7 and BFD) This equipment is identified as the Life Pak 15 or 20, LUCAS device, Code Stat Software, Stair Pro and related peripheral devices.

The **PowerProXT Cots** asset management will be transferred to the ownership of either the Whatcom County Fire Chiefs Association or the Whatcom County EMS & Trauma Council in 2030. Currently, the Whatcom Count EMS & Trauma Council owns the ALS/BLS gurneys and the WCEMS equipment exchange program supports the yearly maintenance and inspection program.

### **Pricing, Maintenance and Upgrade Program**

Pricing of individual Units are demonstrated with the Whatcom ALS360 program contract. (See attached spreadsheet) This is a fixed rate, subscription-based Capital equipment owned by Stryker. Stryker provides a 10-year maintenance and "Flex Fleet" equipment to cover major or unexpected events with on-site services and support.

The advantage of this purchasing strategy allows WCEMS the ability to upgrade and replace all of the aging equipment under the ALS360 program. This will allow a system "reset" that standardizes both the technology and patient transport system for a 20-year service life. Stryker will take all of the older equipment from the agencies with a trade value. Stryker will install and replace with all new equipment Jan 2021. With the exception of vehicles, this program will provide support to all of the identified Capital Equipment requirements on the Paramedic Units.

In addition, this contract contains a “**Technology Refresh**” advantage which gives WCEMS a one-time upgrade to the next generation of technology and patient transport systems with no additional costs to the contract. WCEMS knows there will be a newer and lighter gurney (Stryker) available in about two-years. We also know the LifePak15 will have a significant jump in technology (LifePak20) when available in the next two-years. WCEMS would probably take advantage of the system upgrade in about five years which extends the service life of this equipment well beyond 2030. With both the technology and power cots, there will be a generous increase of unit cost when those new models are introduced in the next couple of years. The technology refresh program locks WCEMS to 2019 pricing for the upgraded equipment. (In five years, the cost increase of a LifePak20 alone will be at least \$10,000 more according to the company)

***This section of the spreadsheet shows the difference/savings between the cash purchase today as opposed to the ALS360 10-year subscription program for the listed equipment.***

Whatcom ALS/BLS					
<b>Capital</b>	<b>Product</b>	<b>Qty</b>	<b>Whatcom BLS 360</b>		<b>Cash Purchase</b>
	LP 15	18			\$ 1,322,280
	Accessories				\$ 140,508
	LP 15 Batteries	54			\$ 53,352
	Lucas	10			\$ 275,230
	Accessories				\$ 40,477
	LP1000	0			\$ -
	PowerProXT	54			\$ 2,100,730
	PowerLoad	7			\$ 302,098
	Stair Pro	7			\$ 47,062
					<b>\$ 3,684,240</b>
<b>Data</b>	<b>Product</b>	<b>Qty</b>	<b>Whatcom BLS 360</b>		<b>Cash Purchase</b>
	4GTitan III Trio	18			\$ 61,965
	Lifenet Asset	28			\$ 14,280
	Codectat Maintenance	3			\$ 6,210
			<b>\$ 51,473</b>	<b>\$ 82,455</b>	
<b>ProCare</b>	<b>Product</b>	<b>Qty</b>	<b>Whatcom BLS 360</b>		<b>Cash Purchase</b>
	LP 15 Onsite	18			\$ 486,000
	Lucas Onsite	10			\$ 105,300
	Stair Chair Onsite	7			\$ 24,780
	PowerProXT onsite	54			\$ 1,138,752
	PowerLOAD onsite	7			\$ 193,872
	AED Service	0			\$ -
			<b>\$ 1,027,002</b>	<b>\$ 1,948,704</b>	
<b>Trade in</b>	<b>Product</b>	<b>Qty</b>	<b>Trade in</b>	<b>Whatcom BLS 360</b>	<b>Cash Purchase</b>
	LP15	3	\$ -	<b>(58,500)</b>	\$ (58,500)
	Lucas	5	\$ -	<b>(15,000)</b>	\$ (15,000)
	Stair Pro	7	\$ -	<b>(1,050)</b>	\$ (1,050)
	LP12	1	\$ -	<b>(5,000)</b>	\$ (5,000)
				<b>(79,550)</b>	<b>\$ (79,550)</b>
	<b>Total ALS360</b>			<b>\$ 4,683,165</b>	<b>\$ 6,233,346</b>
	<b>Total ALS360/year</b>			<b>\$ 468,316</b>	

Stryker has placed a “**trade in**” value for the equipment that will be replaced. (9) LifePak15’s, (5) LUCAS, (7) Stair Pro’s (1) LifePak12 for a total of **\$79,550**.

### **Copy of Detailed Spreadsheet**

The total cost of the 10-year subscription at a fixed rate (no interest or inflation) is **\$4,683,165** with ten annualized payments of **\$468,316** per year. If all of this equipment was purchased today, the total cost would be **\$6,233,346**.



Copy of Whatcom  
360 Proposal ALS 54 I

### **Stryker Master Contract PDF**



WhatcomCounty,Was  
hington-SCH001 9.11.



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2020-586

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<b>File ID:</b>	AB2020-586	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/30/2020	<b>Entered by:</b>	JThomson@co.whatcom.wa.us		
<b>Department:</b>	Health Department	<b>File Type:</b>	Contract		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Service Master Cleaning to continue providing cleaning services at the COVID-19 Temporary Housing Facility, in the amount of \$40,000 for a total amended contract amount of \$150,000

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attachments

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Memo to County Executive, Contract Amendment #2





**MEMORANDUM**

**TO:** Satpal Sidhu, County Executive

**FROM:** Erika Lautenbach, Director

**RE:** Roth Construction, Inc. dba ServiceMaster Cleaning by Roth – COVID-19 Temporary Housing Facility Cleaning Services Contract Amendment #2

**DATE:** November 30, 2020

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Attached is a contract amendment between Whatcom County and Roth Construction, Inc. dba ServiceMaster Cleaning by Roth for your review and signature.

▪ **Background and Purpose**

This contract provides funding for cleaning services provided at the Temporary Housing Facility located at 3701 Byron Avenue in Bellingham. The purpose of this amendment is to increase rates/unit cleaned by \$25 for additional time spent cleaning floors and increase total funding by \$40,000 in order to extend the contract through 12/30/2020.

▪ **Funding Amount and Source**

Funding for this contract may not exceed \$150,000. Funds under this contract are made available by a grant awarded by the US Department of Treasury and subject to Section 601(a) of the Social Security Act, as amended by section 5001 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and Title V and VI of the CARES Act, passed through the Washington State Department of Commerce Local Government Coronavirus Relief Fund (CFDA 21.016) and the Washington State Department of Health Emergency Preparedness & Response COVID-19 Local CARES Grant (CFDA 21.019). These funds are included in the 2020 budget. Council approval is required as this amendment increases approved funding by more than 10%.

Please contact Kathleen Roy at extension #6007 if you have any questions regarding this agreement.

Encl.

**WHATCOM COUNTY  
CONTRACT INFORMATION SHEET**

Whatcom County Contract Number:  
202004011 – 2

Originating Department:		85 Health	
Division/Program: (i.e. Dept. Division and Program)		8550 Human Services / 855040 Housing Program	
Contract or Grant Administrator:		Kathleen Roy	
Contractor's / Agency Name:		Roth Construction, Inc. dba ServiceMaster Cleaning by Roth	
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? If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
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#: 21.016 / 21.019
Is this contract grant funded? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	If yes, Whatcom County grant contract number(s):		202006003 / 201801023
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: 134150 / 660430
Is this agreement excluded from E-Verify? No <input type="checkbox"/> Yes <input checked="" type="checkbox"/>			
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 type="checkbox"/> Interlocal Agreement (between Governments).			
Contract Amount:(sum of original contract amount and any prior amendments): \$ 110,000		Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when</b> : 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: \$ 40,000			
Total Amended Amount: \$ 150,000			
Summary of Scope: This contract provides funding for cleaning services at Whatcom County's COVID-19 Temporary Housing Facility.			
Term of Contract:	9 Months	Expiration Date:	12/30/2020
Contract Routing:	1. Prepared by:	JT	Date: 11/12/2020
	2. Health Budget Approval	KR/JG	Date: 11/18/20 / 11/19/20
	3. Attorney signoff:	RB	Date: 11/25/2020
	4. AS Finance reviewed:		Date:
	5. IT reviewed (if IT related):		Date:
	6. Contractor signed:		Date:
	7. Submitted to Exec.:		Date:
	8. Council approved (if necessary):		Date:
	9. Executive signed:		Date:
	10. Original to Council:		Date:

Whatcom County Contract Number:

202004011 – 2

## WHATCOM COUNTY CONTRACT AMENDMENT

### PARTIES:

Whatcom County  
Whatcom County Health Department  
509 Girard Street  
Bellingham, WA 98225

### AND CONTRACTOR:

Roth Construction, Inc. dba ServiceMaster Cleaning by Roth  
3900 Spur Ridge Lane  
Bellingham, WA 98226

### AMENDMENT NUMBER: 2

### CONTRACT PERIODS:

Original: 04/07/2020 – 07/05/2020  
Amendment #1: 04/07/2020 – 10/31/2020  
Amendment #2: 11/01/2020 – 12/30/2020

THE CONTRACT IDENTIFIED HEREIN, INCLUDING ANY PREVIOUS AMENDMENTS THERETO, IS HEREBY AMENDED AS SET FORTH IN THE DESCRIPTION OF THE AMENDMENT BELOW BY MUTUAL CONSENT OF ALL PARTIES HERETO

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### DESCRIPTION OF AMENDMENT:

1. Extend the term of the contract through 12/30/2020.
2. Amend the designated Administrative Officer in the original contract under “General Terms, Section 37.2, Notice” to:  
  
Anne Deacon, Human Services Manager  
Whatcom County Health Department  
509 Girard Street  
Bellingham, WA 98225  
360-778-6054  
[ADeacon@co.whatcom.wa.us](mailto:ADeacon@co.whatcom.wa.us)
3. Revise Exhibit B – Compensation, to increase rates by \$25 each to account for additional time spent on cleaning floors and revise the invoice deadline date; revised Exhibit B is attached.
4. Funding for the total contract period (04/07/2020 – 12/30/2020) is not to exceed \$150,000
5. All other terms and conditions remain unchanged.
6. The effective start date of the amendment is 11/01/2020.

ALL OTHER TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AND ANY PREVIOUS AMENDMENTS THERETO REMAIN IN FULL FORCE AND EFFECT. ALL PARTIES IDENTIFIED AS AFFECTED BY THIS AMENDMENT HEREBY ACKNOWLEDGE AND ACCEPT THE TERMS AND CONDITIONS OF THIS AMENDMENT. Each signatory below to this Contract warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and bind the party thereto.

---

APPROVAL AS TO PROGRAM: \_\_\_\_\_  
Anne Deacon, Human Services Manager Date

DEPARTMENT HEAD APPROVAL: \_\_\_\_\_  
Erika Lautenbach, Health Department Director Date

APPROVAL AS TO FORM: \_\_\_\_\_  
Royce Buckingham, Prosecuting Attorney Date

FOR THE CONTRACTOR:

Rob Richards, COO		
_____	_____	_____
Contractor Signature	Print Name and Title	Date

FOR WHATCOM COUNTY:

\_\_\_\_\_ Date  
Satpal Singh Sidhu, County Executive

**CONTRACTOR INFORMATION:**

**Roth Construction, Inc. dba ServiceMaster Cleaning by Roth**  
Rob Richards, COO  
3900 Spur Ridge Lane  
Bellingham, WA 98226  
360-815-2472  
[rob@smcbr.com](mailto:rob@smcbr.com)

**EXHIBIT "B"**  
(COMPENSATION)

I. **Budget and Source of Funding:** Funding for this contract may not exceed \$150,000. Funds under this contract are made available and are subject to Section 601(a) of the Social Security Act, as amended by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and Title V and VI of the CARES Act. This project was supported by a grant awarded by the US Department of the Treasury. Grant funds are administered by the Local Government Coronavirus Relief Fund thru the Washington State Department of Commerce (CFDA 21.016) and the Washington State Department of Health Emergency Preparedness & Response COVID-19 Local CARES Grant (CFDA 21.019). Commerce and the State of Washington are not liable for claims or damages arising from Subcontractor's performance of this contract.

**Compensation:** Contractor will be paid on a per unit basis as follows:

<b>Weekly Unit Cleaning</b>	
1 – 5 Units	\$375 each
6 – 10 Units	\$325 each
11 – 60 Units	\$300 each
<b>Turnover and Initial Unit Cleaning</b>	
1 – 5 Units	\$425 each
6 – 10 Units	\$350 each
11 – 60 Units	\$325 each
<b>Weekly Common Area Cleaning</b>	
\$1300 flat rate	

<b>Scheduled After Hour Turn Over (5-day advanced notice)</b>	
1 – 5 Units	\$525 each
6 – 10 Units	\$425 each
11 – 60 Units	\$400 each
<b>Unscheduled After Hour Turn Over (less than 5-day advanced notice)</b>	
1 – 5 Units	\$625 each
6 – 10 Units	\$510 each
11 – 60 Units	\$475 each
After hours defined as: hours after 5pm until 8am Monday-Friday and all of Saturday & Sunday	

Tax Rate is 8.7% and is not included in the above unit pricing.

**II. Invoicing**

1. The Contractor shall submit itemized invoices on a monthly basis in a format approved by the County. The Contractor shall submit invoices to (include contract/PO #) [HL-BusinessOffice@co.whatcom.wa.us](mailto:HL-BusinessOffice@co.whatcom.wa.us). Monthly invoices must be submitted by the 15<sup>th</sup> of the month following the month of service **except final invoices which must be received by January 8, 2021**. Invoices submitted for payment must include the items identified in the table above.
2. Payment by the County will be considered timely if it is made within 30 days of the receipt and acceptance of billing information from Contractor. The County may withhold payment of an invoice if the Contractor submits it more than 30 days after the expiration of this contract.
3. Invoices must include the following statement, with an authorized signature and date:

**I certify that the materials have been furnished, the services rendered, or the labor performed as described on this invoice.**

4. Duplication of Billed Costs or Payments for Service: The Contractor shall not bill the County for services performed or provided under this contract, and the County shall not pay the Contractor, if the Contractor has been or will be paid by any other source, including grants, for those costs used to perform or provide the services in this contract. The Contractor is responsible for any audit exceptions or disallowed amounts paid as a result of this contract.



# Whatcom County

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

## Agenda Bill Master Report

File Number: **AB2020-587**

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<b>File ID:</b>	AB2020-587	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/30/2020	<b>Entered by:</b>	PRice@co.whatcom.wa.us		
<b>Department:</b>	Information Technology Division	<b>File Type:</b>	Contract		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a three-year agreement, using the National Association of State Procurement Officials ValuePoint Master Agreement #AR2474 and State of Washington Participating Addendum #05116, between Whatcom County and CenturyLink Communications, LLC for telecommunications trunk line services, in the amount of \$106,127.17

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attached staff memorandum

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Staff Memo, Proposed Contract



**MEMORANDUM**

**TO:** Satpal Singh Sidhu, County Executive  
Whatcom County Council

**THROUGH:** Tyler Schroeder, Deputy Executive

**FROM:** Perry Rice, IT Manager *PR*

**RE:** Contract for Telecommunications Trunk Line Services

**DATE:** November 29, 2020

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Enclosed for your consideration is the proposed agreement between Whatcom County and CenturyLink Communications, LLC (CenturyLink) for telecommunications trunk line services.

• **Background and Purpose**

Whatcom County currently has five CenturyLink telecommunications Primary Rate Interface (PRI) trunk lines in place that are used for all outgoing and incoming local telecommunications calls to Whatcom County government buildings. This service also provides:

- PS/ALI (private switch/automatic location identification) used for E911
- Over 2,000 Direct Inward Dial (DID) numbers.

CenturyLink is in the process of transitioning customers from PRI to Session Initiation Protocol (SIP) trunk lines. The CenturyLink SIP trunk line product is called Voice Complete. SIP trunk lines allow more flexibility for disaster recovery, reporting and will be less costly than continuing with PRI trunk lines in the future.

This proposed three-year agreement with CenturyLink for the Voice Complete services uses favorable prices established by the nationwide NASPO Value Point – Cloud Solutions contract (Master Agreement #AR2474) and the State of Washington Participating Addendum (Contract #05116). City of Bellingham and over 30 other local government entities in the State of Washington are now using the CenturyLink Voice Complete services using the state contract.

In a second phase of this project, Whatcom County will be re-evaluating long distance calling services of our current vendor (Magna5) with Voice Complete and other vendor offerings.

• **Funding Amount and Source**

This agreement is \$2,947.98 per month which includes estimated taxes, fees and surcharges which vary over time. The total estimated amount over the three-year agreement would be \$106,127.17. The source of funding are interfunds to all county departments.

Please contact Perry Rice at x5235 if you have any questions regarding this agreement.



**WHATCOM COUNTY CONTRACT  
INFORMATION SHEET**

Whatcom County Contract No.

202012002

Originating Department:	Administrative Services
Division/Program: (i.e. Dept. Division and Program)	AS-IT-Telecommunications
Contract or Grant Administrator:	Perry Rice
Contractor's / Agency Name:	CenturyLink Communications, LLC
Is this a New Contract?    If not, is this an Amendment or Renewal to an Existing Contract?    Yes <input type="radio"/> No <input checked="" type="radio"/> Yes <input checked="" type="radio"/> No <input type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval?    Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: <u>3.08.100 (&gt;\$40,000)</u> 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?    If yes, grantor agency contract number(s): _____ CFDA#: _____ Yes <input type="radio"/> No <input checked="" type="radio"/>	
Is this contract grant funded?    If yes, Whatcom County grant contract number(s): _____ Yes <input type="radio"/> No <input checked="" type="radio"/>	
Is this contract the result of a RFP or Bid process?    Contract _____ Yes <input checked="" type="radio"/> No <input type="radio"/> If yes, RFP and Bid number(s): <u>NASPO #AR2474</u> Cost Center: <u>1</u>	
Is this agreement excluded from E-Verify?    No <input type="radio"/> Yes <input checked="" type="radio"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below: <input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Contract work is for less than \$100,000. <input checked="" type="checkbox"/> Contract 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 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): \$ <u>\$106,127.17</u> (Includes est. taxes, fees & surcharges) This Amendment Amount: \$ _____ Total Amended Amount: \$ _____	Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b> 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance. 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
Summary of Scope: _____	
Request authorization for the County Executive to enter into a three-year agreement, using the National Association of State Procurement Officials ValuePoint Master Agreement #AR2474 and State of Washington Participating Addendum #05116, between Whatcom County and CenturyLink Communications, LLC for telecommunications trunk line services, in the amount of \$106,127.17	
Term of Contract: 3-Year    Expiration Date: December 2023	

Contract Routing:	Date:
1. Prepared by: P. Rice	11/29/2020
2. Attorney signoff: <u>K. Frakes e-mail Approval / P.R.</u>	11/30/2020
3. AS Finance reviewed: <u>bbennett</u>	11/30/2020
4. IT reviewed (if IT related): P. Rice	11/29/2020
5. Contractor signed:	
6. Submitted to Exec.: <u>✓</u>	12-2-2020
7. Council approved (if necessary):	
8. Executive signed:	
9. Original to Council:	



**Statement of Work ("SOW")  
Customer: Whatcom County**

WHATCOM COUNTY  
CONTRACT NO.  
202012002

**CONTACT INFORMATION**

<b>Customer:</b>	Whatcom County
<b>Address:</b>	311 Grand Ave, Suite #305 Bellingham, WA 98225
<b>Job Number:</b>	
<b>Customer Primary Contact</b>	
<b>Name:</b>	Perry Rice
<b>Address:</b>	311 Grand Avenue, Suite #305 Bellingham, WA 98225
<b>Telephone:</b>	3607785235
<b>Email:</b>	price@co.whatcom.wa.us
<b>Customer Billing/Accounts Payable</b>	
<b>Name:</b>	Tami Gee-Hardy
<b>Address:</b>	311 Grand Avenue, Suite #305 Bellingham, WA 98225
<b>Telephone:</b>	3607785236
<b>Fax:</b>	
<b>Email:</b>	IT_Purchases@co.whatcom.wa.us
<b>CenturyLink Primary Contact:</b>	
<b>Name:</b>	Bill Olson
<b>Address:</b>	
<b>Telephone:</b>	2067785001
<b>Email:</b>	bill.olson@centurylink.com
<b>CenturyLink Services Billing</b>	
<b>Name:</b>	CenturyLink Business Services
<b>Address:</b>	P.O. Box 52187, Phoenix, AZ 85072-2187
<b>Telephone:</b>	1-800-860-1020
<b>Website:</b>	<a href="https://controlcenter.centurylink.com">https://controlcenter.centurylink.com</a>

**Agreement Pramata ID #1068385 and #1184578  
Quote Number: 11795007**

This Statement of Work ("SOW") sets forth the scope of work and terms and conditions of the Services to be provided to Whatcom County ("Customer") by CenturyLink Communications, LLC ("CenturyLink"). This SOW is subject to and governed by the terms and conditions of the NASPO Value Point – Cloud Solutions contract (Master Agreement # AR2474) and the State of Washington Participating Addendum (Contract #05116) by and between the State of Washington and CenturyLink, under which Customer is an authorized Purchasing Entity, subject to the Level 3 Enterprise Voice SIP-Based Services Service Schedule of the Master Agreement #AR2474 that apply specifically to the Services (collectively, the "Agreement"). Capitalized terms not defined in this SOW are defined in the Agreement. This SOW shall constitute an Order under the Agreement.

The scope of this project is to provide a Voice Complete with Microsoft Office 365 solution to Customer locations. The specific Services are as priced on the Quote attached to this SOW and incorporated by reference. Customer will purchase the Services by executing an Order with CenturyLink that references this SOW. No statewide IT policies will apply to the Services being offered under this SOW, including those referenced in Section 3.7 of Contract #05116.

**Customer: Whatcom County**

**CenturyLink Communications, LLC**

\_\_\_\_\_  
Authorized Signature

Satpal Singh Sidhu

\_\_\_\_\_  
Name Typed or Printed

Whatcom County Executive

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name Typed or Printed

Offer Management

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**WHATCOM COUNTY:**

Recommended for Approval:

*[Signature]*      11/29/2020  
IT Manager                                      Date

**Approved as to form:**

*Approved by E-mail / KF / PR*      11/30/2020  
Prosecuting Attorney                                      Date

**Agreement Pramata ID #1068385 and #1184578**  
**Quote Number: 11795007**

**VOICE COMPLETE SERVICE:** Please refer to attached IFO Order Form/Quote #11795007 (see attached).

**MICROSOFT OFFICE 365:** As noted in the NASPO Cloud Master Agreement, this product requires click to accept terms on CenturyLink's website at <https://apps.centurylink.com/bundles/office365>.

CenturyLink Pricing Exhibit 3						
Microsoft® Office 365 from CenturyLink		Business		Enterprise		
		Business Essential (B1)	Business Premium (B2)	ProPlus	Enterprise (E1)	Enterprise Premium (E3)
<b>Target</b>	Price per user per month \$USD (with annual commitment)	\$5	\$12.50	\$12	\$8	\$20
	Seat Cap	300 (for each plan)		Unlimited		
<b>Standard</b>	24/7 phone support from CenturyLink	Tier 1, Tier 2		Tier 1, Tier 2		
	Install Office desktop applications on up to 5 computers per user (Office)	Business <sup>1</sup>		ProPlus <sup>2</sup>		ProPlus <sup>2</sup>
	Access to Office apps and documents from all major smartphones and iPad		•	•		•
	Office Online - online versions of core Office apps for collaborating on documents	•	•	•	•	•
	OneDrive for Business - 1TB personal online document storage	•	•	•	•	•
	Email - 50 GB email, contacts, shared calendars (Exchange)	•	•	•	•	•
	Online meetings - Web conferencing, IM, video, presence (Skype for Business)	•	•		•	•
<b>Advanced</b>	Sites - team collaboration & internal portals, public website (SharePoint)	•	•		•	•
	Private social networking (Yammer)	•	•		•	•
	On-premises Active Directory synchronization for single sign on	•	•	•	•	•
	Supports hybrid deployment with on-premises servers			•	•	•
Upcoming services: Olo, Video content management				•	•	
Legal compliance & archiving needs for email - archiving, eDiscovery, mailbox hold					•	
Information protection - message encryption, rights management, data loss prevention					•	

1. Includes Word, Excel, PowerPoint, Outlook, OneNote, Publisher

2. Adds Access, InfoPath, Group Policy, Telemetry, Shared Computer Activation (RDS), Push Deployment, Update Controls, IRM, DLP, B1, Voicemail, Site Mailboxes, Archiving & Retention

Proposal prepared for WHATCOM COUNTY - WA - Quote# 11795007 - S

# LUMEN®

## Quote # 11795007

Proposal											
Pricing Prepared For			Prepared On	Price Valid Until	Currency	Total Mrc	Total Nrc				
WHATCOM COUNTY - WA			12/01/2020	02/25/2021	USD	750.00	0.00				
Voice Complete (Access Only)											
Term	Total Mrc			Total Nrc			# Sites				
3 Years	750.00			.00			1				
Location			Universal Service Fund	Summary		Local Access		Coordinated Services			
Site Name	Country	Site Address	USF	Mrc	Nrc	Mrc	Nrc	Coordinated Service Type	Asset/Circuit ID		
BELLINGHAM_WA	USA	311 GRAND AVE BELLINGHAM, WA 98225	Interstate	750.00	.00	750.00	.00				
Product Details											
Description	Qty	Mrc	Nrc	Priced Amount	Mrc Per	Nrc Per	Usage Mrc	Usage Nrc	Vendor	Pop.	Distance(km)
A - 311 GRAND AVE BELLINGHAM, WA 98225 Off Net Access - T1 (1.5 Mb) - (Quantity = 5, Bandwidth = T1 (1.5 Mb), Secondary CFA = No)	5	750.00(150 .00 each)	0.00(0.00 each)								

Proposal prepared for WHATCOM COUNTY - WA - Quote# 11795007 - S

Voice Complete Standard									
Term	Total Mrc			Total Nrc			# Sites		
3 Years	See Rate Sheet			See Rate Sheet			See Rate Sheet		
Summary					Coordinated Services				
Mrc	Nrc		Coordinated Service Type			Asset/Circuit ID			
.00	.00								
Product Details									
Description	City	Mrc	Nrc	Priced Amount	Mrc Par	Nrc Par	Usage Mrc	Usage Nrc	
Voice Complete	See Rate Sheet								



**Order Terms and Conditions**

1. "Lumen" is defined for purposes of this Order as CenturyLink Communications, LLC d/b/a Lumen Technologies Group and its affiliated entities providing Services under this Order. This confidential Order may not be disclosed to third parties and is non-binding until accepted by Lumen, as set forth in section 4. Customer places this Order by signing (including electronically or digitally) or otherwise acknowledging (in a manner acceptable to Lumen) this document and returning it to Lumen. Pricing is valid for 90 calendar days from the date indicated unless otherwise specified.

2. Prior to installation, Lumen may notify Customer in writing (including by e-mail) of price increases due to off-net vendors. Customer has 2 business days following notice to terminate this Order without liability; or otherwise, Customer is deemed to accept the increase.

3. If a generic demarcation point (such as a street address) is provided, the demarcation point for on-net services will be Lumen's Minimum Point of Entry (MPOE) at such location (as determined by Lumen). Off-net demarcation points will be the off-net vendor's MPOE. If this Order identifies aspects of services that are procured by Customer directly from third parties, Lumen is not liable for such services.

4. The Service identified in this Order is subject to the Lumen or CenturyLink Master Service Agreement(s) and applicable Service Schedule(s) between CenturyLink Communications, LLC d/b/a Lumen Technologies Group and Customer (or its affiliate if expressly provided for under such affiliate Master Service Agreement). If Customer has not executed a Lumen or CenturyLink Master Service Agreement with CenturyLink Communications, LLC d/b/a Lumen Technologies Group but has executed a services agreement for applicable services with an affiliate of Lumen ("Affiliate Agreement"), then the terms of the most recent Affiliate Agreement will apply to the Service (to the extent not inconsistent with this Order). In such cases, the current standard Service Schedule applicable to the Services will apply. If Lumen and Customer have not executed a Lumen or CenturyLink Master Service Agreement and/or applicable Service Schedule(s) governing the Service and have not executed an Affiliate Agreement, Lumen's current standard Master Service Agreement/Service Schedule(s) will govern, a copy of which are available upon request. The Lumen entity providing Services is identified on the invoice.

Notwithstanding anything in any Affiliate Agreement to the contrary, Lumen will notify Customer of acceptance of requested Service in this Order by delivering (in writing or electronically) the date by which Lumen will install Service (the "Customer Commit Date"), by delivering the Service, or by the manner described in a Service Schedule. Lumen will deliver a written or electronic notice that the Service is installed (a "Connection Notice"), at which time billing will commence. At the expiration of the Service Term, Service will continue month-to-month, and rates are subject to change upon 30 days' notice from Lumen. If the Affiliate Agreement governs and does not include early termination charges and if Customer cancels or terminates Service for any reason other than Lumen's uncured default or if Lumen terminates due to Customer's uncured default, then Customer will pay Lumen's standard early termination liability charges as identified in the Ancillary Fee Schedule at [www.lumen.com/ancillary-fees](http://www.lumen.com/ancillary-fees). "Affiliate Agreement" for CenturyLink Communications, LLC d/b/a Lumen Technologies Group or any companies that were affiliates of CenturyLink Communications, LLC before the merger with Level 3 Communications ("Merger") means only an applicable Intrexchange Carrier (IXC) network agreement, e.g. CenturyLink Total Advantage Agreement, CenturyLink Total Advantage Express Agreement, or CenturyLink Wholesale Services Agreement (each, an Affiliate Agreement). Affiliate Agreement also includes an Agreement between Customer and any entity that was an affiliate of Level 3 Communications before the Merger.

5. Neither party will be liable for any damages for lost profits, lost revenues, loss of goodwill, loss of anticipated savings, loss of data or cost of purchasing replacement service, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out of the performance or failure to perform under this Order. Customer's sole remedies for any nonperformance, outages, failures to deliver or defects in Service are contained in the service levels applicable to the affected Service.

6. All transport services ordered from Lumen will be treated as interstate for regulatory purposes. Customer may certify transport service as being intrastate (for regulatory purposes only) in a format as required by Lumen, but only where the transport services are sold on a stand-alone basis, the end points for the service are located in the same state and neither end point is a Lumen provided IP port ("Intrastate Services"). Where Customer requests that services be designated as Intrastate Services, Customer certifies to Lumen that not more than 10% of Customer's traffic utilizing the Intrastate Services will be originated or terminated outside of the state in which the Intrastate Services are provided. Such election will apply prospectively only and will apply to all Intrastate Services stated in this Order.

7. Charges for certain Services are subject to (a) a monthly property tax surcharge and (b) a monthly cost recovery fee per month to reimburse Lumen for various governmental taxes and surcharges. Such charges are subject to change by Lumen and will be applied regardless of whether Customer has delivered a valid tax exemption certificate. For additional details on taxes and surcharges that are assessed, visit [www.lumen.com/taxes](http://www.lumen.com/taxes).

8. Customer will pay Lumen's standard: (a) expedite charges (added to the NRC) if Customer requests a delivery date inside Lumen's standard interval duration (available upon request or in Control Center at <https://www.centurylink.com/business/login/>), and (b) ancillary charges for additional activities, features or options as set forth in the Ancillary Fee Schedule, available at [www.lumen.com/ancillary-fees](http://www.lumen.com/ancillary-fees). If Lumen cannot complete installation due to Customer delay or inaction, Lumen may begin charging Customer and Customer will pay such charges.

9. Equipment provided by Lumen to be located in Customer's premises ("CPE") is subject to the terms of the Customer Premise Equipment Addendum, a copy of which is available upon request. For colocation, data center and/or hosting services, pre-arranged escorted access may be required at certain locations, and cross connect services are subject to whether facilities are available at the particular location to complete the connection.

10. For Internet Services provided in certain countries in the Asia-Pacific region where Lumen does not currently hold a license to provide such Services, Customer consents to Lumen providing Service by procuring services of third-party carriers as Customer's agent, and Customer appoints Lumen as its agent to the extent necessary to obtain such Service. Lumen's affiliate is licensed in Hong Kong, Japan, Singapore and Australia.

**911 Acknowledgment**

BY SIGNING THIS ORDER, I ACKNOWLEDGE THAT I HAVE READ AND UNDERSTAND THE "ACCESS TO EMERGENCY RESPONSE SERVICES" SECTION CONTAINED IN THE APPLICABLE SERVICE EXHIBIT/SERVICE SCHEDULE ATTACHED TO THE LUMEN OR CENTURYLINK MASTER SERVICE AGREEMENT OR, THE "911 EMERGENCY SERVICE" SECTION OR "EMERGENCY CALLING CAPABILITY" SECTION CONTAINED IN THE APPLICABLE SERVICE EXHIBIT/SERVICE SCHEDULE ATTACHED TO AN AFFILIATE AGREEMENT, OR IN THE "ACCESS TO EMERGENCY RESPONSE SERVICES" SECTION OF THE TERMS AND CONDITIONS IN THE APPLICABLE STANDARD SERVICE EXHIBIT/SERVICE SCHEDULE IF I HAVE NOT EXECUTED A LUMEN OR CENTURYLINK MASTER SERVICE AGREEMENT OR AN AFFILIATE AGREEMENT WITH AN APPLICABLE SERVICE EXHIBIT/SERVICE SCHEDULE. I FURTHER ACKNOWLEDGE THAT I HAVE READ AND UNDERSTAND THE DISCLOSURE OF LIMITATIONS SET FORTH IN THE EMERGENCY SERVICES ADVISORY AVAILABLE AT <http://www.centurylink.com/legal/HVIGSIP/911advisory.pdf>.

**Declarations and Signatures**

Customer submits this document as a Customer Order.

Authorized Signature:	
Name:	
Title:	
Date:	

Voice Rates prepared for WHATCOM COUNTY - WA- Quote# 11795007



**Voice Rate Sheet**  
**Deal# 10572934**  
**Quote# 11795007**

Term Plan					
Product	Customer Name	Currency	Term	Rates Good Until	Exchange Rate Effective Date
Voice Complete	WHATCOM COUNTY - WA	USD	3 Years	2/25/2021	10/9/2019 3:43:12 PM

CCP (Concurrent Call Path)							
Currency	CCP Plan 1		CCP Plan 2		CCP Plans		Measured MRC
	MRC		MRC		CCP Plan 3	CCP Plan 4	
USD	10.00	30.00	37.00	41.00	90.00	8.00	
GBP	8.17	24.50	30.21	33.48	73.49	6.53	
EUR	9.12	27.35	33.73	37.37	82.04	7.29	

\*Plan maximum included minutes of 5000 minutes per CCP.

- Plan 1 includes United States Local Calling
- Plan 2 includes Local and National Calling in the United States, the United Kingdom, and France
- Plan 3 includes Local and National Calling in the United States, the United Kingdom, France, and Germany
- Plan 4 includes Local and National Calling in the United States, the United Kingdom, France, Germany, and the Netherlands
- Plan 5 includes Local and National Calling in the United States, the United Kingdom, France, Germany, the Netherlands, and Belgium as well as United Kingdom Mobile: 3 Mobile, O2, EE (Orange), T-Mobile, Vodafone
- Measured: Every call is rated

CCP (Concurrent Call Path)							
Currency	Voice Order/Change Charge		Call Type Feature		Account and Authorization Codes		
	MRC	NRC	Expedite Charge per ckt end (separate from LEC charges)		MRC	NRC	NRC
USD		100.00		250.00	10.00		15.00
GBP		81.66		204.14	8.17		12.25
EUR		91.15		227.88	9.12		13.67

Feature Packs						
Currency	Feature Pack 1		Feature Pack 2		Mobility Feature Pack	
	MRC	NRC	MRC	NRC	MRC	NRC
USD			3.00		3.00	
GBP			2.45		2.45	
EUR			2.73		2.73	

Prepaid Minute Plan USD					
Minutes	Prepaid Minute Plan 1	Prepaid Minute Plan 2	Prepaid Minute Plan 3	Prepaid Minute Plan 4	Prepaid Minute Plan 5
	MRC	MRC	MRC	MRC	MRC

Voice Rates prepared for WHATCOM COUNTY - WA- Quote# 11795007

10,000 Prepaid Minutes	24.00	99.75	127.05	168.00	360.94
50,000 Prepaid Minutes	120.00	498.75	635.25	813.75	1804.69
100,000 Prepaid Minutes	240.00	997.50	1270.50	1627.50	3609.38
250,000 Prepaid Minutes	570.00	2418.94	3017.44	3865.31	8572.27
500,000 Prepaid Minutes	1116.00	4738.13	5907.83	7567.88	16783.60
750,000 Prepaid Minutes	1620.00	6957.56	8575.88	10985.63	24363.29
1,000,000 Prepaid Minutes	2112.00	8977.50	11179.65	14322.00	31762.50
Customized Prepaid Minutes					

Prepaid Minute Plan GBP					
Minutes	Prepaid Minute Plan 1	Prepaid Minute Plan 2	Prepaid Minute Plan 3	Prepaid Minute Plan 4	Prepaid Minute Plan 5
	MRC	MRC	MRC	MRC	MRC
10,000 Prepaid Minutes	19.60	81.45	103.75	137.18	294.73
50,000 Prepaid Minutes	97.99	407.27	518.73	664.49	1473.66
100,000 Prepaid Minutes	195.98	814.53	1037.46	1328.97	2947.32
250,000 Prepaid Minutes	465.45	1975.24	2463.96	3156.31	6999.89
500,000 Prepaid Minutes	911.30	3869.03	4824.18	6179.73	13705.04
750,000 Prepaid Minutes	1322.85	5681.36	7002.83	8970.57	19894.41
1,000,000 Prepaid Minutes	1724.60	7330.79	9129.00	11694.96	25936.41
Customized Prepaid Minutes					

Prepaid Minute Plan EUR					
Minutes	Prepaid Minute Plan 1	Prepaid Minute Plan 2	Prepaid Minute Plan 3	Prepaid Minute Plan 4	Prepaid Minute Plan 5
	MRC	MRC	MRC	MRC	MRC
10,000 Prepaid Minutes	21.88	90.92	115.81	153.14	329.00
50,000 Prepaid Minutes	109.38	454.62	579.04	741.75	1645.01
100,000 Prepaid Minutes	218.76	909.24	1158.08	1483.50	3290.02
250,000 Prepaid Minutes	519.57	2204.91	2750.45	3523.30	7813.79
500,000 Prepaid Minutes	1017.26	4318.89	5385.10	6898.27	15298.57
750,000 Prepaid Minutes	1476.66	6341.95	7817.08	10013.61	22207.60
1,000,000 Prepaid Minutes	1925.13	8183.16	10190.46	13054.77	28952.12
Customized Prepaid Minutes					

Plan 1 includes United States Local Calling  
 Plan 2 includes Local and National Calling in the United States, the United Kingdom, and France as well as International Calling to Canada, UK, UK-London, Italy, and Sweden  
 Plan 3 includes Local and National Calling in the United States, the United Kingdom, France, and Germany as well as International Calling to Canada, UK, UK-London, Italy, Sweden, Germany, France-Paris, Ireland, Portugal, USA (Continental 48), and the Netherlands  
 Plan 4 includes Local and National Calling in the United States, the United Kingdom, France, Germany, and the Netherlands as well as International Calling to Canada, UK, UK-London, Italy, Sweden, Germany, France-Paris, Ireland, Portugal, USA (Continental 48), the Netherlands, Austria, France, USA-Puerto Rico, and Spain  
 Plan 5 includes Local and National Calling in the United States, the United Kingdom, France, Germany, the Netherlands and Belgium UK mobile Calling: 3 Mobile, 02, EE (Orange, T-Mobile), Vodafone, as well as International Calling to Canada, UK, UK-London, Italy, Sweden, Germany, France-Paris, Ireland, Portugal, USA (Continental 48), the Netherlands, Austria, France, USA-Puerto Rico, Spain, Luxembourg, USA (Hawaii), and Belgium

National Voice Services - United States						
	MRC			NRC		
	USD	GBP	EUR	USD	GBP	EUR
Directory Listing Additional Listing	5.00	4.08	4.56	3.00	2.45	2.73
Directory Listing Caption	5.00	4.08	4.56	3.00	2.45	2.73
Directory Listing Foreign Additional Listing	12.00	9.80	10.94	3.00	2.45	2.73
Directory Listing Non Pub	3.00	2.45	2.73	3.00	2.45	2.73
Directory Listing Primary Listing						
Directory Listing Un Listed	3.00	2.45	2.73	3.00	2.45	2.73
Interstate - Per Call Surcharge Directory Assistance				1.99	1.63	1.81
Intrastate - Per Call Surcharge Directory Assistance				0.69	0.56	0.63



Voice Rates prepared for WHATCOM COUNTY - WA- Quote# 11795007

LD Oper Chg: Person-to-Person Per Call Surcharge				3.50	2.86	3.19
LD Oper Chg: Station-to-Station Per Call Surcharge				1.75	1.43	1.60
Telephone Number Vanity Charge				100.00	81.66	91.15
Telephone Number	0.15	0.12	0.14			
Port Charge Per Telephone Number				2.00	1.63	1.82
Telephone Number with Lync 911	0.50	0.41	0.46			

National Voice Services Outbound - United States									
Rates are per minute / 18 second minimum / 6 second rounding									
	Rate Per Minute			Rate Per Call			Minimum Call Charge		
	USD	GBP	EUR	USD	GBP	EUR	USD	GBP	EUR
Interstate	.0125	.0102	.0114						
Intrastate (All States)	.0125	.0102	.0114						
Local	.0125	.0102	.0114						

National Voice Services - UK								
	MRC			NRC				
	USD	GBP	EUR	USD	GBP	EUR		
Directory Listing	5.00	4.08	4.56	3.00	2.45	2.73		
Telephone Number	1.00	0.82	0.91					
Telephone Number Vanity Charge				100.00	81.66	91.15		
Port Charge Per Telephone Number				2.00	1.63	1.82		

National Voice Services Outbound - UK									
Rates are per minute / 18 second minimum / 6 second rounding									
	Rate Per Minute			Rate Per Call			Minimum Call Charge		
	USD	GBP	EUR	USD	GBP	EUR	USD	GBP	EUR
Local and National	.0092	.0075	.0084						
03 UK Wide	.0150	.0122	.0137						
Message Svc / Personal Number C	.1916	.1565	.1746						
Mobile FM10	.0443	.0362	.0404						
Mobile FM11	.3525	.2878	.3213						
Mobile FM12	.0263	.0215	.0240						
Mobile FM13	.3263	.2664	.2974						
Mobile FM14	.0353	.0288	.0322						
Mobile FM15	.0263	.0215	.0240						
Mobile FM16	.0263	.0215	.0240						
Mobile FM17	.1320	.1078	.1203						
Mobile FM2	.2700	.2205	.2461						
Mobile FM7	.2700	.2205	.2461						
Mobile FM8	.0263	.0215	.0240						
Mobile/Personal Number F	.5250	.4287	.4785						
New Voice Services G21	.0120	.0098	.0109						
NGCS Service Charge SC001									
NGCS Service Charge SC002	.0179	.0146	.0163						

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NGCS Service Charge SC003	.0357	.0292	.0325					
NGCS Service Charge SC004	.0536	.0438	.0489					
NGCS Service Charge SC005	.0714	.0583	.0651					
NGCS Service Charge SC006	.0893	.0729	.0814					
NGCS Service Charge SC007	.1071	.0875	.0976					
NGCS Service Charge SC008	.1250	.1021	.1139					
NGCS Service Charge SC009	.1429	.1167	.1303					
NGCS Service Charge SC010	.1607	.1312	.1465					
NGCS Service Charge SC011	.1786	.1458	.1628					
NGCS Service Charge SC012	.1964	.1604	.1790					
NGCS Service Charge SC013	.2143	.1750	.1953					
NGCS Service Charge SC014	.2321	.1895	.2116					
NGCS Service Charge SC015	.2679	.2188	.2442					
NGCS Service Charge SC016	.3571	.2916	.3255					
NGCS Service Charge SC017	.4464	.3645	.4069					
NGCS Service Charge SC018	.5357	.4374	.4883					
NGCS Service Charge SC019	.6250	.5104	.5697					
NGCS Service Charge SC020	.6429	.5250	.5860					
NGCS Service Charge SC021	.7143	.5833	.6511					
NGCS Service Charge SC022	.8036	.6562	.7325					
NGCS Service Charge SC023	.8214	.6707	.7487					
NGCS Service Charge SC024	.8929	.7291	.8139					
NGCS Service Charge SC025	.9821	.8020	.8952					
NGCS Service Charge SC026	1.0714	.8749	.9766					
NGCS Service Charge SC027	1.1607	.9478	1.0580					
NGCS Service Charge SC028	1.2500	1.0207	1.1394					
NGCS Service Charge SC029	1.3393	1.0936	1.2208					
NGCS Service Charge SC030	1.4286	1.1666	1.3022					
NGCS Service Charge SC031	1.6071	1.3123	1.4649					
NGCS Service Charge SC032	1.6964	1.3852	1.5463					
NGCS Service Charge SC033	1.7679	1.4436	1.6115					
NGCS Service Charge SC034	1.7857	1.4582	1.6277					
NGCS Service Charge SC035	1.9643	1.6040	1.7905					
NGCS Service Charge SC036	2.1429	1.7498	1.9533					
NGCS Service Charge SC037	2.5893	2.1144	2.3602					
NGCS Service Charge SC038	2.6786	2.1873	2.4416					
NGCS Service Charge SC039	2.7679	2.2602	2.5230					
NGCS Service Charge SC040	3.2143	2.6247	2.9299					
NGCS Service Charge SC041	3.5714	2.9163	3.2554					
NGCS Service Charge SC042	3.9286	3.2080	3.5810					
NGCS Service Charge SC043	4.4643	3.6454	4.0693					

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NGCS Service Charge SC044	5.3571	4.3745	4.8831						
NGCS Service Charge SC045	6.4286	5.2494	5.8598						
NGCS Service Charge SC046				.0893	.0729	.0814			
NGCS Service Charge SC047				.1786	.1458	.1628			
NGCS Service Charge SC048				.2679	.2188	.2442			
NGCS Service Charge SC049				.4464	.3645	.4069			
NGCS Service Charge SC050				.5357	.4374	.4883			
NGCS Service Charge SC051				.6250	.5104	.5697			
NGCS Service Charge SC052				.7143	.5833	.6511			
NGCS Service Charge SC053				.8571	.6999	.7813			
NGCS Service Charge SC054				.8929	.7291	.8139			
NGCS Service Charge SC055				1.2500	1.0207	1.1394			
NGCS Service Charge SC056				1.3393	1.0936	1.2208			
NGCS Service Charge SC057				1.7857	1.4582	1.6277			
NGCS Service Charge SC058				2.5893	2.1144	2.3602			
NGCS Service Charge SC059				2.6786	2.1873	2.4416			
NGCS Service Charge SC060				3.5714	2.9163	3.2554			
NGCS Service Charge SC061				4.4643	3.6454	4.0693			
NGCS Service Charge SC062				5.3571	4.3745	4.8831			
NGCS Service Charge SC063				7.1429	5.8327	6.5109			
NGCS Service Charge SC064				8.9286	7.2909	8.1386			
NGCS Service Charge SC065				10.7143	8.7490	9.7663			
NGCS Service Charge SC066	1.3750	1.1228	1.2533	2.7679	2.2602	2.5230			
NGCS Service Charge SC067	1.4286	1.1666	1.3022	.4464	.3645	.4069			
NGCS Service Charge SC068	2.4750	2.0210	2.2560	7.1250	5.8181	6.4946			
NGCS Service Charge SC069	2.4145	1.9716	2.2009	8.9100	7.2757	8.1216			
NGCS Service Charge SC070	4.9050	4.0053	4.4710				9.8250	8.0228	8.9557
NGCS Service Charge SC071	5.3400	4.3605	4.8675				10.2450	8.3658	9.3385
NGCS Service Charge SC072	6.2250	5.0832	5.6742				12.4650	10.1786	11.3621
NGCS Service Charge SC073	4.4700	3.6501	4.0745						
NGCS Service Charge SC074	.0893	.0729	.0814				.0893	.0729	.0814
NGCS Service Charge SC075	.1785	.1458	.1627				.1785	.1458	.1627
NGCS Service Charge SC076	.7143	.5833	.6511				.7143	.5833	.6511
NGCS Service Charge SC077	1.2500	1.0207	1.1394				1.2500	1.0207	1.1394
NGCS Service Charge SC078	2.6786	2.1873	2.4416				2.6786	2.1873	2.4416
NGCS Service Charge SC079	3.5715	2.9164	3.2555				3.5715	2.9164	3.2555
NGCS Service Charge SC080	6.0000	4.8994	5.4691				6.0000	4.8994	5.4691
Non Emergency Number FF31				.2330	.1903	.2124			
Pager Services Fixed Fee FF3				.6383	.5212	.5818			
Pager Services Fixed Fee FF8				.6383	.5212	.5818			
Pager Services Fixed Fee FF9				.6383	.5212	.5818			

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Pager Services Nofee								
Pager/Messaging R	.0383	.0313	.0349					
Personal Number D	.1916	.1565	.1746					
Personal Number E	.0495	.0404	.0451					
Personal Number J	.5700	.4654	.5196					
Personal Number K	.6750	.5512	.6153					
Personal Number PN1	.4200	.3430	.3828					
Personal Number PN10	.7950	.6492	.7247					
Personal Number PN11	.8700	.7104	.7930					
Personal Number PN12	.5850	.4777	.5332					
Personal Number PN13	.8250	.6737	.7520					
Personal Number PN14	.6750	.5512	.6153					
Personal Number PN15	.2400	.1960	.2188					
Personal Number PN16	.2625	.2144	.2393					
Personal Number PN17	.2925	.2388	.2666					
Personal Number PN18	.3150	.2572	.2871					
Personal Number PN19	.1650	.1347	.1504					
Personal Number PN2	1.1550	.9431	1.0528					
Personal Number PN20	.5100	.4165	.4649					
Personal Number PN21	.8850	.7227	.8067					
Personal Number PN22	.0825	.0674	.0752					
Personal Number PN3	.1125	.0919	.1025					
Personal Number PN4	.5550	.4532	.5059					
Personal Number PN5	.3450	.2817	.3145					
Personal Number PN6	.4650	.3797	.4239					
Personal Number PN7	3.4500	2.8172	3.1447	.6383	.5212	.5818		
Personal Number PN8	.4125	.3368	.3760					
Personal Number PN9	.4950	.4042	.4512					
RadioPager Services Service Local Nts L3	.0639	.0522	.0582					
UK Mobile	.0195	.0159	.0178					
Wifi Services FW1	.1500	.1225	.1367					
Wifi Services FW10	.1500	.1225	.1367					
Wifi Services FW12	.1500	.1225	.1367					
Wifi Services FW2	.1500	.1225	.1367					
Wifi Services FW3	.1500	.1225	.1367					
Wifi Services FW4	.1500	.1225	.1367					
Wifi Services FW5	.3000	.2450	.2735					
Wifi Services FW6	.3000	.2450	.2735					
Wifi Services FW7	.1500	.1225	.1367					
Wifi Services FW8	.1500	.1225	.1367					
Wifi Services FW9	.1500	.1225	.1367					

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National Voice Services - Germany						
	MRC			NRC		
	USD	GBP	EUR	USD	GBP	EUR
Directory Listing	5.00	4.08	4.56	3.00	2.45	2.73
Port Charge Per 10 Consecutive Telephone Number				13.20	10.78	12.03
Port Charge Per 100 Consecutive Telephone Number				2.20	1.80	2.01
Port Charge Per Telephone Number				132.00	107.79	120.32
Telephone Number	1.00	0.82	0.91	5.60	4.57	5.10
Telephone Number Vanity Charge				100.00	81.66	91.15

National Voice Services Outbound - Germany									
	Rates are per minute / 18 second minimum / 6 second rounding						Minimum Call Charge		
	Rate Per Minute			Rate Per Call			USD	GBP	EUR
	USD	GBP	EUR	USD	GBP	EUR	USD	GBP	EUR
Local and National	.0110	.0090	.0100						
Directory Assistance 118	2.8956	2.3645	2.6394						
Directory Assistance 11833	5.7750	4.7157	5.2640	19.2430	15.7133	17.5404			
Directory Assistance 11834	5.7750	4.7157	5.2640	19.2430	15.7133	17.5404			
Emergency Services									
Freephone 800									
Germany Mobile	.0532	.0434	.0485						
Mass Transit 13	.2459	.2008	.2241						
Mass Transit 1371				.2459	.2008	.2241			
Mass Transit 1375				.2459	.2008	.2241			
Mass Transit 1376				.4391	.3586	.4002			
Mass Transit 1377				1.7562	1.4341	1.6008			
Mass Transit 1378				.8782	.7171	.8005			
Mass Transit 1379				.8782	.7171	.8005			
Mobile-Others	.4114	.3359	.3750						
National Subscriber 32	.0559	.0456	.0510						
Pager Services 16	.3266	.2667	.2977						
Pager Services 169				.8607	.7028	.7845			
Pager Services 1695	1.3066	1.0669	1.1910						
Pager Services 16953				2.1514	1.7568	1.9610			
Personal Number 700	.1990	.1625	.1814						
Premium 900	6.6000	5.3894	6.0160	21.9920	17.9581	20.0461			
Shared Cost 1801	.0686	.0560	.0625						
Shared Cost 1802				.1053	.0860	.0960			
Shared Cost 1803	.1581	.1291	.1441						
Shared Cost 1804				.3513	.2869	.3202			
Shared Cost 1805	.2459	.2008	.2241						

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National Voice Services - France						
	MRC			NRC		
	USD	GBP	EUR	USD	GBP	EUR
Directory Listing	5.00	4.08	4.56	3.00	2.45	2.73
Port Charge Per 10 Consecutive Telephone Number				22.00	17.96	20.05
Port Charge Per 100 Consecutive Telephone Number				8.80	7.19	8.02
Port Charge Per Telephone Number				151.80	123.96	138.37
Telephone Number	1.00	0.82	0.91			
Telephone Number Vanity Charge				100.00	81.66	91.15

National Voice Services Outbound - France									
	Rates are per minute / 18 second minimum / 6 second rounding								
	Rate Per Minute			Rate Per Call			Minimum Call Charge		
	USD	GBP	EUR	USD	GBP	EUR	USD	GBP	EUR
Local and National	.0045	.0037	.0041						
Administrative Information									
Directory Enquiry 118000	3.4322	2.8026	3.1265	3.4322	2.8026	3.1265			
Directory Enquiry 118006	.5428	.4432	.4948	2.1713	1.7730	1.9792	2.7143	2.2164	2.4741
Directory Enquiry 118008	1.4630	1.1946	1.3336	1.4630	1.1946	1.3336			
Directory Enquiry 118050	.5428	.4432	.4948	2.1713	1.7730	1.9792	2.7143	2.2164	2.4741
Directory Enquiry 118222	1.4630	1.1946	1.3336	1.4630	1.1946	1.3336			
Directory Enquiry 118318	.5428	.4432	.4948	2.1713	1.7730	1.9792	2.7143	2.2164	2.4741
Directory Enquiry 118444				.0116	.0095	.0106			
Directory Enquiry 118500	.3620	.2956	.3300	1.2666	1.0343	1.1545			
Directory Enquiry 118700				4.8317	3.9454	4.4042			
Directory Enquiry 118711	.5428	.4432	.4948	1.2666	1.0343	1.1545			
Directory Enquiry 118712	.7314	.5972	.6667	2.5410	2.0749	2.3162			
Directory Enquiry 118888	1.8096	1.4777	1.6495	1.8096	1.4777	1.6495			
Directory Enquiry 118999	.3620	.2956	.3300	1.6286	1.3299	1.4845			
Directory Enquiry 1187									
France Mobile	.0280	.0229	.0255						
Freephone 080									
Internet Access	.0375	.0306	.0342	.1848	.1509	.1684			
Local Rate 3	.0480	.0392	.0438	.1358	.1109	.1238			
Personal Numbers 087	.0357	.0292	.0325						
Personal Numbers 0873	.0472	.0385	.0430						
Premium 08360	.1123	.0917	.1024				.2069	.1689	.1886
Premium 083601	.2069	.1689	.1886						
Premium 0836019301	.0375	.0306	.0342				.1848	.1509	.1684
Premium 0836097	.1331	.1087	.1213						
Premium 083660	.6203	.5065	.5654				.4137	.3378	.3771
Premium 0836603				1.8612	1.5198	1.6965			
Premium 0836604	1.7821	1.4552	1.6244				.2069	.1689	.1886

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Premium 0836622	.1033	.0844	.0942						
Premium 0890	.2751	.2246	.2508				.2751	.2246	.2508
Premium 089064	.2069	.1689	.1886				.2069	.1689	.1886
Premium 08907	.2069	.1689	.1886				.2069	.1689	.1886
Premium 0891	.4137	.3378	.3771				.4137	.3378	.3771
Premium 0892	.6203	.5065	.5654				.6203	.5065	.5654
Premium 0897				1.0340	.8443	.9425			
Premium 0899	.6203	.5065	.5654	2.4815	2.0263	2.2619	3.1021	2.5331	2.8276
Premium 089970	.6203	.5065	.5654	2.4815	2.0263	2.2619			
Shared Cost 081	.0490	.0400	.0447	.1363	.1113	.1242			
Shared Cost 0820	.2069	.1689	.1886	.1965	.1605	.1791			
Shared Cost 082020	.1568	.1280	.1429	.1965	.1605	.1791			
Shared Cost 082021	.1568	.1280	.1429	.1965	.1605	.1791			
Shared Cost 082022	.1568	.1280	.1429	.1965	.1605	.1791			
Shared Cost 082048	.1568	.1280	.1429	.1965	.1605	.1791			
Shared Cost 0821	.2069	.1689	.1886	.1965	.1605	.1791			
Shared Cost 082111	.1568	.1280	.1429	.1965	.1605	.1791			
Shared Cost 082161	.1568	.1280	.1429	.1965	.1605	.1791			
Shared Cost 0825	.2613	.2134	.2382	.1965	.1605	.1791			
Shared Cost 0826	.2613	.2134	.2382	.1965	.1605	.1791			
Shared Cost 1044	.0480	.0392	.0438	.1358	.1109	.1238			
Short Number 320	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3203	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3210	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3213	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3214	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3215	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3216	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3217	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3218	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3219	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 322	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3223	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3229	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 323	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3234	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3236	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3240	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3242	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3243	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3245	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			



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Short Number 325	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3253	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3256	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3258	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 326	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3260	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 327	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3270	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3275	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 328	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3281	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 329	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3299	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3600	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3601	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3602	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3603	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3604	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3605	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3606	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3608	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3610	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3611	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3618	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3620	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3621	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3624	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3626	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 363	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3634	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3635	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3637	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3639	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3644	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3650	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3655	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3656	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 366	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3660	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3666	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3667	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			



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Short Number 367	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3677	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3678	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3680	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 369	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 3699	1.9243	1.5713	1.7540	7.2000	5.8793	6.5629			
Short Number 390	.0506	.0413	.0461	.1430	.1168	.1303			
Short Number 3910	.2177	.1778	.1984						
Short Number 3911	.6203	.5065	.5654	2.4815	2.0263	2.2619			
Short Number 3920	.6203	.5065	.5654						
Short Number 3922	.6203	.5065	.5654	2.4815	2.0263	2.2619			
Short Number 393	.6203	.5065	.5654						
Short Number 3939	.0506	.0413	.0461	.1430	.1168	.1303			
Short Number 3940	.6203	.5065	.5654						
Short Number 3969	.6203	.5065	.5654						
Short Number 397	.0506	.0413	.0461	.1430	.1168	.1303			
Short Number 3980				1.0340	.8443	.9425			
Short Number 399	.0506	.0413	.0461	.1430	.1168	.1303			

National Voice Services - Netherlands							
	MRC			NRC			
	USD	GBP	EUR	USD	GBP	EUR	
Directory Listing	5.00	4.08	4.56	3.00	2.45	2.73	
Port Charge Per 10 Consecutive Telephone Number				50.60	41.32	46.12	
Port Charge Per 100 Consecutive Telephone Number				5.50	4.49	5.01	
Port Charge Per Telephone Number				74.80	61.08	68.18	
Telephone Number	1.00	0.82	0.91				
Telephone Number Vanity Charge				100.00	81.66	91.15	

National Voice Services Outbound - Netherlands									
	Rates are per minute / 18 second minimum / 6 second rounding								
	Rate Per Minute			Rate Per Call			Minimum Call Charge		
	USD	GBP	EUR	USD	GBP	EUR	USD	GBP	EUR
Local and National	.0132	.0108	.0120						
Business Number 088	.0275	.0225	.0251	.0550	.0449	.0501			
Data Services 67	.2200	.1796	.2005						
Data Services 672	.2860	.2335	.2607						
Data Services 673	.2860	.2335	.2607						
Data Services 67400	.4355	.3556	.3970						
Data Services 67500	.5565	.4544	.5073						
Data Services 67777	.1320	.1078	.1203						
Data Services 678	.9919	.8100	.9041						
Data Services 679	.9919	.8100	.9041						

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Data Services 67100	.1018	.0831	.0928	.8468	.6915	.7719			
Freephone 800									
Netherlands Mobile	.0575	.0470	.0524						
Pager Services 65				1.4630	1.1946	1.3336			
Pager Services 656				.4598	.3755	.4191			
Pager Services 6570				.4598	.3755	.4191			
Pager Services 6571				.4598	.3755	.4191			
Pager Services 6572				.4598	.3755	.4191			
Pager Services 6573				.4598	.3755	.4191			
Pager Services 6574				.4598	.3755	.4191			
Pager Services 6599	.9423	.7695	.8589						
Pager Services 6600	.6270	.5120	.5715						
Pager Services 6601	.6270	.5120	.5715						
Pager Services 6602				1.0450	.8533	.9525			
Pager Services 6603				2.2781	1.8602	2.0765			
Pager Services 6604				1.3794	1.1264	1.2573			
Pager Services 6605				2.2781	1.8602	2.0765			
Pager Services 66066	.8360	.6827	.7620						
Pager Services 6607				1.3794	1.1264	1.2573			
Pager Services 6608				1.9228	1.5701	1.7527			
Pager Services 6609	.0477	.0390	.0435	.1625	.1327	.1481			
Pager Services 6616				.9423	.7695	.8589			
Pager Services 66160	.6270	.5120	.5715						
Pager Services 66161	.9423	.7695	.8589						
Pager Services 66162	.4180	.3413	.3810						
Pager Services 66163	1.4710	1.2012	1.3408						
Pager Services 66164	1.4710	1.2012	1.3408						
Pager Services 66165				1.8847	1.5390	1.7179			
Pager Services 66169	1.1495	.9387	1.0478						
Pager Services 66506				.7315	.5973	.6668			
Pager Services 66507				.7315	.5973	.6668			
Pager Services 66508				.7315	.5973	.6668			
Pager Services 66509				.7315	.5973	.6668			
Pager Services 66510				.1568	.1280	.1429			
Pager Services 66511				.1568	.1280	.1429			
Pager Services 66512	.0808	.0660	.0737	.0857	.0700	.0781			
Pager Services 66513				2.0915	1.7079	1.9064			
Pager Services 66519	.9423	.7695	.8589						
Pager Services 6653				1.4630	1.1946	1.3336			
Pager Services 665				1.2635	1.0317	1.1517			
Personal Assistance Services 84	.4180	.3413	.3810						

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Personal Assistance Services 8408	.6270	.5120	.5715					
Personal Assistance Services 84262	1.6778	1.3700	1.5293					
Personal Assistance Services 84263				2.7170	2.2186	2.4766		
Personal Assistance Services 8475	.1008	.0823	.0919	.0857	.0700	.0781		
Personal Assistance Services 8476	.0477	.0390	.0435	.0477	.0390	.0435		
Personal Assistance Services 848	.1254	.1024	.1143					
Personal Assistance Services 8485	.1008	.0823	.0919	.0857	.0700	.0781		
Personal Assistance Services 84899	.0477	.0390	.0435	.1625	.1327	.1481		
Personal Assistance Services 849								
Personal Assistance Services 870	.9500	.7757	.8659					
Personal Assistance Services 871	1.6778	1.3700	1.5293					
Personal Assistance Services 87193				2.7170	2.2186	2.4766		
Personal Assistance Services 873	.9423	.7695	.8589					
Personal Assistance Services 87500	.0550	.0449	.0501					
Personal Assistance Services 8765	1.4710	1.2012	1.3408					
Personal Assistance Services 87785	.0919	.0750	.0838					
Personal Assistance Services 87786	.0919	.0750	.0838					
Personal Assistance Services 87787	.0241	.0197	.0220	.0857	.0700	.0781		
Personal Assistance Services 87788	.0241	.0197	.0220	.0857	.0700	.0781		
Personal Assistance Services 8700								
Personal Assistance Services 8701	.0919	.0750	.0838	.0857	.0700	.0781		
Personal Assistance Services 87784	.7355	.6006	.6704					
Personal Assistance Services 87789								

National Voice Services - Belgium							
	MRC			NRC			
	USD	GBP	EUR	USD	GBP	EUR	
Directory Listing	5.00	4.08	4.56	3.00	2.45	2.73	
Port Charge Per 10 Consecutive Telephone Number				19.80	16.17	18.05	
Port Charge Per 100 Consecutive Telephone Number				13.20	10.78	12.03	
Port Charge Per Telephone Number				26.40	21.56	24.06	
Telephone Number	1.00	0.82	0.91				
Telephone Number Vanity Charge				100.00	81.66	91.15	

National Voice Services Outbound - Belgium									
Rates are per minute / 18 second minimum / 6 second rounding									
	Rate Per Minute			Rate Per Call			Minimum Call Charge		
	USD	GBP	EUR	USD	GBP	EUR	USD	GBP	EUR
Local and National	.0350	.0286	.0319						
Belgium Mobile	.0427	.0349	.0389						
Clock service 1200				.1159	.0946	.1056			
Clock service 1300				.1159	.0946	.1056			
Emergency Services									

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Freephone 17									
Freephone 800									
Infokiosk 77									
Infokiosk 776	.7481	.6109	.6819	.0440	.0359	.0401			
Infokiosk 777	.7481	.6109	.6819	.0440	.0359	.0401			
Information Services 1207	.0653	.0533	.0595	1.9524	1.5943	1.7796	2.0200	1.6495	1.8413
Information Services 1307	.0653	.0533	.0595	1.9524	1.5943	1.7796			
Information Services 1313	.4546	.3712	.4144	1.8818	1.5366	1.7153			
Information Services 1414	.4546	.3712	.4144	4.9246	4.0213	4.4889			
Missing Child Hot Line 116000									
Pager Services 452				.5171	.4222	.4713			
Pager Services 453				.5171	.4222	.4713			
Pager Services 454				1.1700	.9554	1.0665			
Pager Services 458				.5171	.4222	.4713			
Pager Services 459				.5171	.4222	.4713			
Premium 70	.5456	.4455	.4973						
Premium 70231	.2727	.2227	.2486						
Premium 70246	.2727	.2227	.2486						
Premium 70270	.2727	.2227	.2486						
Premium 70271	.2727	.2227	.2486						
Premium 70272	.2727	.2227	.2486						
Premium 70273	.2727	.2227	.2486						
Premium 70274	.2727	.2227	.2486						
Premium 70442	.2727	.2227	.2486						
Premium 70445	.2727	.2227	.2486						
Premium 70474	.2727	.2227	.2486						
Premium 70650	.2727	.2227	.2486						
Premium 70651	.2727	.2227	.2486						
Premium 70652	.2727	.2227	.2486						
Premium 70653	.2727	.2227	.2486						
Premium 70654	.2727	.2227	.2486						
Premium 706634	.2727	.2227	.2486						
Premium 706635	.2727	.2227	.2486						
Premium 70680	.2727	.2227	.2486						
Premium 70681	.2727	.2227	.2486						
Premium 70682	.2727	.2227	.2486						
Premium 70683	.2727	.2227	.2486						
Premium 70684	.2727	.2227	.2486						
Premium 7070	.2727	.2227	.2486						
Premium 70752	.2727	.2227	.2486						
Premium 70753	.2727	.2227	.2486						

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Premium 707777	.2727	.2227	.2486						
Premium 900	.9092	.7424	.8288						
Premium 90025	.4546	.3712	.4144						
Premium 900425	.4546	.3712	.4144						
Premium 900502	.4546	.3712	.4144						
Premium 900503	.4546	.3712	.4144						
Premium 900770	.4546	.3712	.4144						
Premium 900771	.4546	.3712	.4144						
Premium 900772	.4546	.3712	.4144						
Premium 900773	.4546	.3712	.4144						
Premium 900774	.4546	.3712	.4144						
Premium 900775	.4546	.3712	.4144						
Premium 900820	.4546	.3712	.4144						
Premium 900821	.4546	.3712	.4144						
Premium 900822	.4546	.3712	.4144						
Premium 900823	.4546	.3712	.4144						
Premium 900824	.4546	.3712	.4144						
Premium 900889	.4546	.3712	.4144						
Premium 902	1.8181	1.4846	1.6572						
Premium 90215	1.3636	1.1135	1.2429						
Premium 902280	1.3636	1.1135	1.2429						
Premium 902281	1.3636	1.1135	1.2429						
Premium 902282	1.3636	1.1135	1.2429						
Premium 902283	1.3636	1.1135	1.2429						
Premium 902284	1.3636	1.1135	1.2429						
Premium 902330	1.3636	1.1135	1.2429						
Premium 902331	1.3636	1.1135	1.2429						
Premium 902332	1.3636	1.1135	1.2429						
Premium 902333	1.3636	1.1135	1.2429						
Premium 902334	1.3636	1.1135	1.2429						
Premium 902425	1.3636	1.1135	1.2429						
Premium 902426	1.3636	1.1135	1.2429						
Premium 90251	1.3636	1.1135	1.2429						
Premium 902522	1.3636	1.1135	1.2429						
Premium 902523	1.3636	1.1135	1.2429						
Premium 90254	1.3636	1.1135	1.2429						
Premium 902770	1.3636	1.1135	1.2429						
Premium 902771	1.3636	1.1135	1.2429						
Premium 902772	1.3636	1.1135	1.2429						
Premium 902773	1.3636	1.1135	1.2429						
Premium 902774	1.3636	1.1135	1.2429						

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Premium 903	2.7273	2.2270	2.4860						
Premium 903471	2.2727	1.8558	2.0716						
Premium 903472	2.2727	1.8558	2.0716						
Premium 903473	2.2727	1.8558	2.0716						
Premium 90351	2.2727	1.8558	2.0716						
Premium 903532	2.2727	1.8558	2.0716						
Premium 903533	2.2727	1.8558	2.0716						
Premium 90354	2.2727	1.8558	2.0716						
Premium 903550	2.2727	1.8558	2.0716						
Premium 903551	2.2727	1.8558	2.0716						
Premium 903552	2.2727	1.8558	2.0716						
Premium 903553	2.2727	1.8558	2.0716						
Premium 903889	2.2727	1.8558	2.0716						
Premium 904	3.1817	2.5981	2.9002						
Premium 904045									
Premium 904046									
Premium 904047									
Premium 904048									
Premium 904049									
Premium 90436									
Premium 90437									
Premium 90439									
Premium 90439552									
Premium 904442									
Premium 904443									
Premium 904444									
Premium 904445									
Premium 904446									
Premium 904447									
Premium 904448									
Premium 904449									
Premium 90456									
Premium 90469									
Premium 904805									
Premium 904806									
Premium 904807									
Premium 904808									
Premium 904809									
Premium 90482									
Premium 904885	3.6363	2.9693	3.3146						
Premium 904886	3.6363	2.9693	3.3146						

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Premium 904887	3.6363	2.9693	3.3146					
Premium 904888	3.6363	2.9693	3.3146					
Premium 904889	3.6363	2.9693	3.3146					
Premium 90516				.9092	.7424	.8288		
Premium 905162				1.8181	1.4846	1.6572		
Premium 905163				1.8181	1.4846	1.6572		
Premium 905164				1.8181	1.4846	1.6572		
Premium 905165				2.7273	2.2270	2.4860		
Premium 905166				2.7273	2.2270	2.4860		
Premium 905167				3.6363	2.9693	3.3146		
Premium 905168				3.6363	2.9693	3.3146		
Premium 905169				3.6363	2.9693	3.3146		
Premium 90522				.4546	.3712	.4144		
Premium 90523				3.6363	2.9693	3.3146		
Premium 90524				2.7273	2.2270	2.4860		
Premium 905244				2.2727	1.8558	2.0716		
Premium 905245				2.2727	1.8558	2.0716		
Premium 905246				2.2727	1.8558	2.0716		
Premium 905247				3.1817	2.5981	2.9002		
Premium 905248				3.1817	2.5981	2.9002		
Premium 905249				3.1817	2.5981	2.9002		
Premium 905330				.4546	.3712	.4144		
Premium 905331				.9092	.7424	.8288		
Premium 905332				1.3636	1.1135	1.2429		
Premium 905333				1.8181	1.4846	1.6572		
Premium 905334				2.2727	1.8558	2.0716		
Premium 905335				2.7273	2.2270	2.4860		
Premium 905336				3.1817	2.5981	2.9002		
Premium 905337				3.6363	2.9693	3.3146		
Premium 905338				3.6363	2.9693	3.3146		
Premium 905339				1.8181	1.4846	1.6572		
Premium 90538				3.6363	2.9693	3.3146		
Premium 90540				.4546	.3712	.4144		
Premium 905404				1.3636	1.1135	1.2429		
Premium 905405				2.2727	1.8558	2.0716		
Premium 905406				2.7273	2.2270	2.4860		
Premium 90541				.9092	.7424	.8288		
Premium 905414				3.6363	2.9693	3.3146		
Premium 905415				3.1817	2.5981	2.9002		
Premium 905416				3.6363	2.9693	3.3146		
Premium 90542				1.8181	1.4846	1.6572		

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Premium 90544				.9092	.7424	.8288			
Premium 90550				3.6363	2.9693	3.3146			
Premium 905500				.4546	.3712	.4144			
Premium 905502				.9092	.7424	.8288			
Premium 905505				1.8181	1.4846	1.6572			
Premium 90553				.9092	.7424	.8288			
Premium 905534				.4546	.3712	.4144			
Premium 905535				.4546	.3712	.4144			
Premium 905536				.4546	.3712	.4144			
Premium 905537				1.3636	1.1135	1.2429			
Premium 905538				1.3636	1.1135	1.2429			
Premium 905539				1.3636	1.1135	1.2429			
Premium 90556				.9092	.7424	.8288			
Premium 905569				56.3636	46.0250	51.3765			
Premium 90566				1.8181	1.4846	1.6572			
Premium 90567				.4546	.3712	.4144			
Premium 90568				.9092	.7424	.8288			
Premium 90569				1.8181	1.4846	1.6572			
Premium 905770				.4546	.3712	.4144			
Premium 905771				.9092	.7424	.8288			
Premium 905772				1.3636	1.1135	1.2429			
Premium 905773				1.8181	1.4846	1.6572			
Premium 905774				2.2727	1.8558	2.0716			
Premium 905775				2.7273	2.2270	2.4860			
Premium 905776				2.7273	2.2270	2.4860			
Premium 905777				3.1817	2.5981	2.9002			
Premium 905778				3.6363	2.9693	3.3146			
Premium 905779				3.6363	2.9693	3.3146			
Premium 90582				1.8181	1.4846	1.6572			
Premium 90586				3.6363	2.9693	3.3146			
Premium 905860				.9092	.7424	.8288			
Premium 905861				.9092	.7424	.8288			
Premium 905862				1.8181	1.4846	1.6572			
Premium 905863				1.8181	1.4846	1.6572			
Premium 905864				1.8181	1.4846	1.6572			
Premium 905865				2.7273	2.2270	2.4860			
Premium 905866				2.7273	2.2270	2.4860			
Premium 90588				3.6363	2.9693	3.3146			
Premium 905880				.4546	.3712	.4144			
Premium 905881				.9092	.7424	.8288			
Premium 905882				1.3636	1.1135	1.2429			



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Premium 905883				1.8181	1.4846	1.6572			
Premium 905884				2.2727	1.8558	2.0716			
Premium 905885				2.7273	2.2270	2.4860			
Premium 905886				3.1817	2.5981	2.9002			
Premium 906	1.8181	1.4846	1.6572						
Premium 90600	.9092	.7424	.8288						
Premium 90606	1.8181	1.4846	1.6572						
Premium 906060	.4546	.3712	.4144						
Premium 906061	.4546	.3712	.4144						
Premium 906062	.9092	.7424	.8288						
Premium 906063	.9092	.7424	.8288						
Premium 906064	1.3636	1.1135	1.2429						
Premium 906065	1.3636	1.1135	1.2429						
Premium 90616	1.3636	1.1135	1.2429						
Premium 90622	.9092	.7424	.8288						
Premium 90623	1.3636	1.1135	1.2429						
Premium 90625	.9092	.7424	.8288						
Premium 906330	.4546	.3712	.4144						
Premium 906331	.9092	.7424	.8288						
Premium 906332	1.3636	1.1135	1.2429						
Premium 906400									
Premium 906401									
Premium 906444	.9091	.7423	.8287						
Premium 906445	.9091	.7423	.8287						
Premium 906488	1.3636	1.1135	1.2429						
Premium 906489	1.3636	1.1135	1.2429						
Premium 906800	.4545	.3711	.4143						
Premium 906801	.4545	.3711	.4143						
Premium 906802	.9091	.7423	.8287						
Premium 906803	.9091	.7423	.8287						
Premium 906804	1.3636	1.1135	1.2429						
Premium 906805	1.3636	1.1135	1.2429						
Premium 907	2.7273	2.2270	2.4860						
Premium 907070	2.2727	1.8558	2.0716						
Premium 907071	2.2727	1.8558	2.0716						
Premium 907074	3.1817	2.5981	2.9002						
Premium 907075	3.1817	2.5981	2.9002						
Premium 907076	3.6363	2.9693	3.3146						
Premium 907077	3.6363	2.9693	3.3146						
Premium 907078	3.6363	2.9693	3.3146						
Premium 907079	3.6363	2.9693	3.3146						

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Premium 90723	2.2727	1.8558	2.0716					
Premium 90736	3.6363	2.9693	3.3146					
Premium 90738	3.6363	2.9693	3.3146					
Premium 90739	3.6363	2.9693	3.3146					
Premium 90739000	3.6363	2.9693	3.3146					
Premium 90739275	3.6363	2.9693	3.3146					
Premium 90739276	3.6363	2.9693	3.3146					
Premium 90739277	3.6363	2.9693	3.3146					
Premium 90739552	3.6363	2.9693	3.3146					
Premium 907471	2.2727	1.8558	2.0716					
Premium 907472	2.2727	1.8558	2.0716					
Premium 907473	2.2727	1.8558	2.0716					
Premium 907474	3.1817	2.5981	2.9002					
Premium 907475	3.1817	2.5981	2.9002					
Premium 907476	3.1817	2.5981	2.9002					
Premium 907477	3.6363	2.9693	3.3146					
Premium 907478	3.6363	2.9693	3.3146					
Premium 907479	3.6363	2.9693	3.3146					
Premium 90756	3.1817	2.5981	2.9002					
Premium 907800	2.2727	1.8558	2.0716					
Premium 907801	2.2727	1.8558	2.0716					
Premium 907804	3.1817	2.5981	2.9002					
Premium 907805	3.1817	2.5981	2.9002					
Premium 907806	3.6363	2.9693	3.3146					
Premium 907807	3.6363	2.9693	3.3146					
Premium 907808	3.6363	2.9693	3.3146					
Premium 907809	3.6363	2.9693	3.3146					
Premium 90782	3.6363	2.9693	3.3146					
Premium 907880	2.2727	1.8558	2.0716					
Premium 907881	3.1817	2.5981	2.9002					
Premium 907882	3.6363	2.9693	3.3146					
Premium 90900				56.3636	46.0250	51.3765		
Premium 909000				1.8181	1.4846	1.6572		
Premium 909001				6.3636	5.1963	5.8005		
Premium 909002				10.9091	8.9081	9.9439		
Premium 909003				15.4546	12.6198	14.0872		
Premium 909004				24.5454	20.0431	22.3736		
Premium 909280	5.4544	4.4539	4.9718	1.8181	1.4846	1.6572		
Premium 909281				6.3636	5.1963	5.8005		
Premium 909282	5.0001	4.0829	4.5577	6.3636	5.1963	5.8005		
Premium 909283				15.4546	12.6198	14.0872		

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Premium 909284	4.0909	3.3405	3.7289	15.4546	12.6198	14.0872			
Premium 909285				19.9999	16.3314	18.2303			
Premium 909286	3.6363	2.9693	3.3146	19.9999	16.3314	18.2303			
Premium 909287				24.5454	20.0431	22.3736			
Premium 909288	3.1817	2.5981	2.9002	24.5454	20.0431	22.3736			
Premium 909289				56.3636	46.0250	51.3765			
Premium 90937				56.3636	46.0250	51.3765			
Premium 909370				19.9999	16.3314	18.2303			
Premium 909371				19.9999	16.3314	18.2303			
Premium 909372				19.9999	16.3314	18.2303			
Premium 909373				38.1819	31.1783	34.8035			
Premium 909374				38.1819	31.1783	34.8035			
Premium 909375				38.1819	31.1783	34.8035			
Premium 90940				10.9091	8.9081	9.9439			
Premium 909405	4.5455	3.7117	4.1433	10.9091	8.9081	9.9439			
Premium 909406	4.5455	3.7117	4.1433	10.9091	8.9081	9.9439			
Premium 909407	4.5455	3.7117	4.1433	10.9091	8.9081	9.9439			
Premium 909408	4.5455	3.7117	4.1433	10.9091	8.9081	9.9439			
Premium 909409	4.5455	3.7117	4.1433	10.9091	8.9081	9.9439			
Premium 90941				6.3636	5.1963	5.8005			
Premium 909415	5.0001	4.0829	4.5577	6.3636	5.1963	5.8005			
Premium 909416	5.0001	4.0829	4.5577	6.3636	5.1963	5.8005			
Premium 909417	5.0001	4.0829	4.5577	6.3636	5.1963	5.8005			
Premium 909418	5.0001	4.0829	4.5577	6.3636	5.1963	5.8005			
Premium 909419	5.0001	4.0829	4.5577	6.3636	5.1963	5.8005			
Premium 90942				15.4546	12.6198	14.0872			
Premium 909425	4.0909	3.3405	3.7289	15.4546	12.6198	14.0872			
Premium 909426	4.0909	3.3405	3.7289	15.4546	12.6198	14.0872			
Premium 909427	4.0909	3.3405	3.7289	15.4546	12.6198	14.0872			
Premium 909428	4.0909	3.3405	3.7289	15.4546	12.6198	14.0872			
Premium 909429	4.0909	3.3405	3.7289	15.4546	12.6198	14.0872			
Premium 90943				19.9999	16.3314	18.2303			
Premium 909435	3.6363	2.9693	3.3146	19.9999	16.3314	18.2303			
Premium 909436	3.6363	2.9693	3.3146	19.9999	16.3314	18.2303			
Premium 909437	3.6363	2.9693	3.3146	19.9999	16.3314	18.2303			
Premium 909438	3.6363	2.9693	3.3146	19.9999	16.3314	18.2303			
Premium 909439	3.6363	2.9693	3.3146	19.9999	16.3314	18.2303			
Premium 90944				24.5454	20.0431	22.3736			
Premium 909445	3.1817	2.5981	2.9002	24.5454	20.0431	22.3736			
Premium 909446	3.1817	2.5981	2.9002	24.5454	20.0431	22.3736			
Premium 909447	3.1817	2.5981	2.9002	24.5454	20.0431	22.3736			

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Premium 909448	3.1817	2.5981	2.9002	24.5454	20.0431	22.3736			
Premium 909449	3.1817	2.5981	2.9002	24.5454	20.0431	22.3736			
Premium 90945				29.0909	23.7548	26.5169			
Premium 909455	2.7273	2.2270	2.4860	29.0909	23.7548	26.5169			
Premium 909456	2.7273	2.2270	2.4860	29.0909	23.7548	26.5169			
Premium 909457	2.7273	2.2270	2.4860	29.0909	23.7548	26.5169			
Premium 909458	2.7273	2.2270	2.4860	29.0909	23.7548	26.5169			
Premium 909459	2.7273	2.2270	2.4860	29.0909	23.7548	26.5169			
Premium 90946				56.3636	46.0250	51.3765			
Premium 90947				33.6364	27.4666	30.6602			
Premium 909475	2.2727	1.8558	2.0716	33.6364	27.4666	30.6602			
Premium 909476	2.2727	1.8558	2.0716	33.6364	27.4666	30.6602			
Premium 909477	2.2727	1.8558	2.0716	33.6364	27.4666	30.6602			
Premium 909478	2.2727	1.8558	2.0716	33.6364	27.4666	30.6602			
Premium 909479	2.2727	1.8558	2.0716	33.6364	27.4666	30.6602			
Premium 90948				38.1819	31.1783	34.8035			
Premium 909485	1.8181	1.4846	1.6572	38.1819	31.1783	34.8035			
Premium 909486	1.8181	1.4846	1.6572	38.1819	31.1783	34.8035			
Premium 909487	1.8181	1.4846	1.6572	38.1819	31.1783	34.8035			
Premium 909488	1.8181	1.4846	1.6572	38.1819	31.1783	34.8035			
Premium 909489	1.8181	1.4846	1.6572	38.1819	31.1783	34.8035			
Premium 90949				1.8181	1.4846	1.6572			
Premium 909495	5.4544	4.4539	4.9718	1.8181	1.4846	1.6572			
Premium 909496	5.4544	4.4539	4.9718	1.8181	1.4846	1.6572			
Premium 909497	5.4544	4.4539	4.9718	1.8181	1.4846	1.6572			
Premium 909498	5.4544	4.4539	4.9718	1.8181	1.4846	1.6572			
Premium 909499	5.4544	4.4539	4.9718	1.8181	1.4846	1.6572			
Premium 909650	5.4544	4.4539	4.9718	1.8181	1.4846	1.6572			
Premium 909651	3.6363	2.9693	3.3146	19.9984	16.3302	18.2289			
Premium 909652									
Premium 909653									
Premium 909654									
Premium 909655									
Premium 909656									
Premium 909657									
Premium 909658									
Premium 909660	5.4544	4.4539	4.9718	1.8181	1.4846	1.6572			
Premium 909661				15.4546	12.6198	14.0872			
Premium 909662				10.9091	8.9081	9.9439			
Premium 909663				6.3636	5.1963	5.8005			
Premium 909664				19.9999	16.3314	18.2303			

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Premium 909665				24.5454	20.0431	22.3736			
Premium 909666				29.0909	23.7548	26.5169			
Premium 909667				33.6364	27.4666	30.6602			
Premium 909668				38.1819	31.1783	34.8035			
Premium 909669				56.3636	46.0250	51.3765			
Premium 90977				1.8181	1.4846	1.6572			
Premium 909774				6.3636	5.1963	5.8005			
Premium 909775				6.3636	5.1963	5.8005			
Premium 909776				15.4546	12.6198	14.0872			
Premium 909777				19.9999	16.3314	18.2303			
Premium 909778				24.5454	20.0431	22.3736			
Premium 909779				56.3636	46.0250	51.3765			
Premium 90980				1.8181	1.4846	1.6572			
Premium 909805	5.4546	4.4541	4.9720	1.8181	1.4846	1.6572			
Premium 909806	5.4546	4.4541	4.9720	1.8181	1.4846	1.6572			
Premium 909807	5.4546	4.4541	4.9720	1.8181	1.4846	1.6572			
Premium 909808	5.4546	4.4541	4.9720	1.8181	1.4846	1.6572			
Premium 909809	5.4546	4.4541	4.9720	1.8181	1.4846	1.6572			
Premium 90981				6.3636	5.1963	5.8005			
Premium 909815	5.0025	4.0849	4.5599	6.3636	5.1963	5.8005			
Premium 909816	5.0025	4.0849	4.5599	6.3636	5.1963	5.8005			
Premium 909817	5.0025	4.0849	4.5599	6.3636	5.1963	5.8005			
Premium 909818	5.0025	4.0849	4.5599	6.3636	5.1963	5.8005			
Premium 909819	5.0025	4.0849	4.5599	6.3636	5.1963	5.8005			
Premium 90982				15.4546	12.6198	14.0872			
Premium 909825	4.0909	3.3405	3.7289	15.4546	12.6198	14.0872			
Premium 909826	4.0909	3.3405	3.7289	15.4546	12.6198	14.0872			
Premium 909827	4.0909	3.3405	3.7289	15.4546	12.6198	14.0872			
Premium 909828	4.0909	3.3405	3.7289	15.4546	12.6198	14.0872			
Premium 909829	4.0909	3.3405	3.7289	15.4546	12.6198	14.0872			
Premium 90983				19.9999	16.3314	18.2303			
Premium 909835	3.6363	2.9693	3.3146	19.9999	16.3314	18.2303			
Premium 909836	3.6363	2.9693	3.3146	19.9999	16.3314	18.2303			
Premium 909837	3.6363	2.9693	3.3146	19.9999	16.3314	18.2303			
Premium 909838	3.6363	2.9693	3.3146	19.9999	16.3314	18.2303			
Premium 909839	3.6363	2.9693	3.3146	19.9999	16.3314	18.2303			
Premium 90984				24.5454	20.0431	22.3736			
Premium 909845	3.1817	2.5981	2.9002	24.5454	20.0431	22.3736			
Premium 909846	3.1817	2.5981	2.9002	24.5454	20.0431	22.3736			
Premium 909847	3.1817	2.5981	2.9002	24.5454	20.0431	22.3736			
Premium 909848	3.1817	2.5981	2.9002	24.5454	20.0431	22.3736			

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Premium 909849	3.1817	2.5981	2.9002	24.5454	20.0431	22.3736			
Premium 90985				29.0909	23.7548	26.5169			
Premium 909855	2.7273	2.2270	2.4860	29.0909	23.7548	26.5169			
Premium 909856	2.7273	2.2270	2.4860	29.0909	23.7548	26.5169			
Premium 909857	2.7273	2.2270	2.4860	29.0909	23.7548	26.5169			
Premium 909858	2.7273	2.2270	2.4860	29.0909	23.7548	26.5169			
Premium 909859	2.7273	2.2270	2.4860	29.0909	23.7548	26.5169			
Premium 90986				56.3636	46.0250	51.3765			
Premium 90987				1.8181	1.4846	1.6572			
Premium 909875	5.4544	4.4539	4.9718	1.8181	1.4846	1.6572			
Premium 909876	5.4544	4.4539	4.9718	1.8181	1.4846	1.6572			
Premium 909877	5.4544	4.4539	4.9718	1.8181	1.4846	1.6572			
Premium 909878	5.4544	4.4539	4.9718	1.8181	1.4846	1.6572			
Premium 909879	5.4544	4.4539	4.9718	1.8181	1.4846	1.6572			
Premium 90988				1.8181	1.4846	1.6572			
Premium 909885	5.4544	4.4539	4.9718	1.8181	1.4846	1.6572			
Premium 909886	5.4544	4.4539	4.9718	1.8181	1.4846	1.6572			
Premium 909887	5.4544	4.4539	4.9718	1.8181	1.4846	1.6572			
Premium 909888	5.4544	4.4539	4.9718	1.8181	1.4846	1.6572			
Premium 909889	5.4544	4.4539	4.9718	1.8181	1.4846	1.6572			
Premium 90989				1.8181	1.4846	1.6572			
Premium 909895	5.4544	4.4539	4.9718	1.8181	1.4846	1.6572			
Premium 909896	5.4544	4.4539	4.9718	1.8181	1.4846	1.6572			
Premium 909897	5.4544	4.4539	4.9718	1.8181	1.4846	1.6572			
Premium 909898	5.4544	4.4539	4.9718	1.8181	1.4846	1.6572			
Premium 909899	5.4544	4.4539	4.9718	1.8181	1.4846	1.6572			
Premium 9099	5.4544	4.4539	4.9718	56.3636	46.0250	51.3765			
Premium 909900	5.4544	4.4539	4.9718	1.8181	1.4846	1.6572			
Premium 909901				6.3636	5.1963	5.8005			
Premium 909902				10.9091	8.9081	9.9439			
Premium 909903				15.4546	12.6198	14.0872			
Premium 909904				19.9999	16.3314	18.2303			
Premium 909905				24.5454	20.0431	22.3736			
Premium 909906				29.0909	23.7548	26.5169			
Premium 909907				33.6364	27.4666	30.6602			
Premium 909908				38.1819	31.1783	34.8035			
Premium 909990	5.0001	4.0829	4.5577	6.3636	5.1963	5.8005			
Premium 909991				1.8181	1.4846	1.6572			
Premium 909992				6.3636	5.1963	5.8005			
Premium 909993				10.9091	8.9081	9.9439			
Premium 909994				15.4546	12.6198	14.0872			

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Premium 909995				24.5454	20.0431	22.3736			
Premium 909996				56.3636	46.0250	51.3765			
Premium 909997	5.4544	4.4539	4.9718	1.8181	1.4846	1.6572			
Premium 909998	4.0909	3.3405	3.7289	15.4546	12.6198	14.0872			
Premium 909999	2.7273	2.2270	2.4860	29.0909	23.7548	26.5169			
Shared Cost 78	.0480	.0392	.0438	.0418	.0341	.0381			

Toll Free/Free Phone - United States							
		MRC			NRC		
		USD	GBP	EUR	USD	GBP	EUR
United States Toll Free Number	800 Number	3.00	2.45	2.73			
United States Toll Free Call Type Feature	Area Code Blocking				25.00	20.41	22.79
United States Toll Free Call Type Feature	Info Digit Blocking	10.00	8.17	9.12			
United States Toll Free Call Type Feature	Info Digit Routing	10.00	8.17	9.12			
United States Toll Free Call Type Feature	Info Digit Screening	15.00	12.25	13.67	15.00	12.25	13.67
United States Toll Free Call Type Feature	National Directory Assistance	20.00	16.33	18.23			
United States Toll Free Call Type Feature	Origin of Call Blocking	10.00	8.17	9.12			
United States Toll Free Call Type Feature	Origin of Call Routing	10.00	8.17	9.12			
United States Toll Free Call Type Feature	Payphone Surcharge (per call)				0.62	0.51	0.57
United States Toll Free Call Type Feature	Percent Allocation Routing	10.00	8.17	9.12			
United States Toll Free Call Type Feature	Time of Day Routing	10.00	8.17	9.12			
United States Toll Free Call Type Feature	Vanity Number						

Toll Free/Free Phone - United States							
Rates are per minute / 18 second minimum / 6 second rounding							
		Rate Per Minute					
		USD	GBP	EUR	USD	GBP	EUR
United States Interstate	Interstate		.0265		.0216		.0242
United States Canadian Origination	United States		.0700		.0572		.0638
United States Intrastate	Alabama		.0450		.0367		.0410
United States Intrastate	Alaska		.1200		.0980		.1094
United States Intrastate	Arizona		.0600		.0490		.0547
United States Intrastate	Arkansas		.0650		.0531		.0592
United States Intrastate	California		.0300		.0245		.0273
United States Intrastate	Colorado		.0625		.0510		.0570
United States Intrastate	Connecticut		.0350		.0286		.0319
United States Intrastate	Delaware		.0350		.0286		.0319
United States Intrastate	Florida		.0575		.0470		.0524
United States Intrastate	Georgia		.0600		.0490		.0547
United States Intrastate	Hawaii		.0925		.0755		.0843
United States Intrastate	Idaho		.0900		.0735		.0820
United States Intrastate	Illinois		.0280		.0229		.0255
United States Intrastate	Indiana		.0265		.0216		.0242
United States Intrastate	Iowa		.0800		.0653		.0729
United States Intrastate	Kansas		.0500		.0408		.0456
United States Intrastate	Kentucky		.0450		.0367		.0410
United States Intrastate	Louisiana		.0350		.0286		.0319
United States Intrastate	Maine		.0550		.0449		.0501
United States Intrastate	Maryland		.0500		.0408		.0456



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United States Intrastate	Massachusetts	.0450	.0367	.0410
United States Intrastate	Michigan	.0300	.0245	.0273
United States Intrastate	Minnesota	.0650	.0531	.0592
United States Intrastate	Mississippi	.0500	.0408	.0456
United States Intrastate	Missouri	.0675	.0551	.0615
United States Intrastate	Montana	.0960	.0784	.0875
United States Intrastate	Nebraska	.0650	.0531	.0592
United States Intrastate	Nevada	.0575	.0470	.0524
United States Intrastate	New Hampshire	.0700	.0572	.0638
United States Intrastate	New Jersey	.0400	.0327	.0365
United States Intrastate	New Mexico	.0300	.0245	.0273
United States Intrastate	New York	.0580	.0474	.0529
United States Intrastate	North Carolina	.0470	.0384	.0428
United States Intrastate	North Dakota	.1075	.0878	.0980
United States Intrastate	Ohio	.0300	.0245	.0273
United States Intrastate	Oklahoma	.0650	.0531	.0592
United States Intrastate	Oregon	.0400	.0327	.0365
United States Intrastate	Pennsylvania	.0500	.0408	.0456
United States Intrastate	Rhode Island	.0525	.0429	.0479
United States Intrastate	South Carolina	.0450	.0367	.0410
United States Intrastate	South Dakota	.1800	.1470	.1641
United States Intrastate	Tennessee	.0600	.0490	.0547
United States Intrastate	Texas	.0600	.0490	.0547
United States Intrastate	Utah	.0500	.0408	.0456
United States Intrastate	Vermont	.0645	.0527	.0588
United States Intrastate	Virginia	.0600	.0490	.0547
United States Intrastate	Washington	.0560	.0457	.0510
United States Intrastate	West Virginia	.0600	.0490	.0547
United States Intrastate	Wisconsin	.0375	.0306	.0342
United States Intrastate	Wyoming	.0500	.0408	.0456

**Toll Free/Free Phone - UK**

		MRC			NRC		
		USD	GBP	EUR	USD	GBP	EUR
UK Toll Free/ Freephone Number	Freephone Number	3.00	2.45	2.73			
UK Toll Free/ Freephone Number	Freephone Number Port Charge Per Number				3.00	2.45	2.73
UK Toll Free/Freephone Call Type Feature	Vanity Number				100.00	81.66	91.15

**Toll Free/Free Phone - UK**

Rates are per minute / 16 second minimum / 6 second rounding

		Rate Per Minute		
		USD	GBP	EUR
UK Origination	Landline Origination	.0398	.0325	.0363
UK Origination	Payphone Origination	1.1455	.9354	1.0441

**Toll Free/Free Phone - Germany**

		MRC			NRC		
		USD	GBP	EUR	USD	GBP	EUR
Germany Toll Free/ Freephone Number	Freephone Number	3.00	2.45	2.73			
Germany Toll Free/ Freephone Number	Freephone Number Port Charge Per Number				3.00	2.45	2.73



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Germany Toll Free/Freephone Call Type Feature	Vanity Number					100.00	81.66	91.15
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Toll Free/Free Phone - Germany								
Rates are per minute / 18 second minimum / 6 second rounding								
		Rate Per Minute						
		USD			GBP		EUR	
Germany Origination	Landline Origination		.0158		.0129		.0144	
Germany Origination	Mobile Origination		.2178		.1778		.1985	
Germany Origination	Payphone Origination		.4950		.4042		.4512	

Toll Free/Free Phone - France								
		USD	MRC GBP	EUR	USD	NRC GBP	EUR	
France Toll Free/ Freephone Number	Freephone Number	3.00	2.45	2.73				
France Toll Free/ Freephone Number	Freephone Number Port Charge Per Number				3.00	2.45	2.73	
France Toll Free/Freephone Call Type Feature	Vanity Number				100.00	81.66	91.15	

Toll Free/Free Phone - France								
Rates are per minute / 18 second minimum / 6 second rounding								
		Rate Per Minute						
		USD			GBP		EUR	
France Origination	Landline Origination		.0198		.0162		.0180	
France Origination	Mobile Origination		.0880		.0719		.0802	
France Origination	Payphone Origination		.2200		.1796		.2005	

Toll Free/Free Phone - Netherlands								
		USD	MRC GBP	EUR	USD	NRC GBP	EUR	
Netherlands Toll Free/ Freephone Number	Freephone Number	3.00	2.45	2.73				
Netherlands Toll Free/ Freephone Number	Freephone Number Port Charge Per Number				3.00	2.45	2.73	
Netherlands Toll Free/Freephone Call Type Feature	Vanity Number				100.00	81.66	91.15	

Toll Free/Free Phone - Netherlands								
Rates are per minute / 18 second minimum / 6 second rounding								
		Rate Per Minute						
		USD			GBP		EUR	
Netherlands Origination	Landline Origination		.0880		.0719		.0802	
Netherlands Origination	Mobile Origination		.4400		.3593		.4011	

Toll Free/Free Phone - Belgium								
		USD	MRC GBP	EUR	USD	NRC GBP	EUR	
Belgium Toll Free / Freephone Number	Freephone Number	3.00	2.45	2.73				
Belgium Toll Free / Freephone Number	Freephone Number Port Charge Per Number				3.00	2.45	2.73	
Belgium Toll Free / Freephone Call Type Feature	Vanity Number				100.00	81.66	91.15	

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Toll Free/Free Phone - Belgium						
Rates are per minute / 18 second minimum / 6 second rounding						
		Rate Per Minute				
		USD	GBP		EUR	
Belgium Origination	Landline Origination	.0334	.0273		.0304	
Belgium Origination	Mobile Origination	.6027	.4921		.5494	
Belgium Origination	Payphone Origination	.3568	.2914		.3252	

Toll Free/Free Phone - Ireland							
		USD	MRC GBP	EUR	USD	NRC GBP	EUR
Ireland Toll Free/ Freephone Number	Freephone Number	3.00	2.45	2.73			
Ireland Toll Free/ Freephone Number	Freephone Number Port Charge Per Number				3.00	2.45	2.73
Ireland Toll Free/Freephone Call Type Feature	Vanity Number				100.00	81.66	91.15

Toll Free/Free Phone - Ireland						
Rates are per minute / 18 second minimum / 6 second rounding						
		Rate Per Minute				
		USD	GBP		EUR	
Ireland Origination	Landline Origination	.0264	.0216		.0241	
Ireland Origination	Mobile Origination	.7480	.6108		.6818	
Ireland Origination	Payphone Origination	.5060	.4132		.4612	

Toll Free/Free Phone - Austria							
		USD	MRC GBP	EUR	USD	NRC GBP	EUR
Austria Toll Free/ Freephone Number	Freephone Number	3.00	2.45	2.73			
Austria Toll Free/ Freephone Number	Freephone Number Port Charge Per Number				3.00	2.45	2.73
Austria Toll Free/Freephone Call Type Feature	Vanity Number				100.00	81.66	91.15

Toll Free/Free Phone - Austria						
Rates are per minute / 18 second minimum / 6 second rounding						
		Rate Per Minute				
		USD	GBP		EUR	
Austria Origination	Landline Origination	.0626	.0511		.0571	
Austria Origination	Mobile Origination	.2323	.1897		.2117	
Austria Origination	Payphone Origination	.1320	.1078		.1203	

Toll Free/Free Phone - Portugal							
		USD	MRC GBP	EUR	USD	NRC GBP	EUR
Portugal Toll Free/ Freephone Number	Freephone Number	3.00	2.45	2.73			
Portugal Toll Free/ Freephone Number	Freephone Number Port Charge Per Number				3.00	2.45	2.73
Portugal Toll Free/Freephone Call Type Feature	Vanity Number				100.00	81.66	91.15

Toll Free/Free Phone - Portugal						
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Rates are per minute / 18 second minimum / 6 second rounding		Rate Per Minute		
		USD	GBP	EUR
Portugal Origination	Landline Origination	.0925	.0755	.0843
Portugal Origination	Mobile Origination	.0925	.0755	.0843
Portugal Origination	Payphone Origination	.0925	.0755	.0843

Toll Free/Free Phone - Spain		MRC			NRC		
		USD	GBP	EUR	USD	GBP	EUR
Spain Toll Free/ Freephone Number	Freephone Number	3.00	2.45	2.73			
Spain Toll Free/ Freephone Number	Freephone Number Port Charge Per Number				3.00	2.45	2.73
Spain Toll Free/Freephone Call Type Feature	Vanity Number				100.00	81.66	91.15

Toll Free/Free Phone - Spain		Rate Per Minute		
		USD	GBP	EUR
Spain Origination	Landline Origination	.0168	.0137	.0153
Spain Origination	Mobile Origination	.2926	.2389	.2667
Spain Origination	Payphone Origination	.1540	.1258	.1404

Toll Free/Free Phone - Switzerland		MRC			NRC		
		USD	GBP	EUR	USD	GBP	EUR
Switzerland Toll Free/ Freephone Number	Freephone Number	3.00	2.45	2.73			
Switzerland Toll Free/ Freephone Number	Freephone Number Port Charge Per Number				3.00	2.45	2.73
Switzerland Toll Free/Freephone Call Type Feature	Vanity Number				100.00	81.66	91.15

Toll Free/Free Phone - Switzerland		Rate Per Minute		
		USD	GBP	EUR
Switzerland Origination	Landline Origination	.0334	.0273	.0304
Switzerland Origination	Mobile Origination	.1836	.1499	.1674
Switzerland Origination	Payphone Origination	.4720	.3854	.4302

International			
International Outbound			
Rates are per minute / 18 second minimum / 6 second rounding			
Country	Dedicated Rate Per Minute (USD)	Dedicated Rate Per Minute (GBP)	Dedicated Rate Per Minute (EUR)
Afghanistan	.3000	.2450	.2735
Afghanistan-Mobile	.3200	.2613	.2917
Albania	.2400	.1960	.2188
Albania Tirana	.2030	.1658	.1850
Albania-Mobile	.6000	.4899	.5469

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Albania-NGN	.2400	.1960	.2188
Algeria	.1000	.0817	.0912
Algeria-Mobile	.6800	.5553	.6198
American Samoa	.0125	.0102	.0114
Andorra	.1800	.1470	.1641
Andorra-Mobile	.3500	.2858	.3190
Angola	.1000	.0817	.0912
Angola-Mobile	.2600	.2123	.2370
Anguilla	.4000	.3266	.3646
Anguilla-Mobile	.4200	.3430	.3828
Antarctica	2.6000	2.1231	2.3699
Antarctica-Norfolk Island	1.6638	1.3586	1.5166
Antigua and Barbuda	.3000	.2450	.2735
Antigua and Barbuda-Mobile	.3000	.2450	.2735
Argentina	.0330	.0269	.0301
Argentina-Buenos Aires	.0063	.0051	.0057
Argentina-Mobile	.2200	.1786	.2005
Armenia	.3800	.3103	.3464
Armenia-Mobile	.3800	.3103	.3464
Aruba	.1500	.1225	.1367
Aruba-Mobile	.3300	.2695	.3008
Ascension Island	1.7500	1.4290	1.5952
Australia	.0200	.0163	.0182
Australia-Melbourne	.0120	.0098	.0109
Australia-Mobile	.0354	.0289	.0323
Australia-Perth	.0120	.0098	.0109
Australia-Sydney	.0120	.0098	.0109
Austria	.0880	.0719	.0802
Austria-Mobile	.2000	.1633	.1823
Austria-NGN	.3494	.2853	.3185
Azerbaijan	.5000	.4083	.4558
Azerbaijan-Mobile	.4000	.3266	.3646
Bahamas	.1600	.1307	.1458
Bahamas-Mobile	.2000	.1633	.1823
Bahrain	.2200	.1786	.2005
Bahrain-Mobile	.2200	.1786	.2005
Bahrain-NGN	.2200	.1786	.2005
Bangladesh	.0600	.0490	.0547
Bangladesh-Mobile	.0600	.0490	.0547
Barbados	.2200	.1786	.2005
Barbados-Mobile	.3200	.2613	.2917
Belarus	.4500	.3675	.4102
Belarus-Mobile	.4500	.3675	.4102
Belgium	.0700	.0572	.0638
Belgium-Mobile	.2600	.2123	.2370
Belgium-Mobile Base	.0486	.0397	.0443
Belgium-Mobile Mobistar	.0486	.0397	.0443
Belgium-Mobile Proximus	.0486	.0397	.0443
Belgium-NGN	.3660	.2989	.3336
Belize	.3100	.2531	.2826
Benin	.4200	.3430	.3828

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Bermuda	.0700	.0572	.0638
Bhutan	.0750	.0612	.0684
Bhutan-Mobile	.0750	.0612	.0684
Bolivia	.2000	.1633	.1823
Bolivia-La Paz	.1324	.1081	.1207
Bolivia-Mobile	.2000	.1633	.1823
Bosnia/Herzegovina	.1997	.1631	.1820
Bosnia/Herzegovina-Mobile	.7219	.5895	.6580
Botswana	.2000	.1633	.1823
Botswana-Mobile	.2800	.2286	.2552
Brazil	.0200	.0163	.0182
Brazil-Belo Horizonte	.0120	.0098	.0109
Brazil-Brasilia	.0120	.0098	.0109
Brazil-Curitiba	.0120	.0098	.0109
Brazil-Florianapolis	.0120	.0098	.0109
Brazil-Fortaleza	.0120	.0098	.0109
Brazil-Goiania	.0120	.0098	.0109
Brazil-Governador Valadares	.0120	.0098	.0109
Brazil-Mobile	.1200	.0980	.1094
Brazil-Porto Alegre	.0120	.0098	.0109
Brazil-Recife	.0120	.0098	.0109
Brazil-Rio de Janeiro	.0120	.0098	.0109
Brazil-Salvador	.0120	.0098	.0109
Brazil-Sao Paulo	.0120	.0098	.0109
Brazil-Vitoria	.0120	.0098	.0109
British Virgin Islands	.2329	.1902	.2123
British Virgin Islands-Mobile	.2329	.1902	.2123
Brunei	.0600	.0490	.0547
Brunei-Mobile	.0600	.0490	.0547
Bulgaria	.1000	.0817	.0912
Bulgaria-Mobile	.4000	.3266	.3646
Burkina Faso	.4500	.3675	.4102
Burkina Faso-Mobile	.4500	.3675	.4102
Burundi	1.0242	.8363	.9336
Burundi-Mobile	1.0242	.8363	.9336
Cambodia	.1000	.0817	.0912
Cambodia-Mobile	.1000	.0817	.0912
Cameroon	.1810	.1478	.1650
Cameroon-Mobile	.4500	.3675	.4102
Canada	.0100	.0082	.0091
Canada-Yukon and NW Territories 867	.0566	.0462	.0516
Cape Verde Islands	.3394	.2771	.3094
Cape Verde Islands-Mobile	.4659	.3804	.4247
Cayman Islands	.2000	.1633	.1823
Cayman Islands-Mobile	.2000	.1633	.1823
Cayman Islands-NGN	.2000	.1633	.1823
Central African Republic	.6500	.5308	.5925
Chad	.8500	.6941	.7748
Chad-Mobile	.8500	.6941	.7748
Chile	.1000	.0817	.0912



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Chile-Easter Island	.7653	.6249	.6976
Chile-Mobile	.1000	.0817	.0912
Chile-NGN	.1000	.0817	.0912
Chile-Santiago	.0333	.0272	.0304
China	.0289	.0236	.0263
Colombia	.0500	.0408	.0456
Colombia-Mobile	.0500	.0408	.0456
Comoros	.6500	.5308	.5925
Comoros-Mobile	.6500	.5308	.5925
Congo	.6500	.5308	.5925
Cook Islands	1.8500	1.5107	1.6863
Costa Rica	.0400	.0327	.0365
Costa Rica-Mobile	.0900	.0735	.0820
Costa Rica-NGN	.0400	.0327	.0365
Croatia	.2200	.1796	.2005
Croatia-Mobile	.3800	.3103	.3464
Croatia-NGN	.2200	.1796	.2005
Cuba	.8500	.6941	.7748
Cyprus	.0800	.0490	.0547
Cyprus-Mobile	.1000	.0817	.0912
Cyprus-NGN	.0800	.0490	.0547
Czech Republic	.0500	.0408	.0456
Czech Republic-Mobile	.1500	.1225	.1367
Czech Republic-Prague	.0253	.0207	.0231
Dem. Rep. of Congo	.7597	.6204	.6925
Dem. Rep. of Congo-Mobile	.6899	.5634	.6289
Dem. Rep. of Congo-NGN	.7597	.6204	.6925
Denmark	.0180	.0147	.0164
Denmark-Mobile	.0500	.0408	.0456
Denmark-NGN	.0166	.0136	.0151
Diego Garcia	2.5626	2.0926	2.3359
Djibouti	.5500	.4491	.5013
Djibouti-Mobile	.5500	.4491	.5013
Dominica	.3500	.2858	.3190
Dominica-Mobile	.3500	.2858	.3190
Dominican Republic	.0500	.0408	.0456
Dominican Republic-Mobile	.1200	.0980	.1094
East Timor	.4659	.3804	.4247
Ecuador	.2000	.1633	.1823
Ecuador-Mobile	.3000	.2450	.2735
Egypt	.1500	.1225	.1367
Egypt-Mobile	.1500	.1225	.1367
El Salvador	.2800	.2286	.2552
El Salvador-Mobile	.2800	.2286	.2552
Equatorial Guinea	.7000	.5716	.6381
Eritrea	.4000	.3266	.3646
Estonia	.0450	.0367	.0410
Estonia-Mobile	.5000	.4083	.4558
Estonia-NGN	1.5714	1.2832	1.4324
Ethiopia	.3500	.2858	.3190
Ethiopia-Mobile	.3500	.2858	.3190

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Falkland Islands	1.2645	1.0326	1.1526
Faroe Islands	.0693	.0566	.0632
Fiji	.4500	.3675	.4102
Fiji-Mobile	.4500	.3675	.4102
Finland	.3900	.3185	.3555
Finland-Corporate Services	.3900	.3185	.3555
Finland-Helsinki	.3900	.3185	.3555
Finland-Mobile	.3900	.3185	.3555
Finland-NGN	.3900	.3185	.3555
France	.0200	.0163	.0182
France-Mobile	.1000	.0817	.0912
France-Mobile Orange	.1000	.0817	.0912
France-Mobile SFR	.1000	.0817	.0912
France-NGN	.3627	.2962	.3306
France-Paris	.0073	.0060	.0067
French Antilles/Martinique	.0160	.0131	.0146
French Antilles/Martinique-Mobile	.0942	.0769	.0859
French Guiana	.1500	.1225	.1367
French Guiana-Mobile	.2000	.1633	.1823
French Polynesia	.3500	.2858	.3190
French Polynesia-Mobile	.3500	.2858	.3190
Gabon	.5500	.4491	.5013
Gabon-Mobile	.5500	.4491	.5013
Gambia	.6500	.5308	.5925
Gambia-Mobile	.6500	.5308	.5925
Georgia	.3000	.2450	.2735
Georgia-Mobile	.5000	.4083	.4558
Germany	.0120	.0098	.0109
Germany-Berlin	.0104	.0085	.0095
Germany-Frankfurt	.0104	.0085	.0095
Germany-Hamburg	.0104	.0085	.0095
Germany-Mobile	.0420	.0343	.0383
Germany-Munich	.0104	.0085	.0095
Germany-NGN	.0200	.0163	.0182
Ghana	.3200	.2613	.2917
Ghana-Mobile	.3200	.2613	.2917
Gibraltar	.0700	.0572	.0638
Gibraltar-Mobile	.2500	.2041	.2279
Global Mobile	11.6967	9.5512	10.6618
Greece	.0400	.0327	.0365
Greece-Athens	.0200	.0163	.0182
Greece-Mobile	.1500	.1225	.1367
Greenland	.7500	.6124	.6836
Greenland-Mobile	.7500	.6124	.6836
Grenada	.3200	.2613	.2917
Grenada-Mobile	.3200	.2613	.2917
Guadeloupe	.0500	.0408	.0456
Guadeloupe-Mobile	.1500	.1225	.1367
Guam	.0125	.0102	.0114
Guatemala	.1800	.1470	.1641

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Guatemala-Mobile	.1800	.1470	.1641
Guinea	.7000	.5716	.6381
Guinea Bissau	.7187	.5869	.6551
Guinea Bissau-Mobile	.7187	.5869	.6551
Guinea-Mobile Areeba	.7000	.5716	.6381
Guinea-NGN	.7000	.5716	.6381
Guyana	.3500	.2858	.3190
Guyana-Mobile	.3500	.2858	.3190
Haiti	.4200	.3430	.3828
Haiti-Mobile	.3500	.2858	.3190
Haiti-NGN	.4200	.3430	.3828
Honduras	.2000	.1633	.1823
Honduras-Mobile Celltel	.2063	.1685	.1880
Hong Kong	.0275	.0225	.0251
Hong Kong-Mobile	.0275	.0225	.0251
Hungary	.0750	.0612	.0684
Hungary-Mobile	.0750	.0612	.0684
Iceland	.0300	.0245	.0273
Iceland-Mobile	.0900	.0735	.0820
India	.0150	.0122	.0137
India-Mobile	.0300	.0245	.0273
Indonesia	.0450	.0367	.0410
Indonesia-Mobile	.0600	.0490	.0547
Inmarsat	12.3156	10.0566	11.2259
Iran	.2750	.2246	.2507
Iran-Mobile	.2750	.2246	.2507
Iraq	.2500	.2041	.2279
Iraq-Mobile	.2500	.2041	.2279
Iraq-NGN	.2500	.2041	.2279
Ireland	.0150	.0122	.0137
Ireland-Mobile	.0616	.0503	.0561
Ireland-NGN	.0150	.0122	.0137
Israel	.0150	.0122	.0137
Israel-Mobile	.0450	.0367	.0410
Israel-Paltel	.2662	.2174	.2426
Israel-Paltel Mobile	.2662	.2174	.2426
Italy	.0150	.0122	.0137
Italy-Milan	.0040	.0033	.0036
Italy-Mobile	.1500	.1225	.1367
Italy-NGN	.0040	.0033	.0036
Italy-Rome	.0040	.0033	.0036
Ivory Coast	.4600	.3756	.4193
Ivory Coast-Mobile	.4600	.3756	.4193
Jamaica	.2800	.2286	.2552
Jamaica-Mobile	.2800	.2286	.2552
Japan	.0400	.0327	.0365
Japan-IP Phone	.0266	.0217	.0242
Japan-Mobile	.1000	.0817	.0912
Jordan	.3000	.2450	.2735
Jordan-Mobile	.3200	.2613	.2917
Kenya	.2800	.2286	.2552



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Kenya-Mobile	.3000	.2450	.2735
Kiribati/Gilbert Island	3.1186	2.5466	2.8427
Kuwait	.1600	.1307	.1458
Kuwait-Mobile	.1800	.1470	.1641
Kuwait-NGN	.1600	.1307	.1458
Kyrgyzstan	.2200	.1796	.2005
Kyrgyzstan-Mobile	.3000	.2450	.2735
Laos	.1600	.1307	.1458
Laos-Mobile	.1600	.1307	.1458
Latvia	.6500	.5308	.5925
Latvia-Mobile	.9000	.7349	.8204
Latvia-NGN	.6500	.5308	.5925
Lebanon	.1965	.1605	.1791
Lebanon-Mobile	.2600	.2123	.2370
Lesotho	.4695	.3834	.4280
Lesotho-Mobile	.4695	.3834	.4280
Liberia	.5200	.4246	.4740
Libya	.3975	.3246	.3623
Libya-Mobile	.5285	.4316	.4817
Liechtenstein	.0900	.0735	.0820
Liechtenstein-Mobile	1.0500	.8574	.9571
Liechtenstein-NGN	.0805	.0657	.0734
Lithuania	.2500	.2041	.2279
Lithuania-Mobile	.4975	.4062	.4535
Lithuania-NGN	1.7714	1.4465	1.6147
Luxembourg	.2150	.1756	.1960
Luxembourg-Mobile	.2650	.2164	.2416
Macau	.1572	.1284	.1433
Macedonia	.2425	.1980	.2210
Macedonia-Mobile	.5500	.4491	.5013
Madagascar	.8200	.6696	.7474
Madagascar-Mobile	.8200	.6696	.7474
Malawi	.4500	.3675	.4102
Malaysia	.0340	.0278	.0310
Malaysia-Johar Bahru	.0233	.0190	.0212
Malaysia-Kuala Lumpur	.0233	.0190	.0212
Malaysia-Mobile	.0340	.0278	.0310
Maldives	1.2000	.9799	1.0938
Maldives-Mobile	1.2000	.9799	1.0938
Mali	.3985	.3254	.3632
Mali-Mobile	.5375	.4389	.4899
Malta	.6800	.5553	.6198
Malta-Mobile	.2945	.2405	.2684
Marshall Islands	.4350	.3552	.3965
Mauritania	.8400	.6859	.7657
Mauritius	.2400	.1960	.2188
Mexico	.0120	.0098	.0109
Mexico-Guadalajara	.0020	.0016	.0018
Mexico-Mexico City	.0021	.0017	.0019
Mexico-Mobile	.0120	.0098	.0109
Mexico-Monterrey	.0020	.0016	.0018

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Mexico-Satellite	.0144	.0118	.0131
Micronesia	.8485	.6929	.7734
Moldova	.5500	.4491	.5013
Moldova-Mobile	.5500	.4491	.5013
Monaco	.1500	.1225	.1367
Monaco-Mobile	.3910	.3193	.3564
Monaco-Mobile KFOR	.5530	.4516	.5041
Mongolia	.0296	.0242	.0270
Mongolia-NGN	.0296	.0242	.0270
Montenegro	.4250	.3470	.3874
Montenegro-Mobile	.4750	.3879	.4330
Montenegro-NGN	.4250	.3470	.3874
Montserrat	.3500	.2858	.3190
Morocco	.3900	.3185	.3555
Morocco-Mobile	.5500	.4491	.5013
Morocco-NGN	.3900	.3185	.3555
Mozambique	.0900	.0735	.0820
Mozambique-Mobile	.3200	.2613	.2917
Myanmar	.2450	.2001	.2233
Namibia	.1850	.1511	.1686
Namibia-Mobile	.1850	.1511	.1686
Nauru	1.8800	1.5352	1.7137
Nepal	.1950	.1592	.1777
Nepal-Mobile	.1950	.1592	.1777
Netherland Antilles	.2090	.1707	.1905
Netherland Antilles-Mobile	.1577	.1288	.1437
Netherland Antilles-NGN	.2090	.1707	.1905
Netherland Antilles-St Maarten	.1577	.1288	.1437
Netherlands	.0800	.0653	.0729
Netherlands-Mobile	.0800	.0653	.0729
Netherlands-Mobile Orange	.0800	.0653	.0729
Netherlands-NGN	.2662	.2174	.2426
New Caledonia	.4855	.3964	.4425
New Zealand	.0250	.0204	.0228
New Zealand-Mobile	.0750	.0612	.0684
Nicaragua	.1950	.1592	.1777
Nicaragua-Mobile	.2800	.2286	.2552
Niger	.5900	.4818	.5378
Niger-Mobile	.5900	.4818	.5378
Niger-NGN	.5900	.4818	.5378
Nigeria	.1700	.1388	.1550
Nigeria-Lagos	.1298	.1060	.1183
Nigeria-Mobile	.1700	.1388	.1550
Niue	2.8500	2.3272	2.5978
North Korea	.8560	.6990	.7803
Northern Marianas	.0719	.0587	.0655
Norway	.0165	.0135	.0150
Norway-Mobile	.0300	.0245	.0273
Norway-Mobile Tele2	.0186	.0152	.0170
Norway-Mobile Telenor	.0186	.0152	.0170

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Norway-NGN	.0985	.0804	.0898
Oman	.2800	.2286	.2552
Oman-Mobile	.3700	.3021	.3373
Pakistan	.0560	.0457	.0510
Pakistan-Mobile	.0560	.0457	.0510
Pakistan-NGN	.0560	.0457	.0510
Palau	.4000	.3266	.3646
Palestinian Authority	.1997	.1631	.1820
Palestinian Authority-Mobile	.2263	.1848	.2063
Panama	.0350	.0286	.0319
Panama-Mobile	.1800	.1470	.1641
Papua New Guinea	1.4200	1.1595	1.2944
Papua New Guinea-NGN	1.4200	1.1595	1.2944
Paraguay	.0700	.0572	.0638
Paraguay-Mobile	.1000	.0817	.0912
Peru	.0200	.0163	.0182
Peru-Lima	.0075	.0061	.0068
Peru-Lima-Mobile	.0075	.0061	.0068
Peru-Mobile	.0200	.0163	.0182
Peru-Rural	.2656	.2169	.2421
Philippines	.1525	.1245	.1390
Philippines-Mobile	.1525	.1245	.1390
Poland	.1540	.1258	.1404
Poland-Mobile	.1540	.1258	.1404
Poland-Mobile P4	.1540	.1258	.1404
Poland-NGN	.1540	.1258	.1404
Portugal	.0320	.0261	.0292
Portugal-Mobile	.1540	.1258	.1404
Principe and Sao Tome	2.5460	2.0790	2.3207
Qatar	.3000	.2450	.2735
Qatar-Mobile	.3000	.2450	.2735
Reunion Island	.1318	.1076	.1201
Reunion Island-Mobile	.1318	.1076	.1201
Romania	.0120	.0098	.0109
Romania-Mobile	.0300	.0245	.0273
Russia	.1200	.0990	.1094
Russia-Kazakhstan Mobile	.1753	.1431	.1598
Russia-Kazakhstan NGN	.1753	.1431	.1598
Russia-Mobile	.2500	.2041	.2279
Russia-Moscow	.0248	.0203	.0226
Rwanda	.4240	.3462	.3865
Rwanda-Mobile	.4240	.3462	.3865
San Marino	.2500	.2041	.2279
San Marino-Mobile	.2500	.2041	.2279
Satellite Network	11.6967	9.5512	10.6618
Saudi Arabia	.1265	.1033	.1153
Saudi Arabia-Mobile	.2150	.1756	.1960
Saudi Arabia-Riyadh	.1032	.0843	.0941
Senegal	.4515	.3687	.4116
Senegal-Mobile	.4515	.3687	.4116
Senegal-NGN	.4905	.4005	.4471

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Serbia	.4500	.3675	.4102
Serbia-Kosovo	.3893	.3179	.3549
Serbia-Mobile	.4500	.3675	.4102
Seychelles Island	1.1979	.9782	1.0919
Sierra Leone	.6900	.5634	.6289
Sierra Leone-Mobile	.6900	.5634	.6289
Singapore	.0230	.0188	.0210
Singapore-Mobile	.0230	.0188	.0210
Sint Maarten	.1600	.1307	.1458
Slovakia	.0120	.0098	.0109
Slovakia-Mobile	.0575	.0470	.0524
Slovenia	.2335	.1907	.2128
Slovenia-Mobile	.5200	.4246	.4740
Slovenia-Mobile Mobitel	.5590	.4565	.5095
Slovenia-Mobile Simobil	.5590	.4565	.5095
Slovenia-Mobile Vega	.5590	.4565	.5095
Solomon Islands	1.5000	1.2249	1.3673
Somalia	.6950	.5675	.6335
South Africa	.2150	.1756	.1960
South Africa-Mobile	.2150	.1756	.1960
South Africa-NGN	.2150	.1756	.1960
South Korea	.0200	.0163	.0182
South Korea-Mobile	.0310	.0253	.0283
South Sudan	.7000	.5716	.6381
Spain	.0150	.0122	.0137
Spain-Mobile	.0700	.0572	.0638
Spain-Mobile Orange	.0339	.0277	.0309
Spain-Mobile Telefonica	.0339	.0277	.0309
Spain-Mobile Vodafone	.0339	.0277	.0309
Spain-NGN	.1800	.1470	.1641
Sri Lanka	.2200	.1796	.2005
Sri Lanka-Mobile	.2200	.1796	.2005
St. Helena	2.6347	2.1514	2.4016
St. Kitts/Nevis	.2502	.2043	.2281
St. Kitts/Nevis-Mobile	.2502	.2043	.2281
St. Lucia	.2800	.2286	.2552
St. Lucia-Mobile	.2800	.2286	.2552
St. Pierre and Miquelon	.2959	.2416	.2697
St. Vincent/Grenadines	.2030	.1658	.1850
St. Vincent/Grenadines-Mobile	.2642	.2157	.2408
Sudan	.2900	.2368	.2643
Sudan-Mobile	.2900	.2368	.2643
Suriname	.3150	.2572	.2871
Suriname-Mobile	.3350	.2736	.3054
Swaziland	.2500	.2041	.2279
Swaziland-Mobile	.2500	.2041	.2279
Sweden	.0200	.0163	.0182
Sweden-Mobile	.0200	.0163	.0182
Sweden-Mobile Telia	.0200	.0163	.0182
Sweden-NGN	.0153	.0125	.0139

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Switzerland	.0200	.0163	.0182
Switzerland-Mobile	.3600	.2940	.3281
Switzerland-Mobile Swisscom	.1005	.0821	.0916
Switzerland-NGN	.0200	.0163	.0182
Switzerland-Zurich	.0160	.0131	.0146
Syria	.2650	.2164	.2416
Syria-Mobile	.3000	.2450	.2735
Taiwan	.0200	.0163	.0182
Taiwan-Mobile	.1200	.0980	.1094
Tajikistan	.1800	.1470	.1641
Tanzania	.4292	.3505	.3912
Tanzania-Mobile	.4292	.3505	.3912
Thailand	.0515	.0421	.0469
Thailand-Mobile	.0515	.0421	.0469
Togo	.4200	.3430	.3828
Togo-Mobile	.4200	.3430	.3828
Tokelau	1.9300	1.5760	1.7592
Tonga	1.2500	1.0207	1.1394
Trinidad and Tobago	.1975	.1613	.1800
Trinidad and Tobago-Mobile	.1975	.1613	.1800
Tunisia	.9438	.7707	.8603
Tunisia-Mobile	.9438	.7707	.8603
Turkey	.0505	.0412	.0460
Turkey-Istanbul	.0433	.0354	.0395
Turkey-Mobile	.2185	.1784	.1992
Turkey-Mobile Turkcell	.2247	.1835	.2048
Turkey-Mobile Vodafone	.2247	.1835	.2048
Turkey-North Cyprus	.0433	.0354	.0395
Turkey-North Cyprus Mobile	.2247	.1835	.2048
Turkmenistan	.1925	.1572	.1755
Turks and Caicos	.2478	.2023	.2259
Turks and Caicos-Mobile	.2478	.2023	.2259
Tuvalu	2.1175	1.7291	1.9301
Uganda	.3872	.3162	.3529
Uganda-Mobile	.3872	.3162	.3529
UK	.0067	.0055	.0061
UK-Freephone	.0067	.0055	.0061
UK-London	.0036	.0029	.0033
UK-Mobile	.2662	.2174	.2426
UK-Mobile H3G	.0133	.0109	.0121
UK-Mobile O2	.0133	.0109	.0121
UK-Mobile Orange	.0133	.0109	.0121
UK-Mobile T-Mobile	.0133	.0109	.0121
UK-Mobile Vodafone	.0133	.0109	.0121
UK-NGN	.2662	.2174	.2426
UK-NGN 84	.2396	.1957	.2184
UK-NGN 845	.1351	.1103	.1231
UK-NGN 870	.2396	.1957	.2184
UK-VoIP and Multimedia	.0300	.0245	.0273
UK-Wide	.0314	.0256	.0286

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Ukraine	.2950	.2409	.2689
Ukraine-Mobile	.2950	.2409	.2689
United Arab Emirates	.2400	.1960	.2188
United Arab Emirates-Dubai	.2595	.2119	.2365
United Arab Emirates-Mobile	.2400	.1960	.2188
Uruguay	.0800	.0653	.0729
Uruguay-Mobile	.2100	.1715	.1914
US Virgin Islands	.0125	.0102	.0114
USA	.0125	.0102	.0114
USA-Alaska	.0125	.0102	.0114
USA-Hawaii	.0125	.0102	.0114
USA-Puerto Rico	.0125	.0102	.0114
Uzbekistan	.1162	.0949	.1059
Uzbekistan-Mobile	.1162	.0949	.1059
Vanuatu	1.8150	1.4821	1.6544
Vatican City	.0225	.0184	.0205
Venezuela	.0250	.0204	.0226
Venezuela-Caracas	.0212	.0173	.0193
Venezuela-Maracaibo	.0212	.0173	.0193
Venezuela-Mobile	.1445	.1180	.1317
Venezuela-Valencia	.0212	.0173	.0193
Vietnam	.0850	.0694	.0775
Vietnam-Mobile	.0850	.0694	.0775
Wallis and Futuna Islands	1.7692	1.4447	1.6127
Western Samoa	2.2500	1.8373	2.0509
Yemen	.2065	.1686	.1882
Yemen-Mobile	.2065	.1686	.1882
Zambia	.4375	.3573	.3988
Zambia-Mobile	.4840	.3952	.4412
Zimbabwe	.1375	.1123	.1253
Zimbabwe-Mobile	.4800	.3920	.4375

**Terms and Conditions Governing This Order**

1. "Lumen" is defined for purposes of this Order as CenturyLink Communications, LLC d/b/a Lumen Technologies Group and its affiliated entities providing Services under this Order. This confidential Order may not be disclosed to third parties and is non-binding until accepted by Lumen, as set forth in section 4. Customer places this Order by signing (including electronically or digitally) or otherwise acknowledging (in a manner acceptable to Lumen) this document and returning it to Lumen. Pricing is valid for 90 calendar days from the date indicated unless otherwise specified.
2. Prior to installation, Lumen may notify Customer in writing (including by e-mail) of price increases due to off-net vendors. Customer has 2 business days following notice to terminate this Order without liability; or otherwise, Customer is deemed to accept the increase.
3. If a generic demarcation point (such as a street address) is provided, the demarcation point for on-net services will be Lumen's Minimum Point of Entry (MPOE) at such location (as determined by Lumen). Off-net demarcation points will be the off-net vendor's MPOE. If this Order identifies aspects of services that are procured by Customer directly from third parties, Lumen is not liable for such services.
4. The Service identified in this Order is subject to the Lumen or CenturyLink Master Service Agreement(s) and applicable Service Schedule(s) between CenturyLink Communications, LLC d/b/a Lumen Technologies Group and Customer (or its affiliate if expressly provided for under such affiliate Master Service Agreement). If Customer has not executed a Lumen or CenturyLink Master Service Agreement with CenturyLink Communications, LLC d/b/a Lumen Technologies Group but has executed a services agreement for applicable services with an affiliate of Lumen ("Affiliate Agreement"), then the terms of the most recent Affiliate Agreement will apply to the Service (to the extent not inconsistent with this Order); in such cases, the current standard Service Schedule applicable to the Services will apply. If Lumen and Customer have not executed a Lumen or CenturyLink Master

Service Agreement and/or applicable Service Schedule(s) governing the Service and have not executed an Affiliate Agreement, Lumen's current standard Master Service Agreement/Service Schedule(s) will govern, a copy of which are available upon request. The Lumen entity providing Services is identified on the invoice. Notwithstanding anything in any Affiliate Agreement to the contrary, Lumen will notify Customer of acceptance of requested Service in this Order by delivering (in writing or electronically) the date by which Lumen will install Service (the "Customer Commit Date"), by delivering the Service, or by the manner described in a Service Schedule. Lumen will deliver a written or electronic notice that the Service is installed (a "Connection Notice"), at which time billing will commence. At the expiration of the Service Term, Service will continue month-to-month, and rates are subject to change upon 30 days' notice from Lumen. If the Affiliate Agreement governs and does not include early termination charges and if Customer cancels or terminates Service for any reason other than Lumen's uncured default or if Lumen terminates due to Customer's uncured default, then Customer will pay Lumen's standard early termination liability charges as identified in the Ancillary Fee Schedule at: [www.lumen.com/ancillary-fees](http://www.lumen.com/ancillary-fees). "Affiliate Agreement" for CenturyLink Communications, LLC d/b/a Lumen Technologies Group or any companies that were affiliates of CenturyLink Communications, LLC before the merger with Level 3 Communications ("Merger") means only an applicable Interexchange Carrier (IXC) network agreement, e.g. CenturyLink Total Advantage Agreement, CenturyLink Total Advantage Express Agreement, or CenturyLink Wholesale Services Agreement (each, an Affiliate Agreement). Affiliate Agreement also includes an Agreement between Customer and any entity that was an affiliate of Level 3 Communications before the Merger.

5. Neither party will be liable for any damages for lost profits, lost revenues, loss of goodwill, loss of anticipated savings, loss of data or cost of purchasing replacement service, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out of the performance or failure to perform under this Order. Customer's sole remedies for any nonperformance, outages, failures to deliver or defects in Service are contained in the service levels applicable to the affected Service.

6. All transport services ordered from Lumen will be treated as interstate for regulatory purposes. Customer may certify transport service as being intrastate (for regulatory purposes only) in a format as required by Lumen, but only where the transport services are sold on a stand-alone basis, the end points for the service are located in the same state and neither end point is a Lumen provided IP port ("Intrastate Services"). Where Customer requests that services be designated as Intrastate Services, Customer certifies to Lumen that not more than 10% of Customer's traffic utilizing the Intrastate Services will be originated or terminated outside of the state in which the Intrastate Services are provided. Such election will apply prospectively only and will apply to all Intrastate Services stated in this Order.

7. Charges for certain Services are subject to (a) a monthly property tax surcharge and (b) a monthly cost recovery fee per month to reimburse Lumen for various governmental taxes and surcharges. Such charges are subject to change by Lumen and will be applied regardless of whether Customer has delivered a valid tax exemption certificate. For additional details on taxes and surcharges that are assessed, visit [www.lumen.com/taxes](http://www.lumen.com/taxes).

8. Customer will pay Lumen's standard: (a) expedite charges (added to the NRC) if Customer requests a delivery date inside Lumen's standard interval duration (available upon request or in Control Center at <https://www.centurylink.com/business/login/>), and (b) ancillary charges for additional activities, features or options as set forth in the Ancillary Fee Schedule, available at [www.lumen.com/ancillary-fees](http://www.lumen.com/ancillary-fees). If Lumen cannot complete installation due to Customer delay or inaction, Lumen may begin charging Customer and Customer will pay such charges.

9. Equipment provided by Lumen to be located in Customer's premises ("CPE") is subject to the terms of the Customer Premise Equipment Addendum, a copy of which is available upon request. For colocation, data center and/or hosting services, pre-arranged escorted access may be required at certain locations, and cross connect services are subject to whether facilities are available at the particular location to complete the connection.

10. For Internet Services provided in certain countries in the Asia-Pacific region where Lumen does not currently hold a license to provide such Services, Customer consents to Lumen providing Service by procuring services of third-party carriers as Customer's agent, and Customer appoints Lumen as its agent to the extent necessary to obtain such Service. Lumen's affiliate is licensed in Hong Kong, Japan, Singapore and Australia.

#### 911 ACKNOWLEDGEMENT

BY SIGNING THIS ORDER, I ACKNOWLEDGE THAT I HAVE READ AND UNDERSTAND THE "ACCESS TO EMERGENCY RESPONSE SERVICES" SECTION CONTAINED IN THE APPLICABLE SERVICE EXHIBIT/SERVICE SCHEDULE ATTACHED TO THE LUMEN OR CENTURYLINK MASTER SERVICE AGREEMENT OR, THE "911 EMERGENCY SERVICE" SECTION OR "EMERGENCY CALLING CAPABILITY" SECTION CONTAINED IN THE APPLICABLE SERVICE EXHIBIT/SERVICE SCHEDULE ATTACHED TO AN AFFILIATE AGREEMENT, OR IN THE "ACCESS TO EMERGENCY RESPONSE SERVICES" SECTION OF THE TERMS AND CONDITIONS IN THE APPLICABLE STANDARD SERVICE EXHIBIT/SERVICE SCHEDULE IF I HAVE NOT EXECUTED A LUMEN OR CENTURYLINK MASTER SERVICE AGREEMENT OR AN AFFILIATE AGREEMENT WITH AN APPLICABLE SERVICE EXHIBIT/SERVICE SCHEDULE. I FURTHER ACKNOWLEDGE THAT I HAVE READ AND UNDERSTAND THE DISCLOSURE OF LIMITATIONS SET FORTH IN THE EMERGENCY SERVICES ADVISORY AVAILABLE AT <http://www.centurylink.com/legal/HV/QSIP/911advisory.pdf>.

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**Declarations and Signatures**

By signing below, the Customer agrees that the above rates shall apply to the applicable Services and are hereby incorporated into the Customer's Agreement with Lumen.

<b>Customer</b>
Signature:
Name:
Title:
Date:



**VOICE QUANTITY ORDER FORM**

Customer Name: Whatcom County

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Please use this form to provide the details for your CenturyLink Voice Complete® services. The Voice Solutions Center will confirm order details prior to submitting your order to make sure that everything is accurate. This information is needed to properly submit CenturyLink Voice Complete orders to our provisioning team and help ensure a successful installation of your services. Please use page 2 of this form if you have multiple locations.

Requested Due Date: 2 / 16 / 2021

DESTINATIONS BY PLAN (higher plans include all destinations in lower plans)

Plans	CCP Plan 1	CCP Plan 2	CCP Plan 3	CCP Plan 4	CCP Plan 5	Measured
<b>Supported Calling Areas</b>	<b>United States-Local</b>	<b>France-Local and National</b> <b>United Kingdom-Local and National</b> <b>United States-National</b>	<b>Germany-Local and National</b>	<b>Netherlands-Local and National</b>	<b>Belgium-Local and National</b> <b>United Kingdom-3 Mobile O2 EE (Orange, T-Mobile)</b> <b>United Kingdom-Vodafone</b>	<b>(Each call is rated according to the customer rate sheet)</b>

Please use the above table to determine the type of CCP Plan needed for your solution

Plans	CCP Plan 1	CCP Plan 2	CCP Plan 3	CCP Plan 4	CCP Plan 5	Measured
<b>Quantity of CCPs Requested</b>	115					

Quantity of new CenturyLink toll free numbers Please indicate the number per country below

**Please Note:** When requesting new CenturyLink toll free numbers please provide the ring-to numbers and areas of service on return email or attach a spreadsheet.

Country	Belgium	France	Germany	Netherlands	United Kingdom	United States
# Toll Free/ Free Phone Numbers						
	Ireland	Portugal	Spain	Austria	Switzerland	

**Pre-Paid Minutes?** None 10K  50K  100K 250K 500K 750K 1 Million Custom PPM

Plans	PPM Plan 1	PPM Plan 2	PPM Plan 3	PPM Plan 4	PPM Plan 5
Pre-Paid Minutes Plan					

**Notice:** The Voice Solutions Center representative working your orders will send you country-specific LOA(s) to process port requests based on the details provided in this form.



**Please note:** Requests for specific TNs/TN ranges may be limited to Level 3's current availability.

**VOICE QUANTITY ORDER FORM - Additional Necessary Details**

**Caller Name (CNAM - 15-character limit, spaces included):**

**DEMARC Detail for Access (PRI or DIA orders ONLY):**

If one directory listing, please fill out the lines below.

If multiple directory listings please attach an additional spreadsheet detailing the listings.

**Directory Listing**

**Business Name:**

**Listed Address:**

**Listed Number:**

**Emergency Calling Type:**  Standard(Default)  Lync 911

911, 999, 112, etc.

**Account Codes (All Outbound Calls)?**  No  Yes  Verified  Unverified

**Mobility Feature Pack required?**  No  Yes

**If yes, please note numbers below.** If all numbers require the Mobility Feature, please mark the check box to the right.

**TNs Requiring Mobility**

1		
2		
3		
4		
5		
6		
7		
8		

**VOICE QUANTITY ORDER FORM – Additional Necessary Details****Contacts:** **Same person for all contacts?** Check for yes. 

Primary Contact:	<i>Perry Rice</i>	Phone # ( ) -	<i>360-778-5235</i>	Email:	<i>price@co.whatcom.wa.us</i>
Technical Name:	<i>Denise Toth Banyan</i>	Phone # ( ) -	<i>360-778-5255</i>	Email:	<i>DTothBanyan@</i> "
Billing Name:	<i>Tami Gce-Hardy</i>	Phone # ( ) -	<i>360-778-5236</i>	Email:	<i>IT_Purchases@</i> "
Local Name:	<i>Chris Wilson</i>	Phone # ( ) -	<i>360-</i>	Email:	<i>CWilson@</i> "

The person signing this form represents that they have authority to bind the customer identified below to the plans, quantities and other details set forth herein. This form is subject to the customer's rate sheet and customer's agreement as referenced therein.

**Signature Field:** **Printed Name and Title:** **Customer:** **Date:**

**CenturyLink SIP Trunking Interconnect:**

1. CenturyLink will only send E. 164 formatted number in INVITEs sent to your equipment. Ex: +13035551212
2. Your equipment must send 10, 11 or E. 164 formatted digits to Level 3. Seven digit dial plans are unsupported.
3. CenturyLink requires that your equipment be provisioned to always use the RTP IP Address provided in the SDP messages for each call. NATs are unsupported.
4. CenturyLink uses the IP Port range 5000-28998 for RTP (even numbers) and RTCP (odd numbers) when using public access and 6000-38000 when using VPN access. If you use a firewall, you will need to allow these ranges as appropriate. Non-SIP aware NATs are unsupported.
5. CenturyLink will always send RTP to the address indicated in SDP we receive. RFC 1918 private IPs are only supported when using VPN transport. NATs are unsupported.
6. Private IPs in SIP headers are only supported with IP-VPN transport.
7. CenturyLink recommends a Diversion Header on all forwarded calls that includes the original called number in compliance with rfc5806. Various problems may occur if Diversion is not included when forwarding calls.
8. The SIP REFER method is unsupported.
9. CenturyLink does not send SIP OPTIONS. If SIP OPTIONS are sent to Level 3, we will respond with a 405 Method Not Allowed.
10. Registration is unsupported.
11. Digest authentication is unsupported.
12. A maximum of six sockets are supported with SIP/TCP. Socket reuse is required.

## CenturyLink PRI Trunking Interconnect:

13. Each PRI will be built with 23 B-channels and one D-channel in the U.S. or 30 B-channels and one D-channel in EMEA. Fractional T1/E1 is unsupported.
14. Only FAS is supported (Facility Associated Signaling — channel 24 on each T1 and channel 16 on each E1 is the D-channel). NFAS is unsupported (D-channel shared by multiple T1/E1s).
15. CenturyLink recommends a Redirecting Number Information Element be included on all forwarded calls that includes the original called number. If any of your devices cannot comply, please notify your sales engineer or account representative immediately.
16. CenturyLink recommends a Calling Number Information Element be included on all calls so called party receives Caller ID. Default Calling Number is unsupported.

**You will receive a CPE Provisioning Datasheet from your customer care manager containing technical details such as the CenturyLink IP addresses you will need to configure for SIP Trunking. If you have not received it by the time your activation is scheduled, please contact your customer care manager.**

### **Please note:**

**Notice:** The Voice Solutions Center representative working your orders will send you country-specific LOA(s) to process port requests based on the details provided in this form.

**Notice:** Requests for specific TNs/TN ranges may be limited to Level 3's current availability.





**The Standard Letter of Agency Document**

A Letter of Agency (LOA) must be completed by the end-user and supplied to CenturyLink upon request. The LOA must contain the name and current service address of the end-user and the numbers that will be ported to CenturyLink from the end-user's current carrier. The LOA used must comply with FCC regulations and must be dated and signed by the end-user or a person who has the authority to act as a legal agent.

**Dear Customer,**

Thank you for choosing CenturyLink Communications, LLC, ("CenturyLink") as your network carrier. As you are aware, you may continue to use your existing telephone number with CenturyLink. In order to transition your current telephone number to the CenturyLink network, CenturyLink must work with your previous service provider to ensure that your service is uninterrupted, and where applicable, to ensure that your number is transferred.

Your prior service provider requires this letter as proof that you have explicitly authorized and requested that your service and current telephone number be transferred to another service provider. By filling in all the information requested below and signing and dating this letter, you provide us with the authorization to initiate the process of transferring your service and telephone number to CenturyLink. You will then be able to use your old number with the CenturyLink network.

Please ensure the following information is completed accurately to prevent possible delays.

**End-User Name (Business or Residential):** Whatcom County

Person authorized to make this request if a business: Perry Rice

Service Street Address: 311 Grand Avenue Suite or Apartment No: 305

City: Bellingham State: WA ZIP Code: 98225

Current Service Provider: CenturyLink

*\*Note that all Telephone Numbers listed below must be associated with this Name.*

<u>Beginning Range TN</u>	<u>End Range TN</u>	<u>Billing (main acct) TN for porting TNs</u>
1 See Attached List		
2		
3		
4		
5		
6		

PLEASE REMOVE ANY FEATURES (i.e., Hunt Group) ASSOCIATED WITH THESE NUMBERS PRIOR TO SUBMITTING THIS LOA. ADDITIONALLY, PLEASE DO NOT PLACE ANY NEW SERVICE ORDERS OR DISCONNECTS WITH YOUR CURRENT SERVICE PROVIDER ON THIS ACCOUNT, AS THIS WILL CAUSE A DELAY IN PORTING YOUR NUMBERS.

If you wish to select CenturyLink as your new service provider for the telephone number listed on this form, you will need to sign your initials on the THREE (3) lines below, as applicable:

- I select \_\_\_\_\_ (initials) CenturyLink as the network carrier for all local calls for this number.
- I select \_\_\_\_\_ (initials) CenturyLink as the network carrier for all intrastate toll calls for this number.
- I select \_\_\_\_\_ (initials) CenturyLink as the network carrier for all interstate toll and international calls for this number.

If you want to receive service on the CenturyLink network, you will need to select CenturyLink in ALL THREE (3) spaces above. You may not have more than one carrier for each TYPE of service above.

By signing below, I designate CenturyLink to transfer my service from my current provider to CenturyLink. By signing below, I also authorize CenturyLink to transfer my current telephone number used to provide service so that CenturyLink may provide its network service to me. By signing below, I also authorize CenturyLink to obtain billing information, customer service records, and other information required to provide me with service on the CenturyLink network. I understand that I may consult with CenturyLink as to whether a fee will apply to the change.

Printed End-User Name: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_



**Whatcom County DID List as of 12/02/2020**

**TOTAL = 2139**

**Range 360-778-5000 to 360-778-6999**

**PLUS**

3603808115	3606766775	3607157456	3607382519
3606761180	3606766776	3607157457	3607382520
3606764593	3606766777	3607157459	3607382521
3606766556	3606766778	3607157460	3607382524
3606766557	3606766779	3607157461	3607382525
3606766558	3606766780	3607157462	3607382531
3606766650	3606766783	3607157463	3607382532
3606766652	3606766784	3607157464	3607384552
3606766670	3606766789	3607157466	3607384553
3606766690	3606766790	3607157467	3607384556
3606766692	3606766793	3607157470	3607384557
3606766693	3606766794	3607157474	3607384560
3606766694	3606766802	3607157477	3607384561
3606766700	3606766803	3607157478	
3606766708	3606766833	3607157490	
3606766715	3606766848	3607331442	
3606766717	3606766863	3607331587	
3606766722	3606766874	3607332900	
3606766724	3606766876	3607333209	
3606766725	3606766879	3607333547	
3606766730	3606766886	3607333740	
3606766734	3606766895	3607382452	
3606766736	3606766907	3607382453	
3606766737	3606766909	3607382457	
3606766739	3606766934	3607382458	
3606766740	3606766940	3607382459	
3606766741	3606766952	3607382466	
3606766742	3606767634	3607382468	
3606766743	3606767646	3607382469	
3606766745	3606767647	3607382472	
3606766746	3606767684	3607382475	
3606766747	3606767685	3607382477	
3606766748	3606767688	3607382480	
3606766754	3606767694	3607382481	
3606766759	3606767695	3607382494	
3606766762	3606767727	3607382502	
3606766764	3606767728	3607382503	
3606766770	3606769311	3607382507	
3606766771	3607157450	3607382508	
3606766772	3607157451	3607382512	
3606766773	3607157453	3607382515	
3606766774	3607157454	3607382517	



# Whatcom County

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

## Agenda Bill Master Report

File Number: **AB2020-589**

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<b>File ID:</b>	AB2020-589	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	12/01/2020	<b>Entered by:</b>	THelms@co.whatcom.wa.us		
<b>Department:</b>	County Executive's Office	<b>File Type:</b>	Contract		
<b>Assigned to:</b>	Council Finance and Administrative Services Committee			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Bellingham Fire Department to increase the reimbursement for costs associated with the support of two Community Paramedics in the amount of \$383,494 for a total amended amount of \$704,549

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

See attached

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** memo, Routing form, Contract



# MEMORANDUM

**To:** Whatcom County Council Members  
**From:** Mike Hilley, EMS Manager  
**Subject:** Community Paramedic Interlocal  
**Date:** November 30, 2020

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## **Requested Action:**

We are asking the Council to approve an amendment to an interlocal agreement between Whatcom County and Bellingham Fire Department (BFD) for the purposes of expanding the successful BFD Community Paramedic Program by covering the expenses for the Community Paramedic Program facilitated through two Community Paramedics.

## **Background and Purpose:**

Community Health programs are evolving with associated outreach programs that include the Ground Response and Coordinated Engagement (GRACE) team. The Bellingham Fire Department has operationalized a Community Paramedic/Health program over the last six years citing a significant reduction of the overuse of 911 by those enrolled in the program. The Bellingham model has expanded into the county with additional Community Paramedics and Sheriff's Deputies supported by case workers from the GRACE Team which includes four case management specialists, a community health worker (CHW), a part-time Nurse Practitioner (ARNP), Program Manager and Administrative Assistants.

The goal of the program is to direct patients to the right care at the right time in an effort to reduce frequent use of the 911 system for both EMS and Law Enforcement. In March, 2020 BFD requested and gained approval from the EMS Oversight Board to fund both Community Paramedics beginning in 2021. The BFD Community Paramedic commitment is programmed through the life of the current levy as outline in the interlocal agreement.

## **Funding Amount and Source:**

The EMS Levy Fund as budgeted through 2021-2022 biennial budget.

**WHATCOM COUNTY CONTRACT  
INFORMATION SHEET**

Whatcom County Contract No.  
201907039-1

Originating Department:	Executive Office
Division/Program: <i>(i.e. Dept. Division and Program)</i>	EMS Administration
Contract or Grant Administrator:	M. Hilley, EMS Manager
Contractor's / Agency Name:	City of Bellingham/Fire Department
<p>Is this a New Contract?    If not, is this an Amendment or Renewal to an Existing Contract?    Yes <input checked="" type="checkbox"/>    No <input type="checkbox"/></p> <p>Yes <input type="checkbox"/>    No <input checked="" type="checkbox"/>    If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____</p> <p>Does contract require Council Approval?    Yes <input type="checkbox"/>    No <input type="checkbox"/>    If No, include WCC: _____</p> <p>Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)</p> <p>Is this a grant agreement?    Yes <input type="checkbox"/>    No <input checked="" type="checkbox"/>    If yes, grantor agency contract number(s): _____ CFDA#: _____</p> <p>Is this contract grant funded?    Yes <input type="checkbox"/>    No <input checked="" type="checkbox"/>    If yes, Whatcom County grant contract number(s): _____</p> <p>Is this contract the result of a RFP or Bid process?    Contract _____ Yes <input type="checkbox"/>    No <input checked="" type="checkbox"/>    If yes, RFP and Bid number(s): _____ Cost Center: <u>130115</u></p> <p>Is this agreement excluded from E-Verify?    No <input type="checkbox"/>    Yes <input type="checkbox"/>    If no, include Attachment D Contractor Declaration form.</p> <p>If YES, indicate exclusion(s) below:</p> <p><input type="checkbox"/> Professional services agreement for certified/licensed professional.</p> <p><input type="checkbox"/> Contract work is for less than \$100,000.    <input type="checkbox"/> Contract for Commercial off the shelf items (COTS).</p> <p><input type="checkbox"/> Contract work is for less than 120 days.    <input type="checkbox"/> Work related subcontract less than \$25,000.</p> <p><input checked="" type="checkbox"/> Interlocal Agreement (between Governments).    <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.</p>	
<p>Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>321,055</u></p> <p>This Amendment Amount: \$ <u>383,494.</u></p> <p>Total Amended Amount: \$ <u>704,549</u></p>	<p>Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b>, and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b></p> <ol style="list-style-type: none"> <li>1. Exercising an option contained in a contract previously approved by the council.</li> <li>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.</li> <li>3. Bid or award is for supplies.</li> <li>4. Equipment is included in Exhibit "B" of the Budget Ordinance</li> <li>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.</li> </ol>
<p>Summary of Scope: The purposes of this agreement is to provide for the cost reimbursement for two Community Paramedics (CPMs) that shall provide mobile integrated health services inclusive of all EMS/Fire Districts within Whatcom County.</p>	
Term of Contract:	Expiration Date:    January 1, 2023

Contract Routing:	1. Prepared by: <u>M. Hilley</u>	Date: <u>11/30/2020</u>
	2. Attorney signoff: <u>C. Quinn</u>	Date: <u>12/1/2020</u>
	3. AS Finance reviewed: <u>BBennett</u>	Date: <u>12/1/2020</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: _____

Amendment No. 1  
Whatcom County Interlocal Agreement No. 201907039  
CONTRACT BETWEEN WHATCOM COUNTY AND  
**City of Bellingham**

THIS AMENDMENT is to the Interlocal Agreement between Whatcom County and City of Bellingham, dated August 8, 2019 and designated "Whatcom County Contract No. 201907039". In consideration of the mutual benefits to be derived, the parties agree to the following:

This Amendment increases the maximum consideration by \$ 383,494 to a total consideration of \$ 704,549 as outlined in THE REVISED Exhibit A, Budget attached.

Unless specifically amended by this agreement, all other terms and conditions of the original contract shall remain in full force and effect.

This Amendment takes effect: January 1, 2021, regardless of the date of signature.

IN WITNESS WHEREOF, Whatcom County and City of Bellingham have executed this Amendment on the date and year below written.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2020, for CITY OF BELLINGHAM.

\_\_\_\_\_  
Seth Fleetwood, Mayor

**Attest:**

\_\_\_\_\_  
Andy Asbjornsen, Finance Director

**Departmental Approval:**

\_\_\_\_\_  
Bill Hewett, Department Head

**Approved as to form:**

\_\_\_\_\_  
Peter Ruffatto, City Attorney

**Approved as to form:**

C. Quinn per email 12/1/2020  
Prosecuting Attorney

**Approved:**  
Accepted for Whatcom County:

By: \_\_\_\_\_  
Satpal Singh Sidhu, Whatcom County Executive

:

**EXHIBIT 'A'**  
**BUDGET**

The Contract number shall be included on all billings or correspondence. The maximum consideration for this contract is \$192,350 for year one beginning January 1, 2021 and \$197,194 for year two (2022). For a total amended amount of \$704,549.

Allowable expenses include reimbursement for items listed below that can be directly linked to services. Bellingham Fire Department will submit invoices detailing allowable expenditures as outlined below. Payment is for reimbursement only and copies of receipts must be attached to invoices. Payment will be made no more than one time per month.

	2021	2022
<b>Wages-CPM/Benefits</b>	<b>179,750.00</b>	<b>184,243.75</b>
<b>Vehicle Expenses</b>	<b>7200.00</b>	<b>7200.00</b>
<b>Fuel</b>	<b>4250.00</b>	<b>4500.00</b>
<b>Cell/Ipad/Iphone</b>	<b>1150.00</b>	<b>1200.00</b>
<b>Total</b>	<b>\$192.350.00</b>	<b>\$197.143.75</b>



# Whatcom County

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

## Agenda Bill Master Report

File Number: **AB2020-219**

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<b>File ID:</b>	AB2020-219	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	05/13/2020	<b>Entered by:</b>	DBrown@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Discussion		
<b>Assigned to:</b>	Council Committee of the Whole	<b>Final Action:</b>			
<b>Agenda Date:</b>	12/08/2020	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Discussion and update on strategies and other items related to COVID-19 (Council and Health Board)

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Discussion and update on strategies and other items related to COVID-19 (Council and Health Board)

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## HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
05/19/2020	Council	DISCUSSED	
06/02/2020	Council	DISCUSSED	
06/16/2020	Council Committee of the Whole	DISCUSSED	
06/16/2020	Council Committee of the Whole	DISCUSSED	
06/23/2020	Council Special Committee of the Whole	DISCUSSED AND MOTION(S) APPROVED	
07/07/2020	Council Committee of the Whole	DISCUSSED	
07/21/2020	Council Committee of the Whole	DISCUSSED	
08/05/2020	Council Committee of the Whole	DISCUSSED	
09/15/2020	Council Committee of the Whole	DISCUSSED	
09/29/2020	Council Committee of the Whole	DISCUSSED	
10/13/2020	Council Committee of the Whole	DISCUSSED	
10/27/2020	Council Committee of the Whole	DISCUSSED	
11/10/2020	Council Committee of the Whole	DISCUSSED	
11/24/2020	Council Committee of the Whole	DISCUSSED	





# Whatcom County

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

## Agenda Bill Master Report

File Number: **AB2020-565**

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<b>File ID:</b>	AB2020-565	<b>Version:</b>	2	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/24/2020	<b>Entered by:</b>	akeenan@co.whatcom.wa.us		
<b>Department:</b>	Planning and Development Services Department	<b>File Type:</b>	Hearing Examiner Recommended Decision		
<b>Assigned to:</b>	Council Committee of the Whole	<b>Final Action:</b>			
<b>Agenda Date:</b>	12/08/2020	<b>Enactment #:</b>			

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

**TITLE FOR AGENDA ITEM:**

Consideration of Hearing Examiners recommendation on preliminary long subdivision application filed by Governors Point Land LP (Governors Point subdivision)

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

Consideration of Hearing Examiners recommendation on preliminary long subdivision application filed by Governors Point Land LP (Governors Point subdivision)

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Memo, Governors Point Land - Recommendation - Exhibit List

**WHATCOM COUNTY**  
Planning & Development Services  
5280 Northwest Drive  
Bellingham, WA 98226-9097  
360-778-5900, TTY 800-833-6384  
360-778-5901 Fax



**Mark Personius, AICP**  
Director

Memorandum

TO: Whatcom County Council

FROM: Amy Keenan, Senior Planner and  
Mark Personius, Planning and Development Services Director

DATE: December 1, 2020

RE: Whatcom County Hearing Examiner's Recommendation Regarding the  
Governors Point Long Subdivision

---

On December 1, 2020, the Whatcom County Hearing Examiner issued a recommendation of approval with findings of fact and conclusions for the Governors Point Long Subdivision, Development Agreement, Shoreline Substantial Development Permit and Shoreline Conditional Use Permit.

Pursuant to WCC 22.05.120 the County Council shall issue a written decision which shall be based solely upon consideration of the record established by the hearing examiner and the criteria set forth in County Code. Please also note that deliberation on this quasi-judicial action shall be in accordance with WCC 22.05.090(4) and Chapter 42.36 RCW.

Staff will provide a brief discussion of the project proposal at the meeting on December 8<sup>th</sup>, however, if you have questions regarding this project please feel free to contact either Mark Personius or myself at (extension 5943 or [akeenan@whatcomcounty.us](mailto:akeenan@whatcomcounty.us)).

Thank You.

WHATCOM COUNTY HEARING EXAMINER

RE: Preliminary Long Subdivision ) LSS2018-0003  
Preliminary PRD Plan ) PLN2018-0016  
Shoreline Substantial Development Permit ) SHR2018-0018  
Shoreline Conditional Use Permit ) SHC2020-0009  
Application by )  
**Governors Point Land, LP** ) FINDINGS OF FACT,  
***“Governors Point Long Subdivision”*** ) CONCLUSIONS OF LAW,  
 ) AND RECOMMENDATION  
 ) TO COUNTY COUNCIL

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**SUMMARY OF APPLICATION AND DECISION**

Application: The Applicant is requesting Preliminary Long Subdivision Approval to subdivide 126 acres into one 98-acre non-residential tract to be owned and operated by the Whatcom Land Trust and 16 residential lots with associated infrastructure including roads, stormwater and fire utilities. Public water is proposed to be provided by the City of Bellingham. The lots will be served by individual onsite septic systems. A tender dock with a float, pier and gangway will be constructed on Pleasant Bay and improved gravel paths and an 800 square foot storage and bathroom building will be constructed within 200 feet of the shoreline.

Recommendation: The Hearing Examiner recommends the Whatcom County Council approve the Development Agreement and grant Preliminary Long Subdivision, Shoreline Substantial Development and Shoreline Conditional Permit Approval to the proposed development, subject to the 150 conditions of Approval recommended herein.

**SUMMARY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW**

## INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted and evidence presented at the public hearing.

### I.

Owner: Governors Point Land LP

Agent: Wayne Schwandt

Surveyor: Jepson and Associates

Engineer: Cascade Engineering Group

Site Location/Address: Approximately 126-acre parcel off Pleasant Bay Road, Bellingham, Washington

Assessor's Parcel Numbers: 370236145506, 370225122040, 370225085132, 370225115201, 370225093208, 370225095189, 370225058223, 370225018180, 370225017225, 370225002162, 370226486305, 370226531156, and 370226509165

Zoning: Rural Residential [RR5A]

Comprehensive Plan: Rural

Number of Lots: Sixteen residential lots and three non-residential tracts

Total Acreage: Approximately 126 acres

Roads: Private Road

Water Supply: City of Bellingham

Sewage Disposal: On-Site Septic Systems

Fire Protection: South Whatcom Fire Authority

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Bellingham Public School District

Topography: The site is varied with steep slopes and flat areas.

Vegetation: Vegetation consists mostly of mature standing trees, young saplings and pasture grass.

Adjacent Land Uses: North: Chuckanut Bay  
East: Single-family Residential  
South: Single-family Residential  
West: Bellingham Bay

Utilities Easements: Necessary utility easements will be established prior to recording the Final Plat.

Variances: No variances requested, except deviations outlined in the Development Agreement.

SEPA Review: Determination of Non-significance, issued June 18, 2020

Authorizing Ordinances

Revised Code of Washington Chapter 58.17  
Revised Code of Washington Chapter 36.70B.170  
Whatcom County Comprehensive Land Use Plan  
Whatcom County Code Chapter 2.33, Permit Review Procedures [repealed ordinance 2018-032]  
Whatcom County Code Chapter 12.08, Development Standards  
Whatcom County Code Chapter 15, Building Code  
State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11, Whatcom County Environmental Policy Administration Chapter 16.08  
Whatcom County Code Chapter 16.16, Critical Areas  
Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance  
Whatcom County Code Title 21, Subdivision Regulations  
Whatcom County Code Title 24, Health Regulations

Legal Notices: Posted – Notice of Public Hearing, November 1, 2020  
Mailed – Notice of Revised Application, September 21, 2020  
Notice of Public Hearing, October 27, 2020  
Published – Notice of Public Hearing, November 5, 2020

Hearing Date: November 18, 2020

Parties of Record

Governors Point Land LP  
Randy Bocci  
862 Peace Portal Drive, Suite 101  
Blaine, WA 98230

Wayne Schwandt  
965 Grand Blvd.  
Bellingham, WA 98229

Bob Carmichael  
Attorney for Governors Point Land LP  
P.O. Box 5226  
Bellingham, WA 98227

Rand Jack  
Whatcom Land Trust  
412 N. Commercial St.  
Bellingham, WA 98225

Craig Parkinson  
(Craig@CascadeCivil.com)  
Michael DiSpigno  
(mike@cascadecivil.com)  
Cascade Civil Engineering

Bill Cantrell  
(bcantrellassociates.com)

Royce Buckingham  
Whatcom County Prosecutor

Mark Personius, Director  
Amy Keenan, Senior Planner  
Andrew Hicks, Shoreline Administrator  
Ryan Ericson, Natural Resources Supervisor  
Andrew Wiser, Geologist Planner  
Erin Page, Critical Areas Planner  
Will Anderson, Fire Inspector  
County Planning Department

Laura Vandervort, Engineer III  
Sanja Barisic, Senior Engineering Technician  
Doug Ranney, Engineering Manager/Development  
Public Works Engineering Services

Members of the public who submitted written comments contained in the Hearing Examiner file.

## **GOVERNORS POINT EXHIBIT LIST**

(access on Hearing Examiner website @whatcom  
County.us)

**November 30, 2020**

<b>Exhibit Number</b>	<b>Title</b>
1	LSS Application
2	Project Narrative
3	Quit Claim Deed
4	Proposed Modifications
5	Surrounding Parcel Information
6	Mailing Labels
7	Preliminary Traffic Concurrency
8	Land Disturbance Permit Application
9	CEGI Road and Utility Schematic
10	AESI Geotechnical Assessment Report
11	Title Guarantees
12	Shoreline Substantial Development Application
13	Whatcom Land Trust Donation Agreement
14	City of Bellingham Wholesale Service Agreement
15	Receipt
16	Determination of Completeness
17	Notice of Application
18	Vicinity Map
19	Legal Notice - Tear Sheet
20	Notice of Application Combined Distribution List
21	Notice of Application - Legal Notice
22	WSDOT Letter
23	OSS Subdivision Application
24	GTCI Traffic Impact Analysis
25	AEI Dock Site Plan
26	CEGI Request for Private Road
27	CEGI Stormwater Report
28	AESI Slope Setback Technical Memo
29	CEGI Response - Stormwater Comments
30	CEGI Individual Stormwater Exhibit Examples
31	CEGI Roadside Barrier Memo

32	Revised Project Narrative
33	WSDOT No Further Comments Letter
34	FESI Marine Vegetation Assessment
35	CEGI Stormwater Response
36	CEGI Private Road Speed Limit Variance Request
37	Speed Limit Variance Request Approval
38	CEGI Preliminary Road and Utility Plans
39	FESI CAO Marine Nearshore Shoreline Habitat
40	CAI Wetland HCA Assessment
41	CAI No Net Loss Analysis
42	CAI Habitat Management Plan - Final
43	Revised SEPA Checklist
44	AESI CAO Slope Setback Technical Memo
45	Lummi LNTHPO Comments
46	Public Works Concurrency DIMIS Analysis
47	MDNS Determination
48	Revised Codes, Covenants and Restrictions
49	Preliminary Plat Maps - Sheets 1-4
50	Preliminary Plat Maps - Sheets 5 and 6
51	CAI Wetland HCA Assessment - Approved (Redlined)
52	Shoreline Conditional Use Permit Application
53	Revised SHC Notice of Application
54	Revised Legal Notice
55	Revised Combined Distribution List
56	Revised Certificate of Mailing
57	Bellingham Public Schools Will Serve Letter
58	South Whatcom Fire Authority Will Serve Letter
59	Development Agreement
60	CAI Addendum
	Public Comment
61	Notice of Application - 20190128 - 20190227
62	Public Comments - 20190228 - 20200617
63	Public Comments SEPA - 20200618-20200713
64	Public Comments - 20200714-20200920
65	Public Comments - SHC - 20200921-20201021
66	Interested Parties
	Staff Memos
67	Public Works Engineer Services Memo
68	Shoreline Staff Report



69	Geologic Hazards Memo
70	HCA Wetlands Memo
71	Health Memo
72	Fire Memo
73	Combined Staff Report - November 5, 2020
74	Exhibit List - November 5, 2020 (DRAFT)
75	Excerpt from Appendix E - Shoreline Management Program Area Designations Map
76	Appendix E - Shoreline Management Program Area Designations Map
77	1999 Settlement Agreement
78	Stipulated Judgement Cause No. 93-2-02447-6
79	Donation Agreement Addendum
80	Superseding Settlement Agreement Clean Draft Ecology Edits
81	Superseding Settlement Agreement Clean Draft Ecology Edits Incorporated
82	Staff Report Revisions Memo
83	Additional Public Comments
84	Revised Combined Staff Report - November 30, 2020
85	Final Exhibit List - November 30, 2020 (access on Hearing Examiner website @whatcom County.us)

## II.

The project area consists of an approximately 126-acre peninsula south of Bellingham, with extensive waterfront on 3 sides abutting Bellingham/Samish, Chuckanut and Pleasant Bays. The site is currently undeveloped with mostly mature forest. An existing gravel road provides access through the site. Wetlands have been identified onsite; however, the wetlands are located within the 98-acre Tract A proposed to be dedicated to the Whatcom Land Trust. The property is Rural Residential [RR5A].

The Governors Point subdivision proposal includes sixteen (16) clustered residential building lots and three reserve tracts in a zone which allows one single-family residential unit per five areas (25 units). The Applicant has chosen to cluster the development on the western shore of the peninsula and will leave approximately 98-acres in the Tract A reserve

area. To serve the subdivision, a private road will be constructed with access to Pleasant Bay Road. The 98-acre reserve area [Tract A] will be deeded to the Whatcom Land Trust (WLT) as a Nature Preserve. The WLT expects to provide two miles of non-motorized walking trails and trail access to beaches on both Pleasant and Samish Bays.

Tract B will be approximately an acre and include a float, pier and gangway on Pleasant Bay, improved gravel paths, and 800 square foot storage and bathroom building. The tender dock will be for temporary loading and unloading purposes only and will include float, pier and gangway. Tract C will be located on the Samish Bay side of the property and provide access to the marine shoreline. These two tracts will serve the 16-lot subdivision.

The proposed Development Agreement was summarized in the staff report as follows:

*"In summary, the applicant is proposing to deviate from development standards for the following items:*

- *Reduce the shoreline setback from 150 feet to 70 feet for lots 1-7 and 75 feet for lots 8-16. Site specific setbacks, including steep slope setbacks will be determined at the building permit; and*
- *Allowance of up to 500 square feet of development in the shoreline setback.*

*As authorized through RCW 36.70B.170, the applicant is utilizing the development agreement (Attachment A) process to mitigate potential impacts. The applicant has proposed the following:*

- *Create a 98acre parcel to be permanently protected as open space;*
- *Reduce the number of residential lots from 25 to 16;*
- *Limit development to less than 10 percent of the total site; the entire site is a single watershed;*
- *Limit development to a 20% average for the residential lots.*
- *Preserve remaining area of each lot through a conservation easement at the time of future development.*
- *Limit residential structure to less than 2,900 square feet conditioned living space as defined as interior space within a closed structure intended for human habitation;*
- *Limit total floor area to less than 4,000 square feet per lot which includes the interior of garages, storage sheds, carport or similar open-sided structures; and*
- *Prohibit shared docks except on lot 16 and Tract B."*

In return for a modified shoreline setback on the 16 proposed shoreline lots and an allowance for up to 500 square feet of development in the shoreline setback area of each lot, the Applicant is reducing the allowed density by 9 lots; limiting the impacts of actual development on each lot by limiting the building square footage and the yard size, eliminating the right to individual docks, limiting overall development impacts to less than 10% of the site, mitigating development impacts through implementation of the detailed Habitat Management Plan; and transferring 98-acres of the site which includes extensive undeveloped waterfront, to be held as a Nature Preserve, with potential public access. It is worth noting that the 98-acres contains "Mature Forrest," which can be expected to result in re-establishment of Old Growth Forrest areas, if protected. The 98 acres is land highly valued as part of a very extensive wildlife corridor, and includes a very significant stretch of prime Pleasant Bay and Chuckanut/Bellingham Bay waterfront. This Applicant appears to have chosen not to attempt to maximize his ability to financially profit from his development rights and has quite simply offered a gift to the general public and future generations.

The Hearing Examiner finds that the Project, as conditioned, will result in no net loss of shoreline ecosystem functions and ecosystem wide processes.

### III.

The Application was reviewed by the Technical Review Committee. The recommendation of this Committee was set forth in the Revised Final Staff Report, (hereinafter Staff Report), entered into the Hearing Examiner file as Exhibit No. 84, dated November 5, and 30, 2020, and prepared by the Land Use Services Division of Whatcom County Planning and Development Services. The Technical Review Committee put in writing its Findings of Fact and Conclusions of Law. Based on these, the Technical Review Committee has determined that, subject to proposed extensive and detailed conditions, the project will comply with applicable Whatcom County and Washington State regulations. The

Technical Review Committee has recommended approval of the Long Subdivision and Development Agreement applications, subject to the 150 conditions set forth in the Staff Report, as modified in a memorandum to the Hearing Examiner, dated November 18, 2020, Exhibit 82 in the Hearing Examiner file.

The Technical Committee's recommendation was based on Staff review and approval of the following Professional assessments and their recommendations:

Site Plan Review Technical Memorandum, Associated Earth Sciences, Inc., March 13, 2020.

Wetland and Habitat Conservation Area Assessment, Cantrell and Associates, Inc., Revised January 25, 2020.

Habitat Conservation Areas No Net Loss Assessment, Cantrell and Associates, Inc., Revised January 25, 2020.

Habitat Management Plan, Cantrell and Associates, Inc., Revised January 25, 2020.  
Governors Point Long Plat Road and Utilities Schematic (Sheets C1-C23), Cascade Engineering Group, P.S., Inc., January 14, 2020.

Eelgrass Survey Marine Vegetation Assessment, Tract B Governors Point Long Plat, Fairbanks Environmental Services, Inc., January 6, 2020

Governors Point Project Narrative, revised August 14, 2019.

Steep Slope Setback Technical Memorandum, Associated Earth Sciences, Inc., October 11, 2019.

Governors Point Residential Subdivision, Whatcom County, Washington, Stormwater Site Plan, Cascade Engineering Group, P.S., Inc., Revised July 9, 2019.

Archaeological Assessment for the Governors Point Residential Development, Bellingham, Whatcom County, Washington, Drayton Archaeology, June 3, 2019.

Governors Point Development Traffic Impact Analysis, Gibson Traffic Consultants, Inc., June 2019.

Geotechnical Assessment Report, Associated Earth Sciences, Inc., October 29, 2018

The Applicant's Representative indicated that there are no factual inaccuracies in Staff's factual findings and no objection to the final Conditions of Approval requested by Staff. Staff has provided a summary of the public comments received and Staff's responses to those comments in the Final Revised Staff Report, exhibit 84. There was no public comment opposing the proposal at the public hearing. All Whatcom County agencies have recommended Approval, subject to conditions related to their jurisdiction.

There was significant public comment on the Project. Staff has discussed the nature of the comments and addressed them in the Staff Report. The Hearing Examiner notes that the public concerns expressed, often strongly, have led to changes in the Proposal and in the recommended Conditions of Approval (for example see Exhibit 82). The Hearing Examiner finds that concerns raised have been considered and properly addressed.

There were extensive public comments supporting the Project as proposed. Much of the support was generated by the transfer of most of the site to the Whatcom Land Trust. There were also numerous comments supporting the proposal from persons living in the nearby Pleasant Bay and Chuckanut Bay communities.

The Factual Findings in the Final Revised Staff Report, Exhibit 84, are supported by the record as a whole and are hereby adopted by the Hearing Examiner, through this reference, as Findings of Fact herein.

#### **IV.**

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following

### **CONCLUSIONS OF LAW**

#### **I.**

There is nothing in the record which would indicate either the Findings of Fact made by the Technical Review Committee, as set forth in the Staff Report, or its Conclusions of

Law were incorrect or failed to properly support the approval of the Preliminary Long Subdivision. The Hearing Examiner hereby adopts, by this reference, the Conclusions of Law reached by the Technical Review Committee in the Staff Report, dated November 5, and 30, 2020, Exhibit No. 84, a copy of which is attached hereto and incorporated herein by this reference.

The Hearing Examiner concurs with the Technical Review Committee that, subject to the proposed Conditions of Approval, the project will comply with the applicable Whatcom County and Washington State Subdivision and Shoreline Regulations, and is in the General Interest, Health and Welfare of the public. The Hearing Examiner should recommend the Whatcom County Council adopt the Development Agreement and grant Preliminary Approval of the Subdivision, the Shoreline Substantial Development Permit and Shoreline Conditional Use Permit, subject to the Conditions of Approval set forth below.

## II.

Based on these Findings of Fact and Conclusions of Law, the Hearing Examiner hereby issues the following recommendation:

### **Recommendation**

The Hearing Examiner hereby Recommends the Whatcom County Council grant Preliminary Approval of the proposed Subdivision, the Shoreline Substantial Development Permit, the Shoreline Conditional Use Permit, and Approve the proposed Governors Point Development Agreement, on an approximately 126 acre parcel to be located on Assessor's Parcel Nos. 370236145506, 370225122040, 370225085132, 370225115201, 370225093208, 370225095189, 370225058223, 370225018180, 370225017225, 370225002162, 370226486305, 370226531156, and 370226509165, accessed off of Pleasant Bay Road, Bellingham, Washington, subject to the following conditions:

### **Conditions of Approval**

#### **Current Planning Division**

1. The use and location on the site as shown on the site plans dated September 2020 and shall not be amended or changed in any way without further approval of the Whatcom County Hearing Examiner unless consistent with WCC 21.05.110.
2. Signage for the site shall be limited to one site identification sign at the entrance to the site, per WCC 20.80.470 (4). The subject sign shall be limited to 64 square feet in size.
3. No sign shall be located closer than 10-feet to any right-of-way, per WCC 20.80.410 (1). A building permit shall be obtained for any sign installed on the site.
4. Approval of this preliminary subdivision shall become invalid unless the final plat is submitted in proper form for final plat approval within five (5) years of the date of preliminary subdivision approval.
5. An applicant requesting final approval of a subdivision shall submit to the administrative official copies of the materials and fees specified in WCC 21.06.050, and the request shall be accompanied by a statement from the county engineer that Whatcom County has accepted as complete all on-site and off-site improvements required by the conditions of preliminary plat approval, or has received cost estimates and performance guarantees to assure completion thereof.
6. The applicant shall obtain all necessary federal, state and local permits prior to construction.
7. The final plat shall include a note referring to the signed and recorded Development Agreement.
8. An easement on the subdivision plat shall be placed over the reserve area per the definition in WCC 20.97.344. The reserve area shall be designated as open space and protected in perpetuity. The minimum percentage of the parent parcel required to be within a reserve area is 30 percent (WCC 20.32.253).
9. No land comprising any part of a proposed land division in the unincorporated area of Whatcom County shall be sold, leased, or offered for sale or lease unless approved under this title. Any person being the owner or agent of the owner of such land who shall sell, lease, or offer for sale or lease any lot or portion thereof shall be guilty of a gross misdemeanor. Each sale or lease, or offer for sale or lease shall be a separate and distinct offense for each separate lot or portion of said land, pursuant to WCC 21.11.010.

### **State Environmental Policy Act**

10. As recommended in the Archaeological Assessment for the Governor's Point Residential Development, Bellingham, Whatcom County Washington (Report 0519C) by Drayton Archaeology, dated June 3, 3019; archaeological monitoring done by a

qualified professional shall occur during construction of the trail and dock on the Reserve Tract near 45WH501.

11. Work may proceed on proposed reserve tract but that all ground disturbing work on this lot be monitored by an archaeologist. The LNTHPO shall review and comment, if necessary, on the Monitoring and Inadvertent Discovery Plan (MIDP) before the construction begins.
12. Work may proceed on proposed lots 1-16 with the Washington State Department of Archaeological and Historic Preservation's Inadvertent Discovery Plan on-site and followed if cultural resources or human remains are encountered. The following contact phone numbers for the Lummi Nation shall be included in the IDP: Lena Tso, THPO 360-312-2257 and Tamela Smart, Deputy THPO 360-312-2253.

### **Public Works Engineering Services**

13. The applicant shall comply with the conditions of the Whatcom County Public Works Engineering Services in the memo dated October 29, 2020, unless modified by that Department or appealed to the appropriate agency.
14. All development shall comply with the Whatcom County Development Standards (WCDS).
15. Sight distance at all road intersections shall meet WCDS.
16. Roads within this development are to be private as permitted under Section 505.E. of Chapter 5, Road Standards.
17. A private road maintenance agreement shall be included in the CC&R's for the subdivision.
18. County-approved road names are required to be shown on the final plat.
19. A map at 1"= 400' scale of the lots shall be provided to PWES for address assignment. Addresses shall be shown on the final plat. The plat address fee shall be paid prior to recording.
20. Interior private roads shall be passable at all times for emergency and public service vehicle use.
21. All road, stormwater facilities, and grading plans shall be designed and stamped by a Washington State licensed civil engineer and submitted for county engineering review and approval prior to construction.
22. The proposed residential private roads shall be constructed as follows:



- a. paved apron per WCDS drawing 505.E-4
  - b. 40-foot minimum access easement width
  - c. a total of twenty-foot minimum roadway inclusive of shoulders, with
    - i. nine-foot minimum width paved drive lanes,
    - ii. one foot minimum width crushed surfacing shoulders, or
    - iii. where terrain constraints exist, road section may include rock wall or retaining wall with concrete vertical curb and gutter at face of wall
  - d. 2% max cross slope
  - e. 2-1/2" minimum compacted depth HMA
  - f. 2" minimum compacted depth crushed surfacing top course
  - g. 10" minimum compacted depth aggregate for gravel base or 8" of additional crushed surfacing base course
  - h. turnarounds at road ends as shown on the preliminary plans and according to WCDS drawing 505.L-2
23. Horizontal and vertical curve information shall be provided on the civil plans. Alignments shall meet minimum horizontal curve radii per WCDS, as approved in the preliminary plans. The residential portion of Road B has been approved, through variance, for reduced speed and hence reduced minimum radii, to be mitigated with widened roadway at minimum curves.
24. Applicant shall obtain an Encroachment Permit for any and all work in the County right-of-way prior to commencing said work.
25. All signing and striping shall be installed as per the Manual of Uniform Traffic Control Devices (MUTCD) standards at the developer's expense.
26. The utility access road serving the boat dock shall be a minimum of twelve feet wide.
27. From the intersection of Roads A and B, for a minimum of 100 feet in each direction from the center of intersection, roads shall be constructed with a minimum of 18 foot paved driving surface plus four foot shoulders for a total width of 26 feet.
28. Road B shall be posted for the requested reduced 20mph speed limit. Signs shall be included in the civil plans.
29. Applicant shall provide certified evaluation of the need for traffic barrier by a professional engineer for the proposed private roads. Evaluation shall include the need for a guardrail or barrier at the top of proposed roadside walls. Evaluation shall include site plans noting areas where the recovery zone is less than ten feet, areas where the downhill slope is greater than 2:1, and areas with greater than 10-foot vertical drop below.

30. A final engineered stormwater design report that meets requirements of the current County-adopted Department of Ecology Stormwater Management Manual for Western Washington shall be submitted and approved by PWES prior to any land disturbance. The report shall be prepared by a civil engineer licensed in the state of Washington. This development shall comply with minimum requirements 1 through 9.
31. The stormwater design report shall account for the total allocated hard surface value, to include the sum of hard surface values for roads, apron, and the hard surface values assigned to each lot.
32. The final engineered stormwater design report shall include SWM best management practices (BMPs) and design for the private roads, as well as a conceptual site plan for each lot. The lot-specific site plans shall demonstrate that each lot can accommodate driveway access and building site with stormwater BMPs that meet required setbacks and slopes per fire, septic separation, critical area and shoreline jurisdictions, and SWM requirements. Applicant shall provide geotechnical support for the design as needed, per SWM and PWES.
33. Private stormwater treatment facilities are to be located outside of the County right of way (ROW). If the engineer determines best location for facility is within the ROW, submit request for approval with County Maintenance and Operations, and provide private maintenance agreement and plan to the County.
34. Downstream conveyance features including ditches and culverts that accept runoff from the development shall be assessed for condition by the engineer and shall be replaced or improved to provide adequate conveyance and erosion protection as needed, per the SWM and County approval.
35. The Stormwater Maintenance Plan shall be included in the CC&R's for the subdivision. The CC&R's shall include a requirement for those lot designs that include a stormwater pump, an emergency stand-by generator is required to remain on site.
36. The developer shall obtain approval from the local U.S. Postal Service Office for the location, style and height of the mailboxes. Mailbox locations, if shared, shall be shown on the final construction plans.
37. Following County approval of the civil construction plans and prior to commencement of construction, the developer, contractor, and developer's construction engineer shall schedule and participate in a formal Preconstruction Conference with PWES staff.
38. Engineer to provide certified construction compliance assurance statement following completion of the work and prior to final inspection per Chapter 2, WCDS.

39. Certified record drawings for all new roads and stormwater systems shall be submitted to and approved by PWES upon completion of construction. Record drawings shall include the Record Drawing Certification statement from Chapter 5, WCDS.
40. The plat shall identify stormwater BMPs required for plat roads and lots. The plat shall identify allowable impervious area per lot and note conservation and dispersion areas.
41. Pursuant to the SWM, applicant shall complete and record a Declaration of Covenant and Grant of Easement (DCGE) for plat stormwater maintenance purposes. Document shall include an exhibit indicating stormwater features and their locations, define the stormwater features, and include a maintenance and operations manual. Reference to the recorded DCGE shall be made on the final plat.
42. The construction engineer shall submit a construction cost estimate of the subdivision stormwater drainage system features with certified statement to PWES upon completion of the work and prior to County approval of the finished work. The applicant shall post a stormwater warranty security for 10% of the cost estimate (\$5,000 minimum). The security shall be in effect for two years following final record drawings.
43. Revised signature blocks and notes shall be added to the final plat prior to approval.

#### **Fire Marshal's Office**

44. The applicant shall comply with all of the conditions of the Fire Marshal's memo, dated September 22, 2020, unless modified by the Fire Marshal's Office or appealed to the appropriate agency.
45. Access roads shall meet Whatcom County Public Works-Engineering Services requirements and Whatcom Fire Marshal's Office road standards for grade surface requirements, turnouts, and turnarounds.
46. Fire permit is required for installation of underground fire lines and hydrants.
47. Access roads to the residences and fire sprinkler systems shall be address at time of building permit submittals.
48. Access road to the boat dock shall be a minimum of 12 feet wide and meet grade surface requirements per Whatcom County Code Chapter 15.04.040

#### **Geohazardous Areas**

49. The applicant shall comply with the conditions of the Whatcom County Planning and Development Services – Geohazards in the memo dated November 4, 2020, unless modified by that Department or appealed to the appropriate agency.

50. Alteration of any plat element intended to ensure the ability to avoid regulated geologically hazardous areas shall be reviewed by the Technical Administrator of Article 3, and if deemed necessary, a qualified professional in accordance with WCC 16.16.320(E). Such elements include, but are not limited to the following: lot configuration, stormwater and septic utility easements and stormwater system design.
51. Supplemental geologic hazard review by the Technical Administrator of Article 3 shall be required prior to issuance of final plat approval.
52. The following note shall be included on the face of the plat:

**GEO-HAZARD AREAS NOTE:**

THIS LONG PLAT HAS BEEN REVIEWED IN ACCORDANCE WITH THE WHATCOM COUNTY CRITICAL AREAS ORDINANCE, TITLE 16, CHAPTER 16.16, ARTICLE 3, ADOPTED PURSUANT TO ORDINANCE 2017-077. REGULATED GEOLOGICALLY HAZARDOUS AREAS HAVE BEEN IDENTIFIED AT THE SUBJECT PARCELS (EROSION AND LANDSLIDE HAZARD AREAS). FUTURE DEVELOPMENT ON ALL LOTS WILL BE SUBJECT TO THE CRITICAL AREAS ORDINANCE IN EFFECT AT THE TIME OF APPLICATION FOR THAT DEVELOPMENT.

**Habitat Conservation Areas and Wetlands**

53. The applicant shall comply with the conditions of the Whatcom County Planning and Development Services – Natural Resources Division in the memo dated November 5, 2020 unless modified by that Department or appealed to the appropriate agency.
54. The maximum “Developed Area” proposed by the applicant for each lot and tract are shown in a table in the preliminary plat map. This table shall be moved to the Developers Agreement. The definition of “Developed Area” is in Section 2.1.5 of the Developer’s Agreement.
55. Prior to final plat all four documents combined as the Critical Area Assessment Report shall be amended to match these conditions and any amendments to the Developers Agreement approved by the County Council. The final documents shall contain a revision date.
56. No more than 10% of the 126-acre Property shall be developed or included in a “Developable Area” as defined by the approved Development Agreement. This condition shall be a required plat note with a reference to the auditor’s recording number.

57. No residential structure located on any Residential Lot on the Property shall exceed 2,900 square feet of conditioned living space ("Conditioned Living Space"). Conditioned Living Space shall include interior space within an enclosed structure intended for human habitation. This 2,900 square foot limitation on Conditioned Living Space shall not include garages or shops, nor shall it include covered exterior courtyards, covered walkways, gazebos, outdoor shelters, storage sheds, carports or similar open sided structures with water tight roof, or similar structures. This condition shall be a required plat note.
58. In total, the floor area of all buildings on a Residential Lot shall not exceed 4,000 square feet. Included in this limitation is the Conditioned Living Space, and the interior space within any garages, shops, storage sheds, carports or similar open sided structures with water tight roof, and other similar buildings. This condition shall be a required plat note.
59. A maximum total of 500-square feet of footprint area of development will be allowed within the shore setback for each Residential Lot. This includes roof eaves, decks, patios, covered walkways, stairs, and accessory water-oriented structures without Conditioned Living Space.
60. The "Developable Area" on average shall not exceed 20% of the area of each individual lot. The average shall be determined at the time the Developer Agreement is approved and recorded.
61. For lots 1-7 and 8-16 remaining undeveloped areas, outside of the defined "Developed Area" shown on the site plan at the time of building permit shall be protected from further development using protective measures in Whatcom County Code in effect at that time of development. This condition shall be a required plat note.
62. The side-yard setback for all Residential Lots and Tract B and Tract C shall be fifteen feet (15'). This condition shall be a required plat note.
63. The shore setback for Residential Lots 1-7 shall be seventy feet (70') measured from the Ordinary High-Water Mark (OHWM). The shore setback for Residential Lots 8-16 shall be seventy-five feet (75') measured from the OHWM. Ordinary High Water Mark shall be determined at the time of future development, in accordance with published guidance by the Department of Ecology. This condition shall be a required plat note.

64. A conservation easement shall be recorded for all wetlands and wetland buffers within the plat.
65. Development required before final plat and all future development shall apply all habitat management recommendations in document titled "Habitat Management Plan". Joint authored by Cantrell & Associates and Fairbanks Environmental. Cover dated REVISED January 25, 2020 and date stamped February 6, 2020; as amended by an addendum to the report dated October 27, 2020 and date stamped the same herein or as amended The AF# of the document shall be recorded on the deed. The following plat note is required:
66. "FUTURE DEVELOPMENT SHALL APPLY HABITAT MANAGEMENT MEASURES AS PROVIDED IN THE APPROVED HABITAT MANAGEMENT PLAN AF#.
67. Future development shall be reviewed with the critical ordinance and shoreline master program in affect at the time of development, unless specifically amended by the Developers Agreement. The following plat note is required:
68. "LOTS 1-16 OF THIS LONG PLAT HAVE BEEN REVIEWED ACCORDING TO THE CRITICAL AREAS ORDINANCE, CHAPTER 16.16 WHATCOM COUNTY CODE ADOPTED PURSUANT TO ORDINANCE 2017-0023 AS AMENDED. REGULATED CRITICAL AREAS ARE LOCATED WITHIN THIS LONG PLAT. A CONSERVATION EASEMENT HAS BEEN FILED WITH THE COUNTY AUDITOR; AF FILE NO.\_\_\_\_\_. FOR WETLANDS AND ASSOCIATED BUFFERS. FUTURE DEVELOPMENT SHALL BE REVIEWED UNDER THE CRITICAL AREA ORDINANCE IN AFFECT AT THE TIME OF DEVELOPMENT, UNLESS SPECIALLY AMEND BY THE DEVELOPERS AGREEMENT AF# DURING THE VESTING PERIOD OF SAID DEVELOPERS AGREEMENT."
69. A mitigation plan may be required for future development permits, as required by the Critical Area Ordinance or Shoreline Master Program in affect at the time development. The following plat note is required:
70. "FUTURE DEVELOPMENT SHALL REQUIRE MITIGATION FOR IMPACTS TO CRITICAL AREAS AND CRITICAL AREAS BUFFERS IN ACCORDANCE WITH THE CRITICAL AREA ORDINANCE IN AFFECT AT THE TIME OF DEVELOPMENT, UNLESS SPECIALLY AMEND BY THE DEVELOPERS AGREEMENT AF# DURING THE VESTING PERIOD OF SAID DEVELOPERS AGREEMENT."
71. Trails on Tract C shall not cover more than 3% of the total area of the tract. No residential buildings or overwater structures are allowed on Tract C.

72. A building setback is required from all standard or modified wetland buffers, standard shoreline setbacks, and herbaceous balds in affect at the time of future development. This condition shall be a required plat note.
73. No stairs shall be constructed to provide access to the shoreline, provided that pedestrian access trails using natural materials (native stone, etc.) with minimal alterations to existing grade and vegetation may be permitted. This condition shall be a required plat note.
74. Individual overwater structures, except mooring buoys are prohibited. This condition shall be a required plat note.
75. No docks of any kind, including shared docks, shall be allowed in front of Residential Lot Nos. 1-15. This condition shall be a required pat note.
76. Shared overwater structures are prohibited in front of Residential Lot Nos. 1-15. This condition shall be a required pat note.
77. Up to six residential mooring buoys are allowed to be installed in Pleasant Bay to serve residential lots in the plat, otherwise mooring buoys are prohibited. This condition shall be a required plat note.
78. On Tract B, the on-site septic system (OSS) shall be placed at outside of the standard shoreline setback and the wetland or wetland buffer. The OSS shall be not placed in the building setback if tree roots will be impacted.
79. For residential lots, septic drain fields shall be placed at least 112' landward of the OHWM of marine waters.
80. Tree retention and replanting requirements in the approved Habitat Management Plan shall be applied to all future development
81. For each snag or live tree removed with pileated woodpecker excavations, a snag will be created within the lots or within the adjacent Reserve Tract A.
82. Clearing and Construction Associated with the maintenance yard on Tract A will not exceed 10,000 square feet in size.
83. Clearing and construction associated with the trails, restroom, and storage building shall not exceed 4,000 square feet.
84. Split rail fencing or similar exclusionary measures shall be required to be placed at the building setback along the road side off wetland A. Split rail fencing or similar inclusionary measures shall be required to be placed in order to prevent the public from entering wetland D, as determined to be applicable.,

85. Signage in accordance with WCC 16.16.265 shall be installed along herbeaceous balds, wetland buffers, stream buffers and the reduced shoreline buffer. The design of the signs shall be included in the final mitigation plan required prior to issuance of civil drawings.
86. Prior to civil drawing approval provide a final mitigation plan addressing the required recommendation in the approved Habitat Management Plan. The final mitigation shall show the increase of an additional 1,500 SF to the west side of Wetland D and provides 880 SF of buffer restoration to the areas temporarily impacted by a combination of replanting/transplanting with local native understory species and healing-in exposed soils with wood chip mulch.
87. Prior to civil drawing approval, the applicant shall submit a final mitigation plan with locations of required wetland and habitat conservation area signage and fencing. A landscape section is required to be included in the civil drawing plan set to address fencing and signage locations
88. Prior to civil drawing approval, the applicant shall submit a final mitigation plan with a bond quantity worksheet or bid from a licensed contractor. A landscape section is required to be included in the civil drawing plan set to address buffer replanting (location and a planting schedule).
89. Culvert or sleeve shall be installed under the road at each lot to allow for future development to install pressurized stormwater conveyance to be pumped in Tract A to allow for full dispersion and avoidance of impacts to slope stability. The locations of the culvert or sleeve shall be shown on the civil drawing. Inspection shall be required to verify installation prior to surfacing of the roadway.
90. Temporary fencing shall be installed along wetland D buffers prior to plat construction authorized under preliminary plat approval. Temporary fencing shall be shown on the civil plan sheet for TESC.
91. Prior to issuance of Civil Drawing approval Temporary Construction fencing shall be inspected and approved by Whatcom County Natural Resources.
92. Prior to construction associated with preliminary plat approval areas of disturbance Shall be demarcated by the applicant and verified by Whatcom County Natural Resources. Any unavoidable impacts shall be address as an addendum to the final Mitigation document and subject to surety and monitoring requirements.
93. Stormwater management is required for all residential lots in accordance with the Western Washington Stormwater Manual. In addition to the standards in the stormwater manual the following design amendments are required:
  - a. Spreader discharges that will be carrying road run-off shall be kept at least 116'



- landward of the OHWM, where feasible.
- b. Stormwater discharge from impervious surfaces with a flow path less than 116' shall be filtered through an engineered storm water treatment system with a 65% efficiency rate for phosphorus.
94. The following plat note shall be required:
- “FUTURE DEVELOPMENT SHALL BE REQUIRED TO MEET STORMWATER REQUIREMENTS IN THE CURRENT STORMWATER MANUAL APPROVED BY WHATCOM COUNTY IN ADDITION TO STORMWATER REQUIREMENTS PROVIDED IN THE APPROVED HABITAT MANAGEMENT PLAN AF# \_\_\_\_\_.”
95. The conceptual stormwater design for the plat and future development on residential lots has been approved without the need for additional outfalls. The final stormwater design shall not include new outfalls, which discharge directly or indirectly into the marine receiving waters. A downstream analysis determining the existing outfalls will not be receiving additional stormwater runoff shall be included in the final stormwater design narrative. A plat note restricting new outfalls will be required.
96. Future trail development within Tract B will require a separate land disturbance permit and will be subject to the Whatcom County Codes in affect at the time of the development. A comprehensive analysis for recreation development will be required from the applicant.
97. Prior to final plat approval the following is required:
- a. A conservation easement shall be recorded with the Whatcom County Auditor for all wetlands and wetland buffers within the plat.
  - b. Install split rail or other appropriate exclusionary measures along the building setback of herbaceous balds and required wetland buffer.
  - c. Educational signage and shoreline setback signage shall be installed. Educational signage regarding herbaceous balds shall be displayed on the fencing at each lot.
  - d. Wetland D shall be surveyed and its boundaries, along with the edges of its 100-foot buffer, shall be accurately shown on submitted checkprints.
  - e. Installation of mitigation as provided in the final mitigation plan. An as-built inspection for the approved mitigation will be required prior to final plat approval.

### **Shorelines – Long Subdivision**

98. Utilities shall be located within roadway and driveway corridors and rights-of-way

wherever feasible.

99. Design of structures shall conform to natural contours and minimize disturbance to soils and native vegetation to the extent feasible. Foundations shall be tiered with earth retention incorporated into the structure.
100. Stormwater infiltration systems shall be employed to mimic the natural infiltration and ground water interflow processes where appropriate.
101. Any lighting along the proposed roadway/driveway corridors shall be designed and operated to avoid illuminating nearby properties or public areas, prevent glare on adjacent properties, or public areas to avoid infringing on the use and enjoyment of such areas, and to prevent hazards.

### **Shoreline – Shoreline Substantial and Conditional Use Permit**

102. The proposed shoreline developments shall be consistent with the scope detailed and approved by this substantial development permit and shoreline conditional use permit. Any changes to the proposed development may require additional review and approval by the Whatcom County Shoreline Administrator and/or Whatcom County Hearing Examiner.
103. The project must be constructed in accordance with the submitted plans/drawings and supporting documentation and comply with all agency permit conditions.
104. The applicant shall obtain a building permit from the Whatcom County Planning and Development (WCPDS) – Building Services Division prior to commencing construction on the tender dock. The above required building permit shall be reviewed by the Shoreline Administrator to ensure consistency with the conditions of this exemption approval prior to issuance of said permit.
105. In conformance with WCC 16.16.265, prior to issuance of the building permit, the applicant shall file a Notice on Title with the Auditor's Office. The notice shall be filed on forms provided by the County and a copy shall be provided to the shoreline administrator. This document is available online at:  
<http://whatcomcounty.us/DocumentCenter/Home/View/2205>.
106. Any change in the currently approved proposal shall receive further critical areas review and approval PRIOR to land disturbance.
107. Construction and/or demolition debris shall be removed from the shoreline area upon completion of the project.
108. Use of heavy machinery shall be limited to use via floating barge. No heavy machinery shall be utilized in upland areas or on the bed lands of marine shorelines unless

reviewed and approved by the Shoreline Administrator.

109. Moorage facilities shall be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night. Exterior finish shall be generally non-reflective.
110. The gravel public access trail on Tract B shall be limited to 5' in width for all areas within the Habitat Conservation Area buffers. Additionally, trail improvements may be made waterward of the Ordinary High Water Mark.
111. Washington State Department of Ecology Water Quality Standards shall be maintained.
112. The project shall not result in significant degradation of ground or surface waters and shall be completed during periods of dry weather.
113. Storage of fuel, oils, and other toxic materials is prohibited on docks and piers except portable containers when provided with secondary containment per 23.100.09.B.20.
114. Bulk storage of gasoline, oil and other petroleum products for any use or purpose is not allowed on piers, except for temporary storage under emergency situations, including oil spill cleanup.
115. The applicant shall contact the Washington State Department of Fish and Wildlife (WDFW) and obtain a Hydraulics Project Approval (HPA) or any other requirements as determined by WDFW. Note that any additional mitigation measures imposed by WDFW shall hereby be adopted as conditions of approval pursuant to WCC 16.16.215. In the event that there is a conflict between such HPA conditions and applicable WCC, the more restrictive standards shall apply.
116. At the time of building permit submittal, a Temporary Erosion and Sedimentation Control (TESC) plan shall be provided. No ground disturbing activities shall commence until the TESC plan has been reviewed and approved by Whatcom County Planning and Development Services.
117. Best Management Practices (BMPs) will be required in order to address any construction related impacts to water quality, the shoreline, and/or existing habitat.
118. The project shall comply with all applicable federal, state and local laws and regulations. Issuance of this shoreline permit does not release the applicant from any other Local, State, regional or Federal statutes or regulations applicable to the proposed development.
119. Should archaeological resources (e.g. shell midden, faunal remains, stone tools) be observed during project activities, all work in the immediate vicinity should stop, and the area should be secured. The Washington State Department of Archaeology and Historic

Preservation (Gretchen Kaehler, Local Government Archaeologist 360-586-3088) and the Lummi Nation Tribal Historic Preservation Office (Lena Tso, THPO 360-312-2257; Tamela Smart, Deputy THPO 360-312-2253) should be contacted immediately in order to help assess the situation and to determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.

120. If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.
121. The location of the ordinary high water mark shall be shown on the construction plans submitted for the building permit.
122. A mono-pile design is required. Construction drawings submitted for the building permit shall demonstrate a mono-pile construction.
123. The distance from the landing to the first pile shall be the maximum feasible for a clear span of the supratidal zone and the distance between other piling shall clear span the rocky habitat, if feasible.
124. Pier decking and stair surfaces shall be entirely grated with functional grating.
125. The community pier shall not exceed six feet in width and 90 feet in length. The community float shall not exceed eight feet in width and 50 feet in length.
126. Functional grating shall be installed on 50% of the float. Grating shall not be located over flotation.
127. The float shall be anchored to the substrate using the minimum piles necessary, not to exceed three (3) piles.
128. Flotation shall be fully encapsulated in a shell. Shell must be designed to prevent break

up or loss of flotation material.

129. A small access float supporting the gangway to accommodate tidal fluctuation may be installed. The access float shall be no greater than 4 feet wide and 6 feet in length.
130. Float stops shall be installed, if the potential exists for grounding of the float.
131. Install ridge caps with bird spikes on top of the piles to minimize predation of prey species.
132. The width of gangway shall not exceed 4 feet. The gangway shall be entirely grated with functional grating.
133. To avoid impact to juvenile rockfish construction shall occur September 30 through March 15.
134. To avoid impacts to juvenile salmonids construction shall occur August 1 through February 15.
135. Conditions of the WDFW Hydraulic Project Approval, including mitigation shall be considered conditions of this permit.
136. If vibratory pile driving will be used than a narrative of standard operating procedures compliant with Army Corps of Engineers Regional General Permit 6 for construction in inland marine waters shall be provided at the time building permit submittal. The narrative must address marine mammals including pinnipeds and cetaceans for noise attenuation and in water affects.
137. A final mitigation plan shall be submitted at the time of building permit application addressing the recommended habitat management measures in addition to the required mitigation for the upland community dock landing and trail construction. The final mitigation plan shall include mitigation equivalent to the Army Corps of Engineers Regional General Permit Appendix B: Compensatory Mitigation Calculator.
138. For trail construction and community dock landing new impacts to the marine shoreline buffer shall be mitigated at a ratio of 1.25 to 1, unless specifically address in the approved habitat management plan.
139. Construction shall commence within two years of the effective date of the shoreline variances and substantial development permit as defined by WAC 173-27-090 (3), provided that the Whatcom County Hearing Examiner may authorize a single extension for a period not to exceed one year based on reasonable factors if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the Department of Ecology.

## **Health Department**

140. The applicant shall comply with the conditions of the Whatcom County Health Department in the memo dated September 9, 2020, unless modified by that Department or appealed to the appropriate agency.
141. OSS components and transport lines maintain required setbacks as stated in Whatcom County Code 24.05.100 including but not limited to roads, proposed stormwater facilities and drinking water lines.
142. If OSS easements are located under the road, OSS transport lines will need to be installed prior to road construction.
143. For those OSS located on different parcel than they serve (Tract A), individual OSS permit applications will be required and transport lines will need to be installed prior to final approval. For OSS located on Tract A, a natural resource assessment may be required prior to OSS permitting and installation.
144. Prior to final approval, the applicant will be required to provide water system design approval from the Washington State Department of Health and all water system infrastructure must be installed.
145. The applicant states in the SEPA checklist that there will be no groundwater withdrawal. The applicant must provide evidence of well decommissioning to WCHD prior to final plat approval.

## **Critical Areas**

146. Future development shall preserve 95% of the coniferous trees and 95% of the madrone trees with a DBH greater than 24 inches, or are older than 80 years of age.
147. A Class IV General Forest Practice Application for land Conversion is required prior to issuance of civil drawings for areas converted during construction activities authorized by the preliminary plat approval.
148. Future development will be required to obtain a land conversion permit at the time of development.
149. Trails are prohibited to traverse through herbaceous balds. This condition shall be a required plat note.
150. Prior to construction on any lots with an herbaceous bald habitat, a site inspection to ensure the construction setback is clearly established or demarcated is required.

NOTICE

This Approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation. Complaints regarding a violation of the conditions of this permit should be filed with Whatcom County Planning and Development Services. The Hearing Examiner may not take any action to revoke this approval without further public hearing. Violations of this title shall constitute Class I civil infractions pursuant to RCW 7.80.120. The maximum penalty and the default amount for such violations shall be consistent with Chapter 7.80.RCW.

NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF  
THE WHATCOM COUNTY HEARING EXAMINER

This action of the Hearing Examiner is final.

The Applicant, any party of record, or any County Department may appeal any final decision of the hearing examiner to Superior Court or other body as specified by WCC 22.05.020. The appellant shall file a written notice of appeal within 21 calendar days of the final decision of the hearing examiner, as provided in RCW 36.70C.040.

More detailed information about appeal procedures is contained in the Whatcom County Code Title 22 and Title 23.60 and which is available at <http://www.codepublishing.com/WA/WhatcomCounty>.

DATED this 30<sup>th</sup> day of November 2020.



Michael Bobbink, Whatcom County Hearing Examiner



WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES  
STAFF REPORT

**November 5, 2020**  
**Revised November 30, 2020\***

The application by <b>Governors Point Land, LP</b> for a Long Subdivision, Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, and Developers Agreement (Governors Point Long Subdivision)	LSS2018-00003, PLN2018-00016, SHR2018-00018, SHC 2020-00009 and SEP2018-00124 <b>FINDINGS CONCLUSIONS, AND RECOMMENDATIONS</b>
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**I. SUMMARY OF APPLICATION AND RECOMMENDATIONS**

Summary: Subdivision of 126 acres into one 98 acre non-residential tract to be owned and operated by the Whatcom Land Trust and 16 residential lots with associated infrastructure including roads, stormwater and fire utilities. Public water is proposed to be provided by the City of Bellingham. The lots will be served by individual onsite septic systems. A tender dock with a float, pier and gangway will be constructed on Pleasant Bay and improved gravel paths and an 800 square foot storage and bathroom building will be constructed within 200 feet of the shoreline.

Recommendation: The Technical Review Committee recommends approval of the requested subdivision, shoreline substantial development permit, a shoreline conditional use permit and development agreement, subject to conditions.

**II. TABLE OF CONTENTS**

- III. Preliminary Information
- IV. Site Description
- V. Project Proposal
- VI. Public Notice and Comment
- VII. State Environmental Policy Act
- VIII. Findings of Fact and Consistency Analysis
  - A. Roads and Bridges
  - B. Building and Fire Codes
  - C. Geologically Hazardous Areas
  - D. Habitat Conservation Areas and Wetlands
  - E. Zoning Code

\* This staff report has been revised to add recommended conditions of approval 146-150.



- F. Subdivision Code
- G. Shoreline
- H. Health Codes
- I. Development Agreement
- IX. Recommendation
- X. Recommended Conditions of Approval

### **III. PRELIMINARY INFORMATION**

#### **A. BACKGROUND INFORMATION**

Owner: Governors Point Land LP  
862 Peace Portal Drive, Suite 101  
Blaine, WA 98230

Agent: Wayne Schwandt  
965 Grand Blvd  
Bellingham, WA 98229

Surveyor: Jepson and Associates  
222 Grand Avenue, Suite C  
Bellingham, WA 98225

Engineer: Cascade Engineering Group  
119 Grand Avenue, Suite D  
Bellingham, WA 98225

Assessor's Parcel  
Numbers: 370236145506, 370225122040, 370225085132,  
370225115201, 370225093208, 370225095189,  
370225058223, 370225018180, 370225017225,  
370225002162, 370226486305, 370226531156, and  
370226509165

Zoning: Rural Residential (RR5A)

Comprehensive Plan: Rural

Subarea: Not applicable

Number of Lots: Sixteen residential lots and three non-residential  
tracts

Total Acreage: Approximately 126 acres

Roads: Private Road

Water Supply: City of Bellingham

<u>Sewage Disposal:</u>	Onsite septic systems
<u>Fire Protection:</u>	South Whatcom Fire Authority
<u>Law Enforcement:</u>	Whatcom County Sheriff's Office
<u>Public Schools:</u>	Bellingham Public Schools
<u>Topography:</u>	The site is varied with steep slopes and flat areas.
<u>Vegetation:</u>	Vegetation consists mostly of mature standing trees, young saplings and pasture grass.
<u>Adjacent Land Uses:</u>	North: Chuckanut Bay East: Single family residential South: Single family residential West: Bellingham Bay
<u>Utilities Easements:</u>	Necessary utility easements will be established prior to recording the final plat.
<u>Variances:</u>	No variances requested, except deviations outlined in the Development Agreement.
<u>SEPA Review:</u>	Mitigated Determination of Non-Significance was issued on June 18, 2020.

#### B. AUTHORIZING ORDINANCES:

1. Revised Code of Washington Chapter 58.17
2. Revised Code of Washington Chapter 36.70B.170
3. Whatcom County Comprehensive Land Use Plan
4. Whatcom County Code Chapter 2.33, Permit Review Procedures (repealed ordinance 2018-032)
5. Whatcom County Code Chapter 12.08, Development Standards
6. Whatcom County Code Chapter 15, Building Code
7. State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11, Whatcom County Environmental Policy Administration Chapter 16.08
8. Whatcom County Code Chapter 16.16, Critical Areas
9. Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance
10. Whatcom County Code Title 21, Subdivision Regulations
11. Whatcom County Code Title 24, Health Regulations

#### **IV. SITE DESCRIPTION**

The project area consists of an approximately 126 acre parcel off Pleasant Bay Road. The property is a peninsula and is surrounded on three sides by Pleasant Harbor, Chuckanut Bay and Bellingham Bay. The site is currently undeveloped with mostly mature forest. An existing gravel road provides access through the site. Wetlands have been identified onsite; however the wetlands are located within Tract A and are proposed to be dedicated to the Whatcom Land Trust. The property is Rural Residential (RR5A).

#### **V. PROJECT PROPOSAL**

As shown on the preliminary plat map (Preliminary Plat Map (pages 1-4), September 3, 2020), the Governors Point subdivision proposal includes sixteen (16) clustered residential building lots and one reserve tract. The property is located in the Rural Residential (RR5A) zone which allows one single family residential unit per five areas. The applicant has chosen to cluster the development and will leave approximately 98 acres in the reserve area. The cluster lots will range in size from 0.91 – 2.01 acres in size and will be created along the western portion of the site (along the Samish Bay marine shoreline). To serve the subdivision, a private road will be constructed with access to Pleasant Bay Road.

The reserve area (Tract A) will not contain a residence and, as proposed by the owner, will be deeded to the Whatcom Land Trust (WLT) as a Nature Reserve. Development of the reserve area will occur after final approval of the subdivision and creation of the lot. Once transferred, the WLT will provide two miles of non-motorized walking trails and trail access to beaches on both Pleasant and Samish Bays. Permitting for development on the reserve area will occur separate from this subdivision application.

The subdivision will create two additional tracts for development. Tract B will be approximately an acre and include a float, pier and gangway on Pleasant Bay, improved gravel paths and 800 square foot storage and bathroom building. The tender dock will be for temporary loading and unloading purposes only and will include float, pier and gangway. Tract C will be located on the Samish Bay side of the property and provide access to the marine shoreline.

The applicant has agreed to limit the maximum developable area on the lots and tracts. Each lot and tract has been assigned a maximum developable area which, for purposes of this subdivision shall include the following: buildings, ornamental landscaping and structures including roofs, driveways, courtyards, covered walkways, and outdoor shelters as specified in the Section 2.1.7.2 of the Development Agreement.

The following table outlines the preliminary developable area per lot:

Lot/Tract	Lot/Tract Size (SF)	Lot/Tract Size (acre)	Maximum Developable Area	
			Total Area (SF)	Total Area (Percent)
1	39,688.1	0.91	10,032	25%
2	77,477.9	1.78	10,867	14%
3	87,847.3	2.01	17,198	20%
4	71,836.0	1.65	16,268	23%
5	56,405.6	1.29	12,075	21%
6	53,378.6	1.23	11,021	21%
7	60,771.1	1.40	14,185	23%
Tract C	44,808.6	1.03	1,560	3%
8	64,884.0	1.46	11,042	17%
9	81,675.8	1.88	17,923	22%
10	75,579.4	1.74	14,900	20%
11	54,579.4	1.25	10,695	20%
12	60,786.7	1.40	9,100	15%
13	48,696.3	1.12	9,230	19%
14	57,800.4	1.33	10,200	18%
15	54,620.5	1.25	13,554	25%
16	85,878.8	1.97	14,436	17%
Tract B	47,246.5	1.08	4,951	10%
Tract A	4,271,058.0	98.05	262,822	6%
Lot Average	64,471.1	1.48	12,670	19.9%
<b>Total Governors Point:</b>		<b>126.98</b>	<b>5,531,249</b>	<b>8.5%</b>

\* Please note this table is preliminary. Final square footages will be determined after construction and final survey work has been completed. Staff will review the final table for consistency with the no-net-loss analysis.

Water will be served by an extension of water service from City of Bellingham through a Wholesale Water Service Agreement. A Group A Water System will be created and will be owned and operated by the Governors Point Homeowners Association. The system will be regulated by the Washington State Department of Health. Sewage will be treated either by individual onsite septic systems located on the lots or within an easement on the Reserve Tract (Tract A).

In addition to the plat maps, two additional site plans have been submitted (Preliminary Plat Map (pages 5 and 6), September 3, 2020). These site plans are illustrative in that they depict potential residence locations, driveways, soils for septic systems and stormwater treatment. These plans are not the approved locations for any development and individual building permits and review will be required at the time of development.

In summary, the applicant is proposing to deviate from development standards for the following items:

- Reduce the shoreline setback from 150 feet to 70 feet for lots 1-7 and 75 feet for lots 8-16. Site specific setbacks, including steep slope setbacks will be determined at the building permit; and
- Allowance of up to 500 square feet of development in the shoreline setback.

As authorized through RCW 36.70B.170, the applicant is utilizing the development agreement (Attachment A) process to mitigate potential impacts. The applicant has proposed the following:

- Create a 98 acre parcel to be permanently protected as open space;
- Reduce the number of residential lots from 25 to 16;
- Limit development to less than 10 percent of the total site; the entire site is a single watershed;
- Limit development to a 20% average for the residential lots.
- Preserve remaining area of each lot through a conservation easement at the time of future development.
- Limit residential structure to less than 2,900 square feet conditioned living space as defined as interior space within a closed structure intended for human habitation;
- Limit total floor area to less than 4,000 square feet per lot which includes the interior of garages, storage sheds, carport or similar open-sided structures; and
- Prohibit shared docks except on lot 16 and Tract B.

**Noted Submitted Plans/Map data/Reports (see exhibit list for all items)**

Preliminary Plat Map (Sheets 1 – 4), Jepson and Associates, September 3, 2020.

Preliminary Plat Map (Sheets 5 and 6), Jepson and Associates, September 3, 2020.

Site Plan Review Technical Memorandum, Associated Earth Sciences, Inc., March 13, 2020.

Wetland and Habitat Conservation Area Assessment, Cantrell and Associates, Inc., Revised January 25, 2020.

Habitat Conservation Areas No Net Loss Assessment, Cantrell and Associates, Inc., Revised January 25, 2020.

Habitat Management Plan, Cantrell and Associates, Inc., Revised January 25, 2020.

Governors Point Long Plat Road and Utilities Schematic (Sheets C1-C23), Cascade Engineering Group, P.S., Inc., January 14, 2020.

Eelgrass Survey Marine Vegetation Assessment, Tract B Governors Point Long Plat, Fairbanks Environmental Services, Inc., January 6, 2020

Governors Point Project Narrative, revised August 14, 2019.

Steep Slope Setback Technical Memorandum, Associated Earth Sciences, Inc.,  
October 11, 2019.

Governors Point Residential Subdivision, Whatcom County, Washington, Stormwater  
Site Plan, Cascade Engineering Group, P.S., Inc., Revised July 9, 2019.

Archaeological Assessment for the Governors Point Residential Development,  
Bellingham, Whatcom County, Washington, Drayton Archaeology, June 3, 2019.

Governors Point Development Traffic Impact Analysis, Gibson Traffic Consultants,  
Inc., June 2019.

Geotechnical Assessment Report, Associated Earth Sciences, Inc., October 29, 2018

## **VI. PUBLIC NOTICE AND COMMENT**

Requirements for public notice are contained in WCC 22.05.070.

Determination of Completeness: The determination of completeness was issued on  
January 14, 2019 for the subdivision, shoreline substantial development permit and  
development agreement.

The shoreline conditional use permit was determined complete on September 17,  
2020.

Notice of Application: The Notice of Application for the subdivision, shoreline  
substantial development permit and development agreement was published on  
January 28, 2019. Notice was also mailed to property owners within 1000 feet of the  
site.

A Revised Notice of Application to include the shoreline conditional use permit was  
published on September 21, 2020. Notice was also mailed to property owners within  
1000 feet of the site and emailed to any party who commented through the initial  
Notice of Application comment period and through the SEPA comment period.

Public Input: During the public comment period for the Notice of Application, SEPA  
and the Shoreline Conditional Use permit the County received numerous written  
comments. Staff also had counter discussions and phone calls with other concerned  
citizens. Please note the public comments are in five exhibit documents organized by  
dates of receipt by staff.

The following is a summary of the comments received and staff's responses to those  
comments:

- Concerns regarding development of the 98 acre Nature Reserve, including public

access, traffic, parking, trails, impacts to wildlife, rock slides, and need for public access. Concerns regarding ability of the WLT to run and operate a public park.

*Development of the Nature Reserve will be reviewed under future permits and will include review under the State Environmental Policy Act. Additional studies will include, but are not limited to traffic reports, recreational impact on ecosystems analysis, habitat conservation areas, wetlands, shorelines, geologically hazardous areas and archaeology.*

- Assurances of home locations

*All 16 residential lots front the Samish Bay and Tracts will not be further subdividable. Final locations of home sites has not been determined through this subdivision and development agreement; however, recommended conditions of approval will require compliance at the time of individual building permit with the following: Development Agreement, stormwater, access, fire and building codes, OSS requirements, shorelines, habitat conservation areas, wetlands and geologically hazardous areas. Additionally, recommended plat notes will restrict development onsite to less than 2,900 square feet of "conditioned living space" and less than 4,000 square feet of total floor area. Finally, as outlined in the Maximum Developable Area table included in the Project Description section (Section V), each lot will be restricted in total area of development including, but not limited to, driveways, roads, structures and landscaping.*

- Impacts to views

*Residential development of the site will occur on the western portion of Governors Point. No residences will be located along Pleasant Bay. Development of the lots will be restricted to no more than 4,000 square feet of total floor area and each lot will include additional maximum developable areas. These restrictions will retain much of the existing tree canopy and reduce overall impacts to views to the water and from the water.*

- Need for a secondary access

*Whatcom County Public Works Engineering Services and the Whatcom County Fire Marshal's Office reviewed relevant code and the traffic impact analysis. No secondary access is required.*

- City water

*The proposed subdivision is serviced by a municipal water system. The City of Bellingham has entered into a contract for a Wholesale Water Service Agreement between the City and Governors Point Land LP. The contract is specific to service for sixteen new residence and two supplemental non-residential connections. No additional services will be allowed through that contract.*

- Emergency response issues including fire hydrants

*Fire hydrants are required and are shown on the preliminary road and utility plans. The hydrants are located every 1000 feet along the access road. The fire hydrants will protect residences, traffic hazards and wildland fires. In addition to the fire hydrants, there are several fire apparatus turnouts and there are fire apparatus turnarounds at both ends of Road B and at the terminus of Road A.*

*Individual single family residences will be reviewed at the time of development for compliance with applicable fire codes; additional fire apparatus turnarounds and/or sprinkling may be necessary.*

- Adequacy of Pleasant Bay Road and State Route 11 (Chuckanut Drive).

*Pleasant Bay Road is a County maintained, Urban Local Access road, with an average daily traffic (ADT) of 62. According to the road mitigation determination, Pleasant Bay Road has sufficient width to support the additional proposed traffic. No additional road widening or improvements are required.*

*In addition, the Washington State Department of Transportation (WSDOT) reviewed the submitted traffic impact analysis and has no additional comments or conditions regarding the residential development.*

- Wildland fire issues

*As noted above, the applicant will be required to install fire hydrants.*

- Accessory dwelling units

*The applicant has not requested Accessory Dwelling Units (ADU's) and staff has not reviewed the possibility of ADU's within this subdivision. Pursuant to WCC 20.32.132, subdivisions are required to be marked as eligible for an ADU at the time of platting. This plat will contain no eligibility note, and therefore ADU's will not be permitted unless a future plat alteration is granted*

- Stormwater discharge

*The applicant has submitted a Preliminary Stormwater Site Plan Report which identified best management practices (BMPs) to address runoff from impervious surfaces in order to prevent erosion and minimize pollution from sediment in the runoff. Among many options, the engineer is choosing to utilize compost amended vegetated filter strips (CAVFS) to treat and disperse plat road runoff. No direct stormwater outfall is proposed or permitted through this application. Each lot is required to manage all impervious surface in accordance with the Whatcom County approved stormwater manual and additional requirements in the approved Habitat Management Plan. The residential systems are required to meet full dispersion or infiltration.*



- OSS locations

*The applicant submitted an Onsite Sewage System Subdivision Application with the Whatcom County Health Department on July 10, 2019. The subdivision application identified adequate soils located outside of shoreline setbacks and regulated critical areas. The OSS will be located at least 100 feet from the shoreline as required by WCC 24.05.100 and will meet all applicable OSS requirements at the time of individual OSS application. In addition to WCC 24.05.100 the approved Habitat Management Plan requires OSS to be placed 112' from the shoreline.*

- Need for additional wildlife, bird and marine studies. Impacts to Great Blue Heron habitat.

*The applicant has submitted a Habitat Management Plan, which address impacts to critical areas and priority species for development of the plat. The Habitat Management Plan will be recorded on title for each residential lot. Individual overwater structures, other than 6 mooring buoys are prohibited. The permit for construction of the community dock has been conditioned to use the most current methodology to minimize impacts to the nearshore such as, function grating, mono-pile design, construction materials that do not contain prohibited preservatives, and distance between pile to clear span sensitive supratidal and intertidal areas, and the proposed location avoids impacts to eelgrass*

- Mitigation for float, gangway and pier on Pleasant Bay

*The permit for construction of the community dock has been conditioned to use the most current methodology to minimize impacts to the nearshore such as, functional grating, mono-pile design, construction materials that do not contain prohibited preservatives, and distance between pile to clear span sensitive supratidal and intertidal areas, and the location avoids impacts to eelgrass and impacts to other macro algae will be temporary and should recover in a single growing season.*

- Concerns regarding safety of moorage and buoys

*A separate shoreline permit will be required for installation of the mooring buoys. Future mooring buoys installation will follow recommend methodology of Army Corps of Engineers, Washington Fish and Wildlife, and the Whatcom County Shoreline Management Program. Mooring buoys will be required to be marked for visibility, anchored to the seafloor, and use a mid-line float to reduce impacts to the seabed and reduce chafe.*

- Adequacy concerns regarding "no net loss of shoreline ecological functions"

*The approach for developing Governors Point was to use a watershed scale holistic view and incorporate landscape ecology principles. To meet no net loss a series of habitat management strategies were developed in the approved habitat management plan. When summed together this approach preserves watershed functions, forest*

*ecological functions, and nearshore functions. Governors Point is a single watershed as determined by Hydrogeologist Chuck Lindsey. The overall development within this watershed will be less than 10%; the threshold where watershed hydrology, habitat, and species have been shown to decline. Development is limited to an average of 20% of total lot size. This maintains at least 80% forest canopy. Studies have shown a species declines when more than 20% of the canopy is removed.*

*The 4,000 square foot maximum floor area will preserve wildlife corridors. Using the watershed and terrestrial forest function as a proxy for individual habitat conservation areas and species, no net loss of ecosystem functions and ecosystem wide processes is achievable.*

- Availability of documents

*Throughout permitting, many of the documents have been made available online at <http://www.whatcomcounty.us/3032/Governors-Point-Long-Subdivision>, and documents have been made available upon request. The Staff Report and exhibits have been issued two weeks prior to the public hearing date to allow additional time for public review.*

- Adequacy of SEPA comment period and public process

*During the SEPA comment period, several commenters requested the comment period be extended. Whatcom County code has no provisions for extension of the SEPA comment period and declined to extend the required fourteen day comment period (WCC 16.08.128 and WAC 197-11-340).*

*Staff has continued to receive comments regarding the project and will continue to forward any comment received to the appropriate staff person for review as well as the Whatcom County Hearing Examiner for inclusion in the official record.*

- Archaeology

Tamela S. Smart, M.A., a representative from Lummi Nation Tribal Historic Preservation Office (LNTHPO) submitted the following comments:

We recommend that work proceed on lot 18 (16) but that all ground disturbing work on this lot be monitored by an archaeologist. The LNTHPO would like an opportunity to review and comment on the Monitoring and Inadvertent Discovery Plan (MIDP) before the project begins.

We recommend that work proceed on lots 1-17 (1-15) with DAHP's Inadvertent Discovery Plan on-site and followed if cultural resources or human remains are encountered. The following contact phone numbers for the Lummi Nation should be included in the IDP: Lena Tso, THPO 360-312-2257 and Tamela Smart, Deputy THPO 360-312-2253.

*These comments were written using a previous version of the preliminary plat map. The correct lots numbers are in parentheses. These comments were recognized as SEPA mitigating conditions.*

- Code, covenants and restrictions and ownership

*The applicant provided a draft codes, covenants and restrictions (CC&R's) document at the time of application. The draft included some language regarding the possibility of multiple ownerships for individual lots. The applicant has provided updated CC&R's and this language has been removed. It appears as the intent is one owner per lot and no condominium-style ownership of the lots.*

- Vesting of dock permit

*Through the review of the proposal, it was determined a Shoreline Conditional Use Permit would be necessary for the dock. The applicant applied for the shoreline conditional use permit on September 17, 2020 and the application was noticed on September 21, 2020. The shoreline conditional use permit is combined with the long subdivision, shoreline substantial development permit and development agreement as one consolidated hearing, pursuant to WCC 22.05.030.*

- Impacts to Chuckanut Wildlife Corridor

*The plat has been conditioned to develop less than 10% of the total acreage of the proposed long division. As proposed, plat development is 8.5%. Studies have shown loss of hydrologic function and ecosystem function when watersheds contain greater than 10% of developed area. In addition, other studies on forest ecology have determined species abundance and diversity decline when greater than 20% of the tree canopy is removed. The plat has been conditioned to on average contain a maximum of 20% developed area. The approved habitat management plan and conditions of approval contain additional habitat management strategies to minimize overall impact to the Terrestrial Forest and Marine Riparian Zone.*

- Support for the proposed subdivision and dedication of land to the Whatcom Land Trust.

*Positive comments were also received for this project. Several respondents noted this proposal was a balance between development of the site for single-family residences and preserving a large portion of Governors Point for wildlife and future public access. The following Whatcom County Comprehensive Plan Goal was referenced as confirmation of the importance of Governors Point in the Recreation Element of the Comprehensive Plan:*

Goal 9E: Recognize the shoreline as one of Whatcom County's unique assets and provide adequate physical and visual access for present and future generations.

Policy 9E-1: As economically feasible, acquire for public use as much of the saltwater shoreline as possible. Public and private resources should be explored to further this policy. A reasonable goal is to acquire for public access a minimum of 15% of the saltwater shoreline and adjacent tidelands in Whatcom County.

Please also see *Section VIII. Findings of Fact and Consistency Analysis* for additional and more detailed response to public comments.

Notice of SEPA Threshold Determination: The SEPA Mitigated Determination of Non-significance (MDNS) for this project was issued on June 18, 2020. The notice was sent to state and local agencies, and interested parties for the project. No appeal of the threshold decision was submitted.

Notice of Public Hearing: The Notice of Public Hearing for this project was posted on the site, emailed to interested parties, and the notice was included in a one-time newspaper publication.

## **VII. STATE ENVIRONMENTAL POLICY ACT (SEPA)**

The State Environmental Policy Act (SEPA) requires applicants to disclose potential impacts to the environment as a result of their project. The Environmental Checklist submitted by the applicant adequately discloses anticipated environmental impacts as a result of this project.

A SEPA Mitigated Determination of Non-Significance (MDNS) was issued on June 18, 2020. The following was added as a SEPA mitigating condition:

Adverse impacts by the proposed development can be caused at the commencement of construction. Therefore, the Whatcom County SEPA Official finds that, pursuant to Substantive Authority, as allowed by WCC 16.08, the following SEPA mitigating conditions shall be required as a condition of the permit:

1. As recommended in the Archaeological Assessment for the Governor's Point Residential Development, Bellingham, Whatcom County Washington (Report 0519C) by Drayton Archaeology, dated June 3, 2019; archaeological monitoring done by a qualified professional shall occur during construction of the trail and dock on the Reserve Tract near 45WH501.
2. Work may proceed on proposed reserve tract but that all ground disturbing work on this lot be monitored by an archaeologist. The LNTHPO shall review and comment, if necessary, on the Monitoring and Inadvertent Discovery Plan (MIDP) before the construction begins.
3. Work may proceed on proposed lots 1-16 with DAHP's Inadvertent Discovery Plan on-site and followed if cultural resources or human remains are encountered. The following contact phone numbers for the Lummi Nation shall be included in the

IDP: Lena Tso, THPO 360-312-2257 and Tamela Smart, Deputy THPO 360-312-2253.

No appeal of the MDNS was filed.

## **VIII. FINDINGS OF FACT and CONSISTENCY WITH REGULATIONS**

### **A. Roads and Bridges (WCC Chapter 12.08)**

WCC Chapter 12.08 adopts and gives authorization for development standards for development within Whatcom County. Whatcom County shall establish uniform, comprehensive and distinct requirements which shall be applied to all developments. These requirements shall be established as "Whatcom County development standards" and shall exist to provide clear development guidelines for all construction activity within the county. These standards shall establish administrative and technical requirements for the implementation of land use regulations and shall provide the basis by which developments are evaluated to ensure compliance with county regulations. Engineering Services reviewed the proposal and submitted a memo dated October 29, 2020 with the following discussion:

Public Works Engineering Services (PWES) has reviewed the proposal for a 16-lot residential subdivision with two non-residential tracts, and a reserve tract to be donated to the Whatcom Land Trust as a nature reserve (approximately 98-acre).

The proposed development must demonstrate conformance with Whatcom County Code (WCC) and Whatcom County Development Standards (WCDS). The following findings and recommended conditions are based on documents that have been submitted for review. Any changes to the proposed plat (lot configuration, easements, ADUs, etc.) may modify these conditions.

#### Findings of Fact:

1. The applicant has submitted a written request for a private road to serve the plat. The criteria of WCDS 505.E for a private road were met and the private road request has been approved by the County.
2. The subdivision will access Pleasant Bay Road, a County maintained road with Urban Local Access classification and an average daily traffic (ADT) count of 62 [2020]. Pleasant Bay Road is a paved road that varies in width from 20 to 21.5 feet wide. According to road mitigation determination per the Development Standards, Pleasant Bay Road has sufficient width to support the additional proposed traffic; no road widening or other County road improvements are required.
3. The applicant has submitted a certified Traffic Impact Analysis by Gibson Traffic Consultants stamped by a Registered Professional Engineer in the State of Washington, dated June 2019. The report includes traffic counts and

justification for proposed average daily traffic assumptions and the low volume sight distance approach applied to the access for the site. The additional proposed traffic is 93 ADT. The report has been reviewed by PWES and approved by the County.

4. The development proposes to add 8 PM Peak Hour Trips, as documented in the reviewed and approved Traffic Impact Analysis. This is below the threshold for further concurrency review. PWES has issued a certificate of Exemption from Concurrency for this project.
5. The applicant submitted a Preliminary Storm Water Site Plan Report prepared by the Cascade Engineering Group. PWES has reviewed and accepted the preliminary design in this report and subsequent addendums received through requests for additional information. Stormwater from the site will drain to Chuckanut and Pleasant Bays.
6. The engineer will utilize best management practices (BMPs) to address runoff from impervious surfaces in order to prevent erosion and minimize pollution from sediment in the runoff. One of the BMPs the engineer plans to utilize to treat and disperse plat road runoff is compost amended vegetated filter strips (CAVFS). This is basically a widened shoulder strip along the road that is vegetated and has amended soil. The engineer has requested a design exception from the maximum slope of the contributing roadway criteria typically applied for this BMP. The engineer has submitted calculations and narrative to justify efficacy of this request and PWES has reviewed and granted preliminary approval for up to 15% resultant slope for this BMP on this project.
7. The geotechnical engineering consultant AES Inc. has submitted an assessment of the site suitability for this residential development and preliminary on-site storm drainage design. In their technical memorandum dated 3-13-2020 AES opines the lots as currently proposed are suitable for residential development, subject to site-specific recommendations. Further, AES supports that the site topography and composition could support dispersion on vegetated slopes 15-40%. This lends support to the preliminary storm design, which will need geotechnical support for dispersion applications proposed on slopes greater than 15%.
8. Engineering Services has reviewed and approved the applicant's requests for variance from standards for these design points:
  - a. 20' minimum roadway width, inclusive of shoulders
  - b. 40' access and utility easement
  - c. 20mph speed limit for residential Road B, and associated reduced radius curves

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 12.08.*

## **B. Building and Fire Code (WCC Title 15)**

WCC Title 15 adopts and amends the applicable building and fire codes. The Building Official is authorized to promulgate such rules, policies and/or procedures as deemed necessary for the efficient operation of the permit process as administered by the department of building safety, designated in IBC Section 103.1, and hereby referred to as the building services division of the Whatcom County Planning and Development Services Department.

WCC Title 15 adopts and amends the applicable fire codes. The Fire Marshal is authorized to promulgate such rules, policies and/or procedures as deemed necessary for safety, designated in IBC Section 103.1, and hereby referred to as the Office of the Fire Marshal.

The Whatcom County Fire Marshal submitted a memo dated September 22, 2020 with additional conditions of approval.

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Title 15.*

## **C. Geologically Hazardous Areas (Article 3) – Title 16**

WCC Chapter 16.16 of the Whatcom County Code contains standards, guidelines, criteria and requirements intended to identify, analyze, preserve and mitigate potential impacts to the County's critical areas and to enhance and restore degraded resources such as wetlands, riparian stream corridors or habitat, where possible.

*Whatcom County Staff Geologist provided the following analysis in a memo dated November 2, 2020.*

The subject parcels associated with the proposed long plat application contain landslide and erosion hazard areas regulated pursuant to Whatcom County Code (WCC) 16.16.310, 3.25 and .355. Hazard areas are primarily located along the southwestern and north perimeter of Governor's Point. Development activity in or adjacent to a regulated landslide or erosion hazard area is subject to the development standards of WCC 16.16.320, 16.16.325, 16.16.330, and 16.16.335.

### **Geologic Hazard Review**

The long plat application materials included a professional assessment of potential hazards titled '*Geotechnical Assessment Report*' prepared by Associated Earth Sciences, Inc. (AESI), dated October 29, 2018. The assessment contains a general summary of pertinent geologic hazards posed to each proposed lot, and concludes that the long plat has been configured appropriately to safely allow development utilizing conventional geologic hazard mitigation measures such as building and shoreline setbacks, geotechnical foundation engineering, construction best management practices and erosion and sediment control measures.

Additional geotechnical and geohazard review was performed by AESI, and is presented in technical memoranda titled '*Steep Slopes Setback*' and '*Site Plan Review*,' dated October 11, 2019, and March 13, 2020, respectively. The former memorandum re-confirmed AESI's conclusion that, as configured, the proposed long subdivision allows suitable setback to prevent detrimental impacts on and off site from any potential or active landslide hazard areas, but that site specific analysis would be required to identify appropriate setbacks and mitigating measures appropriate for future development plans. The latter memorandum reiterates the suitable configuration of the long subdivision, subject to 'site-specific recommendations prepared for each lot at the time of building permit application.' The latter memorandum also addresses the suitability of stormwater disposal in proximity to potential or active landslide hazard areas and concludes that dispersion systems are generally suitable for disposal of stormwater generated by proposed impervious surfaces subject to site-specific recommendations prepared for each lot at the time of building permit.

### **Public Comments – Landslide Hazards**

Public comments were received that cited potential landslide and erosion hazards as concerns for approving the proposed long subdivision. Multiple commenters referenced a landslide that occurred on the northeast side of Governor's Point on March 12, 1991. Review of photos provided by one commenter indicate that the landslide would be more accurately termed a rock slide, as the slope failure occurred within the underlying Chuckanut Sandstone, and failed on a preferential plane of weakness that dips towards the bluff face. Observations made during field reconnaissance, as well as review of structural measurements recorded on the Geologic Map of the Bellingham 1:100,000 Quadrangle (Lapen, 2000), confirm that Chuckanut Sandstone bedding is preferentially oriented along the north shore of Governor's Point for this type of failure mechanism. No development aside from the public dock is proposed near steep slopes that may be susceptible to this mode of failure.

As recommended by AESI residential development at each respective parcel shall be subject to site-specific exploration and mitigating recommendations, which will include evaluation for potential rock slide hazards due to structural discontinuities. While it doesn't appear that Chuckanut Sandstone bedding is preferentially oriented for rock slides on the west aspect of Governor's Point, other structural discontinuities such as jointing and faulting may persist at one or more lots. Such conditions would be regulated as potential landslide hazards pursuant to WCC 16.16.310(C.1.a.vii), but as concluded by AESI sufficient room is present to setback residential development at each proposed parcel as necessary to avoid impacts to or by potential geologic hazards.

### **Stormwater Disposal**

Review of the proposed stormwater treatment and disposal system was also reviewed for potential landslide and erosion hazard area impacts. Conceptual stormwater designs were submitted that proposed dispersion at each lot. In



accordance with AESI recommendations, dispersion trenches were sited at each proposed parcel to accommodate a '50-foot vegetated flow path on slopes shallower than 40 percent'. At some parcels the location of the conceptual dispersion trench alignment may encroach on landslide hazard area setbacks to be defined at the time of development based on site-specific analysis. In order to accommodate the potential that suitable stormwater dispersion locations cannot be identified during site-specific analysis, a condition of approval has been included that the final civil plans shall include a utility easement that would allow stormwater to be collected and conveyed to discharge east of the access drive; thereby ensuring impacts may be avoided.

Similar accommodations have been included for septic drainage. Further necessitating the stormwater utility easement allowing access to Tract A is the Habitat Conservation Area and Wetland condition that prevents stormwater outfalls from discharging 'directly or indirectly into the marine receiving waters.' Outfall pipes that convey stormwater to the toe of an unstable coastal bluff are a common mitigation measure for avoiding impacts to regulated landslide hazard areas, but Staff was of the opinion that such development would be a detriment to the shoreline, thus necessitating the stormwater utility easement and associated condition.

### **Habitat Conservation Management Plan and No Net Loss Analysis**

The Habitat Conservation Management Plan and No Net Loss Analysis, authored by Cantrell and Associates, Inc. (CA), dated January 25, 2020, presents an assessment of potential impacts to ecological functions due to development of the proposed long plat. Included in the analysis are the functions provided by hydrology and slope stability, which are described as offering the primary benefit of 'preserving ongoing natural sediment inputs to waters and to protection of infrastructure.' The assessment is based on Griggs, et al (1992), as cited in Macdonald and Witek (1994), which defines the appropriate setback to provide similar ecological function based on bluff height and slope stability.

To complete the analysis CA interprets coastal bluffs on the west side of Governor's Point as 'stable.' The resulting setback based on this interpretation amounts to a 1(Horizontal):1(Vertical) projection from the toe of the slope, such that the appropriate setback to preserve the ecologic function of hydrology and slope stability is equal to the slope height. For moderately stable slopes, as is likely more appropriate for some of the southern parcels, the resulting setback would be a 2(H):1(V) projection from the toe of slope, or twice the prescriptive setback relative to a stable slope.

In their assessment CA justifies their approach based on AESI's interpretation that sufficient development setbacks are possible at each proposed parcel to avoid or mitigate for potential hazards, as well as a stable designation for the west shore of Governor's Point as depicted on the Washington State Department of Ecology Coastal Atlas. The author concludes that a reduced setback will provide similar

function with respect to hydrology and slope stability, as compared to the standard 150 foot shoreline setback, presuming geotechnical recommendations are prepared and implemented during site development and construction. By this methodology, prescriptive setbacks are essentially supplanted by site-specific setbacks tailored for each lot and proposed scope of development.

While Staff does not concur that the southern lots should be classified as stable, setbacks will ultimately be based on site-specific geotechnical analysis prepared by a qualified professional, and will include Best Management Practices and other mitigation measures intended to ensure detrimental impacts to hydrology and slope stability do not result. As a result, Staff agrees that ecological functions provided by hydrology and slope stability will be preserved.

## **Discussion**

The proposed long plat has been reviewed by a qualified professional in accordance with WCC 16.16.375 and has been shown feasible, as configured, to avoid detrimental impacts to regulated geologically hazardous areas as required by WCC 16.16.320(I). However, due to the presence of regulated landslide and erosion hazards at many of the proposed parcels, the assessment of feasibility is conditional based on site-specific analysis of development plans proposed at the time of building permit application. Plat design elements have been included to ensure impact avoidance is feasible, and include sufficient buildable space to accommodate reasonably conceivable slope setbacks for constructed improvements, and stormwater and septic easements to allow discharge to the east of the access road if deemed necessary following site-specific analysis.

For these reasons it is recommended the proposed long plat receive preliminary approval in consideration of Article 3 of the Whatcom County Critical Areas Ordinance, subject to the following conditions and inclusion of the Geo-hazard Plat Note provided.

## **D. Habitat Conservation Areas and Wetlands (Article 6 and 7) – Title 16**

The long subdivision application has been routed for review for conformance with the WCC 16.16 Critical Area Ordinance. The entire CAO applies to this project; this memorandum review focuses the critical area assessment report, critical area protective measures, and compensatory mitigation in the general requirements (Article I & II), wetlands (Article VI) and fish and wildlife habitat conservation areas (HCA) (Article VII).

## **Staff Analysis**

Chapter 16.16 of the Whatcom County Code contains standards, guidelines, criteria and requirements intended to identify, analyze, preserve and mitigate potential impacts to the County's critical areas and to enhance and restore degraded

resources such as wetlands, riparian stream corridors or habitat, where possible. The review applied the entirety of chapter 16.16 WCC to the proposal as applicable. This analysis reviews specific provisions, which summarize the standards, guidelines, criteria, and requirements of Chapter 16.16 WCC. For this staff report the acronym HMP references the combination of documents, conditions of approval, and the Development Agreement, which as a whole provide all the habitat management strategies necessary to demonstrate compliance with WCC 16.16.

### ***WCC 16.16.225 – Regulated Activities***

As conditioned, the proposal is consistent with WCC 16.16.225(B)(4) and (6).

The applicant has submitted a Habitat Management Plan consistent with alternative mitigation plan provisions in WCC 16.16.261. The proposed long subdivision employs a number of measures to avoid and minimize impacts to critical areas and critical area buffers. These measures include:

- Retiring nine (9) development densities;
- Placing 98 acres of terrestrial forest area in a reserve tract designated as open space;
- Clustering of the 16 residential lots to the Samish Bay side of Governors Point;
- Limiting development in the Governors Point Watershed to less than 10%;
- Limiting development of the residential lots on average to less than 20% which includes ornamental landscaping;
- Limiting total lot development to 4,000 square feet of interior space;
- Limiting ornamental landscape to a maximum of 10% of lot area; and
- At the time of future develop each lot will also record a conservation easement on the remaining area outside of the approved development to protect upland ecosystem functions, priority habitats and provide wildlife corridors.

### ***WCC 16.16.250 – Submittal Requirements and Critical Areas Review Process***

The applicant submitted for review four documents that together, meet the requirements of a complete critical area assessment report (CAAR). The combined documents are titled:

1. "Wetland & Habitat Conservation Areas Assessment" joint authored by Cantrell & Associates and Fairbanks Environmental. Cover dated REVISED January 25, 2020 and submitted February 6, 2020 as amended by an addendum to the report dated October 27, 2020 and date stamped the same.
2. "Habitat Conservation Areas No Net Loss Assessment Governors Point" joint authored by Cantrell & Associates and Fairbanks Environmental. Cover dated REVISED January 25, 2020 and date stamped February 6, 2020.)
3. "Eelgrass Survey Marine Vegetation Assessment Tract B Governors Point Long Plat" authored by Fairbanks Environmental. Cover dated January 6,

2020 and submitted February 6, 2020, as amended by an addendum to the report dated October 27, 2020 and date stamped the same.

4. "Habitat Management Plan" (HMP). Joint authored by Cantrell & Associates and Fairbanks Environmental. Cover dated REVISED January 25, 2020 and date stamped February 6, 2020; as amended by an addendum to the report dated October 27, 2020 and date stamped the same.
5. "Addendum for: Wetland & Habitat Conservation Areas Assessment (revised January 25, 2020), Habitat Conservation Areas No Net Loss Assessment (revised January 25, 2020), Habitat Management Plan (Revised January 25, 2020). Cantrell & Associates. Dated and submitted 10/27/2020.

In addition, the applicant provided an addendum to reports 1-3 addressing agreed to terms in the Agreement dated October 27, 2020.

Document 1 and 3 addresses the inventory and characterization of the project areas. These documents identify the presence and absence of Growth Management Act critical areas, nearshore habitat and species, and provides an existing condition analysis of the uplands and nearshore habitat.

Document 2 addresses marine riparian ecological functions and ecosystem wide processes to characterize the effect of reducing the shoreline setback from 150 feet to 70 or 75. The analysis looks at nine primary functions of the marine riparian area and scores the function based on site-specific tree height (SPTH) and setback from the ordinary high water mark. Washington State Fish and Wildlife (WDFW) in Riparian Management Volume 2 propose the approach of using SPTH to represent ecological function and ecosystem wide processes.

Document 4 provides mitigation measures for project design, protective measures, stormwater management and compensation for unavoidable impacts to minimize or compensate for impacts to critical areas and their buffers. The recommended habitat management measures together with the conditions of approval meet no net loss of ecological function and ecosystem wide processes.

When fully implemented, the conditions of approval will provide the required documentation to approve the combined CAAR.

Document 5 is an addendum to the entire Critical Area Assessment Report to match the agreed to terms in the Developers Agreement.

### ***WCC 16.16.260 – General Mitigation Requirements***

The Habitat Management Plan (HMP) meets mitigation sequencing requirements. Prior to final plat approval: the applicant will submit and receive approval of a

standard surety, install fencing, signage, and mitigation plantings, receive as-built approval, and record with the Whatcom County Auditor easement documents. As conditioned, the proposed subdivision will provided mitigation sufficient to address adverse environmental impacts to achieve no net loss of ecological functions and values.

### **Avoidance**

The applicant is placing in a reserve tract designated as open space approximately 98 acres or 78% of the Governors Point watershed containing high functioning, terrestrial forest, and the upper bounds of the marine riparian area. The 126 acre peninsula is eligible for 25 residential lots per the five acre zoning designation. As proposed only 16 residential lots will be created with this development and 9 development densities will permanently be removed. No direct impacts to wetlands are proposed.

### **Minimization**

Minimization of impacts includes site design, development limitations, and protective easements. As provided in the HMP unavoidable impacts have been reduced to a level of no adverse impact or compensatory mitigation. Development has been limited to less than 10% of the plat; the plat is nearly the entire Governor Point watershed. Residential lot development, on average, is limited to less than 20% including all impervious surfaces and ornamental landscaping. Residential development is clustered on the Samish Bay side of the peninsula.

As the project is proposed altering of natural drainage patterns, natural topography and hydrology will be minimized by re-surfacing existing roads (new roads will not be constructed) and future development is conditioned to meet site development criteria in the shoreline management plan in affect at the time of development. Stormwater management from impervious surfaces such as roads, buildings, and structures, driveways, and other impermeable surfaces will be treated and infiltrated or dispersed on-site via road and driveway side swales, infiltration trenches or other facilities. All stormwater must utilize existing outfalls.

As conditioned, stormwater easements for each residential lot will be required and sleeves to accept stormwater conveyance will be installed in the existing road to allow stormwater to be pumped and fully dispersed into the terrestrial forest of Tract A, should on-site infiltration or dispersion be determined infeasible. New outfalls not associated with residential dispersion or infiltration are prohibited.

## **Rectification**

All areas, outside of the approved development footprint, impacted during construction are required to be rectified by removal of construction materials, temporary staged fill, and revegetated with native plantings.

## **Reduction**

For the proposed subdivision, critical area protection measures include a conservation easement containing the critical area and their buffers shall be recorded at the time of future development on each lot. As a condition of approval a conservation area easement for all streams, wetlands, and buffers within the proposed subdivision is required to be recorded with the Whatcom County Auditor's Office and the Auditor's File Number (AFN) will be recorded on the face of the plat. Split rail fencing and signs are required ten feet from herbaceous balds and at the edge of stream and wetland buffers. Maintenance of these protective measures is included in the Covenants, Conditions and Restrictions (CC&Rs). The CC&Rs also include the requirement for native vegetation retention.

## **Compensation**

Mitigation measures include replanting of vegetation removed to complete plat development. In addition, future developments will provide compensation mitigation in accordance with Whatcom County Codes in affect at the time of development. The applicant provided a conceptual mitigation plan for impacts to wetland D during road construction activities. A surety and five years of monitoring of compensatory mitigation will be required.

### ***WCC 16.16.261 – Alternative or Innovate Mitigation Plans***

The applicant applied for a Development Agreement associated with the subdivision proposal. The requested amendments pertinent to the WCC 16.16 include a reduction of standards marine shoreline setback from 150 feet to 70 feet for lots 1-7 and 75 feet for lots 8-16 and an allowance of 500 square feet of development within the reduced setback.

The HMP has been found to be consistent with WCC 16.16.260 General Mitigation Requirements, WCC 16.16.680 Wetland Mitigation, WCC 16.16.760 Mitigation Standards for Habitat Conservation Areas, and Whatcom County Title 23 Shoreline Master Program. The Habitat Management Plan has been determined to meet no net loss of ecological function and ecosystem wide process.

The HMP has been determined to comply with WCC 16.16.261(B)(1)-(7).

**WCC 16.16.610 – Wetlands Designation, Rating and Mapping**

The following wetlands have been verified as present within the impact area. Their location and size can be seen on the submitted site plans, and can be geographically located on Figure 2 of the Revised Wetland and Habitat Assessment Report. All wetlands identified are located outside of Shoreline Jurisdiction and assessed under the 2017 Critical areas ordinance (ORD2017-077).

Wetland	Size in study area (square feet)	Category	Habitat Score	Moderate Intensity Buffer size (ft.)	HGM
A	5615	IV	6	40'	Slope
B	374	IV	6	40'	Slope
C	0.62	IV	5	40'	Slope
D	0.09	III	7	100'	Slope-Depressional

**WCC 16.16.630 – Wetland buffer widths**

Standard Buffer widths were assigned to each of the four wetlands found in the development area according to WCC 16.16.630(D). No reduction or averaging of wetlands buffers were proposed. Wetland D buffer will be increased by 1500 square feet as recommend in the HMP.

**WCC 16.16.680 – Wetland Mitigation**

No direct impacts to wetlands are proposed. The proposed road improvements on tract A and Tract B at southern end of the property will result in 420 SF of permanent impacts and 880 SF of potential temporary impacts to the outer edge of the buffer to Wetland D. The impacts are unavoidable road improvements are required to bring the main access road up to standards. Impacts have been minimized by using block-retaining structures on the downhill side.

As conditioned, the recommendations in the habitat management plan are required. A final mitigation plan will be submitted prior to civil drawing approval. This final mitigation plan will include the recommendation to provide an additional 1,500 SF of buffer to the west side of Wetland D. In addition, 880 SF of buffer restoration will occur in the areas temporarily impacted through a combination of replanting/transplanting with local native understory species and healing-in exposed soils with wood chip mulch

**WCC 16.16.690- Compensatory Mitigation Plan**

Prior to civil drawing approval, the applicant will submit a final wetland mitigation plan with the elements of WCC 16.16.690 and 16.16.260 and receive approval. Then plan shall also include locations of required signage and fencing. The final

mitigation plan will include one of the following a bond quantity worksheet or bid from a licensed contractor. A landscape section is required to be included in the civil drawing plan set to address buffer replanting (location and a planting schedule) and the locations of fencing and signage. As conditioned, the application will provided mitigation sufficient to address adverse environmental impacts to achieve no net loss of ecological functions and ecosystem-wide process.

**WCC 16.16.710 – Designation, Mapping and Classification- Habitat Conservation Areas**

The CAAR Doc 1 through 5 and Attachment A titled, “Habitat Conservation Area Descriptions and Mitigation Summary Table for Governors Point Long Plat” identify several types of Habitat Conservation Areas (HCA) have been documented on Governor’s Point or adjacent to development within Marine Waters.

The following HCAs are known to be present within the project area:

- Streams
- Herbaceous Balds
- Biodiversity Areas and Habitats
- Mature Forests
- Puget Sound Nearshore
- Chuckanut Wildlife Corridor\*
- Marine Nearshore Habitat and Marine Riparian Zone\*
- Critical Saltwater Habitat
- Snags and Logs
- Riparian Habitat
- Roosting Habitat for Big Brown Bat, Myotis bats, Pallid bat

\* Habitat of Local Importance

The Cantrell Wetland Delineation and Habitat Assessment Report describe Stream A within the project area as non-fish bearing, Type 5 stream. However, staff observed fish within the stream during site inspection on March 19, 2019. As a result, a condition of approval staff determined Stream A to be fish bearing.

Stream	HCA Designation	Critical Area Buffer (ft.)
Stream A	Fish Bearing	100

Designating Stream A as fish bearing does not have an effect on the project design, as the 100 foot buffer is outside of any proposed development area.

**WCC 16.16.760 – Mitigation Standards for Habitat Conservation Areas**

The description, impact determination, and associated mitigation conditions are summarized in the table within Attachment A titled, “Habitat Conservation Area Descriptions and Mitigation Summary Table for Governors Point Long Plat”. Prior to civil drawing approval, the applicant shall submit a final mitigation plan with locations of required signage and fencing. A landscape section is required to be included in the civil drawing plan set to address fencing and signage locations.



*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 16.*

**E. Zoning (Title 20)**

**Residential Rural (RR5A) District (WCC Chapter 20.32)**

The project site is zoned Residential Rural (RR5A) district. WCC Chapter 20.32 outlines the land use controls for development within the R5A zone.

The Maximum Density and Minimum Lot Size Chart, WCC Section 20.32.253, establishes the basic density and lot size requirements for residential development in the R5A zone. The requirement for the RR5A zoning district for subdivisions is listed below:

District	Gross Density	Minimum Lot Size – Conventional	Minimum Lot Size – Cluster	Minimum Reserve Area (Cluster Divisions)
RR-5A	1 dwelling unit/5 acres	5 acres	15,000	30%

*The site is approximately 128 acres with a density of one unit per five acres. The applicant is proposing sixteen clustered residential lots and one buildable reserve tract. The proposal is consistent with the maximum density requirements of WCC 20.32.253.*

*The proposed cluster lots will be between 0.91 acres and 2 acres in size which meets the minimum cluster lot size requirements. The reserve tract and reserve area will be approximately 98 acres which is greater than the 30% minimum reserve area required by WCC 20.32.253. The proposed reserve meets the requirements of WCC 20.32.253.*

*The following details the parent parcel and development acreages:*

*Parent Parcel: 128 acres  
Reserve Area Easement: at least 38.4 acres  
Clustered Lots: 23.7 acres*

WCC Section 20.32.254 outlines the width at street line, width at building line and minimum mean depth requirements for cluster lots within the R5A district.

District	Width at Street Line – Conventional	Width at Street Line – Cluster	Width at Bldg. Line	Minimum Mean Depth
RR-5A w/public water and stormwater facilities	30'	30'	70'	80'

*The proposed development meets the requirements for width at street line and building line and minimum mean depth.*

**WCC 20.32.130 Accessory apartments of detached accessory dwelling units**

The applicant has indicated accessory apartments or detached accessory dwelling units will not be allowed. Pursuant to WCC 20.32.13(7) no lots will be marked as eligible on the face of the plan.

*ADU's have not been requested and will not be allowed on lots created through the Governors Point Long Subdivision.*

**WCC 20.32.300 Lot clustering, reserve area and reserve tract.**

**WCC 20.36.305 Lot clustering. (Adopted by reference in WCCP Chapter 2.)**

(1) The purpose of lot clustering is to provide an alternative method of creating economical building lots with spatially efficient sizes. Clustering is intended to reduce development cost and increase energy efficiency and reserve areas of land which are suitable for agriculture, forestry, or open space.

(2) The clustering option is also intended to help preserve open space and the character of areas and reduce total impervious surface area thereby reducing runoff while assuring continued viable undeveloped natural vegetated corridors for wildlife habitat, protection of watersheds, preservation of wetlands, preservation of aesthetic values including view corridors, and preservation of potential trail and recreation areas.

*The proposed division is a cluster subdivision pursuant to WCC 20.32.300. At least 30% of the site will be preserved in the reserve area easement and used for preservation of vegetated corridors for wildlife habitat and preservation of potential trail and recreation areas.*

**WCC 20.32.310 Design standards. (Adopted by reference in WCCP Chapter 2.)**

The creation of new building lots, pursuant to this section, shall be governed by the following recommended design standards:

- (1) Clustered building lots may be only created through the subdivision or short subdivision process.
- (2) Building lots shall be designed and located to the fullest extent possible to be compatible with valuable or unique natural features, as well as physical constraints of the site.
- (3) The majority of building sites shall be arranged in a cluster or concentrated pattern to be compatible with physical site features and have no more than two common encroachments on existing county roads. The arrangement of clustered building lots is intended to discourage development forms commonly known as linear, straight-line or highway strip patterns.
- (4) Common access to clustered building lots shall be provided by short length roads or loop roads. In addition, interior streets shall be designed to allow access to the "reserve tract" for the purpose of future approved development in urban growth areas and urban growth area reserves.

*The applicant is creating the lots through the long subdivision process, the design of the proposal protects the natural resources on the site and the proposal will not include more than one access to the county road system for the new development. The clustered lots are arranged to protect upland habitat areas and leave a large continuous forested area. The reserve tract is accessible by the proposed internal access road and there are seven cluster lots proposed.*

**WCC 20.36.315 Reserve area.**

- (1) An easement on the subdivision plat shall establish a reserve area per the definition in WCC [20.97.344](#) that is protected "in perpetuity so long as it is not within an urban growth area." The minimum percentage of the parent parcel required to be within a reserve area is shown in WCC [20.32.253](#). This is standard code language for protection of the Reserve Area for all cluster subdivisions.
- (2) A reserve area may contain infrastructure necessary for the subdivision, including but not limited to underground utilities, stormwater ponds, and on-site septic system components, and, in reserve areas designated for agriculture, structures used for on-site agricultural uses permitted in WCC [20.32.052](#). Above-ground hard surface infrastructure such as roads and water tanks may be included in a reserve tract, but the area they occupy shall not be included in the reserve area percentage required in WCC [20.32.253](#).

*The proposal will be conditioned to include a reserve area easement that is protected consistent with WCC 20.32.315(1). The reserve area will potentially include OSS drainfields and a portion of the access road. The area the access road occupies will not be included in the reserve area percentages per WCC 20.32.315(2).*

**WCC 20.32.320 Reserve tract. (Adopted by reference in WCCP Chapter 2.)**

For the purposes of this section, "reserve tract" is defined as that portion of a proposed subdivision or short subdivision which is intended for agricultural,

forestry, or open space purposes. All "reserve tracts" created through the subdivision process shall be subject to the following provisions:

(1) After a site is initially subdivided pursuant to this section, the "reserve tract" may be retained by the subdivider, conveyed to residents of the subdivision or conveyed to a third party.

(2) The "reserve tract" may be considered as a building lot; provided, that such lot is included in the overall density calculation of the original parcel of record and that development within a "reserve area" easement is consistent with the uses permitted in reserve areas in this chapter.

(3) The "reserve tract" may be further subdivided only through the long subdivision process and only under one of the following circumstances:

(a) The county finds that in developing adjacent tracts it would help to further the objectives listed in WCC [20.36.305](#)(2) by dividing the reserve tract and increasing the area of reserve proportionately on the adjacent land being subdivided so that there is no net reduction in reserve area; and when the reserve tract is owned by the original developer or a third party, no property owner within the original subdivision will be significantly adversely affected or suffer a substantial decrease of property value as a result of dividing the reserve tract; or

(b) When the Comprehensive Plan and zoning have been updated as part of the normal process (other than a revision initiated by the private sector or done for a specific area) and the public process has been gone through, subject to findings that there is no adverse impact to critical areas and development is in compliance with rural land use Comprehensive Plan policies, and when the reserve tract is owned by the original developer or a third party, no property owner within the original subdivision will be significantly adversely affected or suffer a substantial decrease of property value as a result of dividing the reserve tract.

(4) The purpose of the reserve tract as stated in subsections (1), (2) and (3) of this section shall be communicated in writing on the face of the plat or short plat; also, the number of developable building sites remaining (if any) with the original parcel of record, based on the assigned density, shall also be prominently displayed on the plat or short plat. Whatcom County shall make every effort to assist all agents in communicating clearly such information to all purchasers and prospective purchasers of building lots or "reserve tracts." Any remaining density beyond the number of lots created on the plat may be assigned to either the lots or the reserve tract, but future subdivision shall not reduce the size of the reserve area below the minimum percentage of the original parent parcel required in WCC [20.32.253](#).

(5) The requirements of subsections (2) to (4) of this section shall be recorded as a deed restriction at the time of filing of the final plat or short plat, and shall constitute an agreement between Whatcom County and the owner of record. Said deed restriction may be amended by mutual agreement between said parties after review for consistency and compliance with the Official Whatcom County Zoning Ordinance, the Whatcom County Subdivision Ordinance and the Whatcom County Comprehensive Plan.

*The Reserve Tract will be designed for open space purposes. No homesite will be designated on the Reserve Tract as the applicant has not proposed a single family*

*residence on the tract. The applicant has proposed transferring ownership of the Reserve Tract to the WLT to be used for active and passive recreation. Development of the Reserve Tract, other than plat infrastructure, will be permitted and completed by the WLT.*

*After subdivision there will be nine remaining densities. Through the development agreement the applicant will extinguish those development rights. The subdivision will be conditioned to include notes that shall be placed on the face of the mylar to be consistent with WCC 32.320.*

**WCC 20.32.350 Building setbacks.**

Building setbacks shall be administered pursuant to WCC [20.80.200](#) (Setback Requirements).

Front Yard	Side Yard	Rear Yard
25 ft.	5 ft.	5 ft.

*Setbacks will be addressed during the review of future building permit applications. As proposed, all lots have adequate area to meet the County setback requirement. In some circumstances, the front yard setback may be reduced during the future review of building permit applications to 20 feet, pursuant to WCC 20.80.230.*

**WCC 20.32.400 Height limitations.**

Maximum height shall be limited to 35 feet. Height of structures shall also conform, where applicable, to the general requirements of WCC [20.80.675](#).

*No structures will be greater than 35 feet in height, except as further restricted by the SMP.*

**WCC 20.32.450 Lot coverage. (Adopted by reference in WCCP Chapter 2.)**

No structure or combination of structures shall occupy or cover more than 5,000 square feet or 20 percent, whichever is greater, of the total area, not to exceed 25,000 square feet. Buildings used for livestock or agricultural products shall be exempt from this lot coverage requirement.

*Lot coverage will be reviewed at the time of building permit submittal. Lot coverage will be further modified by the requirements of the development agreement.*

**WCC 20.32.654 Parking requirements.**

Parking shall conform to the requirements of WCC [20.80.500](#). However, recreation vehicles, and boat parking and storage shall be limited to side and rear yards.

*Parking will be reviewed at the time of building permit; however, each lot shall contain at least two onsite parking spaces. Parking shall meet the standards of WCC 20.80.500 and shall be at least 10 feet in width and 20 feet in depth (WCC 20.80.510).*

***WCC 20.32.656 Drainage. (Adopted by reference in WCCP Chapter 2.)***

All development activity within Whatcom County shall be subject to the stormwater management provisions of the Whatcom County Development Standards unless specifically exempted.

No project permit shall be issued prior to meeting submittal requirements relating to stormwater management in the appropriate chapters of the Whatcom County Development Standards.

*Stormwater management has been addressed through conditions of approval from Public Works Engineering Services.*

***WCC Chapter 20.78 Transportation Concurrency***

WCC Chapter 20.78 gives authority to ensure adequate transportation facilities are available or provided concurrent with development.

Whatcom County Public Works Department Engineering Services issued a Preliminary Concurrency Determination. A Certificate of Transportation Capacity will be issued prior to final plat approval.

*The Technical Review Committee has determined the project is consistent with the requirements of WCC Chapter 20.78.*

***WCC Section 20.80.212 Concurrency***

WCC Section 20.80.212 states that no subdivision shall be approved without a written finding that:

1. All providers of water, sewage disposal, schools, and fire protection serving the development have issued a letter that adequate capacity exists or arrangements have been made to provide adequate services for the development.
2. No county facilities will be reduced below applicable levels of service as a result of the development.

**Water**

Water will be provided for to the site from the City of Bellingham. For more analysis regarding water see Section VII.I. Section I Health Department of this report.

**Sewage Disposal**

Sewage disposal will be provided by onsite septic systems. For more analysis regarding sewage disposal see Section VII.I of this report.

With regard to schools and fire protection, RCW 82.02.050(b) states: "...To promote orderly growth and development by establishing standards by which counties, cities and towns may require, by ordinance, that new growth and development pay a

proportionate share of the cost of new facilities needed to serve the growth and development..."

No such ordinance is in place in Whatcom County, and RCW 82.02.020 is clear that the county has no authority to require such fees. However RCW 82.02.020 "...does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of the proposed development, subdivision or plat."

In addition, RCW 58.17.110 (2) requires that a proposed subdivision shall not be approved unless the city, town or county legislative body makes written findings that:

Appropriate provisions are made for the public health, safety, and general welfare and.... schools and school grounds and all other relevant facts.

### **Schools**

The applicant submitted a will-serve letter for this proposal October 5, 2020 from the Bellingham Public Schools. The school district received notice of the proposal and made no further comments.

### **Fire Protection**

The proposal is within the service area for the South Whatcom Fire Authority. The district submitted a will-serve letter on October 15, 2020.

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 20.80.212.*

## **F. Subdivision Regulations (Title 21)**

WCC Chapter 21.05 regulates policies and procedures for approval of a long subdivision. Section 21.05.030(h)(i and ii) require:

Approval of a preliminary long subdivision shall be accompanied by written findings of fact and conclusions that:

- i. Appropriate provisions have been made for the public health, safety, and general welfare and for such open spaces, drainage ways, stormwater management, streets or roads, pedestrian and bicycle paths, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school, and the public use and interest will be served by the platting of such subdivision and dedication; and
  1. With Regard to the public health, safety and general welfare, the Technical Committee submits the following findings:

*The Technical Review Committee finds that, as conditioned the development has made adequate provisions for public health, safety, and general welfare.*

2. With regard to open space, parks and playgrounds the Technical Review Committee finds the following:

The proposed lots are located in the Residential Rural zoning district and meet the minimum cluster lot size requirements. At least 75 percent of the site will be set aside for open space and passive and active recreation. The Technical Review Committee finds that, as conditioned, the development has made adequate provisions for open space, parks and playgrounds.

3. With regard to streets or roads, alleys, other public ways and transit stops, the Technical Review Committee finds the following:

*Proposed access to the subdivision will be a private road off Pleasant Bay Road. The Technical Review Committee finds that the development will be adequately served by roads, subject to implementation of the conditions proposed by the Division of Engineering.*

4. With regard to drainage Technical Review Committee finds the following:

*The Technical Review Committee has determined that the proposal, as conditioned, is not expected to generate significant levels of air, water or soil pollution, as it is a residential development.*

5. With regard to schools the Technical Review Committee finds the following:

*Bellingham Public Schools was included in the Notice of Application and did not submit comments. This application will be conditioned to provide a letter of concurrency prior to final plat approval; therefore, the Technical Review Committee has determined that as conditioned, the proposal is providing adequately for schools.*

6. With regard to compliance with the relevant polices of the Whatcom County Comprehensive Plan the Technical Review Committee finds the following:

*Applicable goals and policies of the comprehensive plan are as follows:*

Goal 2H: Preserve private property rights while recognizing the importance of the rights of the community, including protecting the natural environment and conserving resources.

Goal 2DD: Retain the character and lifestyle of rural Whatcom County.

Policy 2DD-2: Protect the character of the rural area through the County's development regulations. In addition to the policies of this plan that provide measures governing rural



development, the following County's key development regulations are incorporated into this plan by reference to assure that the plan contains measures to protect rural character:

Policy 2GG-6: Ensure that flexible development patterns such as cluster subdivisions effectively preserve open space and agricultural land and do not create the need for more intensive rural services.

*The Technical Review Committee finds the proposal is in compliance with the relevant policies of the Whatcom County Comprehensive Plan.*

- ii. The proposal is in conformity with the Whatcom County Comprehensive Plan, applicable land division, zoning, critical areas, shoreline management, other land use regulations and Chapter 58.17 RCW.

*As analyzed previously in this report, the Technical Review Committee finds that, as conditioned, the project is in compliance with Title 20 and Title 21 and all other land use controls.*

*The Technical Committee has determined that, as conditioned and amended, the project meets the requirements of WCC Title 21.*

***WCC 21.05.039 Phasing, expiration and time extension for preliminary long subdivision approval.***

(1) Except as provided by subsection (1)(a) of this section, a final plat shall be submitted to the subdivision administrator in proper form for final plat approval within seven years of the date of preliminary plat approval if the date of preliminary plat approval is on or before December 31, 2014, and within five years of the date of preliminary plat approval if the date of preliminary plat approval is on or after January 1, 2015.

(a) A final plat shall be submitted in proper form for final plat approval within 10 years of the date of preliminary plat approval if this project is not subject to requirements adopted under Chapter [90.58](#) RCW and the date of preliminary plat approval is on or before December 31, 2007.

*The applicant has not requested a phased subdivision. As conditioned, the applicant shall complete infrastructure requirements and record the final subdivision within five years of the date of preliminary approval.*

***WCC 21.05.040 Development requirements.***

(1) All subdivisions shall comply with the applicable standards, requirements and procedures of the Whatcom County Development Standards and local, state, and federal laws and regulations. The county, to the extent practicable, will require new land divisions located within city urban growth areas to conform to city development standards, in accordance with adopted ordinances.

(2) Improvements are required to be installed and completed by the subdivider prior to final subdivision approval, unless security is provided under WCC [21.06.040](#).

(3) Improvements and other requirements shall be provided to the extent that each phased subdivision will be adequately served by all roads, utilities, drainage facilities, easements and other amenities necessary to its existence in the event that subsequent phases are not completed, except on-site septic systems do not have to be installed unless required by the health officer. (Ord. 2009-007 § 1).

*As conditioned, the proposed subdivision is consistent with the applicable standards, requirements and procedures of the Whatcom County Development Standards. All improvements shall be completed prior to final subdivision approval except as agreed to under WCC 21.06.040.*

**WCC 21.05.050 Roads.**

Roads shall be designed with appropriate consideration for existing and projected roads, anticipated traffic patterns, topographic and drainage conditions, public convenience and safety, and the proposed uses of the land served.

(1) Dedications for the realignment and widening of the adjacent rights-of-way, in accordance with county standards, shall take place whenever a subdivision abuts a county road. Frontage roads or parallel access roads may be required to eliminate direct access to arterial and collector roads.

*No dedication is required for this development.*

(2) Frontage improvements to the public roadway(s) adjacent to the subject property shall be completed to the current functional classification prior to recording the final plat, unless security is provided under WCC [21.06.040](#).

*No frontage improvements are required for this development.*

(3) Minor and local access roads should discourage through traffic.

*No through traffic is proposed for the proposed development.*

(4) All subdivisions and phased subdivisions shall abut and be accessed by a constructed and maintained public road or a private road as allowed under the Whatcom County Development Standards. The number of access points shall create efficient on- and off-site circulation patterns and facilitate emergency response. A traffic analysis may be required by the county engineer in order to analyze present and future traffic circulation patterns to determine the appropriate location and number of access points to the site and to ascertain the appropriate classification and character of the proposed roads.

*The subdivision is accessed by a constructed and maintained private road as allowed by the Whatcom County Engineer. There is one access point to the site for this development and the development is not proposed to be phased.*

(5) Where reasonably necessary to join with existing roads or needed for future circulation, road rights-of-way and/or easements shall be extended to the outside boundaries of the subdivision.

*A secondary access point or additional road right-of-way is not necessary for the development.*

(6) Public road rights-of-way and/or easements shall be extended to the boundaries of subdivisions that abut public lands and public bodies of water, if requested by the administrator of said public lands. Such access roads need not be provided at an interval more frequent than one-half mile.

*The development is proposing a private road. No rights-of-way or easements will be required at this time.*

(7) Private roads may be permitted in a subdivision when in compliance with the Whatcom County Development Standards. (Ord. 2009-007 § 1).

*The applicant has requested private roads for the development. As discussed in Section VII. A, the Whatcom County Engineer has reviewed and approved the request.*

**WCC 21.05.080 Water supply.**

(1) Water from a public water system(s) shall be provided to serve each lot in a subdivision, except as specified in subsection (2) of this section.

*Public water is proposed to be provided by the City of Bellingham.*

**WCC 21.05.090 Sewage disposal.**

(2) Outside of the urban growth area and small town Comprehensive Plan designations, subdivisions shall not be approved that require extension or expansion of public sewer except when:

- (a) Public sewer is necessary to protect the public health, safety or environment; and
- (b) Public sewer is financially supportable at rural densities and does not permit urban development.

(3) On-site sewage disposal systems shall meet the requirements of WCC [24.05.210](#), Developments, subdivisions, and minimum land area requirements.

*The proposed subdivision is not located within the urban growth area or the small town comprehensive plan designations. Public sewer is not proposed. As discussed in Section VIII. H the OSS shall meet the requirements of WCC 24.05.210.*

**WCC 21.05.100 Fire protection.**

Long subdivisions shall incorporate adequate capability for fire protection in accordance with sound engineering practices and locally adopted codes and development standards and shall be approved by the county fire marshal. (Ord. 2009-007 § 1).

*As conditioned by the Whatcom County Fire Marshal, this proposal is consistent with WCC 21.05.100.*

**G. Shoreline Management Program (Title 23)**

The Shoreline Administrator has reviewed this long plat proposal (LSS2018-00003) for consistency with the Shoreline Management Program (SMP) and has determined that, with the recommended conditions of approval, it is consistent with all applicable policies and regulations of Title 23 WCC.

Pursuant to WCC 23.60.010, a shoreline substantial development permit is required for all proposed use and development of shorelines, unless specifically exempt pursuant to WCC 23.60.022. The proposed division of land, including long plats, does not constitute "development" on its own and therefore does not require authorization under a shoreline substantial development permit. However, pursuant to WCC 23.100.110, "development" may include developments associated with subdivision, such as proposed roadways or other infrastructure. The subject long plat proposal includes such associated developments and the applicant has applied for a shoreline substantial development permit as well as a shoreline conditional use permit to authorize the following associated development activities within shoreline jurisdiction:

1. A portion of the proposed road network to serve new lots is within shoreline jurisdiction (on Tract A, and Lots 10 & 12); and
2. A proposed community boating facility (tender dock) on Tract B; and
3. An access trail and community storage/restroom building on Tract B; and
4. A proposed 800 SF storage/restroom building on Tract B

Staff analysis and findings for the associated shoreline substantial development permit and shoreline conditional use permit are provided in Attachment B to this report.

**WCC 23.90.080 Public access**

Public access is required for all subdivisions of more than four (4) residential lots or dwelling units unless the applicant adequately demonstrates that it is infeasible,

consistent with the policies and regulations of this section. The proposal includes conveyance of approximately 98 acres of land to be put into public trust in order to preserve public access to Governors Point.

When provisions for public access are required as a condition of project approval, the administrator shall prepare written findings, pursuant to Chapter 23.60 WCC, demonstrating consistency with the principles of nexus and proportionality and the test stated in subsection (A)(2) of this section and WCC 23.50.080(A). Staff finds that the test provided in WCC 23.90.080(A)(2) requires that public access be provided for the subject long plat proposal, as it does not meet any of the provisions to be exempt from the public access requirement. As part of an agreement with the City of Bellingham and the Whatcom Land Trust, the applicant agrees to convey approximately 98 acres of land (Tract A) to be put into public trust. Additionally, the plat includes two additional 1-acre tracts (Tract B & C) that will provide public access to the shoreline.

Pursuant to WCC 23.50.080, decisions on shoreline permits or approvals shall recognize all relevant constitutional and other legal limitations on the regulation of private property. Findings shall assure that the conditions imposed relate to the governmental authority and responsibility to protect the public health, safety, and welfare, are consistent with the purposes of the Act, and are roughly proportional to the expected impact. For the long plat proposal the applicant has volunteered to exceed any reasonable minimum requirement for public access and has elected to provide approximately 78% of the land area for purposes of public access. Staff finds that this proposal meets and exceeds the minimum requirements of this section for public access requirements. No additional condition for public access, beyond the applicant's proposal, is required.

### ***WCC 23.90.090 Site planning***

This section requires that new development shall use clustering to minimize adverse impacts on shoreline ecological functions and processes. Staff finds that, in addition to proposing fewer lots than what might be allowed by maximum density standards of the Zoning Ordinance and SMP, the proposed subdivision will also provide a clustered lot configuration.

This section also requires that vehicle and pedestrian circulation systems be designed to minimize clearing, grading and alteration of topography and natural features. Roadway and driveway alignment shall follow the natural contours of the site and minimize width to the maximum extent feasible. Staff finds that the proposal is consistent with the circulation system minimization requirements, in consideration to the natural topography and standards for safe access for emergency responder vehicles.

Other requirements of this section that are applicable to subdivision approval have been incorporated as recommended conditions of approval.

### **WCC 23.100.110 Residential**

For subdivisions where lots are to be created within shoreline jurisdiction, the following requirements shall be met:

- i. Land division may not be approved in cases when it can be reasonably foreseeable that the development or use would require structural flood hazard reduction measures within a channel migration zone or floodway during the life of the development or use.*
- ii. New land division shall assure that the lots created will not require shoreline stabilization in order for reasonable development to occur. New land division that would require shoreline stabilization is prohibited.*
- iii. New or expanded subdivisions and all multiunit residential developments shall provide a community recreation and/or open space area for the benefit of all residents or property owners in the development; provided, that such provisions shall not apply to lot line adjustment, lot consolidation, and subdivision of land into four or fewer lots.*
- iv. New or amended subdivisions, except those for lot line adjustment and lot consolidation purposes, shall provide public access as provided for in WCC 23.90.080 and this section.*
- v. All new subdivisions shall record a prohibition on new private docks on the face of the plat. An area for shared moorage may be approved if it meets all requirements for shared moorage in WCC 23.100.090, including demonstration that public and private marinas and other boating facilities are not sufficient to meet the moorage needs of the subdivision.*
- vi. Subdividing tidelands for sale or lease in connection with individual building lots is prohibited.*
- vii. Substandard shoreline lots unsuitable for development of a primary permitted use under the Official Zoning Ordinance (WCC Title 20) and this program shall not be subdivided.*

Staff finds that, with the recommended conditions of approval, the proposed long plat meets all requirements listed above.

### **H. Health Code (Title 24)**

The purpose of Title 24 is to provide minimum standards to safeguard public health and welfare by regulating and controlling the activities considered in this title and any related work.

The Whatcom County Health Department (WCHD) has reviewed the proposed project

noted above in accordance with WCC 24.05 *On Site Sewage System Regulations*, WCC 24.11 *Drinking Water Code*, and WCC 21 *Land Division Regulations*. The WCHD submitted a memo dated September 9, 2020 stating the following:

The Whatcom County Health Department (WCHD) has reviewed the proposed project referenced above in accordance with WCC Title 24 Health Code and Title 21 Land Division Regulations.

WCHD recommends preliminary approval with the following conditions:

### ***Sewage Disposal***

The applicant has provided an on-site sewage system (OSS) subdivision application demonstrating adequate soils approved by WCHD. The proposed OSS are at least 100 ft. from OHWM per Whatcom County Code 24.05.100. The applicant has proposed to either develop the OSS on each individual lot or on Tract A with required easements.

### ***Water Supply***

The applicant has provided documentation that the City of Bellingham will provide wholesale water for the project.

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Title 24.*

## **I. Development Agreement (WCC 2.11.200 Hearing Examiner – Duties and Powers)**

### ***WCC 2.11.200 Hearing examiner – Duties and powers.***

### ***WCC 2.11.205 Recommended decisions.***

In accordance with the provisions of Chapter [22.05](#) WCC, the hearing examiner shall conduct an open record hearing and prepare a record thereof, and make recommendations to the county council for approval or disapproval of:

C. Development agreements, as authorized in Chapter [36.70B](#) RCW;

Chapter 36.70B.170 Revised Code of Washington

1. A local government may enter into a development agreement with a person having ownership or control of real property within its jurisdiction. A city may enter into a development agreement for real property outside its boundaries as part of a proposed annexation or a service agreement. A development agreement must set forth the development standards and other provisions that

shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. A development agreement shall be consistent with applicable development regulations adopted by a local government planning under chapter [36.70A](#) RCW.

*The applicant and Whatcom County are entering into a development agreement for real property within the County. This development agreement will include alternative standards that will govern and vest the agreement upon standards for the duration of the subdivision. The subdivision will be consistent with all applicable development regulations.*

2. RCW [36.70B.170](#) through [36.70B.190](#) and section 501, chapter 347, Laws of 1995 do not affect the validity of a contract rezone, concomitant agreement, annexation agreement, or other agreement in existence on July 23, 1995, or adopted under separate authority, that includes some or all of the development standards provided in subsection (3) of this section.

*This section is not applicable to this agreement.*

3. For the purposes of this section, "development standards" includes, but is not limited to:
  - a. Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes;
  - b. The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;
  - c. Mitigation measures, development conditions, and other requirements under chapter [43.21C](#) RCW
  - d. Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;
  - e. Affordable housing;
  - f. Parks and open space preservation;
  - g. Phasing;
  - h. Review procedures and standards for implementing decisions;
  - i. A build-out or vesting period for applicable standards; and
  - j. Any other appropriate development requirement or procedure.

*The applicant is proposing to deviate from existing development standards for the following items:*

- *Shoreline setback for lots 1-7 has been modified to 70 feet. Shoreline setback for lots 8-16 has been modified to 75 feet, and*
- *Allowance of up to 500 square feet of development in the shoreline setback.*

*As authorized through RCW 36.70B.170, the applicant is utilizing the development agreement (Attachment A) process to mitigate potential impacts:*



- *No more than 10% of the 128 acre parcel will be developed or included within the “developable area.”*
  - *The residential lots will be limited to on average 20% development area.*
    - *The developable area (“Developable Area”) shall mean the area in which all development on the Property may be located including buildings, ornamental landscaping, and structures such as roads, driveways, courtyards, covered walkways, outdoor shelters, carports or similar open sided structures with water tight roof, and those items specified in Section 2.1.7.3. The term “ornamental landscaping” shall include non-native landscaping, lawns and gardens. Notwithstanding the total Developable Area allowed for any given Residential Lot, ornamental landscaping shall not exceed 3,000 square feet in total on any Residential Lot. For Tracts B and C, “Developable Area” includes viewing platforms, restrooms, and storage sheds.*
  - *Single family residences will be limited to 2,900 square feet of “conditioned living space”*
    - *“Conditioned Living Space” shall include interior space within an enclosed structure intended for human habitation.*
  - *Individual development on each lot shall not exceed 4,000 square feet total floor area*
    - *Included in this limitation are “Conditioned Living Space”, and the interior space within any garages, shops, storage sheds, carports or similar open sided structures with water tight roof, and other similar buildings.*
  - *Creation of a 98 acre open space tract as a limited access nature preserve.*
  - *Reduction in number of lots created from 25 lots (allowed by zoning code) to 16.*
  - *The applicant has 20 years to develop each lot in accordance with the Development Agreement. After the agreement expires both the developable area (as defined by section 2.1.5 of the agreement) and shore setbacks are perpetual.*
4. The execution of a development agreement is a proper exercise of county and city police power and contract authority. A development agreement may obligate a party to fund or provide services, infrastructure, or other facilities. A development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

*The applicant is proposing to deviate from development standards through the development agreement process for several items.*

*The applicant has proposed to mitigate potential impacts from reduced shoreline*

*setbacks by utilizing a watershed approach to identify and protect habitat. To meet the required goal of no net loss, a series of habitat management strategies were developed in the approved habitat management plan. When summed together this approach preserves watershed functions, forest ecological functions, and nearshore functions.*

*To mitigate for the reduced shoreline setback the applicant has provided a habitat management plan. The plan includes increased water quality standards, retaining native vegetation outside of the reduce setback, limiting developed to less than 10% across the entire watershed and on average limiting the residential lots maximum developed area to 20%.*

*The 20% developed area includes interior space for human habitation to 2900 sq. ft. of floor area. Other accessory structures are limit to a maximum of 4,000 sq. ft. of floor area as measured by interior space, which includes the 2900 sq. ft. of conditioned space. Ornamental landscape is required to be below 3,000 square feet or less than 10% of the lot area. The ornamental landscape area is included in the maximum 20% developed area.*

*The limited development area also helps to maintain wildlife corridors. To ensure protection of the wildlife corridor, at the time of future development, a conservation easement will be required per individual lot. The conservation easement shall be the remaining area outside of the approved development. Tree retention requirements*

*The applicant has also prohibited shared moorage throughout the plat, except for lot 16 and Tract B; individual docks are prohibited by the Whatcom County SMP. All other overwater structures are prohibited.*

*The applicant is treating stormwater run-off on each lot to a greater extent than required by the Western Washington Stormwater Manual through additional best management practices. Full dispersion will not need pretreatment, all other stormwater management methods will require pretreatment through a media filter to remove excess nutrients and other pollutants from the stormwater prior to discharging. The plat prohibits direct discharge to the nearshore habitat. If stormwater cannot be treated on-site to the appropriate level per the habitat management plan, sleeves have been require to be installed in the road to except stormwater conveyance carrying stormwater pumped into the riparian forest of Tract A for full dispersion.*

*This approach uses a watershed scale analysis as a proxy to demonstrate no adverse impact to hydrology and habitat at the landscape ecology scale. Further by limiting the forest canopy removal to 20% on the individual lot we manage other forest ecosystem functions or provide a solution to mimic natural processes. This provides a sustainable approach to maintaining Riparian (Freshwater and Marine) Functions; this approach is similar to the WDFW model provided in the draft Riparian Ecosystems, Volume 2: Management Recommendations. The result is a functional ecosystem in*

*the upland coupled with the reduction in allowed overwater structures translates into no adverse impacts the nearshore habitat and species.*

*The applicant has demonstrated that, as conditioned, the proposed development will protect critical habitat and functions.*

#### **IV. RECOMMENDATION**

The Technical Review Committee has determined that subject to the following proposed conditions, the project would comply with applicable Whatcom County and Washington State regulations.

As stated above the Technical Review Committee recommends approval of the Long Subdivision and development agreement applications, subject to the following conditions:

#### **X. CONDITIONS OF APPROVAL**

##### **Current Planning Division**

1. The use and location on the site as shown on the site plans dated September 2020 and shall not be amended or changed in any way without further approval of the Whatcom County Hearing Examiner unless consistent with WCC 21.05.110.
2. Signage for the site shall be limited to one site identification sign at the entrance to the site, per WCC 20.80.470 (4). The subject sign shall be limited to 64 square feet in size.
3. No sign shall be located closer than 10-feet to any right-of-way, per WCC 20.80.410 (1). A building permit shall be obtained for any sign installed on the site.
4. Approval of this preliminary subdivision shall become invalid unless the final plat is submitted in proper form for final plat approval within five (5) years of the date of preliminary subdivision approval.
5. An applicant requesting final approval of a subdivision shall submit to the administrative official copies of the materials and fees specified in WCC 21.06.050, and the request shall be accompanied by a statement from the county engineer that Whatcom County has accepted as complete all on-site and off-site improvements required by the conditions of preliminary plat approval, or has received cost estimates and performance guarantees to assure completion thereof.
6. The applicant shall obtain all necessary federal, state and local permits prior to construction.
7. The final plat shall include a note referring to the signed and recorded Development Agreement.

8. An easement on the subdivision plat shall be placed over the reserve area per the definition in WCC [20.97.344](#). The reserve area shall be designated as open space and protected in perpetuity. The minimum percentage of the parent parcel required to be within a reserve area is 30 percent (WCC 20.32.253).
9. No land comprising any part of a proposed land division in the unincorporated area of Whatcom County shall be sold, leased, or offered for sale or lease unless approved under this title. Any person being the owner or agent of the owner of such land who shall sell, lease, or offer for sale or lease any lot or portion thereof shall be guilty of a gross misdemeanor. Each sale or lease, or offer for sale or lease shall be a separate and distinct offense for each separate lot or portion of said land, pursuant to WCC 21.11.010.

### **State Environmental Policy Act**

10. As recommended in the Archaeological Assessment for the Governor's Point Residential Development, Bellingham, Whatcom County Washington (Report 0519C) by Drayton Archaeology, dated June 3, 2019; archaeological monitoring done by a qualified professional shall occur during construction of the trail and dock on the Reserve Tract near 45WH501.
11. Work may proceed on proposed reserve tract but that all ground disturbing work on this lot be monitored by an archaeologist. The LNTHPO shall review and comment, if necessary, on the Monitoring and Inadvertent Discovery Plan (MIDP) before the construction begins.
12. Work may proceed on proposed lots 1-16 with the Washington State Department of Archaeological and Historic Preservation's Inadvertent Discovery Plan on-site and followed if cultural resources or human remains are encountered. The following contact phone numbers for the Lummi Nation shall be included in the IDP: Lena Tso, THPO 360-312-2257 and Tamela Smart, Deputy THPO 360-312-2253.

### **Public Works Engineering Services**

13. The applicant shall comply with the conditions of the Whatcom County Public Works Engineering Services in the memo dated October 29, 2020, unless modified by that Department or appealed to the appropriate agency.
14. All development shall comply with the Whatcom County Development Standards (WCDS).
15. Sight distance at all road intersections shall meet WCDS.

16. Roads within this development are to be private as permitted under Section 505.E. of Chapter 5, Road Standards.
17. A private road maintenance agreement shall be included in the CC&R's for the subdivision.
18. County-approved road names are required to be shown on the final plat.
19. A map at 1"=400' scale of the lots shall be provided to PWES for address assignment. Addresses shall be shown on the final plat. The plat address fee shall be paid prior to recording.
20. Interior private roads shall be passable at all times for emergency and public service vehicle use.
21. All road, stormwater facilities, and grading plans shall be designed and stamped by a Washington State licensed civil engineer and submitted for county engineering review and approval prior to construction.
22. The proposed residential private roads shall be constructed as follows:
  - a. paved apron per WCDS drawing 505.E-4
  - b. 40-foot minimum access easement width
  - c. a total of twenty foot minimum roadway inclusive of shoulders, with
    - i. nine foot minimum width paved drive lanes,
    - ii. one foot minimum width crushed surfacing shoulders, or
    - iii. where terrain constraints exist, road section may include rock wall or retaining wall with concrete vertical curb and gutter at face of wall
  - d. 2% max cross slope
  - e. 2-1/2" minimum compacted depth HMA
  - f. 2" minimum compacted depth crushed surfacing top course
  - g. 10" minimum compacted depth aggregate for gravel base or 8" of additional crushed surfacing base course
  - h. turnarounds at road ends as shown on the preliminary plans and according to WCDS drawing 505.L-2
23. Horizontal and vertical curve information shall be provided on the civil plans. Alignments shall meet minimum horizontal curve radii per WCDS, as approved in the preliminary plans. The residential portion of Road B has been approved, through variance, for reduced speed and hence reduced minimum radii, to be mitigated with widened roadway at minimum curves.
24. Applicant shall obtain an Encroachment Permit for any and all work in the County right-of-way prior to commencing said work.

25. All signing and striping shall be installed as per the Manual of Uniform Traffic Control Devices (MUTCD) standards at the developer's expense.
26. The utility access road serving the boat dock shall be a minimum of twelve feet wide.
27. From the intersection of Roads A and B, for a minimum of 100 feet in each direction from the center of intersection, roads shall be constructed with a minimum of 18 foot paved driving surface plus four foot shoulders for a total width of 26 feet.
28. Road B shall be posted for the requested reduced 20mph speed limit. Signs shall be included in the civil plans.
29. Applicant shall provide certified evaluation of the need for traffic barrier by a professional engineer for the proposed private roads. Evaluation shall include the need for a guardrail or barrier at the top of proposed roadside walls. Evaluation shall include site plans noting areas where the recovery zone is less than ten feet, areas where the downhill slope is greater than 2:1, and areas with greater than 10 foot vertical drop below.
30. A final engineered stormwater design report that meets requirements of the current County-adopted Department of Ecology Stormwater Management Manual for Western Washington shall be submitted and approved by PWES prior to any land disturbance. The report shall be prepared by a civil engineer licensed in the state of Washington. This development shall comply with minimum requirements 1 through 9.
31. The stormwater design report shall account for the total allocated hard surface value, to include the sum of hard surface values for roads, apron, and the hard surface values assigned to each lot.
32. The final engineered stormwater design report shall include SWM best management practices (BMPs) and design for the private roads, as well as a conceptual site plan for each lot. The lot-specific site plans shall demonstrate that each lot can accommodate driveway access and building site with stormwater BMPs that meet required setbacks and slopes per fire, septic separation, critical area and shoreline jurisdictions, and SWM requirements. Applicant shall provide geotechnical support for the design as needed, per SWM and PWES.
33. Private stormwater treatment facilities are to be located outside of the County right of way (ROW). If the engineer determines best location for facility is within the ROW, submit request for approval with County Maintenance and Operations, and provide private maintenance agreement and plan to the County.
34. Downstream conveyance features including ditches and culverts that accept runoff from the development shall be assessed for condition by the engineer and shall be replaced or improved to provide adequate conveyance and erosion protection as needed, per the SWM and County approval.

35. The Stormwater Maintenance Plan shall be included in the CC&R's for the subdivision. The CC&R's shall include a requirement for those lot designs that include a stormwater pump, an emergency stand-by generator is required to remain on site.
36. The developer shall obtain approval from the local U.S. Postal Service Office for the location, style and height of the mailboxes. Mailbox locations, if shared, shall be shown on the final construction plans.
37. Following County approval of the civil construction plans and prior to commencement of construction, the developer, contractor, and developer's construction engineer shall schedule and participate in a formal Preconstruction Conference with PWES staff.
38. Engineer to provide certified construction compliance assurance statement following completion of the work and prior to final inspection per Chapter 2, WCDS.
39. Certified record drawings for all new roads and stormwater systems shall be submitted to and approved by PWES upon completion of construction. Record drawings shall include the Record Drawing Certification statement from Chapter 5, WCDS.
40. The plat shall identify stormwater BMPs required for plat roads and lots. The plat shall identify allowable impervious area per lot and note conservation and dispersion areas.
41. Pursuant to the SWM, applicant shall complete and record a Declaration of Covenant and Grant of Easement (DCGE) for plat stormwater maintenance purposes. Document shall include an exhibit indicating stormwater features and their locations, define the stormwater features, and include a maintenance and operations manual. Reference to the recorded DCGE shall be made on the final plat.
42. The construction engineer shall submit a construction cost estimate of the subdivision stormwater drainage system features with certified statement to PWES upon completion of the work and prior to County approval of the finished work. The applicant shall post a stormwater warranty security for 10% of the cost estimate (\$5,000 minimum). The security shall be in effect for two years following final record drawings.
43. Revised signature blocks and notes shall be added to the final plat prior to approval.

#### **Fire Marshal's Office**

44. The applicant shall comply with all of the conditions of the Fire Marshal's memo dated September 22, 2020, unless modified by the Fire Marshal's Office or appealed

to the appropriate agency.

45. Access roads shall meet Whatcom County Public Works-Engineering Services requirements and Whatcom Fire Marshal's Office road standards for grade surface requirements, turnouts, and turnarounds.
46. Fire permit is required for installation of underground fire lines and hydrants.
47. Access roads to the residences and fire sprinkler systems shall be address at time of building permit submittals.
48. Access road to the boat dock shall be a minimum of 12 feet wide and meet grade surface requirements per Whatcom County Code Chapter 15.04.040

### **Geohazardous Areas**

49. The applicant shall comply with the conditions of the Whatcom County Planning and Development Services – Geohazards in the memo dated November 4, 2020, unless modified by that Department or appealed to the appropriate agency.
50. Alteration of any plat element intended to ensure the ability to avoid regulated geologically hazardous areas shall be reviewed by the Technical Administrator of Article 3, and if deemed necessary, a qualified professional in accordance with WCC 16.16.320(E). Such elements include, but are not limited to the following: lot configuration, stormwater and septic utility easements and stormwater system design.
51. Supplemental geologic hazard review by the Technical Administrator of Article 3 shall be required prior to issuance of final plat approval.
52. The following note shall be included on the face of the plat:

#### **GEO-HAZARD AREAS NOTE:**

THIS LONG PLAT HAS BEEN REVIEWED IN ACCORDANCE WITH THE WHATCOM COUNTY CRITICAL AREAS ORDINANCE, TITLE 16, CHAPTER 16.16, ARTICLE 3, ADOPTED PURSUANT TO ORDINANCE 2017-077. REGULATED GEOLOGICALLY HAZARDOUS AREAS HAVE BEEN IDENTIFIED AT THE SUBJECT PARCELS (EROSION AND LANDSLIDE HAZARD AREAS). FUTURE DEVELOPMENT ON ALL LOTS WILL BE SUBJECT TO THE CRITICAL AREAS ORDINANCE IN EFFECT AT THE TIME OF APPLICATION FOR THAT DEVELOPMENT.



## Habitat Conservation Areas and Wetlands

53. The applicant shall comply with the conditions of the Whatcom County Planning and Development Services – Natural Resources Division in the memo dated November 5, 2020 unless modified by that Department or appealed to the appropriate agency.
54. The maximum “Developed Area” proposed by the applicant for each lot and tract are shown in a table in the preliminary plat map. This table shall be moved to the Developers Agreement. The definition of “Developed Area” is in Section 2.1.5 of the Developer’s Agreement.
55. Prior to final plat all four documents combined as the Critical Area Assessment Report shall be amended to match these conditions and any amendments to the Developers Agreement approved by the County Council. The final documents shall contain a revision date.
56. No more than 10% of the 126-acre Property shall be developed or included in a “Developable Area” as defined by the approved Development Agreement. This condition shall be a required plat note with a reference to the auditor’s recording number.
57. No residential structure located on any Residential Lot on the Property shall exceed 2,900 square feet of conditioned living space (“Conditioned Living Space”). Conditioned Living Space shall include interior space within an enclosed structure intended for human habitation. This 2,900 square foot limitation on Conditioned Living Space shall not include garages or shops, nor shall it include covered exterior courtyards, covered walkways, gazebos, outdoor shelters, storage sheds, carports or similar open sided structures with water tight roof, or similar structures. This condition shall be a required plat note.
58. In total, the floor area of all buildings on a Residential Lot shall not exceed 4,000 square feet. Included in this limitation is the Conditioned Living Space, and the interior space within any garages, shops, storage sheds, carports or similar open sided structures with water tight roof, and other similar buildings. This condition shall be a required plat note.
59. A maximum total of 500-square feet of footprint area of development will be allowed within the shore setback for each Residential Lot. This includes roof eaves, decks, patios, covered walkways, stairs, and accessory water-oriented structures without Conditioned Living Space.
60. The “Developable Area” on average shall not exceed 20% of the area of each individual lot. The average shall be determined at the time the Developer Agreement is approved and recorded.
61. For lots 1-7 and 8-16 remaining undeveloped areas, outside of the defined

"Developed Area" shown on the site plan at the time of building permit shall be protected from further development using protective measures in Whatcom County Code in effect at that time of development. This condition shall be a required plat note.

62. The side-yard setback for all Residential Lots and Tract B and Tract C shall be fifteen feet (15'). This condition shall be a required plat note.
63. The shore setback for Residential Lots 1-7 shall be seventy feet (70') measured from the Ordinary High-Water Mark (OHWM). The shore setback for Residential Lots 8-16 shall be seventy-five feet (75') measured from the OHWM. Ordinary High Water Mark shall be determined at the time of future development, in accordance with published guidance by the Department of Ecology. This condition shall be a required plat note.
64. A conservation easement shall be recorded for all wetlands and wetland buffers within the plat.
65. Development required before final plat and all future development shall apply all habitat management recommendations in document titled "Habitat Management Plan". Joint authored by Cantrell & Associates and Fairbanks Environmental. Cover dated REVISED January 25, 2020 and date stamped February 6, 2020; as amended by an addendum to the report dated October 27, 2020 and date stamped the same herein or as amended The AF# of the document shall be recorded on the deed. The following plat note is required:
66. "FUTURE DEVELOPMENT SHALL APPLY HABITAT MANAGEMENT MEASURES AS PROVIDED IN THE APPROVED HABITAT MANAGEMENT PLAN AF# \_\_\_\_\_."
67. Future development shall be reviewed with the critical ordinance and shoreline master program in affect at the time of development, unless specifically amended by the Developers Agreement. The following plat note is required:
68. "LOTS 1-16 OF THIS LONG PLAT HAVE BEEN REVIEWED ACCORDING TO THE CRITICAL AREAS ORDINANCE, CHAPTER 16.16 WHATCOM COUNTY CODE ADOPTED PURSUANT TO ORDINANCE 2017-0023 AS AMENDED. REGULATED CRITICAL AREAS ARE LOCATED WITHIN THIS LONG PLAT. A CONSERVATION EASEMENT HAS BEEN FILED WITH THE COUNTY AUDITOR; AF FILE NO.\_\_\_\_\_. FOR WETLANDS AND ASSOCIATED BUFFERS. FUTURE DEVELOPMENT SHALL BE REVIEWED UNDER THE CRITICAL AREA ORDINANCE IN AFFECT AT THE TIME OF DEVELOPMENT, UNLESS SPECIALLY AMEND BY THE DEVELOPERS AGREEMENT AF# \_\_\_\_\_ DURING THE VESTING PERIOD OF SAID DEVELOPERS AGREEMENT."
69. A mitigation plan may be required for future development permits as required by the critical area ordinance or shoreline master program in affect at the time development. The following plat note is required:

70. "FUTURE DEVELOPMENT SHALL REQUIRE MITIGATION FOR IMPACTS TO CRITICAL AREAS AND CRITICAL AREAS BUFFERS IN ACCORDANCE WITH THE CRITICAL AREA ORDINANCE IN AFFECT AT THE TIME OF DEVELOPMENT, UNLESS SPECIALLY AMEND BY THE DEVELOPERS AGREEMENT AF#        DURING THE VESTING PERIOD OF SAID DEVELOPERS AGREEEMENT."
71. Trails on Tract C shall not cover more than 3% of the total area of the tract. No residential buildings or overwater structures are allowed on Tract C.
72. A building setback is required from all standard or modified wetland buffers, standard shoreline setbacks, and herbaceous balds in affect at the time of future development. This condition shall be a required plat note.
73. No stairs shall be constructed to provide access to the shoreline, provided that pedestrian access trails using natural materials (native stone, etc.) with minimal alterations to existing grade and vegetation may be permitted. This condition shall be a required plat note.
74. Individual overwater structures, except mooring buoys are prohibited. This condition shall be a required plat note.
75. No docks of any kind, including shared docks, shall be allowed in front of Residential Lot Nos. 1-15. This condition shall be a required pat note.
76. Shared overwater structures are prohibited in front of Residential Lot Nos. 1-15. This condition shall be a required pat note.
77. Up to six residential mooring buoys are allowed to be installed in Pleasant Bay to serve residential lots in the plat, otherwise mooring buoys are prohibited. This condition shall be a required plat note.
78. On Tract B, the on-site septic system (OSS) shall be placed at outside of the standard shoreline setback and the wetland or wetland buffer. The OSS shall be not placed in the building setback if tree roots will be impacted.
79. For residential lots, septic drain fields shall be placed at least 112' landward of the OHWM of marine waters.
80. Tree retention and replanting requirements in the approved Habitat Management Plan shall be applied to all future development
81. For each snag or live tree removed with pileated woodpecker excavations, a snag will be created within the lots or within the adjacent Reserve Tract A
82. Clearing and Construction Associated with the maintenance yard on Tract A will not exceed 10,000 square feet in size.

83. Clearing and construction associated with the trails, restroom, and storage building shall not exceed 4,000 square feet.
84. Split rail fencing or similar exclusionary measures shall be required to be placed at the building setback along the road side off wetland A. Split rail fencing or similar inclusionary measures shall be required to be placed in order to prevent the public from entering wetland D, as determined to be applicable.,
85. Signage in accordance with WCC 16.16.265 shall be installed along herbeaceous balds, wetland buffers, stream buffers and the reduced shoreline buffer. The design of the signs shall be included in the final mitigation plan required prior to issuance of civil drawings.
86. Prior to civil drawing approval provide a final mitigation plan addressing the required recommendation in the approved Habitat Management Plan. The final mitigation shall show the increase of an additional 1,500 SF to the west side of Wetland D and provides 880 SF of buffer restoration to the areas temporarily impacted by a combination of replanting/transplanting with local native understory species and healing-in exposed soils with wood chip mulch.
87. Prior to civil drawing approval, the applicant shall submit a final mitigation plan with locations of required wetland and habitat conservation area signage and fencing. A landscape section is required to be included in the civil drawing plan set to address fencing and signage locations
88. Prior to civil drawing approval, the applicant shall submit a final mitigation plan with a bond quantity worksheet or bid from a licensed contractor. A landscape section is required to be included in the civil drawing plan set to address buffer replanting (location and a planting schedule).
89. Culvert or sleeve shall be installed under the road at each lot to allow for future development to install pressurized stormwater conveyance to be pumped in Tract A to allow for full dispersion and avoidance of impacts to slope stability. The locations of the culvert or sleeve shall be shown on the civil drawing. Inspection shall be required to verify installation prior to surfacing of the roadway.
90. Temporary fencing shall be installed along wetland D buffers prior to plat construction authorized under preliminary plat approval. Temporary fencing shall be shown on the civil plan sheet for TESC.
91. Prior to issuance of Civil Drawing approval Temporary Construction fencing shall be inspected and approved by Whatcom County Natural Resources.
92. Prior to construction associated with preliminary plat approval areas of disturbance shall be demarcated by the applicant and verified by Whatcom County Natural Resources. Any unavoidable impacts shall be address as an addendum to the final mitigation document and subject to surety and monitoring requirements.

93. Stormwater management is required for all residential lots in accordance with the Western Washington Stormwater Manual. In addition to the standards in the stormwater manual the following design amendments are required:
- a. Spreader discharges that will be carrying road run-off shall be kept at least 116' landward of the OHWM, where feasible.
  - b. Stormwater discharge from impervious surfaces with a flow path less than 116' shall be filtered through an engineered storm water treatment system with a 65% efficiency rate for phosphorus.

94. The following plat note shall be required:

“FUTURE DEVELOPMENT SHALL BE REQUIRED TO MEET STORMWATER REQUIREMENTS IN THE CURRENT STORMWATER MANUAL APPROVED BY WHATCOM COUNTY IN ADDITION TO STORMWATER REQUIREMENTS PROVIDED IN THE APPROVED HABITAT MANAGEMENT PLAN AF# \_\_\_\_\_.”

95. The conceptual stormwater design for the plat and future development on residential lots has been approved without the need for additional outfalls. The final stormwater design shall not include new outfalls, which discharge directly or indirectly into the marine receiving waters. A downstream analysis determining the existing outfalls will not be receiving additional stormwater runoff shall be included in the final stormwater design narrative. A plat note restricting new outfalls will be required.

96. Future trail development within Tract B will require a separate land disturbance permit and will be subject to the Whatcom County Codes in affect at the time of the development. A comprehensive analysis for recreation development will be required from the applicant.

97. Prior to final plat approval the following is required:

- a. A conservation easement shall be recorded with the Whatcom County Auditor for all wetlands and wetland buffers within the plat.
- b. Install split rail or other appropriate exclusionary measures along the building setback of herbaceous balds and required wetland buffer.
- c. Educational signage and shoreline setback signage shall be installed. Educational signage regarding herbaceous balds shall be displayed on the fencing at each lot.
- d. Wetland D shall be surveyed and its boundaries, along with the edges of its 100 foot buffer, shall be accurately shown on submitted checkprints.
- e. Installation of mitigation as provided in the final mitigation plan. An as-built inspection for the approved mitigation will be required prior to final plat approval.

## **Shorelines – Long Subdivision**

98. Utilities shall be located within roadway and driveway corridors and rights-of-way wherever feasible.
99. Design of structures shall conform to natural contours and minimize disturbance to soils and native vegetation to the extent feasible. Foundations shall be tiered with earth retention incorporated into the structure.
100. Stormwater infiltration systems shall be employed to mimic the natural infiltration and ground water interflow processes where appropriate.
101. Any lighting along the proposed roadway/driveway corridors shall be designed and operated to avoid illuminating nearby properties or public areas, prevent glare on adjacent properties, or public areas to avoid infringing on the use and enjoyment of such areas, and to prevent hazards.

## **Shoreline – Shoreline Substantial and Conditional Use Permit**

102. The proposed shoreline developments shall be consistent with the scope detailed and approved by this substantial development permit and shoreline conditional use permit. Any changes to the proposed development may require additional review and approval by the Whatcom County Shoreline Administrator and/or Whatcom County Hearing Examiner.
103. The project must be constructed in accordance with the submitted plans/drawings and supporting documentation and comply with all agency permit conditions.
104. The applicant shall obtain a building permit from the Whatcom County Planning and Development (WCPDS) – Building Services Division prior to commencing construction on the tender dock. The above required building permit shall be reviewed by the Shoreline Administrator to ensure consistency with the conditions of this exemption approval prior to issuance of said permit.
105. In conformance with WCC 16.16.265, prior to issuance of the building permit, the applicant shall file a Notice on Title with the Auditor's Office. The notice shall be filed on forms provided by the County and a copy shall be provided to the shoreline administrator. This document is available online at:  
<http://whatcomcounty.us/DocumentCenter/Home/View/2205>.
106. Any change in the currently approved proposal shall receive further critical areas review and approval PRIOR to land disturbance.
107. Construction and/or demolition debris shall be removed from the shoreline area upon completion of the project.
108. Use of heavy machinery shall be limited to use via floating barge. No heavy machinery shall be utilized in upland areas or on the bedlands of marine shorelines

unless reviewed and approved by the Shoreline Administrator.

109. Moorage facilities shall be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night. Exterior finish shall be generally non-reflective.
110. The gravel public access trail on Tract B shall be limited to 5' in width for all areas within the Habitat Conservation Area buffers. Additionally, trail improvements may be made waterward of the Ordinary High Water Mark.
111. Washington State Department of Ecology Water Quality Standards shall be maintained.
112. The project shall not result in significant degradation of ground or surface waters and shall be completed during periods of dry weather.
113. Storage of fuel, oils, and other toxic materials is prohibited on docks and piers except portable containers when provided with secondary containment per 23.100.09.B.20.
114. Bulk storage or gasoline, oil and other petroleum products for any use or purpose is not allowed on piers, except for temporary storage under emergency situations, including oil spill cleanup.
115. The applicant shall contact the Washington State Department of Fish and Wildlife (WDFW) and obtain a Hydraulics Project Approval (HPA) or any other requirements as determined by WDFW. Note that any additional mitigation measures imposed by WDFW shall hereby be adopted as conditions of approval pursuant to WCC 16.16.215. In the event that there is a conflict between such HPA conditions and applicable WCC, the more restrictive standards shall apply.
116. At the time of building permit submittal, a Temporary Erosion and Sedimentation Control (TESC) plan shall be provided. No ground disturbing activities shall commence until the TESC plan has been reviewed and approved by Whatcom County Planning and Development Services.
117. Best Management Practices (BMPs) will be required in order to address any construction related impacts to water quality, the shoreline, and/or existing habitat.
118. The project shall comply with all applicable federal, state and local laws and regulations. Issuance of this shoreline permit does not release the applicant from any other Local, State, regional or Federal statutes or regulations applicable to the proposed development.
119. Should archaeological resources (e.g. shell midden, faunal remains, stone tools) be observed during project activities, all work in the immediate vicinity should stop, and

the area should be secured. The Washington State Department of Archaeology and Historic Preservation (Gretchen Kaehler, Local Government Archaeologist 360-586-3088) and the Lummi Nation Tribal Historic Preservation Office (Lena Tso, THPO 360-312-2257; Tamela Smart, Deputy THPO 360-312-2253) should be contacted immediately in order to help assess the situation and to determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.

120. If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.
121. The location of the ordinary high water mark shall be shown on the construction plans submitted for the building permit.
122. A mono-pile design is required. Construction drawings submitted for the building permit shall demonstrate a mono-pile construction.
123. The distance from the landing to the first pile shall be the maximum feasible for a clear span of the supratidal zone and the distance between other piling shall clear span the rocky habitat, if feasible.
124. Pier decking and stair surfaces shall be entirely grated with functional grating.
125. The community pier shall not exceed six feet in width and 90 feet in length. The community float shall not exceed eight feet in width and 50 feet in length.
126. Functional grating shall be installed on 50% of the float. Grating shall not be located over flotation.
127. The float shall be anchored to the substrate using the minimum piles necessary, not to exceed (3) piles.



128. Flotation shall be fully encapsulated in a shell. Shell must be designed to prevent break up or loss of flotation material.
129. A small access float supporting the gangway to accommodate tidal fluctuation may be installed. The access float shall be no greater than 4 feet wide and 6 feet in length.
130. Float stops shall be installed, if the potential exists for grounding of the float.
131. Install ridge caps with bird spikes on top of the piles to minimize predation of prey species.
132. The width of gangway shall not exceed 4 feet. The gangway shall be entirely grated with functional grating.
133. To avoid impact to juvenile rockfish construction shall occur September 30 through March 15.
134. To avoid impacts to juvenile salmonids construction shall occur August 1 through February 15.
135. Conditions of the WDFW Hydraulic Project Approval including mitigation shall be a considered a conditions of this permit.
136. If vibratory pile driving will be used than a narrative of standard operating procedures compliant with Army Corps of Engineers Regional General Permit 6 for construction in inland marine waters shall be provided at the time building permit submittal. The narrative must address marine mammals including pinnipeds and cetaceans for noise attenuation and in water affects.
137. A final mitigation plan shall be submitted at the time of building permit application addressing the recommended habitat management measures in addition to the required mitigation for the upland community dock landing and trial construction. The final mitigation plan shall include mitigation equivalent to the Army Corps of Engineers Regional General Permit Appendix B: Compensatory Mitigation Calculator.
138. For trail construction and community dock landing new impacts to the marine shoreline buffer shall be mitigated at a ratio of 1.25 to 1, unless specifically address in the approved habitat management plan.
139. Construction shall commence within two years of the effective date of the shoreline variances and substantial development permit as defined by WAC 173-27-090 (3), provided that the Whatcom County Hearing Examiner may authorize a single extension for a period not to exceed one year based on reasonable factors if a request for extension has been filed before the expiration date and notice of the

proposed extension is given to parties of record and the Department of Ecology.

### **Health Department**

140. The applicant shall comply with the conditions of the Whatcom County Health Department in the memo dated September 9, 2020, unless modified by that Department or appealed to the appropriate agency.
141. OSS components and transport lines maintain required setbacks as stated in Whatcom County Code 24.05.100 including but not limited to roads, proposed stormwater facilities and drinking water lines.
142. If OSS easements are located under the road, OSS transport lines will need to be installed prior to road construction.
143. For those OSS located on different parcel than they serve (Tract A), individual OSS permit applications will be required and transport lines will need to be installed prior to final approval. For OSS located on Tract A, a natural resource assessment may be required prior to OSS permitting and installation.
144. Prior to final approval, the applicant will be required to provide water system design approval from the Washington State Department of Health and all water system infrastructure must be installed.
145. The applicant states in the SEPA checklist that there will be no groundwater withdrawal. The applicant must provide evidence of well decommissioning to WCHD prior to final plat approval.

### **Critical Areas – Additional Conditions**

146. Future development shall preserve 95% of the coniferous trees and 95% of the madrone trees with a DBH greater than 24 inches, or are older than 80 years of age.
147. A Class IV General Forest Practice Application for land Conversion is required prior to issuance of civil drawings for areas converted during construction activities authorized by the preliminary plat approval.
148. Future development will be required to obtain a land conversion permit at the time of development.
149. Trails are prohibited to traverse through herbaceous balds. This condition shall be a required plat note.
150. Prior to construction on any lots with an herbaceous bald habitat, a site inspection to ensure the construction setback is clearly established or

demarcated is required.

Report prepared for the Technical Review Committee by:

Amy Keenan, AICP  
Senior Planner

Attachment A: Draft Development Agreement, October 16, 2020  
Attachment B: Shoreline Staff Report, November 5, 2020  
Attachment C: Exhibit List



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2020-566

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<b>File ID:</b>	AB2020-566	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/24/2020	<b>Entered by:</b>	DBrown@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Resolution		
<b>Assigned to:</b>	Council Committee of the Whole			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Resolution affirming confidence in election results

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Resolution affirming confidence in election results

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
11/24/2020	Council	REFERRED TO COMMITTEE	Council Committee of the Whole

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**Attachments:** Agenda Bill Master Report, Proposed Resolution



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2020-566

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<b>File ID:</b>	AB2020-566	<b>Version:</b>	1	<b>Status:</b>	Referred
<b>File Created:</b>	11/24/2020	<b>Entered by:</b>	DBrown@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Resolution		
<b>Assigned to:</b>	Council Committee of the Whole			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Resolution affirming confidence in election results

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Resolution affirming confidence in election results

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
11/24/2020	Council	REFERRED TO COMMITTEE	Council Committee of the Whole
		Aye: 7	Browne, Buchanan, Byrd, Donovan, Frazey, Elenbaas, and Kershner
		Nay: 0	
		Absent: 0	

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**Attachments:** Proposed Resolution

RESOLUTION NO: \_\_\_\_\_

**AFFIRMING CONFIDENCE IN ELECTION RESULTS**

**WHEREAS**, democracy cannot function without public confidence in election results;  
and,

**WHEREAS**, absentee voting by mail has been used in most US states for decades, and is  
an established, safe, and legitimate way to conduct elections; and

**WHEREAS**, the State of Oregon has used voting by mail in federal elections since 1995;  
and

**WHEREAS**, the State of Washington used voting by mail for decades; and

**WHEREAS**, as documented in Exhibit A, US Department of Justice study of incidents and  
complaints reported to state election agencies found criminal voter fraud rare and episodic;  
and

**WHEREAS**, as documented in Exhibit A, another study of voting by mail matching voted  
absentee ballots to death records found no evidence that election fraud was committed under  
the auspices of deceased registrants; and

**WHEREAS**, as documented in Exhibit A, another study of data obtained from the  
California Secretary of State's Election Fraud Unit, spanning 1994 – 2003, identified 1285 fraud  
complaints, most of which involved registration issues. Only 13 involved voting by mail; and

**WHEREAS**, as documented in Exhibit A, during that decade when there were only 13  
identified allegations of absentee vote fraud in California, approximately 25,000,000 absentee  
votes were cast in California by mail; and

**WHEREAS**, as documented in Exhibit A, yet another study based on an exhaustive public  
records search found that from 2000 – 2012 the number of voter fraud cases in the US was  
"infinitesimal." Of this infinitesimal amount there were 491 cases of absentee ballot fraud; and

**WHEREAS**, that study identified 491 documented cases out of hundreds of millions of  
ballots cast; and

**WHEREAS**, as documented in Exhibit A, yet another study searching LexisNexis for  
reported incidences of criminal cases of election fraud between 2000 and 2005 found "only  
nine cases" that "involved a relatively small number of votes," largely isolated in local elections  
in the US south, where few votes were cast; and

**WHEREAS**, given these observations, it may be more likely for an American to be struck by lightning than to commit voter fraud; and

**WHEREAS**, as documented in Exhibit A, yet another study analyzing voting from 1996 to 2018 in the United States concluded that voting by mail has neutral partisan effects, favoring neither political party; and

**WHEREAS**, the head of the US Cybersecurity and Infrastructure Security Agency overseeing US elections stated the 2020 election, including voting by mail, was the most secure in US history; and

**WHEREAS**, the Secretary of State of Washington has likewise expressed full confidence in voting by mail and election results in this state in 2020, consistent with fair and legitimate results in this state in previous years; and

**WHEREAS**, a majority of members of the Whatcom County Council have, at various points, had opportunities to serve on the Whatcom County Canvassing Board, including members affiliated with both major political parties; and

**WHEREAS**, service on the Canvassing Board provides Council with first-hand exposure to unbiased, neutral, professional administration of elections in the United States; and

**WHEREAS**, as documented in Exhibit A, research finds that public perceptions of voter fraud, and media accounts of voter fraud, reflect perceived levels of voter fraud far in excess of the rare, actual occurrences of voter fraud; and

**WHEREAS**, as documented in Exhibit A, these public perceptions of fraud reflect allegations of fraud promoted by partisan officials, rather than actual occurrences of fraud that may affect election results; and

**WHEREAS**, the outgoing President of the United States has contributed these perceptions by claiming, without evidence, that the 2016 election results were "rigged", and illegitimate; and

**WHEREAS**, the outgoing President of the United States is further contributing to delegitimizing America's democratic processes by claiming, without evidence, that results of the 2020 presidential election were fraudulent by promoting baseless claims about alleged voter fraud committed via voting by mail; and

**WHEREAS**, a major party candidate for Governor of Washington, and the candidate's campaign manager are also alleging, without evidence, that Washington's 2020 election results were fraudulent, and illegitimate; and

**WHEREAS**, a state legislator representing Whatcom County notes having "deep suspicions" in Washington state election results due to voting-by-mail, and claims that voting by mail results in distrust of elections in Washington state that can only be cured by returning to in-person voting, and

**WHEREAS**, it is vital to democracy and democratic norms that elected officials of any political affiliation instill confidence in elections by affirming that election results are true and legitimate, regardless of who is found to win or lose; so

**THEREFORE, BE IT RESOLVED**, that the Whatcom County Council affirms its confidence in the validity and integrity of votes cast by mail in Whatcom County, and in Washington state; and

**BE IT FURTHER RESOLVED**, that the Whatcom County Council affirms that election results certified by the Whatcom County Auditor and the Washington Secretary of State, accurately reflect the results of free and fair elections untainted by fraud; and

**BE IT FURTHER RESOLVED**, that the Whatcom County Council affirms that 2020 election results in other states and localities using voting by mail likewise accurately reflect the results of a free and fair elections, as did results from those states in recent, previous elections.

**APPROVED** this day of \_\_\_\_ of \_\_\_\_\_, 2020.

ATTEST:

WHATCOM COUNTY HEALTH BOARD CHAIR  
WHATCOM COUNTY, WASHINGTON

\_\_\_\_\_  
Dana Brown-Davis, Clerk of the Council

\_\_\_\_\_  
Barry Buchanan, Council Chair

APPROVED AS TO FORM:

\_\_\_\_\_  
Civil Deputy Prosecutor



## Exhibit A

### Sources:

Alvarez, R. M and F. Boehmke. 2008. Studying Election Fraud Allegations, in Alvarez, R. Michael, Thad Hall and Susan Hyde. (eds.) *Election Fraud: Detecting and Deterring Electoral Manipulations*. Brookings Institute.

Ansolabehere, Stephen, and Nathaniel Persily. 2008. Vote Fraud is in the Eye of the Beholder: The Role of Public Opinion in the Challenge to Voter Identification Requirements. *Harvard Law Review* 121 (7): 1737–74.

Atkeson, Lonna Rae. 2014. Voter Confidence in 2010: Local, State, and National Elections. In *Election Administration in the United States: The State of Reform after Bush v. Gore*, eds. R. Michael Alvarez and Bernard Grofman. New York: Cambridge University Press, 102–19.

Bailey, Dana. 2008. Federal Election Fraud Cases, in Alvarez, R. Michael, Thad Hall and Susan Hyde. (eds.) *Election Fraud: Detecting and Deterring Electoral Manipulations*. Brookings Institute.

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Cottrell, David, Michael C. Herron, and Sean J. Westwood. 2018. An exploration of Donald Trump's allegations of massive voter fraud in the 2016 General Election. *Electoral Studies* 51: 123-142.

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Hicks, W. D., McKee, S. C., Sellers, M. D., & Smith, D. A. 2015. A principle or a strategy? Voter identification laws and partisan competition in the American States. *Political Research Quarterly*, 68(1), 18-33.

Hood III, M. V., & Gillespie, W. 2012. They just do not vote like they used to: A methodology to empirically assess election fraud. *Social Science Quarterly*, 93(1), 76-94. Susan Hyde. (eds.) *Election Fraud: Detecting and Deterring Electoral Manipulations*. Brookings Institute.

Minnite, L. C. 2011. *The myth of voter fraud*. Cornell University Press

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US Election Assistance Commission. 2006. *Election Crimes: An Initial Review*. September. P. 10-11.

Walter Cronkite School of Journalism and Mass Communication, Arizona State University. <https://votingrights.news21.com/article/about/>



# Whatcom County

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

## Agenda Bill Master Report

File Number: AB2020-546

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<b>File ID:</b>	AB2020-546	<b>Version:</b>	1	<b>Status:</b>	Introduced
<b>File Created:</b>	11/12/2020	<b>Entered by:</b>	DBrown@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Ordinance		
<b>Assigned to:</b>	Council Committee of the Whole			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Ordinance amending Whatcom County Code 2.98, Point Roberts Community Advisory Committee, to revise membership and meeting procedures to broaden representation and improve transparency

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Ordinance amending Whatcom County Code 2.98, Point Roberts Community Advisory Committee, to revise membership and meeting procedures to broaden representation and improve transparency

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### HISTORY OF LEGISLATIVE FILE

<b>Date:</b>	<b>Acting Body:</b>	<b>Action:</b>	<b>Sent To:</b>
11/24/2020	Council	INTRODUCED	Council Committee of the Whole

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**Attachments:** Proposed Ordinance

ORDINANCE NO. \_\_\_\_\_

**AMENDING WHATCOM COUNTY CODE 2.98, POINT ROBERTS COMMUNITY  
ADVISORY COMMITTEE, TO REVISE MEMBERSHIP AND MEETING PROCEDURES TO  
BROADEN REPRESENTATION AND IMPROVE TRANSPARENCY**

**WHEREAS**, the County government requires all of its boards and commissions to provide full transparency and the opportunity for public participation in their meetings; and

**WHEREAS**, the County Council recently received communications from residents of Point Roberts in which an overwhelming majority have expressed concern that the Point Roberts community advisory committee membership:

- a) is not currently adequately communicating the wishes of the community on a key local issue; and
- b) has not provided adequate notice of its meeting agenda sufficient to allow for broad public comment prior to the committee considering and voting on recommendations the committee has subsequently forwarded to the county council; and
- c) is not maintaining detailed minutes sufficient to reflect the debate and public comments within the meetings, nor who voted and how; and

**WHEREAS**, the County government abides by and supports the principals embodied in the Open Public Meetings Act.

**NOW, THEREFORE, BE IT ORDAINED**, that Whatcom County Code 2.98 shall be amended to include a new section as detailed in the attached Exhibit A to the ordinance.

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2020.

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

\_\_\_\_\_  
Dana Brown-Davis, Clerk of the Council

\_\_\_\_\_  
Barry Buchanan, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE  
WHATCOM COUNTY, WASHINGTON

\_\_\_\_\_  
Civil Deputy Prosecutor

\_\_\_\_\_  
Satpal Singh Sidhu, County Executive

( ) Approved      ( ) Denied

Date Signed: \_\_\_\_\_

## **EXHIBIT A**

### **POINT ROBERTS COMMUNITY ADVISORY COMMITTEE**

Sections:

- 2.98.010 Established.**
- 2.98.020 Purpose.**
- 2.98.030 Function.**
- 2.98.040 Membership – Term of office.**
- 2.98.050 Organization – Meetings.**
- 2.98.060 Committee staffing.**

#### **2.98.010 Established.**

There is hereby established the Point Roberts community advisory committee. (Ord. 2010-008).

#### **2.98.020 Purpose.**

The committee is created to provide advice and recommendation to the executive and to the council regarding needs and issues specific to the Point Roberts community. (Ord. 2010-008).

#### **2.98.030 Function.**

The committee shall utilize its ties to the community in order to identify community needs and to develop and propose methods to address those needs. (Ord. 2010-008).

#### **2.98.040 Membership – Term of office.**

The committee shall consist of the following individuals:

A. One representative from each of the following: the Point Roberts Taxpayers' Association, the Point Roberts Voters' Association, and the Point Roberts Chamber of Commerce.

B. ~~Two~~Four representatives to be appointed by the executive.

Member terms will be two years; provided, that the terms of members first appointed will be staggered so that two of the committee members shall be appointed for one year. (Ord. 2010-008).

#### **2.98.050 Organization – Meetings.**

Meetings of the committee shall be open and accessible to the public and shall comply with the requirements of the Open Public Meetings Act. The committee shall determine its meeting schedule, but shall meet at least quarterly providing at least two weeks' notice of all meetings and shall include the Agenda. Any item intended for a vote must be clearly and unambiguously defined on the agenda. The date of any meeting along with the agenda shall published on the County Website a minimum of two weeks prior. At every meeting, the committee will schedule an open session to take public comment on issues consistent with the charge of the committee. Written and audio records of meetings, resolutions, findings and recommendations shall be kept and such records shall be public. Minutes must be sufficiently detailed to enable a reader to understand the topic discussed and the key points of any debate. All external communications made by the committee shall be in writing, approved by a majority vote with the names of the committee members and their votes attached. The committee shall adopt its own rules and procedures for the conduct of business. The committee shall elect a chairperson from among its members who shall preside at its meetings. (Ord. 2010-008).

#### **2.98.060 Committee staffing.**

The county may provide staffing based on the committee's timely notification of staffing needs at its meetings. The committee is authorized to request from the executive's office information from administrative departments. (Ord. 2010-008).



# Whatcom County

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

## Agenda Bill Master Report

File Number: **AB2020-345**

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<b>File ID:</b>	AB2020-345	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	08/19/2020	<b>Entered by:</b>	MAamot@co.whatcom.wa.us		
<b>Department:</b>	Planning and Development Services Department	<b>File Type:</b>	Discussion		
<b>Assigned to:</b>	Council Committee of the Whole	<b>Final Action:</b>			
<b>Agenda Date:</b>	12/08/2020	<b>Enactment #:</b>			

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Primary Contact Email: [maamot@co.whatcom.wa.us](mailto:maamot@co.whatcom.wa.us)

### **TITLE FOR AGENDA ITEM:**

Discussion of proposed Cherry Point amendments

### **SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

The County Council worked with the Cascadia Law Group to develop proposed Comprehensive Plan and Whatcom County Code (WCC) amendments primarily relating to fossil fuel and renewable fuel facilities in the Cherry Point Area (some of the amendments apply to various land uses on a countywide basis). The Council approved Resolution 2019-037 on August 7, 2019 forwarding the proposed amendments to the Planning Commission for review. The Planning Commission issued their Findings of Fact and Reasons for Action, Conclusions, and Recommendations on August 13, 2020. Council Special Committee of the Whole will discuss the proposed amendments.

### **HISTORY OF LEGISLATIVE FILE**

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<b>Date:</b>	<b>Acting Body:</b>	<b>Action:</b>	<b>Sent To:</b>
09/15/2020	Council Committee of the Whole	DISCUSSED AND MOTION(S) APPROVED	
09/29/2020	Council Committee of the Whole	DISCUSSED AND MOTION(S) APPROVED	
10/13/2020	Council Committee of the Whole	DISCUSSED	
10/20/2020	Council (Special)	DISCUSSED AND MOTION(S) APPROVED	

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***Agenda Bill Master Report Continued (AB2020-345)***

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10/27/2020	Council Committee of the Whole	DISCUSSED
10/28/2020	Council (Special)	DISCUSSED AND MOTION(S) APPROVED
11/17/2020	Council (Special)	DISCUSSED
11/24/2020	Council Committee of the Whole	DISCUSSED

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**Attachments:** Staff Memo, Planning Commission Recommendations, Exhibit A (Comp Plan Amendments), Exhibits B - D (Code Amendments), Planning Commissioner Minority Opinion, Link to Cherry Point Public Comments, PDS Comments Received 11.19.2020, Joint-Stakeholders Proposed Revisions 11.24.2020, PDS Comments Received 11.25.2020

**WHATCOM COUNTY**

Planning & Development Services  
5280 Northwest Drive  
Bellingham, WA 98226-9097  
360-778-5900, TTY 800-833-6384  
360-778-5901 Fax



**Mark Personius**  
Director

## Memorandum

August 20, 2020

TO: The Honorable Satpal Sidhu, Whatcom County Executive  
The Honorable Whatcom County Council

FROM: Matt Aamot, Senior Planner

THROUGH: Mark Personius, Director

RE: Cherry Point Amendments (PLN2018-00009)

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The County Council worked with the Cascadia Law Group to develop proposed Comprehensive Plan and Whatcom County Code (WCC) amendments primarily relating to fossil fuel and renewable fuel facilities in the Cherry Point Area (some of the amendments apply to various land uses on a countywide basis). The Council approved Resolution 2019-037 on August 7, 2019 forwarding the proposed amendments to the Planning Commission for review.

The Planning Commission held a series of meetings on the proposed amendments between September 2019 and August 2020 (there were no meetings in March, April, or May because of the COVID-19 meeting restrictions). Public comments through the end of the Planning Commission review process are posted on the County's website: <https://www.whatcomcounty.us/2849/Cherry-Point-Amendments>. The Planning Commission issued their Findings of Fact and Reasons for Action, Conclusions, and Recommendations on August 13, 2020 relating to:

- Exhibit A - Amending Whatcom County Comprehensive Plan Chapter 2 (Land Use).
- Exhibit B - Amending the State Environmental Policy Act (SEPA) code (WCC 16.08).
- Exhibit C - Amending the Light Impact Industrial District, Heavy Impact Industrial District, Cherry Point Industrial District, Major Project Permits, and Definitions chapters of the Whatcom County Zoning Code (Title 20).
- Exhibit D - Amending the Project Permit Procedures (WCC 22.05).

Selected differences between the original Council proposal and the Planning Commission proposal are summarized below (not all differences are shown below – please see the Exhibits in which all Planning Commission changes to the Council proposal are shown with yellow highlighting).



Exhibit	Document	Council	Planning Commission	Comments
A	Comp Plan		Added Policy 2CC-18 to allow on-going operation, maintenance, repair, modifications, etc. of existing facilities	New Policy would provide certainty to industry relating to particular types of activities that they can continue to conduct as allowed uses at existing facilities.
A	Comp Plan	Added Policy 2CC-18 to treat renewable fuel facilities similar to fossil fuel facilities	Deleted this proposed Policy	The Planning Commission recommended that new renewable fuel refineries and transshipment facilities should be allowed as a permitted use but new fossil fuel refineries and transshipment facilities should be prohibited. Additionally, the Planning Commission recommended that expansion of existing renewable fuel refineries and transshipment facilities should be allowed as a permitted use but expansion of fossil fuel facilities should require a conditional use permit. Therefore, the Planning Commission proposal would not treat renewable fuel facilities in a manner similar to fossil fuel facilities.
B	SEPA Code	Added worksheet for fossil fuel and renewable fuel facilities  WCC 16.08.090.E	Allows use of the worksheet or an expert evaluation and makes other changes to this proposed code  WCC 16.08.090.E	The worksheet will take time to develop and likely will not be available when Council adopts the ordinance. Additionally, larger or more complex projects may benefit from expert evaluation of the issues.
B	SEPA Code	Greenhouse gas (GHG) mitigation through SEPA or the Zoning Code  WCC 16.08.160.F.1	GHG mitigation through SEPA only  WCC 16.08.160.F.1	The Council proposal provides for GHG mitigation through either the Zoning Code or the SEPA Code. The Planning Commission version would provide the SEPA Responsible Official with the discretion to impose mitigation for GHG impacts, but there would not be an automatic requirement for GHG mitigation under the Zoning Code.
B  C	SEPA Code  Zoning Code	Definition of "Facility Emissions"  WCC 20.97.124.1	Definition of "Facility Emissions"  WCC 16.08.175.C	The Council proposal provided a definition of "Facility Emissions" in the Zoning Code. The Planning Commission proposal moves the definition to the SEPA Code. The Planning Commission version deleted the following elements from the original Council definition of facility emissions: <ul style="list-style-type: none"> <li>• The transportation within the borders of Whatcom County of refined and unrefined fossil fuels to and from a facility located within the Cherry Point Heavy Industrial area, and</li> <li>• The upstream emissions generated by the production and transport of raw products to the facility such as crude oil feedstocks or other fuels used in production or energy generation at facilities.</li> </ul>

Exhibit	Document	Council	Planning Commission	Comments
C	Zoning Code	Permitted outright improvements to existing fossil fuel and renewable fuel facilities  WCC 20.68.802	Permitted outright improvements to existing fossil fuel and renewable fuel facilities  20.68.068	Planning Commission moved improvements to existing fossil fuel and renewable fuel facilities that are permitted outright (i.e. do not constitute an "expansion" that requires a conditional use permit) to the permitted use section of the Heavy Impact Industrial Zone. The Planning Commission also expanded the list of permitted uses to address industry and public comments.
C	Zoning Code	Renewable Fuel Facilities  WCC 20.68.153 and .159	Renewable Fuel Facilities  WCC 20.68.070 and .071	Council proposal requires a conditional use permit for new or expanded renewable fuel facilities. Planning Commission proposal would allow these as permitted outright uses.
C	Zoning Code	Conditional use permit for expansion of fossil fuel and renewable fuel facilities  WCC 20.68.153	Conditional use permit for expansion of fossil fuel facilities (does not include renewable fuel facilities because they are permitted outright)  WCC 20.68.153	Planning Commission proposal: <ul style="list-style-type: none"> <li>• Sets specific thresholds defining what constitutes an "expansion" that requires a conditional use permit.</li> <li>• Inserts a clause that "If a conditional use permit is obtained, the baseline for determining the cumulative increase is reset."</li> <li>• Modifies the conditional use permit approval criteria.</li> </ul>
C	Zoning Code	Prohibited Uses: New fossil fuel transshipment facilities  WCC 20.68.205	Prohibited Uses: New fossil fuel transshipment facilities  WCC 20.68.205	The Council proposal prohibits new fossil fuel transshipment facilities. The Planning Commission proposal maintains this prohibition, but inserts language clarifying that certain movements of petroleum products are not prohibited by this clause.
C	Zoning Code	GHG Mitigation  WCC 20.68.801	Deletes GHG Mitigation requirement in the Zoning Code	The Council proposal included language in the Zoning Code requiring GHG mitigation for fossil fuel and renewable fuel facilities if certain criteria are met. The Planning Commission proposal deleted this language from the Zoning Code, but includes GHG mitigation language in the SEPA Code that is more discretionary in nature.  There are a number of state laws, regulations, and proposals that address GHG emissions: <ul style="list-style-type: none"> <li>• RCW 70.94 (Washington Clean Air Act)</li> <li>• RCW 70.235 (Limiting Greenhouse Gas Emissions)</li> <li>• WAC 173-441 (Reporting of Emissions of Greenhouse Gases)</li> <li>• WAC 173-442 (Clean Air Rule)</li> <li>• WAC 173-485 (Petroleum Refinery Greenhouse Gas Emission Requirements)</li> <li>• Directive of the Governor 19-18</li> <li>• Proposed New WAC 173-445 WAC (Greenhouse Gas Assessment for Projects) – to be adopted by September 1, 2021</li> </ul>

Exhibit	Document	Council	Planning Commission	Comments
C	Zoning Code	Change of Use WCC 20.74.110	Deletes this Change of Use provision	The Council proposal includes a provision that requires a change of use permit for certain activities. The Planning Commission deleted this proposed change of use provision (WCC 20.74.110). Concerns had been expressed relating to the potential conversion of an existing refinery/transshipment facility into a crude oil transshipment facility (e.g. see Resolution 2019-037). The Planning Commission language for proposed WCC 20.68.153 addressed this potential situation by requiring a conditional use permit if shipping capacity of unrefined fossil fuels were to increase over a certain level.
C	Zoning Code	Definition of "Fossil or Renewable Fuel Transshipment Facilities" WCC 20.97.160.3	Definition of "Fossil Fuel Transshipment Facilities" WCC 20.97.160.3  Definition of "Renewable Fuel Transshipment Facilities" WCC 20.97.350.4	The Council proposal provided a combined definition of "Fossil or Renewable Fuel Transshipment Facilities." The Planning Commission proposal provides separate definitions of "Fossil Fuel Transshipment Facilities" and "Renewable Fuel Transshipment Facilities" as the Commission's proposal treats these land uses differently. The Planning Commission also made modifications to these definitions.
C	Zoning Code		Definition of "Maximum Atmospheric Crude Distillation Capacity" WCC 20.97.230	The Planning Commission proposal adds a definition of this term because it is used in the conditional use section of the code (WCC 20.68.153).
D	Project Permit Procedures	Proof of Insurance WCC 22.05.125	Proof of Insurance WCC 22.05.125	The Council proposal includes new provisions relating to "Proof of insurance for hazards created in the County." The Planning Commission proposal includes abbreviated proof of insurance language with less detail than the Council proposal.  There are several state laws and regulations that address insurance and/or financial responsibility: <ul style="list-style-type: none"> <li>• RCW 88.40 (Transport of Petroleum Products – Financial Responsibility)</li> <li>• WAC 480-62-300(2) (Railroad Companies – Operations)</li> </ul>

In September, the Planning and Development Services Department would like to review the Planning Commission's recommendations with the County Council's Special Committee of the Whole. When this review is complete, and the County Council has developed a final proposal, an ordinance can be introduced and public hearing scheduled before the Council. Please note that the "[Determination of Non-significance](#)" issued pursuant to the State Environmental Policy Act for the proposed amendments has been appealed.

## **WHATCOM COUNTY PLANNING COMMISSION**

### **Cherry Point Amendments**

#### **FINDINGS OF FACT AND REASONS FOR ACTION**

1. The Whatcom County Council approved Resolution 2019-037 on August 7, 2019, forwarding proposed Comprehensive Plan and code amendments to the Planning Commission for review. The subject amendments primarily relate to fossil fuel and renewable fuel facilities in the Cherry Point Area, although some of the amendments apply to various land uses on a countywide basis.
2. The subject amendments include the following:
  - Amending Whatcom County Comprehensive Plan Chapter 2 (Land Use).
  - Amending the State Environmental Policy Act (SEPA) code (WCC 16.08).
  - Amending the Light Impact Industrial District, Heavy Impact Industrial District, Cherry Point Industrial District, Major Project Permits, and Definitions chapters of the Whatcom County Zoning Code (Title 20).
  - Amending the Project Permit Procedures (WCC 22.05).
3. Notice was submitted to the Washington State Department of Commerce on August 15, 2019.
4. The Whatcom County Planning Commission held a town hall meeting on September 12, 2019.
5. The Whatcom County Planning Commission held work sessions on September 26, 2019, October 10, 2019, October 24, 2019, November 14, 2019, December 12, 2019, January 16, 2020, January 30, 2020, February 27, 2020, June 25, 2020, and July 9, 2020.

6. A Determination of Nonsignificance (DNS) was issued under the State Environmental Policy Act (SEPA) on July 28, 2020.
7. Notice of the Planning Commission hearing was sent to citizens, media, cities, and others on the County's e-mail list on July 30, 2020.
8. Notice of the Planning Commission hearing was posted on the County website on August 3, 2020.
9. Notice of the Planning Commission hearing for the subject amendments was published in the Bellingham Herald on August 3, 2020.
10. The Planning Commission held a public hearing on the subject amendments on August 13, 2020.

### **Comprehensive Plan Amendments**

11. The Cherry Point UGA is approximately 7,030 acres. Whatcom County Comprehensive Plan Chapter 2 contains a specific section with text, goals, and policies relating to the Cherry Point UGA (other goals and policies in the Comprehensive Plan also apply).
12. The subject amendments modify text and Policies 2CC-11, 2CC-16, 2CC-17, and 2WW-4 in Whatcom County Comprehensive Plan Chapter 2. The subject amendments also add new Policy 2CC-18 to the Comprehensive Plan.
13. Whatcom County Comprehensive Plan Policy 2CC-11 already states that "It is the policy of Whatcom County to limit the number of industrial piers at Cherry Point to the existing three piers. . ." The subject amendments modify Policy 2CC-11. These amendments include:
  - Recognizing that the vested rights/enforceable agreement for an additional dock/pier no longer exist.
  - Recognizing the importance of preventing harm to habitat of the Cherry Point Herring stock and Southern Resident Killer Whales.
  - Recognizing that implementation of the Shoreline Program is an important way to preserve the natural character, result in long-term benefits, and protect the resources and ecology of the shoreline.
  - Deleting language that is unnecessary or no longer needed.

14. The subject amendments modify Whatcom County Comprehensive Plan Policy 2CC-16. These amendments include:
  - Recognizing that the study and recommendations to address negative impacts from fossil fuel facilities have been completed (see *Reducing Impacts from Fossil fuel Projects Report to the Whatcom County Council*, Cascadia Law Group, Feb. 12, 2018 and Whatcom County Council Resolution 2019-037, August 7, 2019).
  - Stating that the County will, through SEPA and permitting, seek to limit negative impacts from fossil fuel facilities within the Cherry Point UGA.
  - Refining the language relating to notice to the County Council of fossil fuel projects.
  - Deleting language that is unnecessary or no longer needed.
15. The subject amendments modify Whatcom County Comprehensive Plan Policy 2CC-17. These amendments include:
  - Recognizing that limited fossil fuel facility expansions are subject to environmental review, greenhouse gas analysis, and Cherry Point policies in the Comprehensive Plan.
  - Deleting language that is unnecessary.
16. The subject amendments modify Whatcom County Comprehensive Plan Policy 2WW-4 by recognizing that existing marine port facilities and limited expansions are allowed consistent with the State of Washington Department of Natural Resource Cherry Point Aquatic Reserve Management Plan.
17. The subject amendments add new Whatcom County Comprehensive Plan Policy 2CC-18. This new policy recognizes that the following are allowed: The on-going operation, maintenance, and repair of existing facilities, modifications designed to comply with adoption and implementation of new product standards and fuel standards, operational and site safety improvements, environmental improvements, and regulatory compliance projects.
18. Pursuant to WCC 22.10.060(1), in order to approve comprehensive plan amendments the County must find all of the following:

- The amendment conforms to the requirements of the Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.
- Further studies made or accepted by the Department of Planning and Development Services indicate changed conditions that show need for the amendment.
- The public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:
  - i. The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan.
  - ii. The anticipated effect on the ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.
  - iii. Anticipated impact upon designated agricultural, forest and mineral resource lands.
- The amendment does not include or facilitate spot zoning.

### **Growth Management Act**

19. The Growth Management Act (GMA) establishes planning goals in Revised Code of Washington (RCW) 36.70A.020 to guide adoption of comprehensive plan amendments.
20. GMA planning goal # 1 is to: "Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner."
21. GMA planning goal # 5 is to:  
  
Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and

for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.

22. The subject Comprehensive Plan amendments, when viewed in the context of the other Comprehensive Plan goals and policies, continue to encourage development in the Cherry Point industrial area while also addressing public safety and environmental protection. The amendments recognize that the existing industries provide significant employment and have shipped refined fossil fuel products for decades. The amendments also recognize that existing operations of fossil fuel facilities, along with limited expansions, are allowed with appropriate environmental review and analysis.
23. GMA planning goal # 9 is to: "Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities."
24. GMA planning goal # 10 is to: "Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water."
25. The State Shoreline Management Act policies, which are incorporated as a GMA goal pursuant to RCW 36.70A.480, indicate that:

. . . It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto. . . (RCW 90.58.020)
26. Fossil fuel refineries and transshipment facilities have potential for accidents, which can release pollutants into the environment and impact fish habitat, wildlife habitat, water quality, and air quality. The subject amendments seek to limit negative impacts on public health, safety, and the environment.



## Countywide Planning Policies

27. Countywide Planning Policy E-3 states:

Cherry Point shall be designated as an unincorporated industrial urban growth area in recognition of existing large scale industrial land uses. Additional large scale development shall be encouraged consistent with the ability to provide needed services and consistent with protecting critical areas along with other environmental protection considerations. The Cherry Point industrial area is an important and appropriate area for industry due to its access to deep water shipping, rail, all-weather roads, its location near the Canadian border, and its contribution to the County's goal of providing family wage jobs.

28. Countywide Planning Policy I-2 indicates "New business development and expansion of existing businesses are key factors in providing 'family wage' jobs and a strong tax base. Economic development that pays family wage rates should be encouraged. . ."

29. Countywide Planning Policy I-8 states:

Economic development should be encouraged that:

- a. Does not adversely impact the environment;
- b. Is consistent with community values stated in local comprehensive plans;
- c. Encourages development that provides jobs to county residents;
- d. Addresses unemployment problems in the county and seeks innovative techniques to attract different industries for a more diversified economic base;
- e. Promotes reinvestment in the local economy;
- f. Supports retention and expansion of existing businesses.

30. Countywide Planning Policy N-2 states that "The Cities and the County in cooperation with other municipal corporations and tribal governments shall adopt zoning regulations and development standards to protect water resources. . ."

31. Countywide Planning Policy N-3 states that "Jurisdictions shall cooperate to protect and restore water resources and fish habitat within UGA's and across jurisdictional boundaries to maintain quality of life and economic health in Whatcom County."

32. The Countywide Planning Policies recognize the significance of the Cherry Point UGA for industry, transportation, and good jobs. The Countywide Planning Policies also recognize the importance of environmental protection.

33. The Comprehensive Plan, including the subject amendments, allows a variety of industrial uses in the Cherry Point UGA, while encouraging review processes that will facilitate a full evaluation of fossil fuel development proposals and mitigation of negative impacts.

### **Interlocal Agreements**

34. There are no interlocal agreements relating to the Cherry Point UGA.

### **Further Studies/Changed Conditions**

35. The GMA, originally adopted in 1990, included a requirement to designate Urban Growth Areas (UGAs).
36. The Cherry Point UGA was adopted in 1997 when the Whatcom County Comprehensive Plan was adopted.
37. The Washington State Department of Natural Resources (DNR) originally issued the *Cherry Point Environmental Aquatic Reserve Management Plan* in November 2010, and amended the Plan in January 2017.
38. The primary focus of the *Cherry Point Environmental Aquatic Reserve Management Plan* is to:
  - . . . protect, enhance and restore habitats used by Cherry Point herring stock, salmon, migratory and resident birds, Dungeness crab, groundfish rearing areas and marine mammals, as well as the protection of submerged aquatic vegetation and water quality. . . (p. 4).
39. The *Cherry Point Environmental Aquatic Reserve Management Plan* states:
  - . . . the aquatic environment of Cherry Point: provides essential habitat and irreplaceable biological and ecological functions; is a portion of Treaty-protected usual and accustomed (U&A) grounds and stations of local Native American Indians; and provides significant economic benefits, recreational opportunities and other social values. . . (pp. 4 and 5).
40. The *Cherry Point Environmental Aquatic Reserve Management Plan* recognizes that:
  - . . . A number of species and habitats addressed in this plan have experienced declines over the past 40 years, such as the Cherry Point herring stock, which has shrunk from approximately 15,000 tons to between 800 and 2,100 tons over the last ten years. Other key species in decline include Puget Sound Chinook salmon, bull trout, and

certain species of rockfish, surf scoter, and Southern Resident orca whales . . . (pp. 1 and 2).

41. The *Cherry Point Environmental Aquatic Reserve Management Plan* specifically excludes certain areas, including the three existing industrial piers, from the Reserve (pp. 10 and 11).
42. The *Cherry Point Environmental Aquatic Reserve Management Plan* constitutes a further study that indicates a need for the subject amendments.
43. Other areas of the U.S. and Canada have experienced community impacts and environmental degradation associated with fossil fuel industry accidents since the adoption of the Cherry Point UGA in 1997.

### **Public Interest**

44. The Cherry Point area contains valuable fish and wildlife habitat (*Cherry Point Environmental Aquatic Reserve Management Plan*, DNR, amended 2017).
45. The Cherry Point UGA is a unique location, with important attributes, for industry (Whatcom County Comprehensive Plan, pp. 2-54 to 2-56). Existing industries provide high wage jobs and a substantial tax base (*Employment at Cherry Point*, Hodges, Rucker, and McCafferty, 2019).
46. The Cherry Point UGA text, goals and policies in the Whatcom County Comprehensive Plan, including the subject amendments, recognize the value of existing industrial uses and the importance of marine waters, fish and wildlife habitat, and air quality.
47. The subject comprehensive plan amendments should not adversely affect the overall rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan. The Whatcom County Comprehensive Plan allocated an additional 890 jobs for the Cherry Point UGA for the 2013-2036 planning period. The *Employment at Cherry Point* report from 2014 estimated that there were 2,100 – 2,200 jobs in the Cherry Point industrial area at that time (p. 3). The *Employment at Cherry Point* report from 2019 estimates 3,318 jobs and indicates that, between 2014-2019, “. . . roughly 1,100 jobs have been added . . .” (pp. 6 and 14). However, most of the 700 jobs at Alcoa Intalco Works, along with related jobs, will be lost with the shutdown of the aluminum smelter. Growth projections will be updated in the next periodic update of the Comprehensive Plan (due by June 2025). These updated projections will take into account conditions at that time and expectations for the future.

48. The subject comprehensive plan amendments should not adversely affect ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities. The subject amendments do not expand the allowed uses that would be served by Fire District 7, which encompasses the Cherry Point UGA. Additionally, new residential uses are not allowed in the Cherry Point industrial area and, therefore, new students will not be generated by development in this area.
49. The closest designated Agricultural lands are over .80 of a mile to the southeast, the closest Mineral Resource designation is approximately .06 of a mile to the east, and the closest designated Forestry lands are over 4 miles to the southeast of the Cherry Point UGA. There is no evidence in the record that the subject comprehensive plan amendments would adversely impact designated agricultural, forestry, or mineral resource lands.
50. The Cherry Point UGA goals and policies, including subject amendments, continue to allow industrial uses in the Cherry Point UGA that provide family wage jobs and contribute to the tax base of the County and special purpose districts, while addressing impacts to public safety and the environment. Such planning is in the public interest.

### **Spot Zoning**

51. "Illegal spot zoning" means a zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from, and inconsistent with, the classification of surrounding land and not in accordance with the Comprehensive Plan. Spot zoning is zoning for private gain designed to favor or benefit a particular individual or group and not the welfare of the community as a whole (WCC 20.97.186).
52. The subject proposal does not involve nor facilitate illegal spot zoning.

### **Development Regulation Amendments**

53. The subject amendments modify text of the Whatcom County SEPA rules (WCC 16.08), the Zoning Code (WCC 20), and Project Permit Procedures (WCC 22.05)
54. Pursuant to WCC 22.10.060(2), in order to approve development regulation amendments the County must find that the amendments are consistent with the Whatcom County Comprehensive Plan.

**SEPA Code Amendments**

55. Whatcom County Comprehensive Plan Policy 10A-6 states "Aim to meet or exceed national, state, and regional air quality standards. Work with the Northwest Clean Air Agency to ensure compliance with applicable air quality standards."
56. Whatcom County Comprehensive Plan Policy 10A-9 is to "Cooperate with state and federal agencies and neighboring jurisdictions to identify and protect threatened and endangered fish and wildlife species and their habitats."
57. Whatcom County Comprehensive Plan Goal 10D is to "Strengthen the sustainability of Whatcom County's economy, natural environment, and built communities by responding and adapting to the impacts of climate change."
58. Whatcom County Comprehensive Plan Goal 10L is to "Protect and enhance ecosystems that support native fish and wildlife populations and habitat."
59. The Washington State Department of Ecology adopted a "Clean Air Rule," which included greenhouse gas emission limits, in 2016 (Washington Administrative Code or WAC 173-442). The Clean Air Rule was developed under the authority granted in RCW 70.94 (Washington Clean Air Act) and RCW 70.235 (Limiting Greenhouse Gas Emissions). The Clean Air Rule was challenged and the Thurston County Superior Court issued a ruling in March 2018 that prevented Ecology from implementing the Clean Air Rule regulations. However, the Washington Supreme Court reversed the Superior Court in part on January 16, 2020, upholding the Clean Air rule as it relates to regulating stationary sources (Case No. 95885-8).
60. A [Directive of the Governor](#) (# 19-18), dated December 19, 2019, states:  

. . . I hereby direct the Department of Ecology to adopt rules by September 1, 2021, to strengthen and standardize the consideration of climate change risks, vulnerability, and impacts in environmental assessments for major projects with significant environmental impacts.

. . .

The rules should be uniform and apply to all branches of government, including state agencies, political subdivisions, public and municipal corporations and counties. The rules should cover major industrial projects and major fossil fuel projects; and establish uniform methods, processes, procedures, protocols or criteria that ensure a comprehensive assessment and quantification of direct and indirect greenhouse gas emissions resulting from the project.

Rules for cumulative environmental assessments and reporting should include . . . Methods, procedures, protocols, criteria or standards for mitigation of greenhouse gas emissions, as necessary to achieve a goal of no net increase in greenhouse gas emissions . . .

61. The Washington State Department of Ecology sent an e-mail "Notice of Rulemaking for Proposed New Chapter 173-445 WAC – Greenhouse Gas Assessment for Projects Rulemaking" on May 1, 2020. An associated document entitled "[Preproposal Statement of Inquiry](#)" on Ecology's website stated:

The Department of Ecology (Ecology) is beginning rulemaking as per the Directive of the Governor #19-18. The purpose of this rulemaking is to create a new rule under Chapter 173-445 WAC Greenhouse Gas Assessment for Projects. This rule will address analysis and mitigation of greenhouse gas emissions for environmental assessments of industrial and fossil fuel projects.

62. The subject amendments modify the County's SEPA rules to require applicants for certain fossil fuel and renewable fuel projects to submit additional information on a number of topics including greenhouse gas and other emissions, tanker and barge traffic, stormwater, wastewater, and risk of spills and explosions. These provisions are intended to provide the SEPA Responsible Official with more information in order to make reasoned decisions on threshold determinations.
63. The subject amendments include provisions on SEPA's relationship to federal, state, and regional regulations (see WAC 197-11-158(4)).
64. The subject amendments modify the County's SEPA rules by adding provisions relating to air quality & climate and plants & animals. These topics are specifically listed as "elements of the environment" under the State SEPA Rules (WAC 197-11-444).
65. The subject amendments include provisions that the decision maker may condition or deny projects (conditioning includes mitigating measures). This authority is already granted under RCW 43.21C.060, which states ". . . Any governmental action may be conditioned or denied pursuant to this chapter. . ." (the State Environmental Policy Act).
66. While State government is taking action to address air quality and greenhouse gas emissions, the County finds that the subject amendments will also provide assistance at the local government level in fulfilling responsibilities under SEPA.

### ***Zoning Code Amendments***

67. The Cherry Point UGA is zoned Light Impact Industrial (LII) and Heavy Impact Industrial (HII). There are approximately 470 acres in the LII zone and 6,560 acres in the HII zone.
68. The subject amendments modify the LII zone, HII zone, Cherry Point Industrial District, Major Project Permits, and Definitions sections of the Whatcom County Zoning Code (Title 20).
69. Whatcom County Comprehensive Plan Goal 2H is to "Preserve private property rights while recognizing the importance of the rights of the community, including protecting the natural environment and conserving resources."
70. Whatcom County Comprehensive Plan Goal 7A is to "Promote a healthy economy providing ample opportunity for family-wage jobs for diverse segments of the community, which is essential to the quality of life in the area."
71. Whatcom County Comprehensive Plan Policy 7A-2 is to "Foster a diverse, private-sector job base, which will provide family-wage jobs at the state median income level or greater, and facilitate the retention and expansion of existing businesses."
72. Whatcom County Comprehensive Plan Policy 7J-1 is to "Support creation of job opportunities for local residents, especially family wage jobs to decrease unemployment and underemployment.
73. The Zoning Code, as modified by the subject amendments, preserves private property rights and fosters economic development by continuing to allow a wide array of industrial land uses in the Cherry Point UGA. In the LII zone, allowed uses include manufacturing (except new fossil fuel refineries), fabrication, printing, storage, boat building and repair, communications, and other similar uses. In the HII zone, allowed uses include manufacturing (except new fossil fuel refineries), fabrication, printing, storage, boat building and repair, power plants (except coal-fired plants), and solid waste handling facilities.
74. Additionally, the HII zone amendments allow continued operation, maintenance, and certain improvements to existing refineries and transshipment facilities (WCC 20.68.068).
75. Whatcom County Comprehensive Plan Goal 2G is to "Encourage citizen participation in the decision making process." Policy 2G-1 is to "Examine and improve methods to notify affected property owners of proposed land use changes."

76. The subject Zoning Code amendments provide greater public review of certain land uses that could impact public safety, transportation, and the environment. Specifically, the expansion of existing fossil fuel refineries and existing fossil fuel transshipment facilities requires a conditional use permit in the HII zone (WCC 20.68.153). The conditional use permit process requires notice, a public hearing, evaluation of the proposal for compliance with the approval criteria, and a decision by the hearing examiner.
77. Whatcom County Comprehensive Plan Policy 2CC-16 was adopted in 2017 (Ordinance 2017-027). This Policy, which is being modified by the subject amendments, stated:

The County shall undertake a study to be completed if possible by December of 2017 to examine existing County laws, including those related to public health, safety, development, building, zoning, permitting, electrical, nuisance, and fire codes, and develop recommendations for legal ways the County may choose to limit the negative impacts on public safety, transportation, the economy, and environment from crude oil, coal, liquefied petroleum gases, and natural gas exports from the Cherry Point UGA . . . Based on the above study, develop proposed Comprehensive Plan amendments and associated code and rule amendments. . .

78. The subject amendments prohibit new fossil fuel refineries and new fossil fuel transshipment facilities (WCC 20.66.204, 20.68.204 and .205). Potential impacts from new refineries and associated transshipment facilities may include: Increased pollutant emissions to the air, increased chance of crude oil or refined product spills, increased chance of fire or explosion, increased rail traffic that can impact other modes of transportation (e.g. hold up motor vehicle, school bus, or emergency vehicle traffic at railroad crossings), increased chance of derailment, and increased vessel traffic.
79. The Whatcom County Comprehensive Plan states "Whatcom County lies within the influence of the convergent plate margin between the Pacific and North American Plate termed the Cascadia Subduction Zone. Regionally-extensive and damaging earthquakes, termed mega-thrusts, are possible when stress generated between the subducting Pacific Plate and over-riding North American Plate is released. . ." (Chapter 10, p. 10-12). Because new refineries and transshipment facilities would transport and process flammable and toxic materials there is heightened concern, based upon the geology of the region, that these facilities could increase risk to both public safety and the environment.



80. There are currently five oil refineries in Washington State. Two are in Whatcom County, two are in Skagit County, and one in Pierce County. Whatcom County has approximately 3% of the State's population, but 40% of the State's refineries. The County has accepted its fair share of such facilities in the state and region and wants to limit the local impacts on the community and environment of further concentration of such facilities.
81. The subject amendments prohibit new coal fired power plants in the HII zone (WCC 20.68.207).
82. According to the National Institute of Health's National Library of Medicine website (<https://toxtown.nlm.nih.gov/sources-of-exposure/power-plants>):
  - . . . Air pollution from coal-fired power plants cause serious risk to human health. Coal-fired power plants emit 84 of the 187 hazardous air pollutants identified by the U.S. Environmental Protection Agency. These pollutants may cause cancer, according to the National Toxicology Program.
  - Hazardous air pollution released by coal-fired power plants can cause a wide range of health effects, including heart and lung diseases. Exposure to coal power plant pollution can damage the brain, eyes, skin, and breathing passages. It can affect the kidneys, lungs, and nervous and respiratory systems. Exposure can also affect learning, memory, and behavior.
  - . . . Coal-fired power plants are the biggest industrial sources of mercury and arsenic in the air. Mercury pollutes lakes, streams, and rivers, and builds up in fish. People who eat large amounts of fish from contaminated lakes and rivers are at the greatest risk of exposure to mercury.
  - . . . People who work at or live near coal-fired power plants have the greatest health risks from coal pollution. . .
83. The subject amendments continue to allow other types of power plants in the HII zone, but would prohibit coal-fired power plants because of the risks to the local community, public health, and environment.
84. Whatcom County Comprehensive Plan Policy 10D-10 is to "Create updates to Whatcom County land use policies and development regulations to support renewable energy development goals."
85. The subject amendments allow renewable fuel refineries as a permitted use in the HII zone (WCC 20.68.070 and .071).

86. The Whatcom County Comprehensive Plan states that “. . . Cherry Point is also important historically and culturally to the Coast Salish people, and part of the usual and accustomed fishing area for five treaty tribes, reserved under the Treaty of Point Elliot of 1855. . .” (Chapter 2, p. 2-54). Comprehensive Plan Policy 2CC-11 states:

It is the policy of Whatcom County to limit the number of industrial piers at Cherry Point to the existing three piers, taking into account the need to . . . Recognize federal actions upholding treaty rights. . .

87. The United States Department of the Army, Corps of Engineers denied a permit for a new pier under Section 10 of the Rivers and Harbors Act on May 9, 2016 because “. . . the proposed project would violate the Lummi Indian Nation’s tribal Treaty Rights to access and utilize usual and accustomed fishing areas. . .”
88. The subject Zoning Code amendments implement the Comprehensive Plan by prohibiting new piers, docks, and wharves in the HII zone (WCC 20.68.206 and WCC 20.74.055).

### ***Project Permit Procedure Amendments***

89. Whatcom County Comprehensive Plan Goal 2D is to “Refine the regulatory system to ensure accomplishment of desired land use goals in a fair and equitable manner.”
90. Whatcom County Comprehensive Plan Policy 7G-1 is to “Recognize the natural environment as a major asset and manage environmental resources accordingly. We need both economic prosperity and environmental sustainability.”
91. Whatcom County Comprehensive Plan Policy 10A-2 is to:

Protect the environment through a comprehensive program that includes voluntary activity, education, incentives, regulation, enforcement, restoration, monitoring, acquisition, mitigation, and intergovernmental coordination.

92. RCW 88.40 is entitled “Transport of Petroleum Products – Financial Responsibility.” This State law, at RCW 88.40.005, indicates:

The legislature recognizes that oil and hazardous substance spills and other forms of incremental pollution present serious danger to the fragile marine environment of Washington state. It is the intent and purpose of this chapter to define and prescribe financial responsibility requirements for vessels that transport petroleum products as cargo or as fuel across the waters of the state of Washington and for facilities

that store, handle, or transfer oil or hazardous substances in bulk on or near the navigable waters.

93. This State law requires a tank vessel that carries oil as cargo in bulk to demonstrate financial responsibility to “. . . meet state and federal financial liability requirements for the actual costs for removal of oil spills, for natural resource damages, and for necessary expenses” (RCW 88.40.020).
94. WAC 480-62 is entitled “Railroad Companies – Operations.” This State code, at WAC 480-62-300(2), requires any railroad company that transports crude oil in Washington to submit to the Washington Utilities and Transportation Commission a statement that contains:
  - (a) All insurance carried by the railroad company that covers any losses resulting from a reasonable worst case spill.
  - (b) Coverage amounts, limitations, and other conditions of the insurance.
  - (c) Average and largest crude oil train, as measured in barrels, operated in Washington by the railroad company in the previous calendar year.
  - (d) Information sufficient to demonstrate the railroad company's ability to pay the costs to clean up a reasonable worst case spill of oil including, but not necessarily limited to, insurance, reserve accounts, letters of credit, or other financial instruments or resources on which the company can rely to pay all such costs.
95. The State Legislature adopted Engrossed Substitute House Bill (ESHB) 1578 in 2019. This bill amended the “Vessel Oil Spill Prevention and Response” law (RCW 88.46), the “Oil and Hazardous Substance Spill Prevention and Response” law (RCW 90.56), and other provisions of state law.
96. ESHB 1578 states:

The legislature finds that a variety of existing policies designed to reduce the risk of oil spills have helped contribute to a relatively strong safety record for oil moved by water, pipeline, and train in recent years in Washington state. Nevertheless, gaps exist in our safety regimen, especially deriving from shifts in the modes of overwater transportation of oil and the increased transport of oils that may submerge or sink, contributing to an unacceptable threat to Washington waters, where a catastrophic spill would inflict potentially irreversible damage on the endangered southern resident killer

whales. . .Therefore, it is the intent of the legislature to enact certain new safety requirements designed to reduce the current, acute risk from existing infrastructure and activities of an oil spill that could eradicate our whales, violate the treaty interests and fishing rights of potentially affected federally recognized Indian tribes, damage commercial fishing prospects, undercut many aspects of the economy that depend on the Salish Sea, and otherwise harm the health and well-being of Washington residents. . . (Section 1).

97. Tug escorts have been required for larger loaded oil tankers for years. ESHB 1578 amended state law to require certain smaller oil tankers to be under the escort of tugs, require the Department of Ecology to develop and maintain a model to assess current and potential future risks of oil spills from vessels in Washington waters, and modify reporting requirements for railroad cars and pipelines that transport crude oil within the state.
98. While the Washington State legislature has enacted laws relating to the transportation and handling of fossil fuels, there have been a number of accidents involving fossil fuel refineries and transportation of fossil fuels in North America over the years. These accidents, involving flammable and/or toxic materials, have impacted local communities and the environment.
99. Overall, the subject amendments seek to minimize or avoid additional risk to the local community and environment from fossil fuel facilities. The amendments are intended to heighten the level of review or, in certain cases, prohibit uses in order to protect public health, safety & welfare, fisheries industries, fish & wildlife habitat, and the environment.
100. However, in case of accidents, the subject amendments include proof of insurance requirements (WCC 22.05.125), as it is a matter of fairness that responsible parties mitigate the consequences of any accidents.

### ***County Charter and GMA Takings Provisions***

101. Whatcom County Charter Section 1.11 states, "The rights of the individual citizen shall be guaranteed under the Constitutions of the United States and the State of Washington. No regulation or ordinance shall be drafted and adopted without consideration of and provisions for compensation to those unduly burdened."
102. GMA Planning Goal 6, relating to property rights, states "Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions" (RCW 36.70A.020(6)).

103. The Whatcom County Prosecuting Attorney's Office has rendered an opinion that the subject Comprehensive Plan and code amendments do not unduly burden property owners and do not take private property for public use.

**CONCLUSIONS**

1. The subject Whatcom County Comprehensive Plan amendments are consistent with the approval criteria in WCC 22.10.060(1).
2. The subject development regulation amendments are consistent with the approval criteria in WCC 22.10.060(2).


**RECOMMENDATIONS**

Based upon the above findings and conclusions, the Planning Commission recommends:

1. Approval of Exhibit A, amendments to the Whatcom County Comprehensive Plan.
2. Approval of Exhibit B, amendments to Whatcom County Code 16.08 (State Environmental Policy Act).
3. Approval of Exhibit C, amendments to the Whatcom County Code Title 20 (Zoning).
4. Approval of Exhibit D, amendments to Whatcom County Code 22.05 (Project Permit Procedures).

WHATCOM COUNTY PLANNING COMMISSION

  
\_\_\_\_\_  
Kelvin Barton, Chair

  
\_\_\_\_\_  
Ashley Ubil, Secretary

August 13, 2020  
Date

August 13, 2020  
Date

Commissioners voted to recommend approval 8-1 of the Findings of Fact & Reasons for Action and amendments on August 13, 2020. Members present at the meeting when the vote was taken: Robert Bartel, Kelvin Barton, Atul Deshmane, Jim Hansen, Stephen Jackson, Kimberly Lund, Jon Maberry, Natalie McClendon, and Dominic Mocerri.

# Exhibit A

NOTE: Changes from existing Comprehensive Plan text are shown within underlines and strikethroughs (Planning Commission changes that differ from the County Council Resolution 2019-037 are also highlighted in yellow).

## Comprehensive Plan (Chapter 2)

### Major Industrial Urban Growth Area / Port Industrial

#### Cherry Point – Text

##### **Change Second Paragraph of Cherry Point Text**

Because of the special characteristics of Cherry Point, including deep water port access, rail access, and proximity to Canada, this area has regional significance for the siting of large industrial or related facilities. General Petroleum constructed the Ferndale Refinery in 1954, Alumax/Pechiney/Howmet constructed the Aluminum Smelter in 1966, and the Atlantic Richfield Company constructed the Cherry Point Refinery in 1971. The existing industries in the Cherry Point UGA, which provide significant employment, have produced and shipped refined fossil fuels and other products for decades.

##### **Amend Policy 2CC-11**

Policy 2CC-11: It is the policy of Whatcom County to limit the number of industrial piers at Cherry Point to the existing three piers, taking into account the need to:

- ~~• Honor any existing vested rights or other legally enforceable agreements for an additional dock/ pier;~~  
Act conservatively in land use matters at Cherry Point to prevent further harm to habitat important to the Cherry Point Herring stock and Southern Resident Killer Whales;
- ~~• Update the~~ Optimally implement the Whatcom County Shoreline Master Program to ~~conform with this policy~~ fulfill the Shoreline Management Act's shorelines of statewide significance policy to preserve natural character, result in long-term over short-term benefit, and protect the resources and ecology of the shoreline;
- Encourage the continued agency use of best available science;
- Support and remain consistent with the state Department of Natural Resources' withdrawal of Cherry Point tidelands and bedlands from the general leasing program and the species recovery goals of the Cherry Point Aquatic Reserve designation and Management Plan;
- Recognize federal actions upholding treaty rights;

- 31 • Protect traditional commercial and tribal fishing; and
- 32 • Prevent conflicts with vessel shipment operations of existing refineries that could lead to catastrophic oil
- 33 or fuel spills.

34 **Amend Policy 2CC-16**

35 2CC-16: The County ~~will, through its adopted SEPA policies and applicable permitting processes, shall~~  
36 ~~undertake a study to be completed if possible by December of 2017 to examine existing County laws,~~  
37 ~~including those related to public health, safety, development, building, zoning, permitting, electrical,~~  
38 ~~nuisance, and fire codes, and develop recommendations for legal ways the County may choose to seek to~~  
39 ~~limit the negative impacts on public safety, transportation, the economy, and environment from new fossil~~  
40 ~~fuel facilities, including new or expanded crude oil, coal, liquefied petroleum gases, and natural gas, and~~  
41 ~~exports from facilities within the Cherry Point UGA. above levels in existence as of March 1, 2017[XXX,~~  
42 ~~2020-2019].~~

43  
44  
45 Rationale for Changes (shown with highlighting): Refinery operations may fluctuate over  
46 time, depending on product demand, maintenance turnarounds, etc. Therefore, it may be  
47 difficult to implement this policy if it relates to exceeding impacts that existed on a  
48 particular day (the day of adoption of the policy). Rather, the County would review the  
49 impacts of the new or expanded development, when proposed.

50  
51 ~~To provide clear guidance to current and future county councils on the County's legal rights,~~  
52 ~~responsibilities and limitations regarding interpretation and application of project evaluation~~  
53 ~~under Section 20.88.130 (Major Projects Permits) of the Whatcom County Code. The County should~~  
54 ~~consider any legal advice freely submitted to the County by legal experts on behalf of a variety of~~  
55 ~~stakeholder interests, and make that advice publicly available.~~

56 ~~• Based on the above study, develop proposed Comprehensive Plan amendments and associated code~~  
57 ~~and rule amendments for Council consideration as soon as possible.~~

58 ~~• Until the above mentioned amendments are implemented, †The Prosecuting Attorney and/or the~~ County  
59 Administration should provide the County Council written notice of all known preapplication  
60 correspondence or permit application submittals and notices, federal, state, or local that involve activity  
61 with the potential to expand the export of fossil fuels from Cherry Point “Fossil Fuel Refinery, Renewable  
62 Fuel Refinery, ~~or Fossil Fuel Transshipment Facilities, or Renewable Fuel Transshipment Facilities,”~~ as  
63 defined in the Whatcom County Code (Chapter 20.97).<sup>1</sup>

64  
65  
66 Rationale for Changes (shown with highlighting): On February 27, 2020, the Planning  
67 Commission approved a motion deleting “Prosecuting Attorney” from the notice provisions  
68 above. The County Planning & Development Services Department reviews land use permits  
69 for fossil and renewable fuel facilities. The Prosecuting Attorney’s Office typically only  
70 becomes aware of a permit application if consulted by Planning & Development Services.  
71 On August 13, 2020, the Planning Commission approved separate definitions for Fossil Fuel  
72 Transshipment Facilities and Renewable Fuel Transshipment Facilities in the Zoning Code  
73 (they were previously combined in one definition).  
74

<sup>1</sup> The reference to a definition in the Whatcom County Code could be removed to avoid a policy with a code reference. A definition could be added to the Comprehensive Plan if thought necessary. Typically, the code is more detailed.

75 **Amend Policy 2CC-17**

76 ~~Policy 2CC-16 shall not limit~~ Allow existing operations or maintenance of existing fossil-fuel  
77 related facilities operating at levels as of March 1, 2017 [XXX, 2020 2019] with limited  
78 expansions subject to environmental review, greenhouse gas emission analysis mitigation, and  
79 conformance with Policies 2CC-3 and -11.

80  
81 Rationale for Changes (shown with highlighting): On October 24, 2019, the Planning Commission  
82 approved a motion to remove the proposed GHG mitigation requirements from the Zoning Code and  
83 keep proposed GHG provisions in SEPA (with further discussion on the SEPA language at a later date).  
84 The proposed SEPA rules will require GHG analysis and authorize GHG mitigation. Pursuant to the  
85 proposed SEPA rules, GHG mitigation may be imposed by the Responsible Official, but will not be  
automatically imposed for any project that creates any increase in GHG emissions.

86 **Add a new policy as follows:**

87 **Policy 2CC-18:** This chapter is intended to allow the on-going operation, maintenance, and  
88 repair of existing facilities, modifications designed to comply with  
89 adoption and implementation of new product standards and fuel  
90 standards, operational and site safety improvements, environmental  
91 improvements, and regulatory compliance projects.

92 Rationale for Changes (shown with highlighting): On February 27, 2020, the Planning  
93 Commission approved a motion inserting new Policy 2CC-18 into the Cherry Point UGA  
94 section of the Comprehensive Plan.

95  
96 **Add a new policy on renewable fuels:**

97 2CC-18. Treat renewable fuels facilities similar to fossil fuel facilities.

98  
99 Rationale for Changes (shown with highlighting): On October 10, 2019, the Planning  
100 Commission provided direction that renewable fuel facilities should not be required to  
101 mitigate greenhouse gas emissions if they reduce lifecycle greenhouse gas emissions. On  
102 December 12, 2019, the Planning Commission recommended that new renewable fuel  
103 refineries and transshipment facilities should be allowed as a permitted use but new fossil  
fuel refineries should be prohibited. Additionally, on January 16, 2020, the Planning  
Commission recommended that expansion of existing renewable fuel refineries and  
transshipment facilities should be allowed as a permitted use (expansion of fossil fuel  
facilities would require a conditional use permit). Therefore, in some respects, renewable  
fuel facilities would not be treated in a manner “similar” to fossil fuel facilities.



104

## Essential Public Facilities

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### **Amend Policy 2WW-4**

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Policy 2WW-4 State and regional highways in unincorporated Whatcom County that have been designated as essential state or regional transportation facilities are I-5, State Route 539 (the Guide Meridian), State Route 546/9 (Badger from the Guide to Sumas), and State Route 20 to eastern Washington. Other transportation facilities in unincorporated Whatcom County that have been designated as essential public facilities are Amtrak Cascades passenger rail service, the Burlington Northern Santa Fe railroad tracks, and the Cherry Point marine port facilities. Such facilities in the City of Bellingham include Fairhaven Station (intercity passenger rail terminal), Bellingham Cruise Terminal (Alaska Ferry), and the Port of Bellingham (marine port). Additionally, State Route 543 (the truck route at the Blaine border) is an essential public facility located within the city limits of Blaine.

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Widening of existing state highways or railroad tracks (including construction of sidings) and siting new state highways or railroad tracks should be planned in the Washington Highway System Plan, Amtrak Cascades Plan and the Freight Rail Plan. The state will invite the Regional Transportation Planning Organization and the County to participate in planning studies, review design plans, and provide comments when siting new or expanded state highways or railroad tracks.

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122

Highways and railroad tracks that qualify as essential public facilities should be sited in accordance with all of the following principles. These facilities should be located:

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- In a manner that minimizes or mitigates noise impacts to surrounding residential areas.
- Outside of the Lake Whatcom Watershed, unless there are no viable alternatives.
- In a manner that allows continued fish passage beyond the road or railroad tracks or restores blocked passage.
- In a manner that avoids or mitigates wetland impacts.
- In a manner that minimizes impacts of additional impervious surfaces by treating stormwater runoff.
- In a manner that encourages a vibrant economy by facilitating the efficient movement of people and freight.
- In a manner that accommodates pedestrians, bicycles, and transit.

132

133

Major passenger intermodal terminals should be located in General Commercial, Airport Operations, Urban Residential-Medium Density or industrial zones.

134

Freight railroad switching yards and terminals should be located in industrial zones.

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138

Marine port facilities should be located within the Heavy Impact Industrial zone of the Cherry Point Major/Port Industrial Urban Growth Area. Allow existing facilities and limited expansions consistent with the State of Washington Department of Natural Resource Cherry Point Aquatic Reserve Management Plan.

# Exhibit B

NOTE: Changes from existing text are shown within underlines and strikethroughs (Planning Commission changes that differ from the County Council Resolution 2019-037 are also highlighted in yellow).

## CHAPTER 16.08 STATE ENVIRONMENTAL POLICY ACT (SEPA)

### 16.08.090. Environmental checklist

E. Evaluation/Worksheet for Fossil and Renewable Fuel Facilities: Air and environmental health are elements of the environment in WAC 197-11-444 and subjects addressed in WAC 197-11-960, Environmental Checklist. As provided in WAC 197-11-906(1)(c), Whatcom County hereby adds a procedure and criteria to help identify the affected environment, impacts, and potential mitigation regarding air quality and climate and risks from spills and/or explosions. For any proposed change of use or expansion of facilities that manufacture, process, store or transport any fossil fuel, renewable fuel, or hydrocarbon feedstock, the proponent will provide an expert evaluation or fill out the County’s SEPA “Worksheet for Fossil and Renewable Fuel Facilities.” This expert evaluation or Worksheet provides detailed information required to evaluate impacts to air, land and water during review of a SEPA environmental checklist. The form of the worksheet shall be prepared and updated as needed once per year by the SEPA Responsible Official in consultation with the Planning Commission and taking into account the comments of the Climate Impacts Advisory Group and its members. The expert evaluation or Worksheet shall analyze the “significance” of direct, indirect, and cumulative impacts including but not limited to those arising from:

1. Windborne transport of fossil or renewable fuel emissions across Whatcom County;
2. Lifecycle greenhouse gas emissions for renewable facilities and facility emissions above existing levels for fossil fuel facilities;
3. Transits of tankers or barges and their support vessels that have the potential to create risks of spills or explosion or interfere with commercial and treaty tribe fishing areas; and
4. Releases of stormwater and wastewater to groundwater, marine waters, intertidal wetlands, streams within the shorelines, and to their headwaters; and
5. Potential for loss of life and/or property related to risks from spills or explosions associated with refining and transport of renewable or fossil fuels or related feedstocks within Whatcom County.

In determining whether possible impacts are “significant” and “probable,” the Responsible Official shall determine whether the answers on information in the expert evaluation or the Worksheet for Fossil Fuel Facilities accurately analyze the severity of potential harm, independently from analysis of probability of occurrence, in compliance with WAC 197-11-330. Also, as provided in WAC 197-11-794, “the severity of an impact should be weighed along with the likelihood of its occurrence” and “an impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred.”

The worksheet and supplemental information provided in the expert evaluation or Worksheet required for fossil and renewable fuel facilities shall be considered procedures and criteria added to Whatcom County’s SEPA policies and procedures pursuant to WAC 197-11-906(1)(c) and are deemed necessary to be consistent with the provisions of SEPA

37 contained in RCW 43.21C.020, RCW 43.21C.030 and RCW 43.21C.031. However, the expert evaluation or Worksheet may  
38 not be required if an environmental impact statement is prepared.

39 Discussion/Notes: Suggest reference to WAC 197-11-906(1)(c) as basis to require worksheet  
40 since it allows for additional procedures and criteria. WAC 197-11-315 refers to Ecology and 30-  
41 day review for planned actions, which is not proposed.

42 Rationale for Changes (shown within highlighting): The worksheet will take time to develop and likely will  
43 not be available when Council adopts the ordinance. Additionally, larger or more complex projects would  
44 benefit from expert evaluation of the issues listed above.

45 It may not be necessary to update the worksheet every year. Therefore, the proposed change is to update  
46 the worksheet “as needed.” On January 30, 2020, the Planning Commission passed a motion to remove the  
47 reference to the Climate Impact Advisory Committee, as the SEPA Official may consult with any committee  
48 (including but not limited to the Climate Impact Advisory Committee) when preparing/updating the  
49 worksheet. On February 27, 2020, the Planning Commission inserted a clause that requires the SEPA  
50 Official to consult with the Planning Commission when preparing/updating the worksheet.

51 The proposed SEPA rules authorize GHG mitigation for “facility emissions” for fossil fuel facilities (proposed  
52 WCC 16.08.160.F.1.b.i(a) – Exhibit B, page 4). The proposed SEPA rules require “lifecycle” GHG emission  
53 analysis for renewable facilities (proposed WCC 16.08.160.F.1.b.ii – Exhibit B, page 5). The information  
54 required in the evaluation/worksheet should correspond to these SEPA requirements.

55 The evaluation/worksheet addresses impacts “including but not limited to” the five listed issues. The phrase  
56 “including but not limited to” has been deleted because it is open-ended and undefined. Applicants will  
57 not know what they are required to address if this phrase is retained.

58 Finally, if an environmental impact statement (EIS) is required, then the evaluation/worksheet will not be  
59 needed since significant adverse impacts will be addressed in the EIS.

## 57 16.08.160 Substantive authority.

58 A. The policies and goals set forth in this chapter are supplementary to those in the existing authorization of Whatcom  
59 County.

60 B. The county may attach conditions to a permit or approval for a proposal so long as:

- 61 1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in  
62 environmental documents prepared pursuant to this chapter; and
- 63 2. Such conditions are in writing; and
- 64 3. The mitigation measures included in such conditions are reasonable and capable of being accomplished; and
- 65 4. The county has considered whether other local, state, or federal mitigation measures applied to the proposal are  
66 sufficient to mitigate the identified impacts; and
- 67 5. Such conditions are based on one or more policies or provisions in subsection D, E, or F of this section and cited in  
68 the license or other decision document.

69 Rationale for Changes (shown with highlighting): Subsections E and F below  
70 include provisions relating to placing conditions on projects.

- 71 C. The county may deny a permit or approval for a proposal on the basis of SEPA so long as:
- 72 1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that  
73 are identified in a FEIS or final SEIS prepared pursuant to this chapter; and
- 74 2. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient  
75 to mitigate the identified impact; and
- 76 3. The denial is based on one or more policies **or provisions** identified in subsection D **or F** of this section and identified  
77 in writing in the decision document.

78 **Rationale for Changes (shown with highlighting): Subsection F below includes a**  
79 **provision relating to denying projects.**

- 80 D. The county designates and adopts by reference the following policies as the basis for the county’s exercise of SEPA  
81 authority pursuant to this section:
- 82 1. The county shall use all practicable means, consistent with other essential considerations of state policy, to improve  
83 and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:
- 84 a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- 85 b. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing  
86 surroundings;
- 87 c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or  
88 other undesirable and unintended consequences;
- 89 d. Preserve important historic, cultural, and natural aspects of our national heritage;
- 90 e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
- 91 f. Achieve a balance between population and resource use which will permit high standards of living and a wide  
92 sharing of life’s amenities; and
- 93 g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable  
94 resources.
- 95 2. The county recognizes that each person has a fundamental and inalienable right to a healthful environment and that  
96 each person has a responsibility to contribute to the preservation and enhancement of the environment.
- 97 3. The county adopts by reference the policies in the following county documents:
- 98 Whatcom County Comprehensive Land Use Plan (inclusive of goal statements and all subarea components)
- 99 Whatcom County Shoreline Management Program
- 100 Whatcom County Subdivision Ordinance
- 101 Whatcom County Solid Waste Management Plan
- 102 Whatcom County Critical Areas Ordinance
- 103 All official land use controls adopted by Whatcom County.

104 **E. Relationship to Federal, State and Regional Regulations. Many of the environmental impacts addressed by these**  
105 **SEPA policies are also the subject of federal, state and regional regulations. In deciding whether a project specific**  
106 **adverse environmental impact has been adequately addressed by an existing rule or law of another agency with**  
107 **jurisdiction, the County shall consult orally or in writing with that agency and may expressly defer to that agency. In**  
108 **making this deferral, the County shall base or condition its project approval on compliance with these other existing**  
109 **rules or laws. In deciding whether these regulations provide sufficient impact mitigation, the County shall consult orally**

110 or in writing with the responsible federal, state or other agency with jurisdiction and environmental expertise and may  
111 expressly defer to that agency. The County shall base or condition its project decision on compliance with these other  
112 existing regulations, rules, laws, or adopted enforceable plans. The County need shall not so defer if such regulations did  
113 not anticipate or are otherwise inadequate to address a particular impact of a project.

114  
115 Rationale for Changes (shown with highlighting): The replacement language  
116 above (the 2<sup>nd</sup> and 3<sup>rd</sup> sentences) is taken from the State SEPA rules (WAC 197-  
117 11-158(4)) to better reflect these State rules.

## 118 119 F. Specific Environmental Policies

### 120 1. Air Quality and Climate:

121 a. Air pollution can be damaging to human health, plants and animals, visibility, aesthetics, and the overall quality  
122 of life. Mitigation of criteria air pollutant impacts will normally be the subject of air permits required by the  
123 Northwest Clean Air Agency (NWCAA) and/or State Department of Ecology (DOE) and no further mitigation by  
124 the County shall be required. However, where a project being reviewed by the County generates public nuisance  
125 impacts, or odors or greenhouse gas emissions impacts not addressed through the regulations of NWCAA or DOE,  
126 the County may require mitigation under SEPA.

127  
128 Rationale for Changes (shown with highlighting): Criteria pollutants are specific  
129 types of pollutants identified in the Federal Clean Air Act. The NWCAA addresses  
130 a wider variety of pollutants. Additionally, the State Department of Ecology may  
131 require a “Prevention of Significant Deterioration” permit for certain industrial  
132 sources of air pollution (e.g. refineries). Using the term “public” nuisance in the text  
133 above will maintain consistency with WCC 20.66.704 and WCC 20.68.704, the  
Light Impact Industrial and Heavy Impact Industrial provisions relating to odors.

134 b. Climate change is resulting in increased temperatures, reduced summertime snowpack, reduced stream flows  
135 and increased stream temperatures, more intense storms with increased potential for flooding and damage to roads,  
136 dikes and critical infrastructure such as water and waste treatment facilities. While climate change is a global  
137 phenomenon, it is the policy of Whatcom County to do its fair share to reduce local emissions and to ensure that  
138 projects with a likelihood of more than a moderate adverse impact on air quality and climate that may be  
139 authorized by the County address greenhouse gas emissions impacts. Mitigation may be achieved through the  
140 provisions contained in County land use and development regulations or through the State Environmental Policy  
141 Act where land use code provisions do not address mitigation of greenhouse gas emissions impacts.

142  
143 Rationale for Changes (shown with highlighting): On October 24, 2019, the  
144 Planning Commission approved a motion to remove the proposed GHG mitigation  
145 requirements from the Zoning Code and keep proposed GHG provisions in SEPA  
146 (with further discussion on the SEPA language at a later date). The above changes  
147 would delete the reference to GHG mitigation in the Zoning Code. GHG  
148 mitigation through SEPA is addressed below.

149 i. Greenhouse Gas Emissions – Fossil Fuel Facilities and Fossil Fuel Transshipment Facilities: The following  
150 policies shall apply to fossil fuel facilities and fossil fuel transshipment facilities.

151 (a) Emissions Calculated: The SEPA Responsible Official may require mitigation for greenhouse gas  
152 emissions of fossil fuel facilities and fossil fuel transshipment facilities, as calculated consistent with the  
153 definition of facility emissions in WCC 16.08.17520.97.124.1.

154 (b) Assessment: Greenhouse gas emissions impacts shall be assessed using the most current scientifically  
155 valid modeling techniques version of the GREET Model developed by Argonne National Laboratories or  
156 where feedstocks are from Canada, using the latest version of the GH Genius model developed by Canadian  
157 agencies for quantification of upstream emissions from production of feedstocks produced in Canada.

158  
159 Rationale for Changes (shown with highlighting): Industry representatives have  
160 indicated concern about the models referenced above. The proposed changes  
161 would allow appropriate methods to be used in calculating greenhouse gas  
162 emissions.

163  
164 (c) Mitigation: Greenhouse gas emissions that create specific adverse environmental impacts may be offset  
165 for proposals subject to WCC 20.68.801 through either code requirements or, if not addressed through code  
166 requirements, through mitigation projects that provide real, additional and quantifiable greenhouse gas  
167 mitigation. Such mitigation must not be required by any other regulatory mechanism and there shall be no  
168 double counting of emission reductions where identified as mitigation of greenhouse gas emissions impacts  
169 for permits subject to WCC 20.68.801.

170  
171 Rationale for Changes (shown with highlighting): On October 24, 2019, the  
172 Planning Commission approved a motion to remove the proposed GHG mitigation  
173 requirements from the Zoning Code and keep proposed GHG provisions in SEPA  
174 (with further discussion on the SEPA language at a later date). The above changes  
175 would delete the reference to GHG mitigation in the Zoning Code. The double  
176 counting language above is somewhat confusing. It seems to indicate that, if  
177 mitigation is required by a different agency, then County-required mitigation must  
178 be different and additional. But a general concept is that, if another agency  
179 requires adequate mitigation, County mitigation is not required. Therefore, this  
180 language has been deleted.

181 Additionally, SEPA allows for mitigation of “specific adverse environmental  
182 impacts” (RCW 43.21C.060). This language has been inserted above.

182 ii. Greenhouse Gas Emissions – Renewable Fuels Facilities and Renewable Fuel Transshipment Facilities: The  
183 SEPA Responsible Official shall require documentation of lifecycle greenhouse gas emissions associated with  
184 renewable fuel facilities. The SEPA Responsible Official will consider the lifecycle greenhouse gas emissions  
185 analysis when making the threshold determination. The SEPA Responsible Official shall require  
186 documentation of emissions consistent with b.i(a) and b.i(b) above. The applicant shall demonstrate that the  
187 lifecycle greenhouse gas reductions associated with the renewable fuels provide a net reduction even when  
188 considering transportation and upstream emissions. If there is a net increase in emissions locally, the SEPA  
189 Responsible official may require mitigation per b.i(c) above.

190  
191 On October 10, 2019, the Planning Commission provided direction that renewable fuel  
192 facilities should not be required to mitigate greenhouse gas emissions if they reduce  
193 lifecycle greenhouse gas emissions. Therefore, the greenhouse gas language above has  
194 been modified, including deletion of the mitigation language.

198 iii. Greenhouse Gas Emissions – Other Uses Within the Heavy Impact Industrial District:

199 (a) Method of analysis: Determined by SEPA Responsible Official following consultation with federal and  
200 state agencies with jurisdiction or expertise.

201 (b) Mitigation: Determined by SEPA Responsible Official. See 1.c.

202 c. It is the County's policy to minimize or prevent adverse air quality impacts. Federal, state, regional, and county  
203 regulations and programs cannot always anticipate or adequately mitigate adverse air quality impacts. If the  
204 decision-maker makes a written finding that the applicable federal, state, regional, and/or County regulations did  
205 not anticipate or are inadequate to address the particular impact(s) of the project, the decision-maker may  
206 condition the proposal to mitigate its adverse impacts or, if impacts cannot be mitigated, may deny a project under  
207 the provisions of the State Environmental Policy Act.

208 2. Plants and Animals:

209 a. Many species of birds, mammals, fish, and other classes of animals and plants living in both rural and urban  
210 environments and are of ecological, educational, and economic value. Fish and wildlife populations are threatened  
211 by habitat loss and by the reduction of habitat diversity. For the purposes of this policy, animals and plants of  
212 ecological, educational, and economic value include priority habitats and species as listed in the Washington  
213 Department of Fish and Wildlife's Priority Habitats and Species, as amended, consistent with WCC 16.16.710,  
214 and High Biodiversity Value Areas per the Whatcom County 2017 Ecosystem Report, as amended.

215 b. It is the County's policy to minimize or prevent the loss of fish and wildlife habitat that have substantial  
216 ecological, educational, and economic value. A high priority shall also be given to meeting the needs of state and  
217 federal threatened, endangered, and sensitive species of both plants and animals. Special consideration shall be  
218 given to anadromous fisheries and marine mammals.

219 c. It is the County's policy to ensure applicants provide verifiable documentation of consistency with federal and  
220 state laws regarding treaty rights, clean water rights (both water quality and water quantity), and endangered  
221 species protection such as through attaining permits or conducting consultations. The decision-maker may  
222 condition or deny the project to mitigate its specific adverse environmental impacts if the decision-maker finds  
223 that a proposed project would reduce or damage rare, uncommon, unique or exceptional plant or wildlife habitat,  
224 designated wildlife corridors, or habitat diversity for plants or animals species of substantial educational,  
225 ecological, or economic value, or interfere with treaty rights, clean water rights, or endangered species protection.

226 Discussion/Notes: If amendments are made to the Comprehensive Plan policies then the County  
227 will in effect update policies under the County's SEPA substantive authority.

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229 Rationale for Changes (shown with highlighting): Federal and state agencies  
230 would typically determine compliance with federal and state laws when they issue  
231 or deny a permit or other authorization for a project. The language above implies  
232 that certain federal and state permits/authorizations must be issued before the  
233 County can do SEPA review on a project. The State SEPA rules (WAC 197-11-  
234 158(4)) indicate:

234 In deciding whether a project specific adverse environmental impact has  
235 been adequately addressed by an existing rule or law of another agency  
236 with jurisdiction, the GMA county/city shall consult orally or in writing with  
237 that agency and may expressly defer to that agency. In making this  
238 deferral, the GMA county/city shall base or condition its project approval  
239 on compliance with these other existing rules or laws.

239 This concept of consultation is already embodied in the proposed amendments in  
240 WCC 16.08.160.E above. Therefore, the language highlighted above should be  
241 deleted.



243 **16.08.175 Purpose of this article and adoption by reference.**

244 This article contains uniform usage and definitions of terms under SEPA. The county adopts the following sections  
245 by reference, as supplemented by WAC 173-806-040:

246

247 WAC

- 248 197-11-700 Definitions.
- 249 197-11-702 Act.
- 250 197-11-704 Action.
- 251 197-11-706 Addendum.
- 252 197-11-708 Adoption.
- 253 197-11-710 Affected tribe.
- 254 197-11-712 Affecting.
- 255 197-11-714 Agency.
- 256 197-11-716 Applicant.
- 257 197-11-718 Built environment.
- 258 197-11-720 Categorical exemption.
- 259 197-11-721 Closed record appeal.
- 260 197-11-722 Consolidated appeal.
- 261 197-11-724 Consulted agency.
- 262 197-11-726 Cost-benefit analysis.
- 263 197-11-728 County/city.
- 264 197-11-730 Decision maker.
- 265 197-11-732 Department.
- 266 197-11-734 Determination of nonsignificance (DNS).
- 267 197-11-736 Determination of significance (DS).
- 268 197-11-738 EIS.
- 269 197-11-740 Environment.
- 270 197-11-742 Environmental checklist.
- 271 197-11-744 Environmental document.
- 272 197-11-746 Environmental review.
- 273 197-11-750 Expanded scoping.
- 274 197-11-752 Impacts.
- 275 197-11-754 Incorporation by reference.
- 276 197-11-756 Lands covered by water.
- 277 197-11-758 Lead agency.
- 278 197-11-760 License.
- 279 197-11-762 Local agency.
- 280 197-11-764 Major action.
- 281 197-11-766 Mitigated DNS.



282	197-11-768	Mitigation.
283	197-11-770	Natural environment.
284	197-11-772	NEPA.
285	197-11-774	Nonproject.
286	197-11-775	Open record hearing.
287	197-11-776	Phased review.
288	197-11-778	Preparation.
289	197-11-780	Private project.
290	197-11-782	Probable.
291	197-11-784	Proposal.
292	197-11-786	Reasonable alternative.
293	197-11-788	Responsible official.
294	197-11-790	SEPA.
295	197-11-792	Scope.
296	197-11-793	Scoping.
297	197-11-794	Significant.
298	197-11-796	State agency.
299	197-11-797	Threshold determination.
300	197-11-799	Underlying governmental action.

301 In addition to those definitions contained within WAC 197-11-700 through 197-11-799, when used in this article,  
302 the following terms shall have the following meanings, unless the context indicates otherwise:

303 A. “Early notice” means the county’s response to an applicant stating whether it considers issuance of a  
304 determination of significance (DS) likely for the applicant’s proposal (mitigated determination of  
305 nonsignificance (MDNS) procedures).

306 B. “ERC” means environmental review committee established in WCC 16.08.045.

307 C. “Facility Emissions” means greenhouse gas emissions associated with fossil fuel refineries or fossil fuel  
308 transshipment facilities based upon the refining and processing of fossil fuels located within the Cherry Point  
309 Heavy Industrial area.

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311 Rationale for Changes (shown with highlighting): On October 24, 2019, the Planning Commission  
312 approved a motion to remove the proposed GHG mitigation requirements from the Zoning Code and  
313 keep proposed GHG provisions in SEPA (with further discussion on the SEPA language at a later date).  
314 The definition of “facility emissions” was in the proposed Zoning Code language. However, this term no  
315 longer is used in the Zoning Code. Therefore, the definition was moved from the Zoning Code to the  
316 County’s SEPA rules. On June 25, 2020, the Planning Commission approved a motion to remove the  
317 following elements from the original Council definition of facility emissions:

- 318 ● The transportation within the borders of Whatcom County of refined and unrefined fossil fuels to  
319 and from a facility located within the Cherry Point Heavy Industrial area, and
- 320 ● The upstream emissions generated by the production and transport of raw products to the facility  
321 such as crude oil feedstocks or other fuels used in production or energy generation at facilities.

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D. "Greenhouse Gas Emissions" means gases that trap heat in the atmosphere. "Greenhouse gas," "greenhouse gases," "GHG," and "GHGs" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, and any other gas or gases designated by the federal clean air act (United States Code Title 42, Chapter 85), state clean air act (Chapter 70.94 RCW) or state limiting greenhouse gas emissions law (Chapter 70.235 RCW).

E. "Lifecycle greenhouse gas emissions" means the aggregate quantity of greenhouse gas emissions (including direct emissions and significant indirect emissions), related to the full fuel lifecycle, including all stages of fuel and feedstock production and distribution, from feedstock generation or extraction through the distribution and delivery and use of the finished fuel to the ultimate consumer, where the mass values for all greenhouse gases are adjusted to account for their relative global warming potential.

Rationale for Changes (shown with highlighting): On October 24, 2019, the Planning Commission approved a motion to remove the proposed GHG mitigation requirements from the Zoning Code and keep proposed GHG provisions in SEPA (with further discussion on the SEPA language at a later date). The definitions of "greenhouse gas emissions" and "lifecycle greenhouse gas emissions" are in the proposed Zoning Code language. However, these terms are only used in the definition of "renewable fuels" in the Zoning Code. They are most often used in the proposed SEPA rules. Therefore, these terms were inserted into the County's SEPA rules.

FE. "Ordinance" means the procedure used by the county to adopt regulatory requirements.

GD. "Responsible official" shall mean the director of the department which bears responsibilities for the SEPA process or his/her designee.

HE. "SEPA rules" means Chapter 197-11 WAC adopted by the Department of Ecology. (Ord. 98-048 Exh. A; Ord. 84-122 Part 8).

# Exhibit C

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## CHAPTER 20.66 LIGHT IMPACT INDUSTRIAL (LII) DISTRICT

### 20.66.200 Prohibited uses.

All uses not listed as permitted, accessory, administrative approval, or conditional uses are prohibited, including but not limited to the following, which are listed here for purposes of clarity:

.201 Reserved.

.202 Adult businesses except those allowed as an administrative approval use under WCC 20.66.131.

.203 In the Bellingham Urban Growth Area the following uses are prohibited: ~~petroleum refinery and the primary manufacturing of products thereof,~~ primary manufacturing and processing of rubber, plastics, chemicals, paper, asbestos and products derived thereof, and primary metal industries.

~~.204 New fossil-fuel refinery; or new fossil fuel transshipment or facility unless permitted as a part of an existing refinery modification otherwise permitted under this code.~~

Rationale for Changes (shown with highlighting): The existing refineries are south of Grandview Rd., in the Heavy Impact Industrial zone. There are no refineries north of Grandview in the Light Impact Industrial zone.

*Discussion/Notes: Prohibit fossil fuel related industries in the LII District; already prohibited in the Bellingham UGA. It does not appear that such uses exist in the LII zone; thus, we have only addressed the prohibition of fossil-fuel refinery and fossil fuel transshipment facility unless part of an existing refinery (e.g. transshipment).*

393 CHAPTER 20.68 HEAVY IMPACT INDUSTRIAL (HII) DISTRICT

394 20.68.050 Permitted uses.

395 Unless otherwise provided herein, permitted and accessory uses shall be administered pursuant to the applicable provisions of  
396 Chapter 20.80 WCC, Supplementary Requirements, and Chapter 20.84 WCC, Variances, Conditional Uses, Administrative  
397 Uses and Appeals, the Whatcom County SEPA Ordinance, the Whatcom County Subdivision Ordinance and the Whatcom  
398 County Shoreline Management Program- ~~and implementing regulations. The purpose of the SIC numbers listed within this  
399 chapter is to adopt by reference other activities similar in nature to the use identified herein. (Policies of the subarea  
400 Comprehensive Plan may preclude certain permitted uses to occur in particular subareas. Please refer to the policies of the  
401 applicable subarea plan to determine the appropriateness of a land use activity listed below.)~~

402 .051 The manufacture and processing of food including meat (including packinghouses and slaughterhouses), dairy, fruits,  
403 vegetables, seafood, grain mill, large scale bakery, sugar and beverage products, provided the following criteria are met:

404 (1) Holding pens associated with packinghouses and slaughterhouses shall be limited to that necessary to accommodate  
405 animals intended for processing within 24 hours.

406 (2) The facility shall comply with the solid waste handling standards as set forth in Chapter 173-350 WAC, as administered  
407 by the Whatcom County health department as adopted by reference in Chapter 24.06 WAC.

408 (3) If required by the Washington State Department of Ecology, the following permits shall be obtained:

- 409 (a) State waste discharge permit (Chapter 173-216 WAC);
- 410 (b) Industrial stormwater permit – general permit (Chapter 173-226 WAC);
- 411 (c) An NPDES permit (Chapter 90.48 RCW and Chapter 173-220 WAC).

412 .052 Manufacturing and processing of textiles including weaving cotton, synthetic, silk or wool fabrics; knitting yarn and  
413 thread mills; textile bleaching, dyeing and printing; and carpet manufacture.

414 .053 The manufacture and processing of lumber and wood including sawmills; planing mills; millwork; veneer, plywood and  
415 prefabricated wood products; wooden containers and cooperage.

416 .054 The following are permitted uses except as otherwise prohibited:

417 (1) The manufacture and process of paper including pulp, paper and paperboard mills; and building paper and board mill  
418 products.

419 (2) The manufacture and processing of chemicals and allied products including industrial inorganic and organic chemicals;  
420 synthetic resins, rubber, fibers and plastic materials; soap, detergents and cleaning preparations; paint, linseed oil, shellac,  
421 lacquer and allied products; chemicals from gum and wood; and agricultural chemicals.

422 ~~(3) Refining and storage of petroleum and asphalt fossil fuels, limited as follows:~~

423 ~~(a) fossil fuel refineries, existing legally as of [XXX effective date].~~

424 ~~(b) fossil fuel transshipment facilities existing legally as of [XXX effective date].~~

425 ~~Discussion/Notes: Allow existing legal fossil fuel uses.~~

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Rationale for Changes (shown with highlighting): Existing fossil fuel facilities have  
427 been moved to proposed WCC 20.68.068 below.  
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429 ~~(34)~~ The manufacture and processing of rubber and plastic products.

430 ~~(45)~~ Leather tanning and finishing.

- 431 (56) The manufacture and processing of cement and glass; and concrete, gypsum, plaster, abrasive, asbestos and nonmetallic  
432 mineral products.
- 433 (67) Primary metal industries including blast furnaces and steel works; mills for primary smelting, secondary smelting,  
434 refining, reducing, finishing, rolling, drawing, extruding, and casting of ferrous and nonferrous metals; and the manufacture  
435 of miscellaneous metal products.

436 (7) Storage of asphalt in the Heavy Impact Industrial Zone.

437 *Discussion/Notes: Retained from (3) above in case of construction related businesses.*

438 ~~(9) The refining, storage, blending, manufacture and transshipment of renewable fuels, existing legally as of [XXX effective  
439 date]. Expansions of such existing facilities are subject to the provisions of Section 20.68.153.~~

440 **Rationale for Changes (shown with highlighting): Existing renewable facilities are  
441 addressed in proposed WCC 20.68.068 and 20.68.071 below.**

443 .055 The fabrication of metal products including metal cans, hardware, hand tools, cutlery, heating apparatus, plumbing  
444 fixtures, structural metal and stamping.

445 .056 The manufacture of machinery including engines; turbines; farm machinery and equipment; construction, mining and  
446 materials handling equipment; machine tools and dies; and special and general industrial equipment.

447 .057 The manufacture of electrical machinery including transmission and distribution equipment, and industrial apparatus.

448 .058 The manufacture of transportation equipment including automobiles, trucks, buses, airplanes, boat building and repair,  
449 railroad equipment, bicycles and motorcycles.

450 .059 Bulk commodity storage facilities, and truck, rail, vessel and ~~pipeline~~ transshipment terminals and facilities **except for  
451 fossil fuel facilities or fossil fuel transshipment facilities subject to the provisions of 20.68.153. New fossil fuel storage and  
452 transshipment facilities are expressly prohibited except as provided in Section 20.68.153.**

453 **Rationale for Changes (shown with highlighting): Proposed WCC 20.68.068, WCC 20.68.153,  
454 and WCC 20.68.205 address permitted, conditionally permitted, and prohibited fossil fuel  
455 facilities. The above change would simplify the proposed language by indicating that fossil  
fuel facilities are not addressed by WCC 20.68.059.**

456 .060 Stationary thermal power plants with generating capacity of less than 250,000 kilowatts, floating thermal power plants  
457 with generating capacity of less than 50,000 kilowatts, and other power plants utilizing renewable resources from solar, wind  
458 (Chapter 20.14 WCC) or water sources **except that coal-fired power plants are prohibited.**

459 **Rationale for Changes (shown with highlighting): The Council's proposed  
460 amendments would prohibit coal fired power plants (proposed WCC 20.68.207).  
461 However, power plants are already permitted in the Hill zone (WCC 20.68.060).  
462 Therefore, WCC 20.68.060 should be modified to clarify that permitted power  
plants do not include coal fired power plants.**

463 .061 Heavy construction contractors.

464 .062 Public uses and community facilities including police and fire stations, libraries, activity centers, community centers,  
465 park and recreation facilities identified in an adopted city or county Comprehensive Plan or Park Plan, and other similar  
466 noncommercial uses, excluding state education facilities and correction facilities.

467 .063 One one-story detached accessory storage building per lot; provided, that the floor area shall not exceed 200 square feet  
468 and shall only be used for personal storage and not for habitation or business; and provided further, that the storage building  
469 shall contain no indoor plumbing but may be served with electrical power for lighting.

470 .064 Uses allowed in the Light Impact Industrial Zone as permitted uses, WCC 20.66.100, shall be permitted outright within  
471 the Heavy Impact Industrial District in the Bellingham UGA.

472 .065 Trails, trailheads, restroom facilities and associated parking areas for no more than 30 vehicles.

473 .066 Marijuana production or processing facility.

474 .068 Existing fossil-fuel refineries, fossil-fuel transshipment facilities, renewable fuel refineries, renewable fuel  
475 transshipment facilities, piers and docks legally established as of [XXX effective date of ordinance], uses including repairs,  
476 improvements, maintenance, modifications, remodeling or other changes including but not limited to the following, provided  
477 that a conditional use permit is not required by WCC 20.68.153:

478 (1) Accessory and appurtenant buildings, structures, and processing equipment.

479 (2) Office space.

480 (3) Parking lots.

481 (4) Radio communications facilities.

482 (5) Security buildings, fire stations, and operation centers.

483 (6) Storage buildings.

484 (7) Routine maintenance and repair.

485 (8) Environmental improvements and other projects that are required on the subject site by federal, state, regional, or local  
486 regulations, including modifications of fossil fuel facilities for purposes of co-processing biomass with petroleum.

487 (9) Road projects and bridges.

488 (10) Temporary trailers.

489 (11) Heating and cooling systems.

490 (12) Cable installation.

491 (13) Information technology improvements.

492 (14) Continuous emissions monitoring systems or analyzer shelters.

493 (15) Wastewater and stormwater treatment facilities.

494 (16) Replacement and upgrading of existing equipment.

495 (17) Safety upgrades.

496 (18) Storage tanks.

497 (19) Pipelines carrying petroleum or petroleum products solely within the Heavy Impact Industrial zoning district.

498 (20) Pipelines carrying natural gas solely within the Heavy Impact Industrial zoning district.

499 (21) Renewable fuel production and shipment.

500 (22) Other similar structures or activities.

501 Rationale for Changes (shown with highlighting): Moving permitted uses associated with existing refineries and  
502 transshipment facilities from former proposed WCC 20.68.802 to the permitted use section of the Heavy Impact  
503 Industrial Zoning District for consistency with other sections of the Code. Additional items have been inserted as  
permitted uses to address public comments, including pipelines (# 19 and 20) added on July 9, 2020. On August 13,  
2020, the Planning Commission added the co-processing language to # 8 and inserted # 21 above.

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.070 New renewable fuel refineries or renewable fuel transshipment facilities, except that new piers, docks, or wharves in the Cherry Point Industrial District are prohibited.

Rationale for Changes (shown with highlighting): On December 12, 2019, the Planning Commission passed a motion that renewable fuel facilities be allowed as a permitted use (instead of a conditional use, as proposed by Council).  
  
The Council's original proposed amendments would prohibit new piers, docks, or wharves in the Cherry Point Industrial District (proposed WCC 20.68.206 and 20.74.055). This is recognized in proposed WCC 20.68.070 by indicating that this provision does not apply to piers, docks, or wharves.

.071 Expansion of existing legal renewable fuel refineries or renewable fuel transshipment facilities, provided that the expansion is for renewable fuels only.

Rationale for Changes (shown with highlighting): On January 16, 2020, the Planning Commission passed a motion that expansion of renewable fuel facilities be allowed as a permitted use (instead of a conditional use, as proposed by the County Council).

.081 Freight railroad switching yards and terminals, excluding uses addressed in .059.

.082 Marine port facilities, excluding uses addressed in .059, and excluding new piers, docks, or wharves.

.085 Type I solid waste handling facilities.

.086 Type II solid waste handling facilities.

### **20.68.100 Accessory uses.**

.101 Employee recreation facilities and play areas.

.102 Restaurants, cafes and cafeterias operated primarily for the convenience of employees, clients and customers of the district.

.103 Temporary buildings for construction purposes for a period not to exceed the duration of such construction.

.104 When auxiliary to a principally permitted use: electric utility facilities; substations; generating plants, if less than 50 megawatt (MW) net plant capability; gas works; sewage disposal facilities; solid waste landfills and incinerators.

.105 Other accessory uses and buildings, including security services, customarily appurtenant to a principally permitted use.

.106 On-site treatment and storage facilities for hazardous wastes associated with outright permitted uses or approved conditional uses subject to the most current siting criteria under Chapter 173-303 WAC.

.107 Mini-day care centers, and day care centers operated by, maintained by or funded by business in the district for the purpose of serving the child care needs of employees whose place of employment lies within this zone district.

.108 Electric vehicle rapid charging stations and battery exchange facilities.

538 **20.68.130 Administrative approval uses.**

539 .131 Commercial mushroom substrate production limited to the Cherry Point Industrial Area and pursuant to the  
540 requirements as contained in WCC 20.15.020(2) (commercial mushroom substrate production facilities). (Ord. 2006-031 § 1  
541 (Exh. A), 2006).

542 **20.68.150 Conditional uses.**

543 The following uses require a conditional use permit in the HII Zoning District.

544 .152 Uses allowed in the Light Impact Industrial zone as permitted uses, WCC 20.66.100, subject to the following:

545 (1) Outside of the Bellingham Urban Growth Area, approval shall be supported by a finding by the hearing examiner that  
546 allowing the use will not limit the supply of land available to meet the demand for future heavy industrial uses.

547 (2) Filing of a deed restriction acknowledging that heavy industrial uses are the preferred uses in the zone and agreeing not to  
548 protest proposed heavy industrial uses allowed in the zone in accordance with Chapter 20.68 WCC, and to refrain from legal  
549 action against any heavy industrial use in compliance with the regulations of WCC Title 20 and any conditions of approval  
550 which might have been proposed.

551 .153 Expansion of existing legal fossil or renewable fuel refineries operations and the primary manufacturing of  
552 products thereof or expansion of existing legal fossil or renewable fuel transshipment facilities. For purposes of this  
553 section, an expansion is any Fossil Fuel Refinery and/or Fossil Fuel Transshipment Facility development (including  
554 otherwise permitted or accessory uses), vested after the effective date of this ordinance, that meets any one of the following  
555 thresholds:

556 A. Cumulatively increases its maximum atmospheric crude distillation capacity of fossil fuels by more than 10,000  
557 barrels (or 420,000 gallons) per day based upon an evaluation of physical equipment limitations conducted by a  
558 licensed professional engineer; or

559 B. Cumulatively increases the maximum transshipment capacity of the facility by more than 10,000 barrels (or 420,000  
560 gallons) per day; or

561 C. Cumulatively increases the maximum transshipment capacity of unrefined fossil fuels from the facility by more than  
562 10,000 barrels (or 420,000 gallons) per day.

563 If a conditional use permit is obtained, the baseline for determining the cumulative increases is reset.

564 Rationale for Changes (shown with highlighting): On January 16 and 30, 2020, the  
565 Planning Commission approved motions defining what activities constitute an “expansion”  
566 and when a conditional use permit is required. On January 16, 2020, the Planning  
567 Commission also approved a motion to move expansion of renewable fuel facilities from  
568 conditional use to permitted use, as long as the expansion is for the increased production of  
569 renewable fuels. On August 13, 2020, in response to the joint Industry/RE Sources  
570 proposal, the Planning Commission approved a motion to remove certain fossil fuel storage  
571 tank capacity increases from the above list of improvements that require a conditional use  
572 permit (storage tanks are a permitted use under proposed WCC 20.68.068).

571 Such expansions shall be subject to the conditional use criteria below:

572 (1) The conditional use permit approval criteria listed under WCC 20.84.220 are met;

573 (2) Within shorelines, if applicable, County approval shall be contingent upon approval of a shoreline permit;

574 (3) The applicant has documented to the satisfaction of the County decision maker all of the anticipated sources, types, and  
575 volumes of substances transferred in bulk at the facility. The permit shall be limited exclusively to those types and volumes  
576 of materials or products as documented and approved.



577 Rationale for Changes (shown with highlighting): Sources of raw materials may change over time  
578 and new sources may come on-line. It may be very difficult, if not impossible, to predict sources  
of materials over the life of a project.

579 (4) Insurance requirements meet the provisions of WCC Section 22.05.125.

580 (5) Mitigation of transportation impacts consistent with Chapter 20.78 WCC, Transportation Concurrency Management, and  
581 Chapter 16.24 WCC, Commute Trip Reduction.

582 (6) Mitigation of impacts to other services including fire and emergency response capabilities, water supply and fire flow, to  
583 address risks created by expansions.

584 (7) Prior to issuance of any site preparation or construction permits, and prior to occupancy and/or operation of the expanded  
585 facility, the applicant shall provide verifiable documentation to the county that the facility has been constructed consistent  
586 with any applicable federal or state requirements, including but not limited to water rights and use.

587 Rationale for Changes (shown with highlighting): Criterion 7 above, addressing federal and state  
588 requirements appears to be unnecessary because criterion 9 already addresses federal and  
589 state permitting.

590 (78) Plans for stormwater and wastewater releases have been approved.

591 (89) Prior to commencement of any site preparation or construction activities, all necessary state leases shall be acquired for  
592 any piers or aquatic lands improvements, and it shall be demonstrated to the satisfaction of the zoning administrator that the  
593 project applicant has met any federal or state permit or consultation requirements, including properly addressing tribal treaty  
594 rights or the provisions of the Magnuson Amendment through state and federal permitting decisions; and

595 (9) The County decision maker may approve a conditional use permit with a condition to obtain relevant leases and complete  
596 any necessary federal and state permitting requirements, and may restrict the conditional use permittee from undertaking site  
597 preparation or construction activities until it has fulfilled that condition.

598 (10) Minimization of greenhouse gas emissions and inclusion of local carbon offset mitigation projects; and

599 Rationale for Changes (shown with highlighting): On October 24, 2019, the Planning Commission  
600 approved a motion to remove the proposed GHG mitigation requirements from the Zoning Code  
601 and keep proposed GHG provisions in SEPA (with further discussion on the SEPA language at a  
602 later date).

603 (11) Demonstration that the proposal will retain or add living wage jobs or contribute to the Whatcom County economy;

604 Rationale for Changes (shown with highlighting): On January 30, 2020, the Planning Commission  
605 approved a motion to delete the living wage job language from the conditional use permit  
606 approval criteria.

607 .154 Treatment and storage facilities for hazardous wastes subject to the following:

608 (1) The ~~eight~~ criteria for a conditional use listed under WCC 20.84.200.

609 (2) The most current state siting criteria under Chapter 173-303 WAC.

610 (3) It shall be the responsibility of the applicant to document to the satisfaction of the approving body the anticipated sources,  
611 types, volumes and final disposition of hazardous wastes to be collected and the type of treatments associated with those  
612 wastes. The permit shall be limited exclusively to those types of wastes and treatments as documented and approved.

613 (4) Total off-site facility capacity shall be limited to that needed to treat and store wastes generated within Whatcom County  
614 by generators requiring off-site management of hazardous wastes; provided, however, waste streams may be sourced from  
615 other jurisdictions through interagency zone designation agreements as approved by the county council, not to exceed 10  
616 percent of the total local hazardous waste stream.

617 (5) Prior to occupancy of the facility, the State Department of Ecology shall certify to the county that the facility has been  
618 constructed consistent with state requirements.

619 (6) As a condition of approval, the applicant shall be required to keep and maintain accurate and current records of the types,  
620 amounts, sources, and final disposition of hazardous wastes collected. The applicant shall provide such records annually to  
621 the county, or sooner upon county request. If the facility is found to be exceeding the waste stream limitations or permit  
622 restrictions, the county staff shall so report to the approving body who shall have the authority to revoke the permit,  
623 following a public hearing, if the limitation has been exceeded absent an emergency situation. Any emergency must be  
624 documented by county staff.

625 (7) Annual inspections of the facility shall be a minimum requirement. The applicant shall be required to forward copies of  
626 all facility inspection reports to the county. If deficiencies are found, the operator shall, within 15 days, submit to the county  
627 for approval an implementation schedule of corrective measures. Such schedule shall include specific completion dates and  
628 inspection reporting procedures.

629 If the state does not inspect the facility within the year, the applicant shall be required to arrange and bear all costs for an  
630 inspection by a qualified and independent inspection agency satisfactory to the county.

631 (8) Should the facility be found to consistently operate in a manner unsatisfactory to the county in regard to the public health  
632 and safety, the permit may be revoked by the approving body following a public hearing.

633 .156 Public and private parks facilities not included in an adopted city or county Comprehensive Plan or Park Plan.

634 .157 Trailheads with parking areas for more than 30 vehicles.

635 .158 Athletic fields.

636 ~~.159 New renewable fuel refineries or renewable fuel transshipment facilities, subject to the conditional use permit criteria~~  
637 ~~identified in WCC 20.68.153.~~

638 

Rationale for Changes (shown with highlighting): On December 12, 2019, the 639 Planning Commission passed a motion that new renewable fuel facilities should be 640 allowed as a permitted use (instead of a conditional use, as proposed by Council). 641 Therefore, a new code section, WCC 20.68.070, has been inserted indicating that 642 new renewable fuel facilities would be permitted outright uses.
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643 .180 Major passenger intermodal terminals.

644 .187 Type III solid waste handling facilities; provided, that:

645 (1) The facility or site will not be located within the 100-year floodplain or the Lake Whatcom watershed. The facility or site  
646 will not be located within any area identified in an adopted critical areas ordinance unless outside of the floodplain and at  
647 least three feet in elevation higher than the floodway elevation;

648 (2) Solid waste handling facilities shall be located at least 1,500 feet from the following:

649 (a) All zoning district boundaries, except Commercial Forestry and Industrial Zones;

650 (b) Public parks, public recreation areas, or publicly-owned wildlife areas;

651 (c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;

652 (d) Shorelines that are within the jurisdiction of the Shoreline Management Program;

- 653 (e) Rivers, streams or creeks that contain documented threatened or endangered fish species;
- 654 (f) This 1,500-foot buffer does not apply to:
- 655 (i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from  
656 the property line 100 feet or the standard zoning district setback, whichever is greater;
- 657 (ii) Inert landfills;
- 658 (3) Inert landfills shall be located at least 500 feet from the following:
- 659 (a) All zoning district boundaries, except Commercial Forestry and Industrial Zones;
- 660 (b) Public parks, public recreation areas, or publicly-owned wildlife areas;
- 661 (c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;
- 662 (d) Shorelines that are within the jurisdiction of the Shoreline Management Program;
- 663 (e) Rivers, streams or creeks that contain documented threatened or endangered fish species;
- 664 (f) This 500-foot buffer does not apply to:
- 665 (i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from  
666 the property line 100 feet or the standard zoning district setback, whichever is greater;
- 667 (4) The facility or site will not result in filling or excavation, location of structures or buildings, driveways or machinery use  
668 except for vegetation maintenance within 100 feet of any property line and except for driveways within 150 feet of any  
669 county or state road right-of-way;
- 670 (5) The facility or site will have vehicular approaches designed to minimize conflict between automobile and truck traffic,  
671 will maintain the carrying capacity of county roads, and will be located on a road classified as all weather, except where use  
672 is shown to be intermittent and easily delayed until emergency conditions have passed;
- 673 (6) The facility or site has complied with the provisions of WCC 20.84.200 and all other ordinances and laws regulating solid  
674 waste facilities and sites, such as but not limited to WCC Title 24, the Whatcom County SEPA Ordinance, as well as state  
675 and federal regulations concerning solid waste facilities and sites;
- 676 (7) All landfills have a final closure plan meeting the requirements of WCC Title 24 and of Chapter 173-350 WAC, and the  
677 closure plan includes:
- 678 (a) Reclamation in two to 10 acre increments, as appropriately responsive to the size and intensity of the particular  
679 activity, with seeding to be accomplished annually but no later than September 30th; and
- 680 (b) Permanent vegetative cover that will maintain in healthy growing condition with the level of maintenance that is  
681 covered through the financial assurance for post-closure activities;
- 682 (8) The buffer areas and visual screening shall include a minimum of 50 feet wide of landscaping meeting the requirements  
683 of WCC 20.80.300 (Landscaping);
- 684 (9) Solid waste facilities or sites shall be located outside the 10-year time of travel boundary of a public water system's  
685 delineated wellhead protection area;
- 686 (10) Solid waste facilities or sites that handle putrescible waste will be located at least 10,000 feet from airports serving  
687 turbine-powered aircraft and at least 5,000 feet from airports serving piston-powered aircraft. These buffers shall be  
688 measured from the boundary of the Airport Operations Zone or, if the airport is not within an Airport Operations Zone, from  
689 the boundary of the airport property;
- 690 (11) In addition, the Whatcom County hearing examiner may impose conditions of approval which may be necessary to  
691 protect the value and enjoyment of existing adjacent uses.

692 .188 Mitigation banks as a form of compensatory mitigation for wetland and habitat conservation area impacts when  
693 permitted in accordance with the provisions of Chapter 16.16 WCC; provided, applications for mitigation banks shall be  
694 processed as a major development project pursuant to Chapter 20.88 WCC.

695 **20.68.200 Prohibited uses.**

696 All uses not listed as permitted, accessory, administrative approval, or conditional uses are prohibited, including but not  
697 limited to the following, which are listed here for purposes of clarity:

698 .201 Reserved.

699 .202 Adult businesses.

700 .203 In the Bellingham Urban Growth Area the following uses are prohibited: petroleum refinery and the primary  
701 manufacturing of products thereof, primary manufacturing and processing of rubber, plastics, chemicals, paper, asbestos and  
702 products derived thereof; and primary metal industries.

703 ~~.204 New Fossil fuel refineries and the primary manufacturing of products thereof [XXX effective date].~~

704  
705 Rationale for Changes (shown with highlighting): On December 12, 2019, the Planning Commission  
706 passed a motion that new fossil fuel refineries should be prohibited, as proposed by Council.  
707 “Fossil fuel refinery” is defined by proposed WCC 20.97.160.4. The “primary manufacturing”  
text is unnecessary. It is also unnecessary to insert the effective date into the code.

708 ~~.205. New Fossil Fuel Transshipment Facilities; provided that, the following uses of facilities are not prohibited: (i) inter-~~  
709 ~~refinery shipments, (ii) transferring petroleum products during emergency scenarios where contingencies require petroleum~~  
710 ~~products to be moved, and (iii) necessary petroleum product transfers during turn-arounds or maintenance periods, including~~  
711 ~~bulk storage or transfer facilities for fossil fuels [XXX effective date].~~

712  
713 Rationale for Changes (shown with highlighting): On August 13, 2020, in  
714 response to the joint Industry/RE Sources proposal, the Planning Commission  
715 approved a motion to modify proposed WCC 20.68.205 as shown above.

716 ~~.206. New piers, docks, or wharves in Cherry Point Industrial District.~~

717  
718 Rationale for Changes (shown with highlighting): Cite the full name of the zoning  
district.

719 *Discussion/Notes: Prohibit New Fossil Fuel Refineries. Prohibit Crude Oil and Coal Export*  
720 *Facilities – made broader to Fossil Fuel transshipment.*

721 ~~.207 Coal-fired power plants.~~

722 (Ord. 2018-006 § 3 (Exh. C), 2018; Ord. 2016-011 § 1 (Exh. L), 2016; Ord. 99-078, 1999; Ord. 99-070 § 2, 1999; Ord. 91-  
723 075, 1991).

724 **20.68.250 Minimum lot size.**

725 The minimum lot size shall be consistent with the area required to meet the building setback, lot coverage, buffer and  
726 development standards of the district. (Ord. 97-057 § 1, 1997; Ord. 96-046 § 1, 1996).

727 **20.68.255 Minimum lot frontage.**

728 For the purpose of dividing property, minimum lot frontage shall be sufficient to provide adequate access and utility  
729 development, and meet applicable building setback, buffer, and development standards of the district. In no case shall the  
730 frontage be less than 30 feet. (Ord. 99-045 § 1, 1999).

731 **20.68.350 Building setbacks.**

732 Building setbacks shall be administered pursuant to WCC 20.80.200, 20.80.254 and 20.68.550. (Ord. 99-078, 1999).

733 **20.68.400 Height limitations.**

734 No maximum height is established; however, when a building exceeds 50 feet, the setback requirements of WCC 20.80.200  
735 shall be increased by one foot for each foot of building height in excess of 50 feet, as applicable to all setbacks.

736 **20.68.450 Lot coverage.**

737 The maximum building or structural coverage shall not exceed 60 percent of the lot size.

738 **20.68.500 Open space.**

739 *Repealed by Ord. 97-057.* (Ord. 96-046, 1996).

740 **20.68.550 Buffer area.**

741 .551 The industrial user shall establish a buffer for building sites adjoining the boundary of the Heavy Impact Industrial  
742 District (HII), which shall be located adjacent to the district boundary. The purpose of the buffer is to optimize the visual  
743 appearance of the site by obscuring industrial activity from view by passing motorists, to contribute to on-site and off-site  
744 impact abatement, and to move towards attaining compatibility with surrounding nonindustrial land uses and character.

745 .552 To implement the buffer requirements of this district, minimum setbacks for heavy industrial buildings and accessory  
746 structures shall be established consistent with the following options:

747 (1) If a planting screen is not provided by the industrial user and no natural vegetative screening exists, the minimum  
748 setback(s) shall be 660 feet, as measured from the edge of the district boundary. The setback area may be used for security  
749 roads, parking, or open space.

750 (2) If natural sight-obscuring and dense vegetation exists, the minimum setback(s) shall be 250 feet, as measured from the  
751 district boundary; provided, that a minimum width of 50 feet of natural vegetation is retained. The remainder of the  
752 setback(s) may be used for security roads, parking, or open space.

753 (3) If a 50-foot buffer planting screen is established, pursuant to WCC 20.80.345, the minimum setback(s) shall conform to  
754 the setback requirements of WCC 20.80.200, as measured from the district boundary. In addition, security roads may be  
755 situated within the minimum buffer setback; provided, that the 50-foot-wide buffer planting is established.

756 (4) When a parcel situated within this district is located within the Bellingham Urban Growth Area and adjoins an Urban  
757 Residential District or residential district within the city limits, setbacks for heavy industrial buildings and/or uses shall be  
758 increased to 100 feet and landscaped in accordance with the requirements of WCC 20.80.345.

759 (5) In no case shall the setback from the northern and western boundaries of the Cherry Point heavy industrial area not  
760 contiguous to another industrial zone be less than 660 feet, nor the natural vegetation removed except for parking and  
761 security or protective uses.

762 .553 Uses other than heavy industrial will conform to the normal setback requirements as set forth in WCC 20.80.200 and  
763 20.80.254(3) and the buffering requirements for light impact industrial uses WCC 20.66.551.

764 .554 If any part of said buffer area is separated from, or sold to any contiguous or adjacent owner, lessee or user, the parcel so  
765 separated or sold shall be used only as a buffer area in accordance with the above requirements. (Ord. 2019-013 § 1 (Exh. A),  
766 2019; Ord. 2018-006 § 3 (Exh. C), 2018; Ord. 99-078, 1999; Ord. 97-057 § 1, 1997; Ord. 96-046 § 1, 1996; Ord. 89-117,  
767 1989; Ord. 87-12, 1987; Ord. 87-11, 1987).

768 **20.68.600 Sign regulations.**  
769 Sign regulations shall be administered pursuant to WCC 20.80.400.

770 **20.68.650 Development criteria.**  
771 (Ord. 96-056 Att. A § A1, 1996).

772 **20.68.651 Landscaping.**  
773 Refer to WCC 20.80.300 for landscaping requirements. (Ord. 89-117, 1989).

774 **20.68.652 Off-street parking and loading.**  
775 Off-street parking and loading provisions shall be administered pursuant to WCC 20.80.500. In addition, loading areas must  
776 be located in such a manner that no loading, unloading and/or maneuvering of trucks associated therewith takes place on  
777 public rights-of-way.

778 **20.68.653 Drainage.**  
779 All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No  
780 project permit shall be issued prior to meeting those requirements. (Ord. 2019-013 § 1 (Exh. A), 2019; Ord. 96-056 Att. A §  
781 A2, 1996; Ord. 94-022, 1994).

782 **20.68.654 Driveways.**  
783 Consistent with WCC 20.80.640, driveway plans shall be reviewed by the county engineer or State Department of  
784 Transportation, as applicable. (Ord. 2013-057 § 1 (Exh. A), 2013; Ord. 84-38, 1984).

785 **20.68.655 Access.**  
786 Access shall conform to the provisions of WCC 20.80.565 and 20.80.660. (Ord. 89-117, 1989).

787 **20.68.656 Maintenance.**  
788 The owner, lessee or user shall be responsible for maintaining an orderly appearance of all properties, and shall be  
789 responsible for assuring the care and maintenance of any natural growth, where appropriate.

790 **20.68.657 Enclosure.**  
791 All manufacturing or fabrication processes which have the potential to produce off-site impacts of a detrimental nature,  
792 including light, glare, odors and noise impacts, shall be sufficiently enclosed to mitigate the impacts. (Ord. 99-078, 1999).

793 **20.68.700 Performance standards.**

794 **20.68.701 Pollution control and nuisance abatement.**  
795 Each industry is required to continuously employ the best pollution control and nuisance abatement technology when  
796 reasonably and practicably available for each particular industry; provided, that where federal, state, or regional laws or  
797 regulations provide for the level of technology to be employed, the appropriate standards shall apply.

798 **20.68.702 Heat, light and glare.**  
799 All operations and facilities producing heat, light or glare, including exterior lights, shall be so constructed, screened or used  
800 as to not unreasonably infringe upon the use and enjoyment of property beyond the boundaries of the district.

801 **20.68.703** *Ground vibration.*

802 No ground vibration other than that caused by highway vehicles, trains or construction activity shall be permitted, which is  
803 discernible without instruments, at or beyond the property line for the use concerned.

804 **20.68.704** *Odors.*

805 No odors, dust, dirt, or smoke shall be emitted that are detectable, at or beyond the property line for the use concerned, in  
806 such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe  
807 upon the use and enjoyment of property beyond the boundaries of the district. (Ord. 91-075, 1991).

808 **20.68.705** *Noise.*

809 No use in this district shall exceed the maximum environmental noise level established by Chapter 173-60 WAC. (Ord. 91-  
810 075, 1991).

811 **20.68.706** *Toxic gases and fumes.*

812 Any release of toxic gases or fumes must be in compliance with Washington State and Northwest Air Pollution Control  
813 Authority standards. (Ord. 91-075, 1991).

814 **20.68.707** *Liquid pollutants.*

815 There shall be no off-site release to soil or surface drainage ways of water borne or liquid pollutants. (Ord. 91-075, 1991).

816 **20.68.708** *Appearance.*

817 New facilities developed in the Bellingham Urban Growth Area shall be designed, constructed, operated, and maintained so  
818 as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and such  
819 uses shall not change the essential character of the same area. (Ord. 2018-006 § 3 (Exh. C), 2018; Ord. 99-078, 1999).

820 **20.68.709** *Marijuana odor.*

821 For indoor facilities no odor or smoke shall be emitted that is detectable at or beyond the walls of the facility, in such a  
822 concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon  
823 the use and enjoyment of neighboring use. The applicant shall install an exhaust system that is designed and constructed to  
824 capture sources of contaminants to prevent spreading of contaminants or odors to other occupied parts of the building or  
825 surrounding area. The system must be designed by a licensed Washington State professional engineer. (Ord. 2015-006 Exh.  
826 A, 2015).

827 **~~20.68.800. Fossil Fuel or Renewable Fuel Refineries or Transshipment Facilities~~**

828 ~~This section applies to fossil fuel refineries fossil fuel transshipment facilities, renewable fuel refineries, or renewable fuel~~  
829 ~~transshipment facilities.~~

830 **~~801. Environmental Review and Greenhouse Gas Mitigation~~**

831 ~~(1) State Environmental Policy Act (SEPA) review shall be conducted consistent with WCC Chapter 16.08. Fossil fuel or~~  
832 ~~renewable fuel facility capacity expansions or fossil fuel or renewable fuel transshipment facility expansions are subject to~~  
833 ~~applicable SEPA requirements.~~

834 **~~(2) Greenhouse gas emission analysis required:~~**

835 ~~(a) For the first expansion requiring County land use permits after the date of this ordinance, a baseline calculation of~~  
836 ~~existing facility emissions of greenhouse gases shall be provided by the applicant addressing the average of the prior~~  
837 ~~three year throughput. See facility emissions definition in WCC 20.97.124.1 for the scope and geography of the~~  
838 ~~analysis. Calculation of baseline greenhouse gas emissions shall follow the methodology used for facility~~



839 greenhouse gas reports to the State of Washington Department of Ecology, and to the US Environmental Protection  
840 Agency Electronic Greenhouse Gas Reporting Tool (e-GGRT), or successor state or federal emissions reporting tool  
841 or requirements.

842 (i) The data used to calculate the current actual throughput average shall be obtained from official government  
843 reports from the refinery to federal or state agencies regarding production of the refinery or a particular process unit  
844 to be expanded. This information shall be provided by the project applicant and verified by the County at the time of  
845 application for any land use or construction permits.

846 (ii) For crude oil, refinery capacity is based on atmospheric Crude Distillation Capacity (barrels per calendar day),  
847 consistent with data collected by the US Energy Information Administration. The zoning administrator may approve  
848 another measure of capacity or source that is consistent with (a) and (a)(i). (b) Facility emissions, defined in WCC  
849 20.07.124.1, shall be quantified for each expansion of refining and storage capacity in the application for land use or  
850 construction permits and in SEPA documents analyzing the impacts of an expanded facility.

851 (c) The emissions analysis shall identify how mitigation will offset greenhouse gas emissions generated.

852 (d) Calculations of the baseline facility emissions and the projected increases shall be consistent with rules and  
853 methods adopted by the State of Washington Department of Ecology and shall include upstream greenhouse gas  
854 emission calculations for feedstocks used in the refining process as provided in (e) below.

855 (e) Emissions generated upstream of the refinery facility for production and transport of raw materials used for  
856 refinery expansions shall be quantified using the latest version of the GREET Model developed by Argonne  
857 National Laboratories or, for raw materials produced in Canada, the latest version of the GH Genius model  
858 developed by Canadian national agencies may be used.

859 (f) The County may condition the permit to ensure appropriate mitigation consistent with subsection (3) and may  
860 require periodic monitoring of greenhouse gas reduction measure effectiveness. Greenhouse gas mitigation proposed  
861 by the permit applicant shall be additional, real and quantifiable and shall not be required under any other regulatory  
862 mechanism.

863 (g) Should a national or state greenhouse gas mitigation requirement be adopted that pre-empts or would cause  
864 duplication through local greenhouse gas mitigation, the County may defer to the national or state program.

865 (3) Local mitigation of greenhouse gas emissions shall be required, whenever calculated greenhouse gas emissions above the  
866 baseline for a 3-year average (per section .801(2)(a)), after the effective date of this section [XXX].

867 (a) The applicant shall identify local carbon offset projects including the type and extent, duration, and expected  
868 greenhouse gas reductions, to the satisfaction of the County's SEPA Responsible Official. Greenhouse gas  
869 mitigation proposed by the applicant shall be additional, real and quantifiable and shall not be required under any  
870 other regulatory mechanism.

871 (b) The County may, upon request by the Applicant, approve a fee in lieu of providing a local mitigation project.  
872 The County shall use collected fees in lieu of mitigation for local greenhouse gas mitigation projects that are  
873 additional, real and quantifiable and not required under any other regulatory mechanism. The in-lieu fee shall be set  
874 at \$60 per ton of carbon, based on the following document: US Environmental Protection Agency, Technical Update  
875 of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866 (May 2013, Revised  
876 August 2016). The fee shall be collected annually for the life of the fossil fuel facility or fossil fuel transshipment  
877 facility.

878 (c) Should a national or state greenhouse gas mitigation requirement be adopted that pre-empts or would cause  
879 duplication through local greenhouse gas mitigation, the County shall defer to the national or state program.

880 Discussion/Note: Regarding the fee in lieu, per the US EPA, the Social cost of carbon (SC-  
881 CO<sub>2</sub>) "is a measure, in dollars, of the long-term damage done by a ton of carbon dioxide  
882 (CO<sub>2</sub>) emissions in a given year. This dollar figure also represents the value of damages  
883 avoided for a small emission reduction (i.e., the benefit of a CO<sub>2</sub> reduction)." See:  
884 <https://19january2017snapshot.epa.gov/climatechange/social-cost-carbon.html>. If the



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County wishes to increase the mitigation fee it may do so by ordinance with an accompanying rationale such as inflation, updated US EPA guidance or other factors.

Rationale for Changes (shown with highlighting): On October 24, 2019, the Planning Commission approved a motion to remove the proposed GHG mitigation requirements from the Zoning Code and keep proposed GHG provisions in SEPA (with further discussion on the SEPA language at a later date). The above changes would delete the proposed GHG provisions from the Zoning Code.

20.68.802 Non-Capacity Improvements

(1) Expansions of existing legal fossil fuel refineries, fossil fuel transshipment facilities, renewable fuel refineries, or renewable fuel transshipment facilities for non-capacity purposes are outright permitted uses. Examples of non-capacity improvements include, but are not limited to:

(a) accessory buildings;

(b) office space;

(c) parking lots;

(d) radio communications facilities;

(e) security buildings;

(f) storage buildings, and

(g) other similar structures or activities;

(2) Regular equipment maintenance, replacement, safety upgrades, and environmental improvements are outright permitted uses, but shall mitigate greenhouse gas emissions if required by WCC 20.68.801.

Rationale for Changes (shown with highlighting): Moving permitted uses associated with existing refineries and transshipment facilities from proposed WCC 20.68.802 above to the permitted use section of the Heavy Impact Industrial Zoning District for consistency with other sections of the Code, where additional items have been inserted as permitted uses to address public comments. Additionally, the reference to GHG mitigation provisions in the Zoning Code has been deleted.

917 CHAPTER 20.74 CHERRY POINT INDUSTRIAL (CP) DISTRICT

918 20.74.010 Purpose.

919 The purpose of the Cherry Point Industrial District is to implement the policies of the Cherry Point Major Industrial Urban  
920 Growth Area section of the Whatcom County Comprehensive Plan by establishing a range of land uses and types of  
921 development appropriate for the Cherry Point UGA and to encourage large scale master planning of industrial sites to  
922 preserve sites of sufficient size to accommodate major port and industrial development. (Ord. 98-083 Exh. A § 57, 1998).

923 20.74.020 Applicability.

924 This chapter is applicable to the entire Cherry Point Major Industrial Urban Growth Area. (Ord. 98-083 Exh. A § 57, 1998).

925 20.74.030 Permitted uses.

926 (1) Primary permitted uses:

927 (a) Area south of Grandview: Uses shall include the range of port and large scale industrial uses allowed in the Heavy  
928 Impact Industrial District, Chapter 20.68 WCC, as well as large scale high technology businesses.

929 (b) Area north of Grandview: Uses shall include the range of port and large scale industrial uses allowed in the Light  
930 Impact Industrial District, Chapter 20.66 WCC.

931 (2) Secondary permitted uses shall include smaller scale industrial uses, nonretail commercial uses, and industry-related  
932 professional services, provided the secondary use supports or is supported by primary permitted uses in the Cherry Point  
933 Industrial Urban Growth Area. (Ord. 98-083 Exh. A § 57, 1998).

934 20.74.040 Accessory uses.

935 Accessory uses shall be the same as those permitted in the Heavy Impact Industrial District, Chapter 20.68 WCC. (Ord. 98-  
936 083 Exh. A § 57, 1998).

937 20.74.050 Conditional uses.

938 Conditional uses shall be the same as those permitted in the Heavy Impact Industrial District, Chapter 20.68 WCC. (Ord. 98-  
939 083 Exh. A § 57, 1998).

940 20.74.055 Prohibited uses.

941 Prohibited uses shall be the same as those prohibited in the Light Impact Industrial District as applicable (Chapter 20.66), the  
942 Heavy Impact Industrial District as applicable; (Chapter 20.68 WCC), and the following:

943 **Rationale for Changes (shown with highlighting): The Cherry Point Industrial District**  
944 **includes both the Heavy Impact Industrial and Light Impact Industrial zone.**  
945 **Therefore, both should be referenced.**

946 (1) New piers, docks, or wharves.

947 (2) Conversion of Renewable Fuel Refinery or Renewable Fuel Transshipment Facilities to fossil fuel facilities is prohibited,  
948 except as allowed under WCC 20.74.115 and WCC 20.68.153.

949 20.74.060 Master site plan requirements.

950 (1) Development in the Cherry Point Industrial District requires the review and approval of a master site plan, including  
951 SEPA review. Acceptable master site plans include site plans and supporting information submitted and approved for  
952 applications for a building permit, a short subdivision, a preliminary plat, a binding site plan, a major project permit or a  
953 planned unit development.

954 (2) The minimum area for a master site plan (planning block) shall be 160 acres, or the entire property under common  
955 ownership if the common ownership is less than 160 acres.

956 (3) Each planning block shall include one lot of not less than 40 acres in size to be designated as the site for a port or major  
957 industrial activity; provided, that if the planning block is 40 acres or smaller, the requirement for the major industrial site  
958 shall be waived.

959 (4) Within a planning block, one or more parcels smaller than 40 acres may be created for secondary uses.

960 (5) Review and approved of a master site plan for a planning block shall be included in the approval of any building permit,  
961 short subdivision, preliminary plat, binding site plan, major project permit or a planned unit development and shall be subject  
962 to the same review and approval standards, including SEPA review, as the plat, binding site plan or permit. Each master site  
963 plan shall identify, as appropriate, the proposed phasing of the development including the construction of public and private  
964 facilities and utilities. The master site plan or supporting documentation as appropriate shall also include any mitigation  
965 required under SEPA and the county critical areas ordinance. (Ord. 98-083 Exh. A § 57, 1998).

#### 966 **20.74.070 Minimum lot size and parcelization.**

967 The minimum lot size in the Cherry Point Industrial District shall be 40 acres; provided, that lots less than 40 acres may be  
968 permitted as follows:

969 (1) When the lots are to be located within a development approved as a major project under Chapter 20.88 WCC consistent  
970 with the master site plan requirements in this chapter.

971 (2) When the lots are to be located within a development approved as a planned unit development under Chapter 20.85 WCC  
972 consistent with the master site plan requirements of this chapter.

973 (3) When the lots are part of a short subdivision, long subdivision or binding site plan approved as consistent with the master  
974 site plan requirements of this chapter.

975 (4) When the administrator finds that the lot(s) will be developed with a use(s) that is consistent with the intent of the district  
976 and will not interfere with the development of the primary large uses intended by the Comprehensive Plan.

977 (5) When an existing lot of record is less than 40 acres, provided further division is consistent with this section. (Ord. 98-083  
978 Exh. A § 57, 1998).

#### 979 **20.74.080 Design standards.**

980 Unless otherwise modified by this chapter, building height, setbacks, landscaping, open space and other building and site  
981 design standards for areas south of Grandview Road shall be the same as those of the Heavy Impact Industrial District,  
982 Chapter 20.68 WCC; and for the area north of Grandview Road, the same as those of the Light Impact Industrial District,  
983 Chapter 20.66 WCC. (Ord. 98-083 Exh. A § 57, 1998).

#### 984 **20.74.090 Traffic demand management.**

985 RCW 36.70A.365 requires the implementation of traffic demand management (TDM) programs for designating a Major  
986 Industrial Urban Growth Area. Any employer in the Cherry Point Urban Growth Area that employs 100 or more full-time  
987 employees at a single worksite who begin their regular work day between 6:00 a.m. and 9:00 a.m. on weekdays for at least 12  
988 continuous months during the year are required to meet the TDM requirements of Chapter 16.24 WCC.

989 (1) Employers located in Cherry Point who have not implemented a TDM program shall implement a TDM program by  
990 December 1, 2011.

991 (2) Employers in Cherry Point meeting the criteria for having to complete a plan after December 1, 2011, shall meet the  
992 requirements of this section within one year of having met the criteria. (Ord. 2009-071 § 2 (Exh. B), 2009).

#### 993 **20.74.100 Drainage.**

994 All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No  
995 project permit shall be issued prior to meeting those requirements. (Ord. 2019-013 § 1 (Exh. A), 2019).

996 20.74.110 Change of Use

997 A change of use occurs when the occupancy of a building or a site use changes from one use to another in whole or in part. A  
998 change of use permit is required to document a change of use, even where no alterations are planned or required by the code.  
999 This shall be processed as a Type I permit in Chapter 22.05 WCC. The new use shall ensure:

1000 (1) Applicable building and construction codes are met per Title 15;

1001 (2) Consistency with the requirements of the CP Industrial District, Chapter 20.74, and base zone; and

1002 (3) Transportation concurrency requirements are met per Chapter 20.78;

1003 Discussion/Notes: Change of Use Provisions. Focus is on consistency with the CP district where this permit  
1004 applies;

1005 Rationale for Changes (shown with highlighting): On January 30, 2020, the Planning  
1006 Commission passed a motion to delete the proposed change of use provisions above.  
1007 Concerns have been expressed relating to the potential conversion of an existing  
1008 refinery/transshipment facility into a crude oil transshipment facility (e.g. see Resolution  
1009 2019-037). The Planning Commission language for proposed WCC 20.68.153 addresses  
1010 this potential situation by requiring a conditional use permit if shipping capacity of  
unrefined fossil fuels were to increase over a certain level.

1011 20.74.115 Change of Use of Renewable Fuels Facilities.

1012 A change of use of a Renewable Fuel Refinery or Renewable Fuel Transshipment Facilities to a fossil fuel facility inside the  
1013 boundary of an existing legal fossil fuel refinery requires a conditional use permit subject to WCC 20.68.153. Other changes  
1014 of use from Renewable Fuel Refinery or Renewable Fuel Transshipment Facilities to fossil fuel facilities are prohibited.

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## CHAPTER 20.88 MAJOR PROJECT PERMITS

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### 20.88.100 Major project permits.

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.110 All major developments shall, prior to any construction, obtain a major project permit.

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.120 A major project permit will be required for mitigation banks proposed in accordance with the provisions of Chapter

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16.16 WCC and for any proposed development that meets any two of the following conditions:

#### Cost

(estimated construction cost exclusive \$5,000,000 of land value)

#### Size

Retail 75,000 square feet

office or industrial (gross leasable floor space) 200,000 square feet

Residential 300 dwelling units

motel/hotel 200 units

Number of Employees 250

SEPA Review An EIS is required

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In addition, the zoning administrator may make an administrative determination after receiving a recommendation from the technical review committee that any project be considered a major development, if in the opinion of the administration it is of a nature that council review would be appropriate.

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.130 Pursuant to WCC 22.05.120 the hearing examiner shall recommend to the county council project approval, approval with conditions, or denial, based upon written findings and conclusions supported by the evidence of record. The hearing examiner's recommendation and county council's decision shall determine the adequacy of a major project permit application based on the following criteria:

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(1) Will comply with the development standards and performance standards of the zone in which the proposed major development will be located; provided where a proposed major development has obtained a variance from the development and performance standards, standards as varied shall be applied to that project for the purposes of this act.

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(2) Where the project is conditionally permitted in the zone in which it is located, the project must satisfy the standards for the issuance of a conditional use permit for the zone in which the project is located.

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~~(3) Will be consistent with applicable laws and regulations.~~

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(3) Prior to commencement of any site preparation or construction activities, W will obtain, if required, a state aquatic lands lease, and all other necessary permits consultations and authorizations, including federal determinations that the project will

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1049 not interfere with treaty fishing rights of tribal nations, the limits set forth in the “Magnuson Amendment” under 33 U.S.C. §  
1050 476(b) (2004), Section 10 of the Rivers and Harbors Act (for structures in or over navigable waters of the U.S.), the Coastal  
1051 Zone Management Act (including any state Department of Ecology shoreline conditional use or variance approval), the Clean  
1052 Air Act, and/or under the Clean Water Act, including but not limited to a federal Section 404 authorization (for fill into  
1053 waters of the U.S.) and a state Section 401 water quality certification, prior to issuance of any site preparation or construction  
1054 permits necessary to construct a facility authorized under a major project permit.

1055 (4) Will not substantially interfere with the operation of existing uses.

1056 (5) Will be served by, or will be provided with essential utilities, facilities and services necessary to its operation, such as  
1057 roads, drainage facilities, electricity, water supply, sewage disposal facilities, and police and fire protection. Standards for  
1058 such utilities, facilities and services shall be those currently accepted by the state of Washington, Whatcom County, or the  
1059 appropriate agency or division thereof.

1060 (6) Will not impose uncompensated requirements for public expenditures for additional utilities, facilities and services, and  
1061 will not impose uncompensated costs on other property owned.

1062 (7) Will be appropriately responsive to any EIS prepared for the project.

1063 .140 In addition, the hearing examiner may recommend or county council may impose any reasonable conditions precedent  
1064 to the establishment of the major development as may be required to mitigate impacts of the proposal on the natural  
1065 environment of the county, and to protect the health, safety and general welfare of the people of the county consistent with  
1066 the policies for environmental protection set forth in the Comprehensive Plan. The County decision maker may approve a  
1067 major project permit with a condition to obtain relevant leases and complete any necessary federal and state permitting  
1068 requirements, and may restrict the major project permittee from undertaking site preparation or construction activities until it  
1069 has fulfilled that condition.

1070 .150 The hearing examiner may recommend or county council may also approve alternative mitigation plans for major  
1071 project permits in accordance with WCC 16.16.260(E) which may be used to satisfy the requirements of Chapter 16.16 WCC  
1072 and provide relief from the specific standards and requirements thereof.

## 1073 20.88.200 Procedure.

1074 .205 If a major project permit is determined to be required, an application shall be completed and filed along with the  
1075 appropriate fees, and the application shall be processed in accordance with Chapter 22.05 WCC. A master plan is required as  
1076 part of the application for a major project permit. The master plan document shall include all elements required per the  
1077 department’s administrative manual.

1078 .210 Development Standards. The master planmajor project permit may propose standards that will control development of  
1079 the possible future uses that are in addition to, or substitute for, requirements of this chapter. These may be such things as  
1080 height limits, setbacks, frontage, landscaping requirements, parking requirements, signage, view corridors or facade  
1081 treatments. Proposed standards that do not meet the minimum county standards must obtain the appropriate variance prior to  
1082 county approval of the proposed standards. If the proposed design standards will apply to property located partially or totally  
1083 within an urban growth area, concurrence of the affected city will be required.

1084 .215 Procedures. Master plan Major project permit review shall be conducted under current review procedures. Other land  
1085 use reviews may be conducted concurrently with the master plan-major project permit review.

1086 (a) Any modifications, additions or changes to an approved master plan are subject to the following:

1087 (i) Minor changes shall be reviewed for compliance and compatibility with the approved master planmajor project  
1088 permit.

1089 (1) A determination is made by the director. The director is authorized to consult a technical committee at  
1090 his/her discretion.

1091 (2) Minor changes are those amendments which may affect the dimensions, location and type of  
1092 improvements of facilities; provided, the amendment maintains the basic character of the major project  
1093 permit application approved by the county council including general type and location of dwellings and  
1094 other land use activities, arrangement of buildings, density of the development, and provisions of the

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project to meet density bonus and open space requirements, or capacity limits, and maintains required conditions or mitigation.

- (ii) Major changes shall be subject to the original procedural application type, subject to the fees as contained in the unified fee schedule.
- (iii) ~~Master plans~~ Major project permits may include, as a condition of their approval, a requirement for periodic progress reports and mandatory updates on a predetermined interval.

Rationale for Changes (shown with highlighting): A master plan is one component of the major project permit. The procedures above should relate to the entire permit (not just one component of the permit).

.220 through .265 *Reserved.*

.270 Where a project requires a major project permit, that project shall be exempt from the requirement of obtaining a conditional use permit.

.275 Major project permits: Where an applicant has applied for a planned unit development or a development agreement, that project shall be exempt from the requirement to obtain a major project permit except in the Cherry Point Industrial District.

.280 Major project permits in the Cherry Point Industrial District: where a project in the Cherry Point Industrial District requires a major project permit, the major project permit shall be concurrently processed with other required land use permits including but not limited to: ~~Cherry Point master site plan, conditional use permit, planned unit development, or development agreement.~~

Rationale for Changes (shown with highlighting): The master plan is part of a permit application (not a permit in itself). Additionally, when a major project permit is required, it is exempt from the conditional use permit (WCC 20.88.270 above).

1129 CHAPTER 20.97 DEFINITIONS

1130 Discussion/Notes: Definitions added are based on a review of federal (US Energy  
1131 Information Administration, US Census, Code of the Federal Register, Revised Code of  
1132 Washington), County Ordinance NO. 2018-007, Resolution 2019-004 and examples  
1133 addressed in the White Paper.

1134 20.97.052.1 Change of Use

1135 “Change of use” means when a building or occupancy is altered or replaced, for example from manufacturing to office.

1136 Renumber Section 20.97.052.1 Child care facilities to 20.97.052.2 Child care facilities.

1137 20.97.124.1 Facility Emissions.

1138 “Facility Emissions” are greenhouse gas emissions associated with fossil fuel or renewable fuel refineries or fossil or  
1139 renewable fuel transshipment facilities based upon:

1140 (1) the transportation within the borders of Whatcom County of refined and unrefined fossil fuels to and from a facility  
1141 located within the Cherry Point Heavy Industrial area, and

1142 (2) the refining and processing of fossil fuels located within the Cherry Point Heavy Industrial area, and

1143 (3) the upstream emissions generated by the production and transport of raw products to the facility such as crude oil  
1144 feedstocks or other fuels used in production or energy generation at facilities.

1145 Rationale for Changes (shown with highlighting): On October 24, 2019, the Planning  
1146 Commission approved a motion to remove the proposed GHG mitigation requirements  
1147 from the Zoning Code and keep proposed GHG provisions in SEPA (with further  
1148 discussion on the SEPA language at a later date). The term “facility emissions” is no  
1149 longer is used in the Zoning Code. Therefore, this definition has been moved to the  
County’s SEPA rules, where it would be used.

1150 20.97.160.2 Fossil Fuels.

1151 “Fossil fuels” include coal, petroleum, crude oil, natural gas, oil shales, bitumens, tar sands, propane, butane, and heavy oils.  
1152 All contain carbon and were formed as a result of geologic processes acting on the remains of organic matter. Renewable  
1153 fuels are not fossil fuels.

1154 Rationale for Changes (shown with highlighting): The U.S. Energy Information  
1155 Administration defines “Petroleum” as:  
1156 A broadly defined class of liquid hydrocarbon mixtures. Included are  
1157 crude oil, lease condensate, unfinished oils, refined products obtained from  
1158 the processing of crude oil, and natural gas plant liquids. Note: Volumes of  
1159 finished petroleum products include non hydrocarbon compounds, such as  
additives and detergents, after they have been blended into the products.  
1160 While crude oil is a type of petroleum, it might be useful to insert it in the  
1161 definition so the reader can know that without going to another source. This would  
be consistent with the definition of “Fossil-Fuel Refinery” below, which specifically  
refers to crude oil.



1162 20.97.160.3 Fossil or Renewable Fuel Transshipment Facilities.

1163 "Fossil Fuel Transshipment Facility" is a facility engaging primarily in the process of off-loading of fossil fuel or renewable  
1164 fuel materials, refined or unrefined, refinery feedstocks, products or by products, from one transportation method (such as a  
1165 ship, truck, or railcar) facility and loading it onto another transportation method facility for the purposes of transporting the  
1166 fossil fuel such products into and/or out of Whatcom County. Examples of transportation facilities include ship, truck, or  
1167 freight car. Fossil fuel transshipment facilities may also include pump and compressor stations and associated facilities. This  
1168 definition shall include bulk storage or transfer facilities for the shipment of crude oil without refining or consuming within  
1169 the Cherry Point Industrial District and shall exclude Small Fossil or Renewable Storage and Distribution Facilities.

1170  
1171 Rationale for Changes (shown with highlighting): On August 13, 2020, in  
1172 response to the joint Industry/RE Sources proposal, the Planning Commission  
1173 approved a motion to modify proposed WCC 20.68.160.3 as shown above.  
1174 Planning Commission also approved a motion to insert a separate definition of  
Renewable Fuel Transshipment Facilities (proposed WCC 20.97.350.4 below).

1175 20.97.160.4 Fossil-Fuel Refinery.

1176 A "Fossil-Fuel Refinery" means a facility that converts crude oil and other liquids into petroleum products including but not  
1177 limited to gasoline, distillates such as diesel fuel and heating oil, jet fuel, petrochemical feedstocks, waxes, lubricating oils,  
1178 and asphalt. Activities that support refineries include but are not limited to: bulk storage, manufacturing, or processing of  
1179 fossil fuels or by products. This definition excludes Small Fossil or Renewable Storage and Distribution Facilities.

1180 20.97.160.5 Fossil-Fuel Refinery Capacity.

1181 "Fossil-Fuel Refinery Capacity" means the extent of refinery production capacity in relation to storage capacity. "Storage  
1182 Capacity" is defined as total volume of all tanks at a facility and "Refining Production Capacity" is defined as the current  
1183 actual throughput averaged over the latest three year reporting period prior to the date of a completed application for any  
1184 necessary County permits obtained from official government reports from the refinery to federal or state agencies regarding  
1185 production of the refinery or a particular process unit to be expanded.

1186 Rationale for Changes (shown with highlighting): "Fossil-Fuel Refinery Capacity"  
1187 does not occur in the proposal. "Refinery Capacity" appeared one time  
1188 (proposed WCC 20.68.801(2)(a)(ii)), but the Planning Commission recommends  
deleting this section of the proposal. Therefore, a definition is not needed.

1190 20.97.163 Greenhouse Gas Emissions

1191 "Greenhouse Gas Emissions" means gases that trap heat in the atmosphere. "Greenhouse gas," "greenhouse gases," "GHG,"  
1192 and "GHGs" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride,  
1193 and any other gas or gases designated by the federal clean air act (United States Code Title 42, Chapter 85), or state clean air  
1194 act (Chapter 70.94 RCW) or state limiting greenhouse gas emissions law (Chapter 70.235 RCW).

1195 Discussion/Notes: See RCW 70.235.010 and RCW 70.94.030 regarding State laws.  
1196 See also <https://www.epa.gov/ghgemissions/overview-greenhouse-gases>.

1197 20.97.201 Lifecycle Greenhouse Gas Emissions

1198 "Lifecycle greenhouse gas emissions" means the aggregate quantity of greenhouse gas emissions (including direct emissions  
1199 and significant indirect emissions), related to the full fuel lifecycle, including all stages of fuel and feedstock production and  
1200 distribution, from feedstock generation or extraction through the distribution and delivery and use of the finished fuel to the

1201 ultimate consumer, where the mass values for all greenhouse gases are adjusted to account for their relative global warming  
1202 potential.

1203 Discussion/Notes: Considers a definition under the Clean Air Act. See:  
1204 [https://www.epa.gov/renewable-fuel-standard-program/lifecycle-analysis-greenhouse-](https://www.epa.gov/renewable-fuel-standard-program/lifecycle-analysis-greenhouse-gas-emissions-under-renewable-fuel)  
1205 [gas-emissions-under-renewable-fuel](https://www.epa.gov/renewable-fuel-standard-program/lifecycle-analysis-greenhouse-gas-emissions-under-renewable-fuel) and  
1206 <https://www.govinfo.gov/content/pkg/USCODE-2010-title42/html/USCODE-2010->  
1207 [title42-chap85.htm.](https://www.govinfo.gov/content/pkg/USCODE-2010-title42/html/USCODE-2010-title42-chap85.htm)

### 20.97.202 Living Wage

1208  
1209 “Living wage” means the hourly rate that an individual must earn to support their family, if they are the sole provider and are  
1210 working full time (2080 hours per year). For the purposes of this definition family includes four individuals.

1211 Discussion/Notes: Based on a definition published by Massachusetts Institute of  
1212 Technology. See <http://livingwage.mit.edu/counties/53073>. There is a living-wage  
1213 calculator for each state and each county within. Living wage ordinances vary in their  
1214 wage rates, and they often set the hourly wage a full-time, year-round worker must earn  
1215 to bring a family of four out of poverty. See:  
1216 <http://www.forworkingfamilies.org/resources/policy-tools-living-wage>.

1217 Rationale for Changes (shown with highlighting): On January 30, 2020, the Planning Commission  
1218 passed a motion to delete the “living wage” job language from the conditional use permit approval  
1219 criteria (proposed WCC 20.68.153). This term does not appear elsewhere in the proposal.

### 20.97.230 Maximum Atmospheric Crude Distillation Capacity

1221 “Maximum Atmospheric Crude Distillation Capacity” or “MACDC” is the maximum number of barrels of input that the  
1222 atmospheric distillation unit can process within a 24-hour period when running at maximum capacity. Maximum capacity is  
1223 defined as the physical constraints of the atmospheric distillation process equipment as determined by a professional engineer  
1224 licensed in the State of Washington and shall be measured in barrels per day.

1225 NOTE: Renumber existing WCC 20.97.230 (definition of “May”) to WCC 20.97.231.

1226 Rationale for Changes (shown with highlighting): On January 30, 2020, the  
1227 Planning Commission approved a motion adding the above definition to the Zoning  
1228 Code (the definition was proposed by industry). This term is used in proposed  
1229 WCC 20.68.153.

### 20.97.350.1 Renewable Biomass

1231 “Renewable biomass” includes but is not limited to the following:

1232 (1) Planted crops and crop residue harvested from agricultural land.

1233 (2) Planted trees and tree residue from a tree plantation.

1234 (3) Animal waste material and animal byproducts.

1235 (4) Slash and pre-commercial thinnings.

1236 (5) Organic matter that is available on a renewable or recurring basis.

1237 (6) Algae.

1238 (7) Separated yard waste or food waste, including recycled cooking and trap grease.

1239 (8) Items 1 through 7 including any incidental, de minimis contaminants that are impractical to remove and are related to  
1240 customary feedstock production and transport.

1241 *Discussion/Notes: Adapted from based on federal renewable fuel definition,*  
1242 <https://www.law.cornell.edu/cfr/text/40/80.1401>.

## 1243 20.97.350.2 Renewable Fuel

1244 “Renewable Fuel” means liquid fuels produced from renewable biomass and limited in terms of blending with fossil fuels.  
1245 Common renewable fuels include ethanol and biodiesel:

1246 (1) "E85 motor fuel" means an alternative fuel that is a blend of ethanol and hydrocarbon of which the ethanol portion is  
1247 nominally seventy-five to eighty-five percent denatured fuel ethanol by volume that complies with the most recent version of  
1248 American society of testing and materials specification D 5798.

1249 (2) "Renewable diesel" means a diesel fuel substitute produced from nonpetroleum renewable sources, including vegetable  
1250 oils and animal fats, that meets the registration requirements for fuels and fuel additives established by the federal  
1251 environmental protection agency in 40 Code of Federal Regulations (C.F.R.) Part 79 (2008) and meets the requirements of  
1252 American society of testing and materials specification D 975.

1253 

Rationale for Changes (shown with highlighting): Federal regulations may be amended over time.

1254

1255 (3) Renewable fuels shall include those designed to result in a lifecycle greenhouse gas emission reduction of at least 50% or  
1256 more under the Federal Clean Air Act. Renewable fuels shall not include products produced from palm oil or other  
1257 feedstocks that cannot be proven to reduce greenhouse gas emissions utilizing accepted methods of the Washington State  
1258 Department of Ecology or US EPA.

1259 *Discussion/Notes: A basic renewable fuel energy source is biomass. From biomass,*  
1260 *common liquid fuel forms include ethanol and biodiesel. See:*  
1261 [https://www.eia.gov/energyexplained/?page=renewable\\_home](https://www.eia.gov/energyexplained/?page=renewable_home).

1262 Washington State defines renewable diesel and E85 motor fuel in the motor fuel  
1263 quality act (Chapter 19.112 RCW), which are integrated in the definition.

1264 Limiting fossil fuel percentages to 5% is workable for buses and power cars. See  
1265 <http://www.cleanairtrust.org/Differences-Between-E85-and-E95.html>. E85 includes 15-  
1266 25% fossil fuels and is used by flexibly fueled vehicles. See  
1267 <https://www.fueleconomy.gov/feg/flextech.shtml>.

1268 Under the EPA renewable fuel standard, three of four renewable fuel categories must  
1269 meet a 50% or 60% lifecycle greenhouse gas (GHG) reduction. A fourth conventional  
1270 renewable ethanol must meet a 20% lifecycle GHG reduction. See:  
1271 [https://www.epa.gov/renewable-fuel-standard-program/overview-renewable-fuel-](https://www.epa.gov/renewable-fuel-standard-program/overview-renewable-fuel-standard)  
1272 [standard](https://www.epa.gov/renewable-fuel-standard-program/overview-renewable-fuel-standard).

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**20.97.350.3 Renewable Fuel Refinery**

A “Renewable Fuel Refinery” means a facility that processes or produces renewable fuels. This definition excludes Small Fossil or Renewable Storage and Distribution Facilities.

**20.97.350.4 Renewable Fuel Transshipment Facilities.**

“Renewable Fuel Transshipment Facility” is a facility engaging primarily in the process of off-loading renewable fuel from one transportation method (such as a ship, truck, or railcar) and loading it onto another transportation method for the purposes of transporting the renewable fuel into and out of Whatcom County. This definition shall include bulk storage or transfer facilities for the shipment of renewable fuels without refining or consuming within the Cherry Point Industrial District and shall exclude Small Renewable Storage and Distribution Facilities.

Rationale for Changes (shown with highlighting): On August 13, 2020, the Planning Commission approved a motion to insert a new definition of Renewable Fuel Transshipment Facilities (it was previously combined with the definition of Fossil Fuel Transshipment Facilities).

**20.97.425.1 Small Fossil or Renewable Fuel Storage and Distribution Facilities**

“Small Fossil or Renewable Fuel Storage and Distribution Facilities” means:

- (1) Equipment and buildings used for purposes of direct sale or distribution to consumers of fossil fuels or renewable fuels, or
- (2) Accessory equipment that supplies fossil fuels or renewable fuels to an onsite allowed commercial or industrial operation, and that does not meet the definitions of fossil-fuel refinery, renewable fuel refinery, or fossil or renewable fuel transshipment facilities.

Rationale for Changes (shown with highlighting): Buildings may also be needed at small scale facilities.

**20.97.434.1 Technical committee.**

“Technical committee” or “technical review committee” means the designated representatives of the Whatcom County Planning and Development Services Director, who shall act as chairperson, the Whatcom County Public Works Director, and the Whatcom County Health Department Director.

# Exhibit D

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## CHAPTER 22.05 PROJECT PERMIT PROCEDURES

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### 22.05.020 Project permit processing table.

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(1) Marked boxes in the table below indicate the required general steps for processing all project permit applications or administrative actions. The requirements for each step listed in the top row of the table are provided in WCC 22.05.040 through 22.05.160, as indicated. Specific requirements for each project permit can be found through the references given in the table.

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Permit Application Processing Table	WCC Reference for Specific Requirements	Pre-Application Required (see 22.05.040)	Determination of Completeness Required (see 22.05.050)	Notice of Application Required (see 22.05.070)	Site Posting Required (see 22.05.080)	Notice of Open Record Hearing Required (see 22.05.090)	Open Record Hearing Held By: (see 22.05.090)	County Decision Maker (see 2.11.210, 22.05.120)	Appeal Body (see 2.11.210, 22.05.160, 23.60.150(H))
<b>Type I Applications (Administrative Decision with No Public Notice or Hearing)</b>									
Boundary Line Adjustment	21.03							Administrator	Hearing Examiner
Building Permit	15.04	(f)						Administrator	Hearing Examiner (i)
Natural Resource Assessment	Title 16							Administrator	Hearing Examiner
<u>Change of Use, Cherry Point Industrial District</u>	<u>Chapter 20.74</u>							<u>Administrator</u>	<u>Hearing Examiner</u>
Commercial Site Plan Review								Administrator	Hearing Examiner
Exempt Land Division	21.03							Administrator	Hearing Examiner
Floodplain Development Permit	Title 17							Administrator	Hearing Examiner
Land Disturbance Permit	15.04 and 20.80							Administrator	Hearing Examiner
Lot of Record/Lot Consolidation	20.83 and 20.97.220							Administrator	Hearing Examiner
Nonconforming Use	20.83							Administrator	Hearing Examiner
Removal of Development Moratorium	20.80.738(3)								
Shoreline Exemption	23.60	(a)						Administrator	Hearing Examiner
Zoning	22.20							Administrator	Hearing

Permit Application Processing Table	WCC Reference for Specific Requirements	Pre-Application Required (see 22.05.040)	Determination of Completeness Required (see 22.05.050)	Notice of Application Required (see 22.05.070)	Site Posting Required (see 22.05.080)	Notice of Open Record Hearing Required (see 22.05.090)	Open Record Hearing Held By: (see 22.05.090)	County Decision Maker (see 2.11.210, 22.05.120)	Appeal Body (see 2.11.210, 22.05.160, 23.60.150(H))
Interpretation									Examiner
<b>Type II Applications (Administrative Decision with Public Notice; No Public Hearing)</b>									
Administrative Use	20.84.235							Administrator	Hearing Examiner
Lot Consolidation Relief	20.83.070							Administrator	Hearing Examiner
Reasonable Use (b)	16.16							Administrator	Hearing Examiner
Shoreline Substantial (c)	23.60	(a)						Administrator (d)	Shorelines Hearings Board (h)
Shoreline Conditional Use (c)	23.60	(a)						Administrator (d)	Hearing Examiner
Short Subdivision	21.04							Administrator	Hearing Examiner
<b>Type III Applications (Hearing Examiner Decision with Public Notice and Public Hearing)</b>									
Conditional Use	20.84.200						Hearing Examiner	Hearing Examiner	Superior Court
Floodplain Development Variance	Title 17						Hearing Examiner	Hearing Examiner	Superior Court
Long Subdivision	21.05						Hearing Examiner	Hearing Examiner (g)	Superior Court
Binding Site Plan	21.07						Hearing Examiner	Hearing Examiner (g)	Superior Court
Reasonable Use (e)	16.16						Hearing Examiner	Hearing Examiner	Superior Court
Removal of Development Moratorium	20.80.738(2)						Hearing Examiner	Hearing Examiner	Superior Court
Shoreline Conditional Use	23.60	(a)					Hearing Examiner	Hearing Examiner (d)	Shorelines Hearings Board (h)
Shoreline Substantial	23.60	(a)					Hearing Examiner	Hearing Examiner (d)	Shorelines Hearings Board (h)
Shoreline Variance	23.60	(a)					Hearing Examiner	Hearing Examiner (d)	Shorelines Hearings Board (h)
Zoning or Critical	20.84.100 or						Hearing	Hearing	Superior Court

Permit Application Processing Table	WCC Reference for Specific Requirements	Pre-Application Required (see 22.05.040)	Determination of Completeness Required (see 22.05.050)	Notice of Application Required (see 22.05.070)	Site Posting Required (see 22.05.080)	Notice of Open Record Hearing Required (see 22.05.090)	Open Record Hearing Held By: (see 22.05.090)	County Decision Maker (see 2.11.210, 22.05.120)	Appeal Body (see 2.11.210, 22.05.160, 23.60.150(H))
Areas Ordinance Variance	16.16.270						Examiner	Examiner	
<b>Type IV Applications (County Council Decision with Public Notice and Public Hearing)</b>									
Development Agreement	2.11.205						Hearing Examiner	County Council	Superior Court
Major Project Permit	20.88						Hearing Examiner	County Council	Superior Court
Planned Unit Development	20.85						Hearing Examiner	County Council	Superior Court

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1318 Check marks indicate a step is required; reference letters refer to the notes in subsection (2) of this section.

1319 *Discussion/Notes: Scrubbing the Existing Code for consistency with new provisions and*  
 1320 *desired review process.*

1321 Rationale for Changes (shown with highlighting): On January 30, 2020, the Planning  
 1322 Commission passed a motion to delete the proposed change of use provisions of WCC  
 20.74.110. Therefore, the “Change of Use” permit type is no longer needed.

1324 **22.05.110 Final decisions – Type I, II, and III applications.**

1325 (1) The director or designee’s final decision on all Type I or II applications shall be in the form of a written determination or  
 1326 permit. The determination or permit may be granted subject to conditions, modifications, or restrictions that are necessary to  
 1327 comply with all applicable codes.

1328 (2) The hearing examiner’s final decision on all Type III applications per WCC 22.05.020 or appeals per WCC 22.05.160(1)  
 1329 shall either grant or deny the application or appeal.

1330 (a) The hearing examiner may grant Type III applications subject to conditions, modifications or restrictions that the  
 1331 hearing examiner finds are necessary to make the application compatible with its environment, carry out the objectives  
 1332 and goals of the comprehensive plan, statutes, ordinances and regulations as well as other official policies and objectives  
 1333 of Whatcom County.

1334 (b) Requirements:

1335 (i) Performance bonds or other security, acceptable to the prosecuting attorney, may be required to ensure  
 1336 compliance with the conditions, modifications and restrictions.

1337 (ii) Fossil or Renewable Fuel Refinery or Fossil or Renewable Fuel Transshipment Facilities: The applicant shall  
 1338 provide insurance or other financial assurance acceptable to the prosecuting attorney consistent with Section  
 1339 22.05.125.

1340 (c) The hearing examiner shall render a final decision within 14 calendar days following the conclusion of all testimony  
 1341 and hearings. Each final decision of the hearing examiner shall be in writing and shall include findings and conclusions  
 1342 based on the record to support the decision.

1343 (d) No final decision of the hearing examiner shall be subject to administrative or quasi-judicial review, except as  
1344 provided herein.

1345 (e) The applicant, any person with standing, or any county department may appeal any final decision of the hearing  
1346 examiner to superior court, except as otherwise specified in WCC 22.05.020. (Ord. 2019-013 § 1 (Exh. A); Ord. 2018-  
1347 032 § 1 (Exh. A)).

1348 **22.05.120 ~~Recommended~~ Recommendations and final decisions ~~to county council.~~ Type**  
1349 **IV applications**

1350 (1) For Type IV applications per WCC 22.05.020 the hearing examiner's recommendations to the county council may be to  
1351 grant, grant with conditions or deny an application. The hearing examiner's recommendation may include conditions,  
1352 modifications or restrictions as may be necessary to make the application compatible with its environment, carry out the  
1353 objectives and goals of the comprehensive plan, statutes, ordinances and regulations as well as other official policies and  
1354 objectives of Whatcom County.

1355 (2) Each recommended decision of the hearing examiner for an application identified as a Type IV application per WCC  
1356 22.05.020 shall be in writing to the clerk of the county council and shall include findings and conclusions based upon the  
1357 record to support the decision. Such findings and conclusions shall also set forth the manner in which the decision carries out  
1358 and conforms to the county's comprehensive plan and complies with the applicable statutes, ordinances or regulations.

1359 (3) The deliberation of the county council on quasi-judicial actions shall be in accordance with WCC 22.05.090(4) and  
1360 Chapter 42.36 RCW.

1361 (4) For planned unit developments and major project permits the following shall apply:

1362 (a) The recommendation of the hearing examiner regarding planned unit developments and major project permits shall  
1363 be based upon the criteria set forth in WCC 20.85.335 and 20.88.130, respectively.

1364 (b) The hearing examiner shall file the recommendation with the clerk of the county council within 21 calendar days  
1365 following the conclusion of the open record hearing.

1366 (c) The county council shall conduct the following within the specified time frames, except as provided in subsection  
1367 (4)(c)(iii) of this section:

1368 (i) Hold a public meeting, not an open record public hearing, to deliberate on the project application within 28  
1369 calendar days after receiving the hearing examiner's recommendation.

1370 (ii) Issue a final written decision within 21 calendar days of the public meeting.

1371 (iii) The county council may exceed the time limits in subsection (4)(c)(i) or (ii) of this section if the county council  
1372 meeting schedule does not accommodate a meeting within the above time frames, or if the county council makes  
1373 written findings that a specified amount of additional time is needed to process a specific application or project  
1374 type, per RCW 36.70B.080(1).

1375 (5) The county council's final written decision may include conditions when the project is approved and shall state the  
1376 findings of fact upon which the decision is based.

1377 (a) Performance bonds or other security, acceptable to the prosecuting attorney, may be required to ensure compliance  
1378 with the conditions, modifications and restrictions.

1379 (b) Fossil or Renewable Fuel Refinery or Fossil or Renewable Fuel Transshipment Facilities: The applicant shall  
1380 provide insurance or other financial assurance acceptable to the prosecuting attorney consistent with Section 22.05.125.

1381 (6) Any deliberation or decision of the county council shall be based solely upon consideration of the record established by  
1382 the hearing examiner, the recommendations of the hearing examiner and the criteria set forth in county code, applicable state  
1383 laws and regulations, county code, the county comprehensive plan if applicable, and the county shoreline management  
1384 program, including but not limited to compliance with SEPA, WAC 197-11 (SEPA Rules) as adopted and modified in the  
1385 county code, and the county's adopted SEPA policies. (Ord. 2018-032 § 1 (Exh. A)).

1386



Rationale for Changes (shown with highlighting): Other parts of the proposal require that state permits be obtained. However, that is different than the County Council or hearing examiner evaluating criteria in state laws and regulations. It's the applicable state agency's job to evaluate state criteria, determine if those criteria are met, and then issue the permit. A copy of that permit can then be submitted to the County.

## 22.05.125 Proof of insurance for hazards created in the County

Permit applicant to provide proof of insurance naming Whatcom County as additional insured for any of the following that require a conditional use permit or major project permit:

(1) Expansion of existing fossil fuel refinery or existing fossil fuel transshipment facility;

(2) Expansion of or new renewable fuel refinery or renewable fuel transshipment facility.

Rationale for Changes (shown with highlighting): On November 14, 2019 and June 25, 2020, the Planning Commission approved motions inserting the insurance language above. The Planning Commission recommended deleting the insurance language below from the original Council proposal.

~~At the time of Type I, II, III, or IV applications addressing production capacity or storage tank increases at fossil fuel refineries, fossil fuel transshipment facilities, renewable fuel refineries, or renewable fuel transshipment facilities (Facilities), the applicant shall provide proof of insurance or other financial security acceptable to the prosecuting attorney, which may include a parent company corporate guarantee to cover loss or damages to the County and to County residents from any fire, explosion, spill or other sudden incident from operations of the Facility or from transport of materials, goods, products or waste within the boundaries of Whatcom County. This requirement shall also be met for Type I changes in use from fossil fuel refineries or transshipment facilities to renewable fuel refineries or transshipment facilities. The required policies and any parent company corporate guarantee shall contain the following Coverage Terms:~~

~~(1) Insureds: The Primary Named Insured shall include the Permitted Entity(ies). The County shall be included as additional Insured and shall be provided complete copies of applicable insurance policies and endorsements.~~

~~(2) Insuring Agreements: Insurance shall pay on behalf of the Insured for loss from third party bodily injury, property damage or environmental remediation and restoration expenses resulting from sudden pollution conditions commencing on or after the Permit effective date, either:~~

~~(a) emanating from and beyond the boundaries of a Permitted Facility, or~~

~~(b) arising from materials or waste during transportation to or from a Permitted Facility.~~

~~(3) Policy Limits: Policy limits shall be no less than \$100 million for each Loss / total for all Losses. The required limits may be revised periodically by the County based on factors including inflation adjustments and Permit or Facility specific risks.~~

*Discussion/Note: Minimum insurance amounts could be increased, but at levels above \$50 million to \$100 million may not be available in the insurance market. We suggest taking out the \$100 million liability limit and substituting language that determines the liability limit as each permit is reviewed and made part of a development agreement. Other forms of financial assurance instruments could be allowed such as a letter of credit a parent company corporate guarantee or other financial assurance acceptable to the County Prosecutor as a substitute for commercial insurance. We have included code language to*

1425 ~~that effect in this draft. The County could also indicate that the amount of financial~~  
1426 ~~assurance is to be determined at the point of an approval decision for a facility expansion~~  
1427 ~~rather than specifying an amount here.~~

1428 ~~(4) Policy Deductibles: If the Policy has a deductible, the Insurer shall be liable for the payment of amounts within any~~  
1429 ~~deductible or self insured retention amount applicable to the policy, with a right of reimbursement by the Insured for any~~  
1430 ~~such payment made by the Insurer. If the Policy has a self insured retention (SIR) amount, the Primary Named Insured shall~~  
1431 ~~declare how it intends to provide a financial assurance to the County for such SIR amount, where acceptable forms of~~  
1432 ~~financial assurance are letters of credit and certificates of deposit.~~

1433 ~~(5) Term and Cancellation Notice:~~

1434 ~~(a) Insurance shall be carried for the lifetime of the Permitted Facility.~~

1435 ~~(b) Cancellation of the insurance, whether by the Insurer, the Insured, or other entity having an insurable interest in~~  
1436 ~~and obtaining insurance on behalf of the owner or operator of the Permitted Facility, will be effective only upon~~  
1437 ~~written notice and only after the expiration of 60 days after a copy of such written notice is received by the County~~  
1438 ~~as evidenced by the return receipt.~~

1439 ~~(6) Bankruptcy: Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy.~~

1440 ~~(7) Choice of Law and Forum: The Policy shall not specify that the laws of a state other than the State of Washington apply~~  
1441 ~~in the event of any dispute regarding the validity or formation of the Policy or the meaning, interpretation or operation of any~~  
1442 ~~term, condition, definition or provision of the Policy. Policies may remain silent on choice of law and forum.~~

1443 ~~(8) Insurance Company Financial Strength — Minimum Rating: The Insurer shall meet or exceed a Financial Strength Rating~~  
1444 ~~from A.M. Best of “A” (Excellent) with a minimum Financial Size Category of XIV and a “Stable” or stronger Outlook, or~~  
1445 ~~the equivalent from another major financial rating agency.~~

1446 ~~(9) Definitions: For the purposes of this section, terms are defined as follows:~~

1447 ~~(a) Permitted Facility: Permitted Facility means a location identified in the applicable County Permit, including any~~  
1448 ~~fixed conveyances and terminal distribution systems, as well as pump and compressor stations and related facilities.~~

1449 ~~(b) Loss shall include:~~

1450 ~~(i) monetary awards or settlements of compensatory damages; and~~

1451 ~~(ii) where allowable by law, punitive, exemplary, or multiple damages; and~~

1452 ~~(iii) civil fines, penalties, or assessments.~~

1453 ~~(c) Pollution conditions shall include discharge, dispersal, release or escape, including by fire or explosion, of any solid,~~  
1454 ~~liquid, gaseous or thermal irritant or contaminant, including, but not limited to, petroleum hydrocarbons, smoke, vapors,~~  
1455 ~~soot, fumes, acids, alkalis, or other chemicals.~~

1456 ~~(d) Sudden pollution conditions may be defined by reasonable time limits for discovery and reporting to the insurer.~~

1457 ~~(e) Transportation means movement by any vehicle or mode of transit including but not limited to automobile, truck, or~~  
1458 ~~watercraft, as well as and is inclusive of loading, temporary placement during transit prior to final delivery, or~~  
1459 ~~unloading, of materials goods, products or waste, either:~~

1460 ~~(i) intended for delivery to a Permitted Facility, or~~

1461 ~~(ii) being sent from a Permitted Facility.~~

1462

August 14, 2020  
Whatcom County Council  
311 Grand Avenue, Suite 105  
Bellingham, WA 98225

### Cherry Point Amendments – Planning Commission Minority Opinion

County Council Members

I want to first thank the community, staff and commission members for the work that has been put into improving the Comprehensive Plan Amendments. I believe we came a long way in compromise from what was originally proposed and what effected industry sees as workable regulations. That said, I still cannot support the amendments. Changes in our county regulations and land use policy should show obvious benefit to our community. And while the intentions of environmental improvement and job security at Cherry Point are good, these amendments by their nature will have the opposite effect.

The proposed amendments to the Comprehensive Plan are a substantial shift from historical priorities on land use and will undoubtedly have impacts on the current and future health of our county. These impacts deserve thorough review.

**Environmental:** Global greenhouse gas emissions are not reduced by limiting local production of fossil fuels. Unchanged demand will likely shift production to facilities with lower efficiency and environmental standards, increasing global emissions. GHG reduction can only be accomplished through a reduction in consumption of fossil fuels. If the goal of these amendments is to reduce GHG emissions, a full environmental review to quantify these benefits should be expected.

**Economic:** Planning goals stated by the Growth Management Act require both environmental protection as well as economic development – specifically to promote the retention and expansion of existing businesses. Regulatory burden and uncertainty of permit approval increases risk when evaluating investment prospects and threatens the long-term sustainability of existing industry. Projects offering economic opportunity to our county will likely pass without us ever knowing, including renewable fuel developments.

**Legality:** The current amendments guarantee legal challenge, costing taxpayers while taking time and resources away from staff.

Areas of concern include:

Violation of the Takings Clause – 5<sup>th</sup> Amendment US Constitution – WA State Constitution

Equal Protections Clause – US Constitution – WA State Constitution

Due Process – Pertaining to property rights – US Constitution – WA State Constitution

Commerce Clause – US Constitution

Gives inappropriate authority to the county, attempting to enforce State and Federal Laws

Conflicts with our own Planning Goals as required by the GMA

I strongly recommend the County Council postpone the passage of the Cherry Point Comprehensive Plan and Code Amendments until a sufficient Environmental Impact Study, Economic Impact Study, and Legal Liability Review have been evaluated.

These actions will come at a cost to our community while the benefit is unknown. Encouraging these industries to thrive locally, under their already strict environmental standards, is best not only for our county's economy but for the global environment.



Jon Maberry

[Link to Cherry Point Public Comments](#)

**From:** [Council](#)  
**To:** [Dana Brown-Davis](#); [Lisa Bruner](#); [Cathy Halka](#)  
**Subject:** FW: Cherry Point Amendments - PDS Comments  
**Date:** Thursday, November 19, 2020 1:47:55 PM

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**From:** Matt Aamot  
**Sent:** Thursday, November 19, 2020 1:47:49 PM (UTC-08:00) Pacific Time (US & Canada)  
**To:** Eddy Ury; Council; Todd Donovan; Barry Buchanan; Tyler Byrd; Kathy Kershner; Ben Elenbaas; Rud Browne; Carol Frazey  
**Cc:** Brady, Pamela; Johnson, Tim; Gavin Carscallen; Andrew Gamble; Verburg, James E; Chalfant, Jeff; Brown, Brad J; Strang, Erin T; Trevor Smith; Alex Ramel; Rebecca Ponzio; Anna Doty; Mark Personius; Nick Smith; Amy Keenan  
**Subject:** Cherry Point Amendments - PDS Comments

Dear Stakeholder Group and Council:

Whatcom County Planning and Development Services (PDS) appreciates the efforts of the Stakeholder Group working on the proposed Cherry Point development regulation amendments. PDS has several thoughts/concerns/issues that we would like the Stakeholder Group, and ultimately the County Council, to address or clarify in the Cherry Point amendments:

1. **Plain Language** – Whatcom County Comprehensive Plan Goal 1A is to “Ensure that government activities, regulations and policies are transparent, accountable and easy to understand” (Chapter 1, p. 1-3). The Comprehensive Plan text also states that “. . . Regulations should be clear, concise, and predictable with enough flexibility to allow for reasonable and efficient decision making. . .” (Chapter 2, p. 2-9).

We recognize that drafting regulations relating to the Cherry Point industrial area is challenging because there are at least three distinct audiences for the regulations: The industries being regulated, PDS staff, and the public. Industry representatives have specialized knowledge that PDS staff and most members of the public do not possess. Additionally, industry may not want/be able to disclose confidential business information. There are also differing views on how these industries should be regulated. These factors all add to the difficulty of developing the regulations.

However, development regulations are evaluated for consistency with the Comprehensive Plan pursuant to [WCC 22.10.060\(2\)](#). Therefore, we would urge the Stakeholder Group and the Council to consider the Comp Plan goal of ensuring regulations are “. . . transparent, accountable and easy to understand . . .” This is especially important to allow PDS to administer the regulations in a manner that is consistent and transparent to all.

2. **Clarify Definition of Fossil Fuel Transshipment Facilities** - It is our understanding that members of the Stakeholder Group have indicated that the existing rail and pier facilities associated with the refineries are not considered "Fossil Fuel Transshipment Facilities" under proposed WCC 20.97.160.3. If this is the recommendation of the Stakeholder Group, PDS requests that it be clearly stated in the definition of Fossil Fuel Transshipment Facilities. For example, a clause could simply be added to the definition stating: "Shipping facilities associated with refineries, such as piers and rail facilities, are not Fossil Fuel Transshipment Facilities."

3. **MACDC or Transshipment Capacity / 3<sup>rd</sup> Party Engineer Review** – A conditional use permit would be required when a project increases the "maximum atmospheric crude distillation capacity" (MACDC) or maximum transshipment capacity by more than 10,000 barrels per day (proposed WCC 20.68.153). MACDC is defined in proposed WCC 20.97.230. A determination of whether a project's increase in MACDC triggers a conditional use permit would be based on an evaluation by a licensed professional engineer. It is assumed that maximum transshipment capacity (as currently proposed) would also be determined by a professional engineer. The PDS concern is that we do not have staff with expertise in these issues. It is also our understanding that the current proposed stakeholder approach would require the engineer's MACDC/Transshipment Capacity analysis and County 3<sup>rd</sup> party review before PDS could even determine whether a proposed use is permitted outright in 20.68.068 or triggers a conditional use permit under 20.68.153 (in many but not all cases). This requires that PDS would first have to develop and issue a RFQ for qualified independent consulting petroleum engineers and that we received sufficient responses to establish a roster upon which to select from to conduct subsequent 3<sup>rd</sup> party review. That process would likely take 3-4 months to establish the roster before we could fully implement this approach (i.e., begin accepting permit applications). Some additional thoughts and questions relating to these issues include:

- Are we correct in understanding that the County would have to hire a 3<sup>rd</sup> party engineer to review the industry engineer's documentation of MACDC or transshipment capacity? If so, it would seem to have to happen before they can submit a permit application (e.g., at the pre-app meeting stage). The added layer of the 3<sup>rd</sup> party review will extend the time period for PDS to make a determination on the appropriate permit path and may require an additional meeting with an applicant prior to application submittal.

- Is there any potential amongst professional petroleum engineers for significant disagreement or differing interpretation of the effect of certain refinery equipment or operations on MACDC/Transshipment Capacity? (i.e., can you advise us on the likelihood that a 3<sup>rd</sup> party engineer's review would differ from an applicant's engineer's report conclusions on MACDC to such a degree that could give PDS cause to reach a permitting path decision that differs from an applicant's perspective?)
- PDS's initial determination (after 3<sup>rd</sup> party review) of whether the proposed use is permitted outright or requires a CUP is appealable under WCC 22.11.210. How might this affect permitting timelines for industry permit applications?
- How might this effect the industry's and the public's understanding, perception or expectation of the certainty or uncertainty of the permitting process?
- Would the information in the industry engineer's evaluation include confidential business information from an industry perspective?
- If so, would it be exempt from public disclosure? This may require review by the County's legal counsel.
- Again, being non-engineers, it is our understanding that some new refinery equipment does not operate at full capacity all of the time (e.g. vacuum heaters). What level does the County determine MACDC for a specific project proposal (e.g. "normal operating conditions" or at "assumed maximum capacity conditions")? Staff assumes that the evaluation of proposed new uses or equipment on overall refinery output would be in relation to maximum capacity. Is this correct? Please note, our understanding is that some new refinery operations/equipment may not be able to (or never) reach maximum capacity because of limitations in other downstream equipment (i.e. "bottlenecks"). Does this mean that the refineries never actually reach MACDC? If so, is there any improvement that would trigger an increase in MACDC to the threshold levels requiring a CUP? Please advise.
- Related to the question above, what types of equipment and/or new uses would increase MACDC or transshipment capacity? It would be helpful if industry could provide specific examples of improvement projects that likely would/would not trigger the conditional use permit requirement as proposed in

20.68.153. For example, would a new or replacement vacuum heater that is more efficient than existing equipment increase MACDC to a threshold requiring a CUP? Other examples such as a new oxygen plant, new nitrogen plant, heat exchanger, hydrotreater, pier improvements, etc?

4. **Storage Tanks** – At this point in the process, we have concerns that the proposed storage tank regulations may not be clear, concise, and predictable (or easy to understand) for non-engineers and the public. Storage tanks are permitted under proposed WCC 20.68.068 unless a conditional use permit is required under proposed WCC 20.68.153 (certain increase in MACDC or transshipment capacity – see discussion above). Additionally, new fossil fuel transshipment facilities are prohibited under proposed WCC 20.68.205. We would like to understand:

- Under what conditions would a new tank increase MACDC or transshipment capacity? It would be helpful if industry could provide several storage tank examples/scenarios that would trigger the conditional use permit requirement.
- Under what conditions would a new tank not increase MACDC or transshipment capacity? It would be helpful if industry could provide several storage tank examples/scenarios that would not trigger the conditional use permit requirement.
- Is it the intent of these regulations to prohibit new tanks that would be used solely for transshipment?
- Is it the intent of these regulations to prohibit use of existing tanks solely for transshipment?

We recognize and appreciate that the Stakeholder Group is currently working through some of these issues. Our request is simply that the Group ask the following question for each proposed regulation and definition: Is it transparent, accountable and easy to understand for industry, PDS, and the public?

Thank you for considering our input.

Sincerely,

PDS Staff



## Cherry Point Amendments Stakeholder Revisions

For consideration by Whatcom County Council on November 24<sup>th</sup>, 2020

Jointly proposed by designated representatives of environmental advocacy groups, Cherry Point industries and organized labor, including:

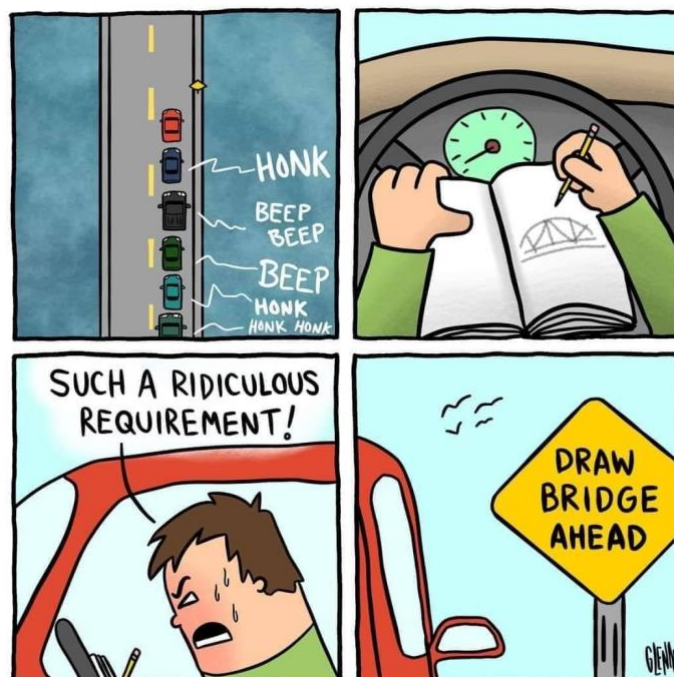
RE Sources, bp, Phillips 66, Petrogas, STAND, LiUNA 292

(WEC engaged supportively, pending final confirmation of yesterday's updated version)

Last Updated: November 24th

### Color Coding Key:

- **Red strikethrough** – text removed
- **Blue underline** – text added
- **Green (strikethrough/underline)** – language moved from one section to another, but retained
- **Black** – CP Amendments Draft (Council approved as of October 28 2020) and/or existing WCC
- **Highlights** [overlaid on any text colors shown above]: stakeholders' proposed changes



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## 20.66.200 Prohibited Uses [Light Impact Industrial (LII) District]

.204 New Fossil Fuel Refineries or new Fossil Fuel Transshipment Facilities

## 20.68.050 Permitted Uses [Heavy Impact Industrial (HII) District]

.059 Bulk commodity storage facilities, and truck, rail, vessel and transshipment terminals and facilities, except as prohibited under WCC 20.68.200. for fossil fuel facilities or fossil fuel transshipment facilities.

.068 Existing Fossil Fuel Refineries, Fossil Fuel Transshipment Facilities, Renewable Fuel Refineries, Renewable Fuel Transshipment Facilities, piers and docks legally established as of [XXX effective date of ordinance], provided that when a permit is sought for a project proposed within or attached to a facility of such classification, the applicant must disclose any capacity changes defined under WCC 20.68.153 to the county permitting authorities. Provided that a conditional use permit is not required by WCC 20.68.153, permitted uses include repairs, improvements, maintenance, modifications, remodeling or other changes including, but not limited to the following: [enumerated 1 – 25]

... (1) - (17) ...

### ~~(18) Storage Tanks~~

~~(19) Pipelines carrying petroleum or petroleum products solely within the Heavy Impact Industrial zoning district.~~

~~(20) Pipelines carrying natural gas solely within the Heavy Impact Industrial zoning district.~~

~~(21) Renewable fuel production and shipment.~~

### ~~(22) Other similar structures or activities~~

~~(21) Inter-refinery shipments of refined products and Intermediate Materials such as unfinished oils and blendstocks;~~

~~(22) Transferring Fossil Fuels during emergency scenarios where contingencies require Fossil Fuels to be moved;~~

~~(23) Necessary Fossil Fuels transfers during turn-arounds or maintenance periods.~~

~~(24) Storage Tanks, provided that the County decision maker shall include in any approval of an application for storage tanks at an existing Fossil Fuel Refinery, Fossil Fuel Transshipment Facility, Renewable Fuel Refinery, or Renewable Fuel Transshipment Facility a condition that the storage tank shall only be used in the manner described in the application and approved in the permit. The application and permit shall describe the intended use of the storage tank, including the type of fuel to be stored and, if located within a Fossil Fuel Refinery or Renewable Fuel Refinery, whether the storage tank will or will not be used for transshipment.~~

~~(25) Other similar structures or activities~~

- .070 New Renewable Fuel Refineries or Renewable Fuel Transshipment Facilities, except that new piers, docks, or wharves in the Cherry Pont Industrial District are prohibited.
- .071 Expansion of existing legal Renewable Fuel Refineries or ~~or Renewable Fuel Transshipment Facilities~~, provided that the expansion is for Renewable Fuels only.
- .081 Freight railroad switching yards and terminals, ~~except as prohibited under WCC 20.68.200, excluding uses addressed in .059.~~
- .082 Marine port facilities, ~~except as prohibited under WCC 20.68.200, excluding uses addressed in .059, and excluding new piers, docks or wharves.~~

### 20.68.150 Conditional Uses [Heavy Impact Industrial (HII) District]

.153 Expansion of existing ~~legal Fossil Fuel Refineries or expansion of existing legal Fossil Fuel Transshipment Facilities.~~ For purposes of this section, an expansion is any ~~Fossil Fuel Refinery and/or Fossil Fuel Transshipment Facility~~ development (including otherwise permitted or accessory uses), vested after the effective date of this ordinance, that meets any one of the following applicable thresholds:

- A. Cumulatively increases ~~its the facility's total M~~ maximum Atmospheric Crude Distillation Capacity of Fossil Fuels by more than 10,000 barrels (or 420,000 gallons) per day based upon an evaluation of physical equipment limitations conducted by a licensed professional engineer; or
- B. Cumulatively increases ~~the facility's total Maximum Transshipment Capacity for Fossil Fuels its maximum transshipment capacity~~ by more than 10,000 barrels (or 420,000 gallons) per day based upon an evaluation conducted by a licensed professional engineer in accordance with 20.97.230.2 ; or
- C. ~~Increases the frequency of Fossil Fuel unit train shipments by rail unloaded or loaded at an existing facility in excess of limits, if any, established by County, State or Federal authorities (where applicable) as of [XXX effective date of ordinance] or the effective date of a previously approved conditional use permit, whichever is more recent.~~

~~Cumulatively increases its maximum transshipment capacity of unrefined fossil fuels from the facility by more than 10,000 barrels (or 420,000 gallons) per day.~~

~~.154 Expansion of existing legal Fossil Fuel Refineries or expansion of existing legal Fossil Fuel Transshipment Facilities. For purposes of this section, an expansion is any Fossil Fuel Refinery and/or Fossil Fuel Transshipment Facility development (including otherwise permitted or accessory uses), vested after the effective date of this ordinance, that cumulatively increases the facility's total Maximum Transshipment Capacity for Fossil Fuels by more than 10,000 barrels (or 420,000 gallons) per day, based upon an evaluation conducted by a licensed professional engineer in accordance with 20.97.230.2 .~~

If a conditional use permit is obtained, the baseline for determining the cumulative increases is reset.

~~Such~~ Expansions, ~~as per 20.68.153 or 20.68.154,~~ shall be subject to the conditional use criteria below, ~~as applicable:~~

- (1) The conditional use permit approval criteria listed under WCC 20.84.220 are met;

(2) Within shorelines, if applicable, County approval shall be contingent upon approval of a shoreline permit;

(3) The applicant has documented to the County decision maker **(as applicable):**

- all of the anticipated types and volumes of substances to be processed, stored, or transferred in bulk **with the proposed expansion at the facility;**
- **changes** in maximum transshipment capacity **and/or** the maximum atmospheric crude distillation capacity **occurring as a result of the proposed expansion, as applicable; and**
- the mode of shipment vessels to be loaded or unloaded **with the proposed equipment and/or at the facility as a result of the proposed expansion.**

The permit shall be limited exclusively to those types and volumes of materials or products as documented and approved.

(4) Insurance requirements meet the provisions of WCC **Section** 22.05.125.

(5) Mitigation of transportation impacts consistent with Chapter 20.78 WCC, Transportation Concurrency Management, and Chapter 16.24 WCC, Commute Trip Reduction

(6) Mitigation of impacts to other services including fire and emergency response capabilities, water supply and fire flow, to address risks created by expansions.

(7) Plans for stormwater and wastewater releases have been approved.

(8) Prior to commencement of any site preparation or construction activities, all necessary state leases shall be acquired for any piers or aquatic lands improvements, and it shall be demonstrated to the **satisfaction of the** zoning administrator that the project applicant has met any federal or state permit consultation requirements, including tribal treaty rights or the provisions of the Magnuson Amendment through state and federal permitting decisions, **and**

(9) The County decision maker may approve a conditional use permit with a condition to obtain relevant leases and complete any necessary federal and state permitting requirements, and may restrict the conditional use permittee from undertaking site preparation or construction activities until it has fulfilled that condition.

(10) The permittee must inform the county permitting authorities of a change in the aforementioned disclosures so that the department can document current capacity levels to ensure that the cumulative thresholds under **WCC** 20.68.153 have not been exceeded.

**(11) The County decision maker shall include, in any approval of an application for an expansion, as per 20.68.153 or 20.68.154, a condition that the permitted equipment shall only be used in the manner described by the project proponent in the application and approved in the permit. The application shall describe the intended use, including the type of fuel to be stored and, if located at a Fossil Fuel Refinery or Renewable Fuel Refinery, whether the equipment will or will not be used for transshipment.**

## **20.68.200 Prohibited Uses [Heavy Impact Industrial District]**

.204 New **F**ossil **F**uel **R**efineries.

.205 New Fossil Fuel Transshipment Facilities. **provided that, the following uses of facilities are not prohibited: (i) inter-refinery shipments of refined products and intermediate materials such as unfinished oils and blendstocks, (ii) transferring Fossil Fuels during emergency scenarios where contingencies require Fossil Fuels to be moved, and (iii) necessary Fossil Fuels transfers during turn-arounds or maintenance periods.**

.206 New piers, docks, or wharves in the Cherry Point Industrial District.

.207 Coal-fired power plants.

### 20.74.055 Prohibited Uses [Cherry Point Industrial District]

Prohibited uses shall be the same as those prohibited in the Light Impact Industrial District **as applicable** (Chapter 20.66) and the Heavy Impact Industrial District **as applicable** (Chapter 20.68), **as applicable**, and the following:

- 1) New piers, docks, or wharves in the Cherry Point Industrial District
- (2) Conversion of **a** Renewable Fuel Refinery or Renewable Fuel Transshipment Facilities to become a Fossil Fuel Refinery or Fossil Fuel Transshipment Facilities

### 20.97 Definitions

**Note: in reviewing existing Whatcom County Code, it appears that 20.97.160 (.1-.5) and 20.97.350.1 refer to other defined terms, which could be an error in the draft amendments or otherwise is meant to align with a code scrub that has not yet been published online.**

**We adjusted numbering of definitions simply to avoid the need for additional numeric re-assigning. If this is numbering is unintentional, then other defined terms in the Cherry Point Amendments (not shown here) would also need to be renumbered. We will defer to PDS on preference for numbering, and would accept alternate numbers and ordering of defined terms as long as the definitional text shown below is amended as follows:**

- **20.97.230.1 Maximum Atmospheric Crude Distillation Capacity**

"Maximum Atmospheric Crude Distillation Capacity" or "MACDC" is the maximum number of barrels of input that the atmospheric distillation unit can process within a 24-hour period when running at maximum capacity. Maximum capacity is defined as the physical constraints of the atmospheric distillation process equipment as determined by a professional engineer licensed in the State of Washington and shall be measured in barrels per day.

- **20.97.160.230.2 Fossil Fuels.**

"Fossil Fuels" **refers to hydrocarbon compounds and composites formed as a result of geologic processes acting on the remains of organic matter, including but not limited to coal, petroleum products and byproducts,** crude oil, **intermediate materials (such as unfinished oils and blendstock),** natural gas, oil shales, bitumens, tar sands, **liquified petroleum gases,** propane, butane, and heavy oils. Renewable fuels are not **Fossil Fuels.**

- **20.97.160.x230.3 Intermediate Materials:**

"Intermediate Materials" refers to refined or partially refined **Fossil Fuel** products that are produced at a refinery by processing crude oil and other petroleum-based feedstocks that can be further processed to produce refined products or other blending components. Under this definition, feedstocks such as "topped crude" are not intermediate materials.

- 20.97.230.4 Maximum Transshipment Capacity

The calculation of Maximum Transshipment Capacity shall be conducted by a professional engineer licensed in the State of Washington and shall consist of one or a combination of the following limitations:

1. The maximum physical limit of a facility's capacity for off-loading Fossil Fuels from one or more modes of shipment (i.e., rail, truck, pipeline, etc.), then storing and/or loading such Fossil Fuels, without processing through a Fossil Fuel Refinery, onto another mode of shipment to be transported outside of the designated zoning district boundaries [such as the Cherry Point Industrial District], based on the facility's maximum physical limits to move Fossil Fuels from the receipt points of all its inbound shipment methods to the delivery points of all its outbound shipment methods ~~at the facility~~, including the capacities or other physical attributes of the facility's equipment, including but not limited to capacities of:
  - i. loading equipment;
  - ii. offloading equipment;
  - iii. pumps and/or compressors;
  - iv. bulk storage;
  - v. piping hydraulics; or
  - vi. any combination of the above.

The capacity calculation shall exclude any equipment installed with a permit condition that prohibits that equipment from being used for transshipment purposes.

2. Shipment limitations imposed by County, State or Federal authorities that can be demonstrated by the applicant to restrict the frequency and/or annual amount of Fossil Fuel shipments at its facility. If any such limitations form the basis of a Maximum Transshipment Capacity calculation, then any future increases in Fossil Fuel shipments above those previously imposed limits would constitute an increase in Maximum Transshipment Capacity.

- 20.97. ~~160.3230.5~~ 230.5 Fossil Fuel Transshipment Facility ~~ies~~.

"Fossil Fuel Transshipment Facility" is ~~a facility, as an entire complex, consisting of its individual units, equipment, or components, which in aggregate,~~ ~~engages~~ primarily in the process of off-loading Fossil Fuels from one ~~or more modes of shipment (i.e., rail, truck, pipeline, etc.), transportation method (such as ship, truck or railcar) and then~~ storing and/or loading such Fossil Fuels ~~it,~~ without processing through a Fossil Fuel Refinery, onto another mode of shipment to be transported outside of the designated zoning district boundaries, such as the Cherry Point Industrial District. ~~transportation method for the purposes of transporting the shipment into and/or out of Whatcom County.~~ This definition ~~shall include bulk storage or transfer facilities for the shipment of crude oil without refining or consuming the Cherry Point Industrial District and~~ shall exclude Small Fossil or Renewable ~~Fuel~~ Storage and Distribution Facilities.

- **20.97.350.4230.6 Renewable Fuel Transshipment Facility**<sup>ies</sup>.  
 “Renewable Fuel Transshipment Facility” **a facility, is an entire complex, consisting of its individual units, equipment, or components which in aggregate** engages primarily in the process of off-loading **Renewable Fuels and/or Renewable Biomass** from one **mode of shipment (i.e., rail, truck, pipeline, etc.)** ~~transportation method (such as a ship, truck, or railcar)~~ then storing and/or loading **such fuels it without processing through a Renewable Fuel Refinery or Fossil Fuel Refinery,** onto another **mode of shipment to be transported outside of the designated zoning district boundaries, such as the Cherry Point Industrial District.** ~~transportation method for the purposes of transporting the shipment renewable fuel into and/or out of Whatcom County.~~ This definition shall exclude Small Fossil or Renewable **Fuel** Storage and Distribution Facilities.

**20.97.350.3230.7 Renewable Fuel Refinery**

A “Renewable Fuel Refinery” means a facility that processes or produces renewable fuels. This definition excludes Small Fossil or Renewable Storage and Distribution Facilities.

**Note: we did not discuss a change to the definition of Renewable Fuel Refinery, but it may warrant revisiting to maintain consistency with the definition of fossil fuel refinery.**

- **20.97.160.4230.8 Fossil Fuel Refinery**  
 A “Fossil Fuel Refinery” is **a facility, an entire complex, consisting of its individual units, equipment, or components, which in aggregate** ~~that~~ **engages primarily in receiving and converting Fossil Fuels and other liquids** into **petroleum** products including but not limited to gasoline, distillates such as diesel fuel and heating oil, jet fuel, petrochemical feedstocks, waxes, lubricating oils, **Intermediate Materials,** and asphalt. Fossil Fuel Refinery ~~facility~~ uses include **receiving feedstocks,** bulk storage, manufacturing, or processing of **Fossil Fuels, Intermediate Materials** or byproducts, and shipment of those processed materials to downstream customers. **The following activities do not render a Fossil-Fuel Refinery a Fossil-Fuel Transshipment Facility: (i) inter-refinery shipments of refined products and Intermediate Materials such as unfinished oils and blendstocks, (ii) transferring Fossil Fuels during emergency scenarios where contingencies require Fossil Fuels to be moved, and (iii) necessary Fossil Fuels transfers during turn-arounds or maintenance periods.** This definition shall exclude Small Fossil or Renewable **Fuel** Storage and Distribution Facilities.



**From:** [Council](#)  
**To:** [Dana Brown-Davis](#); [Lisa Bruner](#); [Cathy Halka](#)  
**Subject:** FW: Cherry Point Amendments - PDS Comments on Proposed Revisions (Nov 24)  
**Date:** Wednesday, November 25, 2020 1:53:59 PM

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**From:** Matt Aamot  
**Sent:** Wednesday, November 25, 2020 1:53:55 PM (UTC-08:00) Pacific Time (US & Canada)  
**To:** Eddy Ury; Council; Todd Donovan; Barry Buchanan; Tyler Byrd; Kathy Kershner; Ben Elenbaas; Rud Browne; Carol Frazey  
**Cc:** Brady, Pamela; Johnson, Tim; Gavin Carscallen; Andrew Gamble; Verburg, James E; Chalfant, Jeff; Brown, Brad J; Strang, Erin T; Trevor Smith; Alex Ramel; Rebecca Ponzio; Anna Doty; Mark Personius; Nick Smith; Amy Keenan; Karen Frakes  
**Subject:** Cherry Point Amendments - PDS Comments on Proposed Revisions (Nov 24)

Dear Stakeholder Group:

Thank you for sending PDS a copy of the "Cherry Point Amendments Stakeholder Revisions" submitted to the County Council on Nov. 24, 2020. We appreciate and value the Stakeholder Group's hard work and diligence on this matter. PDS staff has the initial comments on the proposed changes:

### **General Comments**

Generally speaking, we are still concerned about the degree to which proposed regulations are "transparent, accountable and easy to understand" (see our 11/19/2020 e-mail). As mentioned at the Council Committee of the Whole meeting yesterday, we would like the Stakeholder Group to apply the proposed regulations to a number of scenarios or examples to get a sense of whether the Council, PDS, and the Stakeholder Group would interpret the (sometimes complex) regulations in a similar fashion. This would also provide some level of transparency for the public relating to what the proposed regulations might mean for County review of different types of projects. We would appreciate receiving this information in writing.

### **Specific Comments**

We also have the following specific questions/comments on the proposed amendments that we are hoping the Stakeholder Group can address:

Proposed WCC 20.68.153.C – This section requires a conditional use permit for expansion of Fossil Fuel Refineries when, among other things, the expansion:

Increases the frequency of Fossil Fuel unit train shipments by rail unloaded or loaded at an existing facility in excess of limits, if any, established by County, State or Federal authorities (where



applicable) as of [XXX effective date of ordinance] or the effective date of a previously approved conditional use permit, whichever is more recent.

If a refinery could increase the train shipments without physical improvements (outside the RR R-O-W), would the County have the authority to permit an increase in rail traffic? Or is this preempted by the Federal government? This may initially be a question for industry (is it possible to increase train traffic without physical improvements). If so, it may be prudent to have County's legal counsel review the proposed language.

Conditional Use Criteria – When expansion of Fossil Fuel Refineries (20.68.153) was separated from Fossil Fuel Transshipment Facilities (20.68.154), the approval criteria relating to both .153 and .154 were left hanging (don't appear to have a code citation). It may be cleaner to insert the conditional use criteria under both .153 and .154 so the code citations are clear.

#### Transshipment by Refineries

The proposal allows transshipment by Fossil Fuel Refineries that, by definition, are not Fossil Fuel Transshipment Facilities.

Proposed WCC 20.68.068(24) allows the following as a permitted use (as long as none of the conditional use thresholds are met):

Storage Tanks, provided that the County decision maker shall include in any approval of an application for storage tanks at an existing Fossil Fuel Refinery, Fossil Fuel Transshipment Facility, Renewable Fuel Refinery, or Renewable Fuel Transshipment Facility a condition that the storage tank shall only be used in the manner described in the application and approved in the permit. The application and permit shall describe the intended use of the storage tank, including the type of fuel to be stored and, if located within a Fossil Fuel Refinery or Renewable Fuel Refinery, **whether the storage tank will or will not be used for transshipment.**

Proposed WCC 20.68.153(B) requires a conditional use permit for a Fossil Fuel Refinery expansion if, among other things, it:

Cumulatively increases the facility's total **Maximum Transshipment Capacity for Fossil Fuels** by more than 10,000 barrels (or 420,000 gallons) per day based upon an evaluation conducted by a licensed professional engineer in accordance with 20.97.230.2.

Proposed conditional use criterion 11 states:

(11) The County decision maker shall include, in any approval of an application for an expansion, as per 20.68.153 or 20.68.154, a condition that the permitted equipment shall only be used in the manner described by the project proponent in the application and approved in the permit. The application shall describe the intended use, including the type of fuel to be stored and, if located at a Fossil Fuel Refinery or Renewable Fuel Refinery, **whether the equipment will or will not be used for transshipment.**

The fact that Fossil Fuel Refineries may transship fossil fuels raises the question of how much they can transship without processing on site? How would it be viewed if an existing Refinery imported exactly the same amount of crude oil but, instead of refining all of this crude oil on site, proposed to ship out some of it? It can be assumed that this would be a permitted use, if the Maximum Transshipment Capacity is increased by less than 10,000 barrels/day. If Maximum Transshipment Capacity is increased by more than 10,000 barrels/day of crude oil, it would require a conditional use permit. But at what point would it be considered a New Fossil Fuel Transshipment Facility that is prohibited under proposed WCC 20.68.205? Would it be when 25%, 50%, or some other % of this crude oil is transshipped (instead of refined on site)?

Proposed WCC 20.97.230.4 – Clause # 1 of the definition of Maximum Transshipment Capacity is somewhat complex. The scenarios will give us a sense of the meaning of this definition, but ultimately, an engineer will have to determine whether clause # 1 is met in any given case (same for MACDC). We would like some examples of what improvements/activities, other than changes to the DNR lease limiting the number of vessels/year, would constitute an increase in the Maximum Transshipment Capacity?

Thank you for considering our input.

Sincerely,

PDS Staff



# Whatcom County

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

## Agenda Bill Master Report

File Number: MIN2020-113

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<b>File ID:</b>	MIN2020-113	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/18/2020	<b>Entered by:</b>	KFelbing@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Minutes Consent		
<b>Assigned to:</b>	Council			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

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

### TITLE FOR AGENDA ITEM:

Committee of the Whole for November 10, 2020

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Draft Minutes Committee of the Whole Nov 10 2020

**Whatcom County  
Council Committee of the Whole**

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



**Committee Minutes - Draft Minutes**

VIRTUAL MEETING - MAY BEGIN EARLY; ENDS NO  
LATER THAN 2:15 P.M.

**Tuesday, November 10, 2020**

**1:25 PM**

**Virtual Meeting**

**COUNCILMEMBERS**

Rud Browne  
Barry Buchanan  
Tyler Byrd  
Todd Donovan  
Ben Elenbaas  
Carol Frazey  
Kathy Kershner

**CLERK OF THE COUNCIL**

Dana Brown-Davis, C.M.C.

## Call To Order

Council Chair Barry Buchanan called the meeting to order at 11:10 p.m. in a virtual meeting.

## Roll Call

**Present:** 7 - Rud Browne, Barry Buchanan, Tyler Byrd, Todd Donovan, Carol Frazey, Ben Elenbaas and Kathy Kershner

**Absent:** None

## Committee Discussion

1. [AB2020-219](#) Discussion and update on strategies and other items related to COVID-19 (Council and Health Board)

Erika Lautenbach, Health Department Director, updated the Councilmembers on the following:

- Increases in COVID-19 cases: The Health Department hopes that it is a short-term spike.
- Statistics for Whatcom County on where the virus have been contracted, with the majority coming from within a household or at social events.
- Progress on a COVID-19 vaccine, the roles of the State and the Health Department in administration, and a phased approach of administration starting with priority populations.

She discussed with Councilmembers concerns about unforeseen consequences of the vaccine, work with Peace Health on medical search planning, mental health services associated with the COVID-19 crisis, and volunteer fatigue. She stated the community is needing able volunteers.

Satpal Sidhu, County Executive, and Lautenbach discussed with Councilmembers an idea to identify and recognize key volunteers who have served in the last six months and where people can go to see volunteer opportunities online.

**This agenda item was DISCUSSED.**

2. [AB2020-523](#) Discussion of proposed ordinance designating a Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program within Whatcom County

Donovan briefed the Councilmembers on the role of the County in administration of the program and the impact it would have on County Government. The following people also spoke:

- Rebecca Xczar, County Assessor
- Satpal Sidhu, County Executive

They discussed the impacts as listed in the Municipal Research CPACER Information document (on file), looking at model documents, how to collect funds associated with the program, where the program should be housed in the County, ways to make up for costs of staff time, and whether collaborating with other counties for administration of the program could save money.

**This agenda item was DISCUSSED.**

**Items Added by Revision**

There were no agenda items added by revision.

**Other Business**

Dana Brown-Davis, Clerk of the Council, discussed with Councilmembers when the next committee meeting will start.

**Adjournment**

The meeting adjourned at 1:45 p.m.

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WA

\_\_\_\_\_  
Dana Brown-Davis, Council Clerk

\_\_\_\_\_  
Barry Buchanan, Council Chair

\_\_\_\_\_  
Kristi Felbinger, Minutes Transcription



# Whatcom County

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

## Agenda Bill Master Report

File Number: MIN2020-114

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<b>File ID:</b>	MIN2020-114	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/19/2020	<b>Entered by:</b>	KFelbing@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Minutes Consent		
<b>Assigned to:</b>	Council			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

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Primary Contact Email: [KFelbing@co.whatcom.wa.us](mailto:KFelbing@co.whatcom.wa.us)

### TITLE FOR AGENDA ITEM:

Regular County Council for November 10, 2020

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Draft Minutes Council Nov 10 2020

# **Whatcom County Council**

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



## **Minutes - Draft Minutes**

**VIRTUAL MEETING - VIEW ONLINE**

**Tuesday, November 10, 2020**

**6 PM**

**Virtual Meeting**

### **COUNCILMEMBERS**

Rud Browne  
Barry Buchanan  
Tyler Byrd  
Todd Donovan  
Ben Elenbaas  
Carol Frazey  
Kathy Kershner

### **CLERK OF THE COUNCIL**

Dana Brown-Davis, C.M.C.



## COUNTY COUNCIL

### CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 6:01 p.m. in a virtual meeting.

### ROLL CALL

**Present:** 7 - Rud Browne, Barry Buchanan, Tyler Byrd, Todd Donovan, Carol Frazey, Ben Elenbaas, and Kathy Kershner

**Absent:** None

### FLAG SALUTE

### ANNOUNCEMENTS

### COUNTY EXECUTIVE'S REPORT

Satpal Sidhu, County Executive, stated he did not have a report.

### MINUTES CONSENT

*Donovan moved* to accept the minutes consent items. The motion was seconded by Kershner (see votes on individual items below).

1. [MIN2020-103](#) Special Council Cherry Point Work Session for October 20, 2020

**Donovan moved and Kershner seconded that the Minutes Consent be . The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Donovan, Frazey, Elenbaas, and Kershner

**Nay:** 0

**Absent:** 0

**Temp Absent:** 1 - Byrd

2. [MIN2020-104](#) Water Work Session for October 20, 2020

**Donovan moved and Kershner seconded that the Minutes Consent be APPROVED BY CONSENT. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Donovan, Frazey, Elenbaas, and Kershner

**Nay:** 0

**Absent:** 0

**Temp Absent:** 1 - Byrd

3. [MIN2020-106](#) Special Council Budget Work Session for October 29, 2020

**Donovan moved and Kershner seconded that the Minutes Consent be APPROVED BY CONSENT. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Donovan, Frazey, Elenbaas, and Kershner

**Nay:** 0

**Absent:** 0

**Temp Absent:** 1 - Byrd

- 4. [MIN2020-107](#) Special Council Cherry Point Work Session for October 28, 2020

**Donovan moved and Kershner seconded that the Minutes Consent be APPROVED BY CONSENT. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Donovan, Frazey, Elenbaas, and Kershner

**Nay:** 0

**Absent:** 0

**Temp Absent:** 1 - Byrd

**PUBLIC HEARINGS**

- 1. [AB2020-445](#) Ordinance adopting amendments to Whatcom County Code 20.72, Point Roberts Special District

Council staff played a short video about how to speak at the meeting.

Buchanan opened the Public Hearing and the following people spoke:

- Allison Calder
- Steve Wolff

Hearing no one else, Buchanan closed the public hearing.

**Donovan moved and Byrd seconded that the Ordinance Requiring a Public Hearing be ADOPTED. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Frazey, Elenbaas, and Kershner

**Nay:** 0

**Absent:** 0

Enactment No: ORD 2020-056

- 2. [AB2020-310](#) Ordinance granting Gordon Montgomery and John Milobar, a non-exclusive franchise for the provision of sewer services

Buchanan opened the Public Hearing and the following person spoke:

- Dannon Traxler

Hearing no one else, Buchanan closed the public hearing.

Christopher Quinn, Prosecuting Attorney's Office, briefed the Councilmembers on the substitute Ordinance. He answered whether the franchise agreement will ever expire and come back for reconsideration.

**Donovan moved and Frazey seconded that the SUBSTITUTE Ordinance Requiring a Public Hearing be ADOPTED. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Frazey, Elenbaas, and Kershner

**Nay:** 0

**Absent:** 0

Enactment No: ORD 2020-057

### **OPEN SESSION (20 MINUTES)**

Council staff played a short video about how to speak at the meeting.

Buchanan opened the Open Session and the following people spoke:

- Lance Calloway spoke about the Ordinance imposing an interim moratorium on the acceptance and processing of applications and permits for new or expanded facilities in the Cherry Point urban growth area, the primary purpose of which would be the shipment of unrefined fossil fuels not to be processed at Cherry Point
- Doug Gustafson spoke about Unity Village temporary tiny home community in Fairhaven and support of efforts to shelter more individuals
- Eddy Ury spoke about the C-PACER program and proposed Cherry Point amendments
- Heather Katahdin spoke about the need for more shelter options and a nighttime warming center
- Trevor Smith spoke about the Ordinance imposing an interim moratorium on the acceptance and processing of applications and permits for new or expanded facilities in the Cherry Point urban growth area, the primary purpose of which would be the shipment of unrefined fossil fuels not to be processed at Cherry Point
- Miguel Perry spoke about the Ordinance imposing an interim moratorium on the acceptance and processing of applications and

permits for new or expanded facilities in the Cherry Point urban growth area, the primary purpose of which would be the shipment of unrefined fossil fuels not to be processed at Cherry Point

- Kim Sauter spoke about a budget proposal to freeze a position for mental health deputies in the Sheriff's Office
- Markus Dee Stidham spoke about the need for emergency shelter and using pallet shelters
- Louise Cassidy spoke about garbage service in Point Roberts
- Christopher Watrobka spoke about the Ordinance imposing an interim moratorium on the acceptance and processing of applications and permits for new or expanded facilities in the Cherry Point urban growth area, the primary purpose of which would be the shipment of unrefined fossil fuels not to be processed at Cherry Point
- Mary Stidham spoke about using CARES Act dollars to buy pallet shelters and a budget proposal to freeze a position for mental health deputies in the Sheriff's Office
- Shari Lapof spoke about providing shelter using pallet shelters and the availability of drinking water and free food in downtown Bellingham

Hearing no one else, Buchanan closed the Open Session.

## **CONSENT AGENDA**

*Byrd* reported for the Finance and Administrative Services Committee and *moved* to approve Consent Agenda items one through 21. Councilmembers discussed and voted on those items (see votes on individual items below\*\*).

*\*\*Clerk's note:* The Consent Agenda was reconsidered later in the meeting. The actions below represent the original and the final action taken on each item except for AB2020-488. The original action for that item is listed in a note under the agenda title in this section and the final action for that item is under the second Consent Agenda Header later in the meeting.

### **(From Council Finance and Administrative Services Committee)**

1. [AB2020-475](#) Request authorization for the County Executive to enter into a contract between Whatcom County and Downtown Bellingham Partnership to reimburse operational losses due to COVID-19, in the amount of \$56,033

**Byrd moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

2. [AB2020-515](#) Request authorization for County Executive to enter into contract between Whatcom County and Aha! Childcare and Family Learning Center for economic losses due to COVID-19 in an amount not to exceed \$45,000

**Byrd moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

3. [AB2020-516](#) Request authorization for County Executive to enter into an agreement between Whatcom County and Gabriel's Art Kids for economic losses due to COVID-19 in an amount not to exceed \$90,000

**Byrd moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

4. [AB2020-517](#) Request authorization for the County Executive to enter into an agreement between Whatcom County and The Seedlings Early Learning Center, Inc. for economic losses due to COVID-19 in an amount not to exceed \$50,000

**Byrd moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

5. [AB2020-518](#) Request authorization for County Executive to enter into a contract amendment between Whatcom County and MORE Smiles Learning for economic losses due to COVID-19 in the amount of \$50,000 for a total amended contract amount not to exceed \$100,000

**Byrd moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

6. [AB2020-519](#) Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Whatcom Family YMCA for economic losses due to COVID-19 in the amount of \$131,000 for a total amended contract amount not to exceed \$426,221

**Byrd moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

7. [AB2020-499](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Mt Baker School District for reimbursement of eligible COVID-related PPE expenses, in the amount of \$94,325

**Byrd moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

8. [AB2020-505](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Nooksack Valley School District for reimbursement of eligible COVID-related PPE and technology expenses, in the amount of \$82,755

**Byrd moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

9. [AB2020-506](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Lynden School District for reimbursement of eligible COVID-related technology expenses, in the amount of \$146,025

**Byrd moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

10. [AB2020-507](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Blaine School District for reimbursement of eligible COVID-related PPE and technology expenses, in the amount of \$94,905

**Byrd moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

11. [AB2020-476](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington Department of Fish and Wildlife for FY2019 Operation Stonegarden (OPSG), in the amount \$25,000

**Byrd moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

12. [AB2020-477](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and City of Sumas for FY2019 Operation Stonegarden (OPSG), in the amount of \$60,000.00

**Byrd moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

13. [AB2020-478](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and City of Lynden for FY2019 Operation Stonegarden (OPSG), in the amount of \$30,000.00

**Byrd moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

14. [AB2020-479](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the City of Ferndale for FY2019 Operation Stonegarden (OPSG) in the amount of \$30,000

**Byrd moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

15. [AB2020-480](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the City of Everson for FY2019 Operation Stonegarden (OPSG) in the amount of \$60,000

**Byrd moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

16. [AB2020-481](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and City of Blaine for FY2019 Operation Stonegarden (OPSG) in the amount of \$31,948.00

**Byrd moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

17. [AB2020-474](#) Request authorization for the County Executive to enter into a contract between Whatcom County and Whidbey Telephone Company for Communications Site Lease, in the amount of \$33,155.94

**Byrd moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**



**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

18. [AB2020-482](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and U.S. Department of Justice Organized Crime Drug Enforcement Task Forces (OCDETF) for reimbursement of overtime of Whatcom County Sheriff's Office Deputies engaged in Federal Organized Crime Drug Enforcement Task Force investigations, in the amount of \$10,000.00

**Byrd moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

19. [AB2020-483](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and U.S. Department of Justice Organized Crime Drug Enforcement Task Forces (OCDETF) for reimbursement of overtime of Whatcom County Sheriff's Office Deputies engaged in Federal Organized Crime Drug Enforcement Task Force investigations, in the amount of \$2,500.00

**Byrd moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

20. [AB2020-488](#) Request authorization for the County Executive to enter into a contract between Whatcom County and Securus Technologies, LLC to provide Inmate Communication Services for commission percentage rates of 30% months 1-36, 47% months 37-48 and 55% months 49+

*Clerk's note on AB2020-488:* The first time this item was considered it was Authorized by Consent 6-1 with Elenbaas opposed. However, after Other Items from the Finance and Administrative Services Committee, all of the Consent Agenda items were reconsidered and this item was voted on separately. The motion and vote for this item can be found under the second "Consent Agenda" header below.

21. [AB2020-500](#) Request authorization for the County Executive to enter into a contract amendment between Whatcom County and Julota to renew the annual contract and integrate the Advanced DataMart Interface in the amount of \$46,088.80 for a total amended

contract amount of \$85,021.30

**Byrd moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

## **OTHER ITEMS**

### **(From Council Natural Resources Committee)**

1. [AB2020-497](#) Public Works staff will provide an update to Council on the discussion at the WRIA1 Watershed Management Board meeting on October 29, 2020 of the County Executive's Comprehensive Water Settlement concept and request that Council make a motion to proceed with the settlement concept

*Donovan* reported for the Natural Resources Committee and *moved* that the Council approve bringing the framework forward as proposed by the Executive, and moving that forward, recognizing that it is not exclusive to adjudication.

The motion carried by the following vote:

**Aye:** 6 - Frazey, Kershner, Browne, Buchanan, Byrd, and Donovan

**Nay:** 1 - Elenbaas

**This matter was DISCUSSED AND MOTION(S) APPROVED**

### **(From Council Finance and Administrative Services Committee)**

2. [AB2020-449](#) Ordinance amending the project budget for the Civic Center Improvement Fund, Request No. 1 in the amount of \$4,350,000

**Byrd reported for the Finance and Administrative Services Committee and moved that the Ordinance be ADOPTED. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

Enactment No: ORD 2020-058

3. [AB2020-450](#) Ordinance amending the 2020 Whatcom County Budget, request no. 20, in the amount of \$4,476,128

*Byrd* reported for the Finance and Administrative Services Committee and *moved* that the Ordinance be adopted.

Byrd thanked the Facilities Department for their forethought on this item to get the most for the money by breaking it down in smaller chunks.

**Byrd's motion that the Ordinance be ADOPTED carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

Enactment No: ORD 2020-059

4. [AB2020-492](#) Request authorization for the County Executive to enter into a FEMA Public Assistance grant contract between Whatcom County and the Washington State Military Department for the emergency protective measures as well as the repair and restoration of damaged public facilities as approved by FEMA in project worksheets describing eligible scopes of work and associated funding

*Byrd* reported for the Finance and Administrative Services Committee and *moved* that the Contract be authorized.

Byrd stated there was additional information on this item but that it was just supplemental and did not change anything.

**Byrd's motion that the Contract be AUTHORIZED carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Frazey, Elenbaas, and Kershner

**Nay:** 0

**Absent:** 0

5. [AB2020-503](#) Resolution approving a salary schedule and policies for Unrepresented Whatcom County Employees effective January 1, 2021, through December 31, 2021

**Byrd reported for the Finance and Administrative Services Committee and moved that the Resolution be APPROVED. The motion carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Frazey, Elenbaas, and Kershner

**Nay:** 0

**Absent:** 0

Enactment No: RES 2020-046

6. [AB2020-521](#) Request authorization for the County Executive to enter into a contract amendment between G6 Hospitality Properties, LLC and Whatcom County to extend the lease term through February 28, 2021 with the option to extend an additional three months through May 30, 2021 at an increased of \$10,000 in the monthly base rent

*Byrd* reported for the Finance and Administrative Services Committee and *moved* that the substitute Contract be authorized.

Browne acknowledged Byrd for his efforts on this item.

**Byrd's motion that the SUBSTITUTE Contract be AUTHORIZED carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

7. [AB2020-526](#) Resolution requesting the County transition from paper to digital and decrease our environmental impact, streamline processes, support transparency, and cut expenses

*Byrd* reported for the Finance and Administrative Services Committee and *moved* that the Resolution be approved.

Councilmembers discussed the motion and the Resolution.

**Byrd's motion that the Resolution be APPROVED carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Frazey, Elenbaas, and Kershner

**Nay:** 0

**Absent:** 0

Enactment No: RES 2020-047

8. [AB2020-527](#) Resolution requesting Whatcom County distribute surplus computers and similar devices to the community

*Byrd* reported for the Finance and Administrative Services Committee and *moved* that the Resolution be approved.

Byrd briefed the Councilmembers and stated he would like to hear from non-profits if they would like to coordinate with the County.

**Byrd's motion that the Resolution be APPROVED carried by the following vote:**

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Frazey, Elenbaas, and Kershner

Nay: 0

Absent: 0

Enactment No: RES 2020-048

## **CONSENT AGENDA (2)**

Donovan stated that he voted yes on item 20 of the Consent Agenda but did not want to vote yes.

*Byrd moved* to reconsider all the Consent Agenda items. The motion was seconded Buchanan.

The motion to reconsider carried by the following vote:

**Aye:** 7 - Kershner, Browne, Buchanan, Byrd, Donovan, Elenbaas, and Frazey

**Nay:** 0

*Byrd moved* to approve all the Consent Agenda items except for item number 20 (AB2020-488).

The motion to approve Consent Agenda Items 1-19 and 21 carried by the following vote:

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

*Clerk's note:* See vote on Item number 20 below.

20. [AB2020-488](#) Request authorization for the County Executive to enter into a contract between Whatcom County and Securus Technologies, LLC to provide Inmate Communication Services for commission percentage rates of 30% months 1-36, 47% months 37-48 and 55% months 49+

*Byrd* reported for the Finance and Administrative Services Committee and *moved* to approve Consent Agenda item number 20 (AB2020-488).

Councilmembers discussed a concern about putting the burden of charges on or making revenue from people who are incarcerated and awaiting trial, whether there is an alternative way to provide the call service free of charge, whether the County is required to have a system in place that allows inmates to make personal calls, and whether it is ethical for the County to make money from the revenue received by the vendor.

The following people also provided more information and answered questions:

- Tyler Schroeder, Executive's Office
- Bill Elfo, Sheriff

Elfo answered questions about whether the County should generate revenue from people who are incarcerated, whether inmates are charged for calls made in regards to their cases, what the County does with the revenue collected from the fees, whether there would be no service at all if this contract is not renewed, why one would not want inmates to have unrestricted and unmonitored access to calls, and whether the County could not take a commission from the vendor.

Councilmembers discussed where to go from here with services provided and alternative sources of revenues for the General Fund.

**Byrd's motion that the Contract be AUTHORIZED BY CONSENT carried by the following vote:**

**Aye:** 5 - Browne, Buchanan, Frazey, Elenbaas, and Kershner

**Nay:** 2 - Byrd, and Donovan

**Absent:** 0

## **OTHER ITEMS (2)**

### **(From Council Public Works and Health Committee)**

Frazey reported for the Public Works and Health Committee and stated that AB2020-486 was held in Committee.

9. [AB2020-498](#) Presentation of the 2020 Public Works Winter Snow and Ice Policy and request for a motion from Council in support of the policy

**Frazey** reported for the Public Works and Health Committee and *moved* that the Council support the proposed 2020 Public Works Winter Snow and Ice Policy.

Councilmembers discussed the motion and the policy.

The motion carried by the following vote:

**Aye:** 7 - Byrd, Donovan, Elenbaas, Frazey, Kershner, Browne, and Buchanan

**Nay:** 0

**This agenda item was DISCUSSED AND MOTION(S) APPROVED.**

10. [AB2020-431](#) Resolution affirming racism as a Public Health Crisis

Frazey reported for the Public Works and Health Committee and stated that this item was Held in Committee.

**This agenda item was HELD IN COMMITTEE.**

11. [AB2020-525](#) Resolution recognizing inequality and unconscious bias and its effects on community health

Frazey reported for the Public Works and Health Committee and stated that this item was withdrawn by the proposer.

Elenbaas spoke about conversations he would like to have the with Public Health Advisory Board (PHAB) concerning the Resolution.

**This agenda item was WITHDRAWN by the proposer.**

### **ITEMS ADDED BY REVISION**

There were no agenda items added by revision.

### **INTRODUCTION ITEMS**

Buchanan reported that Introduction item one (AB2020-487) was held in Committee and withdrawn from Introduction.

***Donovan moved*** to approve introduction items two through 16. The motion was seconded by Frazey.

***Kershner moved*** to withdraw item six (AB2020-490) from Introduction.

Dana Brown-Davis, Clerk of the Council, stated the item could be discussed in the Special Council meeting on November 12, 2020 prior to having a public hearing.

Councilmembers discussed the motion.

***Kershner withdrew*** her motion.

Kershner stated she would like to consider 13 separately.

Councilmembers concurred to introduce agenda item numbers 2-12 and 14-16.

The motion to introduce agenda item numbers 2-12 and 14-16 carried 6-1 with Elenbaas opposed (see motion and votes on individual agenda items below).

***Donovan moved*** to introduce agenda item number 13. The motion was seconded by Buchanan.

Councilmembers discussed the motion.

The motion carried 5-2 with Kershner and Elenbaas opposed (see individual motion and vote on the item below).

1. [AB2020-487](#) Ordinance amending Whatcom County Code 8.10, Solid Waste and Residential Recycling Collection, regarding solid waste collection in Point Roberts, WA

**This agenda item was WITHDRAWN.**

2. [AB2020-494](#) Ordinance amending the 2020 Whatcom County Budget, request no. 21, in the amount of \$316,676

**Donovan moved and Frazey seconded that the Ordinance be INTRODUCED.**

**The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

3. [AB2020-495](#) Ordinance establishing the Shallow Shore Culvert Relocation Fund and establishing a project based budget for the Shallow Shore Culvert Relocation Fund

**Donovan moved and Frazey seconded that the Ordinance be INTRODUCED.**

**The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

4. [AB2020-496](#) Ordinance amending the project budget for the Public Safety Radio System Fund, request no. 2

**Donovan moved and Frazey seconded that the Ordinance be INTRODUCED.**

**The motion failed by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

5. [AB2020-466](#) Ordinance amending Whatcom County Code Section 1.14, adjusting Precinct Boundary Lines and Precinct Maps

**Donovan moved and Frazey seconded that the Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:**



**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

6. [AB2020-490](#) Ordinance authorizing the 2021 Whatcom County Unified Fee Schedule

**Donovan moved and Frazey seconded that the Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

7. [AB2020-504](#) Ordinance in the matter of the adoption of the final budget of Whatcom County for the Biennium 2021-2022

**Donovan moved and Frazey seconded that the Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

8. [AB2020-509](#) Ordinance authorizing the levy of taxes for County and State purposes in Whatcom County, Washington, for the year 2021

**Donovan moved and Frazey seconded that the Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

9. [AB2020-510](#) Ordinance authorizing the Levy of Taxes for Countywide Emergency Medical purposes for 2021

**Donovan moved and Frazey seconded that the Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

10. [AB2020-511](#) Ordinance limiting the General Fund property tax levy

**Donovan moved and Frazey seconded that the Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

11. [AB2020-512](#) Ordinance authorizing the Levy of Taxes for County Conservation Futures Purposes for 2021

**Donovan moved and Frazey seconded that the Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

12. [AB2020-513](#) Ordinance authorizing the Levy of Taxes for road purposes for 2021

**Donovan moved and Frazey seconded that the Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

13. [AB2020-520](#) Ordinance imposing an interim moratorium on the acceptance and processing of applications and permits for new or expanded facilities in the Cherry Point urban growth area, the primary purpose of which would be the shipment of unrefined fossil fuels not to be processed at Cherry Point

**Donovan moved and Buchanan seconded that the Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:**

**Aye:** 5 - Browne, Buchanan, Byrd, Donovan, and Frazey

**Nay:** 2 - Elenbaas, and Kershner

**Absent:** 0

14. [AB2020-491](#) Resolution adopting 2021 budget for the Point Roberts Transportation Benefit District (Council acting as the governing body of the Point Roberts Transportation Benefit District)

**Donovan moved and Frazey seconded that the Resolution Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

15. [AB2020-493](#) Resolution adopting the 2021 budget for the Whatcom County Flood Control Zone District and Subzones (Council acting as the Flood Control Zone District Board of Supervisors)

**Donovan moved and Frazey seconded that the Resolution (FCZDBS) Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

16. [AB2020-514](#) Resolution authorizing the levy of taxes for the Whatcom County Flood Control Zone District for 2021 (Whatcom County Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

**Donovan moved and Frazey seconded that the Resolution (FCZDBS) Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:**

**Aye:** 6 - Browne, Buchanan, Byrd, Donovan, Frazey, and Kershner

**Nay:** 1 - Elenbaas

**Absent:** 0

## **COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES**

Councilmembers gave Committee reports.

**Byrd moved** to request that the Executive and his team look into purchasing the pallet shelter units by November 16. The motion was seconded by

Kershner.

Councilmembers discussed the motion and Byrd confirmed that his motion is to keep the ball rolling at the very least.

Satpal Sidhu, County Executive, spoke about whether the item would be treated the same if proposed by another Councilmember and whether the proposed shelters could immediately be approved for use for isolation and quarantine.

Councilmembers and Sidhu continued to discuss the motion.

The motion carried by the following vote:

**Aye:** 7 - Frazey, Kershner, Browne, Buchanan, Byrd, Donovan, and Elenbaas

**Nay:** 0

Dana Brown-Davis, Clerk of the Council, asked if the Council was planning on scheduling a special meeting and she and Councilmembers discussed their upcoming meeting schedule.

**Byrd moved** to schedule a special meeting on November 16 to review the item.

Councilmembers and Brown-Davis discussed the motion.

Karen Frakes, Prosecuting Attorney's Office, answered whether the Council could approve it after the fact if the Administration finds that this is a viable option and they have budget left.

**Byrd amended** his motion to schedule a special meeting on November 16 at 2 p.m. to review the item. The motion was seconded by Kershner.

Councilmembers discussed the motion.

The motion carried by the following vote:

**Aye:** 6 - Kershner, Browne, Buchanan, Byrd, Elenbaas, and Frazey

**Nay:** 1 - Donovan

Councilmembers continued Committee reports and other items.

## **ADJOURN**

The meeting adjourned at 9:02 p.m.

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WA

\_\_\_\_\_  
Dana Brown-Davis, Council Clerk

\_\_\_\_\_  
Barry Buchanan, Council Chair

\_\_\_\_\_  
Kristi Felbinger, Minutes Transcription



# Whatcom County

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

## Agenda Bill Master Report

File Number: MIN2020-115

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<b>File ID:</b>	MIN2020-115	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/19/2020	<b>Entered by:</b>	KFelbing@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Minutes Consent		
<b>Assigned to:</b>	Council			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

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

**TITLE FOR AGENDA ITEM:**

Special Council for November 16, 2020

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

None

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Draft Minutes Special Council Nov 16 2020

# **Whatcom County Council (Special)**

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



## **Minutes - Draft Minutes**

**VIRTUAL MEETING - VIEW ONLINE**

**Monday, November 16, 2020**

**2 PM**

**Virtual Meeting**

### **COUNCILMEMBERS**

Rud Browne  
Barry Buchanan  
Tyler Byrd  
Todd Donovan  
Ben Elenbaas  
Carol Frazey  
Kathy Kershner

### **CLERK OF THE COUNCIL**

Dana Brown-Davis, C.M.C.

**Call To Order**

Council Chair Barry Buchanan called the meeting to order at 2 p.m. in a virtual meeting.

**Roll Call**

**Present:** 7 - Rud Browne, Barry Buchanan, Tyler Byrd, Todd Donovan, Carol Frazey, Ben Elenbaas and Kathy Kershner

**Absent:** None

**Special Presentation and Possible Action**

[AB2020-549](#) Update on Council's request to have the County purchase pallet shelters

The following people discussed the item with Councilmembers:

- Tyler Schroeder, Executive's Office
- Anne Deacon, Health Department
- Satpal Sidhu, County Executive
- Karen Frakes, Prosecuting Attorney's Office
- Hannah Stone, Bellingham City Council

Schroeder briefed the Councilmembers and referred to an email sent to Council with additional information.

Councilmembers and the speakers discussed whether this item should be discussed by the Homeless Strategies Workgroup, whether the purchase meets the guidelines for using CARES Act dollars and how the timing of a purchase might affect that, other shelter efforts through the City of Bellingham and the Health Department, whether buying pallet shelters would need a competitive bid process or whether the emergency proclamation still in place could waive that requirement, where the shelters could be located and how they would be operated, partnering with the City of Bellingham, what CARES Act funds or other funding sources (such as a Department of Commerce or other State grants) are available, overall management costs, whether homelessness is an allowable use for CARES Act dollars, whether capital equipment purchased for utilization during the CARES Act period could be used for a different purpose afterward, whether the pallet shelters could be used for additional isolation and quarantine facilities or so that the homeless population would be less likely to get COVID-19, whether base camp is beyond capacity and beds at the Byron Street facility are currently available, when the Byron Street rooms will be available for shelter, an increase this year of available shelter beds from last year, and using the pallet shelters as supportable infrastructure that could be



used somewhere other than in the city of Bellingham.

Karen Frakes, Prosecuting Attorney's Office, stated the concern is whether there is any assurance or plan that the County would be able to use these at some point. The language from the Treasury indicated that you have to be able to show that you need to receive them during the covered period and unless we can show a plan that they need to be received now she is questioning if it meets that criteria.

Councilmembers and the speakers continued to discuss funding for operational expense, the location for the shelters, taking the proposal up with the Homeless Strategies Workgroup with the Administration in attendance, establishing a process for such a purchase, and what will happen to the shelters after March.

**Byrd moved** to reach out to make the purchase of these units. The motion was seconded by Kershner.

Byrd stated if we do it now we can move it forward under CARES Act funding and if it does not work under that, we can fall back to the Department of Commerce or other funding.

Frakes stated there are also issues with competitive bidding and she has a hard time understanding how it could fall under the emergency exemption.

Councilmembers discussed the motion.

Hannah Stone, Bellingham City Councilmember, stated that based on City Council conversations, there is support from the City to move forward but they are waiting on the Council to take this critical step because this is the piece that they cannot provide. She urged them to support the motion.

Schroeder and Frakes answered how long the competitive bid process takes, whether the Council can operate under the emergency proclamation and bypass the purchasing policies, and the fact that purchasing has to meet certain conditions and the County does not meet those conditions at this point.

Councilmembers and Sidhu continued to discuss the motion, the use of CARES Act money or falling back on other funding sources, funding operating costs, and not cutting existing housing programs to fund this.

The motion carried by the following vote:

**Aye:** 7 - Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner  
**Nay:** 0

**This agenda item was DISCUSSED AND MOTION(S) APPROVED.**

**Items Added by Revision**

There were no agenda items added by revision.

**Other Business**

There was no other business.

**Adjournment**

The meeting adjourned at 3:07 p.m.

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WA

\_\_\_\_\_  
Dana Brown-Davis, Council Clerk

\_\_\_\_\_  
Barry Buchanan, Council Chair

\_\_\_\_\_  
Kristi Felbinger, Minutes Transcription



# Whatcom County

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

## Agenda Bill Master Report

File Number: MIN2020-116

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<b>File ID:</b>	MIN2020-116	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/19/2020	<b>Entered by:</b>	KFelbing@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Minutes Consent		
<b>Assigned to:</b>	Council			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

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Primary Contact Email: [KFelbing@co.whatcom.wa.us](mailto:KFelbing@co.whatcom.wa.us)

### TITLE FOR AGENDA ITEM:

Water Work Session for November 17, 2020

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

None

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Draft Minutes Water Work Session Nov 17 2020

# **Whatcom County Council Water Work Session**

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



## **Minutes - Draft Minutes**

**VIRTUAL MEETING - VIEW ONLINE**

**Tuesday, November 17, 2020**

**10:30 AM**

**Virtual Meeting**

### **COUNCILMEMBERS**

Rud Browne  
Barry Buchanan  
Tyler Byrd  
Todd Donovan  
Ben Elenbaas  
Carol Frazey  
Kathy Kershner

### **CLERK OF THE COUNCIL**

Dana Brown-Davis, C.M.C.

**Call To Order**

Council Chair Barry Buchanan called the meeting to order at 10:37 a.m. in a virtual meeting.

**Roll Call**

**Present:** 6 - Rud Browne, Barry Buchanan, Tyler Byrd, Todd Donovan, Ben Elenbaas and Carol Frazey

**Absent:** 1 - Kathy Kershner

**Water Resources Update**

Gary Stoyka, Public Works Department, briefed the Councilmembers about the following:

- The water adjudication settlement process
- The December 17 Watershed Management Board meeting in which they will vote on whether to accept the Executive's settlement proposal
- The following projects:
  - Ongoing regional water supply plan work that the Public Utility District (PUD) is heading up
  - The Drainage Based Management project led by the County
- A consultant has been chosen for the ground water model peer review
- Work and next steps on the water use efficiency projects
- Work on the agricultural water use efficiency project
- Updates on meetings of the Watershed Management Board, Planning Unit, and Lake Whatcom Policy Group
- Two new interlocal agreements with the City of Bellingham and the Conservation District to move the homeowner incentive program forward for Lake Whatcom

He answered whether talking to the Department of Ecology about getting the local settlement process going is a biennial budget request to the Governor and whether it would be competing for funds allocated for adjudication.

**Washington Conservation Corps Presentation**

Gary Stoyka, Public Works Department, introduced the presentation.

John Thompson, Public Works Department introduced the Whatcom Conservation Corps. speakers and the following people presented:

- James van der Voort
- Simone Vachon
- Hanna Michaud
- Will Ashford
- Abby Dekoekkoek
- Michelle Meyer

They answered what kind of projects the crews could work on when they were not able to be out working in the field.

Thompson gave closing remarks.

### **WRIA 1 Planning Unit Discussion**

Kathy Sabel, WRIA Planning Unit representative, read from an email which included the following questions for Council:

1. What is the role of the Whatcom County Council in relation to the WRIA 1 Watershed Management Board and the negotiated settlement concept?
2. Is there a new iteration of the settlement concept paper?
3. What is the County Council's view on the negotiated settlement concept paper?
4. What role does the County Council see for the WRIA 1 Planning Unit in a negotiated settlement?

Gary Stoyka, Public Works Department, and Councilmembers discussed what the Watershed Management Board would be looking at approving, what funding the Executive has allocated in the 2021 Flood Control Zone District budget to support the settlement process and funding that may be requested over the next several years, the motion approved by the Council that the framework that may come back to them would not be exclusive to the adjudication process, how the Council would interact with any proposals made since the Executive is the County representative on the Watershed Management Board, and a suggestion that the Council discuss the Planning Unit's questions in a Council or Committee meeting in order to provide them with more specific answers from the Council as a whole within an open public meeting process.

Councilmembers, Dana Brown-Davis, Clerk of the Council, and the other speakers discussed putting an agenda item in the Natural Resources Committee that would address the Planning Unit's questions, whether they should wait until they hear back from the Executive about what the framework might look like, when the Executive would have something to

bring back to the Council, whether this could be added to one of the last two meetings of the year as an agenda item, whether all the involved parties are behind the proposed white paper for settlement, waiting for the discussion at the December 17, 2020 Watershed Management Board meeting, whether the Planning Unit is suggesting there is a conflict between the Comprehensive Plan and the water settlement process, and hearing the recommendations of the Planning Unit as a group.

**Other Business**

There was no other business.

**Adjournment**

The meeting adjourned at 11:34 a.m.

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WA

\_\_\_\_\_  
Dana Brown-Davis, Council Clerk

\_\_\_\_\_  
Barry Buchanan, Council Chair

\_\_\_\_\_  
Kristi Felbinger, Minutes Transcription



# Whatcom County

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

## Agenda Bill Master Report

File Number: MIN2020-117

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<b>File ID:</b>	MIN2020-117	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/19/2020	<b>Entered by:</b>	KFelbing@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Minutes Consent		
<b>Assigned to:</b>	Council			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

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

**TITLE FOR AGENDA ITEM:**

Special Council Cherry Point Work Session for November 17, 2020

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

None

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Draft Minutes Special Council Nov 17 2020



# **Whatcom County Council (Special)**

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



## **Minutes - Draft Minutes**

**VIRTUAL MEETING - VIEW ONLINE (CHERRY POINT)**

**Tuesday, November 17, 2020**

**1 PM**

**Virtual Meeting**

### **COUNCILMEMBERS**

Rud Browne  
Barry Buchanan  
Tyler Byrd  
Todd Donovan  
Ben Elenbaas  
Carol Frazey  
Kathy Kershner

### **CLERK OF THE COUNCIL**

Dana Brown-Davis, C.M.C.

## Call To Order

Council Chair Barry Buchanan called the meeting to order at 1 p.m. in a virtual meeting.

## Roll Call

**Present:** 7 - Rud Browne, Barry Buchanan, Tyler Byrd, Todd Donovan, Carol Frazey, Ben Elenbaas and Kathy Kershner

**Absent:** None

## Discussion and Possible Approval of Motions

1. [AB2020-345](#) Discussion of proposed Cherry Point amendments

Eddy Ury, Re Sources, stated the presentation today is a draft-revisions proposal that the Stakeholder group is working on. Since they have not reached final agreement on it the compromise they came to is that they would present it to the Councilmembers on screen but not send them a document yet. He asked the following stakeholder members present to introduce themselves:

- Alex Ramel, Stand.earth
- Anna Doty, Washington Environmental Council (WEC)/Washington Conservation Voters (WCV)
- Pam Brady, BP
- Jim Verburg, BP
- Jeff Chalfant, BP
- Gavin Carscallen, Petrogas
- Andrew Gamble, Petrogas
- Brad Brown, Phillips 66
- Tim Johnson, Phillips 66
- Holli Johnson, Western States Petroleum Association (WSPA)
- Trevor Smith, Laborers Local 292

**Approximate Timestamp: 00:05:21**

Ury shared a document "Cherry Point Amendments Joint Stakeholder Revisions Transshipment" on the screen and updated the Councilmembers on what the Stakeholder group has worked on.

**Approximate Timestamp: 00:31:00**

The following people discussed the document with Councilmembers and answered questions:

- Brad Brown
- Eddy Ury
- Gavin Carscallen
- Jeff Chalfant
- Mark Personius, Planning and Development Services Department Director

**Approximate Timestamp: 01:23:51**

Ury and Councilmembers spoke about next steps and when a document with proposed changes might be available for Councilmembers.

Dana Brown-Davis, Clerk of the Council, answered a question about a next possible meeting time and the Councilmembers and participants agreed to meet on November 24, 2020 which is a regular Council meeting day.

**Approximate Timestamp: 1:30:07**

*Elenbaas moved* to adjourn the meeting. The motion was seconded by Byrd.

The motion to adjourn failed by the following vote:

**Aye:** 3 - Browne, Byrd, and Elenbaas

**Nay:** 4- Buchanan, Donovan, Frazey, and Kershner

**Approximate Timestamp: 1:31:39**

The following people discussed with Councilmembers about time needed for the Stakeholder group to work on proposed revisions and a plan moving forward.

- Alex Ramel
- Eddy Ury
- Pam Brady
- Trevor Smith

**This agenda item was DISCUSSED.**

### **Items Added by Revision**

There were no agenda items added by revision.

### **Other Business**

There was no other business.

### **Adjournment**

The meeting adjourned at 2:41 p.m.

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WA

\_\_\_\_\_  
Dana Brown-Davis, Council Clerk

\_\_\_\_\_  
Barry Buchanan, Council Chair

\_\_\_\_\_  
Kristi Felbinger, Minutes Transcription



# Whatcom County

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

## Agenda Bill Master Report

File Number: **AB2020-524**

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<b>File ID:</b>	AB2020-524	<b>Version:</b>	1	<b>Status:</b>	Introduced
<b>File Created:</b>	11/03/2020	<b>Entered by:</b>	DBrown@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Ordinance		
<b>Assigned to:</b>	Council	<b>Final Action:</b>			
<b>Agenda Date:</b>	12/08/2020	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Ordinance creating a Child and Family Well-Being Task Force

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

The Whatcom Working Towards Well-being Action Plan calls for the creation of a county task force, or other official county committee, to ensure that diverse community partners are informed, coordinated and included in the implementation of the action plan, make additional recommendations, and regularly report progress to County Council and County Executive,

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### HISTORY OF LEGISLATIVE FILE

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<b>Date:</b>	<b>Acting Body:</b>	<b>Action:</b>	<b>Sent To:</b>
11/24/2020	Council	INTRODUCED	Council

---

**Attachments:** Proposed Ordinance

1 PROPOSED BY: \_\_\_\_\_  
2 INTRODUCTION DATE: NOVEMBER 24, 2020  
3  
4

5 ORDINANCE NO. \_\_\_\_\_  
6

7 **ESTABLISHING WHATCOM COUNTY CODE 2.106**  
8 **AND CREATING A WHATCOM COUNTY**  
9 **CHILD AND FAMILY WELL-BEING TASK FORCE**  
10

11 **WHEREAS**, in April 2019, the County Health Board adopted Resolution 2019-020  
12 affirming commitment to Whatcom County's Young Children and Families; and  
13

14 **WHEREAS**, in February 2020, the County Health Board officially adopted a child and  
15 family action plan entitled: "Whatcom Working Towards Well-being: An Action Plan for  
16 County Government" (Action Plan); and  
17

18 **WHEREAS**, the Action Plan calls for the development of an ordinance to create a  
19 county task force, or other official county committee, with high level staffing and resources  
20 to ensure that diverse community partners are informed, coordinated and included in the  
21 implementation of the action plan, make additional recommendations, and regularly report  
22 progress to County Council and County Executive; and  
23

24 **WHEREAS**, the Action Plan recommends using the County Incarceration Prevention  
25 and Reduction Task Force as a model, including representatives from government,  
26 community organizations, and families; and  
27

28 **WHEREAS**, the Action Plan also specifies that the task force will focus on tracking  
29 and furthering progress of community efforts to achieve the desired results for children and  
30 families.  
31

32 **NOW, THEREFORE, BE IT ORDAINED** by the Whatcom County Council that  
33 Whatcom County Code Chapter 2.106 is hereby established, creating a Whatcom County  
34 Child and Family Well-being Task Force as outlined in Exhibit A to this ordinance.  
35

36 **BE IT FURTHER ORDAINED** that the initial tasks to be accomplished by the Task  
37 Force are as follows:  
38

39 **A. Develop processes and procedures to ensure that all work of the Task Force**  
40 **is embedded in principles of:**

- 41 a. Equity, with specific attention to racial equity  
42 b. Family engagement  
43 c. Results-based approaches  
44

45 **B. Develop recommendations for County infrastructure to promote child and**  
46 **family wellbeing**

- 47 a. Clarify scope and purpose of infrastructure  
48 b. Identify and evaluate infrastructure models such as a County Office of Child and  
49 Family Well-being  
50 c. Recommend funding approaches to build and sustain infrastructure  
51 d. Recommend policies and practices that increase accountability to parents,  
52 caregivers, and stakeholders from under-represented communities in county  
53 committees and workgroups.

- e. Propose strategies to adopt trauma-informed practices across County government, including staff training and development

**C. Develop recommendations for adoption of a “children and families first” approach for County policy and funding decisions across all departments**

- a. Recommend policy and program review process
- b. Recommend ways to fully integrate parents, caregivers, and stakeholders from underrepresented communities in county committees and workgroups, including compensation for time
- c. Recommend processes to ensure consideration and prioritization of child and family needs in county funding decisions

**D. Develop recommendations to promote shared governmental and community accountability for child and family results**

- a. Review results approaches in other communities and recommend strategies for County adoption
- b. Identify mechanisms for government and community stakeholders to agree on and work together toward desired results, including identification of key strategies and actions
- c. Identify mechanisms to track and share progress on key indicators aligned with desired results

**E. Develop recommendations for coordination and enhancement of existing county initiatives focused on issues impacting young children and their families**

- a. Review existing County initiatives and groups focused on issues such as racial equity, housing, behavioral health, economic development, and incarceration prevention, and recommend ways to incorporate focus on young children and their families into these initiatives and groups.
- b. Review existing community initiatives addressing high priority concerns such as child/family homelessness, lack of access to affordable child care and early learning opportunities, and need for child/family behavioral health supports and identify opportunities for additional County support and coordination.

**F. Develop recommendations for new, or enhancement of existing, funding streams to support child and family programs and services that are aligned with desired results**

- a. Recommend scope and process of fiscal analysis
- b. Review and recommend options for new or enhanced funding streams

**BE IT FINALLY ORDAINED** that the initial work of the Task Force for the above tasks shall be accomplished and reported to the County Council and County Executive in the following phases:

PHASE I – Establish Task Force processes and procedures. Clarify goals and metrics. Establish processes for shared accountability for results. Evaluate and recommend infrastructure model for County adoption. Propose scope and approach for County fiscal analysis to identify existing and potential funding streams for child and family programs. Review and identify existing child and family serving collaborative resources and initiatives, and infrastructure. Recommend strategies to fill the gaps identified. Deliver the initial Phase I report by June 1, 2021.

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PHASE II -- Develop and establish methods to increase and stabilize funding streams for child and family programs, services, and infrastructure. Deliver the initial Phase II report as completed no later than March 2022.

PHASE III – Develop specific operational plans and budgets leading to implementation of appropriate programs, services and infrastructure. Include details on assignment of responsibilities, and projected outcomes anticipated. Deliver the initial Phase III report with sufficient details to proceed with programs and infrastructure no later than October 1, 2022.

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2020.

**ATTEST:**

**WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON**

\_\_\_\_\_  
**Dana Brown-Davis, Clerk of the Council**

\_\_\_\_\_  
**Barry Buchanan, Council Chair**

**APPROVED AS TO FORM:**

**WHATCOM COUNTY EXECUTIVE  
WHATCOM COUNTY, WASHINGTON**

\_\_\_\_\_  
**Civil Deputy Prosecutor**

\_\_\_\_\_  
**Satpal Sidhu, County Executive**

( ) **Approved**      ( ) **Denied**

**Date Signed:**

\_\_\_\_\_



## EXHIBIT A

### Chapter 2.106

#### CHILD AND FAMILY WELL-BEING TASK FORCE

##### Sections:

##### **2.106.010 Established**

##### **2.106.020 Purpose**

##### **2.106.030 Function**

##### **2.106.040 Permanent Members**

##### **2.106.050 Additional Appointed Members**

##### **2.106.060 Term of Office**

##### **2.106.070 Organization – Meetings**

##### **2.106.080 Staff and Funding Support**

##### **2.106.090 Reporting**

##### **2.106.010 Established**

There is hereby established a Whatcom County Child and Family Well-being Task Force.

##### **2.106.020 Purpose**

The purpose of the Whatcom County Child and Family Well-being Task Force is to continually review Whatcom governmental impact on children and families and make specific recommendations for improvements for all departments

##### **2.106.030 Function**

The Task Force will consider input from diverse families throughout Whatcom County and evidence-based and promising practices and report on and make recommendations to County Council, Executive, and other appropriate officials regarding implementation of recommendations in the Whatcom Working Toward Well-being: An Action Plan for County Government (Action Plan) as adopted on February 4, 2020.

##### **2.106.040 Permanent Members**

Members of the Child and Family Well-being Task Force shall include the following 15 representatives, appointed by their designated agency:

- A. Three representatives from families selected by Generations Forward Family Council
- B. One representative from Whatcom Early Learning Alliance
- C. One representative from Whatcom Taking Action for Children/Youth with Special Health Needs
- D. One representative from School Superintendents (selected by Superintendents)
- E. One representative from Department of Children, Youth and Families (DCYF)
- F. One representative from the Whatcom County Health Department (selected by Health Director)
- G. One representative from Public Health Advisory Board (selected by PHAB)
- H. One member of the Whatcom County Council/Health Board
- I. Whatcom County Executive or alternate
- J. One representative from City of Bellingham
- K. One representative from small cities (selected by the Small Cities Partnership)
- L. One representative from Lummi Nation (selected by Lummi Nation)
- M. One representative from Nooksack Tribe (selected by Nooksack Tribe)

These representatives are not subject to term limits. The individual agencies will determine who will represent them on the Task Force.

## **2.106.050 Additional Appointed Members**

In addition to officials designated above, the Child and Family Well-being Task Force shall include the following 15 members who represent at least one of the following experiences, appointed by the Whatcom County Council:

1. Community Members from Under-Represented Communities: Hispanic/Latino, American Indian/Alaska Native, Black/African American, Immigrant, Rural (up to 5 members)
2. Representative from a Community Action Agency, Non-Profit Housing Organization or Social Service Agency (up to 2 members)
3. Representative from the Faith Community
4. Representative from Private School, Home School, Higher Education or Child Care Provider (up to 2 members)
5. Medical and Behavioral Health Care Provider serving young children and families
6. Community Members with experience caring for children such as Parent, Foster Parent, Grandparent, or Guardian. (up to 3 members)
7. Representative from Private Business, Corporation, or Philanthropic Organization

## **2.106.060 Term of Office**

The term of office for appointed members shall be four years; members may apply for and be appointed to an additional consecutive four-year term. Appointment of members shall comply with Chapter 2.03 WCC.

## **2.106.070 Organization — Meetings.**

- A. Meetings of the task force shall be open and accessible to the public and shall be subject to the Open Public Meetings Act.
- B. At every meeting, the task force will schedule an open session to take public comment.
- C. Written records of meetings, resolutions, research, findings and recommendations shall be kept and such records shall be submitted to county staff and shall be made public, including posting on the county website.
- D. The task force shall adopt its own rules and procedures for the conduct of business.
- E. The task force shall elect co-chairs (including at least one representing family perspective) from among its members who shall preside at its meetings.
- F. The task force shall determine its meeting schedule and agenda, but shall meet at least quarterly.
- G. The task force may form and appoint ad hoc committees to work on specific issues, so long as at least two committee members are also members of each ad hoc committee.

## **2.106.080 Staff and Funding Support**

The Task Force will have full support from the Council, the County Executive's Office, Health Department staff, and locally delivered paid consultant assistance to conduct and complete its tasks in an efficient and effective manner.

## **2.106.090 Reporting**

As outlined in the Phases of the Ordinance and at least biannually thereafter, no later than March 30 and September 30 of each year, the Task Force will provide a report and recommendations to the County Council and County Executive on progress.



# Whatcom County

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

## Agenda Bill Master Report

File Number: **AB2020-552**

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<b>File ID:</b>	AB2020-552	<b>Version:</b>	1	<b>Status:</b>	Introduced
<b>File Created:</b>	11/18/2020	<b>Entered by:</b>	DBrown@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Council Appointment Requiring Introduction		
<b>Assigned to:</b>	Council	<b>Final Action:</b>			
<b>Agenda Date:</b>	12/08/2020	<b>Enactment #:</b>			

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

### TITLE FOR AGENDA ITEM:

Appointment to Drainage Improvement District #7, Supervisor Position 3 - Applicant(s): Rod Stump

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

#### Special District Vacancies

Applicants must be registered voters in the State of Washington and own land in the district they represent. Appointments are made by the County Council. Appointees will serve until the next special district election in February 2022.

Duties include field review of drainage needs, attending an annual meeting to determine the next year's work schedule and assessment levy, elect internal officers, and review, discuss, or act on any other official and district business. (RCW 85.06 and RCW 85.38.170 and .180)

#### Drainage Improvement District #7

1 vacancy, Supervisor Position 3. Appointed term will expire at the special district general election of February 2022. District boundary is generally located in the Custer area northerly of Ferndale.

Unnamed tributary ditches to and the upstream reaches of California Creek, tributary to Drayton Harbor, are the primary channels.

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
11/24/2020	Council	INTRODUCED	Council

---

**Attachments:** Stump Application

## Online Form Submittal: Board and Commission Application

noreply@civicplus.com <noreply@civicplus.com>

Tue 11/17/2020 4:50 PM

### Board and Commission Application

#### Step 1

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#### Application for Appointment to Whatcom County Boards and Commissions

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##### 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	Rod
Last Name	Stump
Today's Date	11/17/2020
Street Address	7406 Valley View Rd
City	Ferndale
Zip	98248
Do you live in & are you registered to vote in Whatcom County?	Yes
Do you have a different mailing address?	<i>Field not completed.</i>
Primary Telephone	360-303-3535
Secondary Telephone	<i>Field not completed.</i>
Email Address	Stump45rod@gmsil.com

---

**Step 2**

1. Name of Board or Committee	Drainage Improvement District #7
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	<i>Field not completed.</i>
9. Please describe your occupation (or former occupation if retired), qualifications, professional and/or community activities, and education	BP Cherry Pt Refinery Inspection Field Coordinator. I have work for BP since 2010. Prior was a self employed general contractor

10. Please describe why you're interested in serving on this board or commission      I have been directly impacted by drainage issues in the past. I would like to help my neighbors and community improve and function safely and effectively.

---

References (please include daytime telephone number):      Ed Pomeroy - 360-815-7213

---

Signature of applicant:      Rod Stump

---

Place Signed / Submitted      Blaine Wa

---

(Section Break)

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Email not displaying correctly? [View it in your browser.](#)



# Whatcom County

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

## Agenda Bill Master Report

File Number: **AB2020-553**

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<b>File ID:</b>	AB2020-553	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	11/18/2020	<b>Entered by:</b>	AHester@co.whatcom.wa.us		
<b>Department:</b>	Public Works Department	<b>File Type:</b>	Ordinance Requiring a Public Hearing		
<b>Assigned to:</b>	Council	<b>Final Action:</b>			
<b>Agenda Date:</b>	12/08/2020	<b>Enactment #:</b>			

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

**TITLE FOR AGENDA ITEM:**

Ordinance granting City of Lynden a non-exclusive franchise for an industrial condensate pipeline

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

RCW 36.55.040, Whatcom County Charter Section 9.30, and Whatcom County Code 12.24 provides for the granting of franchises to public and private utility companies for use of County Rights-of-Way. This is a new franchise allowing for the use and presence in County Rights-of-Way for an industrial condensate pipeline

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:** Memo, Ordinance.pdf





## MEMORANDUM

**TO:** The Honorable Satpal Singh Sidhu, County Executive,  
Honorable Members of the Whatcom County Council

**THROUGH:** Jon Hutchings, Director

**FROM:** Andrew Hester, Public Works Real Estate Coordinator AH

**RE:** Franchise for City of Lynden

**DATE:** November 19, 2020

---

▪ **Requested Action**

Adopt an ordinance that grants a franchise to City of Lynden, allowing for the use of County Rights of Way to lay, construct, maintain, and repair an industrial condensate pipeline per the terms of the franchise agreement, under RCW 36.55 and § 9.30 of the Home Rule Charter.

▪ **Background and Purpose**

City of Lynden has applied for a new franchise agreement for the purposes of utilizing County rights of way to install and maintain an industrial condensate pipeline.

Please contact Chris Quinn at extension 5729 if you have any questions or concerns regarding the terms of this agreement.

Encl.

SPONSORED BY: \_\_\_\_\_

PROPOSED BY: Executive

INTRODUCTION DATE: \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

GRANTING THE CITY OF LYNDEN A FRANCHISE AND THE RIGHT, PRIVILEGE, AND AUTHORITY THEREUNDER TO LOCATE, SET, ERECT, LAY, CONSTRUCT, EXTEND, SUPPORT, ATTACH, CONNECT, MAINTAIN, REPAIR, REPLACE, ENLARGE, OPERATE AND USE AN INDUSTRIAL CONDENSATE PIPELINE IN, UPON, OVER, UNDER, ALONG, ACROSS AND THROUGH THE FRANCHISE AREA.

WHEREAS, The City of Lynden (hereinafter referred to as "Lynden"), has applied for a twenty-five (25) year franchise; and

WHEREAS, the Home Rule Charter for Whatcom County authorizes the County Council to grant non-exclusive franchises for a fixed term not to exceed 25 years for the use of any street, road, or public place;

WHEREAS, RCW 36.55.010, Whatcom County Charter Section 9.30, and Whatcom County Code Chapter 12.24 address the requirements pertaining to the granting of franchises by the County; and

WHEREAS, Lynden seeks a non-exclusive twenty-five (25) year franchise to construct, erect, alter, lay, support, connect, improve, renew, replace, repair, operate and maintain an industrial condensate pipeline upon, under, over, across and along certain roads and other areas in Whatcom County, Washington; and

WHEREAS, the application of Lynden has come on regularly to be heard by the County Council on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, and notice of this hearing having been duly published on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, and the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, in the Bellingham Herald, a daily newspaper published in Whatcom County having county-wide circulation; and

WHEREAS, it appears to the Council that notice of said application and hearing thereon has been given as required by law in RCW 36.55.040; and

WHEREAS, this Council finds, after having considered said application and being otherwise fully advised in the premises, that it is in the public interest for this Council to grant the franchise for a period of twenty-five (25) years; and

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the language set forth below, in Sections 1 through 20, shall constitute the franchise agreement between Whatcom County and Lynden, which shall be and become effective as set forth in Section 13 thereof:

**Section 1. Definitions.**

1.1 Where used in this franchise agreement (“Franchise”), the following terms shall mean:

1.1.1 “County” means the County of Whatcom, a political subdivision of the State of Washington, and its successors and assigns.

1.1.2 “Lynden” means the City of Lynden, and its successors and assigns.

1.1.3 “Franchise Area” means Hannegan Road between Nooksack River and Riverview Road within Section 20, Township 40 North, Range 3 East of W.M. in Whatcom County, Washington as may hereafter be amended and attached hereto.

1.1.4 “Facilities” means, collectively, an industrial condensate pipeline and any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located over or under ground.

1.1.5 “Ordinance” means Ordinance No. \_\_\_\_\_, which sets forth the terms and conditions of this Franchise.

1.1.6 “Right-of-Way” means the surface of and space along, above, and below any public street, road, way, lane, drive, alley or easement within the Franchise Area;

1.1.7 “Relocation” means to protect, support, temporarily disconnect, relocate and/or remove Lynden Facilities within or from within the County right-of-way.

**Section 2. Facilities Within Franchise Area.**

2.1 The County does hereby grant to Lynden a Franchise, and the right, privilege, and authority thereunder, to construct, erect, alter, lay, support, connect, improve, renew, replace, repair, operate and maintain all necessary equipment and Facilities, in, under, on, across, over, through, along, or below the public rights-of-way located in the Franchise Area.

2.2 This Franchise is subject to the terms and conditions hereinafter set forth.

**Section 3. County Authority.**

3.1 The County, in granting this Franchise, does not waive any rights which it now has or may hereafter acquire with respect to the Franchise Area, and this Franchise shall not be construed to deprive the County of any powers, rights, or privileges which it now has, or may hereafter acquire, to regulate the use of and to control the Franchise Area.

**Section 4. Noninterference of Facilities.**

4.1 As to new Facilities, Lynden’s Facilities shall be placed and maintained within the Franchise Area so as not to unreasonably interfere with the free passage of traffic and in accordance with all applicable laws, rules, and regulations. Prior to the installation of new

Facilities within the Franchise Area, Lynden may request that the County determine whether the proposed placement of the Facilities will unreasonably interfere with the free and safe passage of traffic, and the County shall make such determination in writing within a reasonable period of time. If the proposed location is not approved by the County Engineer, the County Engineer shall advise in writing what reasonable modifications to the proposed location of the Facilities are necessary for the County Engineer to issue a determination that the proposed location of the Facilities will not unreasonably interfere with the free and safe passage of traffic.

If Lynden proceeds to install new Facilities without first obtaining the County Engineer's determination that the proposed location of the Facilities will not unreasonably interfere with the free and safe passage of traffic then, upon determination by the County that current placement of particular Facilities unreasonably interferes with free or safe passage of traffic, the County shall notify Lynden which shall, at its own expense, act promptly to rectify the problem in consultation with the County. Lynden shall exercise its rights under this Franchise and within the Franchise Area in accordance with all County codes and ordinances governing use and occupancy of the Franchise Area; provided, however, in the event of any conflict or inconsistency of such codes and ordinances with the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control to the extent authorized by law; provided, further, nothing herein shall be deemed to waive, prejudice or otherwise limit any right of appeal afforded Lynden by such County codes and ordinances.

4.2 Lynden's existing Facilities shall be maintained within the Franchise Area so as not to unreasonably interfere with the free passage of traffic and in accordance with all applicable laws, rules, and regulations. Upon determination by the County that current placement of particular Facilities unreasonably interferes with free or safe passage of traffic, the County shall notify Lynden which shall, at its own expense, act promptly to rectify the problem in consultation with the County. Lynden shall exercise its rights under this Franchise and within the Franchise Area in accordance with all County codes and ordinances governing use and occupancy of the Franchise Area; provided, however, in the event of any conflict or inconsistency of such codes and ordinances with the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control to the extent authorized by law; provided, further, nothing herein shall be deemed to waive, prejudice or otherwise limit any right of appeal afforded Lynden by such County codes and ordinances.

4.3 All construction or installation of such Facilities, service, repair, or relocation of the same, performed over, above, along or under the Franchise Area shall be done in such a manner as not to interfere unreasonably with the construction and maintenance of other existing utilities, lines, public or private, drains, drainage ditches and structures, irrigation ditches and structures, located therein, nor with the grading or improvement of the Franchise Area. The owners of all utilities, public or private, installed in the Franchise Area prior in time to the Facilities of Lynden shall have preference as to the positioning and location of such utilities so installed with respect to Lynden. Such preference shall continue in the event of the necessity of relocating or changing the grade of the Franchise Area. Lynden shall have such preference as to owners of all utilities, public or private, initially installed in the Franchise Area subsequent in time to Lynden's Facilities.

4.4 The locating, laying, construction, operation and maintenance of Lynden's Facilities authorized by this Franchise shall not preclude the County, its agents or its contractors from blasting, grading, excavating, or doing other necessary road work contiguous to Lynden's

Facilities, provided that Lynden and the County shall first check with the locator service to determine whether or not any of Lynden's lines are located in the proposed work area. Upon finding from the locator service that Lynden does have lines located within the proposed work area, the County shall provide Lynden with seventy-two (72) hours notice of proposed work, except if a lesser time for notice is warranted by emergency, in order that the Lynden may protect its Facilities. Failure of Lynden to properly notify the locator service of the location of its lines and Facilities shall relieve County of its duty to provide Lynden the otherwise-required advance notice of proposed work.

4.5 Lynden shall maintain all above-ground Facilities that it places in the Franchise Area. In order to avoid interference with the County's ability to maintain the Franchise Area, Lynden shall provide a clear zone of five (5) feet on all sides of such above-ground Facilities. If Lynden fails to comply with this provision, and by its failure, property is damaged, then Lynden shall be deemed responsible for all damages caused thereby and the County shall be released from any responsibility therefore. For these purposes, "clear zone" means an area that is mowed or otherwise maintained so that the Facilities are readily visible to County maintenance operations.

## **Section 5. Construction Within the Franchise Area.**

5.1 All construction and installation work within the Franchise Area shall be subject to the approval and pass the inspection of the County Engineer, and shall conform to all applicable local, state and federal standards, codes or regulations, and the County expressly reserves the right to prescribe standards as to how and where Facilities shall be installed. The standards shall be consistent with reasonable standards and standard engineering practices in the applicable industries.

5.2 Prior to commencement of construction of any new Facilities, Lynden shall first file with the County Engineer its application for permits to do such work, together with plans and specifications in duplicate showing the position and location of all such Facilities sought to be constructed, laid, installed or erected at that time showing their position relative to existing County roads, rights-of-way, or other County property within the Franchise Area upon plans drawn to scale. The Facilities shall be laid in conformity with said plans and specifications of definite location, except in instances in which deviation may be allowed thereafter in writing by the County Engineer. The plans and specifications shall specify the class and type of material and equipment to be used, manner of excavation, construction, installation, backfill, erection of temporary structures, erection of permanent structures, traffic control, traffic turnouts and road obstructions, etc. No such construction shall be commenced without Lynden first securing a written permit from the County Engineer, including approval endorsed on one set of plans and specifications returned to Lynden. All such work shall be subject to the approval of and shall pass the inspection of the County Engineer. Lynden shall pay all costs of and expenses incurred in the examination, inspection and approval of such work on account of granting the said permits.

5.3 In any work which requires breaking of soil within the Franchise Area for the purpose of laying, relaying, connecting, disconnecting, constructing, maintaining and repairing Lynden's Facilities, and making connections between the same to structures and buildings of consumers or making connections to other Facilities now in existence or hereafter constructed, Lynden shall be governed by and conform to the general rules adopted by the County Engineer; and Lynden

at its own expense and with due diligence shall complete the work for which the soil has been broken and forthwith replace the work and make good the Franchise Area and leave the same in as good condition as before the work was commenced; provided, however, that no such breaking of the soil within the Franchise Area shall be done prior to the obtaining of a permit issued by the County Engineer. Applications for such a permit shall be accompanied by specifications for the restoration of the Franchise Area to the same condition as it was in prior to such breaking, and such specifications must be approved by the County Engineer before such breaking of the soil is commenced; provided further, that the County Engineer may require a performance bond in a reasonable sum sufficient to guarantee that such Franchise Area shall be restored to the same condition as it was in prior to such breaking of the soil, the amount of said bond to be fixed by the County Engineer. Lynden shall pay all costs of and expenses incurred in the examination, inspection and approval of such restoration. The County Engineer may at any time do, order, or have done, any and all work that the County Engineer considers necessary to restore to a safe condition any Franchise Area left by Lynden or its agents in a condition dangerous to life or property, and Lynden upon demand shall pay to the County all costs of such work, the County having first provided notice of such condition to Lynden and a reasonable time to cure such unsafe condition, provided however, in the event of damage to the Franchise Area caused by Lynden that necessitates immediate repair by the County or its agents on an emergency basis where notice to Lynden or providing an opportunity to cure is not feasible considering nature of the emergency and necessary repair, as determined by the County Engineer using professional engineering standards, no such notice and reasonable time to cure shall be required as a condition of repayment by Lynden.

5.4 In preparing plans and specifications for the installation of Facilities within the Franchise Area, Lynden shall reasonably conform to the standards and specifications established by the County Engineer. Lynden shall consult with the County Engineer in case it plans to deviate from the established standards and specifications in the course of installing Facilities within the Franchise Area and must demonstrate to the satisfaction of the County Engineer that its plans will achieve a legal and functionally equivalent result.

5.5 All work done by and for Lynden under this Franchise shall be done in a thorough and workmanlike manner. In the construction of Facilities and the opening of trenches within and the tunneling under the Franchise Area, Lynden shall leave such trenches and tunnels in such a way as to interfere as little as possible with public travel, and shall take all due and necessary precautions to guard the same, so that damage or injury shall not occur or arise by reason of such work. Where any of such trenches, ditches, or tunnels are left open at night, Lynden shall place warning lights and barricades at such a position as to give adequate warning of such work, per the MUTCD (Manual on Uniform Traffic Control Devices). Lynden shall be liable for any injury to person or persons or damage to property to the extent proximately caused by its carelessness or neglect, or to the extent proximately caused by any failure or neglect to properly guard or give warning of any trenches, ditches or tunnels dug or maintained by Lynden.

5.6 Before any work is performed under this Franchise which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads and all other surveys, Lynden shall reference all such monuments and markers. The reference points shall be so located that they will not be disturbed during Lynden's operations under this Franchise. The method of referencing these monuments or other points to be referenced shall be approved by the County Engineer. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit, and as directed by the County

Engineer. The cost of monuments or other markers lost, destroyed, or disturbed, and the expense of replacement by approved monuments shall be borne by Lynden. A complete set of reference notes for monuments and other ties shall be filed with the County Engineer's Office.

## **Section 6. Relocation of Facilities.**

6.1 Lynden shall, at its sole expense and with due diligence, relocate or adjust the elevation of any of its Facilities upon receipt of written request from the County Engineer when determined reasonably necessary based upon sound engineering principles by the County Engineer for improvement to the County facilities in the Franchise Area, provided that the elevations required by the County are not in violation of local, state or federal law and are reasonable necessary for safety purposes. Lynden shall coordinate such relocation or adjustment of its Facilities with the County and shall perform the same in a timely fashion so that, absent conditions beyond the control of Lynden, such relocation or adjustment of Lynden's Facilities will not impede or delay pending changes to the Franchise Area.

6.2 Lynden may propose to the County alternatives to reduce or eliminate the need for relocation of its Facilities pursuant to Section 6.1. Upon the County's receipt from Lynden of such alternatives in writing, the County shall evaluate such alternatives and shall advise Lynden in writing if one or more of such alternatives are suitable to accommodate the work that would otherwise necessitate relocation of Lynden's Facilities. In evaluating such alternatives, the County shall give each alternative proposed by Lynden full and fair consideration with due regard to all the facts and circumstances which bear upon the practicality of relocation and alternatives to relocation. In the event the County reasonably determines that such alternatives are not appropriate, Lynden shall relocate its Facilities as otherwise provided in Section 6.1. Any acceptance by the County of such alternatives shall not excuse (nor shall be construed to excuse) Lynden from future relocation or adjustment of Lynden's Facilities pursuant to this Section 6.

6.3 As qualified in Sections 6.1 and 6.2 above, and in Section 6.4 below, whenever any person or entity, other than the County, requires the relocation of Lynden's Facilities to accommodate the work of such person or entity within the Franchise Area, or whenever the County requires the relocation of Lynden's Facilities within the Franchise Area for the benefit of any person or entity other than the County, then Lynden shall have the right as a condition of such relocation to require such person or entity to:

6.3.1 Make payment to Lynden, at a time and upon terms acceptable to Lynden, which acceptance shall not be unreasonably withheld, for any and all costs and expenses incurred by Lynden in the relocation of Lynden's Facilities; and

6.3.2 Indemnify and save Lynden harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the relocation of Lynden's Facilities, to the extent such injury or damage is caused by the negligence of the person or entity requesting the relocation of Lynden's Facilities or the negligence of the agents, servants or employees of the person or entity requesting the relocation of Lynden's Facilities.

6.4 Any condition or requirement imposed by the County upon any person or entity, other than Lynden or the County (including, without limitation, any condition or requirement

imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development) which requires the relocation of Lynden's Facilities shall be a required relocation for purposes of Section 6.3; provided, however:

6.4.1 If the County notifies Lynden in writing that the primary purpose of imposing such condition or requirement upon such person or entity is to cause the grading or widening of the Franchise Area on the County's behalf consistent with the County's Six-Year Road Construction Program, then Lynden shall relocate its Facilities within the Franchise Area in accordance with Section 6.1.

6.4.2 If the County notifies Lynden in writing that the County will bear a portion of the costs of, or will provide funding towards, a project that includes grading or widening of the Franchise Area resulting from the imposition of such condition or requirement upon such person or entity, then Lynden agrees to bear a portion of its costs and expenses to relocate its Facilities to accommodate such grading or widening, such portion borne by Lynden being a percentage equal to that percentage of such project's costs borne or funded by the County (the "County Contribution"); provided, however, in no event shall such portion borne by Lynden exceed the dollar amount of such County Contribution. "Project" shall mean that work directly bearing on the area that necessitates relocation by Lynden, and shall not include other off-site improvements that may be performed at the same time. In all other respects such relocation shall be a required relocation for the purposes of Section 6.3 and without limiting the foregoing, Lynden shall have the right as a condition of such relocation to require such person or entity to pay to Lynden all relocation costs and expenses in excess of the portion borne by Lynden under this Section 6.4.2.

6.4.3 If the Facilities to be relocated pursuant to this subsection 6.4 have been located at or relocated within the preceding five (5) years to a location upon which the County had agreed at the time without reservation, then Lynden shall be entitled to recovery of all its costs and expenses incurred in the relocation of its Facilities from the party on whom the condition for road improvements was placed. Documentation of any such agreement between the County and Lynden shall be kept in conjunction with the encroachment permit issued by the County for the work of relocation.

6.5 Nothing in this Section 6 shall require Lynden to bear any cost or expense in connection with the location or relocation of any Facilities then existing pursuant to easement or such other rights not derived from or addressed by this Franchise.

## **Section 7. Indemnification.**

7.1 To the extent permitted by law, Lynden shall defend, indemnify and hold the County harmless from any and all claims, demands, suits, actions, costs and expenses, including but not limited to reasonable attorney's fees, made against it on account of injury or damage to the person or property of another, but only to the extent such injury or damage is caused by the actions or failure to act of Lynden, its agents, servants or employees in exercising the rights granted to Lynden in this Franchise; provided, however, that in the event any such claim or demand be presented to or filed with the County, the County shall promptly notify Lynden thereof, and Lynden shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand; provided further, that in the event any suit or action is



begun against the County based upon any such claim or demand, the County shall likewise promptly notify Lynden thereof, and Lynden shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election. Notwithstanding the foregoing, if damages to another or others result from concurrent negligence of Lynden and the County, Lynden and the County shall each be responsible for, and this indemnification provision shall be operative so that each party bears, the proportionate share attributable to its own negligence. In case judgment which is not appealed shall be rendered against the County in such suit or action, Lynden shall fully satisfy said judgment within ninety (90) days after said suit or action shall have finally been determined. Upon Lynden's failure to satisfy said judgment within ninety (90) days, the County may elect to terminate this Franchise pursuant to the terms of Section 19 herein. The provision for reimbursement of the County shall survive the termination of this Franchise.

7.2 Acceptance by the County of any work performed by Lynden at the time of completion shall not be grounds for avoidance of the covenant in Section 7.1 above.

### **Section 8. Acquisition of Right-of-Way.**

8.1 In the event that Lynden proposes to acquire easements for the location or relocation of its Facilities outside of, and adjacent to the Franchise Area, Lynden shall notify the County of the same and the County shall have the option, with the concurrence of Lynden, to acquire in place of such Lynden proposed easements, additional public rights-of-way or equivalent public utility easements for use by Lynden. Any such public rights-of-way acquired by the County shall become Franchise Area. Any such public utility easements so acquired by the County shall not be Franchise Area (and shall not be subject to the terms and conditions of this Franchise) and Lynden's use of such public utility easements shall be subject to the terms and conditions of such public utility easements.<sup>1</sup> This section applies only to easement granted to transmission lines; it does not apply to easements granted for new customer service lines.

### **Section 9. Vacation of the Franchise Area.**

9.1 If at any time the County shall seek to vacate any portion of the Franchise Area and said vacation shall be for the purpose of acquiring the fee or other property interest in said portion of the Franchise Area for the use of the County, in either its proprietary or governmental capacity, and there are no Facilities located in the Franchise Area, then the County Engineer may at his option and by giving thirty (30) days written notice to Lynden, terminate this franchise with reference to such portion of the Franchise Area so vacated, and the County shall not be liable for any damages or loss to Lynden allegedly incurred by reason of such termination. Nothing herein shall limit or prevent Lynden from exercising its powers of eminent domain. Should Lynden notify the County of its intent to consider exercising its power of eminent domain to obtain an easement for the Facilities located within the area of the Franchise to be terminated, the termination of the Franchise shall be tolled for a period of no less than one hundred and twenty (120) days from the date of notice.

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<sup>1</sup> A distinction is drawn here between public rights-of-way which are or shall become Franchise Area and thus governed by the terms of the franchise ordinance, and public utility easements which shall not become Franchise Area, the use of which shall be governed by the terms and conditions of the easements themselves and not by the franchise ordinance.

9.2 If at any time the County shall vacate any portion of the Franchise Area in which Facilities are installed at the time of said vacation, and said vacation shall be for the purpose of acquiring the fee or other property interest in said portion of the Franchise Area by other than the County, then the County shall, in its vacation procedure, unless otherwise waived in writing by Lynden, reserve an easement to Lynden for Lynden's Facilities as reasonably necessary for the continued use, operation, maintenance and repair of the Facilities as located in the portion of the Franchise Area to be vacated.

#### **Section 10. Moving Buildings within the Franchise Area.**

10.1 If any person or entity obtains permission from the County to use the Franchise Area for the moving or removal of any building or other object, the County shall, prior to granting such permission, direct such person or entity to arrange with Lynden for the temporary adjustment of Lynden's Facilities necessary to accommodate the moving or removal of such building or other object. Such person or entity shall make such arrangements, upon terms and conditions acceptable to Lynden, not less than fourteen (14) days prior to the moving or removal of such building or other object. In such event, Lynden shall, at the sole cost and expense of the person or entity desiring to move or remove such building or other object, adjust any of its Facilities which may obstruct the moving or removal of such building or object.

#### **Section 11. Locating Facilities.**

11.1 Lynden and the County acknowledge and commit to fully comply with their respective obligations, as the same may arise from time to time, under Chapter 19.122 RCW (Underground Utilities Locator Statute) or any other law applicable to determining the location of utility facilities.

#### **Section 12. Nonexclusive Franchise.**

12.1 This Franchise is not and shall not be deemed to be an exclusive franchise. It shall not in any manner prohibit the County from granting other franchises of a like nature or franchises for other public or private utilities under, along, across, over, and upon any part of the Franchise Area, and shall in no way prevent or prohibit the County from constructing, altering, maintaining, using, or vacating any part thereof, or affect its jurisdiction over any part thereof with full power to make all necessary changes, relocations, repairs, maintenance, etc., the same as the County may deem fit.

#### **Section 13. Franchise Term; Effect on Existing Franchises for Same Purpose.**

13.1 This Franchise is and shall remain in full force and effect for a period of twenty-five (25) years from and after the effective date of the Ordinance; provided, however, Lynden shall have no rights under this Franchise nor shall Lynden be bound by the terms and conditions of this Franchise unless Lynden shall, within thirty (30) days after the effective date of the Ordinance, file with the County its written acceptance of the franchise agreement contained within the Ordinance.

13.1.1 No franchise hereunder shall become effective for any purpose unless and until written acceptance therefore shall have been filed with the Whatcom County Council and County Director of Public Works and such written acceptance shall be in the form and substance as

shall be prescribed and approved by the County Prosecuting Attorney and operate as an acceptance of each and every term and condition and limitation contained in this ordinance, and in such franchise; and

13.1.2 Such written acceptance shall be filed by Lynden not later than the thirtieth (30th) day following the effective date of the Ordinance granting such franchise; and in default of the filing of such written acceptance as herein required, Lynden shall be deemed to have rejected the same. In case of Lynden's tardy acceptance of franchise, the County's recognition thereof shall be strictly at its discretion.

13.2 This Franchise agreement sets forth and constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof. This Franchise agreement supersedes any and all prior agreements, negotiations, correspondence, undertakings, promises, covenants, arrangements, communications, representations, and warranties, whether oral or written, of any party to this agreement.

#### **Section 14. Assignment.**

14.1 Neither this Franchise nor any interest herein shall be sold, transferred, or assigned without the prior consent in writing of the County Council, which consent shall not be unreasonably withheld, except that the Lynden may mortgage this Franchise to the trustee for its bond holders. Any approved assignee shall, within thirty (30) days of the date of any assignment, file written notice of the assignment with the County, together with its written acceptance of all terms and conditions of this Franchise.

14.2 All the provisions, conditions, and requirements herein contained shall be binding upon the successors and assigns of Lynden, and all privileges, as well as all obligations and liabilities of the grantee shall inure to its successors and assigns equally as if they were specifically mentioned wherever Lynden is mentioned.

#### **Section 15. Amendment.**

15.1 Except as addressed in and through Section 15.3 below, this Franchise may be amended only by written instrument, signed by both parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise (including, without limitation, Section 5 above) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the County in conjunction with the exercise (or failure to exercise) by Lynden any and all rights, benefits, privileges, obligations or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically:

15.1.1 References this Franchise; and

15.1.2 States that it supersedes this Franchise to the extent it contains terms and

conditions that change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise. In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement or other document, the provisions of this Franchise shall control.

15.2 If, during the term of this Franchise, there becomes effective any change in federal or state law (including changes approved by the Washington Utilities and Transportation Commission) which:

15.2.1 Affords either party the opportunity to negotiate in good faith a term or condition of this Franchise which term or condition would not have, prior to such change, been consistent with federal or state law; or

15.2.2 Pre-empts or otherwise renders null and void any term or condition of this Franchise which has there-to-fore been negotiated in good faith; then, in such event, either party may notify the other party in writing that such party desires to commence negotiations to amend this Franchise. Such negotiations shall encompass only the specific term or condition affected by such change in federal or state law and neither party shall be obligated to re-open negotiation on any other term or condition of this Franchise. Within thirty (30) days from and after the other party's receipt of such written notice, the parties shall, at a mutually agreeable time and place, commence such negotiations. Pending completion of such negotiations resulting in mutually agreeable amendment of this Franchise, adoption of such amendment by Ordinance by the County and acceptance of such Ordinance by Lynden, and except as to any portion thereof which has been pre-empted or otherwise rendered null and void by such change in federal or state law, this Franchise shall remain in full force and effect.

15.3 Notwithstanding any language to the contrary contained herein, this Franchise is subject to the provisions of the Whatcom County Charter, Section 9.30, and all rights belonging to the County and its people as set forth therein are hereby reserved thereto.

## **Section 16. Miscellaneous**

16.1 If any term, provision, condition, or portion of this Franchise shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Franchise, which shall continue in full force and effect. The headings of sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

16.2 This Franchise is subject to the requirements of any and all applicable laws, rules, and regulations, including the Whatcom County Code, as currently enacted or hereafter modified. In the event of any actual conflict between the provisions of this Franchise and the requirements of the Whatcom County Code or County-enacted rules or regulations, the provisions of this Franchise shall control, to the extent authorized by law.

16.3 All notices, demands, requests, consents and approvals which may, or are required to be given by any party to any other party hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, sent by facsimile, sent by a nationally recognized overnight delivery service, or if mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

**For County:** County Executive  
Whatcom County Courthouse.  
311 Grand Ave.  
Bellingham, WA 98225

**For Lynden :** Mayor  
City of Lynden  
300 4<sup>th</sup> Street  
Lynden, WA 98264

or to such other address as the foregoing parties hereto may from time-to-time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original document.

16.4 No failure by any of the foregoing parties to insist upon the strict performance of any covenant, duty, agreement, or condition of this Franchise or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. No waiver shall affect or alter this Franchise, and each and every covenant, agreement, term and condition of this franchise shall continue in full force and effect with respect to other then existing or subsequent breach thereof.

#### **Section 17. Incorporation and Annexation.**

17.1 Whenever any part of the Franchise Area, by reason of the subsequent incorporation of any town or city, or extension of the limits of any town or city, shall fall within the city or town limits, this Franchise shall continue in force and effect as to all of the Franchise Area not so included in city or town limits.

#### **Section 18. Insurance.**

18.1 During the term of this Franchise Lynden shall keep in effect, a liability insurance policy covering all liability of Lynden to the County, including any assumed by contract between Lynden and any other party, with limits at least in the amount of \$2,000,000. In lieu of the insurance requirement of this Section, Lynden may self-insure against such risks. At the time of Lynden's acceptance of this Franchise and otherwise upon the County's request, Lynden shall provide the County with certificate(s) of insurance or evidence of self-insurance reflecting the requirements of this section.

#### **Section 19. Forfeiture and Termination of Franchise.**

19.1 If Lynden shall willfully violate or fail, through willful or unreasonable neglect, to comply with any of the provisions of this Franchise for sixty (60) days after receipt of written notice from the County, then the County shall have the right by ordinance to declare Lynden's forfeiture of all rights hereunder and to declare this Franchise terminated and of no further force or effect thereafter; provided, however, if any failure to comply with this Franchise by Lynden cannot be corrected with due diligence within said sixty (60) day period (Lynden's obligation to

comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control), then the time within which Lynden may so comply shall be extended for such time as may be reasonably necessary and so long as Lynden commences promptly and diligently to effect such compliance.

**Section 20. Effective Date.**

20.1 This Ordinance shall be effective ten (10) days after being signed by the County Executive, with the Franchise granted hereunder finally effective pursuant to the terms of Sections 13.1, 13.1.1, and 13.1.2, having been: (i) introduced to the County Council not less than thirteen (13) days before its passage; (ii) brought to public notice by such notice having been posted in three (3) public places in Bellingham at least fifteen (15) days before the day fixed for the public hearing; (iii) published at least twice in the official newspaper for the County and no later than five (5) days prior to the day fixed for the hearing and as otherwise required by law; and (iv) passed at a regular meeting of the legislative body of the County of Whatcom by a vote of at least \_\_\_\_\_ members of the County Council on \_\_\_\_\_, 2020.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2020.

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

\_\_\_\_\_  
Dana Brown-Davis, Clerk of the Council

\_\_\_\_\_  
Barry Buchanan, Council Chair

APPROVED AS TO FORM:

( ) Approved ( ) Denied

Christopher Quinn  
\_\_\_\_\_  
Civil Deputy Prosecutor  
(authorized via email 11/10/2020)

\_\_\_\_\_  
Satpal Singh Sidhu, County Executive



# Whatcom County

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

## Agenda Bill Master Report

File Number: **AB2020-588**

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<b>File ID:</b>	AB2020-588	<b>Version:</b>	1	<b>Status:</b>	Agenda Ready
<b>File Created:</b>	12/01/2020	<b>Entered by:</b>	DBrown@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Special Council Only Item		
<b>Assigned to:</b>	Council			<b>Final Action:</b>	
<b>Agenda Date:</b>	12/08/2020			<b>Enactment #:</b>	

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Primary Contact Email: [BElenbaas@co.whatcom.wa.us](mailto:BElenbaas@co.whatcom.wa.us)

**TITLE FOR AGENDA ITEM:**

Approval of letter/request to provide additional public spaces for assigned family visitations during the COVID-19 Pandemic

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:**

Approval of letter/request to provide additional indoor public spaces for assigned family visitations during the COVID-19 Pandemic

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
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**Attachments:**