

After recording return to:

Skagit County Public Works Department
Attn: Road Maintenance Division
1800 Continental Place
Mount Vernon, WA 98273

INTERLOCAL COOPERATIVE AGREEMENT

BETWEEN
Town of La Conner
AND
Skagit County

THIS AGREEMENT ("Agreement") is made and entered into by and between Town of La Conner ("Second Party") and Skagit County, a Political Subdivision of the State of Washington ("County") pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT. The Second Party and the County may be individually referred to herein as a "party", and may be collectively referred to herein as the "parties." In consideration of the following, the parties mutually agree as follows:

1. PURPOSE: The COUNTY will perform work, provide materials, and provide the use of County equipment operated by a County operator, for work for the SECOND PARTY as requested, to be reimbursed to the COUNTY at the actual cost incurred by the COUNTY for said work, materials, and equipment rentals, including, but not limited to road maintenance and the use of County equipment by a County operator.

1.1 In the event that the Second Party shall use any equipment owned by the County pursuant to this Agreement, the Second Party agrees that any user and/or operator of such equipment shall be a County operator properly trained and/or certified in accordance with applicable law and industry standards, and (to the fullest extent allowed by law) shall further agree to defend, indemnify, and hold harmless the County for all liability, cost, loss, expense, claims, settlements, and/or judgments against the County arising from and/or related to the use and/or operation of the County's equipment by the County on behalf of the Second Party, pursuant to the terms herein.

2. RESPONSIBILITIES: The COUNTY and the SECOND PARTY in the performance of this Agreement shall abide by the provisions of RCW 39.34, the terms of this Agreement and/or any other applicable law.

3. TERM OF AGREEMENT: The term of this Agreement shall be from January 1, 2013 through December 31, 2017.

4. **MANNER OF FINANCING:** The COUNTY will perform work, provide materials, and/or the use of County equipment (to be operated by a County operator), for work on the SECOND PARTY'S facilities upon their request and acceptance by the COUNTY, to be reimbursed by SECOND PARTY to the COUNTY at the actual cost incurred by the COUNTY for said work, materials and use of County equipment (and wages for the County operator provided by the County to operate the equipment); and, in addition thereto, nine percent (9%) of the total cost shall be added for overhead costs for accounting, billing, and administrative services, provided that the COUNTY shall submit to the SECOND PARTY a certified statement of the costs, and within thirty (30) days thereafter, SECOND PARTY shall pay to the COUNTY the amount of said statement.

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

5.1 The County's representative shall be the Skagit County Public Works Department Road Maintenance Division Operation's Division Manager.

5.2 Second Party's representative shall be the Director of Public Works.

6. **TREATMENT OF ASSETS AND PROPERTY:** No fixed assets or personal or real property will be jointly or cooperatively, acquired, held, used, or disposed of pursuant to this Agreement.

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

8. **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, employees, volunteers, assigns, contractors, subcontractors, and/or consultants to the fullest extent required by law, and further agrees to save, indemnify, defend, and hold the other party harmless from any such liability, loss, and/or expense, including but not limited to, judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the other party, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the other party, its subcontractors, its elected officers, employees, volunteers, and/or their agents. It is further provided that no liability shall attach to the County by reason of entering into this contract except as expressly provided herein.

9. **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.

10. **CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS:** The Agreement may be changed, modified, amended or waived only by written agreement executed by the parties hereto. Waiver

or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

11. **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.

12. **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.

13. **COMPLIANCE WITH LAWS AND TERMS OF GRANTS:** The parties to this Agreement shall comply with all applicable federal, state, and local laws, rules, and regulations in carrying out the terms and conditions of this Agreement. If applicable, compliance with laws shall specifically include, by not be limited to, compliance with laws pertaining to the payment of prevailing wage on public works (including, but not necessarily limited to RCW 39.12). If applicable, compliance with laws shall also specifically include, but not be limited to, compliance with laws for the procurement of contracts for architectural and engineering services (including, but not necessarily limited to RCW 39.80). If necessary, the parties shall obtain and comply with all necessary permits and approvals from applicable jurisdictions prior to commencing any work related to this Agreement. To the maximum extent allowed by law, the Second Party shall indemnify and hold the County harmless for any non-compliance with laws as specifically pertaining and/or related to the Purpose of this Agreement as described herein. The Second Party individually recognizes and agrees that it shall be solely and separately responsible and liable for compliance with all terms and conditions of any grant(s) obtained or procured by the Second Party (and/or on behalf of the Second Party by the County). To the maximum extent allowed by law, the Second Party shall defend, indemnify, and hold the County harmless for any non-compliance with laws the terms of any grants(s) as specifically pertaining and/or related to the Purpose of the Agreement, as described herein.

14. **ASSIGNMENT AND SUBCONTRACTING:** Unless otherwise expressly provided herein, no portion of this Agreement may be assigned, contracted, and/or subcontracted to any other individual, firm, company, and/or other entity without the express and prior written approval of the County. To the extent provided by law, and by the terms of any applicable grants, the County may assign, contract, and/or sub contract any or all of its duties and/or obligations under this Agreement, without the consent of the Second Party.

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

16. **VENUE AND CHOICE OF LAW:** In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the Superior Court of the State of Washington in and for the County of Skagit. This Agreement shall be governed by the laws of the State of Washington.

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

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

IN WITNESS WHEREOF, the parties have executed this Agreement this _____ day of _____, 2012.

GOVERNMENT AGENCY:

Signature

Date November 14, 2012

Ramon Hayes, Mayor
Print Name and Title of Signatory

Mailing Address:

Town of La Conner
204 Douglas Street
P.O. Box 400
La Conner, WA 98257

DATED this _____ day of _____, 2012.

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

Kenneth A. Dahlstedt, Chairman

Sharon D. Dillon, Commissioner

Attest:

Ron Wesen, Commissioner

Clerk of the Board

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

Recommended:

County Administrator

DATED this 26 day of December, 2012.

BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON

ABSENT

Kenneth A. Dahlstedt, Chairman

Sharon D. Dillon
Sharon D. Dillon, Commissioner

Ron Wesen
Ron Wesen, Commissioner

Attest:

Linda Hanmer
Clerk of the Board

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

Recommended:

Henry Hall
Department Head

County Administrator

Approved as to form:

John D. Johnson
12/10/12
Civil Deputy Prosecuting Attorney

Approved as to indemnification:

Sharon D. Dillon
Risk Manager

Approved as to budget:

Linda Yagme
Budget & Finance Director