

**Executive Summary and Staff Analysis**  
**Whatcom County Officials**  
**(Jack Louws, Executive; Bill Elfo, Sheriff; David McEachran, Prosecutor)**  
(10 Complaints plus five 45-Day Citizen Action Complaints)  
PDC Case No. 1122

This summary highlights staff's findings, conclusions, and recommendations regarding the allegations contained in PDC Case No. 1122, which includes 15 complaints, five of which are identical 45-Day Citizen Action Complaints, filed between October 18 and November 17, 2015 against Whatcom County Officials (Jack Louws, County Executive; Bill Elfo, County Sheriff; and David McEachran, County Prosecutor).

**Background**

For the past 17 years, Whatcom County officials have been studying issues related to jail facilities, jail operations, and treatment options. In 2015, the Whatcom County Council passed Resolution 2015-024 to send a proposed 0.2 percent sales and use tax increase to voters for constructing and operating a new jail facility, and for other public safety purposes. The measure appeared on the November 3, 2015 general election ballot as Proposition 2015-1. It was rejected by 51.43% of voters with 29,896 "No" votes and 28,230 "Yes" votes.

**Allegations**

The 15 complaints alleged that Whatcom County officials authorized and distributed a flyer that promoted Proposition 2015-1 and the re-election campaigns of Sheriff Bill Elfo and Executive Jack Louws. The complaints alleged:

- A. The jail mailer was not a fair and objective presentation of facts and did not represent "normal and regular" activity because it did not accurately present the costs and other anticipated impacts of the ballot measure, and some of the pictures were inflammatory because they show incarcerated citizens in deplorable housing conditions.
- B. The jail mailer assisted the campaigns of Sheriff Bill Elfo and Executive Jack Louws by including their pictures in the mailer. The mailer was also a prohibited Public Service Announcement by Sheriff Elfo and Executive Louws.
- C. The jail mailer promoted Proposition 2015-1 because it targeted registered voters.
- D. The jail mailer failed to disclose that passage could impact the County's ability to raise money for future public safety issues.
- E. The jail mailer was part of a coordinated campaign effort.
- F. The jail mailer promoted Proposition 2015-1 and Proposition 1 by misidentifying Proposition 2015-1 as Proposition 1.

- G. The jail mailer constituted an Electioneering Communication that went unreported.

## **Findings**

Whatcom County officials mailed one jurisdiction-wide fact sheet concerning Proposition 2015-1. The mailer presented a condensed summary of the county's findings about its jail facilities over the past 17 years, and explained that the ballot measure would increase the sales and use tax by 0.2 percent to raise funds to construct and operate a new jail facility in Ferndale. The flyer did not include the construction cost, estimated to be between \$75 million and \$95 million, because the cost estimate was dependent on the City of Bellingham's acceptance of a Jail Facility Use Agreement, and negotiations were still underway when the fact sheet was prepared and mailed. The mailer used neutral language, and pictures showed the condition of the existing jail and drawings of the proposed jail facility.

The mailer included pictures of three elected officials, Sheriff Elfo, who was up for election but was unopposed, Executive Louws, who was up for election and was opposed, and Prosecutor McEachran who was not up for election. Sheriff Elfo and Executive Louws are responsible for jail operations, programs, or budgeting for the jail facility. Each made statements in the flyer about jail operations and programs. Pictures of the officials did not appear to be a gratuitous appearance for the purpose of assisting their campaigns for re-election.

State law prohibits state-elected officials and municipal officers from speaking or appearing in a Public Service Announcement (PSA) from January 1 to the date of the general election in a year in which the official is a candidate. A PSA is a communication that is designed to benefit or promote the community's health, safety or welfare such as breast cancer screening, heart disease, or organ donation. A public agency fact sheet, such as the jail mailer, does not meet the definition of a PSA even though it included statements by three elected officials about an issue of public concern.

The flyer was sent to households with at least one registered voter rather than to all mailing addresses. This happened after representatives of Whatcom County contacted PDC staff asking if the mailer could be sent to a list of registered voters. County officials understood the answer to indicate that a list of registered voters may be used as a mailing list, so long as the list is not filtered to be restricted by political party or voting platforms. PDC staff did not have written evidence of the conversation, and typically directs people with such questions to the appropriate PDC Interpretation found on the PDC website. However, it appears that Whatcom County relied on what they understood to be advice from PDC staff when deciding to restrict their fact sheet mailing to households with at least one registered voter.

The mailer did not speculate about the alleged secondary effect of the proposition on the County's ability to raise money in the future to address other public safety issues, and no evidence was provided or found that the mailer was coordinated with any

campaign efforts. The flyer erroneously identified the measure as Proposition 1 rather than as Proposition 2015-1 after relying on information received from the Auditor's office. No evidence was provided showing that the County intentionally used the wrong Proposition number, or demonstrating that using the wrong number would result in incorrect votes in support of Proposition 2015-1 or Proposition 1. Finally, an Electioneering Communication does not include a communication that is exempted by the commission through rule consistent with the intent of RCW 42.17A, and public agencies are allowed to produce and disseminate a fair and objective fact sheet about a ballot proposition.

### **Conclusion**

Based on the factors identified in staff's investigation and described here, staff did not find that Whatcom County Officials (Jack Louws, County Executive; Bill Elfo, County Sheriff; and David McEachran, County Prosecutor) violated RCW 42.17A.555 by authorizing and distributing a flyer that promoted Proposition 2015-1 or Proposition 1, or the re-election campaigns of Sheriff Bill Elfo and Executive Jack Louws. In addition, the jail mailer did not constitute a prohibited Public Service Announcement or an unreported Electioneering Communication.

The jail mailer described the proposal being presented to voters. It included the cost to taxpayers by stating the percentage increase in the sales and use tax. The statements by Executive Louws, Sheriff Elfo, and Prosecutor McEachran were factual, and were presented in a neutral way, and use of their pictures did not appear to be done for the purpose of assisting the election campaigns of Sheriff Elfo and Executive Louws.

Staff is concerned that the mailer did not include an estimate of the cost to construct and operate the proposed jail facility, and that the mailer was sent to registered voters rather than to all addresses, but given that the mailer accurately described the proposed jail facility and the increased sales and use tax to taxpayers, the County's concern about using an Assessor's Office list of household addresses, and efforts to obtain and follow staff advice on the question of whether mailing to registered voters was appropriate, enforcement does not appear warranted in this instance.

### **Recommendation**

For the reasons described above, staff recommends that the Commission dismiss the allegations in the 15 complaints, and recommend, for the five complaints that are 45-Day Citizen Action Complaints, that the Attorney General take no further action.



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PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION  
OF THE STATE OF WASHINGTON

In RE COMPLIANCE WITH  
RCW 42.17 and RCW 42.17A

Whatcom County Officials  
(Executive Jack Louws; Sheriff Bill  
Elfo; Prosecutor David McEachran)

Respondent.

PDC Case No. 1122

Report of Investigation

**I.**

**Background**

- 1.1 In 2015, the Whatcom County Council passed a resolution to send a proposed 0.2 percent sales and use tax increase to voters to pay for construction and operation of a new jail facility in Whatcom County. The measure appeared on the November 3, 2015 general election ballot as Proposition 2015-1. The measure was rejected by 51.43% of voters with 29,896 “No” votes and 28,230 “Yes” votes.
- 1.2 Between October 18, 2015 and November 2, 2015, PDC received 14 complaints, five of which were filed as 45-day citizen action complaints under RCW 42.17A.765(4), which allows a citizen to prosecute an alleged violation of RCW 42.17A in Superior Court if, after receiving proper notice, the Attorney General and prosecuting attorney in the county in which the violation occurred, have failed to commence an action. On November 17, 2015, PDC received a 15<sup>th</sup> complaint. The 15 complaints make similar allegations, that Whatcom County Officials used County facilities in a variety of ways to promote Proposition 2015-1, an alleged violation of RCW 42.17A.555.

**II.**

**Allegations**

- 2.1 The 15 complaints alleged that a flyer paid for by Whatcom County concerning a sales and use tax increase to pay for constructing and operating a new jail facility, and for other public safety purposes, authorized and approved by Jack Louws, County Executive, and Bill Elfo, County Sheriff, and reviewed and approved by David McEachran, County Prosecutor, promoted Proposition 2015-1 and the re-election campaigns of Sheriff Bill Elfo and Executive Jack Louws because of its content and because it was mailed to all households in Whatcom County that included at least one registered voter. The



complaints also alleged that the flyer promoted Proposition 1, a ballot measure concerning district-only voting for Whatcom County Council positions, because the flyer erroneously referred to the new jail facility ballot measure as Proposition 1.

2.2 Some of the complaints refer to the alleged violations as being civil rights violations in addition to violations of RCW 42.17A, citing such concerns as “systemic racism,” illegal “mass incarceration policies,” and “deliberate overcrowding.” The PDC has no jurisdiction over civil rights violations and no authority to investigate those concerns.

2.3 The 15 complainants are listed below, followed by a brief summary of the allegations in the complaints:

1. Richard Jenn, received October 18, 2015 **(Exhibit 1)**
2. Debra David, received October 18, 2015 **(Exhibit 2)**
3. Douglas Starcher, received October 21, 2015 **(Exhibit 3)**
4. Marissa McGrath, received October 21, 2015 **(Exhibit 4)**
5. Sara Holodnick, received October 21, 2015 **(Exhibit 5)**
6. Rosalinda Guillen, 45-day citizen action, received October 30, 2015 **(Exhibit 6)**
7. Omar Jordan, 45-day citizen action, received October 30, 2015 **(Exhibit 7)**
8. Kimberly Harris, 45-day citizen action, received October 30, 2015 **(Exhibit 8)**
9. Maria Mora Villalpando, 45-day citizen action, received October 30, 2015 **(Exhibit 9)**
10. Neah Monteiro, 45-day citizen action, received October 30, 2015 **(Exhibit 10)**
11. Marinel Kniseley, received October 31, 2015 **(Exhibit 11)**
12. Tina McKim, received November 1, 2015 **(Exhibit 12)**
13. Liisa Wale, received November 2, 2015 **(Exhibit 13)**
14. League of Women Voters of Bellingham and Whatcom County, received November 2, 2015 **(Exhibit 14)**
15. James Ace, received November 17, 2015 **(Exhibit 15)**

### **Summary of Allegations**

- A. The jail mailer is not a fair and objective presentation of facts because it does not accurately present the costs and other anticipated impacts of the ballot measure, and some of the pictures are inflammatory because they show incarcerated citizens in deplorable housing conditions.
- B. The jail mailer assisted the campaigns of Sheriff Bill Elfo and Executive Jack Louws by including their pictures in the mailer. The mailer was also a Public Service Announcement by Sheriff Elfo and Executive Louws that was prohibited because they were candidates on the ballot during the year the mailing was made.
- C. The jail mailer promoted Proposition 2015-1 because it targeted all Whatcom County households in which there was at least one registered voter.
- D. The jail mailer failed to disclose that passage would max out the county's ability to tax for public safety issues for 30 years.

- E. The jail mailer, with its information about the ballot measure, was a coordinated campaign effort.
- F. The jail mailer promoted Proposition 2015-1 and Proposition 1 by creating confusion when it misidentified Proposition 2015-1 as Proposition 1, a measure concerning district-only voting.
- G. Distribution of the jail mailer was not a normal and regular activity for the county as contemplated under RCW 42.17A.555 and WAC 390-05-273.
- H. The jail mailer constituted an Electioneering Communication as defined in RCW 42.17A.005(19)(a) that would require reporting under RCW 42.17A.305.

### **III.** **Findings**

- 3.1 Whatcom County's jail is 32 years old, and the County began preparing to build a new jail more than 17 years ago due to what it states are well-documented operational and maintenance problems due to its age, including overcrowding. During that time, the county has spent over \$800,000 researching and informing the public about the issue, which has included assembling panels, conducting studies, and commissioning plans to address the issue. The county also approved the purchase of a \$6 million site for the proposed new jail.
- 3.2 During this 17-year process, the county has notified the public of its jail research findings through website postings, open public meetings, and interviews with the media. The county's research consistently indicated that the jail needed to be replaced. In September 2014, the County Council contracted with DLR Group, in part, to "inform the general public of operational and maintenance issues facing" Whatcom County concerning its jail issues. DLR was authorized by the Whatcom County Council to create two jurisdiction-wide mailings to inform the public of the maintenance and operational issues, the proposed solution, and the cost of the tax that would pay for the solution, if passed by voters. In 2015, the Council passed Resolution 2015-024 to send to voters a proposed sales tax increase of 0.2 percent to pay for construction of a new jail facility in Whatcom County.
- 3.3 In preparing for making its informational mailings, DLR and Whatcom County studied the law and confirmed that a single jurisdiction-wide factual mailing was the legal and customary method for informing the public about the upcoming ballot proposition. They read PDC staff member Tony Perkins' January 12, 2015 letter to Local Government Agency Officials, and decided to send out only one mailing. DLR and Whatcom County researched examples of fact sheet mailings from other jurisdictions, including a recent Skagit County jail proposal sent out during the summer of 2013. DLR and Whatcom County decided on a four-page fold-out newsletter to describe its 2015 ballot measure, consistent with other mailers issued by Whatcom County in the past. **(See Exhibit 24)**
- 3.4 After developing its fact sheet, DLR and Whatcom County sought official review by PDC staff, but were told the PDC was no longer providing reviews of individual fact sheets due to budget cuts and staffing levels. DLR and Whatcom County then contacted

PDC staff to obtain advice before sending out its fact sheet. After a conversation between a DLR staff member and a PDC Filer Assistance Specialist, DLR and Whatcom County reviewed and revised its mailer to conform to the advice they stated they received from the PDC. That advice included: (1) If regular informational mailers are not sent to the public, then only one mailer per ballot measure may be sent out; (2) An indication that a list of Registered Voters may be used as a mailing list, so long as the list is not filtered to be restricted by political party or voting platforms; and (3) The mailer should not directly advocate, and should only present the facts of the project and information to allow voters to make an informed decision of the funding question. Whatcom County also used the statutory references provided by PDC staff and several examples of prior advice given to other counties. The fact sheet was then distributed jurisdiction-wide to households with at least one voter, on a non-partisan basis. **(See Exhibit 17)**

- 3.5 Within a few days of the fact sheet being mailed, a newspaper article was written about the mailer, and five complaints were received by the PDC. Nine additional complaints, including five 45-day complaints, were received between October 30 and November 2, 2015, and a 15<sup>th</sup> complaint was received November 17, 2015. Some of the complaints argued against a larger jail facility citing “systemic racism,” illegal “mass incarceration policies,” “deliberate overcrowding,” and other objections to Whatcom County’s incarceration policies. Proposition 2015-1 failed. **(See Exhibits 16-25 for the County’s response to the complaints.)**

**Allegation A** - The jail mailer is not a fair and objective presentation of facts because it does not accurately present the costs and other anticipated impacts of the ballot measure, and some of the pictures are inflammatory because they show incarcerated citizens in deplorable housing conditions. **(See Exhibits 18, 20, 21, 25)**

- 3.6 Some of the complaints include political argument against Proposition 2015-1, and fault the county for not making those arguments in its mailing. There is no evidence that the county failed to accurately present the cost to the taxpayer and other anticipated impacts of the proposition in its mailing.
- 3.7 The mailing presents a condensed summary of the county’s findings about its jail over the past 17 years. Those findings resulted from the county’s studies, panels, and reports. The mailing included the following elements:
- Quote from Executive Jack Louws concerning the cost of programs for behavioral health programming.
  - Neutral statement from Prosecutor David McEachran about the lack of programming space in the existing jail.
  - Statement from Sheriff Bill Elfo expressing law enforcement concerns about the existing jail, including overcrowding, safety, liability, and programming space.
  - A site map without comment showing the layout and design of the proposed new jail facility.

- Neutral comments about a “Proposed design” explaining six modern features of the new facility that would remedy maintenance and operations issues in the existing jail.
- Photos of the existing jail and drawings of the proposed jail.
- Jail capacity statistics.
- Factual statement that the current jail cannot operate at current population levels or expand at its current site.
- Statement that Whatcom County must, by law, house felons.
- Statement that the County Council has determined the existing jail does not meet the County’s needs, and that a new jail facility will be built in Ferndale if the measure passes.
- Current sales tax rates in the region.
- The language of the ballot measure, including the exact rate.
- Statement of the percentage increase the tax would add.
- The procedural history of the process for planning the new jail.
- A timeline for a new facility if the proposition passed.

3.8 Whatcom County officials stated that they followed PDC’s January 12, 2015 advisory memo to local government agency officials on election-related communications, and as a result, the elements in the mailer:

- Are not overtly promotional or oppositional.
- Do not speculate about secondary or tertiary impacts.
- Do not minimize the cost through comparisons to small ticket items.
- Do not purport to describe or promise responsible fiscal management.
- Do not offer detailed tax exemption information.
- Do not offer information about the conduct of the election.

3.9 Whatcom County officials stated that they also reviewed samples of past advice provided by the PDC. They stated that based on the advice given, the Whatcom County mailing: **(See Exhibit 17)**

- Does not refer readers to outside sources.
- Does not encourage voter participation.

- Does not use emotionally laden language.
- Does not convey a tenor of support through words telling the voters they “should, need, must” support this tax to fix the existing jail problem.
- Does not indicate that this is a good time for financing or job creation.
- Does not describe the tax as “small.”
- Does not ask voters to ask themselves whether the tax is right for them and to make a decision.
- Does not “sell” the tax by minimizing the financial impact.
- Does not discuss the “fairness” of the proposed tax.

3.10 Whatcom County demonstrated that they researched this issue extensively, used PDC resources for guidance, and then condensed the information they had gathered about the jail for 18 years into a mailing to inform the public about the issue before them.

#### Cost

- 3.11 The cost of the ballot proposition to voters was expressed as a proposed increase in the sales and use tax of two tenths of one percent. The cost to individual taxpayers is directly related to their purchases subject to sales or use tax. Thus, the increased tax burden would vary for each taxpayer. The mailer stated that half of the tax would expire upon payment of bonds issued to finance the facilities, no later than 30 years after issuance. The mailer included a list of current sales tax rates from the Puget Sound region. Although the flyer did not include the sales and use tax rates for Anacortes or Sedro-Woolley, they are each .085, which is the same rate listed for several of the jurisdictions listed in the flyer. The flyer did not include any statements about secondary cost concerns, such as rising construction costs if construction of a new jail is delayed, or job creation if the measure is accepted. **(See Exhibit 25)**
- 3.12 The mailer did not state the cost to construct and operate the new jail facility, nor did it state the estimated revenue that would be generated from the proposed sales and use tax increase of 0.2 percent. Whatcom County stated that the cost of constructing a new jail facility is dependent on Bellingham’s agreement to the Jail Facility Use Agreement. With Bellingham’s participation, they would add their inmates to the population, which would require a larger jail and create higher operating costs. With Bellingham’s participation, the larger jail would have 521 beds and would cost an estimated \$97 Million. Without Bellingham’s participation, the inmate population would be lower, and the jail would have 400 beds and cost an estimated \$75 million. At the time the informational mailer went to press, the County Executive was still discussing with the City of Bellingham the opportunity for Bellingham’s participation. The mailer did not provide an estimated cost to construct the new jail facility because negotiations with the City of Bellingham were still going on, and the County did not want to misidentify the cost of \$75 million versus a potential \$97 million.

- 3.13 A draft of the mailer that was not used included the following language: "If Proposition #1 passes, the County and 6 of the 7 cities will build a replacement jail on LaBounty Road in Ferndale, demolish the existing Prospect Street jail and construct facilities for inmate transfer at the County Courthouse. Construction of a new \$75 million jail facility will house up to 400 inmates plus space for behavioral health, medical and administration areas. The City of Bellingham will receive a portion of these tax proceeds per state law and is authorized to use the funds as described in the ballot measure."
- 3.14 Because negotiations were still going on, and Whatcom County did not want to misidentify the cost, the final mailer included the following language: "If Proposition #1 passes, the County and participating cities will build a replacement jail on LaBounty Road in Ferndale, demolish the existing Prospect Street jail and construct facilities for inmate transfer at the County Courthouse. Construction of a new jail facility will house felons and misdemeanants plus space for behavioral health, medical and administration areas."

### Photos

- 3.15 The jail mailer includes three pictures that include incarcerated individuals. The first photo shows three inmates in a room with two bunks and a cot. Its caption reads, "Existing cell." A second photo shows three inmates sitting on a bench. Its caption reads, "Existing inmate programs space." A third photo shows eight inmates in a room with four bunks and four cots. Its caption reads, "Existing shower room converted to cell." The photos are not captioned with charged language. Whatcom County contends that the photos are factual and depict the actual condition of the jail. They also contend that the photos do not depict the condition of the jail in an inflammatory manner, intended to trigger an emotional response. They state that the photos provide a fair and objective look at the actual maintenance and operations problems facing the County. The photos appear to be informative and not inflammatory. (See Exhibit 25)

**Allegation B** - The jail mailer assisted the campaigns of Sheriff Bill Elfo and Executive Jack Louws by including their pictures in the mailer. The mailer was also a Public Service Announcement by Sheriff Elfo and Executive Louws that was prohibited because they were candidates on the ballot during the year the mailing was made.

- 3.16 Whatcom County states that it appears the complaints are not sworn under oath, a requirement when a complaint is filed against a candidate or elected official. The complaints were filed through the Commission's on-line portal for receiving complaints which includes a certification checkbox that is equivalent to a complaint being sworn under oath.
- 3.17 The jail mailer included pictures of Sheriff Bill Elfo, Executive Jack Louws, and Prosecutor David McEachran. Sheriff Elfo was up for election, but was unopposed. Executive Louws was up for election, and was opposed. Prosecutor McEachran was not up for election. DLR developed the mailing and requested the photos from Sheriff Elfo and Executive McEachran. Each individual authorized DLR to use a photo, with the understanding that the mailer would be reviewed by PDC staff and by the Whatcom County Prosecuting Attorney's Office for legality before dissemination.

- 3.18 Sheriff Elfo stated that when he first saw a mockup of the flyer it already included a picture of him that he believed was taken from the public domain. He said the County Executive's office asked for higher resolution pictures, which he sent, but they were not used in the final version of the flyer. Sheriff Elfo said while he did not specifically authorize the picture that was used, he expressed a positive view that it would assist voters in making a decision.
- 3.19 Executive Louws indicated that DLR Group designed the mailing and chose to use a photo of him. He then approved using his photo with the understanding that the legality of the entire mailing would be reviewed with the PDC and the Whatcom County Prosecuting Attorney's Office.
- 3.20 The elected officials who appeared in the mailing are responsible for jail operations and programs or budgeting for the facility, or are experts regarding jail operations and programs. Sheriff Elfo is the chief law enforcement officer in the County and is responsible for the operation of the jail. Executive Louws is responsible for capital improvements, such as a new jail facility, and the budgeting and administration of capital projects. He is also responsible for jail maintenance. The pictures allowed the reader to see who was making the statements about the jail and its operations, and did not appear to be a gratuitous appearance on behalf of a popular cause, such as might be done in a public service announcement. No evidence was found that the statements made by Sheriff Elfo and Executive Louws, or the use of their pictures next to their statements, were for the purpose of assisting their campaigns for re-election.
- 3.21 State law prohibits state-elected officials and municipal officers from speaking or appearing in a Public Service Announcement (PSA) from January 1 to the date of the general election in a year in which the official is a candidate. A PSA is a communication that is designed to benefit or promote the community's health, safety or welfare or nonprofit community events. Examples of public service announcements include but are not limited to communications regarding nonprofit community events, outreach or awareness activities such as: breast cancer screening, heart disease, domestic violence, organ donation, emergency or other disaster relief for organizations such as the Red Cross, programs designed to encourage reading by school children, childhood safety, fund drives for charitable programs such as United Way, and similar matters.
- 3.22 A public agency fact sheet concerning a ballot proposition does not meet the definition of a PSA even though it included the pictures of three elected officials and statements from those officials concerning an issue of public concern.

**Allegation C** - The jail mailer promoted Proposition 2015-1 because it targeted all Whatcom County households in which there was at least one registered voter. (See Exhibit 17)

- 3.23 Whatcom County officials decided that sending the fact sheet to an Auditor's Office list was the best option to ensure a broad audience for a jurisdiction-wide mailer in Whatcom County. Officials stated they contemplated using the Assessor's Office tax information as a resource but it became clear that the Assessor's list would include thousands of vacant properties (non-household addresses) and addresses located outside the USA (bulk mailers cannot be mailed to foreign addresses). Officials said they were unaware of any

other option to gather a “jurisdiction-wide” list of Whatcom County’s households since they do not maintain a current distribution list of households.

3.24 DLR Group compiled and recommended using a list of households that voted in the last three elections. However, Whatcom County asked DLR to contact the PDC to determine whether that limiting the distribution in this manner would be consistent with PDC guidance concerning not mailing to “specific subgroups.” DLR contacted PDC staff for advice. On September 2, 2015, an employee of DLR spoke with a PDC Filer Assistance Specialist about the mailer. According to the DLR employee, the advice included: (1) If regular informational mailers are not sent to the public, then only one mailer per ballot measure may be sent out; (2) An indication that a list of Registered Voters may be used as a mailing list, so long as the list is not filtered to be restricted by political party or voting platforms; and (3) The mailer should not directly advocate, and should only present the facts of the project and information to allow voters to make an informed decision of the funding question. Based on the DLR staff member’s understanding of the advice from PDC staff, Whatcom County distributed the fact sheet jurisdiction-wide to households with at least one voter, on a non-partisan basis.

3.25 The PDC employee did not have written notes of the conversation, and does not believe he would have provided advice that it would be acceptable to send a fact sheet to a list of registered voters, as opposed to all households in the jurisdiction. The PDC employee stated that he typically directs people with such questions to the appropriate PDC Interpretation found on the PDC website. However, it appears that the DLR Group staff member and the PDC staff member likely had a conversation that included a brief discussion of the appropriateness of sending a single jurisdiction-wide mailing to a list of registered voters, and in a good-faith attempt to follow the advice received, DLR sent the jail mailing to a list of registered voters.

**Allegation D** - The jail mailer failed to disclose that passage would max out the county's ability to tax for public safety issues for 30 years.

3.26 The tax proposed by Proposition 2015-1 was a 0.2 percent sales and use tax increase. As such, there was no known fixed amount of revenue being generated by the proposition. Whatcom County stated a discussion of the alleged secondary effect of the proposition on the County’s statutory taxing structure and ability to raise money in the future to address other public safety issues that do not yet exist, would be prohibited in an informational mailer requesting funds to construct a new jail.

**Allegation E** - The jail mailer, with its information about the ballot measure, was a coordinated campaign effort.

3.27 Whatcom County denied that its informational mailer about Proposition 2015-1 was coordinated with any campaign efforts, and no evidence of coordinated campaign activities was cited in the complaints.

**Allegation F** - The jail mailer promoted Proposition 2015-1 and Proposition 1 by creating confusion when it misidentified Proposition 2015-1 as Proposition 1, a measure concerning district-only voting. (See Exhibit 22)



- 3.28 Whatcom County's mailing referred to the proposition as "Proposition Number 1" which differed slightly from the number that appeared on the ballot, which was "Proposition 2015-1." A separate Proposition 1 appeared on the ballot regarding a different measure, concerning district-only voting for County Council positions.
- 3.29 The complaints suggest that Whatcom County's use of Proposition 1 to describe the jail mailer may have been done to confuse voters, and somehow result in votes for Proposition 2015-1 and Proposition 1 that were not intended by voters.
- 3.30 Whatcom County produced evidence showing that on August 19, 2015, the Whatcom County Auditor's Office sent the County Executive's office an email that stated, "I believe this is the final version (see attached)" with an attachment that included the ballot proposition language. The proposition was titled "Proposition Number 1." The Executive's Office forwarded the email to DLR, and the mailing was created using Proposition Number 1.
- 3.31 No evidence was provided showing that the County intentionally used the wrong Proposition number, or demonstrating how using the wrong number would result in incorrect votes.

**Allegation G** - Distribution of the jail mailer was not a normal and regular activity for the county as contemplated under RCW 42.17A.555 and WAC 390-05-273. **(Exhibits 17-21 & 24)**

- 3.32 In September 2014, Whatcom County contracted with DLR Group to provide a variety of jail development services, including permitting, design, engineering, and on-going public outreach. The public outreach took on many forms, and included the development of mailers about the jail proposal. The mailings were planned more than a year before the 2015 election as part of the County's public information process.
- 3.33 For Proposition 2015-1, Whatcom County sent out a single mailing, as contemplated by PDC Interpretation 04-02, which states in part, "It is not only the right, but the responsibility of local government to inform the general public of the operational and maintenance issues facing local agencies." The interpretation goes on to state that, "The PDC will presume that every agency may distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure." Whatcom County also uses mailings to inform the public of maintenance and operations issues, and to provide facts about relevant research and studies. **(See Exhibit 19)**

**Allegation H** - The jail mailer constituted an Electioneering Communication as defined in RCW 42.17A.005(19)(a) that would require reporting under RCW 42.17A.305.

- 3.34 An Electioneering Communication does not include a communication that is exempted by the commission through rule consistent with the intent of RCW 42.17A. RCW 42.17A.555(3), WAC 390-05-271, WAC 390-05-273, and Interpretation 04-02 allow public agencies to produce and disseminate fair and objective fact sheets about ballot propositions the agencies place on the ballot. Therefore, including an image of an elected official who is on the ballot, in an agency's fact sheet, does not make the fact sheet an Electioneering Communication.

#### IV. Scope

4.1 PDC staff reviewed the following:

- Fourteen complaints filed between October 18, 2015 and November 2, 2015, five of which were filed as 45-day citizen action complaints under RCW 42.17A.765(4), and a 15<sup>th</sup> complaint received November 17, 2015.
- The response from Whatcom County Officials, prepared by Royce Buckingham, Whatcom County Deputy Prosecuting Attorney.

4.2 Staff spoke with Mr. Buckingham.

4.3 Staff spoke with Chip Beatty, PDC Filer Assistance Specialist.

#### V. Laws, Rules & PDC Interpretations

- 5.1 **RCW 42.17A.555** states, in part: “No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities: ... (3) Activities which are part of the normal and regular conduct of the office or agency.”
- 5.2 **WAC 390-05-271(2)** states that RCW 42.17A.555 does not prevent a public office or agency from (a) making facilities available on a nondiscriminatory, equal access basis for political uses or (b) making an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency.
- 5.3 **WAC 390-05-273** defines the “normal and regular conduct” of a public office or agency as “conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner.”
- 5.4 **Interpretation 04-02** Guidelines for Local Government Agencies in Election Campaigns - This document is an educational tool that is an expression of the Commission's view of the meaning of RCW 42.17A.555 and relevant administrative rules and case law involving local government and election campaign activity. It is intended to provide guidance regarding the Commission's approach and interpretation of how the statutory prohibition on the use of public facilities for campaigns impacts activities that may be contemplated by government employees and other persons who may seek to utilize those public facilities. Readers are strongly encouraged to review the statute and rules referenced in these Guidelines. For ease of reference, the majority of this interpretation is in chart form. In

part, the chart identifies categories of persons, some possible activities, and some general considerations. These illustrative examples in the columns of the chart are not intended to be exhaustive.

- 5.5 **RCW 42.17A.005(19)(a)** defines an electioneering communication as any broadcast, cable, or satellite television or radio transmission, United States postal service mailing, billboard, newspaper, or periodical that:

Clearly identifies a candidate for a state, local, or judicial office either by specifically naming the candidate, or identifying the candidate without using the candidate's name;

Is broadcast, transmitted, mailed, erected, distributed, or otherwise published within sixty days before any election for that office in the jurisdiction in which the candidate is seeking election; and

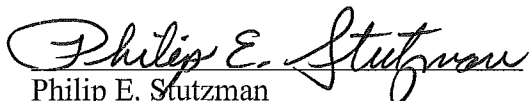
Either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market value of one thousand dollars or more.

Under subsection (b), the definition states that an "Electioneering Communication" does not include: ... (ix) any other communication exempted by the commission through rule consistent with the intent of this chapter.

- 5.6 **RCW 42.17A.575** prohibits state-elected officials and municipal officers from speaking or appearing in a public service announcement from January 1 to the date of the general election in a year in which the official is a candidate.

- 5.7 **WAC 390-05-525** states the following concerning "Public service announcements." (1) Public Service Announcement (PSA) means a communication that is designed to benefit or promote the community's health, safety or welfare or nonprofit community events; not selling a product or service; sponsored by an organization with a history of routinely providing the community such outreach public service messages in the service area of the organization; of primary interest to the general public and is not targeted to only voters or voters in a specific jurisdiction; not coordinated with or controlled or paid for by a candidate's authorized committee or political committee; ... (2) Examples of public service announcements include but are not limited to communications regarding nonprofit community events, outreach or awareness activities such as: Breast cancer screening, heart disease, domestic violence, organ donation, emergency or other disaster relief for organizations such as the Red Cross, programs designed to encourage reading by school children, childhood safety, fund drives for charitable programs such as United Way, and similar matters.

Respectfully submitted this 23<sup>rd</sup> day of November, 2015.

  
Philip E. Stutzman  
Sr. Compliance Officer

**List of Exhibits**

- Exhibit 1** Richard Jehn Complaint
- Exhibit 2** Debra David Complaint
- Exhibit 3** Douglas Starcher Complaint
- Exhibit 4** Marissa McGrath Complaint
- Exhibit 5** Sara Holodnick Complaint
- Exhibit 6** Rosalinda Guillen 45-day Complaint
- Exhibit 7** Omar Joran 45-day Complaint
- Exhibit 8** Kim Harris Complaint 45-day Complaint
- Exhibit 9** Maru Villalpando 45-day Complaint
- Exhibit 10** Neah Lin Monteiro 45-day Complaint
- Exhibit 11** Marinel Kniseley Complaint
- Exhibit 12** Tina McKim Complaint
- Exhibit 13** Liisa Wale Complaint
- Exhibit 14** League of Women Voters of Bellingham-Whatcom County
- Exhibit 15** James Ace Complaint
- Exhibit 16** Response Letter – Whatcom County Officials
- Exhibit 17** Response Letter – Whatcom County Officials – Exhibit A
- Exhibit 18** Response Letter – Whatcom County Officials – Exhibit B
- Exhibit 19** Response Letter – Whatcom County Officials – Exhibit C
- Exhibit 20** Response Letter – Whatcom County Officials – Exhibit D
- Exhibit 21** Response Letter – Whatcom County Officials – Exhibit E
- Exhibit 22** Response Letter – Whatcom County Officials – Exhibit F
- Exhibit 23** Response Letter – Whatcom County Officials – Exhibit G
- Exhibit 24** Response Letter – Whatcom County Officials – Exhibit H
- Exhibit 25** Response Letter – Whatcom County Officials – Exhibit I

by **Richard D. Jehn** on **Sun, 18 Oct 2015 at 3:23 PM** via **Portal**  
**File a Formal Complaint - Richard Douglas Jehn**

I question the integrity of Messrs. Louws, Elfo, and McEachran in sending out a glossy mailer (which I received in my mail on October 16, 2015) itemizing the reasons I should support their intention to construct a brand new jail north of Bellingham. I also note that they have broken the law by using their offices to prepare and send this advertising to me and, no doubt, everyone else in the county. According to RCW 42.17A.555, “No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition.”

(<http://apps.leg.wa.gov/rcw/default.aspx?cite=42.17A.555>)

More information can be found

here: <http://www.bellinghamherald.com/news/local/article39560088.html>

If Mr. Louws believes that the glossy mailing I received meets the criterion that “**one jurisdiction-wide objective and fair presentation of the facts per ballot measure is appropriate,**” then I really take issue with his sense of reality.

What is, in effect, an independent audit of the jail proposal that has emanated from county offices finds that the proposal is “an extreme case of attempted fiscal misappropriation ...” (“Just Say No – to the Incarceration-Industrial Complex,” David Camp, *Northwest Citizen*, October 2, 2015, <http://www.nwcitizen.com/entry/just-say-no-to-the-incarceration-industrial-complex>). A number of important questions about costs associated with the new jail are asked and no one has yet addressed these questions. “What happened to all the money we have been providing for upkeep? Why wasn’t the old jail properly maintained? Why should we give more money to the sheriff and the county administration when they appear to be spending it so imprudently?” (*ibid*)

Further, it seems a few highly questionable property dealings are associated with the land around the proposed location of the new jail complex (“That Louwsy Jail Deal,” Tip Johnson, *Northwest Citizen*, September 15, 2015, <http://www.nwcitizen.com/entry/louwsy-jail-deal>). No one has answered the questions raised about this topic either.

It seems to me that a number of questions about this jail proposal are left unanswered by the glossy mailer, and for you to believe it is an “objective and fair presentation of the facts” is a slap in the face to every voter in Whatcom County.

## Timeline for New Facility

- ✓ April 2015 - Authorizing Permit Issued by City of Ferndale
- ✓ July 2015 - County Council Authorizes Sales Tax Ballot Measure
- ✓ August 2015 - Cities and County Agree to Construct and Operate Jail
- **November 2015 - Public Vote for Sales Tax**
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- **Spring 2019 - Occupy Jail**

## Citizens and Experts Develop Plan for the New Whatcom County Jail

In 2011, the County Council tasked a 13-member Jail Planning Task Force (JPTF) to recommend size, location and programming to replace the main jail and conducted 16 public meetings soliciting community input and comments from citizens and stakeholders. In 2013, the JPTF presented unanimous findings to reporting, "Due to overcrowding, life/safety and physical plant concerns in the main jail facility, Whatcom County needs a new jail." It described the need as "critical" echoing findings recommended by other citizen committees tasked to examine jail issues over the last two decades, including in 1999-2000, 2004 and 2008.

County Executive Jack Louws developed a proposal to replace the jail and implement the JPTF recommendations. The County Council approved the purchase of the Labounty Road Property in 2013, a centrally located site near I-5, reasonably close to the courthouse and sufficiently sized to accommodate long-term growth if needed. The site selection was unanimously endorsed by the County Police Chiefs' Association.

Modern design features will maximize operational efficiencies and help control expenses and provide needed areas for behavioral and other health issues. Additional medical, counseling and classroom space will facilitate education, literacy, substance abuse, life-skills and other training and treatment programs.

## The Ballot Measure

WHATCOM COUNTY,  
WASHINGTON PROPOSITION NUMBER 1  
JAIL FACILITIES SALES AND USE TAX

The Whatcom County Council passed Resolution 2015-024 concerning a proposition authorizing a sales and use tax for jail facilities. This proposition would impose a sales and use tax of two tenths of one percent (20 cents for every \$100) for constructing and operating jail facilities for inmates charged or convicted of misdemeanor and felony acts, and for other public safety purposes, as authorized by RCW 82.14.450. Half of this tax (10 cents for every \$100) would expire upon repayment of bonds issued to finance the facilities, no later than 30 years after issuance.

Should this proposition be:

Approved

Rejected

Current Sales Tax Rates  
from Puget Sound Region

Unincorp. Whatcom County	.085
Bellingham	.087
Blaine	.085
Everson	.085
Ferndale	.087
Lynden	.087
Nooksack	.085
Sumas	.085
Burlington	.085
Mount Vernon	.085
Everett	.092
Bellevue	.095
Seattle	.096
Tacoma	.095

The proposition before County voters would add sales and use tax at the rate of 0.2% for construction and operation of jail facilities, adult corrections programs including inmate mental health programs, and for other public safety purposes, as authorized by RCW 82.14.450.

State law requires the County to provide for a jail. The County Council has determined the current jail does not meet existing and future needs.

If Proposition #1 passes, the County and participating cities will build a replacement jail on Labounty Road in Ferndale, demolish the existing Prospect Street jail and construct facilities for inmate transfer at the County Courthouse. Construction of a new jail facility will house felons and misdemeanants plus space for behavioral health, medical and administration areas.



## Existing Jail - Overcrowded and Unsafe



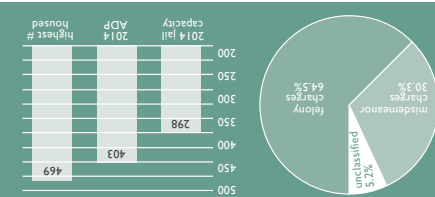
"The existing jail has been overcrowded and unsafe for decades. Over time, conditions have grown increasingly worse. Eighteen years of reports, findings and analysis by professional consultants, jail-planners, engineers, fire safety officials, staff, the National Institute of Corrections and multiple citizen committees consistently highlighted compelling life-safety and liability issues. Also highlighted were the lack of space for behavioral health and other programming targeted at effective treatment and reducing recidivism. Given severe and unsustainable conditions within the jail that jeopardize staff, visitors and inmates alike as well as expose the County cannot continue to operate the facility into the future at current population levels."



## WHATCOM COUNTY JAIL



WHATCOM COUNTY  
311 GRAND STREET  
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By law, Whatcom County is required to accept all accused/convicted felons whose case originates in the entire County, including Bellingham, Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas.

The current jail was built in 1984 to house 148 inmates, remodeled to house 212. Total jail capacity, including interim jail on Division Street, is 298. The average daily jail population (ADP) in 2014 was 403. According to statewide comparison, Our jail population is at 137% percent of capacity, 4th highest in the state, and no expansion options.

The County cannot continue to operate the facility into the future at current population levels. Existing Whatcom County jail has limited renovation





# Whatcom County's Commitment to Behavioral Health Services



Executive Jack Louws

Whatcom County spends \$11.5 million annually on a wide and varied behavioral health continuum of care services for citizens designed to make it possible for people to stay out of jail, or to re-enter society after jail with the tools needed for success. This financial commitment to programming is very close to equaling the amount we spend to operate the jail annually. Whatcom County Council has established a task force to target enhanced alternatives to corrections, that would reduce or eliminate our need to expand the proposed replacement jail. These behavioral health and treatment programs include:

- Specialized training for public safety personal;
- School and community programs focused on prevention, treatment, intervention and family support programs;
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## Budgeted-for Alternatives

Prevention, Alternative and Diversion Programs  
\$ 11,500,000

Jail Operations net programs  
\$ 12,300,000

“One of the greatest challenges and frustrations within the current jail is the inability to provide adequate space for health services and programming.



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There are huge demands for services for all of the care the jail provides. The lack of clinic and counseling space limits the care the jail can provide which often exacerbates mental health conditions. Mental health and chemical dependency issues are a significant issue for law and justice and the community as a whole. The new jail facility is designed with dedicated programming space. This space will allow for treatment opportunities for those offenders receptive to programs that give them the best chance of staying out of jail.”

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## Existing Jail Conditions



Existing cell.



Existing shower room converted to cell.



Existing dayroom.



Existing inmate programs space.



Existing central control room.

## PROPOSED DESIGN

### Modern Jail Features

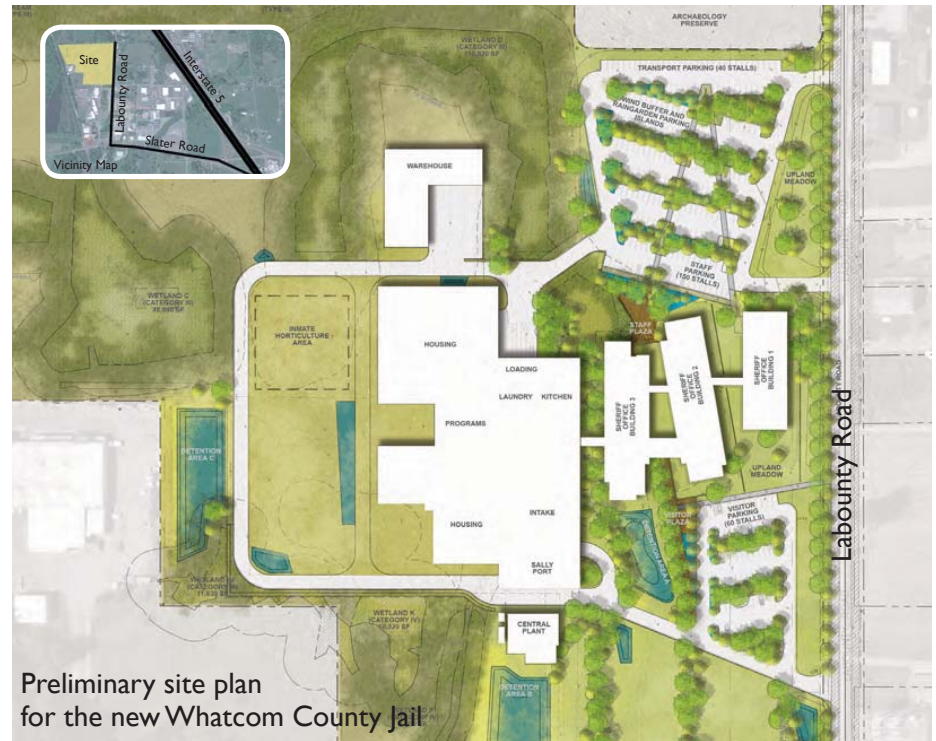


Dayroom with inmate video visiting



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- New facility can be constructed with no impact on current jail operations.
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- Opportunity to institute new technologies including video surveillance, video arraignments and video visitation.
- Facility designed to meet current codes and correctional facility standards.
- Building site design to accommodate substantial future growth.



Preliminary site plan for the new Whatcom County Jail



Four person cell.



Secure outdoor recreation area.



Medical clinic and infirmary for observation.

by **Debra David** on **Sun, 18 Oct 2015 at 11:59 PM** via **Portal**  
**File a Formal Complaint - Debra David**

If the intention of the mailer, titled “Whatcom County Community Report – Whatcom County Jail” was public outreach services, as the email response from County Executive Louws Administrative Coordinator, Tawni Helms indicated, then why did the mailer only target registered voters? All Whatcom County citizens will be impacted by the proposed jail sales tax and subsequent construction project.

Also, the information in the mailer refers to the jail sales tax as Proposition 1 when in fact the correct information for the jail sales tax on the ballot is Proposition 2015-1. Proposition 1 is a Charter Review issue and therefore misinforms the public.  
Whatcom County Contract 201409013 with the DLR Group references an amount on page 27 for public outreach expense, not to exceed \$86,138. If in fact the DLR Group was responsible for the co-production of this mailer, why then was no credit/reference that the DLR Group was involved the proposed design?

The photos in the jail mailer are inflammatory as they show incarcerated citizens in deplorable housing conditions.

Lastly, the mailer references a “Timeline for New Facility” which is misleading and presumptive since no timeline will in fact exist unless Proposition 2015-1 is approved by voters.



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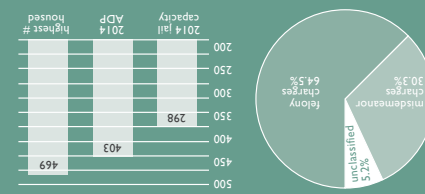
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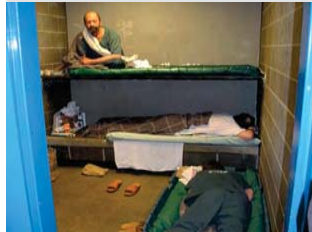
David S. McEachran  
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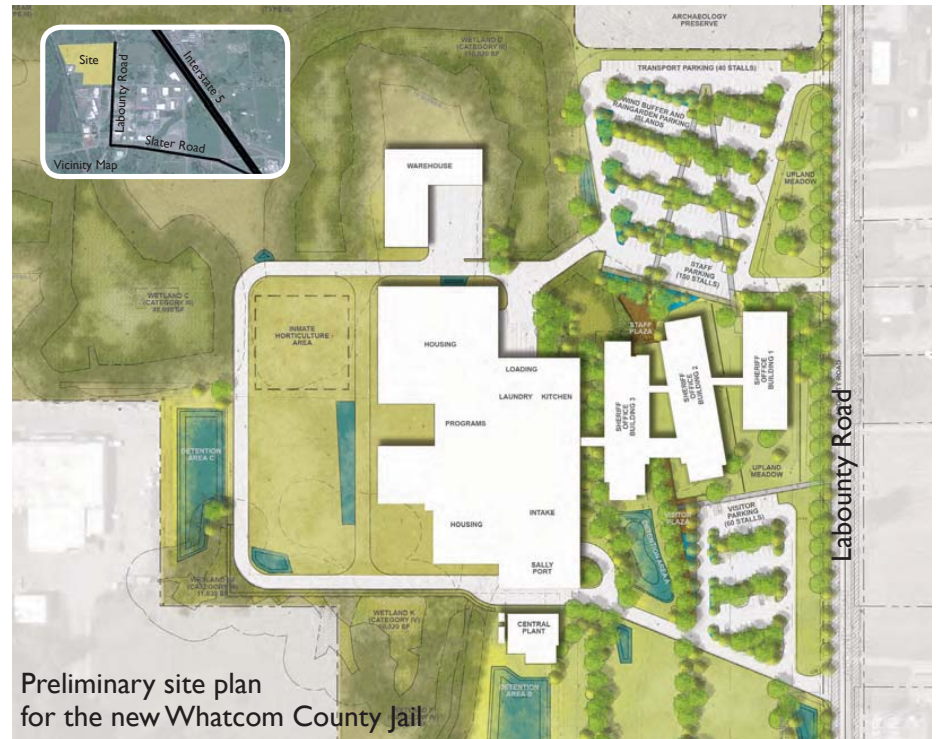


Dayroom with inmate video visiting

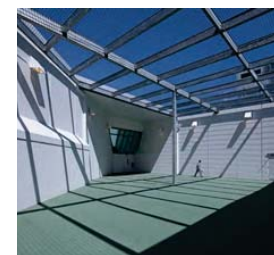


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Secure outdoor recreation area.



Medical clinic and infirmary for observation.





Debbie David <debb.david@gmail.com>

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## Jail Mailer

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**Tawni Helms** <THelms@co.whatcom.wa.us>  
To: "debb.david@gmail.com" <debb.david@gmail.com>  
Cc: Tyler Schroeder <tschroed@co.whatcom.wa.us>

Thu, Oct 15, 2015 at 4:54 PM

Good afternoon Debra,

I am writing in response to your inquiry regarding the jail flyer you received today. The flyer was produced by the DLR Group working under contract for Whatcom County. They've been contracted for the provision of professional design services for conditional use permitting and public outreach services. They are paid out of the New Jail Project Fund.

Thank you,

*Tawni Helms, PHR*

Administrative Coordinator

Whatcom County Executive Office

311 Grand Avenue, Suite 108

Bellingham, WA 98225

360-778-5208

*“My wish for you is that you continue. Continue to be who and how you are, to astonish a mean world with your acts of kindness...” ~Maya Angelou*

Disclaimer: Public records and documents are available to the public as required under the Washington State Public Records Act (RCW 42.56). The information contained in all correspondence with a government entity may be disclosable to third party requesters under the Public Records Act.

**COPY**  
Original Document filed  
In Whatcom County Council Office,  
311 Grand Ave.,  
Bellingham, WA 98225

Whatcom County Contract No.  
201409013

**CONTRACT FOR SERVICES AGREEMENT  
DLR Group**

**Professional Design Services for Conditional Use Permitting, Whatcom County Jail**

**DLR Group**, hereinafter called **Designer**, and **Whatcom County**, hereinafter referred to as **County (hereinafter also referred to as Owner)**, agree and contract as set forth in this Agreement, including:

- General Conditions, pp. 3 to 21,
- Exhibit A (Scope of Work), pp. 22 to 25,
- Exhibit B (Compensation), pp. 26 & 27
- Exhibit C (Schedule), pp. 28

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 following the issuance of a notice to proceed, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31 day of, December, 2015.

The general purpose or objective of this Agreement is to provide full design services for the Conditional Use Permit (CUP) for Essential Public Facilities (EPF) permitting process 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 Designer is to perform all necessary design services for the Project as set forth in the Agreement between Owner and Designer. Designer, through itself and its Design Consultants, has agreed to provide such architectural, engineering, civil, structural and other services required by this Agreement and the other Contract Documents ("Services").

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

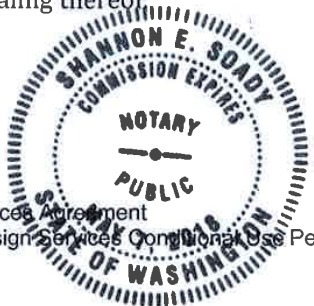
**IN WITNESS WHEREOF**, the parties have executed this Agreement this 1<sup>st</sup> day of October, 2014.

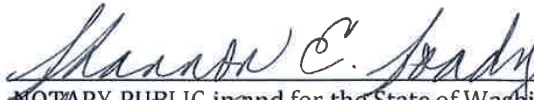
**DESIGNER:**

DLR Group, Inc.  
  
WILLIAM J. VALDEZ, VICE PRESIDENT

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF WHATCOM )

On this 23<sup>rd</sup> day of September, 2014, before me personally appeared WILLIAM J. VALDEZ to me known to be the Principal of DLR GROUP 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 Seattle, WA. My commission expires May 7, 2018



## GENERAL CONDITIONS

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

#### **1.1.1** Scope of Services:

The Designer agrees to provide to the County professional 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. The intent of the drawings and specifications is to include all items necessary for the proper execution and completion of the project: **Included in the base fees are Professional Services through schematic design inclusive of the Conditional Use Permit for Essential Public Facilities permitting process only.**

**1.2.1** Terms used in this Agreement shall have the meanings set forth unless otherwise provided herein, with the following specific terms defined as follows:

- .1** *Additional Services* refers to those services identified in Section 2.8 hereof.
- .2** *Agreement* refers to this executed contract between Owner and Designer.
- .3** *Construction Phase Services* refers to those services identified in Section 2.7 hereof.
- .4** *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.
- .5** *Design Consultant* is a qualified, licensed design professional who is not an employee of Designer, but is retained by Designer, or employed or retained by anyone under contract with Designer, to furnish design services required under the Contract Documents.
- .6** *Design Phase Services* refers to those services set forth in Sections 2.5 and 2.6 hereof.
- .7** *Design Schedule* refers to the schedule setting forth the dates by which Designer must perform the various Services required herein, consistent with the Project Schedule.
- .8** *Designer's Fee* shall refer to the compensation due Designer for the performance of the Services as set forth herein.
- .9** *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.
- .10** *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, or any Services.
- .11** *Owner's Project Criteria* are developed by or for Owner to describe Owner's program, requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements. Owner's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

- .12 *Project Schedule* refers to the schedule setting forth the dates by which the various stages of both the design and construction of the Project must be performed so as to satisfy Designer's obligations to Owner.
- .13 *Site* is the land or premises on which the Project is located.
- .14 *Bases of Design* the intent is to provide a complete specification & drawing package. The intent of the complete package is to include all necessary items for the proper execution and completion of work; however, any item or detail not specifically mentioned in the specifications or shown on the drawings, but which is necessary to produce the intended results shall be included.
- .15 *Designer* is any person or entity retained by Owner as an independent Designer to perform a portion of the construction work for the Project and shall include materialmen and suppliers.
- .16 *Sub-Consultant* is any person or entity retained by a Designer as an independent Designer to perform any portion of the Designer's work and shall include materialmen and suppliers.
- .17 *Substantial Completion* is the date on which the Project, or an agreed upon portion of the Project, is sufficiently complete so that Owner can occupy and use the Project or a portion thereof for its intended purposes.
- .18 *Services* shall include all Design Phase Services, Construction Phase Services and Additional Services required by the Contract Documents or as may be authorized in writing by Owner.

### 1.3 Contract Documents

1.3.1 The Contract Documents, in addition to this Agreement, are comprised of the following:

- .1 All written modifications, amendments and change orders to this Agreement;
- .2 This Agreement, including all exhibits and attachments, executed by Owner and Designer;
- .3 Written Supplementary Conditions, if any, executed by Owner and Designer;
- .4 The design Schedule;

1.4.1 The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, this Agreement shall take precedence.

2.1.1 Designer shall, consistent with applicable state licensing laws, provide the Services, including architectural, engineering and other design professional services, as described in this Agreement and in accordance with the Contract Documents. Designer agrees that such Services shall be provided through qualified, licensed design professionals who are either (i) employed by Designer or (ii) procured by Designer from qualified, licensed Design Consultants.

2.1.2 Designer shall not engage the services of any Design Consultant without first obtaining the approval of Owner, which approval shall not be unreasonably withheld. Designer agrees that each Design Consultant shall be fully bound to Designer in the same manner as Designer is bound to Owner for all the requirements of the Contract Documents to the extent applicable to the Design Consultant's scope of services. Designer

shall at all times be responsible for the services performed by its Design Consultants, and shall coordinate the services of its Design Consultants to satisfy Designer's obligations under the Contract Documents. Nothing in this Agreement shall relieve Designer from responsibility for the services performed by its Design Consultants, or create any legal or contractual relationship between Owner and any Design Consultant.

- 2.1.3 If Owner or Owner Representative performs other work on the Project with separate design professionals under Owner's or Owner's Representative control, Designer agrees to reasonably cooperate and coordinate its activities with those of such separate design professionals so that the Project can be completed in an orderly and coordinated manner and without disruption.
- 2.1.4 Designer shall only communicate with Owner, Consultant(s), or Sub-Consultants through Owner unless the parties agree otherwise.
- 2.1.5 Within seven (7) days after execution of this Agreement, Owner and Designer will meet to discuss issues affecting the administration of the Services and to implement the necessary procedures, including but not limited to those relating to the schedule for the Services, schedule updates, review of submittals, and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents and allow Designer to meet its obligations to design the Project consistent with the Contract Documents, without compromising any professional obligations of Designer.

## 2.2 Standard of Care

2.2.1 The standard of care for all design professional services performed by Designer and its Design Consultants pursuant to this Agreement shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project for projects of similar size and complexity. Notwithstanding the preceding sentence, if the Agreement specifically identifies performance standards for the Services, Designer agrees that all such Services shall be performed to achieve such standards.

## 2.3 Legal Requirements

- 2.3.1 Designer agrees to perform the Services in accordance with all applicable Legal Requirements.
- 2.3.2 Designer's Fee and/or the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Services. Such effects may include, without limitation, revisions Designer is required to make to the Construction Documents because of changes in Legal Requirements.
- 2.4.1 Designer agrees that the Key Personnel assigned to perform the Services shall be as listed in paragraph 2.4.2 below. Designer shall not change such personnel without prior written approval by the Owner.
- 2.4.2 Key Personnel. The following individuals/positions are considered KEY PERSONNEL.
  - Principal –
  - Project Architect –
  - Draftsperson –
  - Clerical –
- 2.5.2 Designer shall provide reasonable assistance to Owner in obtaining any permits, approvals, and licenses which are not Designer's obligation to obtain, but which are required for the construction of the Project.



**2.5.3** Designer shall make any revisions to the Construction Documents reasonably necessary to secure permits, approvals, and licenses, including those which have been denied for failure of the Construction Documents to meet Legal Requirements. If such revisions are necessary for reasons beyond the control of Designer or its Design Consultants, Designer shall be compensated for such revisions as a change to this Agreement.

## **2.6 Design Services**

**2.6.1** In accordance with the times set forth in the Design Schedule, Designer shall submit to Owner all interim design submissions and revisions required. Such design submissions shall be in the form and quantity called for in the Contract Documents and may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Owner and Designer agree that prior to the scheduled date for submitting all design submissions to Owner, Owner's Representative and Designer will hold meetings for the purpose of discussing and monitoring the design for consistency with the requirements of the Contract Documents, as well as Owner's pricing and other assumptions.

**2.6.2** In accordance with the Contract Documents and the times set forth in the Design Schedule, Designer shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Project. The Construction Documents shall be consistent with the latest set of interim design submissions; as such submissions may have been modified in a design review meeting. Designer shall provide the Construction Documents in the form and quantity called for in the Contract Documents; actual costs for the printing of these submission documents shall be paid for out of the reimbursable cost set forth in Exhibit "A", if available. Designer shall perform agreed upon revisions and submit revised Construction Documents to Owner for Owner's approval.

**2.6.3** Designer shall attend and participate in such meetings as are held between Owner and Designer to discuss interim design submissions and the Construction Documents. If requested, Designer shall identify during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Owner and provided to all attendees for review.

**2.6.4** In addition to the interim design submissions and the Construction Documents, Designer shall, if requested by Owner, prepare interim design submissions and Construction Documents the parties agree are required to permit commencement of construction on a portion of the Project before the entire Construction Documents for the Project are completed.

**2.6.5** Owner's approvals of interim design submissions and the Construction Documents are for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Contract Documents.

**2.6.6** Designer will, at its own cost, revise any interim design submission or the Construction Documents to correct any of its errors, mistakes or omissions. Designer shall also design to a Fixed Design Budget and, at its own cost, make such revisions as are required to achieve such budget, Any and all such revisions required of this paragraph shall be performed timely and so as not to jeopardize the Design Schedule and/or the Project Schedule. The expense of such revisions shall not be charged against the 5% contingency established in section 12.10.2

## **2.7 Construction Phase Services**

**2.7.1** Designer shall assist Owner in preparing bidding documents for specified portions of the Project's construction, and clarifying and responding to questions involving the bidding documents.

- 2.7.2** Designer shall timely provide requested clarifications and interpretations of the Construction Documents (often referred to as "RFI's"), which shall be consistent with the intent of, and reasonably inferable from, the Contract Documents. Designer shall make all revisions to the Construction Documents necessary for the proper construction of the Project. Such revisions will be accomplished at the Designer's expense if and to the extent necessitated by an ambiguity, error or omission of the Designer; all other revisions will be an Additional Service. Responses to RFI's, for whatever reason required shall be timely and shall not cause delays to the approved critical path schedule for the project.
- 2.7.3** Designer shall review and approve such submittals, including shop drawings, product data and samples, as may be required by the Design-Build Agreement or as reasonably required by the Owner. Such review shall be accomplished in accordance with the project schedule within the times for such review provided in the critical path schedule submitted by the Contractor and approved by the owner. The time within which Designer shall review and respond to submittals under will be discussed at the meeting provided in Section 2.1.5, but shall be finally established upon the approval of critical path for the construction of the project. Designer shall expeditiously inform Owner of any revisions that are necessary as a condition to Designer's approval of submittals. Designer's review and approval shall not relieve Contractor of responsibility for construction means and methods, or safety precautions. Except for performance based specification submittals, designer's approval will not apply to a change from the design shown in the Construction Documents unless the change is expressly noted as a change to the Construction Documents by clouding in the submittal.
- 2.7.4** Designer shall review, and if acceptable approve, any substitutions for materials or equipment proposed by Owner.
- 2.7.5** Designer shall, if requested by Owner, review any inspection reports or tests involving the construction of the Project and provide its comments to Owner. Designer is not responsible for the accuracy or completeness of the tests or inspections.
- 2.7.6** Designer shall at appropriate intervals visit the Site to determine in general if the construction is proceeding in accordance with the Construction Documents. Designer shall promptly notify Owner of any defects, deficiencies, deviations, omissions, or violations observed by Designer in the construction of the Project, and make recommendations to Owner on how to proceed. Designer and Designer's consultants shall visit the Site an average of once per month during the period of construction, or more as necessary to perform their professional duties under this Agreement.
- 2.7.7** Designer shall attend meetings with Owner, Contractors, and Consultants to discuss design issues which may arise during construction.
- 2.7.8** Designer shall provide such certifications as may be necessary relative to Substantial Completion.
- 2.7.9** Designer's provision of the Construction Phase Services shall not be construed to make Designer responsible for (i) the acts or omissions of Contractor, or any Sub-Contractors, (ii) the means, methods, sequences, and techniques of construction of the Project or (iii) safety precautions and programs in connection with the construction of the Project. Nothing in this Agreement shall create any duties to or legal or contractual relationship between Designer or any Contractor or Subcontractor. If the Owner authorizes deviations from the documents prepared by the Designer or its Consultants without written agreement of the Designer, the Owner shall indemnify, defend and hold harmless the Designer, its Consultants and their respective agents and employees from and against claims, damages, losses and expenses, arising out of or resulting from such deviations.

## 2.8 Additional Services

**2.8.1** Additional Services, if any, agreed upon by the parties shall be compensated as set forth in Exhibit A or in an amendment to this Agreement. Additional Services are those services not specifically described as part of Services in this Agreement. Additional Services include, without limitation, making revisions to documents due to adjustments in the program, project budget, enactment of revisions to codes subsequent to the preparation of such documents and providing services required due to significant changes in the Project including, but not limited to: size, quality, complexity, construction cost, schedule or method of bidding or negotiation and contracting for construction. Additional Services will not include necessary modifications or corrections that were missed or miscalculated by the Designer.

### Timely Reviews, Approvals and Submittals

- 3.1.1** **Owner** shall provide timely reviews and approvals of all interim design submissions and the Construction Documents consistent with the turnaround times set forth in the Design Schedule and the Design-Build Agreement, or as agreed to by the parties at the meeting required under Section 2.1.5 hereof.
- 3.1.2** **Owner** shall, in the contract for construction, require Contractor to submit timely to Designer all submittals, including shop drawings, product data and samples, for Designer's review and approval consistent with the Project Schedule. Timely submittal means in accordance with the times noted in the submittal schedule included in the project critical path schedule for the project; (Standard two weeks for most submittals with a portion of the submittals required to be processed quicker) times to be agreed upon between Designer, Contractor and Owner when appropriate. Designer will provide a schedule of items to be submitted by Owner for Designer's review.
- 3.1.3** Owner shall provide timely notice to Designer of any delays to the Project caused by Designer.
- 3.1.4** Owner shall provide the following information and materials to Designer, unless otherwise agreed.
- .1** Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
  - .2** Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
  - .3** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Designer to perform the Services;
  - .4** A legal description of the Site;
  - .5** As-built and record drawings of any existing structures at the Site;
  - .6** Environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site;
  - .7** Owner's Project Criteria;
  - .8** Test and inspection reports.

**3.4.1** If Designer's performance of the Services are delayed for any reason so as to impact the Design Schedule or the Project Schedule, Designer shall promptly notify Owner in writing of the cause(s) of such delay within sufficient time to permit Owner to provide timely notice to Contractors or Consultants. To the extent the delay is due to any negligent act, error or omission on the part of Designer, Design Consultants, or anyone for whom they are responsible, Designer shall compensate and indemnify Owner for all costs, damages, and expenses arising from such delay. If the delay is caused by Owner or others for whom Owner is responsible, the Designer's Fee and the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of the delay. If the delay is caused by Owner or other causes, the Designer's Fee and the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of the delay if and only to the extent Owner secures such compensation and time from the Owner.

**Section Numbers 3.4.2 through 6.1.0 are purposely omitted from this contract.**

**6.1.1** Designer's Fee shall be the compensation due Designer for the performance of the Services, including all Design Phase Services, Construction Phase Services, and Additional Services, and for Reimbursable Costs, all as set forth in this Agreement. Unless otherwise provided in the Contract Documents, the Designer's Fee is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

**6.1.2** Designer will be compensated for the Design Phase Services, Construction Phase Services, Additional Services, if any, and Reimbursable Costs as set forth in Exhibit A.

**6.2 Applications for Payment**

**6.2.1** Beginning with the first month after the Date of Commencement, Designer shall submit on a monthly basis for Owner's review and approval, Designer's certified Application for Payment requesting payment for all Services performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.5 hereof. Once approved, Owner will submit Designer's Application for Payment to Owner with Design- Builder's next application.

**6.2.2** The Application for Payment shall constitute Designer's representation that (i) the Services have been performed consistent with the Contract Documents, (ii) the Services have progressed to the point indicated in the Application for Payment, (iii) Design Consultants have been paid all amounts previously received by Designer on account of their services, and (iv) there are no claims, obligations or liens outstanding or unsatisfied for labor, services, taxes, or other items performed, furnished, or incurred for or in connection with the Services.

**6.2.3** Owner shall make payment on Designer's properly submitted and accurate Application for Payment within thirty (30) days after Owner's receipt of payment from Owner on account of Designer's monthly Application for Payment

At the time Designer submits its final Application for Payment to Owner, Designer shall provide (i) all deliverables required by the Contract Documents; (ii) an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for or in connection with the Services which will in any way affect Owner's or Owner's interests; (iii) a general release executed by Designer waiving, upon receipt of final payment by Designer, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment; and (iv) certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents. Owner shall make payment on Designer's properly submitted and accurate final Application for Payment within thirty (30) days after Owner's receipt of final payment from Owner on account of Designer's final Application for Payment, provided also that Designer has satisfied the requirements for final payment set forth herein.

**8.2.1** Designer designates the individual listed below as its Senior Representative ("Designer's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes:

Name: William Valdez  
 Title: Vice President, Principal  
 Address: 51 University Street, Suite 600  
 Seattle WA 98101  
 Telephone: (206) 461-6000

**9 Designer's Insurance Requirements**

**9.1.1** Prior to starting the Work, Designer shall procure, maintain and pay for such insurance as will protect against claims for bodily injury or death, or for damage to property (including loss of use) and loss or damage resulting from professional errors and omissions, which may arise out of operations by Designer or by any Design Consultants or by anyone employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall not be less than the greater of coverages and limits of liability specified below, any coverages and limits of liability specified in the Contract Documents or coverages and limits required by law.

**9.1.2** Designer shall procure and maintain the following minimum insurance coverages and limits of liability and provide proof of coverage by a Certificate of Insurance and endorsements and specifically name this County Project under the coverage:

Workers' Compensation		Statutory Limits
Employer's Liability	\$1,000,000 each	accident
	\$1,000,000 disease	policy limit
	\$1,000,000 disease	each employee
Commercial General		
Liability	\$2,000,000 each	occurrence
	\$2,000,000	aggregate (applicable on a per project basis)
Comprehensive Automobile		
Liability	\$2,000,000 each	accident
Professional Errors		
and Omissions	\$2,000,000 each	claim
	\$2,000,000 annual	aggregate

Commercial General Liability insurance required under this paragraph shall be written on an occurrence form (ISO Form CG 00 01 or equivalent) and, shall include coverage for Products/Completed Operations extending six (6) years after final acceptance of the Project by Owner or such longer period as the Contract Documents may require, **Provided, however that such coverage beyond three (3) years after final acceptance is available at a commercially reasonable price.** Owner agrees to compensate Designer for any added costs beyond commercially reasonable prices for the additional three (3) year period provided that Designer provides full and complete information about its insurance program costs and quotations., Broad Form Property Damage including Completed Operations, Personal Injury with Employment Exclusion (if any) deleted, Blanket XCU and Blanket Contractual Liability insurance applicable to Designer's defense and indemnity obligations under Article 10, and other contractual indemnities assumed by Designer under the Contract Documents. Commercial General Liability insurance shall include "stop gap" coverage for work in those states where Workers' Compensation insurance is provided through a state



fund if Employer's liability coverage is not available. Comprehensive Automobile Liability insurance required under this paragraph shall include coverage for all owned, hired and non-owned automobiles. Workers' Compensation coverage shall include a waiver of subrogation against Owner and Owner.

If the required Professional Errors and Omissions insurance is written on a claims made basis, the retroactive date shall be prior to the start of Designer's Work. If insurances are commercially available to obtain, Designer agrees to maintain such coverage for 6 years after final acceptance of the Project by the Owner or such longer period as the Contract Documents may require. Renewal policies during this period shall maintain the same retroactive date.

- 9.1.3** Employer's Liability, Commercial General Liability and Comprehensive Automobile Liability insurance may be arranged under single policies for full minimum limits required, or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy. The general aggregate on the Commercial General Liability coverage shall apply on a project specific basis.
- 9.1.4** Designer shall endorse its Commercial General Liability (including products/completed operations coverage); and Comprehensive Automobile Liability and Umbrella/Excess Liability policies to add Owner, and such other parties as Owner is required under the Contract Documents to name the County, officials, employees and agents as additional insureds on Designer's insurance, as "additional insureds" with respect to liability arising out of (a) operations performed for Owner or Owner's Representative by or for Designer, (b) acts or omissions of Owner or Owner's Representative in connection with their general supervision of operations by or for Designer, (c) Designer's use of Owner's tools and equipment, and (d) claims for bodily injury or death brought against Owner or Owner's Representative by Designer's employees or the employees of Designer's consultants of any tier, however caused, related to the performance of Services under this Agreement. Such insurance afforded to Owner, Owner, and others as additional insureds under Designer's policies shall be primary insurance and not excess over, and Owner's insurance shall be non-contributory. Designer's insurance waives all rights of subrogation.
- 9.1.5** Designer shall require its Design Consultants to procure and maintain, from insurance companies authorized to do business in the state in which the Project is located, the insurance coverages set forth in this Article.
- 9.1.7** Designer shall maintain in effect all insurance coverages required under this Article, or by the other Contract Documents, at Designer's sole expense and with insurance carriers licensed to do business in the State 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 Owner in writing. Deductibles or Self Insured Retention on any policies furnished for this project shall not be more than \$100,000 for each claim.
- 9.1.8** Prior to commencing any services hereunder, Designer shall provide Owner with Certificates and Endorsements evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled. Owner shall have the right to examine any policy required under this Agreement Copies of the complete insurance policies to be provided under this agreement shall be provided to Owner within seven (7) of the signing of this contract , which includes requests made by email.
- 9.1.9** All insurance policies shall contain a provision that coverages and limits afforded thereunder shall not be canceled, materially changed, non-renewed, or restrictive modifications added, without thirty (30) days prior written notice to Owner. Certificates of Insurance and Endorsements shall be filed with Owner prior to start of Designer's Work. Renewal Certificates and Endorsements shall be provided to Owner not less than ten (10) days prior to the expiration date of any of the required policies. All Certificates of Insurance and Endorsements shall be in a form acceptable to Owner and shall provide satisfactory evidence that

Designer has complied with all insurance requirements. Owner shall not be obligated to review such certificates or other evidence of insurance, or to advise Designer of any deficiencies in such documents, and receipt thereof shall not relieve Designer from, nor be deemed a waiver of Owner's right to enforce, the terms of Designer's obligations hereunder.

**9.1.10** The required minimum limits of insurance indicated above shall not in any way restrict or diminish Designer's liability under this Agreement. Owner's right to recover under insurance provided under this article shall not be limited by other portions of the agreement that limit the liability of any party to the proportion of its relative fault for the purpose of indemnification for certain types of claims.

**9.2 Waiver of Subrogation:** Designer and Designer's insurance waives all rights of subrogation.

**9.2.1** Designer and Owner waive against each other and Design Consultants, Owner's separate Designers, Consultants, Sub-Consultants, agents and employees of each and all of them, all damages covered by Builder's Risk insurance, except such rights as they may have to the proceeds of such insurance. Owner and Designer shall, where appropriate, require similar waivers of subrogation from Design Consultants and Consultants and shall require each of them to include similar waivers in their contracts.

## **10.1 Patent and Copyright Infringement**

**10.1.1** Designer shall defend any action or proceeding brought against Owner or Owner's Representative based on any claim that the Project, or any part thereof, or the operation or use of the Project or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Designer of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Designer shall indemnify and hold harmless Owner and Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Owner's Representative in any such action or proceeding. Designer agrees to keep Owner informed of all developments in the defense of such actions.

**10.1.2** If Owner is enjoined from the operation or use of the Project, or any part thereof, as the result of any such patent or copyright suit, claim, or proceeding, Designer shall at its sole expense take reasonable steps to procure the Owner's right to operate or use the Project, or applicable part thereof. If Designer cannot so procure such right within a reasonable time, Designer shall promptly, at Designer's option and at Designer's expense, (i) modify the Project, or applicable part thereof, so as to avoid infringement of any patents, or copyrights, or (ii) replace said work with work that does not infringe or violate any such patent or copyright, and is consistent with the Contract Documents.

**10.1.3** Sections 10.1.1 and 10.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner or Owner's Representative and not offered or recommended by Designer to Owner or Owner's Representative; or (ii) arising from modifications to the Project by Owner or Owner's Representative after acceptance of the Project. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Designer to the same extent Designer is obligated to defend, indemnify and hold harmless Owner in Section 10.1 . I above.

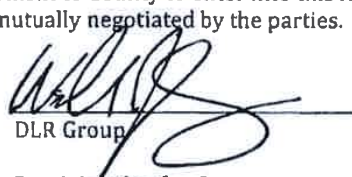
**10.1.4** The obligations set forth in this Section 10.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or

**11.1 Designer's General Indemnification Responsibilities**

**11.2.1** Indemnification by Designer. To the fullest extent permitted by law, the Designer 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 which 1) are caused in whole or in part by the negligent act or omission, of the Designer its employees, agents or volunteers or Designer's subcontractors or consultants 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 Designer or its subcontractors' or consultants' use of, presence upon or proximity to the property of the County. In the event of the concurrent negligence of the Designer, its subcontractors, consultants', employees or agents, and the County, its employees or agents, this indemnification obligation of the Owner shall be valid and enforceable only to the extent of the negligence of the Designer, its subcontractors, consultants', employees and agents.

If Whatcom County is required to resort to litigation or arbitration to enforce Designer's Indemnification and Defense obligations it shall be entitled to recover its reasonable costs of establishing its right to indemnity including but not limited to all costs, expenses, arbitration filing fees, arbitrator's fees, and attorney fees.

This indemnification obligation of the Designer 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 Designer hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the Designer are a material inducement to County to enter into this Agreement, are reflected in the Designer's compensation, and have been mutually negotiated by the parties.

  
\_\_\_\_\_  
DLR Group

  
\_\_\_\_\_  
Whatcom County

**Participation by County - No Waiver.** 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 Designer's indemnity obligations under this Agreement.

**Survival of Designer's Indemnity Obligations.** The Designer agrees all Designer's indemnity obligations shall survive the completion, expiration or termination of this Agreement.

**Indemnity by Subcontractors.** In the event the Designer enters into subcontracts to the extent allowed under this Agreement, the Designer's subcontractors shall indemnify the County on a basis equal to or exceeding Designer's indemnity obligations to the County and subcontractors shall provide proof of Insurance verifying this condition.

**11.2.2** If an employee of Designer, anyone employed directly or indirectly by Designer or anyone for whose acts any of them may be liable has a claim against any party indemnified pursuant to Section 11.2.1 above, Designer's indemnity obligation set forth in Section 11.2.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Designer, or other entity under any employee benefit acts, including workers' compensation or disability acts.



**11.2.3** Designer agrees to procure, maintain and pay for such general liability insurance coverage and endorsements as will insure the provisions for this paragraph.

#### **11.6 Duty to Continue Performance**

**11.6.1** Unless provided to the contrary in the Contract Documents, Designer shall continue to perform the Services and Owner shall continue to satisfy its payment obligations to Designer, pending the final resolution of any dispute or disagreement between Owner and Designer.

**11.7** Owner Design and Construction Contingency. Owner shall establish a contingency amount equal to Three Per Cent (3%) of the construction contract amount between Owner and Contractor for the project. This contingency shall be part of the contract sum between Owner and Contractor. This contingency may be expended, at the sole discretion of Owner, on (1) Unknown or changed conditions, (2) design clarifications or modifications, (3) Contractor claims, including correction of work because of design errors, ambiguities, omissions. (4) changes required because of Requests for Information (RFI's). (5) cost overruns in construction. **Provided** that such contingency shall not be used by reason of any correction or amendment of Designer-Created documents for the project as part of the design or bidding process, but rather only after the owner has executed a Construction agreement with the Contractor.

#### **12.1 Assignment**

**12.1.1** Neither Designer nor Owner shall, without the written consent of the other, assign, transfer or sublet any portion or part of the Services or the obligations required by the Contract Documents.

#### **12.2 Successorship**

**12.2.1** Owner and Designer intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

#### **12.3 Governing Law, Venue**

**12.3.1** This Agreement and all Contract Documents shall be governed by the laws of the State of Washington.

**12.3.2** The Venue of any action in court or of any alternative disputes procedures, including, but not limited to arbitration proceedings, if any shall be in Whatcom County, Washington.

#### **12.4 Severability**

**12.4.1** If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements or court order, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

**12.5.1** The failure of either Owner or Designer to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

## **12.6 Headings**

**12.6.1** The headings used in this Agreement or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

## **12.7 Notice**

**12.7.1** Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in this Agreement or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the number of the intended recipient.

## **12.8 Amendments**

**12.8.1** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

## **12.9 Survival**

**12.9.1** Designer's obligations under this Agreement shall not be released, and shall specifically survive, the completion of all Services hereunder, final payment to Designer, and the termination of this Agreement for any reason.

## **12.10 No Release of Information for Advertising and Promotion**

**12.10.1** Designer shall not publish, release, disclose or announce to any member of the public, press, official body or any other third party any information concerning this Agreement, or any part thereof, without the prior written consent of Owner and/or Owner's Representative, except as required by law. Neither the names of Owner or Owner's Representative, nor of the site, shall be used in any advertising or other promotional context by Designer without the prior written consent of Owner and/or Owner's Representative.

**2 Design Contingency.** It is understood and agreed that the nature of the design process is such that plans, specifications and other documentation prepared by or related services performed by Designer under this agreement will contain errors, omissions, conflicts, ambiguities or design uncertainties requiring clarifications, corrections or modification. Accordingly, the Owner agrees to establish a design contingency equal to 2% of the cost of the work in addition to the construction contingency provided in section 11.7. Such design contingency shall be utilized for the cost attributed to errors, omissions, conflicts, ambiguities or design uncertainties, excluding any improvements or betterments costs implemented by the Owner. Costs incurred by the Owner, excluding any improvements or betterment cost, in excess of this design contingency shall be the responsibility of Designer, but only to the extent caused by the Designer and its SubConsultants, negligent acts, errors, or omissions in the performance of services under this agreement. Any cost over the 2% contingency for negligent errors, omissions, conflicts, ambiguities or design uncertainties requiring clarifications, corrections or modification will be paid by Designer.

### **12.11.1 Termination for Default:**

If the Designer 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 Designer 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 Designer'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 Designer 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 Designer. The Designer 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.

**12.11.2 Termination for Reduction in Funding: Not Applicable**

**12.11.3 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 Designer shall be entitled to payment for actual work acceptably performed for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, and shall be based upon the Designer's provable costs directly allocable this contract, 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. If any termination for cause is determined by any forum to have been wrongful, in that case it shall be converted to a termination for Public Convenience and Designer shall be compensated under the terms of this Section.

***Series 20-29: Provisions Related to Consideration and Payments***

**20.1 Accounting and Payment for Designer Services:**

Payment to the Designer 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 Designer for any costs or expenses incurred by the Designer in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Designer, 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 Designer understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Designer authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Designer 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 Designer to make the necessary estimated tax payments throughout the year, if any, and the Designer is solely liable for any tax obligation arising from the Designer's performance of this Agreement. The Designer hereby agrees to indemnify the County against any demand to pay taxes arising from the Designer'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 Designer must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Designer'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 Designer 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 Designer 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 Designer to termination or damages, provided that the County promptly gives notice in writing to the Designer 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 Designer 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 Designer 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 Designer, (3) to set off any amount so paid or incurred from amounts due or to become due the Designer. In the event the Designer obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Designer by reason of good faith withholding by the County under this clause.

**23.1 Labor Standards:**

The Designer agrees to comply with state and federal requirements, as applicable, 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 Designer:**

The Designer's services shall be furnished by the Designer as an independent Designer, 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 Designer as an independent Designer.

The Designer acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Designer 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 Designer 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.

Designer 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 Designer. 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.

**31.1 Ownership of Items Produced:**

When the Designer creates any copyrightable materials or invents any patentable property, the Designer 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. Designer further agrees to make research, notes, and other work products produced in the performance of this Agreement available to the County upon request.

**32.1 Confidentiality:**

The Designer, its employees, SubConsultants, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Designer 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. Designer shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Designer 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 Designer'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 Designer 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. Designer 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 Designer, then the Designer agrees to notify the Administrative Officer as soon as it is practical.

**34.2 Industrial Insurance Waiver:**

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

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.



**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 Designer 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 Designer is governed by such laws, the Designer 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, sexual orientation, age, marital status, 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 Designer 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 Consultant, provided that the foregoing provision shall not apply to contracts or Consultants for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

**35.2 Non-Discrimination in Client Services: Not Applicable**

**36.1 Waiver of Noncompetition: Not Applicable**

**36.2 Conflict of Interest:**

If at any time prior to commencement of, or during the term of this Agreement, Designer 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 Designer 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 Designer 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 Designer 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 Designer 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 Russell, Facilities Manager  
Whatcom County Facilities Management  
316 Lottie Street  
Bellingham, WA 98225  
(360) 676-6746

**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 Designer to the County's Administrative Officer under this Agreement. Notice to the Designer for all purposes under this Agreement shall be given to the address provided by the Designer herein above in the "Designer Information" section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

***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 Designer Commitments, Warranties and Representations:** Not Applicable

**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: *consultant***

a. General:

All disputes or differences between the Designer and the County, arising under or related to this agreement or any additional services, 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 Designer 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 Designer 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 Designer 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. Designer 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 Designer 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 Designer 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 and all claims, 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 then current American Arbitration Association (AAA) Construction Industry rules in effect on the date hereof, as modified by this Agreement. The parties may elect to provide for administration of the arbitration by other than the AAA. 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 Washington State substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, including expenses, costs and attorney fees to the prevailing party and pre-award interest, if provided by statute but shall not have the power to award punitive damages. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in the Superior Court for the State of Washington, in Whatcom County. 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 or be considered a condition precedent to arbitration.

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

#### **43.1 Venue and Choice of Law:**

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.



**44.1 Survival:**

The provisions of paragraphs 11.1, 11.2, 11.3 , 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

**45.1 Entire Agreement:**

*This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.*

**EXHIBIT A**  
**SCOPE OF WORK**

The scope of services for the requested authorized modifications is for the portion of professional services through schematic design inclusive of the CUP for EPF permitting process only. It is anticipated that once the project is funded following a successful August 2015 funding election that the balance of professional services will be authorized.

Based on the CUP for EPF application checklist and the permitting meeting (May 22, 2014) with the City of Ferndale the following is the understanding of the scope of work:

1. Schematic Design Process and Stakeholder Meetings to a level of effort (Roughly 60% Schematic Design) that allows for the development of a singular design concept and solution. Scope of the Schematic Design Services is outlined in the following section.
2. This portion of the Schematic Design Process results in the following permit applications that will be completed and submitted to the authorities having jurisdiction (AHJ) by A/E with the assistance of Whatcom County:
  - a. Master Application
  - b. CUP for EPF
  - c. Eagle Compliance Check List (As stipulated in the CUP for EPF)
  - d. Encroachment Permit Application
  - e. Planning Application
  - f. Shoreline Management Application
  - g. Site Plan Application
  - h. Civil Plan Applications
    - i. Sanitary Sewer Application – Ferndale
    - ii. Storm Sewer Application – Ferndale
    - iii. Water Application – Ferndale
    - iv. Wetland Mitigation – Ferndale & USACE
3. Stakeholder meetings, executive team meetings, design team meetings, Council presentations and public meetings as needed as a course of the schematic design process and permit applications stated above.
4. Schematic Design Cost Estimates of MACC (Maximum Allowed Construction Cost) and Whole Project Cost of the singular design solution to confirm the project is on Budget
5. Development of Project Schedule inclusive of public funding process
6. Provide public outreach and support including schematic design graphics, coordination with public outreach committee, and attend public presentations.
7. Traffic Consultant
8. Site Survey
9. Geotechnical Engineering – Infiltration & Groundwater Testing, Preload Requirements, Soil Bearing Properties.
10. Geotechnical Engineering – Geothermal Conductivity Analysis.

### Schematic Design Services

In the Schematic Design Phase, the Architect/Engineer (A/E) provides those services necessary to prepare Schematic Design Documents consisting of drawings and other documents illustrating the general scope, scale, and relationship of project components for approval by the agency. Design should be conceptual in character, based on the requirements developed during the Predesign Phase, approved by the agency, or program requirements provided by the agency and reviewed and agreed upon by the A/E. Schematic Design includes the following:

#### Project Administration

Services consisting of schematic design administrative functions including consultation, meetings and correspondence, and progress design review conferences.

#### Disciplines Coordination

Coordination between the architectural work and engineering work and other involved consultants for the project. When specialty consultants are used, additional coordination beyond basic services may be required and negotiated for appropriate phases of the work.

#### Document Checking

Review and coordination of project documents

#### Consulting Permitting Authority

Consultations, research of critical applicable regulations, preparation of written and graphic explanatory materials. The services apply to applicable laws, statutes, regulations and codes.

#### Data Coordination User Agency

Review and coordination of data furnished for the project by the agency

#### Architectural Design

Services responding to scope of work (program /predesign) requirements and consisting of preparation of conceptual site and building plans, schematic sections and elevations, preliminary selection of buildings systems and materials, development of approximate dimensions, areas and volumes.

#### Structural Design

Services consisting of recommendations regarding basic structural material and systems, analysis, and development of conceptual design solutions.

#### Mechanical Design

Services consisting of consideration for alternate materials, systems and equipment , and development of conceptual design solutions for energy sources/conservation, heating, ventilating and air conditioning (HVAC), plumbing, fire protection, and general space requirements.

#### Electrical Design

Services consisting of consideration of alternate systems, recommendations regarding basic electrical materials, systems and equipment, analysis, and development of conceptual design solutions for power service and distribution, lighting, communication raceways, fire detection and alarms, and general space requirements.

#### Civil/Site Design

Services consisting of site planning including layout of site features, building position, preliminary grading, location of paving for walkways, driveways and parking, and fencing locations. Also included are the normal connections required to service the building such as water, drainage, and sanitary systems, if applicable.

#### Civil and Site Development

- All permit applications will be prepared by the Design Team. The OWNER will develop the actual permit application and required reports and pay all permit processing fees. This is inclusive of the Conditional Use Permit for Essential Public Facility siting process, and City Planning permit.
- Identify local stormwater control agency, document restrictions as they pertain to the proposed project, define permitting requirements; identify any local public work standards as they pertain to roads, stormwater, sewer etc.; any local restriction regarding dust control, demolition, construction traffic/noise, excess earthwork disposal, any existing floodplain restrictions, etc.
- Civil Engineers will confirm adequacy of topographical and boundary mapping provided by surveyors. A/E team will evaluate legal, ownership, permitting and zoning constraints. Identify environmentally sensitive areas such as wetlands, flood plains, known hazardous waste areas, etc.
- Develop and validate site layout. This will include activities such as: (1) determine structure size, locations, and orientation; (2) layout roadways/truck access corridors and define maneuvering requirements (design vehicle); (3) size and locate parking lots for employees and visitors to the facility; (4) determine emergency vehicle access requirements. (5) evaluate flood plain impacts and constraints; (6) local stormwater management facilities (GSI and LID) (7) locate utility, piping, and duct bank (electrical, communications, and fiber) corridors (horizontal and vertical).
- Civil Engineers will coordinate with surveyors; define surveyors' scope of work; coordinate with geotechnical engineers on additional boring locations; record boring locations on site drawings.
- Develop preliminary erosion control plan for project. Determine if erosion control ponds are required; locate ponds on site plan drawings as required. Prepare preliminary storm water calculations suitable for submission to local site permitting authorities. Develop preliminary storm water control concepts (swales, curb and gutter). Meet with local storm water and erosion and sediment control agency to determine permitting requirements for site plans, and impact of requirements on preparation of contract documents. Document findings.
- Set preliminary finished floor levels for new structures. Establish preliminary finished grades; overall major surfaces, road profiles, etc. Iterate preliminary surfaces and structures to optimize earthwork if necessary.
- Perform preliminary sizing calculations
- Prepare a list of required technical specification.
- Perform ongoing design coordination with other design disciplines.
- Perform quantity take-offs of civil elements for inclusion in the schematic design cost estimate.
- Review and revise LEED and EAGLE checklist.
- Review concepts and draft work products with and seek approval from quality control reviewer.

#### Offsite Civil Schematic Design

- Develop preliminary erosion control plan for offsite work
- Develop LaBounty Road frontage improvements, channelization, and paving sections
- Perform ongoing design coordination with other design disciplines.

- Perform quantity take-offs of civil elements for inclusion in the schematic design cost estimate
- Review concepts and draft work products with and seek approval from quality control reviewer.
- Wetland Mitigation and Remediation. Provide mitigation and planning and design services to compensate for up to 3 acres of unavoidable impact sot wetlands.

Design Field Surveying:

- Design Field Surveying , Topographic Surveys, Property Boundary and Right of Way Surveys, Offsite Survey Support, Basemap and Design Plan Production.

Cost Estimating

Services consisting of development of a probably construction cost from quantity surveys and unit costs of building elements for the project. Costs shall reflect the level of design elements presented in the Schematic Design documents, plus appropriate design contingencies to encompass unidentified scope ultimately included in the program. Assist user agency with analyzing scope, schedule, and budget options to stay within the MACC.

Presentations

Service consisting of appropriate presentation(s) of the CUP for EPF documents by the A/E to agency representatives.

Materials Research

Services consisting of identification of potential of architectural materials, systems, and equipment as required by the CUP for EPF application process.

Scheduling

Services consisting of reviewing and updating previously established project schedules or initial development of schedules for decision-making, design and documentation.

Public Outreach

Provide public outreach and support on an as needed hourly not to exceed basis. Scope of services will accommodate approximately 500 man hours to public outreach expertise and support services.

- Assistance in developing a coordinated message and developing graphics to support the message. Graphics include images of existing facilities that illustrate intent of the Whatcom County Jail, and rendering of the facility on a site.
- Perform 3<sup>rd</sup> party community polling of the community issues
- Anticipate attending 2 Council meetings as part of the development of the community outreach process
- Anticipate attending 6 public outreach steering committee meetings as part of the development of the community outreach process.
- Supporting the public outreach steering committee in developing materials for presentations and mailers.
- Participate as a technical resource to the County for presentations to support organizations and public information meetings as part of the communication plan.

**EXHIBIT B  
(COMPENSATION)**

As consideration for the services provided pursuant to Exhibit A, Scope of work allowable expenses, the county agrees to compensate the Designer according to the fee schedule provided. Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed. Mileage at IRS rate, lodging and per diem at a rate not to exceed the GSA rate for location where services were provided. 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. Other expenditures such as printing, postage and telephone charges shall be reimbursed at actual cost plus 10%. 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 Designer's expense.

The Contract Number, set forth, shall be included on all billings or correspondence in connection therewith. The Consultant may bill the County progressively not more than once per month (30 days). Progressive billings will be for the amount of work complete.

		<b>SD Phase – CUP for EFP ONLY</b>	<b>Remaining DS to PC Phase (if approved)</b>
1	Space Programming and Pre-Design Services (Completed)	\$0	\$0
2	Design Project Administration & Project Management Fee	\$33,595	\$397,097
3	Architectural Design Fee	\$134,376	\$1,588,388
4	Structural Engineering Design Fee	\$53,750	\$635,355
5	Mechanical Engineering Design Fee	\$80,625	\$953,033
6	Electrical Engineering Design Fee	\$33,594	\$397,097
7	"Engineers" Cost Estimating Services for EPF Process	Included	N/A
8	Cost Estimating Services (SD, DD& CD Phases) includes VE & Bid Assistance	\$0	\$119,000
9	Life Cycle Analysis	\$0	\$40,000
10	On Site CA Phase Representation (Basic Services includes Bi-monthly. Addition Services would result in weekly	N/A	\$93,600
11	Renderings & Models	Included	Included
12	Interiors, Furnishings, FF&E, U.S. Communities Program (Design & Purchasing Schedule Only)	\$0	\$276,000
13	Detention & Courts Electronic Systems & Security Design	\$4,000	\$456,000
14	Kitchen & Laundry Consulting Design Services	\$0	\$49,400
15	Participation in Commissioning, Program Managed by Others	\$0	\$80,000
16	LEED Certification Documentation Process	\$10,000	\$90,000
17	Civic Engineering Consultant; Wetlands, On-Site & Partial Off-Site CUP for EPF includes Task 2, 3, & 7.1, 7.2, & 7.3	\$136,707	\$534,950
18	Landscape, Hardscape, Community Integration Consultant	\$61,510	\$323,071
19	Traffic Consulting	\$7,500	\$0
20	Civil Engineering Consultant; Site Survey – Task 8	\$43,142	\$0
21	Geotechnical Engineering – Infiltration & groundwater testing, Preload Requirements, Soil Bearing Properties	\$77,185	\$0
22	Geotechnical Engineering – Geothermal Conductivity Analysis	\$35,313	\$0
	<b>Subtotal Professional Lump Sum Services</b>	<b>\$711,297</b>	<b>\$6,032,990</b>
23	Reimbursable Costs, Design Printing, Mailing. Note: Bid set printing is by Owner	\$28,452	\$241,320



24	Public Outreach - As Needed Hourly, Not to Exceed	\$86,138	\$0
<b>Services by Others, not included in DLR Group contract scope unless designated to (continued):</b>			
25	Independent Commissioning Agent (Owner's consultant)		
26	LEED Certification Fee (Owner project cost)		
27	Interior Furnishings, FF&E, U.S. Communities Program (Purchasing & Installation by Owner)		
28	Testing and Balancing (Owner project cost)		
29	Hazardous Materials Study & Abatement (Owner project cost)		
30	Preload Monitoring (Owner project cost)		
31	Materials Testing (Owner project cost)		
32	Roofing Consultant (Owner project cost)		
	<b>Grand Total Design Services - This Contract</b>	<b>\$825,887</b>	<b>\$6,274,310</b>



WHATCOM COUNTY  
EXECUTIVE'S OFFICE  
County Courthouse  
311 Grand Ave. Suite #108  
Bellingham, WA 98225



Jack Louws  
County Executive

MEMO TO: County Council Chair  
County Council Members

FROM: Jack Louws, County Executive

A handwritten signature in blue ink, appearing to be "JL", is written over the printed name of Jack Louws.

DATE: October 16, 2015

SUBJECT: Jail Proposition Mailer

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In the DLR services contract unanimously passed by the Whatcom Council on September 30<sup>th</sup>, 2014 there was a budget allocation authorizing public outreach on the project. This activity included providing assistance in developing clear public information and developing graphics, including images of the existing facilities and renderings of the new facility. The planned public information for the project also included developing materials for presentations and mailers. The schedule in the contract included the community report concerning the ballot measure. This report is being distributed to every registered voter household in Whatcom County.

According to the PDC guidelines, **"one jurisdiction-wide objective and fair presentation of the facts per ballot measure is appropriate."**

*"In PDC Interpretation 04-02, Guidelines for Local Government Agencies in Election Campaigns, the Commission held that "it is not only the right, but the responsibility of local government to inform the general public of the operational and maintenance issues facing local agencies." Accordingly, the Interpretation states that "[t]he PDC will presume that every agency may distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure," typically a jurisdiction-wide "fact sheet" mailing. Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used."*

The Administration worked with the Prosecuting Attorney's office to ensure consistency with state law in regards to local government and election activities. We also worked with the Public Disclosure Commission (PDC) that has prepared guidance on this subject (<http://www.pdc.wa.gov/archive/filerassistance/manuals/pdf/Fact.Sheets.pdf>).

The community report is consistent with public information efforts executed in other communities, such as the recent Skagit jail/sales tax measure. The report is a fair and factual presentation of the new jail project including the background leading to its development, the laws and circumstances related to the project and relevant information from key county officials. It neither asks for support or rejection of the ballot measure.

If you have additional questions please do not hesitate to call me for additional information.

Office 360 778 5200

Fax 360 778 5201

TDD 711

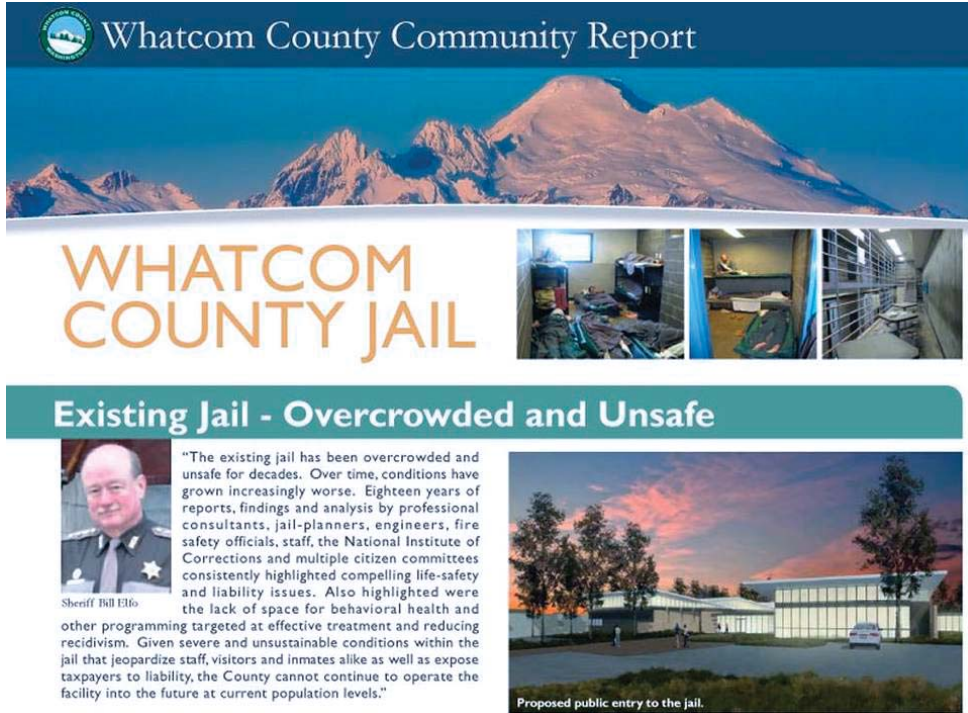
# Whatcom County uses tax revenue to send mailer about jail tax measure

**HIGHLIGHTS**

Mailers cost \$28,000, went only to registered voters

Some question use of taxpayer money, say only one side is presented

No complaint yet filed with state Public Disclosure Commission



BY SAMANTHA WOHLFEIL  
*The Bellingham Herald*

BELLINGHAM — Some community members are furious about the county’s use of public money to mail out information about a jail sales tax measure to registered voters.

The day before many households would start to see ballots arrive from the auditor’s office, each household with at least one registered voter got a flier from the county labeled the “Whatcom County Community Report: Whatcom County Jail.”

“

**I SAID THAT HAS TO BE A PHONY MAILER, IT’S A FRAUD, THERE’S NO WAY THE COUNTY WOULD SEND SOMETHING YOU ARE DESCRIBING.**

Ken Mann, Whatcom County Council member

The mailer presents pictures of the current and proposed Whatcom County Jail and talks about the proposal to pay for it with a 0.2 percent sales tax increase (20 cents per \$100 purchase). The mailer contains information from the county, Whatcom County Executive Jack Louws, Sheriff Bill Elfo, and Prosecutor Dave McEachran, on four 11-by-17 glossy color pages.

A copy of it can be viewed on the county website, [co.whatcom.wa.us](http://co.whatcom.wa.us), by searching for “community report mailer.”

The mailers cost \$28,452, according to a county contract. The money came from a 2004 sales tax that voters passed to help pay for a new jail.

State law prohibits the expenditure of public money on advertising or spaces to campaign for a specific candidate or promotion of or opposition to any ballot proposition, with a few exceptions. Under the law, if a candidate or committee aims it is allowed to send out one such mailer under state guidelines.

## First impressions

After opening their mail, some of the most vocal political players in the county took to social media to vent about the flier and question whether it violated state campaign rules.

Among them was Whatcom County Council member Ken Mann, who said he first learned of the fliers when an “irate constituent” called him to say they were upset county government would spend taxpayer dollars to lobby for increased taxes.

“When she described it to me, I said that has to be a phony mailer, it’s a fraud, there’s no way the county would send something you are describing,” Mann said.

He was wrong.

In fact, whether they knew it or not at the time, Mann and the other six sitting council members unanimously approved the money for the fliers in September 2014 as part of an \$825,887 contract amendment with DLR Group, the consultant working on the jail. The contract included funding for public outreach, which included developing materials for presentations and mailers, among other tasks.

“My initial reaction was shock and dismay and finally outrage,” Mann said. “I was further outraged that they would equate public outreach with a one-sided political propaganda piece during election season.”

Mann said the council “never ever never never” talked about sending a mailer out, and he thought there was no way the council would have approved that item had it gone before them.



**IT GIVES PEOPLE INFORMATION TO DECIDE WHETHER OR NOT THEY SUPPORT IT. I FEEL IT FOLLOWS THE INTENT OF THE LAW.**

Jack Louws, Whatcom County executive

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Doug Starcher, who helped write the statement against the jail sales tax measure for the Whatcom County voters’ guide, said the mailer was a “despicable piece of misrepresentation.”

Starcher questioned the use of pictures in the mailer, specifically images of overcrowded cells.

“The first question is did those prisoners give their permission for those photographs to be taken and used,” he said. “The notion that those photographs are anything other than lobbying in favor of this tax, to try and represent anything else is ridiculous.”

He also questioned the use of pictures of Louws and Elfo, who are both up for re-election.

“There’s a picture of the County Executive, who is running for office, then it lands in people’s mailboxes the day before or the day that their ballots arrive,” Starcher said. “That looks a little sketchy to me.”

## Following the rules

On Friday morning, Oct. 16, Louws said the county followed the guidelines for such mailers as laid out by the state Public Disclosure Commission.

“We’re following the PDC guidelines,” he said. “I think it is a fact-based document.”

The PDC used to offer to review mailers for compliance before they were sent out, but that program was cut in January this year, said Lori Anderson, a PDC spokeswoman.

The county referenced a memo from the PDC in putting together the mailer. The executive’s office, sheriff’s office and prosecutor’s office all worked to make sure the flier was fact-based and met the requirements, Louws said. The number of staff hours working on the flier was not specifically tracked.

The county cites a PDC interpretation as giving them “not only the right, but the responsibility” to “inform the general public of the operational and maintenance issues” and tells the county it may “distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure.”

“This shows where we’re at,” Louws said. “It doesn’t propose a position on it, but it does identify that we’re putting it forward to the voters for reasons based on a jail task force and on a resolution the Whatcom County Council has passed.”



When asked if he believed the flier was objective, Louws said, "It gives people information to decide whether or not they support it. I feel it follows the intent of the law."

Deputy Prosecuting Attorney Dan Gibson, who helped review the text of the flier, which was compiled by other staff, said those who worked on it had framed their work using similar types of fliers that had been used in other counties. One of those was a flier sent out in Skagit County when their new jail sales tax increase was on the ballot.

The title, Whatcom County Community Report, was similar to the title used in Skagit, Louws said.

"Whenever an informational flier is presented, you talk about what is the current situation," Gibson said. "People are providing factual information, and doing so obviously within a context. In this case, it's people who work within the facility describing it as it currently exists, and how it would exist if a new facility was constructed."

Mann said the legality of the flier wasn't important, but that it's a matter of principle.

"Whether you're a Republican or a Democrat or an independent, it's just so far over the line," Mann said. "Even if they found some loophole that they can claim this is legit, that does not make it right, and it does not make it ethical."

### **Additional concerns and complaint**

It was too soon to tell if anyone would file a complaint with the PDC as of Friday afternoon, although several people said they were looking to see if they might have a case to do so.

Richard May, who served on the County Charter Review Commission, said he was most concerned about the title of the ballot measure used in the flier.

"In this mailed piece it says this is Proposition 1," May said. "The jail vote on the ballot is Proposition 2015-1. Proposition 1 on the ballot is district-only voting."

People who follow politics closely and think about such issues all the time will be able to make that distinction, May said, but the majority of voters don't have a lot of time to do background research.

"If they get that piece of mail and say, 'Yes, I want to vote yes for the jail,' and it says in giant letters 'Proposition 1,' a single-issue voter may say 'I've got to make sure to vote yes for Proposition 1,'" May said. "That could boost the district-only vote by hundreds or even thousands of votes, so that's a huge issue."

When asked about the potential for mistaking the two similarly named propositions, Gibson said he didn't think it was an issue.

"I'm assuming that every voter reads the language of the proposition upon which they are voting," he said. "I think that's a fair assumption. The reason we put the language in there is so that people will read it."



## **WHAT WE WANT MOST IS FOR PEOPLE TO BE INFORMED ON THE ELECTION AND NOT CONFUSED ON ANYTHING, INCLUDING ALL OF THESE (CHARTER) AMENDMENTS.**

Charlie Crabtree, Whatcom County Republicans chairman

---

Tanya Baumgart, who helped produce this year's Bellingham/Whatcom County League of Women Voters forums, said she was surprised to see the mailer as she thought the county was not allowed to send them out. She did not speak as a representative of the League, which has not taken a stance for or against the measure.

"I had to work with the PDC to make sure we were in compliance with their guidelines for our forums," Baumgart said. "The PDC gave me the example that basically any time the taxpayer monies are being used for printing fliers is kind of an illustration of something that violates PDC guidelines."

Though the flier isn't explicitly in favor of the ballot measure, Baumgart said, "it definitely gives the one side of the ballot measure but doesn't give the other side. There were both sides presented at our forums."

She said that what is included in the flier is reasonably accurate and it appears to be an educational piece, but questioned the fact that it was only sent to voters.

"So that's not just an educational piece for the community, it's a targeted mailing to voters," she said. "That gives me pause."

Charlie Crabtree, chair of the Whatcom County Republicans, said the Republicans had not been involved in the flier.

When asked about spending taxpayer money on the materials, Crabtree said the PDC states it needs to be used in the public interest, and educational fliers are allowed when school districts are putting out information on levies.

“At the same time, I think that’s a heck of a lot of money,” he said.

Crabtree said he believed the piece was meant to inform the public about what’s on the ballot, and he would stand by the Republicans’ endorsement for the jail measure, but said he could understand the concerns about spending taxpayer money.

“I can tell you there are a lot of conservatives worried about the jail costs, and probably this just adds to that, I don’t know,” Crabtree said. “But when it gets down to it, as far as the Republicans are concerned, what we want most is for people to be informed on the election and not confused on anything, including all of these (charter) amendments.”

General election ballots are due to drop boxes or must be postmarked by Nov. 3.

Reach Samantha Wohlfeil at 360-715-2274 or [samantha.wohlfeil@bellinghamherald.com](mailto:samantha.wohlfeil@bellinghamherald.com). Follow her on Twitter at [@BhamPolitics](https://twitter.com/BhamPolitics).



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## Comments

15 Comments

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Add a comment...



**Janel Wilson** · Mt. Baker Jr. Sr. High School

This flyer made my decision, Vote. NO

Wasn't sure which way to go,

Jack was trying to bully The City of Bellingham too. Thanks Kelly and City Council for holding your own.

Now this misuse of Public funds.

Like · Reply · 2 · 2 hrs




**Barbara Perry** · Western Washington University

Read the latest Tip Johnson (past City Counsel man) and David Camp (previous business accountant) articles on line.

Like · Reply · 1 · 3 hrs

**Sj Robson**

 People can read those articles on [www.nwcitizen.com](http://www.nwcitizen.com)

Like · Reply · 2 hrs



**Barbara Perry** · Western Washington University

Please Elpho, Louws, and McEachran, answer the following questions:

1. Why was jail property originally assessed at \$30,212 an acre, then \$44,329 an acre and finally, 6 acres bought for \$149,488 an acre? Why are records lost from this transaction?
2. In 2000, Louws buys 6 acres of land "catty corner" to jail, assessed at \$110,000 for \$660,000 an acre? Why isn't original land owner found?
3. In 2010, land adjacent to jail property is assessed at \$240,413 an acre. Why is it assessed so high? Isn't there a conflict of interest in Louw's purchase of land and then selling land to Homeland Secur... [See More](#)

Unlike · Reply ·  4 · 3 hrs · Edited



**Sj Robson**

First, Sam Crawford, Matthew Goggins, and David McCluskey are all simply deflecting from the subject of the article by trying to voice their opinions on the jail proposal. The Herald article above is about our county jurisdiction sending out a mailer that is a promo piece for the jail disguised as a "community report," paid for with taxpayer funds. Also, this mailer just happened to land in voters' mailboxes at the same timing ballots arrived.

The new jail mailer does not appear to represent "an objective and fair presentation of the facts." That is the language used in the PDC Interpretatio... [See More](#)

Like · Reply ·  3 · 23 hrs



**Matthew Goggins** · Regis High School

Sj Robson, thank you for reading my comment and taking the time to write a thoughtful response. I'd like to respond to some of the points you've raised.

Ken Mann is the person who raised the topic of the jail. He complained to the county paper of record about the mailer that the county sent out about the jail proposal.

It is true that I focused on the underlying issue, the jail, the need to replace the jail, and the sales tax ballot measure. But I also made a point of addressing Ken Mann's complaint first.

I agree with you and Councilmember Mann that ethical norms are the highest priori... [See More](#)

Like · Reply · 9 hrs · Edited



**Sj Robson**

Matthew Goggins: The underlying issue is not whether we need a new jail or not. It's whether our County Executive has acted improperly, by basically issuing a taxpayer-funded promo piece mailer for his desired proposal for a sales tax-funded new jail. A jail plan that many people think is not a good plan, and there was no "other perspective" presented in that mailer.

Also, you wrote: "The reason you seem to be disappointed in my remarks is because I don't think the mailer necessarily violated any ethical norms."

To clarify, you did not remark about the mailer having "violated" or not having "violated any ethical norms" in your original comment. My issue with your remarks was that you ignored the subject matter of the article, to then use the opportunity to advocate for the new jail plan instead, and I believe you did that to distract/deflect from the reality of what is very likely an improperly-issued and improperly-funded County jail mailer.

Like · Reply · 8 hrs



**Matthew Goggins** · Regis High School

Sj Robson Actually, I just explained to you exactly why I said what I said. If I don't think there was a violation, either in law or in ethics, then I don't think the mailer is an issue. When you made your reply, that wasn't clear to you, so I expanded my comments to make that clear.

So if I am correct, and the mailer is not an issue, then the only issue remaining is the jail. I ask you again to please consider voting for the sales tax ballot measure, and to give your support for the new jail Thank you for sharing your judgement on the mailer, we will just have to agree to disagree on that question.

Like · Reply ·  2 · 5 hrs

[Show 1 more reply in this thread](#)



**Delaine Clizbe**

I can not believe the Bellingham Herald chose to highlight this publication. We are still waiting for them to let the citizens of Bellingham and Whatcom County know that Resource for Sustainable Communities did not in fact file the required information with the Public Disclosure Commission about their campaign spending on Proposition 9 in a timely manner. Why is Ken Mann not outraged about that? Well because, he was in the back room with Resources when they plotted their campaign.

Like · Reply ·  5 · Oct 17, 2015 6:53pm




**Sam Crawford** · Works at Westside Building Supply

Matthew Goggins I concur with your eloquent observations.

The more-than-a-decade road to this "Jail Facilities Sales and Use Tax" measure on my ballot in front of me has been paved with extremely careful and thoughtful analysis. Probably to a costly fault because of how long it has taken, but on this decision it's time to "move on" with clarity regarding what this facility construction and operation will mean to our collective future.

Across many years, every consideration has been vetted and measured regarding finance, location, operation, meeting social service needs with broader programmi... [See More](#)

Like · Reply ·  5 · Oct 17, 2015 6:32pm



**Fahri Ugurlu** · Istanbul iktisadi ticari ilimler akademisi

Sir, Your coast per inmate will increase from 60 dollars per day to 130 dollars per day(south King county jail cost) This jail will take the county to bankrupt.. Where is the increase on operating cost will come from?

Unlike · Reply · 1 · 11 hrs



**Sam Crawford** · Works at Westside Building Supply

Fahri Ugurlu The per diem will go from \$80/day in 2015 to \$100/day in 2019. (<http://co.whatcom.wa.us/DocumentCenter/Home/View/8767>) These budgeted amounts are anticipated by the proposed sales tax measure before us. The cities of Whatcom County (except for the politically-charged Bellingham City Council) have all signed off on the proposed budget, for which they will be responsible for these per-diem costs for their anticipated respective non-felon arrests. This tax measure creates the funding to make all of this happen. Saying it will bankrupt the county is ludicrous. This specific proposed facility will not be funded or built if this measure does not pass.

Like · Reply · 1 · 10 hrs · Edited



**Fahri Ugurlu** · Istanbul iktisadi ticari ilimler akademisi

Sam Crawford The jail modeled after the south king county jail. And their cost is 130-135 dollars, what makes you think you can run the jail much less than the others?

Like · Reply · 10 hrs

[Show 3 more replies in this thread](#)



**David McCluskey** · Embry-Riddle FL/AZ

Vote to reject prop 9. Prop 9 is the same as this mailer. you really dont know what your going to end up getting.

Like · Reply · 1 · Oct 17, 2015 2:22pm



**Matthew Goggins** · Regis High School

Ken Mann is in favor of limited government, and government officials acting with self-restraint and humility. He is setting a high, but needed, standard for our county. We should all agree to help our government officials live up to that standard in the decisions they make and the actions they take. Thank you for highlighting this important principle. Councilmember Mann.

David McEachran has been our prosecuting attorney -- not an attorney in the office, but the actual lead elected prosecutor -- for about forty years now.

Bill Elfo is remarkably effective, well-educated, and highly popul... [See More](#)

Like · Reply · 3 · Oct 17, 2015 2:18pm · Edited



**Francie Smart** · Independent Wellness Consultant at Executive Coordinator Market America

WHO pays \$149,000 an acre for property that's about 1/2 wetlands and has been assessed at \$48,000 an acre? and WHY? That's where the new HUGE, \$137MILLION dollar jail is to be built. Why not build on one of the many other, very suitable pieces of property the County already owns? WHO is the true beneficiary? It doesn't feel like those you mentioned are ethical at all, with the exception of Mann, who does appear to be highly ethical.

Unlike · Reply · 2 · 12 hrs



**David Camp**

These are the people we pay to uphold the law in Whatcom Cty. and they cheat to make sure their tax-and-spend boondoggle gets passed? This stinks to high heaven!

Unlike · Reply · 8 · Oct 17, 2015 11:15am



**Lori Wilkinson Laigaie** · Bellingham, Washington

Please state how they "cheated".

Like · Reply · 3 · Oct 17, 2015 8:26pm



**Robert Cunningham** · Bellingham, Washington

As long as the flyer is factual, it is the duty of government to inform the public. One needs facts to arrive at decisions. Do those who are offended by the flyer wish the facts to NOT be presented to the voters? Do they feel threatened by the public being informed? I wonder why?

Like · Reply · 6 · Oct 17, 2015 10:39am



**Fahri Ugurlu** · Istanbul iktisadi ticari ilimler akademisi

Flyers mailed only the register voters not the public. You miss that.

Like · Reply · 3 · Oct 17, 2015 1:13pm



**Robert Cunningham** · Bellingham, Washington

Fahri Ugurlu No I did not, if you don't vote, you deserve whatever you get!

Like · Reply · 4 · Oct 17, 2015 2:11pm



**Fahri Ugurlu** · Istanbul iktisadi ticari ilimler akademisi

Robert Cunningham

Like · Reply · 11 hrs

[Show 4 more replies in this thread](#)

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by **Doug Starcher** on **Wed, 21 Oct 2015 at 1:32 PM** via **Portal**  
**File a Formal Complaint - Douglas A Starcher**

On October 16, 2015 I received a mailing from Whatcom County, the '*Whatcom County Community Report*'. I've been a registered voter in Whatcom County since 1976 and have never received a Community Report from Whatcom County. I believe this mailer crossed the line from informational to promotional in several egregious ways.

The PDC's 1/12/15 memo to local government regarding ballot measure communication from local government states:

RCW 42.17A.555 prohibits local government officials and employees from using or authorizing the use of public facilities to assist a candidate's campaign, or to promote or oppose a ballot proposition. WAC 390-05-271 of the Public Disclosure Commission's rules states that this prohibition "does not prevent a public office or agency from...making an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency."

In PDC Interpretation 04-02, Guidelines for Local Government Agencies in Election Campaigns, the Commission held that "it is not only the right, but the responsibility of local government to inform the general public of the operational and maintenance issues facing local agencies." Accordingly, the Interpretation states that "[t]he PDC will presume that every agency may distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure," typically a jurisdiction-wide "fact sheet" mailing. Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used.

You also advised that "an "objective and fair presentation of the facts" must **avoid** the following:

- Overtly promotional or oppositional content (including inflammatory or emotionally-driven language; check marks and other indications of support; and gratuitous photos that tend to provoke an emotional reaction—e.g. an image of a body on an EMT stretcher, or a house exploding in flames)"

**RESPONDENT:**

Whatcom County  
311 Grand Avenue  
Bellingham, WA 98225

**ALLEGED VIOLATIONS:**

First, I write to express an urgent concern:

**The mailer misstates the ballot number throughout.** The Jail Sales Tax is Proposition No. 2015-1 yet they call it 'Proposition 1' throughout this mail piece. **At no place in this mailer is the title of Proposition No. 2015-1 accurately stated.**

**Unfortunately, there is a Proposition 1 on our ballot.** This is a proposed Charter Review Amendment for District-Only voting strongly supported by the Whatcom Republican Party. I

believe it's likely that this mailer will result in confusion and in more votes for the District-Only voting measure. The three elected officials shown on this mailer are all members of the Republican Party. It's also notable that the District Attorney who advised county administration on the legality of this jail mail piece is the same District Attorney who advised the Charter Review Commission and wrote the ballot language for Proposition 1. Surely he was aware that these are different propositions? When asked by the Bellingham Herald he responded that "I'm assuming that every voter reads the language of the proposition upon which they are voting," he said. "I think that's a fair assumption. The reason we put the language in there is so that people will read it."

*Bottom line: he knew that Proposition 1 was District-Only voting and allowed the wording on the mailer.*

**Whatcom County's mailer fails to meet the standards for "an objective and fair presentation of the facts for each ballot measure."** As stated by the PDC, "such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used."

**The mailer fails to state the cost of the jail.** PDC advises that "Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition..." yet the total cost and the amount expected to be raised via this new sales tax aren't stated in the mailer. *If that's not the purpose of the mailer, then why did they send it to every registered voter at great cost?*

**The mailer fails to disclose that if this sales tax passes, our community's capacity to tax ourselves for public safety purposes will be capped for the next 30 years.** With other competing public safety priorities, that information is critical to enable the public to make an informed decision. *This is a significant trade-off that is ignored in the rush to promote the jail.*

**The majority of information in this mailer is unrelated to the actual jail tax before voters and so appears to be there for promotional purposes only:**

- a. The claim from Jack Louws that Whatcom County spends \$11.5-million on behavioral health might not be accurate as most of that money is believed to be pass-through grant money or for unrelated programs (such as emergency planning) and regardless, none of the 0.2% jail sales tax will go towards that \$11.5 million.
- b. The section from Dave McEachron implies that mental health and chemical dependency will be treated in the jail yet no previous jail plans or communication have stated that. There will be medical beds but this jail is for incarceration, not treatment. McEachron connects what many in the community have described as a vital need for mental health and substance abuse treatment with funding for the jail when *there is no connection between this proposed tax and mental health or substance abuse treatment.*
- c. The paragraph on the top of the back page titled 'Citizens and Experts Develop Plan for the new Whatcom County Jail' cherry picks favorable information and leaves out the recommendations Whatcom County ignored. For example, the Citizen Committee

referenced also recommended that a mental health triage facility be part of this proposal yet the County administration has failed to include that as part of this plan.

- d. While the mailer speaks of the jail sales tax going towards inmate mental health programs, today mental health programs - even those within the jail - are paid for out of a mental health sales tax and that's likely to continue. This information seems inaccurate. As if to underscore that false statement, the site plan shows no area for mental health treatment.
- e. The comparison chart of current sales tax rates from Puget Sound region fails to show sales tax rates that are lower (there are many) and only includes those that are the same or higher. That omission makes this section promotional in nature.

**The mailer contains photographs that are either intended to trigger an emotional response or that are clearly self-promotional.**

- a. Photographs of prisoners are used and appear intended to trigger an emotional response from the reader. These photos seem gratuitous in nature.
- b. Three photographs of County Administrators are used and appear to be self-promotional in nature. The photographs add no information about the jail tax and two of the three are on the ballot this year, one in a contested race.

<http://www.pdc.wa.gov/archive/filerassistance/manuals/pdf/Fact.Sheets.pdf>

<http://www.bellinghamherald.com/news/local/article39560088.html>

by **Marissa McGrath** on **Wed, 21 Oct 2015 at 2:45 PM** via **Portal**  
**File a Formal Complaint - Marissa McGrath**

It appears that Whatcom County broke the law by sending out the jail mailer to advertise for the new jail. The fact that Jack Louws and Bill Elfo got free publicity on the county's dime during the home stretch of their reelection campaigns certainly isn't ethical either and may also be illegal. This is disheartening to say the least.

Please see PDC's January 12, 2015 memo to local government regarding ballot measure communication from local government states below:

RCW 42.17A.555 prohibits local government officials and employees from using or authorizing the use of public facilities to assist a candidate's campaign, or to promote or oppose a ballot proposition. WAC 390-05-271 of the Public Disclosure Commission's rules states that this prohibition "does not prevent a public office or agency from...making an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency."

In PDC Interpretation 04-02, Guidelines for Local Government Agencies in Election Campaigns, the Commission held that "it is not only the right, but the responsibility of local government to inform the general public of the operational and maintenance issues facing local agencies."

Accordingly, the Interpretation states that "[t]he PDC will presume that every agency may distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure," typically a jurisdiction-wide "fact sheet" mailing. Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used.

You also advised that "an "objective and fair presentation of the facts" must avoid the following:

- Overtly promotional or oppositional content (including inflammatory or emotionally-driven language; check marks and other indications of support; and gratuitous photos that tend to provoke an emotional reaction—e.g. an image of a body on an EMT stretcher, or a house exploding in flames)"

RESPONDENT:

Whatcom County  
311 Grand Avenue  
Bellingham, WA 98225



# Whatcom County Community Report



## WHATCOM COUNTY JAIL



### Existing Jail - Overcrowded and Unsafe



Sheriff Bill Elfo

"The existing jail has been overcrowded and unsafe for decades. Over time, conditions have grown increasingly worse. Eighteen years of reports, findings and analysis by professional consultants, jail-planners, engineers, fire safety officials, staff, the National Institute of Corrections and multiple citizen committees consistently highlighted compelling life-safety and liability issues. Also highlighted were the lack of space for behavioral health and other programming targeted at effective treatment and reducing recidivism. Given severe and unsustainable conditions within the jail that jeopardize staff, visitors and inmates alike as well as expose taxpayers to liability, the County cannot continue to operate the facility into the future at current population levels."



Proposed public entry to the jail.



by **Sara Holodnick** on **Wed, 21 Oct 2015 at 2:50 PM** via **Portal**  
**File a Formal Complaint - Sara Holodnick**

I would like to issue a formal complaint against the election mailer regarding the proposed jail sent out by Jack Louws and Bill Elfo on the taxpayer's dime. As a small business owner in Whatcom County, I am deeply troubled by this unethical tactic. I expect my elected officials to play by the rules.

From a January 12, 2015 memo:

"RCW 42.17A.555 prohibits local government officials and employees from using or authorizing the use of public facilities to assist a candidate's campaign, or to promote or oppose a ballot proposition. WAC 390-05-271 of the Public Disclosure Commission's rules states that this prohibition "does not prevent a public office or agency from...making an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency."

In PDC Interpretation 04-02, Guidelines for Local Government Agencies in Election Campaigns, the Commission held that "it is not only the right, but the responsibility of local government to inform the general public of the operational and maintenance issues facing local agencies."

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- Overtly promotional or oppositional content (including inflammatory or emotionally-driven language; check marks and other indications of support; and gratuitous photos that tend to provoke an emotional reaction—e.g. an image of a body on an EMT stretcher, or a house exploding in flames)"



**NOTICE OF CIVIL RIGHTS VIOLATIONS AND NOTICE OF REASON TO BELIEVE  
RCW 42.17A IS BEING OR HAS BEEN VIOLATED**

Via Email and Regular Mail, [REDACTED]

- TO: Washington Attorney General Bob Ferguson  
1125 Washington St SE  
PO Box 40100  
Olympia, WA 98504
- TO: Whatcom County Prosecutor, David S. McEachran (Hand  
311 Grand Avenue, Suite 201  
Bellingham, WA 98225
- TO: Public Disclosure Commission  
711 Capital Way #206  
PO Box 40908  
Olympia, WA 98504-0908

Pursuant to RCW 42.17A, be advised of the following civil rights violations and reasons to believe RCW 42.17A is being or has been violated.

The flyer attached hereto as **Exhibit A** ("Flyer") was mailed to select registered Whatcom County voters for the promotion of Whatcom County Ballot Proposition No. 1, and Whatcom County Proposition No. 2015-1 and for the purpose of assisting a campaign for the election to public office. This Notice incorporates the facts reported in the October 15, 2015, Bellingham Herald Article (*Whatcom County uses tax revenue to send mailer about jail tax measure*), attached hereto as **Exhibit B**. Whatcom County, Whatcom County Executive Jack Louws, Whatcom County Prosecutor Dave McEachran, and Whatcom County Sheriff Bill Elfo, and other unknown individuals used funds and facilities of a public office or agency, or agencies (directly or indirectly), including the County Executive's Office, the Sheriff's Department, and the Prosecutor's Office for the purpose of assisting the promotion of the two ballot propositions and for the purpose of assisting the campaigns for election of Louws and Elfo.

RCW 42.17A.555 provides, in part,

No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to

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any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency....

**A. The Flyer is an impermissible attempt to influence the outcome of the ballot propositions.**

The Flyer is a one-sided pitch for mass incarceration. The Flyer completely omits the incarceration facts being examined nationwide at all levels of government. Having examined cost and injustice of our 40-year history of mass incarceration, Republicans, Democrats, Police Chiefs, and Prosecutors nationwide are calling for reduced incarceration. The nation is becoming aware that the U.S. holds 25% of the planet's incarcerated people, yet has only 5% of the planet's free population.

We as people of color in Whatcom County are especially concerned about mass incarceration and the potential ramping up of mass incarceration in Whatcom County, especially with our proximity to the northern border and the large presence of Homeland Security. The Whatcom County Jail is disproportionately filled with people of color. With this notice, we therefore intend to put Washington, Whatcom County, and local law enforcement on notice of the existing civil rights violations, and our belief that ramping up mass incarceration while ignoring the system's racism is a deliberate exacerbation of ongoing racial profiling and civil rights violations. The Flyer, and the three proponents' (Louws, Elfo, and McEachran) support of the Flyer, increases the level of distrust that communities of color have in Whatcom County law enforcement system.

Mass incarceration is a racist system implemented at the end of, and in reaction to, the gains made during the Civil Rights era. Today, we have a prison-industrial complex expanded to include immigration detention. The Administration, several Congressional leaders, and conservative groups agree that mass incarceration is a serious issue that needs to be addressed throughout our country. The Department of Justice recently announced they are releasing 6,000 prisoners.<sup>1</sup> In Whatcom County, community members and groups have fought for the last decade to bring attention to local leaders and law enforcement, regarding issues of racial profiling and the racially disproportionate population in Whatcom County jails.

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<sup>1</sup> <http://www.ibtimes.com/immigration-2015-one-third-6000-prisoners-due-release-are-undocumented-immigrants-2131042.a>

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The entire country is waking up to years of systemic racism and injustice thanks to community awareness, activism, and books like Michelle Alexander's *The New Jim Crow: Mass Incarceration in the Age of Color Blindness*. "More than 130 of the nation's top law-enforcement officials including big-city police chiefs, sheriffs, prosecutors and attorneys general, have joined the call to end the harsh, counter-productive practices and policies that have driven America's [mass incarceration] boom, destroyed communities and written off an entire generation of young men of color."<sup>2</sup> In contrast to reality, a voter reading the Flyer would come away with the impression that there is no alternative to increasing the size of Whatcom County's jail.

The Flyer was created, in part, by the company hired by the County to provide "full design services" and "assistance in developing a coordinated message and developing graphics to support the message." The October 1, 2014, DLR Group Contract for Services Agreement is attached hereto as **Exhibit C**. Local government agencies "...shall not coordinate informational activities with campaign efforts, in a manner that makes the agency appear to be supporting or opposing a ballot measure." January 12, 2015, PDC Letter.

As opposed to an "objective and fair presentation of the facts," the message, apparently, is that a new, expensive, larger jail in Ferndale is necessary. The Flyer uses official uniforms, equipment, publications, and the County seal to support its message. The flyer is one sided and fails to inform the voter of the nature, costs and impacts of the proposal—and leaves out the issues, listed below, about which community members have been educating our local leaders for the last decade:

1. The proposed jail increases the number of Whatcom County jail beds from roughly approximately 280 to 521 (the magnitude of the increase is not even disclosed);
2. The longstanding, well-reasoned testimony, public hearing statements, and oft-repeated concerns of the Whatcom County population opposed to a larger jail;
3. Whatcom County's incarceration rate is already among the highest in the world;
4. Whatcom County's booking rates are up, while statewide bookings are down;<sup>3</sup>
5. Whatcom County offers inmates less "good time" (earned early release) than 27 of Washington's 39 counties (i.e., if you serve time in Whatcom County and behave, you will serve more of your sentence than you would in roughly 7 out of 10 counties in Washington);

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<sup>2</sup> October 22, 2015, New York Times Editorial, citing position of Law Enforcement Leaders ([lawenforcementleaders.org](http://lawenforcementleaders.org)).

<sup>3</sup> <http://www.whatcomcounty.us/DocumentCenter/Home/View/827>;  
<http://www.whatcomcounty.us/449/Background-Documents-on-Jail-Planning>;  
<http://www.whatcomcounty.us/449/Background-Documents-on-Jail-Planning>; and  
<http://www.nwcitizen.com/blog-entry/the-making-of-a-jail-crisis-part-two-stuff-it>

6. The absence of Whatcom County law enforcement training regarding alternatives to booking, as in Seattle's LEAD program, which has reduced recidivism by 25%;
7. The overcrowding is the result of the unlawful mass incarceration policies (including bail recommendation, sentence recommendation, and good time policies) of Whatcom County and the three mass incarceration proponents quoted in the Flyer (Louws, McEachran, and Elfo). WCC 1.28.100 requires, amongst other things, that Sheriff Elfo release inmates early or transfer them when it is overcrowded. Sheriff Elfo and Prosecutor McEachran are also the main architects of overcrowding and unsafe crisis of the jail.
8. The feel bad pictures of inmates sleeping on the floor and the absence of adequate space for a dayroom and other programs is not caused by the size of the jail, but rather by Whatcom County's mass incarceration policies;
9. The jail was deliberately and illegally overcrowded in order to manufacture a crisis that could be used to justify plans to increase Whatcom County's capacity to incarcerate 521 (or more) inmates at a time.
10. No Flyer space is devoted to facts supportive of static or reduced incarceration rates;
11. Whether the County has made a finding (or has relied upon any information or analysis) that its current mass incarceration policy, or the proposed incarceration ramp-up is (or is not) effective at achieving any public policy goals; and if so, what are the findings and information relied upon;
12. How much Whatcom County has spent planning and promoting the plan for a larger jail verses exploring the data, science, and societal benefit, and economic savings of alternatives to incarceration<sup>4</sup>;
13. How much of the local budgets go to incarceration verses incarceration alternatives;
14. The cost of building and maintaining the proposed jail;
15. The cost of building and maintaining a smaller jail;
16. The total amount of additional tax that will be collected over 30 years in the event the proposition is approved;
17. The economic impact of choosing mass incarceration over alternatives to incarceration;
18. The societal impact of choosing mass incarceration over alternatives to incarceration;
19. The lack of an analysis regarding the current make-up (and causes thereof) of the jail population in terms of race, economic status, conviction vs. non-conviction status (i.e. incarcerated because they can't afford bail or home monitoring), mental health status; number of people incarcerated for drug

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<sup>4</sup> In this Notice, "alternatives to incarceration" is defined as alternatives to pre booking and measures to reduce to incarceration (e.g. mental health services, "Ban the Box" law, etc.)

- possession, drug use, drug sales, and driving under the influence (or if such an analysis exists, the fact that it has not been shared with the public);
20. If the jail tax passes, all of Whatcom County's public safety tax for potentially 30 years will be earmarked for incarceration (that is, by law Whatcom County may not raise any additional tax to fund alternatives to incarceration for potentially 30 years);
  21. The exacerbation of the difficulty in finding funding for incarceration alternatives, and enhanced incarceration (as listed in the Flyer by Louws) caused by the proposed tax;
  22. There is no analysis regarding incarceration rate, or even information assisting the voters in deciding that they should incarcerate more, the same, or fewer people than they do already (e.g., whether they should incarcerate 523, 403, or whether they should reduce incarceration rates by 25% to 300).
  23. Even if the jail tax passes, agreement has not been reached for housing Bellingham's non-felony inmates; Bellingham has nearly half the population of the entire county; and the County has demanded Bellingham tax payers provide additional funds before the proposed jail would permit housing of Bellingham's non-felony inmates (beyond the roughly \$120,000,000 that will be raised by the proposed county tax);
  24. The fact that Whatcom County incarcerates people of color at 5 to 7 times the rate of whites;
  25. The fact that Whatcom County law enforcement have provided the public little or no analysis regarding the existence or reduction of its own systemic racism;
  26. The absence of racial bias training in Whatcom County law enforcement which is recommended by the federal government and has been proven effective in reducing racial bias;
  27. The absence of an explanation for who the additional 120 beds will be used to incarcerate (e.g., does the proposal allow Whatcom County to rent beds to the Federal Government to incarcerate people for immigration violations?);
  28. This voting period (ending November 3, 2015) was scheduled to occur two (2) months before the publically funded Whatcom County jail alternatives task force is scheduled to make recommendations; that is, if the proposed tax is passed, 30 years of taxation (roughly \$120,000,000) will be unavailable for alternatives to incarceration.
  29. The reason for building the jail in Ferndale, rather than the County's population center (Bellingham);
  30. As people of color we are concerned that the remote location of the proposed new, big jail would make the the concerns and potential abuses less visible, less transparent to the community, and easier for abuses and violations to be carried out. "Out of sight, out of mind."

31. The DOJ recommends jails be built next to county courthouses rather than in more remote areas to reduce cost and increase function;
32. The economic impact of building a jail away from the population center (Bellingham has nearly half of the County's population);
33. The County Executive (and jail proponent in the Flyer) Jack Louws' financial interest in having the jail built in the proposed location (especially regarding the sale of land under or near the planned site);<sup>5</sup>

To fall within the WAC 290.05.271 exception, public offices or agencies must make "facilities available on a nondiscriminatory, equal access basis for political uses or [make] an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency." Further, public funds or resources may only be expended if "the preparation and distribution of information is not for the purpose of influencing the outcome of an election." PDC Interpretation No. 04-02, Page 4. "Supervisory personnel have a duty to know, apply, and communicate to their staffs the difference between acceptable information activities and inappropriate promotional activities in support of local government ballot measures." *Id.* "[I]n no case will the PDC view a marketing or sales effort related to a campaign or election as normal and regular conduct." *Id.*, at 5.

The Washington Public Disclosure Commission (PDC) has advised, "Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used." January 12, 2015, Public Disclosure Commission Letter to Local Government Agency Officials from Tony Perkins, Acting Assistant Director, Re Election-Related Communications by Local Government Agencies ("January 12, 2015, PDC Letter"). "Such a presentation should also explain, in neutral, factual terms, the outcome anticipated if the proposition is rejected by voters." *Id.* [A]n "objective and fair presentation of the facts" must **avoid** . . . Overtly promotional or oppositional content (including inflammatory or emotionally-driven language; check marks and other indications of support; and gratuitous photos that tend to provoke an emotional reaction—e.g. an image of a body on an EMT stretcher, or a house exploding in flames)." *Id.* (emphasis in original).

" 'Objective and fair presentation of the facts' means that in addition to presenting the facts, the materials should present accurately the costs and other anticipated impacts of a ballot measure." (January 12, 2015 PDC letter) The Flyer uses official uniforms, equipment, and publications, the use of which is restricted in the January 12, 2015, letter.

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<sup>5</sup> NW Citizen article by Tip Johnson, <http://www.nwcitizen.com/entry/louwsy-jail-deal>.



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The facts outlined in this notice, including 1 through 33, above, demonstrate reason to believe the foregoing legal requirements have not been met.

**B. The Flyer contains false statements, conflations, and gives the voters false impressions.**

The Flyer appears to be designed to be confusing as it related to existing incarceration alternatives and incarceration alternatives that would be funded by approving the proposed ballot measure. The Flyer makes false statements, conflations, and false impressions, including –

1. States that the Jail Facilities Sales and Use Tax is proposed in Whatcom County, Washington Proposition Number 1 (Proposition Number 1 is a different proposition on the ballot this year, which we feel is designed to dilute the ability of people of color to fairly participate in electing county government who represent their interests.<sup>6</sup> The Jail Facility Sales Tax was named as Proposition 1 not once, but twice, in two different ways, on the flyer-a false statement that was amplified and repeated on King 5 News on October 29. Nowhere on the flyer is it described correctly as Proposition 2015-1. Proposition 1 is supported by large-monied industries like the agricultural industry and coal industry; its passage would solidify power for the three elected officials Louws, Elfo, and McEachran, and their allies. This mislabeling cannot be dismissed as anything but intentional.)
2. Conflates safety and incarceration rates. We agree that the Whatcom County jail should be safe. But safety does not immediately mean building a bigger jail when and where the flyer describes.
3. Conflates the need for better jail conditions with the need for a bigger jail;
4. Uses emotional photos and graphic representations to create a false dichotomy (inhumane treatment or larger jail)
5. Implies that safety issues are due to the size of the jail;
6. Implies that increased incarceration is a natural, unavoidable, and even legally required, need ("State law requires...", "liability," "By law, Whatcom County requires...");
7. Consistent with Louws, McEachran, Elfo, and others' campaign to increase the size of the jail the Flyer manufactures a false choice: Treat people humanely and approve the proposal; or reject it, and treat people inhumanely;
8. States that the need for a new jail is "critical," while at the same time stating that the need has been critical since 1999, and that the estimated date for implementing the proposed solution is 3.5 years from now - Spring of 2019;

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<sup>6</sup> <https://aclu-wa.org/cases/montes-v-city-yakima>

<https://www.aclu.org/news/federal-court-rules-yakimas-voting-system-violates-voting-rights-act>

[http://www.yakimaherald.com/special\\_projects/aclu/](http://www.yakimaherald.com/special_projects/aclu/)

9. Implies, confuses, and misleads voters that this measure will also help fund the alternatives, cited in the Flyer;
10. Implies, confuses, and misleads voters that the jail tax will fund the behavioral health and treatment programs listed by Louws;
11. Implies, confuses, and misleads voters that there is existing funding for the behavioral health and treatment programs Louws lists, when the proposal will make funding for such programs more difficult if not impossible;
12. Implies, confuses, and misleads voters that the County funds incarceration and alternatives to incarceration nearly equally (\$12.3 and \$11.5 million, respectively); or alternatively, implies that if the jail tax is approved, the County will fund incarceration and alternatives to incarceration nearly equally (\$12.3 and \$11.5 million, respectively);
13. Implies, confuses, and misleads voters that the County has meaningfully examined its policies regarding incarceration rates;
14. Implies, confuses, and misleads voters that the County has examined alternatives to incarceration;
15. Implies, confuses, and misleads voters that there is evidence to support the need for increased incarceration;
16. States that the new jail is "centrally located";
17. States that there are ". . . no expansion options"
18. States that the "Cities and county agree. . ."

**C. The Flyer is not normal, customary, and regular conduct.**

The Flyer was created, in part, by the company hired by the County to provide "full design services" and "assistance in developing a coordinated message and developing graphics to support the message." According to Louws, the Flyer was specifically approved in a \$27,000+ funding measure passed by the County Council. The flyer is unusual, and unlike previous information mailed to voters on other issues, including other ballot initiatives.

Passage of a tax that maxes out the ability of the County to charge tax for public safety issues for 30 years is not a normal and regular event, and creation of the Flyer is not normal and regular conduct. Passage of Proposition 1, which will likely permanently reduce the voice of voters of color in County government is not normal and regular conduct.

Further, the County Executive who approved the Flyer has profited from sale of land next to or around the proposed jail.<sup>7</sup>

WAC 390-05-273 (Definition of normal and regular conduct) provides,

Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17A.555, means conduct which is (1) lawful,

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<sup>7</sup> NW Citizen article by Tip Johnson, <http://www.nwcitizen.com/entry/louwsy-jail-deal>

i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.

"The agency must be able to demonstrate that for other major policy issues facing the jurisdiction, the agency has customarily communicated with its residents in a manner similar to that undertaken for the ballot measure." PDC Interpretation No. 04-02, Page 5.

In the event communications other than a "jurisdiction-wide mailed "fact sheet," are used, . . . the agency must be able to demonstrate that . . . the method, format, and frequency is typical of how the agency routinely communicates with its audience." January 12, 2015, PDC Letter.

**D. The Flyer is an electioneering communication that identifies political candidates and supports local political campaigns without having been submitted to voters for approval.**

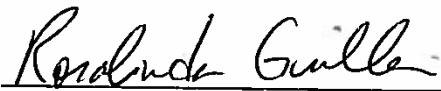
Louws and Elfo are running for re-election in this voting period. They are photographed and quoted in the Flyer as authorities on the subjects. The Flyer is designed to minimize and divert attention from their roles in creating the overcrowding situation.

RCW 42.17A.300(1)(b) provides, "Electioneering communications that identify political candidates for state, local, or judicial office and that are distributed sixty days before an election for those offices are intended to influence voters and the outcome of those elections."

RCW 42.17A.550 provides,

A county, city, town, or district that establishes a program to publicly finance local political campaigns may only use funds derived from local sources to fund the program. A local government must submit any proposal for public financing of local political campaigns to voters for their adoption and approval or rejection.

Rosalinda Guillen



Whatcom County Resident and Voter,  
filed October 30, 2015, only on her own behalf

Contact Information for Legal Representative:

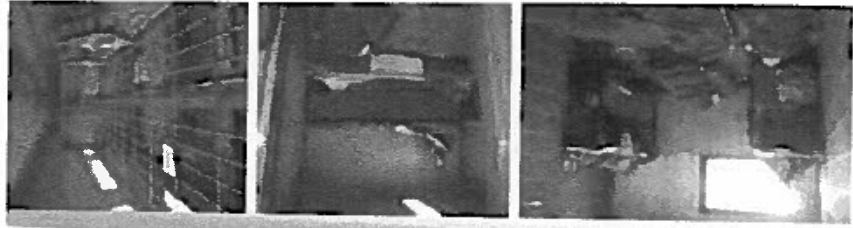
Junga Subedar  
P.O. Box 2444,  
Bellingham, WA 98227

360-746-2745

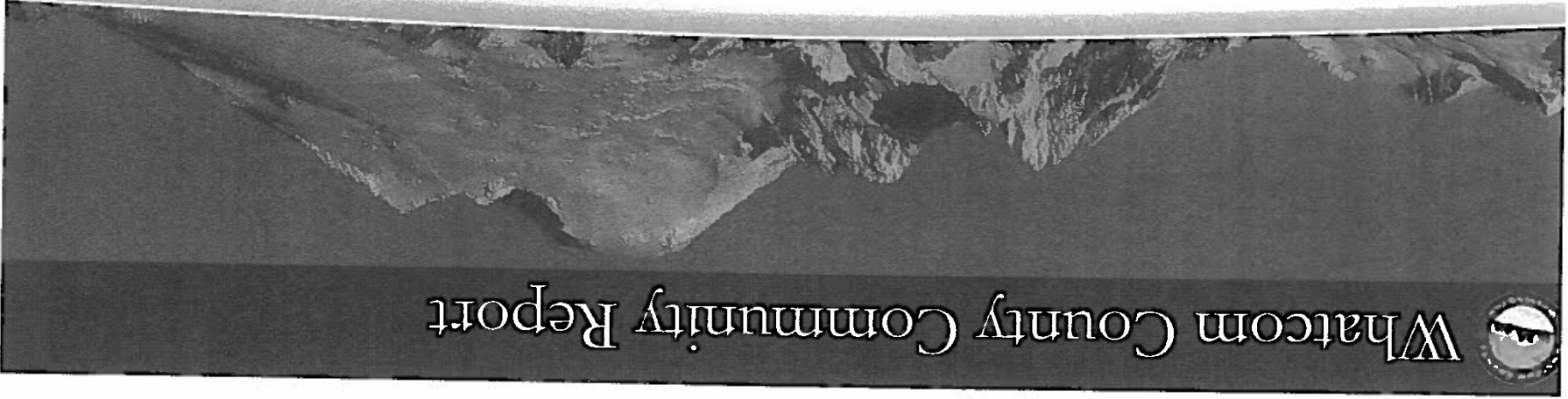
CC: ACLU,  
WSBA,  
Washington State Commission on Hispanic Affairs,  
Washington State Commission on African-American Affairs,  
Washington State Commission on Native American Affairs;  
Lummi Nation;  
Brothers and Sisters of Whatcom County;  
Bellingham Unitarian Fellowship;  
Senator Rick Larson;  
Senator Maria Cantwell;  
State Representatives;  
Whatcom Human Rights Task Force;  
Ralph Munro Institute, WWU Professor Vernon Johnson  
Western Washington University, Fairhaven College  
Fairhaven College, Woodring College of Education

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# EXHIBIT A



# WHATCOM COUNTY I&II



WHATCOM COUNTY  
311 GRAND STREET  
BELLINGHAM, WA 98225





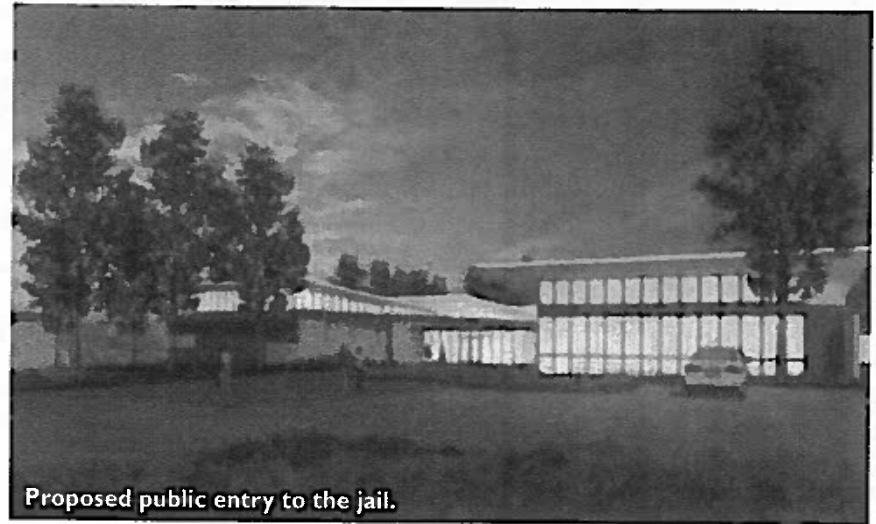
## Existing Jail - Overcrowded and Unsafe



Sheriff Bill Elfo

“The existing jail has been overcrowded and unsafe for decades. Over time, conditions have grown increasingly worse. Eighteen years of reports, findings and analysis by professional consultants, jail-planners, engineers, fire safety officials, staff, the National Institute of Corrections and multiple citizen committees consistently highlighted compelling life-safety and liability issues. Also highlighted were the lack of space for behavioral health and

other programming targeted at effective treatment and reducing recidivism. Given severe and unsustainable conditions within the jail that jeopardize staff, visitors and inmates alike as well as expose taxpayers to liability, the County cannot continue to operate the facility into the future at current population levels.”



Proposed public entry to the jail.

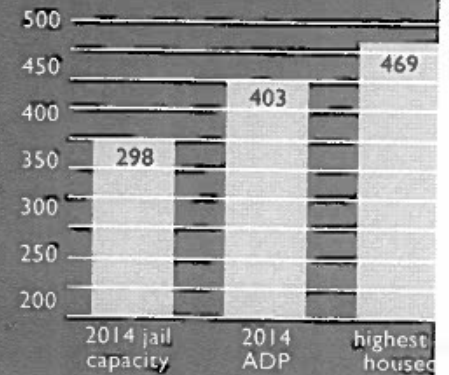
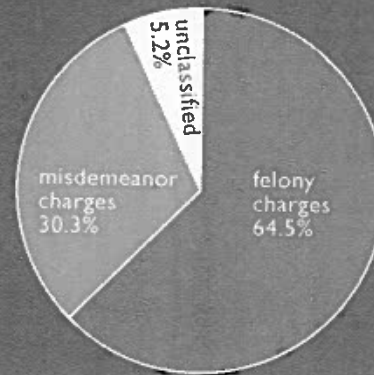
The County cannot continue to operate the facility into the future at current population levels.

Existing Whatcom County Jail has limited renovation and no expansion options.

The current jail was built in 1984 to house 148 inmates, remodelled to house 212. Total jail capacity, including interim jail on Division Street, is 298. The average daily jail population (ADP) in 2014 was 403. According to statewide comparison,

**Our jail population is at 137% percent of capacity, 4th highest in the state.**

By law, Whatcom County is required to accept all accused/convicted felons whose case originate in the entire County, including Bellingham, Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas.



**Occupy Jail**

echoing findings recommended by other citizen committees tasked to examine jail issues over the last two decades, including in 1999-2000, 2004 and 2008.

and other health issues. Additional counseling and classroom space, education, literacy, substance abuse and other training and treatment

# The Ballot Measure

WHATCOM COUNTY,  
 NGTON PROPOSITION NUMBER 1  
 ILITIES SALES AND USE TAX

Whatcom County Council passed Resolution 2015-024 authorizing a proposition authorizing a sales and use tax facilities. This proposition would impose a sales tax of two tenths of one percent (20 cents for every \$100) for constructing and operating jail facilities for persons charged or convicted of misdemeanor and felony offenses and for other public safety purposes, as authorized by RCW 82.14.450. Half of this tax (10 cents for every \$100) would expire upon repayment of bonds issued to construct the facilities, no later than 30 years after issuance.

The proposition before County voters would add sales and use tax at the rate of 0.2% for construction and operation of jail facilities, adult corrections programs including inmate mental health programs and for other public safety purposes as authorized by RCW 82.14.450.

If this proposition be:

Approved

Rejected

State law requires the County to provide for a jail. The County Council has determined the current jail does not meet existing and future needs:

## Current Sales Tax Rates Puget Sound Region

Whatcom County	.085
Ham	.087
	.085
n	.085
le	.087
	.087
ack	.085
	.085
gton	.085
Vernon	.085
t	.092
ie	.095
	.096
a	.095

If Proposition #1 passes, the County and participating cities will build a replacement jail on Labounty Road in Ferndale, demolish the existing Prospect Street jail and construct facilities for inmate transfer at the County Courthouse. Construction of a new jail facility will house felons, misdemeanants plus space for behavioral health, medical and administration



or eliminate our need to expand the proposed replacement jail. These behavioral health and treatment programs include:

- Specialized training for public safety personnel;
- Individual and community programs focused on prevention, treatment, intervention and family support programs;
- Pre-arrest court/detention behavioral health services;
- Community mental health and substance abuse treatment and opiate outreach;
- Family treatment and mental health courts;
- Affordable housing services;
- Pre-arrest court probation specialized behavioral health unit;
- Intensive case management, supportive housing, and the Rainbow Recovery Center;
- Veterans' relief services;
- A triage center;
- Behavioral health services;
- Alternative programs, including electronic home monitoring, work release, and jail work crews.

## Targeted-for Alternatives

• Alternative and Diversion Programs  
00

• Diversion net programs  
00

“One of the greatest challenges and frustrations within the current jail is the inability to provide adequate space for health services and programming.



*There are huge demands for services for all of the care the jail provides. The lack of clinic and counseling space*



Existing cell.



Existing shower room converted to cell.



Existing dayroom.



Existing inmate programs space.

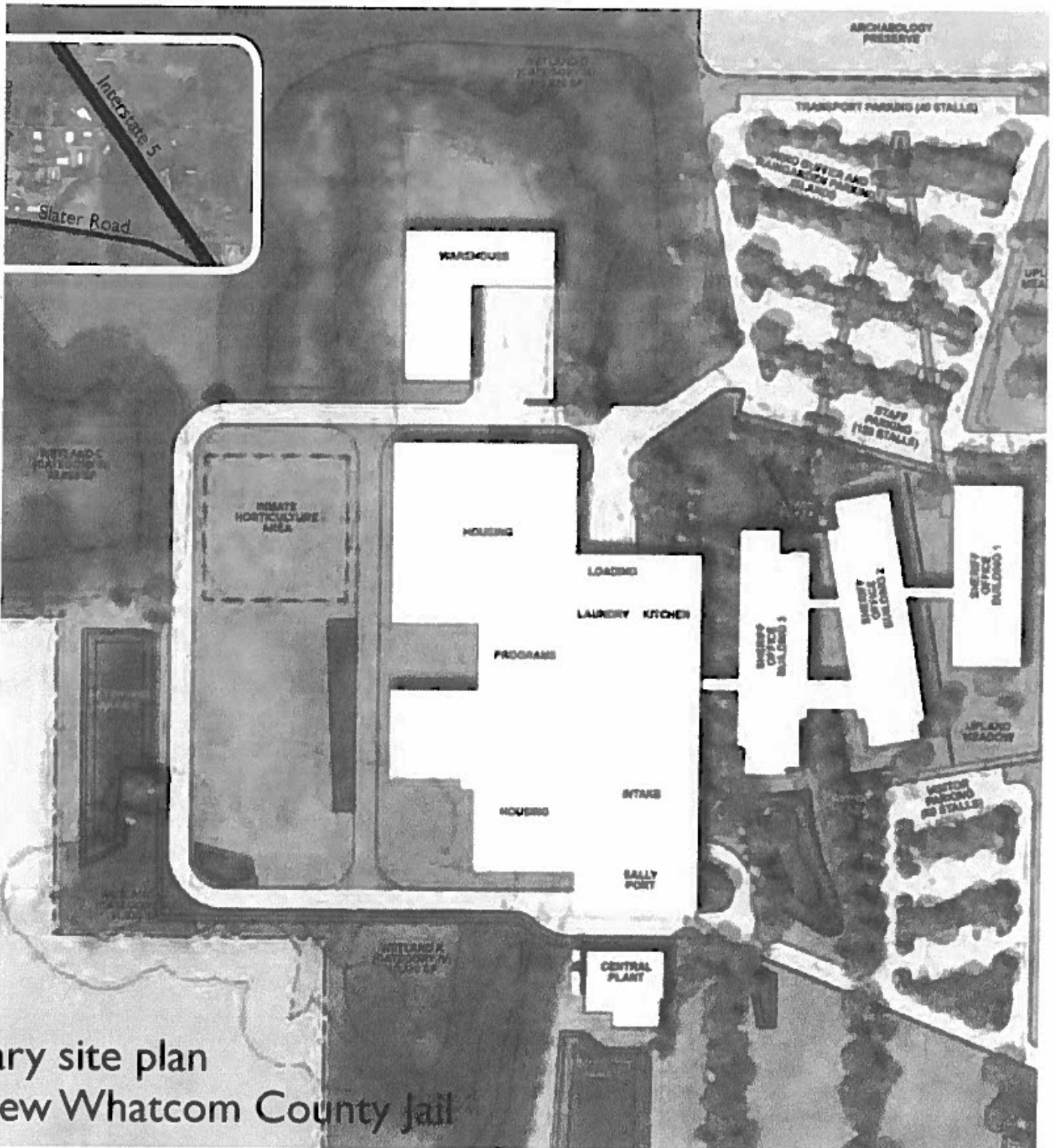


video visiting



Central control room.

- Building site design to accommodate future growth.



# EXHIBIT B



Mailers cost \$28,000, went only to registered voters

Some question use of taxpayer money, say only one side is presented

No complaint yet filed with state Public Disclosure Commission

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Cover of the Whatcom County Community Report sent to residents. Whatcom County  
Courtesy to The Bellingham Herald

j

By Samantha Wohlfeil

The Bellingham Herald

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Some community members are furious about the county's use of public money to mail out information about a jail sales tax measure to registered voters.

The day before many households would start to see ballots arrive from the auditor's office, each household with at least one registered voter got a flier from the county labeled the "Whatcom County Community Report: Whatcom County Jail."

I said that has to be a phony mailer, it's a fraud, there's no way the county would send something you are describing. Ken Mann, Whatcom County Council member

The mailer presents pictures of the current and proposed Whatcom County Jail and talks about the proposal to pay for it with a 0.2 percent sales tax increase (20 cents per \$100 purchase). The mailer contains information from the county, Whatcom County Executive Jack Louws, Sheriff Bill Elfo, and Prosecutor Dave McEachran, on four 11-by-17 glossy color pages.

A copy of it can be viewed on the county website, [co.whatcom.wa.us](http://co.whatcom.wa.us), by searching for "community report mailer."

The mailers cost \$28,452, according to a county contract. The money came from a 2004 sales tax that voters passed to help pay for a new jail.

State law prohibits the expenditure of public money or use of public offices or spaces to campaign for a specific candidate or promotion of or opposition to any ballot proposition, with a few exceptions. The county claims it is allowed to send out one such mailer under state guidelines.

## First impressions

After opening their mail, some of the most vocal political players in the county took to social media to vent about the flier and question whether it violated state campaign rules.

Among them was Whatcom County Council member Ken Mann, who said he first learned of the fliers when an "irate constituent" called him to say they were upset county government would spend taxpayer dollars to lobby for increased taxes.

"When she described it to me, I said that has to be a phony mailer, it's a fraud, there's no way the county would send something you are describing," Mann said.

He was wrong.

In fact, whether they knew it or not at the time, Mann and the other six sitting council members unanimously approved the money for the fliers in September 2014 as part of an \$825,887 contract amendment with DLR Group, the consultant working on the jail. The contract included funding for public outreach, which included developing materials for presentations and mailers, among other tasks.

"My initial reaction was shock and dismay and finally outrage," Mann said. "I was further outraged that they would equate public outreach with a one-sided political propaganda piece during election season."

Mann said the council "never ever never never never" talked about sending a mailer out, and he thought there was no way the council would have approved that item had it gone before them.

It gives people information to decide whether or not they support it. I feel it follows the intent of the law. Jack Louws, Whatcom County executive

Doug Starcher, who helped write the statement against the jail sales tax measure for the Whatcom County voters' guide, said the mailer was a "despicable piece of misrepresentation."

Starcher questioned the use of pictures in the mailer, specifically images of overcrowded cells.

"The first question is did those prisoners give their permission for those photographs to be taken and used," he said. "The notion that those photographs are anything other than lobbying in favor of this tax, to try and represent anything else is ridiculous."

He also questioned the use of pictures of Louws and Elfo, who are both up for re-election.

"There's a picture of the County Executive, who is running for office, then it lands in people's mailboxes the day before or the day that their ballots arrive," Starcher said. "That looks a little sketchy to me."

Following the rules

On Friday morning, Oct. 16, Louws said the county followed the guidelines for such mailers as laid out by the state Public Disclosure Commission.

"We're following the PDC guidelines," he said. "I think it is a fact-based document."

The PDC used to offer to review mailers for compliance before they were sent out, but that program was cut in January this year, said Lori Anderson, a PDC spokeswoman.

The county referenced a memo from the PDC in putting together the mailer. The executive's office, sheriff's office and prosecutor's office all worked to make sure the flier was fact-based and met the requirements, Louws said. The number of staff hours working on the flier was not specifically tracked.

The county cites a PDC interpretation as giving them "not only the right, but the responsibility" to "inform the general public of the operational and maintenance issues" and tells the county it may "distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure."

"This shows where we're at," Louws said. "It doesn't propose a position on it, but it does identify that we're putting it forward to the voters for reasons based on a jail task force and on a resolution the Whatcom County Council has passed."

When asked if he believed the flier was objective, Louws said, "It gives people information to decide whether or not they support it. I feel it follows the intent of the law."

Deputy Prosecuting Attorney Dan Gibson, who helped review the text of the flier, which was compiled by other staff, said those who worked on it had framed their work using similar types of fliers that had been used in other counties. One of those was a flier sent out in Skagit County when their new jail sales tax increase was on the ballot.

The title, Whatcom County Community Report, was similar to the title used in Skagit, Louws said.

"Whenever an informational flier is presented, you talk about what is the current situation," Gibson said. "People are providing factual information, and doing so obviously within a context. In this case, it's people who work within the facility describing it as it currently exists, and how it would exist if a new facility was constructed."

Mann said the legality of the flier wasn't important, but that it's a matter of principle.

"Whether you're a Republican or a Democrat or an independent, it's just so far over the line," Mann said. "Even if they found some loophole that they can claim this is legit, that does not make it right, and it does not make it ethical."

#### Additional concerns and complaint

It was too soon to tell if anyone would file a complaint with the PDC as of Friday afternoon, although several people said they were looking to see if they might have a case to do so.

Richard May, who served on the County Charter Review Commission, said he was most concerned about the title of the ballot measure used in the flier.

"In this mailed piece it says this is Proposition 1," May said. "The jail vote on the ballot is Proposition 2015-1. Proposition 1 on the ballot is district-only voting."

People who follow politics closely and think about such issues all the time will be able to make that distinction, May said, but the majority of voters don't have a lot of time to do background research.

"If they get that piece of mail and say, 'Yes, I want to vote yes for the jail,' and it says in giant letters 'Proposition 1,' a single-issue voter may say 'I've got to make sure to vote yes for Proposition 1,'" May said. "That could boost the district-only vote by hundreds or even thousands of votes, so that's a huge issue."

When asked about the potential for mistaking the two similarly named propositions, Gibson said he didn't think it was an issue.

"I'm assuming that every voter reads the language of the proposition upon which they are voting," he said. "I think that's a fair assumption. The reason we put the language in there is so that people will read it."

What we want most is for people to be informed on the election and not confused on anything, including all of these (charter) amendments. Charlie Crabtree, Whatcom County Republicans chairman

Tanya Baumgart, who helped produce this year's Bellingham/Whatcom County League of Women Voters forums, said she was surprised to see the mailer as she thought the county was not allowed to send them out. She did not speak as a representative of the League, which has not taken a stance for or against the measure.

"I had to work with the PDC to make sure we were in compliance with their guidelines for our forums," Baumgart said. "The PDC gave me the example that basically any time the taxpayer monies are being used for printing fliers is kind of an illustration of something that violates PDC guidelines."

Though the flier isn't explicitly in favor of the ballot measure, Baumgart said, "it definitely gives the one side of the ballot measure but doesn't give the other side. There were both sides presented at our forums."

She said that what is included in the flier is reasonably accurate and it appears to be an educational piece, but questioned the fact that it was only sent to voters.

"So that's not just an educational piece for the community, it's a targeted mailing to voters," she said. "That gives me pause."

Charlie Crabtree, chair of the Whatcom County Republicans, said the Republicans had not been involved in the flier.

When asked about spending taxpayer money on the materials, Crabtree said the PDC states it needs to be used in the public interest, and educational fliers are allowed when school districts are putting out information on levies.

"At the same time, I think that's a heck of a lot of money," he said.

Crabtree said he believed the piece was meant to inform the public about what's on the ballot, and he would stand by the Republicans' endorsement for the jail measure, but said he could understand the concerns about spending taxpayer money.

"I can tell you there are a lot of conservatives worried about the jail costs, and probably this just adds to that, I don't know," Crabtree said. "But when it gets down to it, as far as the Republicans are concerned, what we want most is for people to be informed on the election and not confused on anything, including all of these (charter) amendments."

General election ballots are due to drop boxes or must be postmarked by Nov. 3.

*Reach Samantha Wohlfeil at 360-715-2274 or*

*[samantha.wohlfeil@bellinghamherald.com](mailto:samantha.wohlfeil@bellinghamherald.com). Follow her on Twitter at [@BhamPolitics](https://twitter.com/BhamPolitics).*



# EXHIBIT C

**COPY**  
Original Document filed  
In Whatcom County Council Office,  
311 Grand Ave.,  
Bellingham, WA 98225

Whatcom County Contract No.  
201409013

**CONTRACT FOR SERVICES AGREEMENT**  
**DLR Group**

**Professional Design Services for Conditional Use Permitting, Whatcom County Jail**

**DLR Group**, hereinafter called **Designer**, and **Whatcom County**, hereinafter referred to as **County (hereinafter also referred to as Owner)**, agree and contract as set forth in this Agreement, including:

- General Conditions, pp.3 to 21,
- Exhibit A (Scope of Work), pp. 22 to 25,
- Exhibit B (Compensation), pp. 26 & 27
- Exhibit C (Schedule), pp. 28

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

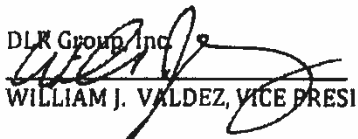
The term of this Agreement shall commence following the issuance of a notice to proceed, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31 day of, December, 2015.

The general purpose or objective of this Agreement is to provide full design services for the Conditional Use Permit (CUP) for Essential Public Facilities (EPF) permitting process 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 Designer is to perform all necessary design services for the Project as set forth in the Agreement between Owner and Designer. Designer, through itself and its Design Consultants, has agreed to provide such architectural, engineering, civil, structural and other services required by this Agreement and the other Contract Documents ("Services").

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

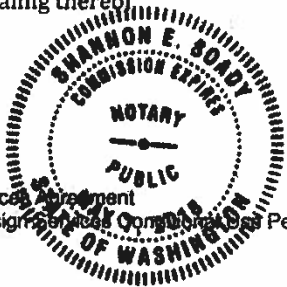
IN WITNESS WHEREOF, the parties have executed this Agreement this 1<sup>st</sup> day of October, 2014.

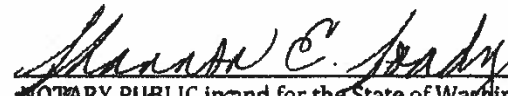
**DESIGNER:**

DLR Group, Inc.  
  
WILLIAM J. VALDEZ, VICE PRESIDENT

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF WHATCOM )

On this 2<sup>nd</sup> day of September, 2014, before me personally appeared WILLIAM J. VALDEZ to me known to be the Principal of DLR GROUP 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 Seattle, WA  
My commission expires May 7, 2018

**WHATCOM COUNTY:**  
**Approved as to form:**

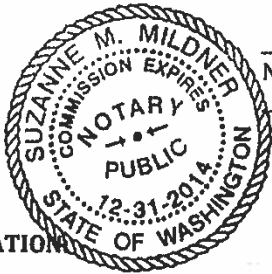
By: *S. Gallen* *September 23, 2014*  
Prosecuting Attorney Date

**Approved:**  
Accepted for Whatcom County:

By: *[Signature]*  
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON )  
                                  ) ss  
COUNTY OF WHATCOM )

On this *1st* day of *October* *2014*, 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.



*Suzanne M. Mildner*  
NOTARY PUBLIC in and for the State of Washington, residing at *Bellevue* My commission expires *12-31-14*.

**DESIGNER INFORMATION**

DLR Group  
Address:  
DLR Group  
51 University Street, Suite 600  
Seattle WA 98101  
Contact Name: Bill Valdez  
Contact Phone: (206) 461-6000  
Contact FAX: (206) 461-6049

## GENERAL CONDITIONS

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

#### **1.1.1 Scope of Services:**

The Designer agrees to provide to the County professional 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. The intent of the drawings and specifications is to include all items necessary for the proper execution and completion of the project: **Included in the base fees are Professional Services through schematic design inclusive of the Conditional Use Permit for Essential Public Facilities permitting process only.**

#### **1.2.1** Terms used in this Agreement shall have the meanings set forth unless otherwise provided herein, with the following specific terms defined as follows:

- .1** *Additional Services* refers to those services identified in Section 2.8 hereof.
- .2** *Agreement* refers to this executed contract between Owner and Designer.
- .3** *Construction Phase Services* refers to those services identified in Section 2.7 hereof.
- .4** *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.
- .5** *Design Consultant* is a qualified, licensed design professional who is not an employee of Designer, but is retained by Designer, or employed or retained by anyone under contract with Designer, to furnish design services required under the Contract Documents.
- .6** *Design Phase Services* refers to those services set forth in Sections 2.5 and 2.6 hereof.
- .7** *Design Schedule* refers to the schedule setting forth the dates by which Designer must perform the various Services required herein, consistent with the Project Schedule.
- .8** *Designer's Fee* shall refer to the compensation due Designer for the performance of the Services as set forth herein.
- .9** *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.
- .10** *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, or any Services.
- .11** *Owner's Project Criteria* are developed by or for Owner to describe Owner's program, requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements. Owner's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

- .12 *Project Schedule* refers to the schedule setting forth the dates by which the various stages of both the design and construction of the Project must be performed so as to satisfy Designer's obligations to Owner.
- .13 *Site* is the land or premises on which the Project is located.
- .14 *Bases of Design* the intent is to provide a complete specification & drawing package. The intent of the complete package is to include all necessary items for the proper execution and completion of work; however, any item or detail not specifically mentioned in the specifications or shown on the drawings, but which is necessary to produce the intended results shall be included.
- .15 *Designer* is any person or entity retained by Owner as an independent Designer to perform a portion of the construction work for the Project and shall include materialmen and suppliers.
- .16 *Sub-Consultant* is any person or entity retained by a Designer as an independent Designer to perform any portion of the Designer's work and shall include materialmen and suppliers.
- .17 *Substantial Completion* is the date on which the Project, or an agreed upon portion of the Project, is sufficiently complete so that Owner can occupy and use the Project or a portion thereof for its intended purposes.
- .18 *Services* shall include all Design Phase Services, Construction Phase Services and Additional Services required by the Contract Documents or as may be authorized in writing by Owner.

### 1.3 Contract Documents

1.3.1 The Contract Documents, in addition to this Agreement, are comprised of the following:

- .1 All written modifications, amendments and change orders to this Agreement;
- .2 This Agreement, including all exhibits and attachments, executed by Owner and Designer;
- .3 Written Supplementary Conditions, if any, executed by Owner and Designer;
- .4 The design Schedule;

1.4.1 The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, this Agreement shall take precedence.

2.1.1 Designer shall, consistent with applicable state licensing laws, provide the Services, including architectural, engineering and other design professional services, as described in this Agreement and in accordance with the Contract Documents. Designer agrees that such Services shall be provided through qualified, licensed design professionals who are either (i) employed by Designer or (ii) procured by Designer from qualified, licensed Design Consultants.

2.1.2 Designer shall not engage the services of any Design Consultant without first obtaining the approval of Owner, which approval shall not be unreasonably withheld. Designer agrees that each Design Consultant shall be fully bound to Designer in the same manner as Designer is bound to Owner for all the requirements of the Contract Documents to the extent applicable to the Design Consultant's scope of services. Designer

shall at all times be responsible for the services performed by its Design Consultants, and shall coordinate the services of its Design Consultants to satisfy Designer's obligations under the Contract Documents. Nothing in this Agreement shall relieve Designer from responsibility for the services performed by its Design Consultants, or create any legal or contractual relationship between Owner and any Design Consultant.

- 2.1.3** If Owner or Owner Representative performs other work on the Project with separate design professionals under Owner's or Owner's Representative control, Designer agrees to reasonably cooperate and coordinate its activities with those of such separate design professionals so that the Project can be completed in an orderly and coordinated manner and without disruption.
- 2.1.4** Designer shall only communicate with Owner, Consultant(s), or Sub-Consultants through Owner unless the parties agree otherwise.
- 2.1.5** Within seven (7) days after execution of this Agreement, Owner and Designer will meet to discuss issues affecting the administration of the Services and to implement the necessary procedures, including but not limited to those relating to the schedule for the Services, schedule updates, review of submittals, and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents and allow Designer to meet its obligations to design the Project consistent with the Contract Documents, without compromising any professional obligations of Designer.

## **2.2 Standard of Care**

**2.2.1** The standard of care for all design professional services performed by Designer and its Design Consultants pursuant to this Agreement shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project for projects of similar size and complexity. Notwithstanding the preceding sentence, if the Agreement specifically identifies performance standards for the Services, Designer agrees that all such Services shall be performed to achieve such standards.

## **2.3 Legal Requirements**

- 2.3.1** Designer agrees to perform the Services in accordance with all applicable Legal Requirements.
- 2.3.2** Designer's Fee and/or the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Services. Such effects may include, without limitation, revisions Designer is required to make to the Construction Documents because of changes in Legal Requirements.
- 2.4.1** Designer agrees that the Key Personnel assigned to perform the Services shall be as listed in paragraph 2.4.2 below. Designer shall not change such personnel without prior written approval by the Owner.
- 2.4.2** Key Personnel. The following individuals/positions are considered KEY PERSONNEL.
  - Principal -
  - Project Architect -
  - Draftsperson -
  - Clerical -
- 2.5.2** Designer shall provide reasonable assistance to Owner in obtaining any permits, approvals, and licenses which are not Designer's obligation to obtain, but which are required for the construction of the Project.



**2.5.3** Designer shall make any revisions to the Construction Documents reasonably necessary to secure permits, approvals, and licenses, including those which have been denied for failure of the Construction Documents to meet Legal Requirements. If such revisions are necessary for reasons beyond the control of Designer or its Design Consultants, Designer shall be compensated for such revisions as a change to this Agreement.

## **2.6 Design Services**

**2.6.1** In accordance with the times set forth in the Design Schedule, Designer shall submit to Owner all interim design submissions and revisions required. Such design submissions shall be in the form and quantity called for in the Contract Documents and may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Owner and Designer agree that prior to the scheduled date for submitting all design submissions to Owner, Owner's Representative and Designer will hold meetings for the purpose of discussing and monitoring the design for consistency with the requirements of the Contract Documents, as well as Owner's pricing and other assumptions.

**2.6.2** In accordance with the Contract Documents and the times set forth in the Design Schedule, Designer shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Project. The Construction Documents shall be consistent with the latest set of interim design submissions; as such submissions may have been modified in a design review meeting. Designer shall provide the Construction Documents in the form and quantity called for in the Contract Documents; actual costs for the printing of these submission documents shall be paid for out of the reimbursable cost set forth in Exhibit "A", if available. Designer shall perform agreed upon revisions and submit revised Construction Documents to Owner for Owner's approval.

**2.6.3** Designer shall attend and participate in such meetings as are held between Owner and Designer to discuss interim design submissions and the Construction Documents. If requested, Designer shall identify during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Owner and provided to all attendees for review.

**2.6.4** In addition to the interim design submissions and the Construction Documents, Designer shall, if requested by Owner, prepare interim design submissions and Construction Documents the parties agree are required to permit commencement of construction on a portion of the Project before the entire Construction Documents for the Project are completed.

**2.6.5** Owner's approvals of interim design submissions and the Construction Documents are for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Contract Documents.

**2.6.6** Designer will, at its own cost, revise any interim design submission or the Construction Documents to correct any of its errors, mistakes or omissions. Designer shall also design to a Fixed Design Budget and, at its own cost, make such revisions as are required to achieve such budget, Any and all such revisions required of this paragraph shall be performed timely and so as not to jeopardize the Design Schedule and/or the Project Schedule. The expense of such revisions shall not be charged against the 5% contingency established in section 12.10.2

## **2.7 Construction Phase Services**

**2.7.1** Designer shall assist Owner in preparing bidding documents for specified portions of the Project's construction, and clarifying and responding to questions involving the bidding documents.

- 2.7.2** Designer shall timely provide requested clarifications and interpretations of the Construction Documents (often referred to as "RFI's"), which shall be consistent with the intent of, and reasonably inferable from, the Contract Documents. Designer shall make all revisions to the Construction Documents necessary for the proper construction of the Project. Such revisions will be accomplished at the Designer's expense if and to the extent necessitated by an ambiguity, error or omission of the Designer; all other revisions will be an Additional Service. Responses to RFI's, for whatever reason required shall be timely and shall not cause delays to the approved critical path schedule for the project.
- 2.7.3** Designer shall review and approve such submittals, including shop drawings, product data and samples, as may be required by the Design-Build Agreement or as reasonably required by the Owner. Such review shall be accomplished in accordance with the project schedule within the times for such review provided in the critical path schedule submitted by the Contractor and approved by the owner. The time within which Designer shall review and respond to submittals under will be discussed at the meeting provided in Section 2.1.5, but shall be finally established upon the approval of critical path for the construction of the project. Designer shall expeditiously inform Owner of any revisions that are necessary as a condition to Designer's approval of submittals. Designer's review and approval shall not relieve Contractor of responsibility for construction means and methods, or safety precautions. Except for performance based specification submittals, designer's approval will not apply to a change from the design shown in the Construction Documents unless the change is expressly noted as a change to the Construction Documents by clouding in the submittal.
- 2.7.4** Designer shall review, and if acceptable approve, any substitutions for materials or equipment proposed by Owner.
- 2.7.5** Designer shall, if requested by Owner, review any inspection reports or tests involving the construction of the Project and provide its comments to Owner. Designer is not responsible for the accuracy or completeness of the tests or inspections.
- 2.7.6** Designer shall at appropriate intervals visit the Site to determine in general if the construction is proceeding in accordance with the Construction Documents. Designer shall promptly notify Owner of any defects, deficiencies, deviations, omissions, or violations observed by Designer in the construction of the Project, and make recommendations to Owner on how to proceed. Designer and Designer's consultants shall visit the Site an average of once per month during the period of construction, or more as necessary to perform their professional duties under this Agreement.
- 2.7.7** Designer shall attend meetings with Owner, Contractors, and Consultants to discuss design issues which may arise during construction.
- 2.7.8** Designer shall provide such certifications as may be necessary relative to Substantial Completion.
- 2.7.9** Designer's provision of the Construction Phase Services shall not be construed to make Designer responsible for (i) the acts or omissions of Contractor, or any Sub-Contractors, (ii) the means, methods, sequences, and techniques of construction of the Project or (iii) safety precautions and programs in connection with the construction of the Project. Nothing in this Agreement shall create any duties to or legal or contractual relationship between Designer or any Contractor or Subcontractor. If the Owner authorizes deviations from the documents prepared by the Designer or its Consultants without written agreement of the Designer, the Owner shall indemnify, defend and hold harmless the Designer, its Consultants and their respective agents and employees from and against claims, damages, losses and expenses, arising out of or resulting from such deviations.

## **2.8 Additional Services**

- 2.8.1** Additional Services, if any, agreed upon by the parties shall be compensated as set forth in Exhibit A or in an amendment to this Agreement. Additional Services are those services not specifically described as part of Services in this Agreement. Additional Services include, without limitation, making revisions to documents due to adjustments in the program, project budget, enactment of revisions to codes subsequent to the preparation of such documents and providing services required due to significant changes in the Project including, but not limited to: size, quality, complexity, construction cost, schedule or method of bidding or negotiation and contracting for construction. Additional Services will not include necessary modifications or corrections that were missed or miscalculated by the Designer.

### **Timely Reviews, Approvals and Submittals**

- 3.1.1** Owner shall provide timely reviews and approvals of all interim design submissions and the Construction Documents consistent with the turnaround times set forth in the Design Schedule and the Design-Build Agreement, or as agreed to by the parties at the meeting required under Section 2.1.5 hereof.
- 3.1.2** Owner shall, in the contract for construction, require Contractor to submit timely to Designer all submittals, including shop drawings, product data and samples, for Designer's review and approval consistent with the Project Schedule. Timely submittal means in accordance with the times noted in the submittal schedule included in the project critical path schedule for the project; (Standard two weeks for most submittals with a portion of the submittals required to be processed quicker) times to be agreed upon between Designer, Contractor and Owner when appropriate. Designer will provide a schedule of items to be submitted by Owner for Designer's review.
- 3.1.3** Owner shall provide timely notice to Designer of any delays to the Project caused by Designer.
- 3.1.4** Owner shall provide the following information and materials to Designer, unless otherwise agreed.
- .1** Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
  - .2** Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
  - .3** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Designer to perform the Services;
  - .4** A legal description of the Site;
  - .5** As-built and record drawings of any existing structures at the Site;
  - .6** Environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site;
  - .7** Owner's Project Criteria;
  - .8** Test and inspection reports.

- 3.4.1** If Designer's performance of the Services are delayed for any reason so as to impact the Design Schedule or the Project Schedule, Designer shall promptly notify Owner in writing of the cause(s) of such delay within sufficient time to permit Owner to provide timely notice to Contractors or Consultants. To the extent the delay is due to any negligent act, error or omission on the part of Designer, Design Consultants, or anyone for whom they are responsible, Designer shall compensate and indemnify Owner for all costs, damages, and expenses arising from such delay. If the delay is caused by Owner or others for whom Owner is responsible, the Designer's Fee and the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of the delay. If the delay is caused by Owner or other causes, the Designer's Fee and the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of the delay if and only to the extent Owner secures such compensation and time from the Owner.

**Section Numbers 3.4.2 through 6.1.0 are purposely omitted from this contract.**

- 6.1.1** Designer's Fee shall be the compensation due Designer for the performance of the Services, including all Design Phase Services, Construction Phase Services, and Additional Services, and for Reimbursable Costs, all as set forth in this Agreement. Unless otherwise provided in the Contract Documents, the Designer's Fee is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.
- 6.1.2** Designer will be compensated for the Design Phase Services, Construction Phase Services, Additional Services, if any, and Reimbursable Costs as set forth in Exhibit A.

**6.2 Applications for Payment**

- 6.2.1** Beginning with the first month after the Date of Commencement, Designer shall submit on a monthly basis for Owner's review and approval, Designer's certified Application for Payment requesting payment for all Services performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.5 hereof. Once approved, Owner will submit Designer's Application for Payment to Owner with Design- Builder's next application.
- 6.2.2** The Application for Payment shall constitute Designer's representation that (i) the Services have been performed consistent with the Contract Documents, (ii) the Services have progressed to the point indicated in the Application for Payment, (iii) Design Consultants have been paid all amounts previously received by Designer on account of their services, and (iv) there are no claims, obligations or liens outstanding or unsatisfied for labor, services, taxes, or other items performed, furnished, or incurred for or in connection with the Services.
- 6.2.3** Owner shall make payment on Designer's properly submitted and accurate Application for Payment within thirty (30) days after Owner's receipt of payment from Owner on account of Designer's monthly Application for Payment

At the time Designer submits its final Application for Payment to Owner, Designer shall provide (i) all deliverables required by the Contract Documents; (ii) an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for or in connection with the Services which will in any way affect Owner's or Owner's interests; (iii) a general release executed by Designer waiving, upon receipt of final payment by Designer, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment; and (iv) certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents. Owner shall make payment on Designer's properly submitted and accurate final Application for Payment within thirty (30) days after Owner's receipt of final payment from Owner on account of Designer's final Application for Payment, provided also that Designer has satisfied the requirements for final payment set forth herein.

**8.2.1** Designer designates the individual listed below as its Senior Representative ("Designer's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes:

Name: William Valdez  
 Title: Vice President, Principal  
 Address: 51 University Street, Suite 600  
 Seattle WA 98101  
 Telephone: (206) 461-6000

**9 Designer's Insurance Requirements**

**9.1.1** Prior to starting the Work, Designer shall procure, maintain and pay for such insurance as will protect against claims for bodily injury or death, or for damage to property (including loss of use) and loss or damage resulting from professional errors and omissions, which may arise out of operations by Designer or by any Design Consultants or by anyone employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall not be less than the greater of coverages and limits of liability specified below, any coverages and limits of liability specified in the Contract Documents or coverages and limits required by law.

**9.1.2** Designer shall procure and maintain the following minimum insurance coverages and limits of liability and provide proof of coverage by a Certificate of Insurance and endorsements and specifically name this County Project under the coverage:

Workers' Compensation		Statutory Limits
Employer's Liability	\$1,000,000 each	accident
	\$1,000,000 disease	policy limit
	\$1,000,000 disease	each employee
Commercial General Liability	\$2,000,000 each	occurrence
	\$2,000,000	aggregate (applicable on a per project basis)
Comprehensive Automobile Liability	\$2,000,000 each	accident
Professional Errors and Omissions	\$2,000,000 each	claim
	\$2,000,000 annual	aggregate

Commercial General Liability insurance required under this paragraph shall be written on an occurrence form (ISO Form CG 00 01 or equivalent) and, shall include coverage for Products/Completed Operations extending six (6) years after final acceptance of the Project by Owner or such longer period as the Contract Documents may require, **Provided, however that such coverage beyond three (3) years after final acceptance is available at a commercially reasonable price.** Owner agrees to compensate Designer for any added costs beyond commercially reasonable prices for the additional three (3) year period provided that Designer provides full and complete information about its insurance program costs and quotations., Broad Form Property Damage including Completed Operations, Personal Injury with Employment Exclusion (if any) deleted, Blanket XCU and Blanket Contractual Liability insurance applicable to Designer's defense and indemnity obligations under Article 10, and other contractual indemnities assumed by Designer under the Contract Documents. Commercial General Liability insurance shall include "stop gap" coverage for work in those states where Workers' Compensation insurance is provided through a state

fund if Employer's liability coverage is not available. Comprehensive Automobile Liability insurance required under this paragraph shall include coverage for all owned, hired and non-owned automobiles. Workers' Compensation coverage shall include a waiver of subrogation against Owner and Owner.

If the required Professional Errors and Omissions Insurance is written on a claims made basis, the retroactive date shall be prior to the start of Designer's Work. If insurances are commercially available to obtain, Designer agrees to maintain such coverage for 6 years after final acceptance of the Project by the Owner or such longer period as the Contract Documents may require. Renewal policies during this period shall maintain the same retroactive date.

- 9.1.3** Employer's Liability, Commercial General Liability and Comprehensive Automobile Liability insurance may be arranged under single policies for full minimum limits required, or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy. The general aggregate on the Commercial General Liability coverage shall apply on a project specific basis.
- 9.1.4** Designer shall endorse its Commercial General Liability (including products/completed operations coverage): and Comprehensive Automobile Liability and Umbrella/Excess Liability policies to add Owner, and such other parties as Owner is required under the Contract Documents to name the County, officials, employees and agents as additional insureds on Designer's insurance, as "additional insureds" with respect to liability arising out of (a) operations performed for Owner or Owner's Representative by or for Designer, (b) acts or omissions of Owner or Owner's Representative in connection with their general supervision of operations by or for Designer, (c) Designer's use of Owner's tools and equipment, and (d) claims for bodily injury or death brought against Owner or Owner's Representative by Designer's employees or the employees of Designer's consultants of any tier, however caused, related to the performance of Services under this Agreement. Such insurance afforded to Owner, Owner, and others as additional insureds under Designer's policies shall be primary insurance and not excess over, and Owner's insurance shall be non-contributory. Designer's insurance waives all rights of subrogation.
- 9.1.5** Designer shall require its Design Consultants to procure and maintain, from insurance companies authorized to do business in the state in which the Project is located, the insurance coverages set forth in this Article.
- 9.1.7** Designer shall maintain in effect all insurance coverages required under this Article, or by the other Contract Documents, at Designer's sole expense and with insurance carriers licensed to do business in the State 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 Owner in writing. Deductibles or Self Insured Retention on any policies furnished for this project shall not be more than \$100,000 for each claim.
- 9.1.8** Prior to commencing any services hereunder, Designer shall provide Owner with Certificates and Endorsements evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled. Owner shall have the right to examine any policy required under this Agreement Copies of the complete insurance policies to be provided under this agreement shall be provided to Owner within seven (7) of the signing of this contract , which includes requests made by email.
- 9.1.9** All insurance policies shall contain a provision that coverages and limits afforded thereunder shall not be canceled, materially changed, non-renewed, or restrictive modifications added, without thirty (30) days prior written notice to Owner. Certificates of Insurance and Endorsements shall be filed with Owner prior to start of Designer's Work. Renewal Certificates and Endorsements shall be provided to Owner not less than ten (10) days prior to the expiration date of any of the required policies. All Certificates of Insurance and Endorsements shall be in a form acceptable to Owner and shall provide satisfactory evidence that



Designer has complied with all insurance requirements. Owner shall not be obligated to review such certificates or other evidence of insurance, or to advise Designer of any deficiencies in such documents, and receipt thereof shall not relieve Designer from, nor be deemed a waiver of Owner's right to enforce, the terms of Designer's obligations hereunder.

**9.1.10** The required minimum limits of insurance indicated above shall not in any way restrict or diminish Designer's liability under this Agreement. Owner's right to recover under insurance provided under this article shall not be limited by other portions of the agreement that limit the liability of any party to the proportion of its relative fault for the purpose of indemnification for certain types of claims.

**9.2 Waiver of Subrogation:** Designer and Designer's insurance waives all rights of subrogation.

**9.2.1** Designer and Owner waive against each other and Design Consultants, Owner's separate Designers, Consultants, Sub-Consultants, agents and employees of each and all of them, all damages covered by Builder's Risk insurance, except such rights as they may have to the proceeds of such insurance. Owner and Designer shall, where appropriate, require similar waivers of subrogation from Design Consultants and Consultants and shall require each of them to include similar waivers in their contracts.

#### **10.1 Patent and Copyright Infringement**

**10.1.1** Designer shall defend any action or proceeding brought against Owner or Owner's Representative based on any claim that the Project, or any part thereof, or the operation or use of the Project or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Designer of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Designer shall indemnify and hold harmless Owner and Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Owner's Representative in any such action or proceeding. Designer agrees to keep Owner informed of all developments in the defense of such actions.

**10.1.2** If Owner is enjoined from the operation or use of the Project, or any part thereof, as the result of any such patent or copyright suit, claim, or proceeding, Designer shall at its sole expense take reasonable steps to procure the Owner's right to operate or use the Project, or applicable part thereof. If Designer cannot so procure such right within a reasonable time, Designer shall promptly, at Designer's option and at Designer's expense, (i) modify the Project, or applicable part thereof, so as to avoid infringement of any patents, or copyrights, or (ii) replace said work with work that does not infringe or violate any such patent or copyright, and is consistent with the Contract Documents.

**10.1.3** Sections 10.1.1 and 10.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner or Owner's Representative and not offered or recommended by Designer to Owner or Owner's Representative; or (ii) arising from modifications to the Project by Owner or Owner's Representative after acceptance of the Project. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Designer to the same extent Designer is obligated to defend, indemnify and hold harmless Owner in Section 10.1 . I above.

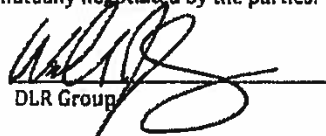
**10.1.4** The obligations set forth in this Section 10.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or

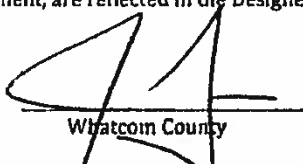
**11.1 Designer's General Indemnification Responsibilities**

**11.2.1 Indemnification by Designer.** To the fullest extent permitted by law, the Designer 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 which 1) are caused in whole or in part by the negligent act or omission, of the Designer its employees, agents or volunteers or Designer's subcontractors or consultants 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 Designer or its subcontractors' or consultants' use of, presence upon or proximity to the property of the County. In the event of the concurrent negligence of the Designer, its subcontractors, consultants', employees or agents, and the County, its employees or agents, this indemnification obligation of the Owner shall be valid and enforceable only to the extent of the negligence of the Designer, its subcontractors, consultants', employees and agents.

If Whatcom County is required to resort to litigation or arbitration to enforce Designer's Indemnification and Defense obligations It shall be entitled to recover its reasonable costs of establishing its right to indemnity including but not limited to all costs, expenses, arbitration filing fees, arbitrator's fees, and attorney fees.

This indemnification obligation of the Designer 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 Designer hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the Designer are a material inducement to County to enter into this Agreement, are reflected in the Designer's compensation, and have been mutually negotiated by the parties.

  
DLR Group

  
Whatcom County

**Participation by County - No Waiver.** 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 Designer's indemnity obligations under this Agreement.

**Survival of Designer's Indemnity Obligations.** The Designer agrees all Designer's indemnity obligations shall survive the completion, expiration or termination of this Agreement.

**Indemnity by Subcontractors.** In the event the Designer enters into subcontracts to the extent allowed under this Agreement, the Designer's subcontractors shall indemnify the County on a basis equal to or exceeding ' Designer's indemnity obligations to the County and subcontractors shall provide proof of Insurance verifying this condition.

**11.2.2** If an employee of Designer, anyone employed directly or indirectly by Designer or anyone for whose acts any of them may be liable has a claim against any party indemnified pursuant to Section 11.2.1 above, Designer's indemnity obligation set forth in Section 11.2.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Designer, or other entity under any employee benefit acts, including workers' compensation or disability acts.

**11.2.3** Designer agrees to procure, maintain and pay for such general liability insurance coverage and endorsements as will insure the provisions for this paragraph.

**11.6 Duty to Continue Performance**

**11.6.1** Unless provided to the contrary in the Contract Documents, Designer shall continue to perform the Services and Owner shall continue to satisfy its payment obligations to Designer, pending the final resolution of any dispute or disagreement between Owner and Designer.

**11.7** Owner Design and Construction Contingency. Owner shall establish a contingency amount equal to Three Per Cent (3%) of the construction contract amount between Owner and Contractor for the project. This contingency shall be part of the contract sum between Owner and Contractor. This contingency may be expended, at the sole discretion of Owner, on (1) Unknown or changed conditions, (2) design clarifications or modifications, (3) Contractor claims, including correction of work because of design errors, ambiguities, omissions. (4) changes required because of Requests for Information (RFI's). (5) cost overruns in construction. **Provided** that such contingency shall not be used by reason of any correction or amendment of Designer-Created documents for the project as part of the design or bidding process, but rather only after the owner has executed a Construction agreement with the Contractor.

**12.1 Assignment**

**12.1.1** Neither Designer nor Owner shall, without the written consent of the other, assign, transfer or sublet any portion or part of the Services or the obligations required by the Contract Documents.

**12.2 Successorship**

**12.2.1** Owner and Designer intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

**12.3 Governing Law, Venue**

**12.3.1** This Agreement and all Contract Documents shall be governed by the laws of the State of Washington.

**12.3.2** The Venue of any action in court or of any alternative disputes procedures, including, but not limited to arbitration proceedings, if any shall be in Whatcom County, Washington.

**12.4 Severability**

**12.4.1** If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements or court order, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

**12.5.1** The failure of either Owner or Designer to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

## **12.6 Headings**

**12.6.1** The headings used in this Agreement or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

## **12.7 Notice**

**12.7.1** Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in this Agreement or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the number of the intended recipient.

## **12.8 Amendments**

**12.8.1** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

## **12.9 Survival**

**12.9.1** Designer's obligations under this Agreement shall not be released, and shall specifically survive, the completion of all Services hereunder, final payment to Designer, and the termination of this Agreement for any reason.

## **12.10 No Release of Information for Advertising and Promotion**

**12.10.1** Designer shall not publish, release, disclose or announce to any member of the public, press, official body or any other third party any information concerning this Agreement, or any part thereof, without the prior written consent of Owner and/or Owner's Representative, except as required by law. Neither the names of Owner or Owner's Representative, nor of the site, shall be used in any advertising or other promotional context by Designer without the prior written consent of Owner and/or Owner's Representative.

**2 Design Contingency.** It is understood and agreed that the nature of the design process is such that plans, specifications and other documentation prepared by or related services performed by Designer under this agreement will contain errors, omissions, conflicts, ambiguities or design uncertainties requiring clarifications, corrections or modification. Accordingly, the Owner agrees to establish a design contingency equal to 2% of the cost of the work in addition to the construction contingency provided in section 11.7. Such design contingency shall be utilized for the cost attributed to errors, omissions, conflicts, ambiguities or design uncertainties, excluding any improvements or betterments costs implemented by the Owner. Costs incurred by the Owner, excluding any improvement or betterment cost, in excess of this design contingency shall be the responsibility of Designer, but only to the extent caused by the Designer and its SubConsultants, negligent acts, errors, or omissions in the performance of services under this agreement. Any cost over the 2% contingency for negligent errors, omissions, conflicts, ambiguities or design uncertainties requiring clarifications, corrections or modification will be paid by Designer.

### **12.11.1 Termination for Default:**

If the Designer 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 Designer 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 Designer'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 Designer 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 Designer. The Designer 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.

**12.11.2 Termination for Reduction in Funding: Not Applicable**

**12.11.3 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 Designer shall be entitled to payment for actual work acceptably performed for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, and shall be based upon the Designer's provable costs directly allocable this contract, 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. If any termination for cause is determined by any forum to have been wrongful, in that case it shall be converted to a termination for Public Convenience and Designer shall be compensated under the terms of this Section.

***Series 20-29: Provisions Related to Consideration and Payments***

**20.1 Accounting and Payment for Designer Services:**

Payment to the Designer 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 Designer for any costs or expenses incurred by the Designer in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Designer, 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 Designer understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Designer authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Designer 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 Designer to make the necessary estimated tax payments throughout the year, if any, and the Designer is solely liable for any tax obligation arising from the Designer's performance of this Agreement. The Designer hereby agrees to indemnify the County against any demand to pay taxes arising from the Designer'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 Designer must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Designer'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 Designer 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 Designer 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 Designer to termination or damages, provided that the County promptly gives notice in writing to the Designer 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 Designer 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 Designer 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 Designer, (3) to set off any amount so paid or incurred from amounts due or to become due the Designer. In the event the Designer obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Designer by reason of good faith withholding by the County under this clause.

**23.1 Labor Standards:**

The Designer agrees to comply with state and federal requirements, as applicable, 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 Designer:**

The Designer's services shall be furnished by the Designer as an independent Designer, 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 Designer as an independent Designer.

The Designer acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Designer 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 Designer 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.



Designer 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 Designer. 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.

**31.1 Ownership of Items Produced:**

When the Designer creates any copyrightable materials or invents any patentable property, the Designer 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. Designer further agrees to make research, notes, and other work products produced in the performance of this Agreement available to the County upon request.

**32.1 Confidentiality:**

The Designer, its employees, SubConsultants, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Designer 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. Designer shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Designer 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 Designer'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 Designer 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. Designer 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 Designer, then the Designer agrees to notify the Administrative Officer as soon as it is practical.

**34.2 Industrial Insurance Waiver:**

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

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

**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 Designer 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 Designer is governed by such laws, the Designer 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, sexual orientation, age, marital status, 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 Designer 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 Consultant, provided that the foregoing provision shall not apply to contracts or Consultants for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

**35.2 Non-Discrimination in Client Services: Not Applicable**

**36.1 Walver of Noncompetition: Not Applicable**

**36.2 Conflict of Interest:**

If at any time prior to commencement of, or during the term of this Agreement, Designer 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 Designer 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 Designer 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 Designer 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 Designer 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 Russell, Facilities Manager  
Whatcom County Facilities Management  
316 Lottie Street  
Bellingham, WA 98225  
(360) 676-6746

**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 Designer to the County's Administrative Officer under this Agreement. Notice to the Designer for all purposes under this Agreement shall be given to the address provided by the Designer herein above in the "Designer Information" section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

***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 Designer Commitments, Warranties and Representations:** Not Applicable

**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: consultant**

a. General:

All disputes or differences between the Designer and the County, arising under or related to this agreement or any additional services, 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 Designer 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 Designer 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 Designer 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. Designer 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 Designer 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 Designer 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 and all claims, 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 then current American Arbitration Association (AAA) Construction Industry rules in effect on the date hereof, as modified by this Agreement. The parties may elect to provide for administration of the arbitration by other than the AAA. 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 Washington State substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, including expenses, costs and attorney fees to the prevailing party and pre-award interest, if provided by statute but shall not have the power to award punitive damages. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in the Superior Court for the State of Washington, in Whatcom County. 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 or be considered a condition precedent to arbitration.

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

**43.1 Venue and Choice of Law:**

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

**44.1 Survival:**

The provisions of paragraphs 11.1, 11.2, 11.3 , 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

**45.1 Entire Agreement:**

*This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.*

**EXHIBIT A**  
**SCOPE OF WORK**

The scope of services for the requested authorized modifications is for the portion of professional services through schematic design inclusive of the CUP for EPF permitting process only. It is anticipated that once the project is funded following a successful August 2015 funding election that the balance of professional services will be authorized.

Based on the CUP for EPF application checklist and the permitting meeting (May 22, 2014) with the City of Ferndale the following is the understanding of the scope of work:

1. Schematic Design Process and Stakeholder Meetings to a level of effort (Roughly 60% Schematic Design) that allows for the development of a singular design concept and solution. Scope of the Schematic Design Services is outlined in the following section.
2. This portion of the Schematic Design Process results in the following permit applications that will be completed and submitted to the authorities having jurisdiction (AHJ) by A/E with the assistance of Whatcom County:
  - a. Master Application
  - b. CUP for EPF
  - c. Eagle Compliance Check List (As stipulated in the CUP for EPF)
  - d. Encroachment Permit Application
  - e. Planning Application
  - f. Shoreline Management Application
  - g. Site Plan Application
  - h. Civil Plan Applications
    - i. Sanitary Sewer Application – Ferndale
    - ii. Storm Sewer Application – Ferndale
    - iii. Water Application – Ferndale
    - iv. Wetland Mitigation – Ferndale & USACE
3. Stakeholder meetings, executive team meetings, design team meetings, Council presentations and public meetings as needed as a course of the schematic design process and permit applications stated above.
4. Schematic Design Cost Estimates of MACC (Maximum Allowed Construction Cost) and Whole Project Cost of the singular design solution to confirm the project is on Budget
5. Development of Project Schedule inclusive of public funding process
6. Provide public outreach and support including schematic design graphics, coordination with public outreach committee, and attend public presentations.
7. Traffic Consultant
8. Site Survey
9. Geotechnical Engineering – Infiltration & Groundwater Testing, Preload Requirements, Soil Bearing Properties.
10. Geotechnical Engineering – Geothermal Conductivity Analysis.

### **Schematic Design Services**

In the Schematic Design Phase, the Architect/Engineer (A/E) provides those services necessary to prepare Schematic Design Documents consisting of drawings and other documents illustrating the general scope, scale, and relationship of project components for approval by the agency. Design should be conceptual in character, based on the requirements developed during the Predesign Phase, approved by the agency, or program requirements provided by the agency and reviewed and agreed upon by the A/E. Schematic Design includes the following:

#### **Project Administration**

Services consisting of schematic design administrative functions including consultation, meetings and correspondence, and progress design review conferences.

#### **Disciplines Coordination**

Coordination between the architectural work and engineering work and other involved consultants for the project. When specialty consultants are used, additional coordination beyond basic services may be required and negotiated for appropriate phases of the work.

#### **Document Checking**

Review and coordination of project documents

#### **Consulting Permitting Authority**

Consultations, research of critical applicable regulations, preparation of written and graphic explanatory materials. The services apply to applicable laws, statutes, regulations and codes.

#### **Data Coordination User Agency**

Review and coordination of data furnished for the project by the agency

#### **Architectural Design**

Services responding to scope of work (program /predesign) requirements and consisting of preparation of conceptual site and building plans, schematic sections and elevations, preliminary selection of buildings systems and materials, development of approximate dimensions, areas and volumes.

#### **Structural Design**

Services consisting of recommendations regarding basic structural material and systems, analysis, and development of conceptual design solutions.

#### **Mechanical Design**

Services consisting of consideration for alternate materials, systems and equipment , and development of conceptual design solutions for energy sources/conservation, heating, ventilating and air conditioning (HVAC), plumbing, fire protection, and general space requirements.

#### **Electrical Design**

Services consisting of consideration of alternate systems, recommendations regarding basic electrical materials, systems and equipment, analysis, and development of conceptual design solutions for power service and distribution, lighting, communication raceways, fire detection and alarms, and general space requirements.

#### **Civil/Site Design**



Services consisting of site planning including layout of site features, building position, preliminary grading, location of paving for walkways, driveways and parking, and fencing locations. Also included are the normal connections required to service the building such as water, drainage, and sanitary systems, if applicable.

#### Civil and Site Development

- All permit applications will be prepared by the Design Team. The OWNER will develop the actual permit application and required reports and pay all permit processing fees. This is inclusive of the Conditional Use Permit for Essential Public Facility siting process, and City Planning permit.
- Identify local stormwater control agency, document restrictions as they pertain to the proposed project, define permitting requirements; identify any local public work standards as they pertain to roads, stormwater, sewer etc.; any local restriction regarding dust control, demolition, construction traffic/noise, excess earthwork disposal, any existing floodplain restrictions, etc.
- Civil Engineers will confirm adequacy of topographical and boundary mapping provided by surveyors. A/E team will evaluate legal, ownership, permitting and zoning constraints. Identify environmentally sensitive areas such as wetlands, flood plains, known hazardous waste areas, etc.
- Develop and validate site layout. This will include activities such as: (1) determine structure size, locations, and orientation; (2) layout roadways/truck access corridors and define maneuvering requirements (design vehicle); (3) size and locate parking lots for employees and visitors to the facility; (4) determine emergency vehicle access requirements. (5) evaluate flood plain impacts and constraints; (6) local stormwater management facilities (GSI and LID) (7) locate utility, piping, and duct bank (electrical, communications, and fiber) corridors (horizontal and vertical).
- Civil Engineers will coordinate with surveyors; define surveyors' scope of work; coordinate with geotechnical engineers on additional boring locations; record boring locations on site drawings.
- Develop preliminary erosion control plan for project. Determine if erosion control ponds are required; locate ponds on site plan drawings as required. Prepare preliminary storm water calculations suitable for submission to local site permitting authorities. Develop preliminary storm water control concepts (swales, curb and gutter). Meet with local storm water and erosion and sediment control agency to determine permitting requirements for site plans, and impact of requirements on preparation of contract documents. Document findings.
- Set preliminary finished floor levels for new structures. Establish preliminary finished grades; overall major surfaces, road profiles, etc. Iterate preliminary surfaces and structures to optimize earthwork if necessary.
- Perform preliminary sizing calculations
- Prepare a list of required technical specification.
- Perform ongoing design coordination with other design disciplines.
- Perform quantity take-offs of civil elements for inclusion in the schematic design cost estimate.
- Review and revise LEED and EAGLE checklist.
- Review concepts and draft work products with and seek approval from quality control reviewer.

#### Offsite Civil Schematic Design

- Develop preliminary erosion control plan for offsite work
- Develop LaBounty Road frontage improvements, channelization, and paving sections
- Perform ongoing design coordination with other design disciplines.

- Perform quantity take-offs of civil elements for inclusion in the schematic design cost estimate
  - Review concepts and draft work products with and seek approval from quality control reviewer.
  - Wetland Mitigation and Remediation. Provide mitigation and planning and design services to compensate for up to 3 acres of unavoidable impact sot wetlands.
- Design Field Surveying:
- Design Field Surveying , Topographic Surveys, Property Boundary and Right of Way Surveys, Offsite Survey Support, Basemap and Design Plan Production.

#### Cost Estimating

Services consisting of development of a probably construction cost from quantity surveys and unit costs of building elements for the project. Costs shall reflect the level of design elements presented in the Schematic Design documents, plus appropriate design contingencies to encompass unidentified scope ultimately included in the program. Assist user agency with analyzing scope, schedule, and budget options to stay within the MACC.

#### Presentations

Service consisting of appropriate presentation(s) of the CUP for EPF documents by the A/E to agency representatives.

#### Materials Research

Services consisting of identification of potential of architectural materials, systems, and equipment as required by the CUP for EPF application process.

#### Scheduling

Services consisting of reviewing and updating previously established project schedules or initial development of schedules for decision-making, design and documentation.

#### Public Outreach

Provide public outreach and support on an as needed hourly not to exceed basis. Scope of services will accommodate approximately 500 man hours to public outreach expertise and support services.

- Assistance in developing a coordinated message and developing graphics to support the message. Graphics include images of existing facilities that illustrate intent of the Whatcom County Jail, and rendering of the facility on a site.
- Perform 3<sup>rd</sup> party community polling of the community issues
- Anticipate attending 2 Council meetings as part of the development of the community outreach process
- Anticipate attending 6 public outreach steering committee meetings as part of the development of the community outreach process.
- Supporting the public outreach steering committee in developing materials for presentations and mailers.
- Participate as a technical resource to the County for presentations to support organizations and public information meetings as part of the communication plan.

**EXHIBIT B  
(COMPENSATION)**

As consideration for the services provided pursuant to Exhibit A, Scope of work allowable expenses, the county agrees to compensate the Designer according to the fee schedule provided. Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed. Mileage at IRS rate, lodging and per diem at a rate not to exceed the GSA rate for location where services were provided. 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. Other expenditures such as printing, postage and telephone charges shall be reimbursed at actual cost plus 10%. 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 Designer's expense.

The Contract Number, set forth, shall be included on all billings or correspondence in connection therewith. The Consultant may bill the County progressively not more than once per month (30 days). Progressive billings will be for the amount of work complete.

		<b>SD Phase - CUP for EFP ONLY</b>	<b>Remaining DS to PC Phase (if approved)</b>
1	Space Programming and Pre-Design Services (Completed)	\$0	\$0
2	Design Project Administration & Project Management Fee	\$33,595	\$397,097
3	Architectural Design Fee	\$134,376	\$1,588,388
4	Structural Engineering Design Fee	\$53,750	\$635,355
5	Mechanical Engineering Design Fee	\$80,625	\$953,033
6	Electrical Engineering Design Fee	\$33,594	\$397,097
7	"Engineers" Cost Estimating Services for EFP Process	Included	N/A
8	Cost Estimating Services (SD, DD& CD Phases) includes VE & Bid Assistance	\$0	\$119,000
9	Life Cycle Analysis	\$0	\$40,000
10	On Site CA Phase Representation (Basic Services includes Bi-monthly. Addition Services would result in weekly	N/A	\$93,600
11	Renderings & Models	Included	Included
12	Interiors, Furnishings, FF&E, U.S. Communities Program (Design & Purchasing Schedule Only)	\$0	\$276,000
13	Detention & Courts Electronic Systems & Security Design	\$4,000	\$456,000
14	Kitchen & Laundry Consulting Design Services	\$0	\$49,400
15	Participation in Commissioning, Program Managed by Others	\$0	\$80,000
16	LEED Certification Documentation Process	\$10,000	\$90,000
17	Civic Engineering Consultant; Wetlands, On-Site & Partial Off-Site CUP for EFP includes Task 2, 3, & 7.1, 7.2, & 7.3	\$136,707	\$534,950
18	Landscape, Hardscape, Community Integration Consultant	\$61,510	\$323,071
19	Traffic Consulting	\$7,500	\$0
20	Civil Engineering Consultant; Site Survey - Task 8	\$43,142	\$0
21	Geotechnical Engineering - Infiltration & groundwater testing, Preload Requirements, Soil Bearing Properties	\$77,185	\$0
22	Geotechnical Engineering - Geothermal Conductivity Analysis	\$35,313	\$0
	<b>Subtotal Professional Lump Sum Services</b>	<b>\$711,297</b>	<b>\$6,032,990</b>
23	Reimbursable Costs, Design Printing, Mailing. Note: Bid set printing is by Owner	\$28,452	\$241,320

24	Public Outreach – As Needed Hourly, Not to Exceed	\$86,138	\$0
<b>Services by Others, not included in DLR Group contract scope unless designated to (continued):</b>			
25	Independent Commissioning Agent (Owner's consultant)		
26	LEED Certification Fee (Owner project cost)		
27	Interior Furnishings, FF&E, U.S. Communities Program (Purchasing & Installation by Owner)		
28	Testing and Balancing (Owner project cost)		
29	Hazardous Materials Study & Abatement (Owner project cost)		
30	Preload Monitoring (Owner project cost)		
31	Materials Testing (Owner project cost)		
32	Roofing Consultant (Owner project cost)		
<b>Grand Total Design Services – This Contract</b>		<b>\$825,887</b>	<b>\$6,274,310</b>

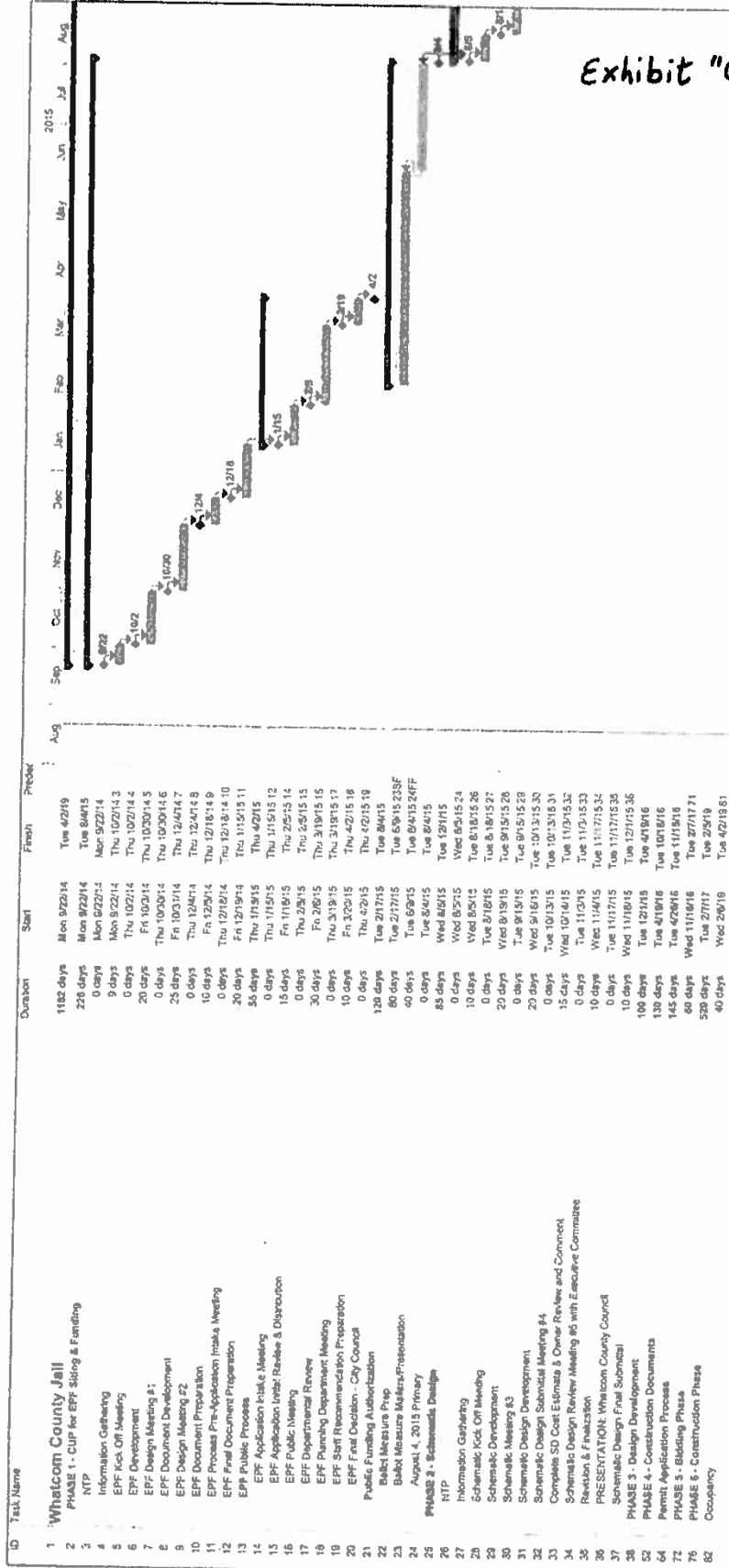


Exhibit "C"

Project: Whatcom County Jail  
 Date: Fri 9/22/14

Task: Information Gathering  
 Milestone: EFF Kick Off Meeting  
 Summary: EFF Development

Project Summary: External Task  
 Inactive Milestone: Inactive Milestone  
 Inactive Summary: Inactive Summary

Manual Summary Rollup: Manual Summary  
 Manual Summary: Start-Only  
 Manual Summary: Finish-Only

Progress: Split

Page 1 of 1

DLR Group

**NOTICE OF CIVIL RIGHTS VIOLATIONS AND NOTICE OF REASON TO BELIEVE  
RCW 42.17A IS BEING OR HAS BEEN VIOLATED**

Via Email and Regular Mail, and Registered Mail, Return Receipt Requested

- TO: Washington Attorney General Bob Ferguson  
1125 Washington St SE  
PO Box 40100  
Olympia, WA 98504
- TO: Whatcom County Prosecutor, David S. McEachran  
311 Grand Avenue, Suite 201  
Bellingham, WA 98225
- TO: Public Disclosure Commission  
711 Capital Way #206  
PO Box 40908  
Olympia, WA 98504-0908

Pursuant to RCW 42.17A, be advised of the following civil rights violations and reasons to believe RCW 42.17A is being or has been violated.

The flyer attached hereto as **Exhibit A** ("Flyer") was mailed to select registered Whatcom County voters for the promotion of Whatcom County Ballot Proposition No. 1, and Whatcom County Proposition No. 2015-1 and for the purpose of assisting a campaign for the election to public office. This Notice incorporates the facts reported in the October 15, 2015, Bellingham Herald Article (*Whatcom County uses tax revenue to send mailer about jail tax measure*), attached hereto as **Exhibit B**. Whatcom County, Whatcom County Executive Jack Louws, Whatcom County Prosecutor Dave McEachran, and Whatcom County Sheriff Bill Elfo, and other unknown individuals used funds and facilities of a public office or agency, or agencies (directly or indirectly), including the County Executive's Office, the Sheriff's Department, and the Prosecutor's Office for the purpose of assisting the promotion of the two ballot propositions and for the purpose of assisting the campaigns for election of Louws and Elfo.

RCW 42.17A.555 provides, in part,

No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to

any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency....

**A. The Flyer is an impermissible attempt to influence the outcome of the ballot propositions.**

The Flyer is a one-sided pitch for mass incarceration. The Flyer completely omits the incarceration facts being examined nationwide at all levels of government. Having examined cost and injustice of our 40-year history of mass incarceration, Republicans, Democrats, Police Chiefs, and Prosecutors nationwide are calling for reduced incarceration. The nation is becoming aware that the U.S. holds 25% of the planet's incarcerated people, yet has only 5% of the planet's free population.

We as people of color in Whatcom County are especially concerned about mass incarceration and the potential ramping up of mass incarceration in Whatcom County, especially with our proximity to the northern border and the large presence of Homeland Security. The Whatcom County Jail is disproportionately filled with people of color. With this notice, we therefore intend to put Washington, Whatcom County, and local law enforcement on notice of the existing civil rights violations, and our belief that ramping up mass incarceration while ignoring the system's racism is a deliberate exacerbation of ongoing racial profiling and civil rights violations. The Flyer, and the three proponents' (Louws, Elfo, and McEachran) support of the Flyer, increases the level of distrust that communities of color have in Whatcom County law enforcement system.

Mass incarceration is a racist system implemented at the end of, and in reaction to, the gains made during the Civil Rights era. Today, we have a prison-industrial complex expanded to include immigration detention. The Administration, several Congressional leaders, and conservative groups agree that mass incarceration is a serious issue that needs to be addressed throughout our country. The Department of Justice recently announced they are releasing 6,000 prisoners.<sup>1</sup> In Whatcom County, community members and groups have fought for the last decade to bring attention to local leaders and law enforcement, regarding issues of racial profiling and the racially disproportionate population in Whatcom County jails.

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<sup>1</sup> <http://www.ibtimes.com/immigration-2015-one-third-6000-prisoners-due-release-are-undocumented-immigrants-2131042.a>



The entire country is waking up to years of systemic racism and injustice thanks to community awareness, activism, and books like Michelle Alexander's *The New Jim Crow: Mass Incarceration in the Age of Color Blindness*. "More than 130 of the nation's top law-enforcement officials including big-city police chiefs, sheriffs, prosecutors and attorneys general, have joined the call to end the harsh, counter-productive practices and policies that have driven America's [mass incarceration] boom, destroyed communities and written off an entire generation of young men of color."<sup>2</sup> In contrast to reality, a voter reading the Flyer would come away with the impression that there is no alternative to increasing the size of Whatcom County's jail.

The Flyer was created, in part, by the company hired by the County to provide "full design services" and "assistance in developing a coordinated message and developing graphics to support the message." The October 1, 2014, DLR Group Contract for Services Agreement is attached hereto as **Exhibit C**. Local government agencies "...shall not coordinate informational activities with campaign efforts, in a manner that makes the agency appear to be supporting or opposing a ballot measure." January 12, 2015, PDC Letter.

As opposed to an "objective and fair presentation of the facts," the message, apparently, is that a new, expensive, larger jail in Ferndale is necessary. The Flyer uses official uniforms, equipment, publications, and the County seal to support its message. The flyer is one sided and fails to inform the voter of the nature, costs and impacts of the proposal—and leaves out the issues, listed below, about which community members have been educating our local leaders for the last decade:

1. The proposed jail increases the number of Whatcom County jail beds from roughly approximately 280 to 521 (the magnitude of the increase is not even disclosed);
2. The longstanding, well-reasoned testimony, public hearing statements, and oft-repeated concerns of the Whatcom County population opposed to a larger jail;
3. Whatcom County's incarceration rate is already among the highest in the world;
4. Whatcom County's booking rates are up, while statewide bookings are down;<sup>3</sup>
5. Whatcom County offers inmates less "good time" (earned early release) than 27 of Washington's 39 counties (i.e., if you serve time in Whatcom County and behave, you will serve more of your sentence than you would in roughly 7 out of 10 counties in Washington);

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<sup>2</sup> October 22, 2015, New York Times Editorial, citing position of Law Enforcement Leaders ([lawenforcementleaders.org](http://lawenforcementleaders.org)).

<sup>3</sup> <http://www.whatcomcounty.us/DocumentCenter/Home/View/827>;  
<http://www.whatcomcounty.us/449/Background-Documents-on-Jail-Planning>;  
<http://www.whatcomcounty.us/449/Background-Documents-on-Jail-Planning>; and  
<http://www.nwcitizen.com/blog-entry/the-making-of-a-jail-crisis-part-two-stuff-it>

6. The absence of Whatcom County law enforcement training regarding alternatives to booking, as in Seattle's LEAD program, which has reduced recidivism by 25%;
7. The overcrowding is the result of the unlawful mass incarceration policies (including bail recommendation, sentence recommendation, and good time policies) of Whatcom County and the three mass incarceration proponents quoted in the Flyer (Louws, McEachran, and Elfo). WCC 1.28.100 requires, amongst other things, that Sheriff Elfo release inmates early or transfer them when it is overcrowded. Sheriff Elfo and Prosecutor McEachran are also the main architects of overcrowding and unsafe crisis of the jail.
8. The feel bad pictures of inmates sleeping on the floor and the absence of adequate space for a dayroom and other programs is not caused by the size of the jail, but rather by Whatcom County's mass incarceration policies;
9. The jail was deliberately and illegally overcrowded in order to manufacture a crisis that could be used to justify plans to increase Whatcom County's capacity to incarcerate 521 (or more) inmates at a time.
10. No Flyer space is devoted to facts supportive of static or reduced incarceration rates;
11. Whether the County has made a finding (or has relied upon any information or analysis) that its current mass incarceration policy, or the proposed incarceration ramp-up is (or is not) effective at achieving any public policy goals; and if so, what are the findings and information relied upon;
12. How much Whatcom County has spent planning and promoting the plan for a larger jail verses exploring the data, science, and societal benefit, and economic savings of alternatives to incarceration<sup>4</sup>;
13. How much of the local budgets go to incarceration verses incarceration alternatives;
14. The cost of building and maintaining the proposed jail;
15. The cost of building and maintaining a smaller jail;
16. The total amount of additional tax that will be collected over 30 years in the event the proposition is approved;
17. The economic impact of choosing mass incarceration over alternatives to incarceration;
18. The societal impact of choosing mass incarceration over alternatives to incarceration;
19. The lack of an analysis regarding the current make-up (and causes thereof) of the jail population in terms of race, economic status, conviction vs. non-conviction status (i.e. incarcerated because they can't afford bail or home monitoring), mental health status; number of people incarcerated for drug

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<sup>4</sup> In this Notice, "alternatives to incarceration" is defined as alternatives to pre booking and measures to reduce to incarceration (e.g. mental health services, "Ban the Box" law, etc.)

- possession, drug use, drug sales, and driving under the influence (or if such an analysis exists, the fact that it has not been shared with the public);
20. If the jail tax passes, all of Whatcom County's public safety tax for potentially 30 years will be earmarked for incarceration (that is, by law Whatcom County may not raise any additional tax to fund alternatives to incarceration for potentially 30 years);
  21. The exacerbation of the difficulty in finding funding for incarceration alternatives, and enhanced incarceration (as listed in the Flyer by Louws) caused by the proposed tax;
  22. There is no analysis regarding incarceration rate, or even information assisting the voters in deciding that they should incarcerate more, the same, or fewer people than they do already (e.g., whether they should incarcerate 523, 403, or whether they should reduce incarceration rates by 25% to 300).
  23. Even if the jail tax passes, agreement has not been reached for housing Bellingham's non-felony inmates; Bellingham has nearly half the population of the entire county; and the County has demanded Bellingham tax payers provide additional funds before the proposed jail would permit housing of Bellingham's non-felony inmates (beyond the roughly \$120,000,000 that will be raised by the proposed county tax);
  24. The fact that Whatcom County incarcerates people of color at 5 to 7 times the rate of whites;
  25. The fact that Whatcom County law enforcement have provided the public little or no analysis regarding the existence or reduction of its own systemic racism;
  26. The absence of racial bias training in Whatcom County law enforcement which is recommended by the federal government and has been proven effective in reducing racial bias;
  27. The absence of an explanation for who the additional 120 beds will be used to incarcerate (e.g., does the proposal allow Whatcom County to rent beds to the Federal Government to incarcerate people for immigration violations?);
  28. This voting period (ending November 3, 2015) was scheduled to occur two (2) months before the publically funded Whatcom County jail alternatives task force is scheduled to make recommendations; that is, if the proposed tax is passed, 30 years of taxation (roughly \$120,000,000) will be unavailable for alternatives to incarceration.
  29. The reason for building the jail in Ferndale, rather than the County's population center (Bellingham);
  30. As people of color we are concerned that the remote location of the proposed new, big jail would make the the concerns and potential abuses less visible, less transparent to the community, and easier for abuses and violations to be carried out. "Out of sight, out of mind."

31. The DOJ recommends jails be built next to county courthouses rather than in more remote areas to reduce cost and increase function;
32. The economic impact of building a jail away from the population center (Bellingham has nearly half of the County's population);
33. The County Executive (and jail proponent in the Flyer) Jack Louws' financial interest in having the jail built in the proposed location (especially regarding the sale of land under or near the planned site);<sup>5</sup>

To fall within the WAC 290.05.271 exception, public offices or agencies must make "facilities available on a nondiscriminatory, equal access basis for political uses or [make] an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency." Further, public funds or resources may only be expended if "the preparation and distribution of information is not for the purpose of influencing the outcome of an election." PDC Interpretation No. 04-02, Page 4. "Supervisory personnel have a duty to know, apply, and communicate to their staffs the difference between acceptable information activities and inappropriate promotional activities in support of local government ballot measures." *Id.* "[I]n no case will the PDC view a marketing or sales effort related to a campaign or election as normal and regular conduct." *Id.*, at 5.

The Washington Public Disclosure Commission (PDC) has advised, "Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used." January 12, 2015, Public Disclosure Commission Letter to Local Government Agency Officials from Tony Perkins, Acting Assistant Director, Re Election-Related Communications by Local Government Agencies ("January 12, 2015, PDC Letter"). "Such a presentation should also explain, in neutral, factual terms, the outcome anticipated if the proposition is rejected by voters." *Id.* "[A]n 'objective and fair presentation of the facts' must **avoid** . . . Overtly promotional or oppositional content (including inflammatory or emotionally-driven language; check marks and other indications of support; and gratuitous photos that tend to provoke an emotional reaction—e.g. an image of a body on an EMT stretcher, or a house exploding in flames)." *Id.* (emphasis in original).

"'Objective and fair presentation of the facts' means that in addition to presenting the facts, the materials should present accurately the costs and other anticipated impacts of a ballot measure." (January 12, 2015 PDC letter) The Flyer uses official uniforms, equipment, and publications, the use of which is restricted in the January 12, 2015, letter.

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<sup>5</sup> NW Citizen article by Tip Johnson, <http://www.nwcitizen.com/entry/louwsy-jail-deal>.

The facts outlined in this notice, including 1 through 33, above, demonstrate reason to believe the foregoing legal requirements have not been met.

**B. The Flyer contains false statements, conflations, and gives the voters false impressions.**

The Flyer appears to be designed to be confusing as it related to existing incarceration alternatives and incarceration alternatives that would be funded by approving the proposed ballot measure. The Flyer makes false statements, conflations, and false impressions, including –

1. States that the Jail Facilities Sales and Use Tax is proposed in Whatcom County, Washington Proposition Number 1 (Proposition Number 1 is a different proposition on the ballot this year, which we feel is designed to dilute the ability of people of color to fairly participate in electing county government who represent their interests.<sup>6</sup> The Jail Facility Sales Tax was named as Proposition 1 not once, but twice, in two different ways, on the flyer-a false statement that was amplified and repeated on King 5 News on October 29. Nowhere on the flyer is it described correctly as Proposition 2015-1. Proposition 1 is supported by large-monied industries like the agricultural industry and coal industry; its passage would solidify power for the three elected officials Louws, Elfo, and McEachran, and their allies. This mislabeling cannot be dismissed as anything but intentional.)
2. Conflates safety and incarceration rates. We agree that the Whatcom County jail should be safe. But safety does not immediately mean building a bigger jail when and where the flyer describes.
3. Conflates the need for better jail conditions with the need for a bigger jail;
4. Uses emotional photos and graphic representations to create a false dichotomy (inhumane treatment or larger jail)
5. Implies that safety issues are due to the size of the jail;
6. Implies that increased incarceration is a natural, unavoidable, and even legally required, need ("State law requires...", "liability," "By law, Whatcom County requires...");
7. Consistent with Louws, McEachran, Elfo, and others' campaign to increase the size of the jail the Flyer manufactures a false choice: Treat people humanely and approve the proposal; or reject it, and treat people inhumanely;
8. States that the need for a new jail is "critical," while at the same time stating that the need has been critical since 1999, and that the estimated date for implementing the proposed solution is 3.5 years from now - Spring of 2019;

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<sup>6</sup> <https://aclu-wa.org/cases/montes-v-city-yakima>

<https://www.aclu.org/news/federal-court-rules-yakimas-voting-system-violates-voting-rights-act>

[http://www.yakimaherald.com/special\\_projects/aclu/](http://www.yakimaherald.com/special_projects/aclu/)

9. Implies, confuses, and misleads voters that this measure will also help fund the alternatives, cited in the Flyer;
10. Implies, confuses, and misleads voters that the jail tax will fund the behavioral health and treatment programs listed by Louws;
11. Implies, confuses, and misleads voters that there is existing funding for the behavioral health and treatment programs Louws lists, when the proposal will make funding for such programs more difficult if not impossible;
12. Implies, confuses, and misleads voters that the County funds incarceration and alternatives to incarceration nearly equally (\$12.3 and \$11.5 million, respectively); or alternatively, implies that if the jail tax is approved, the County will fund incarceration and alternatives to incarceration nearly equally (\$12.3 and \$11.5 million, respectively);
13. Implies, confuses, and misleads voters that the County has meaningfully examined its policies regarding incarceration rates;
14. Implies, confuses, and misleads voters that the County has examined alternatives to incarceration;
15. Implies, confuses, and misleads voters that there is evidence to support the need for increased incarceration;
16. States that the new jail is "centrally located";
17. States that there are ". . . no expansion options"
18. States that the "Cities and county agree. . ."

**C. The Flyer is not normal, customary, and regular conduct.**

The Flyer was created, in part, by the company hired by the County to provide "full design services" and "assistance in developing a coordinated message and developing graphics to support the message." According to Louws, the Flyer was specifically approved in a \$27,000+ funding measure passed by the County Council. The flyer is unusual, and unlike previous information mailed to voters on other issues, including other ballot initiatives.

Passage of a tax that maxes out the ability of the County to charge tax for public safety issues for 30 years is not a normal and regular event, and creation of the Flyer is not normal and regular conduct. Passage of Proposition 1, which will likely permanently reduce the voice of voters of color in County government is not normal and regular conduct.

Further, the County Executive who approved the Flyer has profited from sale of land next to or around the proposed jail.<sup>7</sup>

WAC 390-05-273 (Definition of normal and regular conduct) provides,

Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17A.555, means conduct which is (1) lawful,

<sup>7</sup> NW Citizen article by Tip Johnson, <http://www.nwcitizen.com/entry/louwsy-jail-deal>

i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.

"The agency must be able to demonstrate that for other major policy issues facing the jurisdiction, the agency has customarily communicated with its residents in a manner similar to that undertaken for the ballot measure." PDC Interpretation No. 04-02, Page 5.

In the event communications other than a "jurisdiction-wide mailed "fact sheet," are used, . . . the agency must be able to demonstrate that . . . the method, format, and frequency is typical of how the agency routinely communicates with its audience." January 12, 2015, PDC Letter.

**D. The Flyer is an electioneering communication that identifies political candidates and supports local political campaigns without having been submitted to voters for approval.**

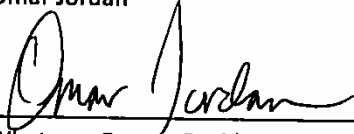
Louws and Elfo are running for re-election in this voting period. They are photographed and quoted in the Flyer as authorities on the subjects. The Flyer is designed to minimize and divert attention from their roles in creating the overcrowding situation.

RCW 42.17A.300(1)(b) provides, "Electioneering communications that identify political candidates for state, local, or judicial office and that are distributed sixty days before an election for those offices are intended to influence voters and the outcome of those elections."

RCW 42.17A.550 provides,

A county, city, town, or district that establishes a program to publicly finance local political campaigns may only use funds derived from local sources to fund the program. A local government must submit any proposal for public financing of local political campaigns to voters for their adoption and approval or rejection.

Omar Jordan



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Whatcom County Resident,  
filed October 30, 2015, only on his own behalf  
(but also happens to be Steering Committee Member of the Bellingham Racial Justice Coalition)

**Contact Information for Legal Representative:**

Edward Alexander  
Law Office of Edward S. Alexander  
114 West Magnolia, Suite 400  
Bellingham, WA 98225

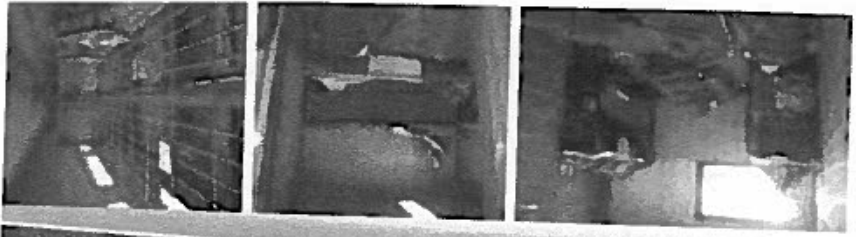
360-392-2872

CC: NAACP,  
ACLU,  
WSBA,  
Washington State Commission on Hispanic Affairs,  
Washington State Commission on African-American Affairs,  
Washington State Commission on Native American Affairs;  
Lummi Nation;  
Brothers and Sisters of Whatcom County;  
Bellingham Unitarian Fellowship;  
Senator Rick Larson;  
Senator Maria Cantwell;  
State Representatives;  
Whatcom Human Rights Task Force;  
Ralph Munro Institute, WWU Professor Vernon Johnson  
Western Washington University, Fairhaven College  
Fairhaven College, Woodring College of Education



# EXHIBIT A

WHATCOM  
COUNTY IA II



Whatcom County Community Report



WHATCOM COUNTY  
311 GRAND STREET  
BELLINGHAM, WA 98225

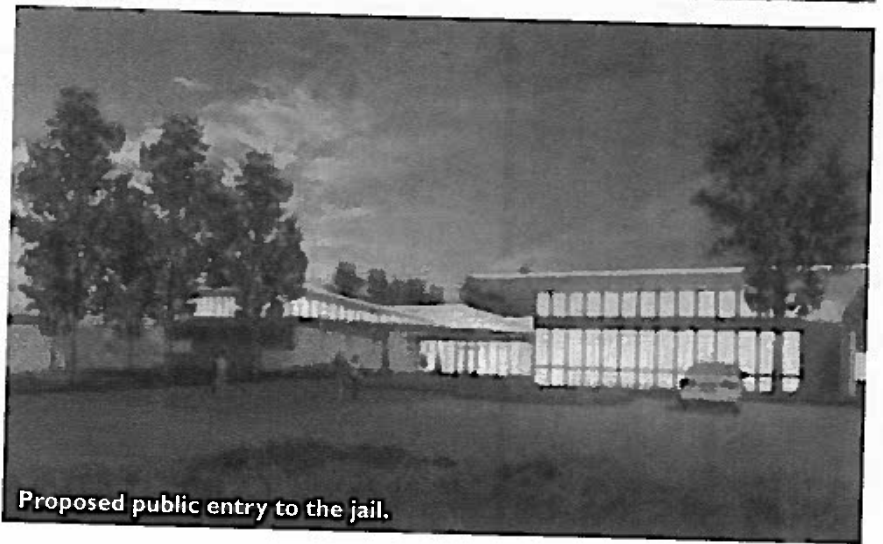


## Existing Jail - Overcrowded and Unsafe



Sheriff Bill Elfo

"The existing jail has been overcrowded and unsafe for decades. Over time, conditions have grown increasingly worse. Eighteen years of reports, findings and analysis by professional consultants, jail-planners, engineers, fire safety officials, staff, the National Institute of Corrections and multiple citizen committees consistently highlighted compelling life-safety and liability issues. Also highlighted were the lack of space for behavioral health and other programming targeted at effective treatment and reducing recidivism. Given severe and unsustainable conditions within the jail that jeopardize staff, visitors and inmates alike as well as expose taxpayers to liability, the County cannot continue to operate the facility into the future at current population levels."



Proposed public entry to the jail.

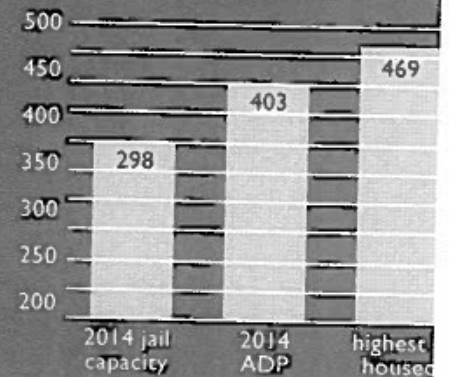
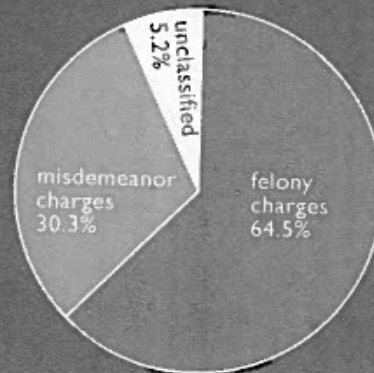
The County cannot continue to operate the facility into the future at current population levels.

Existing Whatcom County Jail has limited renovation and no expansion options.

The current jail was built in 1984 to house 148 inmates, remodel to house 212. Total jail capacity, including interim jail on Division Street, is 298. The average daily jail population (ADP) in 2014 was 403. According to statewide comparison,

**Our jail population is at 137% percent of capacity, 4th highest in the state.**

By law, Whatcom County is required to accept all accused/convicted felons whose case originate in the entire County, including Bellingham, Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas.







or eliminate our need to expand the proposed replacement jail. These behavioral health and treatment programs include:

- Specialized training for public safety personnel;
- Individual and community programs focused on prevention, treatment, intervention and family support programs;
- In-custody court/detention behavioral health services;
- Community mental health and substance abuse treatment and opiate outreach;
- Family treatment and mental health courts;
- Affordable housing services;
- A dedicated court probation specialized behavioral health unit;
- Intensive case management, supportive housing, and the Rainbow Recovery Center;
- Veterans' relief services;
- A crisis triage center;
- Behavioral health services;
- Alternative programs, including electronic home monitoring, work release, and jail work crews.

## Targeted-for Alternatives

Alternative and Diversion Programs  
00

Probation and Parole Programs  
00

“ One of the greatest challenges and frustrations within the current jail is the inability to provide adequate space for health services and programming.



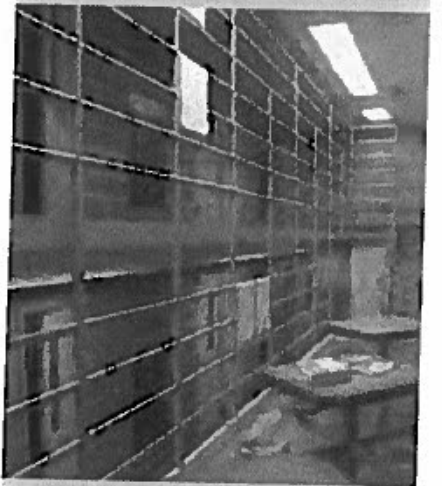
*There are huge demands for services for all of the care the jail provides. The lack of clinic and counseling space*



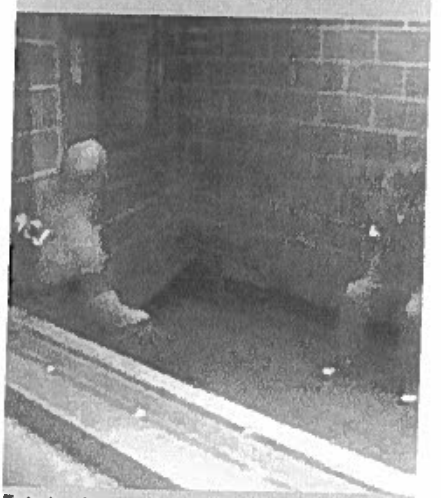
Existing cell.



Existing shower room converted to cell.



Existing dayroom.



Existing inmate programs space.

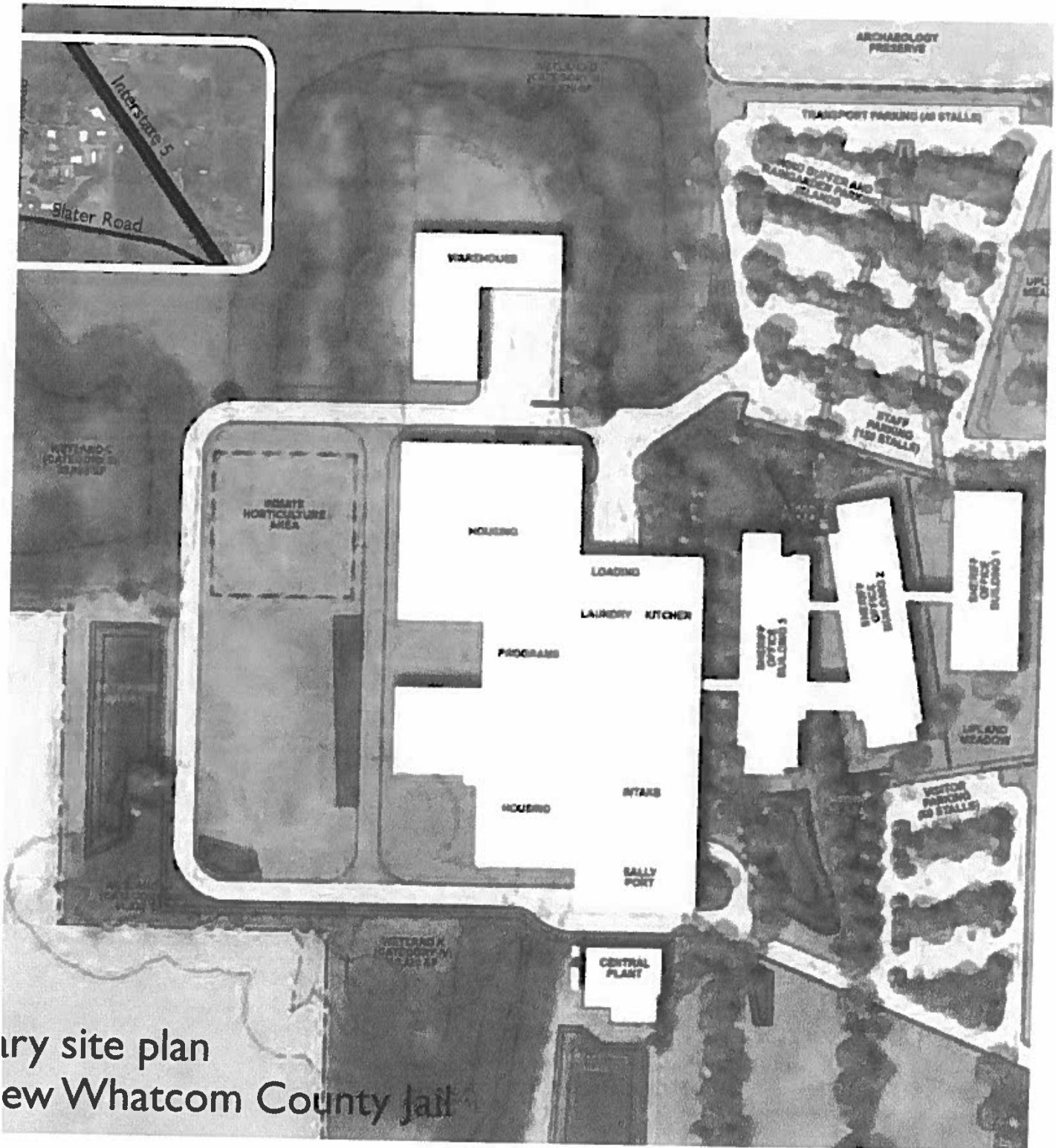


video visiting



Central control room.

- Building site design to accommo future growth.



ery site plan  
ew Whatcom County Jail



# EXHIBIT B



Mailers cost \$28,000, went only to registered voters

Some question use of taxpayer money, say only one side is presented

No complaint yet filed with state Public Disclosure Commission

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Cover of the Whatcom County Community Report sent to residents. Whatcom County  
Courtesy to The Bellingham Herald

j

By Samantha Wohlfeil

The Bellingham Herald

- o [LINKEDINGOOGLE+PINTERESTREDDITPRINTORDER REPRINT OF THIS STORY](#)BELLINGHAM

Some community members are furious about the county's use of public money to mail out information about a jail sales tax measure to registered voters.

The day before many households would start to see ballots arrive from the auditor's office, each household with at least one registered voter got a flier from the county labeled the "Whatcom County Community Report: Whatcom County Jail."

I said that has to be a phony mailer, it's a fraud, there's no way the county would send something you are describing. Ken Mann, Whatcom County Council member

The mailer presents pictures of the current and proposed Whatcom County Jail and talks about the proposal to pay for it with a 0.2 percent sales tax increase (20 cents per \$100 purchase). The mailer contains information from the county, Whatcom County Executive Jack Louws, Sheriff Bill Elfo, and Prosecutor Dave McEachran, on four 11-by-17 glossy color pages.

A copy of it can be viewed on the county website, [co.whatcom.wa.us](http://co.whatcom.wa.us), by searching for "community report mailer."

The mailers cost \$28,452, according to a county contract. The money came from a 2004 sales tax that voters passed to help pay for a new jail.

State law prohibits the expenditure of public money or use of public offices or spaces to campaign for a specific candidate or promotion of or opposition to any ballot proposition, with a few exceptions. The county claims it is allowed to send out one such mailer under state guidelines.

## First impressions

After opening their mail, some of the most vocal political players in the county took to social media to vent about the flier and question whether it violated state campaign rules.

Among them was Whatcom County Council member Ken Mann, who said he first learned of the fliers when an "irate constituent" called him to say they were upset county government would spend taxpayer dollars to lobby for increased taxes.

"When she described it to me, I said that has to be a phony mailer, it's a fraud, there's no way the county would send something you are describing," Mann said.

He was wrong.

In fact, whether they knew it or not at the time, Mann and the other six sitting council members unanimously approved the money for the fliers in September 2014 as part of an \$825,887 contract amendment with DLR Group, the consultant working on the jail. The contract included funding for public outreach, which included developing materials for presentations and mailers, among other tasks.

"My initial reaction was shock and dismay and finally outrage," Mann said. "I was further outraged that they would equate public outreach with a one-sided political propaganda piece during election season."

Mann said the council "never ever never never never" talked about sending a mailer out, and he thought there was no way the council would have approved that item had it gone before them.

It gives people information to decide whether or not they support it. I feel it follows the intent of the law. Jack Louws, Whatcom County executive

Doug Starcher, who helped write the statement against the jail sales tax measure for the Whatcom County voters' guide, said the mailer was a "despicable piece of misrepresentation."

Starcher questioned the use of pictures in the mailer, specifically images of overcrowded cells.

"The first question is did those prisoners give their permission for those photographs to be taken and used," he said. "The notion that those photographs are anything other than lobbying in favor of this tax, to try and represent anything else is ridiculous."

He also questioned the use of pictures of Louws and Elfo, who are both up for re-election.

"There's a picture of the County Executive, who is running for office, then it lands in people's mailboxes the day before or the day that their ballots arrive," Starcher said. "That looks a little sketchy to me."

Following the rules

On Friday morning, Oct. 16, Louws said the county followed the guidelines for such mailers as laid out by the state Public Disclosure Commission.

"We're following the PDC guidelines," he said. "I think it is a fact-based document."

The PDC used to offer to review mailers for compliance before they were sent out, but that program was cut in January this year, said Lori Anderson, a PDC spokeswoman.

The county referenced a memo from the PDC in putting together the mailer. The executive's office, sheriff's office and prosecutor's office all worked to make sure the flier was fact-based and met the requirements, Louws said. The number of staff hours working on the flier was not specifically tracked.

The county cites a PDC interpretation as giving them "not only the right, but the responsibility" to "inform the general public of the operational and maintenance issues" and tells the county it may "distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure."

"This shows where we're at," Louws said. "It doesn't propose a position on it, but it does identify that we're putting it forward to the voters for reasons based on a jail task force and on a resolution the Whatcom County Council has passed."

When asked if he believed the flier was objective, Louws said, "It gives people information to decide whether or not they support it. I feel it follows the intent of the law."

Deputy Prosecuting Attorney Dan Gibson, who helped review the text of the flier, which was compiled by other staff, said those who worked on it had framed their work using similar types of fliers that had been used in other counties. One of those was a flier sent out in Skagit County when their new jail sales tax increase was on the ballot.

The title, Whatcom County Community Report, was similar to the title used in Skagit, Louws said.

"Whenever an informational flier is presented, you talk about what is the current situation," Gibson said. "People are providing factual information, and doing so obviously within a context. In this case, it's people who work within the facility describing it as it currently exists, and how it would exist if a new facility was constructed."

Mann said the legality of the flier wasn't important, but that it's a matter of principle.

"Whether you're a Republican or a Democrat or an independent, it's just so far over the line," Mann said. "Even if they found some loophole that they can claim this is legit, that does not make it right, and it does not make it ethical."

#### Additional concerns and complaint

It was too soon to tell if anyone would file a complaint with the PDC as of Friday afternoon, although several people said they were looking to see if they might have a case to do so.

Richard May, who served on the County Charter Review Commission, said he was most concerned about the title of the ballot measure used in the flier.

"In this mailed piece it says this is Proposition 1," May said. "The jail vote on the ballot is Proposition 2015-1. Proposition 1 on the ballot is district-only voting."

People who follow politics closely and think about such issues all the time will be able to make that distinction, May said, but the majority of voters don't have a lot of time to do background research.

"If they get that piece of mail and say, 'Yes, I want to vote yes for the jail,' and it says in giant letters 'Proposition 1,' a single-issue voter may say 'I've got to make sure to vote yes for Proposition 1,'" May said. "That could boost the district-only vote by hundreds or even thousands of votes, so that's a huge issue."

When asked about the potential for mistaking the two similarly named propositions, Gibson said he didn't think it was an issue.

"I'm assuming that every voter reads the language of the proposition upon which they are voting," he said. "I think that's a fair assumption. The reason we put the language in there is so that people will read it."

What we want most is for people to be informed on the election and not confused on anything, including all of these (charter) amendments. Charlie Crabtree, Whatcom County Republicans chairman

Tanya Baumgart, who helped produce this year's Bellingham/Whatcom County League of Women Voters forums, said she was surprised to see the mailer as she thought the county was not allowed to send them out. She did not speak as a representative of the League, which has not taken a stance for or against the measure.

"I had to work with the PDC to make sure we were in compliance with their guidelines for our forums," Baumgart said. "The PDC gave me the example that basically any time the taxpayer monies are being used for printing fliers is kind of an illustration of something that violates PDC guidelines."

Though the flier isn't explicitly in favor of the ballot measure, Baumgart said, "it definitely gives the one side of the ballot measure but doesn't give the other side. There were both sides presented at our forums."

She said that what is included in the flier is reasonably accurate and it appears to be an educational piece, but questioned the fact that it was only sent to voters.

"So that's not just an educational piece for the community, it's a targeted mailing to voters," she said. "That gives me pause."

Charlie Crabtree, chair of the Whatcom County Republicans, said the Republicans had not been involved in the flier.

When asked about spending taxpayer money on the materials, Crabtree said the PDC states it needs to be used in the public interest, and educational fliers are allowed when school districts are putting out information on levies.

"At the same time, I think that's a heck of a lot of money," he said.

Crabtree said he believed the piece was meant to inform the public about what's on the ballot, and he would stand by the Republicans' endorsement for the jail measure, but said he could understand the concerns about spending taxpayer money.

"I can tell you there are a lot of conservatives worried about the jail costs, and probably this just adds to that, I don't know," Crabtree said. "But when it gets down to it, as far as the Republicans are concerned, what we want most is for people to be informed on the election and not confused on anything, including all of these (charter) amendments."

General election ballots are due to drop boxes or must be postmarked by Nov. 3.

*Reach Samantha Wohlfeil at 360-715-2274 or  
[samantha.wohlfeil@bellinghamherald.com](mailto:samantha.wohlfeil@bellinghamherald.com). Follow her on Twitter at @BhamPolitics.*

# EXHIBIT C

COPY  
Original Document filed  
In Whatcom County Council Office,  
311 Grand Ave.,  
Bellingham, WA 98225

Whatcom County Contract No.  
201409013

CONTRACT FOR SERVICES AGREEMENT  
DLR Group

Professional Design Services for Conditional Use Permitting, Whatcom County Jail

DLR Group, hereinafter called Designer, and Whatcom County, hereinafter referred to as County (hereinafter also referred to as Owner), agree and contract as set forth in this Agreement, including:

- General Conditions, pp.3 to 21,
- Exhibit A (Scope of Work), pp. 22 to 25,
- Exhibit B (Compensation), pp. 26 & 27
- Exhibit C (Schedule), pp. 28

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 following the issuance of a notice to proceed, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31 day of, December, 2015.

The general purpose or objective of this Agreement is to provide full design services for the Conditional Use Permit (CUP) for Essential Public Facilities (EPF) permitting process 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 Designer is to perform all necessary design services for the Project as set forth in the Agreement between Owner and Designer. Designer, through itself and its Design Consultants, has agreed to provide such architectural, engineering, civil, structural and other services required by this Agreement and the other Contract Documents ("Services").

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

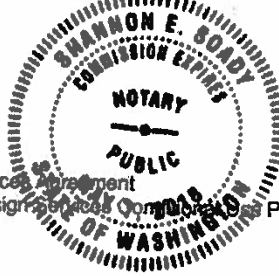
IN WITNESS WHEREOF, the parties have executed this Agreement this 1<sup>st</sup> day of October, 2014.

DESIGNER:

DLR Group, Inc.  
*[Signature]*  
WILLIAM J. VALDEZ, VICE PRESIDENT

STATE OF WASHINGTON             )  
   ) ss.  
COUNTY OF WHATCOM             )

On this 2<sup>nd</sup> day of September, 2014, before me personally appeared WILLIAM J. VALDEZ to me known to be the Principal of DLR GROUP and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.



*[Signature]*  
NOTARY PUBLIC in and for the State of Washington, residing at Seattle, wa. My commission expires May 7, 2018



**WHATCOM COUNTY:**

**Approved as to form:**

By: *S. Gallany* *September 23, 2014*  
Prosecuting Attorney Date

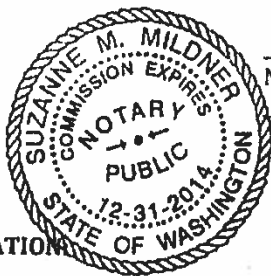
**Approved:**

Accepted for Whatcom County:

By: \_\_\_\_\_  
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON )  
) ss  
COUNTY OF WHATCOM )

On this *1st* day of *October*, 20*14*, 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.



*Suzanne M. Mildner*  
NOTARY PUBLIC in and for the State of Washington, residing at  
*Bellingham* My commission expires *12-31-14*.

**DESIGNER INFORMATION**

DLR Group

Address:

DLR Group

51 University Street, Suite 600

Seattle WA 98101

Contact Name: Bill Valdez

Contact Phone: (206) 461-6000

Contact FAX: (206) 461-6049

Contract for Services Agreement  
DLR Group – Design Services Conditional Use Permitting

## GENERAL CONDITIONS

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

#### **1.1.1 Scope of Services:**

The Designer agrees to provide to the County professional 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. The intent of the drawings and specifications is to include all items necessary for the proper execution and completion of the project: **Included in the base fees are Professional Services through schematic design inclusive of the Conditional Use Permit for Essential Public Facilities permitting process only.**

#### **1.2.1** Terms used in this Agreement shall have the meanings set forth unless otherwise provided herein, with the following specific terms defined as follows:

- .1** *Additional Services* refers to those services identified in Section 2.8 hereof.
- .2** *Agreement* refers to this executed contract between Owner and Designer.
- .3** *Construction Phase Services* refers to those services identified in Section 2.7 hereof.
- .4** *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.
- .5** *Design Consultant* is a qualified, licensed design professional who is not an employee of Designer, but is retained by Designer, or employed or retained by anyone under contract with Designer, to furnish design services required under the Contract Documents.
- .6** *Design Phase Services* refers to those services set forth in Sections 2.5 and 2.6 hereof.
- .7** *Design Schedule* refers to the schedule setting forth the dates by which Designer must perform the various Services required herein, consistent with the Project Schedule.
- .8** *Designer's Fee* shall refer to the compensation due Designer for the performance of the Services as set forth herein.
- .9** *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.
- .10** *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, or any Services.
- .11** *Owner's Project Criteria* are developed by or for Owner to describe Owner's program, requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements. Owner's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

- .12 *Project Schedule* refers to the schedule setting forth the dates by which the various stages of both the design and construction of the Project must be performed so as to satisfy Designer's obligations to Owner.
- .13 *Site* is the land or premises on which the Project is located.
- .14 *Bases of Design* the Intent is to provide a complete specification & drawing package. The intent of the complete package is to include all necessary items for the proper execution and completion of work; however, any item or detail not specifically mentioned in the specifications or shown on the drawings, but which is necessary to produce the intended results shall be included.
- .15 *Designer* is any person or entity retained by Owner as an independent Designer to perform a portion of the construction work for the Project and shall include materialmen and suppliers.
- .16 *Sub-Consultant* is any person or entity retained by a Designer as an independent Designer to perform any portion of the Designer's work and shall include materialmen and suppliers.
- .17 *Substantial Completion* is the date on which the Project, or an agreed upon portion of the Project, is sufficiently complete so that Owner can occupy and use the Project or a portion thereof for its intended purposes.
- .18 *Services* shall include all Design Phase Services, Construction Phase Services and Additional Services required by the Contract Documents or as may be authorized in writing by Owner.

### 1.3 Contract Documents

1.3.1 The Contract Documents, in addition to this Agreement, are comprised of the following:

- .1 All written modifications, amendments and change orders to this Agreement;
- .2 This Agreement, including all exhibits and attachments, executed by Owner and Designer;
- .3 Written Supplementary Conditions, if any, executed by Owner and Designer;
- .4 The design Schedule;

1.4.1 The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, this Agreement shall take precedence.

2.1.1 Designer shall, consistent with applicable state licensing laws, provide the Services, including architectural, engineering and other design professional services, as described in this Agreement and in accordance with the Contract Documents. Designer agrees that such Services shall be provided through qualified, licensed design professionals who are either (i) employed by Designer or (ii) procured by Designer from qualified, licensed Design Consultants.

2.1.2 Designer shall not engage the services of any Design Consultant without first obtaining the approval of Owner, which approval shall not be unreasonably withheld. Designer agrees that each Design Consultant shall be fully bound to Designer in the same manner as Designer is bound to Owner for all the requirements of the Contract Documents to the extent applicable to the Design Consultant's scope of services. Designer

shall at all times be responsible for the services performed by its Design Consultants, and shall coordinate the services of its Design Consultants to satisfy Designer's obligations under the Contract Documents. Nothing in this Agreement shall relieve Designer from responsibility for the services performed by its Design Consultants, or create any legal or contractual relationship between Owner and any Design Consultant.

- 2.1.3 If Owner or Owner Representative performs other work on the Project with separate design professionals under Owner's or Owner's Representative control, Designer agrees to reasonably cooperate and coordinate its activities with those of such separate design professionals so that the Project can be completed in an orderly and coordinated manner and without disruption.
- 2.1.4 Designer shall only communicate with Owner, Consultant(s), or Sub-Consultants through Owner unless the parties agree otherwise.
- 2.1.5 Within seven (7) days after execution of this Agreement, Owner and Designer will meet to discuss issues affecting the administration of the Services and to implement the necessary procedures, including but not limited to those relating to the schedule for the Services, schedule updates, review of submittals, and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents and allow Designer to meet its obligations to design the Project consistent with the Contract Documents, without compromising any professional obligations of Designer.

## 2.2 Standard of Care

2.2.1 The standard of care for all design professional services performed by Designer and its Design Consultants pursuant to this Agreement shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project for projects of similar size and complexity. Notwithstanding the preceding sentence, if the Agreement specifically identifies performance standards for the Services, Designer agrees that all such Services shall be performed to achieve such standards.

## 2.3 Legal Requirements

- 2.3.1 Designer agrees to perform the Services in accordance with all applicable Legal Requirements.
- 2.3.2 Designer's Fee and/or the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Services. Such effects may include, without limitation, revisions Designer is required to make to the Construction Documents because of changes in Legal Requirements.
- 2.4.1 Designer agrees that the Key Personnel assigned to perform the Services shall be as listed in paragraph 2.4.2 below. Designer shall not change such personnel without prior written approval by the Owner.
- 2.4.2 Key Personnel. The following individuals/positions are considered KEY PERSONNEL.
  - Principal -
  - Project Architect -
  - Draftsperson -
  - Clerical -
- 2.5.2 Designer shall provide reasonable assistance to Owner in obtaining any permits, approvals, and licenses which are not Designer's obligation to obtain, but which are required for the construction of the Project.

2.5.3 Designer shall make any revisions to the Construction Documents reasonably necessary to secure permits, approvals, and licenses, including those which have been denied for failure of the Construction Documents to meet Legal Requirements. If such revisions are necessary for reasons beyond the control of Designer or its Design Consultants, Designer shall be compensated for such revisions as a change to this Agreement.

## 2.6 Design Services

2.6.1 In accordance with the times set forth in the Design Schedule, Designer shall submit to Owner all interim design submissions and revisions required. Such design submissions shall be in the form and quantity called for in the Contract Documents and may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Owner and Designer agree that prior to the scheduled date for submitting all design submissions to Owner, Owner's Representative and Designer will hold meetings for the purpose of discussing and monitoring the design for consistency with the requirements of the Contract Documents, as well as Owner's pricing and other assumptions.

2.6.2 In accordance with the Contract Documents and the times set forth in the Design Schedule, Designer shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Project. The Construction Documents shall be consistent with the latest set of interim design submissions; as such submissions may have been modified in a design review meeting. Designer shall provide the Construction Documents in the form and quantity called for in the Contract Documents; actual costs for the printing of these submission documents shall be paid for out of the reimbursable cost set forth in Exhibit "A", if available. Designer shall perform agreed upon revisions and submit revised Construction Documents to Owner for Owner's approval.

2.6.3 Designer shall attend and participate in such meetings as are held between Owner and Designer to discuss interim design submissions and the Construction Documents. If requested, Designer shall identify during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Owner and provided to all attendees for review.

2.6.4 In addition to the interim design submissions and the Construction Documents, Designer shall, if requested by Owner, prepare interim design submissions and Construction Documents the parties agree are required to permit commencement of construction on a portion of the Project before the entire Construction Documents for the Project are completed.

2.6.5 Owner's approvals of interim design submissions and the Construction Documents are for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Contract Documents.

2.6.6 Designer will, at its own cost, revise any interim design submission or the Construction Documents to correct any of its errors, mistakes or omissions. Designer shall also design to a Fixed Design Budget and, at its own cost, make such revisions as are required to achieve such budget, Any and all such revisions required of this paragraph shall be performed timely and so as not to jeopardize the Design Schedule and/or the Project Schedule. The expense of such revisions shall not be charged against the 5% contingency established in section 12.10.2

## 2.7 Construction Phase Services

2.7.1 Designer shall assist Owner in preparing bidding documents for specified portions of the Project's construction, and clarifying and responding to questions involving the bidding documents.

- 2.7.2** Designer shall timely provide requested clarifications and interpretations of the Construction Documents (often referred to as "RFI's"), which shall be consistent with the intent of, and reasonably inferable from, the Contract Documents. Designer shall make all revisions to the Construction Documents necessary for the proper construction of the Project. Such revisions will be accomplished at the Designer's expense if and to the extent necessitated by an ambiguity, error or omission of the Designer; all other revisions will be an Additional Service. Responses to RFI's, for whatever reason required shall be timely and shall not cause delays to the approved critical path schedule for the project.
- 2.7.3** Designer shall review and approve such submittals, including shop drawings, product data and samples, as may be required by the Design-Build Agreement or as reasonably required by the Owner. Such review shall be accomplished in accordance with the project schedule within the times for such review provided in the critical path schedule submitted by the Contractor and approved by the owner. The time within which Designer shall review and respond to submittals under will be discussed at the meeting provided in Section 2.1.5, but shall be finally established upon the approval of critical path for the construction of the project. Designer shall expeditiously inform Owner of any revisions that are necessary as a condition to Designer's approval of submittals. Designer's review and approval shall not relieve Contractor of responsibility for construction means and methods, or safety precautions. Except for performance based specification submittals, designer's approval will not apply to a change from the design shown in the Construction Documents unless the change is expressly noted as a change to the Construction Documents by clouding in the submittal.
- 2.7.4** Designer shall review, and if acceptable approve, any substitutions for materials or equipment proposed by Owner.
- 2.7.5** Designer shall, if requested by Owner, review any inspection reports or tests involving the construction of the Project and provide its comments to Owner. Designer is not responsible for the accuracy or completeness of the tests or inspections.
- 2.7.6** Designer shall at appropriate intervals visit the Site to determine in general if the construction is proceeding in accordance with the Construction Documents. Designer shall promptly notify Owner of any defects, deficiencies, deviations, omissions, or violations observed by Designer in the construction of the Project, and make recommendations to Owner on how to proceed. Designer and Designer's consultants shall visit the Site an average of once per month during the period of construction, or more as necessary to perform their professional duties under this Agreement.
- 2.7.7** Designer shall attend meetings with Owner, Contractors, and Consultants to discuss design issues which may arise during construction.
- 2.7.8** Designer shall provide such certifications as may be necessary relative to Substantial Completion.
- 2.7.9** Designer's provision of the Construction Phase Services shall not be construed to make Designer responsible for (i) the acts or omissions of Contractor, or any Sub-Contractors, (ii) the means, methods, sequences, and techniques of construction of the Project or (iii) safety precautions and programs in connection with the construction of the Project. Nothing in this Agreement shall create any duties to or legal or contractual relationship between Designer or any Contractor or Subcontractor. If the Owner authorizes deviations from the documents prepared by the Designer or its Consultants without written agreement of the Designer, the Owner shall indemnify, defend and hold harmless the Designer, its Consultants and their respective agents and employees from and against claims, damages, losses and expenses, arising out of or resulting from such deviations.

## **2.8 Additional Services**

- 2.8.1** Additional Services, if any, agreed upon by the parties shall be compensated as set forth in Exhibit A or in an amendment to this Agreement. Additional Services are those services not specifically described as part of Services in this Agreement. Additional Services include, without limitation, making revisions to documents due to adjustments in the program, project budget, enactment of revisions to codes subsequent to the preparation of such documents and providing services required due to significant changes in the Project including, but not limited to: size, quality, complexity, construction cost, schedule or method of bidding or negotiation and contracting for construction. Additional Services will not include necessary modifications or corrections that were missed or miscalculated by the Designer.

### **Timely Reviews, Approvals and Submittals**

- 3.1.1** Owner shall provide timely reviews and approvals of all interim design submissions and the Construction Documents consistent with the turnaround times set forth in the Design Schedule and the Design-Build Agreement, or as agreed to by the parties at the meeting required under Section 2.1.5 hereof.
- 3.1.2** Owner shall, in the contract for construction, require Contractor to submit timely to Designer all submittals, including shop drawings, product data and samples, for Designer's review and approval consistent with the Project Schedule. Timely submittal means in accordance with the times noted in the submittal schedule included in the project critical path schedule for the project; (Standard two weeks for most submittals with a portion of the submittals required to be processed quicker) times to be agreed upon between Designer, Contractor and Owner when appropriate. Designer will provide a schedule of items to be submitted by Owner for Designer's review.
- 3.1.3** Owner shall provide timely notice to Designer of any delays to the Project caused by Designer.
- 3.1.4** Owner shall provide the following information and materials to Designer, unless otherwise agreed.
- .1** Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
  - .2** Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
  - .3** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Designer to perform the Services;
  - .4** A legal description of the Site;
  - .5** As-built and record drawings of any existing structures at the Site;
  - .6** Environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site;
  - .7** Owner's Project Criteria;
  - .8** Test and inspection reports.

- 3.4.1** If Designer's performance of the Services are delayed for any reason so as to impact the Design Schedule or the Project Schedule, Designer shall promptly notify Owner in writing of the cause(s) of such delay within sufficient time to permit Owner to provide timely notice to Contractors or Consultants. To the extent the delay is due to any negligent act, error or omission on the part of Designer, Design Consultants, or anyone for whom they are responsible, Designer shall compensate and indemnify Owner for all costs, damages, and expenses arising from such delay. If the delay is caused by Owner or others for whom Owner is responsible, the Designer's Fee and the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of the delay. If the delay is caused by Owner or other causes, the Designer's Fee and the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of the delay if and only to the extent Owner secures such compensation and time from the Owner.

**Section Numbers 3.4.2 through 6.1.0 are purposely omitted from this contract.**

- 6.1.1** Designer's Fee shall be the compensation due Designer for the performance of the Services, including all Design Phase Services, Construction Phase Services, and Additional Services, and for Reimbursable Costs, all as set forth in this Agreement. Unless otherwise provided in the Contract Documents, the Designer's Fee is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.
- 6.1.2** Designer will be compensated for the Design Phase Services, Construction Phase Services, Additional Services, if any, and Reimbursable Costs as set forth in Exhibit A.

## **6.2 Applications for Payment**

- 6.2.1** Beginning with the first month after the Date of Commencement, Designer shall submit on a monthly basis for Owner's review and approval, Designer's certified Application for Payment requesting payment for all Services performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.5 hereof. Once approved, Owner will submit Designer's Application for Payment to Owner with Design- Builder's next application.
- 6.2.2** The Application for Payment shall constitute Designer's representation that (i) the Services have been performed consistent with the Contract Documents, (ii) the Services have progressed to the point indicated in the Application for Payment, (iii) Design Consultants have been paid all amounts previously received by Designer on account of their services, and (iv) there are no claims, obligations or liens outstanding or unsatisfied for labor, services, taxes, or other items performed, furnished, or incurred for or in connection with the Services.
- 6.2.3** Owner shall make payment on Designer's properly submitted and accurate Application for Payment within thirty (30) days after Owner's receipt of payment from Owner on account of Designer's monthly Application for Payment

At the time Designer submits its final Application for Payment to Owner, Designer shall provide (i) all deliverables required by the Contract Documents; (ii) an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for or in connection with the Services which will in any way affect Owner's or Owner's interests; (iii) a general release executed by Designer waiving, upon receipt of final payment by Designer, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment; and (iv) certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents. Owner shall make payment on Designer's properly submitted and accurate final Application for Payment within thirty (30) days after Owner's receipt of final payment from Owner on account of Designer's final Application for Payment, provided also that Designer has satisfied the requirements for final payment set forth herein.



8.2.1 Designer designates the individual listed below as its Senior Representative ("Designer's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes:

Name: William Valdez  
Title: Vice President, Principal  
Address: 51 University Street, Suite 600  
Seattle WA 98101  
Telephone: (206) 461-6000

## 9 Designer's Insurance Requirements

9.1.1 Prior to starting the Work, Designer shall procure, maintain and pay for such insurance as will protect against claims for bodily injury or death, or for damage to property (including loss of use) and loss or damage resulting from professional errors and omissions, which may arise out of operations by Designer or by any Design Consultants or by anyone employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall not be less than the greater of coverages and limits of liability specified below, any coverages and limits of liability specified in the Contract Documents or coverages and limits required by law.

9.1.2 Designer shall procure and maintain the following minimum insurance coverages and limits of liability and provide proof of coverage by a Certificate of Insurance and endorsements and specifically name this County Project under the coverage:

Workers' Compensation		Statutory Limits
Employer's Liability	\$1,000,000 each \$1,000,000 disease \$1,000,000 disease	accident policy limit each employee
Commercial General Liability	\$2,000,000 each \$2,000,000	occurrence aggregate (applicable on a per project basis)
Comprehensive Automobile Liability	\$2,000,000 each	accident
Professional Errors and Omissions	\$2,000,000 each \$2,000,000 annual	claim aggregate

Commercial General Liability insurance required under this paragraph shall be written on an occurrence form (ISO Form CG 00 01 or equivalent) and, shall include coverage for Products/Completed Operations extending six (6) years after final acceptance of the Project by Owner or such longer period as the Contract Documents may require, **Provided, however that such coverage beyond three (3) years after final acceptance is available at a commercially reasonable price.** Owner agrees to compensate Designer for any added costs beyond commercially reasonable prices for the additional three (3) year period provided that Designer provides full and complete information about its insurance program costs and quotations., Broad Form Property Damage including Completed Operations, Personal Injury with Employment Exclusion (if any) deleted, Blanket XCU and Blanket Contractual Liability insurance applicable to Designer's defense and indemnity obligations under Article 10, and other contractual indemnities assumed by Designer under the Contract Documents. Commercial General Liability insurance shall include "stop gap" coverage for work in those states where Workers' Compensation insurance is provided through a state

fund if Employer's liability coverage is not available. Comprehensive Automobile Liability insurance required under this paragraph shall include coverage for all owned, hired and non-owned automobiles. Workers' Compensation coverage shall include a waiver of subrogation against Owner and Owner.

If the required Professional Errors and Omissions insurance is written on a claims made basis, the retroactive date shall be prior to the start of Designer's Work. If insurances are commercially available to obtain, Designer agrees to maintain such coverage for 6 years after final acceptance of the Project by the Owner or such longer period as the Contract Documents may require. Renewal policies during this period shall maintain the same retroactive date.

- 9.1.3** Employer's Liability, Commercial General Liability and Comprehensive Automobile Liability insurance may be arranged under single policies for full minimum limits required, or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy. The general aggregate on the Commercial General Liability coverage shall apply on a project specific basis.
- 9.1.4** Designer shall endorse its Commercial General Liability (including products/completed operations coverage); and Comprehensive Automobile Liability and Umbrella/Excess Liability policies to add Owner, and such other parties as Owner is required under the Contract Documents to name the County, officials, employees and agents as additional insureds on Designer's insurance, as "additional insureds" with respect to liability arising out of (a) operations performed for Owner or Owner's Representative by or for Designer, (b) acts or omissions of Owner or Owner's Representative in connection with their general supervision of operations by or for Designer, (c) Designer's use of Owner's tools and equipment, and (d) claims for bodily injury or death brought against Owner or Owner's Representative by Designer's employees or the employees of Designer's consultants of any tier, however caused, related to the performance of Services under this Agreement. Such insurance afforded to Owner, Owner, and others as additional insureds under Designer's policies shall be primary insurance and not excess over, and Owner's insurance shall be non-contributory. Designer's insurance waives all rights of subrogation.
- 9.1.5** Designer shall require its Design Consultants to procure and maintain, from insurance companies authorized to do business in the state in which the Project is located, the insurance coverages set forth in this Article.
- 9.1.7** Designer shall maintain in effect all insurance coverages required under this Article, or by the other Contract Documents, at Designer's sole expense and with insurance carriers licensed to do business in the State 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 Owner in writing. Deductibles or Self Insured Retention on any policies furnished for this project shall not be more than \$100,000 for each claim.
- 9.1.8** Prior to commencing any services hereunder, Designer shall provide Owner with Certificates and Endorsements evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled. Owner shall have the right to examine any policy required under this Agreement Copies of the complete insurance policies to be provided under this agreement shall be provided to Owner within seven (7) of the signing of this contract, which includes requests made by email.
- 9.1.9** All insurance policies shall contain a provision that coverages and limits afforded thereunder shall not be canceled, materially changed, non-renewed, or restrictive modifications added, without thirty (30) days prior written notice to Owner. Certificates of Insurance and Endorsements shall be filed with Owner prior to start of Designer's Work. Renewal Certificates and Endorsements shall be provided to Owner not less than ten (10) days prior to the expiration date of any of the required policies. All Certificates of Insurance and Endorsements shall be in a form acceptable to Owner and shall provide satisfactory evidence that

Designer has complied with all insurance requirements. Owner shall not be obligated to review such certificates or other evidence of insurance, or to advise Designer of any deficiencies in such documents, and receipt thereof shall not relieve Designer from, nor be deemed a waiver of Owner's right to enforce, the terms of Designer's obligations hereunder.

**9.1.10** The required minimum limits of insurance indicated above shall not in any way restrict or diminish Designer's liability under this Agreement. Owner's right to recover under insurance provided under this article shall not be limited by other portions of the agreement that limit the liability of any party to the proportion of its relative fault for the purpose of indemnification for certain types of claims.

**9.2 Waiver of Subrogation:** Designer and Designer's insurance waives all rights of subrogation.

**9.2.1** Designer and Owner waive against each other and Design Consultants, Owner's separate Designers, Consultants, Sub-Consultants, agents and employees of each and all of them, all damages covered by Builder's Risk insurance, except such rights as they may have to the proceeds of such insurance. Owner and Designer shall, where appropriate, require similar waivers of subrogation from Design Consultants and Consultants and shall require each of them to include similar waivers in their contracts.

## **10.1 Patent and Copyright Infringement**

**10.1.1** Designer shall defend any action or proceeding brought against Owner or Owner's Representative based on any claim that the Project, or any part thereof, or the operation or use of the Project or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Designer of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Designer shall indemnify and hold harmless Owner and Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Owner's Representative in any such action or proceeding. Designer agrees to keep Owner informed of all developments in the defense of such actions.

**10.1.2** If Owner is enjoined from the operation or use of the Project, or any part thereof, as the result of any such patent or copyright suit, claim, or proceeding, Designer shall at its sole expense take reasonable steps to procure the Owner's right to operate or use the Project, or applicable part thereof. If Designer cannot so procure such right within a reasonable time, Designer shall promptly, at Designer's option and at Designer's expense, (i) modify the Project, or applicable part thereof, so as to avoid infringement of any patents, or copyrights, or (ii) replace said work with work that does not infringe or violate any such patent or copyright, and is consistent with the Contract Documents.

**10.1.3** Sections 10.1.1 and 10.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner or Owner's Representative and not offered or recommended by Designer to Owner or Owner's Representative; or (ii) arising from modifications to the Project by Owner or Owner's Representative after acceptance of the Project. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Designer to the same extent Designer is obligated to defend, indemnify and hold harmless Owner in Section 10.1 . I above.

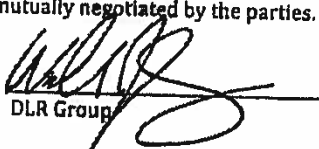
**10.1.4** The obligations set forth in this Section 10.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or

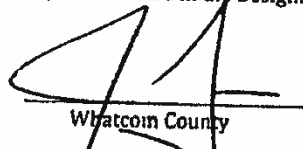
**11.1 Designer's General Indemnification Responsibilities**

**11.2.1 Indemnification by Designer.** To the fullest extent permitted by law, the Designer 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 which 1) are caused in whole or in part by the negligent act or omission, of the Designer its employees, agents or volunteers or Designer's subcontractors or consultants 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 Designer or its subcontractors' or consultants' use of, presence upon or proximity to the property of the County. In the event of the concurrent negligence of the Designer, its subcontractors, consultants', employees or agents, and the County, its employees or agents, this indemnification obligation of the Owner shall be valid and enforceable only to the extent of the negligence of the Designer, its subcontractors, consultants', employees and agents.

If Whatcom County is required to resort to litigation or arbitration to enforce Designer's Indemnification and Defense obligations it shall be entitled to recover its reasonable costs of establishing its right to indemnity including but not limited to all costs, expenses, arbitration filing fees, arbitrator's fees, and attorney fees.

This indemnification obligation of the Designer 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 Designer hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the Designer are a material inducement to County to enter into this Agreement, are reflected in the Designer's compensation, and have been mutually negotiated by the parties.

  
DLR Group

  
Whatcom County

**Participation by County - No Waiver.** 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 Designer's indemnity obligations under this Agreement.

**Survival of Designer's Indemnity Obligations.** The Designer agrees all Designer's indemnity obligations shall survive the completion, expiration or termination of this Agreement.

**Indemnity by Subcontractors.** In the event the Designer enters into subcontracts to the extent allowed under this Agreement, the Designer's subcontractors shall indemnify the County on a basis equal to or exceeding Designer's indemnity obligations to the County and subcontractors shall provide proof of Insurance verifying this condition.

**11.2.2** If an employee of Designer, anyone employed directly or indirectly by Designer or anyone for whose acts any of them may be liable has a claim against any party indemnified pursuant to Section 11.2.1 above, Designer's indemnity obligation set forth in Section 11.2.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Designer, or other entity under any employee benefit acts, including workers' compensation or disability acts.

**11.2.3** Designer agrees to procure, maintain and pay for such general liability insurance coverage and endorsements as will insure the provisions for this paragraph.

**11.6 Duty to Continue Performance**

**11.6.1** Unless provided to the contrary in the Contract Documents, Designer shall continue to perform the Services and Owner shall continue to satisfy its payment obligations to Designer, pending the final resolution of any dispute or disagreement between Owner and Designer.

**11.7** Owner Design and Construction Contingency. Owner shall establish a contingency amount equal to Three Per Cent (3%) of the construction contract amount between Owner and Contractor for the project. This contingency shall be part of the contract sum between Owner and Contractor. This contingency may be expended, at the sole discretion of Owner, on (1) Unknown or changed conditions, (2) design clarifications or modifications, (3) Contractor claims, including correction of work because of design errors, ambiguities, omissions. (4) changes required because of Requests for Information (RFI's). (5) cost overruns in construction. **Provided** that such contingency shall not be used by reason of any correction or amendment of Designer-Created documents for the project as part of the design or bidding process, but rather only after the owner has executed a Construction agreement with the Contractor.

**12.1 Assignment**

**12.1.1** Neither Designer nor Owner shall, without the written consent of the other, assign, transfer or sublet any portion or part of the Services or the obligations required by the Contract Documents.

**12.2 Successorship**

**12.2.1** Owner and Designer intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

**12.3 Governing Law, Venue**

**12.3.1** This Agreement and all Contract Documents shall be governed by the laws of the State of Washington.

**12.3.2** The Venue of any action in court or of any alternative disputes procedures, including, but not limited to arbitration proceedings, if any shall be in Whatcom County, Washington.

**12.4 Severability**

**12.4.1** If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements or court order, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

**12.5.1** The failure of either Owner or Designer to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

**12.6 Headings**

**12.6.1** The headings used in this Agreement or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

**12.7 Notice**

**12.7.1** Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in this Agreement or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the number of the intended recipient.

**12.8 Amendments**

**12.8.1** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

**12.9 Survival**

**12.9.1** Designer's obligations under this Agreement shall not be released, and shall specifically survive, the completion of all Services hereunder, final payment to Designer, and the termination of this Agreement for any reason.

**12.10 No Release of Information for Advertising and Promotion**

**12.10.1** Designer shall not publish, release, disclose or announce to any member of the public, press, official body or any other third party any information concerning this Agreement, or any part thereof, without the prior written consent of Owner and/or Owner, except as required by law. Neither the names of Owner or Owner's Representative, nor of the site, shall be used in any advertising or other promotional context by Designer without the prior written consent of Owner and/or Owner's Representative.

**2 Design Contingency.** It is understood and agreed that the nature of the design process is such that plans, specifications and other documentation prepared by or related services performed by Designer under this agreement will contain errors, omissions, conflicts, ambiguities or design uncertainties requiring clarifications, corrections or modification. Accordingly, the Owner agrees to establish a design contingency equal to 2% of the cost of the work in addition to the construction contingency provided in section 11.7. Such design contingency shall be utilized for the cost attributed to errors, omissions, conflicts, ambiguities or design uncertainties, excluding any improvements or betterments costs implemented by the Owner. Costs incurred by the Owner, excluding any improvements or betterment cost, in excess of this design contingency shall be the responsibility of Designer, but only to the extent caused by the Designer and its SubConsultants, negligent acts, errors, or omissions in the performance of services under this agreement. Any cost over the 2% contingency for negligent errors, omissions, conflicts, ambiguities or design uncertainties requiring clarifications, corrections or modification will be paid by Designer.

**12.11.1 Termination for Default:**

If the Designer 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 Designer 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 Designer'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 Designer 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 Designer. The Designer 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.

**12.11.2 Termination for Reduction in Funding: Not Applicable**

**12.11.3 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 Designer shall be entitled to payment for actual work acceptably performed for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, and shall be based upon the Designer's provable costs directly allocable this contract, 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. If any termination for cause is determined by any forum to have been wrongful, in that case it shall be converted to a termination for Public Convenience and Designer shall be compensated under the terms of this Section.

***Series 20-29: Provisions Related to Consideration and Payments***

**20.1 Accounting and Payment for Designer Services:**

Payment to the Designer 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 Designer for any costs or expenses incurred by the Designer in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Designer, 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 Designer understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Designer authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Designer 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 Designer to make the necessary estimated tax payments throughout the year, if any, and the Designer is solely liable for any tax obligation arising from the Designer's performance of this Agreement. The Designer hereby agrees to indemnify the County against any demand to pay taxes arising from the Designer'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 Designer must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Designer'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 Designer 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 Designer 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 Designer to termination or damages, provided that the County promptly gives notice in writing to the Designer 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 Designer 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 Designer 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 Designer, (3) to set off any amount so paid or incurred from amounts due or to become due the Designer. In the event the Designer obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Designer by reason of good faith withholding by the County under this clause.

**23.1 Labor Standards:**

The Designer agrees to comply with state and federal requirements, as applicable, 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 Designer:**

The Designer's services shall be furnished by the Designer as an independent Designer, 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 Designer as an independent Designer.

The Designer acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Designer 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 Designer 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.



Designer 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 Designer. 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.

**31.1 Ownership of Items Produced:**

When the Designer creates any copyrightable materials or invents any patentable property, the Designer 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. Designer further agrees to make research, notes, and other work products produced in the performance of this Agreement available to the County upon request.

**32.1 Confidentiality:**

The Designer, its employees, SubConsultants, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Designer 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. Designer shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Designer 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 Designer'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 Designer 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. Designer 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 Designer, then the Designer agrees to notify the Administrative Officer as soon as it is practical.

**34.2 Industrial Insurance Waiver:**

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

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

**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 Designer 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 Designer is governed by such laws, the Designer 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, sexual orientation, age, marital status, 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 Designer 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 Consultant, provided that the foregoing provision shall not apply to contracts or Consultants for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

**35.2 Non-Discrimination in Client Services: Not Applicable**

**36.1 Waiver of Noncompetition: Not Applicable**

**36.2 Conflict of Interest:**

If at any time prior to commencement of, or during the term of this Agreement, Designer 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 Designer 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 Designer 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 Designer 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 Designer 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 Russell, Facilities Manager  
Whatcom County Facilities Management  
316 Lottie Street  
Bellingham, WA 98225  
(360) 676-6746

**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 Designer to the County's Administrative Officer under this Agreement. Notice to the Designer for all purposes under this Agreement shall be given to the address provided by the Designer herein above in the "Designer Information" section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

***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 Designer Commitments, Warranties and Representations:** Not Applicable

**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: consultant**

a. General:

All disputes or differences between the Designer and the County, arising under or related to this agreement or any additional services, 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 Designer 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 Designer 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 Designer 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. Designer 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 Designer 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 Designer 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 and all claims, 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 then current American Arbitration Association (AAA) Construction Industry rules in effect on the date hereof, as modified by this Agreement. The parties may elect to provide for administration of the arbitration by other than the AAA. 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 Washington State substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, including expenses, costs and attorney fees to the prevailing party and pre-award interest, if provided by statute but shall not have the power to award punitive damages. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in the Superior Court for the State of Washington, in Whatcom County. 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 or be considered a condition precedent to arbitration.

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

**43.1 Venue and Choice of Law:**

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

**44.1 Survival:**

The provisions of paragraphs 11.1, 11.2, 11.3 , 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

**45.1 Entire Agreement:**

*This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.*

**EXHIBIT A**  
**SCOPE OF WORK**

The scope of services for the requested authorized modifications is for the portion of professional services through schematic design inclusive of the CUP for EPF permitting process only. It is anticipated that once the project is funded following a successful August 2015 funding election that the balance of professional services will be authorized.

Based on the CUP for EPF application checklist and the permitting meeting (May 22, 2014) with the City of Ferndale the following is the understanding of the scope of work:

1. Schematic Design Process and Stakeholder Meetings to a level of effort (Roughly 60% Schematic Design) that allows for the development of a singular design concept and solution. Scope of the Schematic Design Services is outlined in the following section.
2. This portion of the Schematic Design Process results in the following permit applications that will be completed and submitted to the authorities having jurisdiction (AHJ) by A/E with the assistance of Whatcom County:
  - a. Master Application
  - b. CUP for EPF
  - c. Eagle Compliance Check List (As stipulated in the CUP for EPF)
  - d. Encroachment Permit Application
  - e. Planning Application
  - f. Shoreline Management Application
  - g. Site Plan Application
  - h. Civil Plan Applications
    - i. Sanitary Sewer Application – Ferndale
    - ii. Storm Sewer Application – Ferndale
    - iii. Water Application – Ferndale
    - iv. Wetland Mitigation – Ferndale & USACE
3. Stakeholder meetings, executive team meetings, design team meetings, Council presentations and public meetings as needed as a course of the schematic design process and permit applications stated above.
4. Schematic Design Cost Estimates of MACC (Maximum Allowed Construction Cost) and Whole Project Cost of the singular design solution to confirm the project is on Budget
5. Development of Project Schedule inclusive of public funding process
6. Provide public outreach and support including schematic design graphics, coordination with public outreach committee, and attend public presentations.
7. Traffic Consultant
8. Site Survey
9. Geotechnical Engineering – Infiltration & Groundwater Testing, Preload Requirements, Soil Bearing Properties.
10. Geotechnical Engineering – Geothermal Conductivity Analysis.

### **Schematic Design Services**

In the Schematic Design Phase, the Architect/Engineer (A/E) provides those services necessary to prepare Schematic Design Documents consisting of drawings and other documents illustrating the general scope, scale, and relationship of project components for approval by the agency. Design should be conceptual in character, based on the requirements developed during the Predesign Phase, approved by the agency, or program requirements provided by the agency and reviewed and agreed upon by the A/E. Schematic Design includes the following:

#### **Project Administration**

Services consisting of schematic design administrative functions including consultation, meetings and correspondence, and progress design review conferences.

#### **Disciplines Coordination**

Coordination between the architectural work and engineering work and other involved consultants for the project. When specialty consultants are used, additional coordination beyond basic services may be required and negotiated for appropriate phases of the work.

#### **Document Checking**

Review and coordination of project documents

#### **Consulting Permitting Authority**

Consultations, research of critical applicable regulations, preparation of written and graphic explanatory materials. The services apply to applicable laws, statutes, regulations and codes.

#### **Data Coordination User Agency**

Review and coordination of data furnished for the project by the agency

#### **Architectural Design**

Services responding to scope of work (program /predesign) requirements and consisting of preparation of conceptual site and building plans, schematic sections and elevations, preliminary selection of buildings systems and materials, development of approximate dimensions, areas and volumes.

#### **Structural Design**

Services consisting of recommendations regarding basic structural material and systems, analysis, and development of conceptual design solutions.

#### **Mechanical Design**

Services consisting of consideration for alternate materials, systems and equipment , and development of conceptual design solutions for energy sources/conservation, heating, ventilating and air conditioning (HVAC), plumbing, fire protection, and general space requirements.

#### **Electrical Design**

Services consisting of consideration of alternate systems, recommendations regarding basic electrical materials, systems and equipment, analysis, and development of conceptual design solutions for power service and distribution, lighting, communication raceways, fire detection and alarms, and general space requirements.

#### **Civil/Site Design**

Services consisting of site planning including layout of site features, building position, preliminary grading, location of paving for walkways, driveways and parking, and fencing locations. Also included are the normal connections required to service the building such as water, drainage, and sanitary systems, if applicable.

#### Civil and Site Development

- All permit applications will be prepared by the Design Team. The OWNER will develop the actual permit application and required reports and pay all permit processing fees. This is inclusive of the Conditional Use Permit for Essential Public Facility siting process, and City Planning permit.
- Identify local stormwater control agency, document restrictions as they pertain to the proposed project, define permitting requirements; identify any local public work standards as they pertain to roads, stormwater, sewer etc.; any local restriction regarding dust control, demolition, construction traffic/noise, excess earthwork disposal, any existing floodplain restrictions, etc.
- Civil Engineers will confirm adequacy of topographical and boundary mapping provided by surveyors. A/E team will evaluate legal, ownership, permitting and zoning constraints. Identify environmentally sensitive areas such as wetlands, flood plains, known hazardous waste areas, etc.
- Develop and validate site layout. This will include activities such as: (1) determine structure size, locations, and orientation; (2) layout roadways/truck access corridors and define maneuvering requirements (design vehicle); (3) size and locate parking lots for employees and visitors to the facility; (4) determine emergency vehicle access requirements. (5) evaluate flood plain impacts and constraints; (6) local stormwater management facilities (GSI and LID) (7) locate utility, piping, and duct bank (electrical, communications, and fiber) corridors (horizontal and vertical).
- Civil Engineers will coordinate with surveyors; define surveyors' scope of work; coordinate with geotechnical engineers on additional boring locations; record boring locations on site drawings.
- Develop preliminary erosion control plan for project. Determine if erosion control ponds are required; locate ponds on site plan drawings as required. Prepare preliminary storm water calculations suitable for submission to local site permitting authorities. Develop preliminary storm water control concepts (swales, curb and gutter). Meet with local storm water and erosion and sediment control agency to determine permitting requirements for site plans, and impact of requirements on preparation of contract documents. Document findings.
- Set preliminary finished floor levels for new structures. Establish preliminary finished grades; overall major surfaces, road profiles, etc. Iterate preliminary surfaces and structures to optimize earthwork if necessary.
- Perform preliminary sizing calculations
- Prepare a list of required technical specification.
- Perform ongoing design coordination with other design disciplines.
- Perform quantity take-offs of civil elements for inclusion in the schematic design cost estimate.
- Review and revise LEED and EAGLE checklist.
- Review concepts and draft work products with and seek approval from quality control reviewer.

#### Offsite Civil Schematic Design

- Develop preliminary erosion control plan for offsite work
- Develop LaBounty Road frontage improvements, channelization, and paving sections
- Perform ongoing design coordination with other design disciplines.



- Perform quantity take-offs of civil elements for inclusion in the schematic design cost estimate
  - Review concepts and draft work products with and seek approval from quality control reviewer.
  - Wetland Mitigation and Remediation. Provide mitigation and planning and design services to compensate for up to 3 acres of unavoidable impact sot wetlands.
- Design Field Surveying:
- Design Field Surveying , Topographic Surveys, Property Boundary and Right of Way Surveys, Offsite Survey Support, Basemap and Design Plan Production.

#### Cost Estimating

Services consisting of development of a probably construction cost from quantity surveys and unit costs of building elements for the project. Costs shall reflect the level of design elements presented in the Schematic Design documents, plus appropriate design contingencies to encompass unidentified scope ultimately included in the program. Assist user agency with analyzing scope, schedule, and budget options to stay within the MACC.

#### Presentations

Service consisting of appropriate presentation(s) of the CUP for EPF documents by the A/E to agency representatives.

#### Materials Research

Services consisting of identification of potential of architectural materials, systems, and equipment as required by the CUP for EPF application process.

#### Scheduling

Services consisting of reviewing and updating previously established project schedules or initial development of schedules for decision-making, design and documentation.

#### Public Outreach

Provide public outreach and support on an as needed hourly not to exceed basis. Scope of services will accommodate approximately 500 man hours to public outreach expertise and support services.

- Assistance in developing a coordinated message and developing graphics to support the message. Graphics include images of existing facilities that illustrate intent of the Whatcom County Jail, and rendering of the facility on a site.
- Perform 3<sup>rd</sup> party community polling of the community issues
- Anticipate attending 2 Council meetings as part of the development of the community outreach process
- Anticipate attending 6 public outreach steering committee meetings as part of the development of the community outreach process.
- Supporting the public outreach steering committee in developing materials for presentations and mailers.
- Participate as a technical resource to the County for presentations to support organizations and public information meetings as part of the communication plan.

**EXHIBIT B  
(COMPENSATION)**

As consideration for the services provided pursuant to Exhibit A, Scope of work allowable expenses, the county agrees to compensate the Designer according to the fee schedule provided. Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed. Mileage at IRS rate, lodging and per diem at a rate not to exceed the GSA rate for location where services were provided. 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. Other expenditures such as printing, postage and telephone charges shall be reimbursed at actual cost plus 10%. 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 Designer's expense.

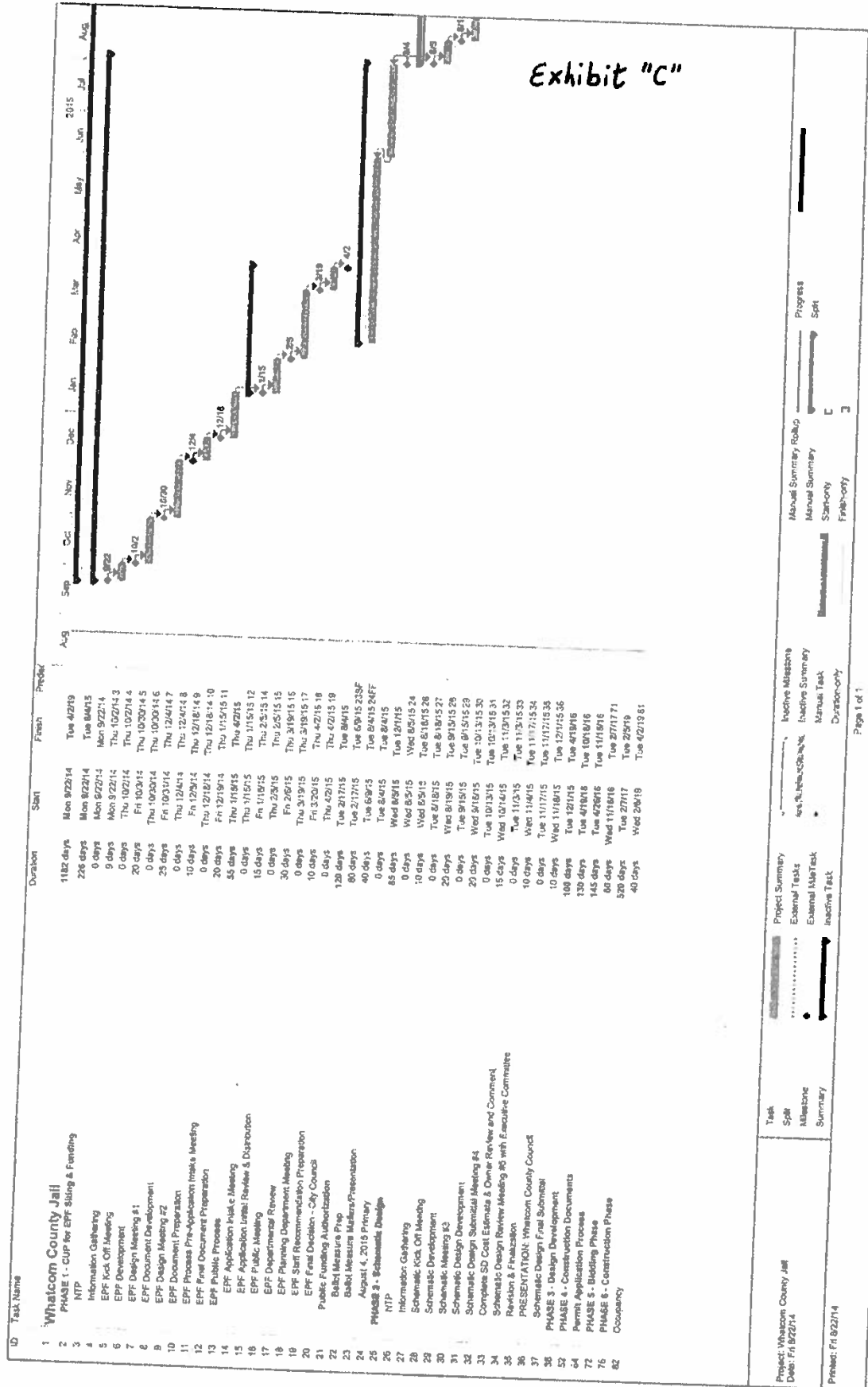
The Contract Number, set forth, shall be included on all billings or correspondence in connection therewith. The Consultant may bill the County progressively not more than once per month (30 days). Progressive billings will be for the amount of work complete.

		SD Phase - CUP for EPF ONLY	Remaining DS to PC Phase (if approved)
1	Space Programming and Pre-Design Services (Completed)	\$0	\$0
2	Design Project Administration & Project Management Fee	\$33,595	\$397,097
3	Architectural Design Fee	\$134,376	\$1,588,388
4	Structural Engineering Design Fee	\$53,750	\$635,355
5	Mechanical Engineering Design Fee	\$80,625	\$953,033
6	Electrical Engineering Design Fee	\$33,594	\$397,097
7	"Engineers" Cost Estimating Services for EPF Process	Included	N/A
8	Cost Estimating Services (SD, DD& CD Phases) includes VE & Bid Assistance	\$0	\$119,000
9	Life Cycle Analysis	\$0	\$40,000
10	On Site CA Phase Representation (Basic Services includes Bi-monthly. Addition Services would result in weekly)	N/A	\$93,600
11	Renderings & Models	Included	Included
12	Interiors, Furnishings, FF&E, U.S. Communities Program (Design & Purchasing Schedule Only)	\$0	\$276,000
13	Detention & Courts Electronic Systems & Security Design	\$4,000	\$456,000
14	Kitchen & Laundry Consulting Design Services	\$0	\$49,400
15	Participation in Commissioning, Program Managed by Others	\$0	\$80,000
16	LEED Certification Documentation Process	\$10,000	\$90,000
17	Civic Engineering Consultant; Wetlands, On-Site & Partial Off-Site CUP for EPF includes Task 2, 3, & 7.1, 7.2, & 7.3	\$136,707	\$534,950
18	Landscape, Hardscape, Community Integration Consultant	\$61,510	\$323,071
19	Traffic Consulting	\$7,500	\$0
20	Civil Engineering Consultant; Site Survey - Task 8	\$43,142	\$0
21	Geotechnical Engineering - Infiltration & groundwater testing, Preload Requirements, Soil Bearing Properties	\$77,185	\$0
22	Geotechnical Engineering - Geothermal Conductivity Analysis	\$35,313	\$0
	<b>Subtotal Professional Lump Sum Services</b>	<b>\$711,297</b>	<b>\$6,032,990</b>
23	Reimbursable Costs, Design Printing, Mailing. Note: Bid set printing is by Owner	\$28,452	\$241,320

Contract for Services Agreement  
DLR Group - Design Services Conditional Use Permitting

24	Public Outreach - As Needed Hourly, Not to Exceed	\$86,138	\$0
<b>Services by Others, not included in DLR Group contract scope unless designated to (continued):</b>			
25	Independent Commissioning Agent (Owner's consultant)		
26	LEED Certification Fee (Owner project cost)		
27	Interior Furnishings, FF&E, U.S. Communities Program (Purchasing & Installation by Owner)		
28	Testing and Balancing (Owner project cost)		
29	Hazardous Materials Study & Abatement (Owner project cost)		
30	Preload Monitoring (Owner project cost)		
31	Materials Testing (Owner project cost)		
32	Roofing Consultant (Owner project cost)		
	<b>Grand Total Design Services - This Contract</b>	<b>\$825,887</b>	<b>\$6,274,310</b>

# Exhibit "C"



**NOTICE OF CIVIL RIGHTS VIOLATIONS AND NOTICE OF REASON TO BELIEVE  
RCW 42.17A IS BEING OR HAS BEEN VIOLATED**

Via Email and Regular Mail [REDACTED]

- TO: Washington Attorney General Bob Ferguson  
1125 Washington St SE  
PO Box 40100  
Olympia, WA 98504
- TO: Whatcom County Prosecutor, David S. McEachran (Hand)  
311 Grand Avenue, Suite 201  
Bellingham, WA 98225
- TO: Public Disclosure Commission  
711 Capital Way #206  
PO Box 40908  
Olympia, WA 98504-0908

Pursuant to RCW 42.17A, be advised of the following civil rights violations and reasons to believe RCW 42.17A is being or has been violated.

The flyer attached hereto as **Exhibit A** ("Flyer") was mailed to select registered Whatcom County voters for the promotion of Whatcom County Ballot Proposition No. 1, and Whatcom County Proposition No. 2015-1 and for the purpose of assisting a campaign for the election to public office. This Notice incorporates the facts reported in the October 15, 2015, Bellingham Herald Article (*Whatcom County uses tax revenue to send mailer about jail tax measure*), attached hereto as **Exhibit B**. Whatcom County, Whatcom County Executive Jack Louws, Whatcom County Prosecutor Dave McEachran, and Whatcom County Sheriff Bill Elfo, and other unknown individuals used funds and facilities of a public office or agency, or agencies (directly or indirectly), including the County Executive's Office, the Sheriff's Department, and the Prosecutor's Office for the purpose of assisting the promotion of the two ballot propositions and for the purpose of assisting the campaigns for election of Louws and Elfo.

RCW 42.17A.555 provides, in part,

No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to

any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency....

**A. The Flyer is an impermissible attempt to influence the outcome of the ballot propositions.**

The Flyer is a one-sided pitch for mass incarceration. The Flyer completely omits the incarceration facts being examined nationwide at all levels of government. Having examined cost and injustice of our 40-year history of mass incarceration, Republicans, Democrats, Police Chiefs, and Prosecutors nationwide are calling for reduced incarceration. The nation is becoming aware that the U.S. holds 25% of the planet's incarcerated people, yet has only 5% of the planet's free population.

We as people of color in Whatcom County are especially concerned about mass incarceration and the potential ramping up of mass incarceration in Whatcom County, especially with our proximity to the northern border and the large presence of Homeland Security. The Whatcom County Jail is disproportionately filled with people of color. With this notice, we therefore intend to put Washington, Whatcom County, and local law enforcement on notice of the existing civil rights violations, and our belief that ramping up mass incarceration while ignoring the system's racism is a deliberate exacerbation of ongoing racial profiling and civil rights violations. The Flyer, and the three proponents' (Louws, Elfo, and McEachran) support of the Flyer, increases the level of distrust that communities of color have in Whatcom County law enforcement system.

Mass incarceration is a racist system implemented at the end of, and in reaction to, the gains made during the Civil Rights era. Today, we have a prison-industrial complex expanded to include immigration detention. The Administration, several Congressional leaders, and conservative groups agree that mass incarceration is a serious issue that needs to be addressed throughout our country. The Department of Justice recently announced they are releasing 6,000 prisoners.<sup>1</sup> In Whatcom County, community members and groups have fought for the last decade to bring attention to local leaders and law enforcement, regarding issues of racial profiling and the racially disproportionate population in Whatcom County jails.

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<sup>1</sup> <http://www.ibtimes.com/immigration-2015-one-third-6000-prisoners-due-release-are-undocumented-immigrants-2131042.a>

The entire country is waking up to years of systemic racism and injustice thanks to community awareness, activism, and books like Michelle Alexander's *The New Jim Crow: Mass Incarceration in the Age of Color Blindness*. "More than 130 of the nation's top law-enforcement officials including big-city police chiefs, sheriffs, prosecutors and attorneys general, have joined the call to end the harsh, counter-productive practices and policies that have driven America's [mass incarceration] boom, destroyed communities and written off an entire generation of young men of color."<sup>2</sup> In contrast to reality, a voter reading the Flyer would come away with the impression that there is no alternative to increasing the size of Whatcom County's jail.

The Flyer was created, in part, by the company hired by the County to provide "full design services" and "assistance in developing a coordinated message and developing graphics to support the message." The October 1, 2014, DLR Group Contract for Services Agreement is attached hereto as **Exhibit C**. Local government agencies "...shall not coordinate informational activities with campaign efforts, in a manner that makes the agency appear to be supporting or opposing a ballot measure." January 12, 2015, PDC Letter.

As opposed to an "objective and fair presentation of the facts," the message, apparently, is that a new, expensive, larger jail in Ferndale is necessary. The Flyer uses official uniforms, equipment, publications, and the County seal to support its message. The flyer is one sided and fails to inform the voter of the nature, costs and impacts of the proposal—and leaves out the issues, listed below, about which community members have been educating our local leaders for the last decade:

1. The proposed jail increases the number of Whatcom County jail beds from roughly approximately 280 to 521 (the magnitude of the increase is not even disclosed);
2. The longstanding, well-reasoned testimony, public hearing statements, and oft-repeated concerns of the Whatcom County population opposed to a larger jail;
3. Whatcom County's incarceration rate is already among the highest in the world;
4. Whatcom County's booking rates are up, while statewide bookings are down;<sup>3</sup>
5. Whatcom County offers inmates less "good time" (earned early release) than 27 of Washington's 39 counties (i.e., if you serve time in Whatcom County and behave, you will serve more of your sentence than you would in roughly 7 out of 10 counties in Washington);

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<sup>2</sup> October 22, 2015, New York Times Editorial, citing position of Law Enforcement Leaders ([lawenforcementleaders.org](http://lawenforcementleaders.org)).

<sup>3</sup> <http://www.whatcomcounty.us/DocumentCenter/Home/View/827>;  
<http://www.whatcomcounty.us/449/Background-Documents-on-Jail-Planning>;  
<http://www.whatcomcounty.us/449/Background-Documents-on-Jail-Planning>; and  
<http://www.nwcitizen.com/blog-entry/the-making-of-a-jail-crisis-part-two-stuff-it>

6. The absence of Whatcom County law enforcement training regarding alternatives to booking, as in Seattle's LEAD program, which has reduced recidivism by 25%;
7. The overcrowding is the result of the unlawful mass incarceration policies (including bail recommendation, sentence recommendation, and good time policies) of Whatcom County and the three mass incarceration proponents quoted in the Flyer (Louws, McEachran, and Elfo). WCC 1.28.100 requires, amongst other things, that Sheriff Elfo release inmates early or transfer them when it is overcrowded. Sheriff Elfo and Prosecutor McEachran are also the main architects of overcrowding and unsafe crisis of the jail.
8. The feel bad pictures of inmates sleeping on the floor and the absence of adequate space for a dayroom and other programs is not caused by the size of the jail, but rather by Whatcom County's mass incarceration policies;
9. The jail was deliberately and illegally overcrowded in order to manufacture a crisis that could be used to justify plans to increase Whatcom County's capacity to incarcerate 521 (or more) inmates at a time.
10. No Flyer space is devoted to facts supportive of static or reduced incarceration rates;
11. Whether the County has made a finding (or has relied upon any information or analysis) that its current mass incarceration policy, or the proposed incarceration ramp-up is (or is not) effective at achieving any public policy goals; and if so, what are the findings and information relied upon;
12. How much Whatcom County has spent planning and promoting the plan for a larger jail verses exploring the data, science, and societal benefit, and economic savings of alternatives to incarceration<sup>4</sup>;
13. How much of the local budgets go to incarceration verses incarceration alternatives;
14. The cost of building and maintaining the proposed jail;
15. The cost of building and maintaining a smaller jail;
16. The total amount of additional tax that will be collected over 30 years in the event the proposition is approved;
17. The economic impact of choosing mass incarceration over alternatives to incarceration;
18. The societal impact of choosing mass incarceration over alternatives to incarceration;
19. The lack of an analysis regarding the current make-up (and causes thereof) of the jail population in terms of race, economic status, conviction vs. non-conviction status (i.e. incarcerated because they can't afford bail or home monitoring), mental health status; number of people incarcerated for drug

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<sup>4</sup> In this Notice, "alternatives to incarceration" is defined as alternatives to pre booking and measures to reduce to incarceration (e.g. mental health services, "Ban the Box" law, etc.)



- possession, drug use, drug sales, and driving under the influence (or if such an analysis exists, the fact that it has not been shared with the public);
20. If the jail tax passes, all of Whatcom County's public safety tax for potentially 30 years will be earmarked for incarceration (that is, by law Whatcom County may not raise any additional tax to fund alternatives to incarceration for potentially 30 years);
  21. The exacerbation of the difficulty in finding funding for incarceration alternatives, and enhanced incarceration (as listed in the Flyer by Louws) caused by the proposed tax;
  22. There is no analysis regarding incarceration rate, or even information assisting the voters in deciding that they should incarcerate more, the same, or fewer people than they do already (e.g., whether they should incarcerate 523, 403, or whether they should reduce incarceration rates by 25% to 300).
  23. Even if the jail tax passes, agreement has not been reached for housing Bellingham's non-felony inmates; Bellingham has nearly half the population of the entire county; and the County has demanded Bellingham tax payers provide additional funds before the proposed jail would permit housing of Bellingham's non-felony inmates (beyond the roughly \$120,000,000 that will be raised by the proposed county tax);
  24. The fact that Whatcom County incarcerates people of color at 5 to 7 times the rate of whites;
  25. The fact that Whatcom County law enforcement have provided the public little or no analysis regarding the existence or reduction of its own systemic racism;
  26. The absence of racial bias training in Whatcom County law enforcement which is recommended by the federal government and has been proven effective in reducing racial bias;
  27. The absence of an explanation for who the additional 120 beds will be used to incarcerate (e.g., does the proposal allow Whatcom County to rent beds to the Federal Government to incarcerate people for immigration violations?);
  28. This voting period (ending November 3, 2015) was scheduled to occur two (2) months before the publically funded Whatcom County jail alternatives task force is scheduled to make recommendations; that is, if the proposed tax is passed, 30 years of taxation (roughly \$120,000,000) will be unavailable for alternatives to incarceration.
  29. The reason for building the jail in Ferndale, rather than the County's population center (Bellingham);
  30. As people of color we are concerned that the remote location of the proposed new, big jail would make the the concerns and potential abuses less visible, less transparent to the community, and easier for abuses and violations to be carried out. "Out of sight, out of mind."

31. The DOJ recommends jails be built next to county courthouses rather than in more remote areas to reduce cost and increase function;
32. The economic impact of building a jail away from the population center (Bellingham has nearly half of the County's population);
33. The County Executive (and jail proponent in the Flyer) Jack Louws' financial interest in having the jail built in the proposed location (especially regarding the sale of land under or near the planned site);<sup>5</sup>

To fall within the WAC 290.05.271 exception, public offices or agencies must make "facilities available on a nondiscriminatory, equal access basis for political uses or [make] an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency." Further, public funds or resources may only be expended if "the preparation and distribution of information is not for the purpose of influencing the outcome of an election." PDC Interpretation No. 04-02, Page 4. "Supervisory personnel have a duty to know, apply, and communicate to their staffs the difference between acceptable information activities and inappropriate promotional activities in support of local government ballot measures." *Id.* "[I]n no case will the PDC view a marketing or sales effort related to a campaign or election as normal and regular conduct." *Id.*, at 5.

The Washington Public Disclosure Commission (PDC) has advised, "Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used." January 12, 2015, Public Disclosure Commission Letter to Local Government Agency Officials from Tony Perkins, Acting Assistant Director, Re Election-Related Communications by Local Government Agencies ("January 12, 2015, PDC Letter"). "Such a presentation should also explain, in neutral, factual terms, the outcome anticipated if the proposition is rejected by voters." *Id.* "[A]n 'objective and fair presentation of the facts' must **avoid** . . . Overtly promotional or oppositional content (including inflammatory or emotionally-driven language; check marks and other indications of support; and gratuitous photos that tend to provoke an emotional reaction—e.g. an image of a body on an EMT stretcher, or a house exploding in flames)." *Id.* (emphasis in original).

" 'Objective and fair presentation of the facts' means that in addition to presenting the facts, the materials should present accurately the costs and other anticipated impacts of a ballot measure." (January 12, 2015 PDC letter) The Flyer uses official uniforms, equipment, and publications, the use of which is restricted in the January 12, 2015, letter.

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<sup>5</sup> NW Citizen article by Tip Johnson, <http://www.nwcitizen.com/entry/louwsy-jail-deal>.

The facts outlined in this notice, including 1 through 33, above, demonstrate reason to believe the foregoing legal requirements have not been met.

**B. The Flyer contains false statements, conflations, and gives the voters false impressions.**

The Flyer appears to be designed to be confusing as it related to existing incarceration alternatives and incarceration alternatives that would be funded by approving the proposed ballot measure. The Flyer makes false statements, conflations, and false impressions, including –

1. States that the Jail Facilities Sales and Use Tax is proposed in Whatcom County, Washington Proposition Number 1 (Proposition Number 1 is a different proposition on the ballot this year, which we feel is designed to dilute the ability of people of color to fairly participate in electing county government who represent their interests.<sup>6</sup> The Jail Facility Sales Tax was named as Proposition 1 not once, but twice, in two different ways, on the flyer-a false statement that was amplified and repeated on King 5 News on October 29. Nowhere on the flyer is it described correctly as Proposition 2015-1. Proposition 1 is supported by large-monied industries like the agricultural industry and coal industry; its passage would solidify power for the three elected officials Louws, Elfo, and McEachran, and their allies. This mislabeling cannot be dismissed as anything but intentional.)
2. Conflates safety and incarceration rates. We agree that the Whatcom County jail should be safe. But safety does not immediately mean building a bigger jail when and where the flyer describes.
3. Conflates the need for better jail conditions with the need for a bigger jail;
4. Uses emotional photos and graphic representations to create a false dichotomy (inhumane treatment or larger jail)
5. Implies that safety issues are due to the size of the jail;
6. Implies that increased incarceration is a natural, unavoidable, and even legally required, need ("State law requires...", "liability," "By law, Whatcom County requires...");
7. Consistent with Louws, McEachran, Elfo, and others' campaign to increase the size of the jail the Flyer manufactures a false choice: Treat people humanely and approve the proposal; or reject it, and treat people inhumanely;
8. States that the need for a new jail is "critical," while at the same time stating that the need has been critical since 1999, and that the estimated date for implementing the proposed solution is 3.5 years from now - Spring of 2019;

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<sup>6</sup> <https://aclu-wa.org/cases/montes-v-city-yakima>  
<https://www.aclu.org/news/federal-court-rules-yakimas-voting-system-violates-voting-rights-act>  
[http://www.yakimaherald.com/special\\_projects/aclu/](http://www.yakimaherald.com/special_projects/aclu/)

9. Implies, confuses, and misleads voters that this measure will also help fund the alternatives, cited in the Flyer;
10. Implies, confuses, and misleads voters that the jail tax will fund the behavioral health and treatment programs listed by Louws;
11. Implies, confuses, and misleads voters that there is existing funding for the behavioral health and treatment programs Louws lists, when the proposal will make funding for such programs more difficult if not impossible;
12. Implies, confuses, and misleads voters that the County funds incarceration and alternatives to incarceration nearly equally (\$12.3 and \$11.5 million, respectively); or alternatively, implies that if the jail tax is approved, the County will fund incarceration and alternatives to incarceration nearly equally (\$12.3 and \$11.5 million, respectively);
13. Implies, confuses, and misleads voters that the County has meaningfully examined its policies regarding incarceration rates;
14. Implies, confuses, and misleads voters that the County has examined alternatives to incarceration;
15. Implies, confuses, and misleads voters that there is evidence to support the need for increased incarceration;
16. States that the new jail is "centrally located";
17. States that there are ". . . no expansion options"
18. States that the "Cities and county agree. . ."

**C. The Flyer is not normal, customary, and regular conduct.**

The Flyer was created, in part, by the company hired by the County to provide "full design services" and "assistance in developing a coordinated message and developing graphics to support the message." According to Louws, the Flyer was specifically approved in a \$27,000+ funding measure passed by the County Council. The flyer is unusual, and unlike previous information mailed to voters on other issues, including other ballot initiatives.

Passage of a tax that maxes out the ability of the County to charge tax for public safety issues for 30 years is not a normal and regular event, and creation of the Flyer is not normal and regular conduct. Passage of Proposition 1, which will likely permanently reduce the voice of voters of color in County government is not normal and regular conduct.

Further, the County Executive who approved the Flyer has profited from sale of land next to or around the proposed jail.<sup>7</sup>

WAC 390-05-273 (Definition of normal and regular conduct) provides,

Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17A.555, means conduct which is (1) lawful,

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<sup>7</sup> NW Citizen article by Tip Johnson, <http://www.nwcitizen.com/entry/louwsy-jail-deal>

i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.

"The agency must be able to demonstrate that for other major policy issues facing the jurisdiction, the agency has customarily communicated with its residents in a manner similar to that undertaken for the ballot measure." PDC Interpretation No. 04-02, Page 5.

In the event communications other than a "jurisdiction-wide mailed "fact sheet," are used, . . . the agency must be able to demonstrate that . . . the method, format, and frequency is typical of how the agency routinely communicates with its audience." January 12, 2015, PDC Letter.

**D. The Flyer is an electioneering communication that identifies political candidates and supports local political campaigns without having been submitted to voters for approval.**

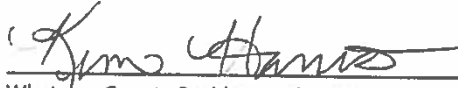
Louws and Elfo are running for re-election in this voting period. They are photographed and quoted in the Flyer as authorities on the subjects. The Flyer is designed to minimize and divert attention from their roles in creating the overcrowding situation.

RCW 42.17A.300(1)(b) provides, "Electioneering communications that identify political candidates for state, local, or judicial office and that are distributed sixty days before an election for those offices are intended to influence voters and the outcome of those elections."

RCW 42.17A.550 provides,

A county, city, town, or district that establishes a program to publicly finance local political campaigns may only use funds derived from local sources to fund the program. A local government must submit any proposal for public financing of local political campaigns to voters for their adoption and approval or rejection.

Kim Harris

A handwritten signature in black ink, appearing to read "Kim Harris", is written over a horizontal line.

Whatcom County Resident and voter,  
filed October 30, 2015, only on her own behalf  
(but also happens to be Steering Committee Member of the Bellingham Racial Justice Coalition)

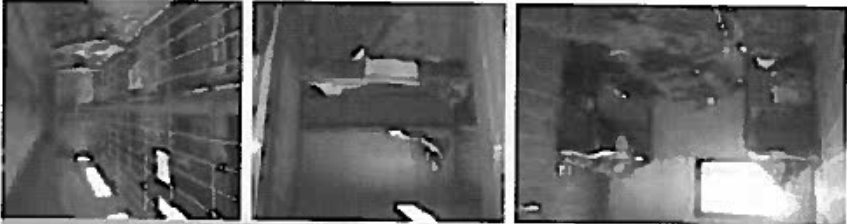
**Contact Information for Legal Representative:**

Edward Alexander  
Law Office of Edward S. Alexander  
114 West Magnolia, Suite 400  
Bellingham, WA 98225

360-392-2872

# EXHIBIT A

# WHATCOM COUNTY I/II



## Whatcom County Community Report



WHATCOM COUNTY  
311 GRAND STREET  
BELLINGHAM, WA 98225





## Existing Jail - Overcrowded and Unsafe



Sheriff Bill Elfo

"The existing jail has been overcrowded and unsafe for decades. Over time, conditions have grown increasingly worse. Eighteen years of reports, findings and analysis by professional consultants, jail-planners, engineers, fire safety officials, staff, the National Institute of Corrections and multiple citizen committees consistently highlighted compelling life-safety and liability issues. Also highlighted were the lack of space for behavioral health and other programming targeted at effective treatment and reducing recidivism. Given severe and unsustainable conditions within the jail that jeopardize staff, visitors and inmates alike as well as expose taxpayers to liability, the County cannot continue to operate the facility into the future at current population levels."



Proposed public entry to the jail.

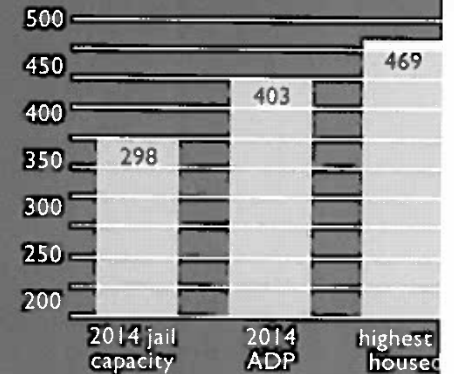
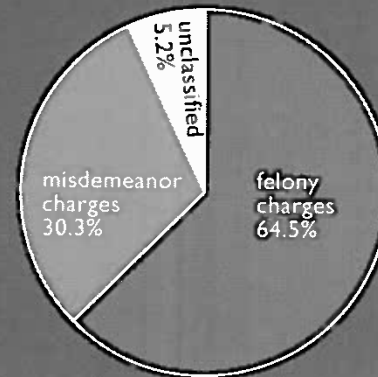
The County cannot continue to operate the facility into the future at current population levels.

Existing Whatcom County Jail has limited renovation and no expansion options.

The current jail was built in 1984 to house 148 inmates, remodelled to house 212. Total jail capacity, including interim jail on Division Street, is 298. The average daily jail population (ADP) in 2014 was 403. According to statewide comparison,

**Our jail population is at 137% percent of capacity, 4th highest in the state.**

By law, Whatcom County is required to accept all accused/convicted felons whose case originate in the entire County, including Bellingham, Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas.



**Occupy Jail**

ecnoing findings recommended by other citizen committees tasked to examine jail issues over the last two decades, including in 1999-2000, 2004 and 2008.

and other health issues. Additio counseling and classroom space education, literacy, substance ab and other training and treatmer

# Ballot Measure

COM COUNTY,  
NGTON PROPOSITION NUMBER 1  
ILITIES SALES AND USE TAX

hatcom County Council passed Resolution 2015-024 ning a proposition authorizing a sales and use tax facilities. This proposition would impose a sales tax of two tenths of one percent (20 cents for \$100) for constructing and operating jail facilities for s charged or convicted of misdemeanor and felony d for other public safety purposes, as authorized W 82.14.450. Half of this tax (10 cents for every would expire upon repayment of bonds issued to the facilities, no later than 30 years after issuance.

**If this proposition be:**

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## ent Sales Tax Rates Puget Sound Region

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The proposition before County vo would add sales and use tax at the of 0.2% for construction and oper: jail facilities, adult corrections prog including inmate mental health pro and for other public safety purpos as authorized by RCW 82.14.450.



State law requires the County to provide for a jail. The County Cou has determined the current jail do not meet existing and future needs:



If Proposition #1 passes, the Coun and participating cities will build a replacement jail on Labounty Roac in Ferndale, demolish the existing Prospect Street jail and construct facilities for inmate transfer at the County Courthouse. Construction a new jail facility will house felons misdemeanants plus space for beh: health, medical and administration



or eliminate our need to expand the proposed replacement jail. These behavioral health and treatment programs include:

- specialized training for public safety personnel;
- individual and community programs focused on prevention, treatment, intervention and family support programs;
- in-custody court/detention behavioral health services;
- community mental health and substance abuse treatment and opiate outreach;
- family treatment and mental health courts;
- homeless housing services;
- pre-arrest court probation specialized behavioral health unit;
- intensive case management, supportive housing, and the Rainbow Recovery Center;
- Veterans' relief services;
- a crisis triage center;
- behavioral health services;
- alternative programs, including electronic home monitoring, work release, and jail work crews.

## Targeted-for Alternatives

Alternative and Diversion Programs  
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Probation and Parole Programs  
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“One of the greatest challenges and frustrations within the current jail is the inability to provide adequate space for health services and programming.



*There are huge demands for services for all of the care the jail provides. The lack of clinic and counseling space*



Existing cell.



Existing shower room converted to cell.



Existing dayroom.



Existing inmate programs space.

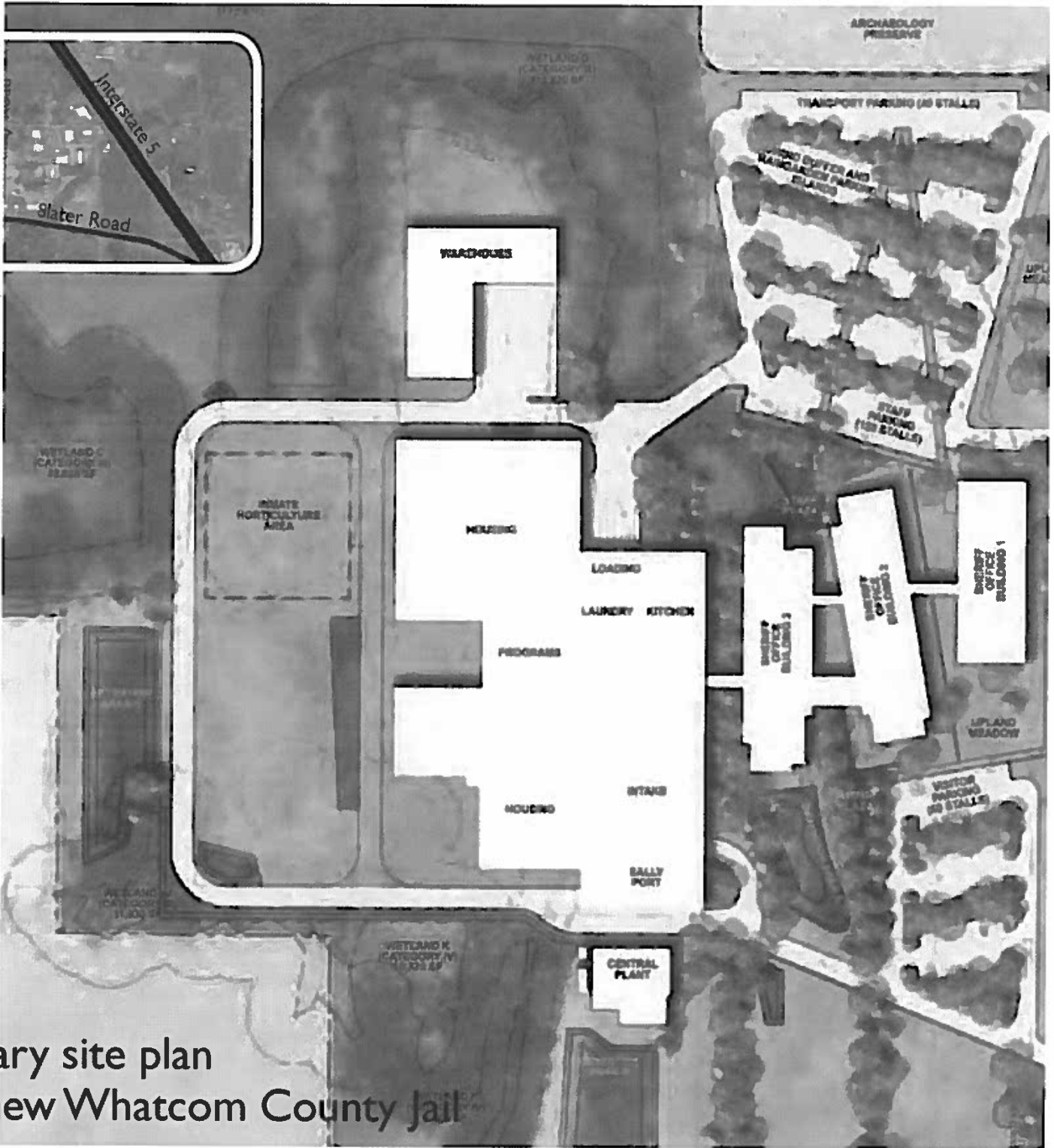


video visiting

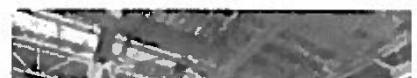


Central control room.

- Building site design to accommodate future growth.



ary site plan  
ew Whatcom County Jail



# EXHIBIT B

Mailers cost \$28,000, went only to registered voters

Some question use of taxpayer money, say only one side is presented

No complaint yet filed with state Public Disclosure Commission

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Cover of the Whatcom County Community Report sent to residents. Whatcom County  
Courtesy to The Bellingham Herald

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By Samantha Wohlfeil

The Bellingham Herald

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Some community members are furious about the county's use of public money to mail out information about a jail sales tax measure to registered voters.

The day before many households would start to see ballots arrive from the auditor's office, each household with at least one registered voter got a flier from the county labeled the "Whatcom County Community Report: Whatcom County Jail."

I said that has to be a phony mailer, it's a fraud, there's no way the county would send something you are describing. Ken Mann, Whatcom County Council member

The mailer presents pictures of the current and proposed Whatcom County Jail and talks about the proposal to pay for it with a 0.2 percent sales tax increase (20 cents per \$100 purchase). The mailer [contains information from the county, Whatcom County Executive Jack Louws, Sheriff Bill Elfo, and Prosecutor Dave McEachran](#), on four 11-by-17 glossy color pages.

A copy of it can be viewed on the county website, [co.whatcom.wa.us](http://co.whatcom.wa.us), by searching for "community report mailer."

The mailers cost \$28,452, [according to a county contract](#). The money came from a [2004 sales tax that voters passed to help pay for a new jail](#).

State law prohibits the expenditure of public money or use of public offices or spaces to campaign for a specific candidate or promotion of or opposition to any ballot proposition, with a few exceptions. The county claims it is allowed to send out one such mailer under state guidelines.

## First impressions

After opening their mail, some of the most vocal political players in the county took to social media to vent about the flier and question whether it violated state campaign rules.

Among them was Whatcom County Council member Ken Mann, who said he first learned of the fliers when an "irate constituent" called him to say they were upset county government would spend taxpayer dollars to lobby for increased taxes.

"When she described it to me, I said that has to be a phony mailer, it's a fraud, there's no way the county would send something you are describing," Mann said.

He was wrong.

In fact, whether they knew it or not at the time, Mann and the other six sitting council members unanimously approved the money for the fliers in September 2014 as part of an \$825,887 contract amendment with DLR Group, the consultant working on the jail. The contract included funding for public outreach, which included developing materials for presentations and mailers, among other tasks.

"My initial reaction was shock and dismay and finally outrage," Mann said. "I was further outraged that they would equate public outreach with a one-sided political propaganda piece during election season."

Mann said the council "never ever never never never" talked about sending a mailer out, and he thought there was no way the council would have approved that item had it gone before them.

It gives people information to decide whether or not they support it. I feel it follows the intent of the law. Jack Louws, Whatcom County executive

Doug Starcher, who helped write the statement against the jail sales tax measure for the Whatcom County voters' guide, said the mailer was a "despicable piece of misrepresentation."

Starcher questioned the use of pictures in the mailer, specifically images of overcrowded cells.

"The first question is did those prisoners give their permission for those photographs to be taken and used," he said. "The notion that those photographs are anything other than lobbying in favor of this tax, to try and represent anything else is ridiculous."



He also questioned the use of pictures of Louws and Elfo, who are both up for re-election.

"There's a picture of the County Executive, who is running for office, then it lands in people's mailboxes the day before or the day that their ballots arrive," Starcher said. "That looks a little sketchy to me."

Following the rules

On Friday morning, Oct. 16, Louws said the county followed the guidelines for such mailers as laid out by the state Public Disclosure Commission.

"We're following the PDC guidelines," he said. "I think it is a fact-based document."

The PDC used to offer to review mailers for compliance before they were sent out, but that program was cut in January this year, said Lori Anderson, a PDC spokeswoman.

The [county referenced a memo from the PDC in putting together the mailer](#). The executive's office, sheriff's office and prosecutor's office all worked to make sure the flier was fact-based and met the requirements, Louws said. The number of staff hours working on the flier was not specifically tracked.

The county cites a PDC interpretation as giving them "not only the right, but the responsibility" to "inform the general public of the operational and maintenance issues" and tells the county it may "distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure."

"This shows where we're at," Louws said. "It doesn't propose a position on it, but it does identify that we're putting it forward to the voters for reasons based on a jail task force and on a resolution the Whatcom County Council has passed."

When asked if he believed the flier was objective, Louws said, "It gives people information to decide whether or not they support it. I feel it follows the intent of the law."

Deputy Prosecuting Attorney Dan Gibson, who helped review the text of the flier, which was compiled by other staff, said those who worked on it had framed their work using similar types of fliers that had been used in other counties. One of those was a flier sent out in Skagit County when their new jail sales tax increase was on the ballot.

The title, Whatcom County Community Report, was similar to the title used in Skagit, Louws said.

"Whenever an informational flier is presented, you talk about what is the current situation," Gibson said. "People are providing factual information, and doing so obviously within a context. In this case, it's people who work within the facility describing it as it currently exists, and how it would exist if a new facility was constructed."

Mann said the legality of the flier wasn't important, but that it's a matter of principle.

"Whether you're a Republican or a Democrat or an independent, it's just so far over the line," Mann said. "Even if they found some loophole that they can claim this is legit, that does not make it right, and it does not make it ethical."

#### Additional concerns and complaint

It was too soon to tell if anyone would file a complaint with the PDC as of Friday afternoon, although several people said they were looking to see if they might have a case to do so.

Richard May, who served on the County Charter Review Commission, said he was most concerned about the title of the ballot measure used in the flier.

"In this mailed piece it says this is Proposition 1," May said. "The jail vote on the ballot is Proposition 2015-1. [Proposition 1 on the ballot is district-only voting.](#)"

People who follow politics closely and think about such issues all the time will be able to make that distinction, May said, but the majority of voters don't have a lot of time to do background research.

"If they get that piece of mail and say, 'Yes, I want to vote yes for the jail,' and it says in giant letters 'Proposition 1,' a single-issue voter may say 'I've got to make sure to vote yes for Proposition 1,'" May said. "That could boost the district-only vote by hundreds or even thousands of votes, so that's a huge issue."

When asked about the potential for mistaking the two similarly named propositions, Gibson said he didn't think it was an issue.

"I'm assuming that every voter reads the language of the proposition upon which they are voting," he said. "I think that's a fair assumption. The reason we put the language in there is so that people will read it."

What we want most is for people to be informed on the election and not confused on anything, including all of these (charter) amendments. Charlie Crabtree, Whatcom County Republicans chairman

Tanya Baumgart, who helped produce this year's Bellingham/Whatcom County League of Women Voters forums, said she was surprised to see the mailer as she thought the county was not allowed to send them out. She did not speak as a representative of the League, which has not taken a stance for or against the measure.

"I had to work with the PDC to make sure we were in compliance with their guidelines for our forums," Baumgart said. "The PDC gave me the example that basically any time the taxpayer monies are being used for printing fliers is kind of an illustration of something that violates PDC guidelines."

Though the flier isn't explicitly in favor of the ballot measure, Baumgart said, "it definitely gives the one side of the ballot measure but doesn't give the other side. There were both sides presented at our forums."

She said that what is included in the flier is reasonably accurate and it appears to be an educational piece, but questioned the fact that it was only sent to voters.

"So that's not just an educational piece for the community, it's a targeted mailing to voters," she said. "That gives me pause."

Charlie Crabtree, chair of the Whatcom County Republicans, said the Republicans had not been involved in the flier.

When asked about spending taxpayer money on the materials, Crabtree said the PDC states it needs to be used in the public interest, and educational fliers are allowed when school districts are putting out information on levies.

"At the same time, I think that's a heck of a lot of money," he said.

Crabtree said he believed the piece was meant to inform the public about what's on the ballot, and he would stand by the Republicans' endorsement for the jail measure, but said he could understand the concerns about spending taxpayer money.

"I can tell you there are a lot of conservatives worried about the jail costs, and probably this just adds to that, I don't know," Crabtree said. "But when it gets down to it, as far as the Republicans are concerned, what we want most is for people to be informed on the election and not confused on anything, including all of these (charter) amendments."

General election ballots are due to drop boxes or must be postmarked by Nov. 3.

*Reach Samantha Wohlfel at 360-715-2274 or*

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# EXHIBIT C



**WHATCOM COUNTY:**

**Approved as to form:**

By: *[Signature]* September 23, 2014  
Prosecuting Attorney Date

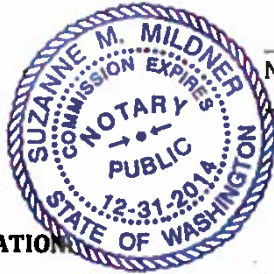
**Approved:**

Accepted for Whatcom County:

By: *[Signature]*  
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF WHATCOM )

On this 1<sup>st</sup> day of October 2014 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.



*Suzanne M. Mildner*  
NOTARY PUBLIC in and for the State of Washington, residing at *Bellingham*  
My commission expires 12-31-14

**DESIGNER INFORMATION:**

DLR Group  
Address:  
DLR Group  
51 University Street, Suite 600  
Seattle WA 98101  
Contact Name: Bill Valdez  
Contact Phone: (206) 461-6000  
Contact FAX: (206) 461-6049

## GENERAL CONDITIONS

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

#### **1.1.1 Scope of Services:**

The Designer agrees to provide to the County professional 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. The intent of the drawings and specifications is to include all items necessary for the proper execution and completion of the project: **Included in the base fees are Professional Services through schematic design inclusive of the Conditional Use Permit for Essential Public Facilities permitting process only.**

#### **1.2.1** Terms used in this Agreement shall have the meanings set forth unless otherwise provided herein, with the following specific terms defined as follows:

- .1** *Additional Services* refers to those services identified in Section 2.8 hereof.
- .2** *Agreement* refers to this executed contract between Owner and Designer.
- .3** *Construction Phase Services* refers to those services identified in Section 2.7 hereof.
- .4** *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.
- .5** *Design Consultant* is a qualified, licensed design professional who is not an employee of Designer, but is retained by Designer, or employed or retained by anyone under contract with Designer, to furnish design services required under the Contract Documents.
- .6** *Design Phase Services* refers to those services set forth in Sections 2.5 and 2.6 hereof.
- .7** *Design Schedule* refers to the schedule setting forth the dates by which Designer must perform the various Services required herein, consistent with the Project Schedule.
- .8** *Designer's Fee* shall refer to the compensation due Designer for the performance of the Services as set forth herein.
- .9** *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.
- .10** *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, or any Services.
- .11** *Owner's Project Criteria* are developed by or for Owner to describe Owner's program, requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements. Owner's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.



- .12 *Project Schedule* refers to the schedule setting forth the dates by which the various stages of both the design and construction of the Project must be performed so as to satisfy Designer's obligations to Owner.
- .13 *Site* is the land or premises on which the Project is located.
- .14 *Bases of Design* the intent is to provide a complete specification & drawing package. The intent of the complete package is to include all necessary items for the proper execution and completion of work; however, any item or detail not specifically mentioned in the specifications or shown on the drawings, but which is necessary to produce the intended results shall be included.
- .15 *Designer* is any person or entity retained by Owner as an independent Designer to perform a portion of the construction work for the Project and shall include materialmen and suppliers.
- .16 *Sub-Consultant* is any person or entity retained by a Designer as an independent Designer to perform any portion of the Designer's work and shall include materialmen and suppliers.
- .17 *Substantial Completion* is the date on which the Project, or an agreed upon portion of the Project, is sufficiently complete so that Owner can occupy and use the Project or a portion thereof for its intended purposes.
- .18 *Services* shall include all Design Phase Services, Construction Phase Services and Additional Services required by the Contract Documents or as may be authorized in writing by Owner.

### 1.3 Contract Documents

1.3.1 The Contract Documents, in addition to this Agreement, are comprised of the following:

- .1 All written modifications, amendments and change orders to this Agreement;
- .2 This Agreement, including all exhibits and attachments, executed by Owner and Designer;
- .3 Written Supplementary Conditions, if any, executed by Owner and Designer;
- .4 The design Schedule;

1.4.1 The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, this Agreement shall take precedence.

2.1.1 Designer shall, consistent with applicable state licensing laws, provide the Services, including architectural, engineering and other design professional services, as described in this Agreement and in accordance with the Contract Documents. Designer agrees that such Services shall be provided through qualified, licensed design professionals who are either (i) employed by Designer or (ii) procured by Designer from qualified, licensed Design Consultants.

2.1.2 Designer shall not engage the services of any Design Consultant without first obtaining the approval of Owner, which approval shall not be unreasonably withheld. Designer agrees that each Design Consultant shall be fully bound to Designer in the same manner as Designer is bound to Owner for all the requirements of the Contract Documents to the extent applicable to the Design Consultant's scope of services. Designer

shall at all times be responsible for the services performed by its Design Consultants, and shall coordinate the services of its Design Consultants to satisfy Designer's obligations under the Contract Documents. Nothing in this Agreement shall relieve Designer from responsibility for the services performed by its Design Consultants, or create any legal or contractual relationship between Owner and any Design Consultant.

- 2.1.3** If Owner or Owner Representative performs other work on the Project with separate design professionals under Owner's or Owner's Representative control, Designer agrees to reasonably cooperate and coordinate its activities with those of such separate design professionals so that the Project can be completed in an orderly and coordinated manner and without disruption.
- 2.1.4** Designer shall only communicate with Owner, Consultant(s), or Sub-Consultants through Owner unless the parties agree otherwise.
- 2.1.5** Within seven (7) days after execution of this Agreement, Owner and Designer will meet to discuss issues affecting the administration of the Services and to implement the necessary procedures, including but not limited to those relating to the schedule for the Services, schedule updates, review of submittals, and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents and allow Designer to meet its obligations to design the Project consistent with the Contract Documents, without compromising any professional obligations of Designer.

## **2.2 Standard of Care**

**2.2.1** The standard of care for all design professional services performed by Designer and its Design Consultants pursuant to this Agreement shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project for projects of similar size and complexity. Notwithstanding the preceding sentence, if the Agreement specifically identifies performance standards for the Services, Designer agrees that all such Services shall be performed to achieve such standards.

## **2.3 Legal Requirements**

- 2.3.1** Designer agrees to perform the Services in accordance with all applicable Legal Requirements.
- 2.3.2** Designer's Fee and/or the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Services. Such effects may include, without limitation, revisions Designer is required to make to the Construction Documents because of changes in Legal Requirements.
- 2.4.1** Designer agrees that the Key Personnel assigned to perform the Services shall be as listed in paragraph 2.4.2 below. Designer shall not change such personnel without prior written approval by the Owner.
- 2.4.2** Key Personnel. The following individuals/positions are considered KEY PERSONNEL.
  - Principal –
  - Project Architect –
  - Draftsperson –
  - Clerical –
- 2.5.2** Designer shall provide reasonable assistance to Owner in obtaining any permits, approvals, and licenses which are not Designer's obligation to obtain, but which are required for the construction of the Project.

**2.5.3** Designer shall make any revisions to the Construction Documents reasonably necessary to secure permits, approvals, and licenses, including those which have been denied for failure of the Construction Documents to meet Legal Requirements. If such revisions are necessary for reasons beyond the control of Designer or its Design Consultants, Designer shall be compensated for such revisions as a change to this Agreement.

## **2.6 Design Services**

**2.6.1** In accordance with the times set forth in the Design Schedule, Designer shall submit to Owner all interim design submissions and revisions required. Such design submissions shall be in the form and quantity called for in the Contract Documents and may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Owner and Designer agree that prior to the scheduled date for submitting all design submissions to Owner, Owner's Representative and Designer will hold meetings for the purpose of discussing and monitoring the design for consistency with the requirements of the Contract Documents, as well as Owner's pricing and other assumptions.

**2.6.2** In accordance with the Contract Documents and the times set forth in the Design Schedule, Designer shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Project. The Construction Documents shall be consistent with the latest set of interim design submissions; as such submissions may have been modified in a design review meeting. Designer shall provide the Construction Documents in the form and quantity called for in the Contract Documents; actual costs for the printing of these submission documents shall be paid for out of the reimbursable cost set forth in Exhibit "A", if available. Designer shall perform agreed upon revisions and submit revised Construction Documents to Owner for Owner's approval.

**2.6.3** Designer shall attend and participate in such meetings as are held between Owner and Designer to discuss interim design submissions and the Construction Documents. If requested, Designer shall identify during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Owner and provided to all attendees for review.

**2.6.4** In addition to the interim design submissions and the Construction Documents, Designer shall, if requested by Owner, prepare interim design submissions and Construction Documents the parties agree are required to permit commencement of construction on a portion of the Project before the entire Construction Documents for the Project are completed.

**2.6.5** Owner's approvals of interim design submissions and the Construction Documents are for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Contract Documents.

**2.6.6** Designer will, at its own cost, revise any interim design submission or the Construction Documents to correct any of its errors, mistakes or omissions. Designer shall also design to a Fixed Design Budget and, at its own cost, make such revisions as are required to achieve such budget, Any and all such revisions required of this paragraph shall be performed timely and so as not to jeopardize the Design Schedule and/or the Project Schedule. The expense of such revisions shall not be charged against the 5% contingency established in section 12.10.2

## **2.7 Construction Phase Services**

**2.7.1** Designer shall assist Owner in preparing bidding documents for specified portions of the Project's construction, and clarifying and responding to questions involving the bidding documents.

- 2.7.2** Designer shall timely provide requested clarifications and interpretations of the Construction Documents (often referred to as "RFI's"), which shall be consistent with the intent of, and reasonably inferable from, the Contract Documents. Designer shall make all revisions to the Construction Documents necessary for the proper construction of the Project. Such revisions will be accomplished at the Designer's expense if and to the extent necessitated by an ambiguity, error or omission of the Designer; all other revisions will be an Additional Service. Responses to RFI's, for whatever reason required shall be timely and shall not cause delays to the approved critical path schedule for the project.
- 2.7.3** Designer shall review and approve such submittals, including shop drawings, product data and samples, as may be required by the Design-Build Agreement or as reasonably required by the Owner. Such review shall be accomplished in accordance with the project schedule within the times for such review provided in the critical path schedule submitted by the Contractor and approved by the owner. The time within which Designer shall review and respond to submittals under will be discussed at the meeting provided in Section 2.1.5, but shall be finally established upon the approval of critical path for the construction of the project. Designer shall expeditiously inform Owner of any revisions that are necessary as a condition to Designer's approval of submittals. Designer's review and approval shall not relieve Contractor of responsibility for construction means and methods, or safety precautions. Except for performance based specification submittals, designer's approval will not apply to a change from the design shown in the Construction Documents unless the change is expressly noted as a change to the Construction Documents by clouding in the submittal.
- 2.7.4** Designer shall review, and if acceptable approve, any substitutions for materials or equipment proposed by Owner.
- 2.7.5** Designer shall, if requested by Owner, review any inspection reports or tests involving the construction of the Project and provide its comments to Owner. Designer is not responsible for the accuracy or completeness of the tests or inspections.
- 2.7.6** Designer shall at appropriate intervals visit the Site to determine in general if the construction is proceeding in accordance with the Construction Documents. Designer shall promptly notify Owner of any defects, deficiencies, deviations, omissions, or violations observed by Designer in the construction of the Project, and make recommendations to Owner on how to proceed. Designer and Designer's consultants shall visit the Site an average of once per month during the period of construction, or more as necessary to perform their professional duties under this Agreement.
- 2.7.7** Designer shall attend meetings with Owner, Contractors, and Consultants to discuss design issues which may arise during construction.
- 2.7.8** Designer shall provide such certifications as may be necessary relative to Substantial Completion.
- 2.7.9** Designer's provision of the Construction Phase Services shall not be construed to make Designer responsible for (i) the acts or omissions of Contractor, or any Sub-Contractors, (ii) the means, methods, sequences, and techniques of construction of the Project or (iii) safety precautions and programs in connection with the construction of the Project. Nothing in this Agreement shall create any duties to or legal or contractual relationship between Designer or any Contractor or Subcontractor. If the Owner authorizes deviations from the documents prepared by the Designer or its Consultants without written agreement of the Designer, the Owner shall indemnify, defend and hold harmless the Designer, its Consultants and their respective agents and employees from and against claims, damages, losses and expenses, arising out of or resulting from such deviations.

## **2.8 Additional Services**

**2.8.1** Additional Services, if any, agreed upon by the parties shall be compensated as set forth in Exhibit A or in an amendment to this Agreement. Additional Services are those services not specifically described as part of Services in this Agreement. Additional Services include, without limitation, making revisions to documents due to adjustments in the program, project budget, enactment of revisions to codes subsequent to the preparation of such documents and providing services required due to significant changes in the Project including, but not limited to: size, quality, complexity, construction cost, schedule or method of bidding or negotiation and contracting for construction. Additional Services will not include necessary modifications or corrections that were missed or miscalculated by the Designer.

### **Timely Reviews, Approvals and Submittals**

**3.1.1** Owner shall provide timely reviews and approvals of all interim design submissions and the Construction Documents consistent with the turnaround times set forth in the Design Schedule and the Design-Build Agreement, or as agreed to by the parties at the meeting required under Section 2.1.5 hereof.

**3.1.2** Owner shall, in the contract for construction, require Contractor to submit timely to Designer all submittals, including shop drawings, product data and samples, for Designer's review and approval consistent with the Project Schedule. Timely submittal means in accordance with the times noted in the submittal schedule included in the project critical path schedule for the project; (Standard two weeks for most submittals with a portion of the submittals required to be processed quicker) times to be agreed upon between Designer, Contractor and Owner when appropriate. Designer will provide a schedule of items to be submitted by Owner for Designer's review.

**3.1.3** Owner shall provide timely notice to Designer of any delays to the Project caused by Designer.

**3.1.4** Owner shall provide the following information and materials to Designer, unless otherwise agreed.

- .1** Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
- .2** Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
- .3** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Designer to perform the Services;
- .4** A legal description of the Site;
- .5** As-built and record drawings of any existing structures at the Site;
- .6** Environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site;
- .7** Owner's Project Criteria;
- .8** Test and inspection reports.

**3.4.1** If Designer's performance of the Services are delayed for any reason so as to impact the Design Schedule or the Project Schedule, Designer shall promptly notify Owner in writing of the cause(s) of such delay within sufficient time to permit Owner to provide timely notice to Contractors or Consultants. To the extent the delay is due to any negligent act, error or omission on the part of Designer, Design Consultants, or anyone for whom they are responsible, Designer shall compensate and indemnify Owner for all costs, damages, and expenses arising from such delay. If the delay is caused by Owner or others for whom Owner is responsible, the Designer's Fee and the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of the delay. If the delay is caused by Owner or other causes, the Designer's Fee and the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of the delay if and only to the extent Owner secures such compensation and time from the Owner.

**Section Numbers 3.4.2 through 6.1.0 are purposely omitted from this contract.**

**6.1.1** Designer's Fee shall be the compensation due Designer for the performance of the Services, including all Design Phase Services, Construction Phase Services, and Additional Services, and for Reimbursable Costs, all as set forth in this Agreement. Unless otherwise provided in the Contract Documents, the Designer's Fee is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

**6.1.2** Designer will be compensated for the Design Phase Services, Construction Phase Services, Additional Services, if any, and Reimbursable Costs as set forth in Exhibit A.

**6.2 Applications for Payment**

**6.2.1** Beginning with the first month after the Date of Commencement, Designer shall submit on a monthly basis for Owner's review and approval, Designer's certified Application for Payment requesting payment for all Services performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.5 hereof. Once approved, Owner will submit Designer's Application for Payment to Owner with Design- Builder's next application.

**6.2.2** The Application for Payment shall constitute Designer's representation that (i) the Services have been performed consistent with the Contract Documents, (ii) the Services have progressed to the point indicated in the Application for Payment, (iii) Design Consultants have been paid all amounts previously received by Designer on account of their services, and (iv) there are no claims, obligations or liens outstanding or unsatisfied for labor, services, taxes, or other items performed, furnished, or incurred for or in connection with the Services.

**6.2.3** Owner shall make payment on Designer's properly submitted and accurate Application for Payment within thirty (30) days after Owner's receipt of payment from Owner on account of Designer's monthly Application for Payment

At the time Designer submits its final Application for Payment to Owner, Designer shall provide (i) all deliverables required by the Contract Documents; (ii) an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for or in connection with the Services which will in any way affect Owner's or Owner's interests; (iii) a general release executed by Designer waiving, upon receipt of final payment by Designer, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment; and (iv) certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents. Owner shall make payment on Designer's properly submitted and accurate final Application for Payment within thirty (30) days after Owner's receipt of final payment from Owner on account of Designer's final Application for Payment, provided also that Designer has satisfied the requirements for final payment set forth herein.

**8.2.1** Designer designates the individual listed below as its Senior Representative ("Designer's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes:

Name: William Valdez  
 Title: Vice President, Principal  
 Address: 51 University Street, Suite 600  
 Seattle WA 98101  
 Telephone: (206) 461-6000

**9 Designer's Insurance Requirements**

**9.1.1** Prior to starting the Work, Designer shall procure, maintain and pay for such insurance as will protect against claims for bodily injury or death, or for damage to property (including loss of use) and loss or damage resulting from professional errors and omissions, which may arise out of operations by Designer or by any Design Consultants or by anyone employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall not be less than the greater of coverages and limits of liability specified below, any coverages and limits of liability specified in the Contract Documents or coverages and limits required by law.

**9.1.2** Designer shall procure and maintain the following minimum insurance coverages and limits of liability and provide proof of coverage by a Certificate of Insurance and endorsements and specifically name this County Project under the coverage:

<b>Workers' Compensation</b>		<b>Statutory Limits</b>
Employer's Liability	\$1,000,000 each	accident
	\$1,000,000 disease	policy limit
	\$1,000,000 disease	each employee
<b>Commercial General Liability</b>	\$2,000,000 each	occurrence
	\$2,000,000	aggregate (applicable on a per project basis)
<b>Comprehensive Automobile Liability</b>	\$2,000,000 each	accident
<b>Professional Errors and Omissions</b>	\$2,000,000 each	claim
	\$2,000,000 annual	aggregate

Commercial General Liability insurance required under this paragraph shall be written on an occurrence form (ISO Form CG 00 01 or equivalent) and, shall include coverage for Products/Completed Operations extending six (6) years after final acceptance of the Project by Owner or such longer period as the Contract Documents may require, **Provided, however that such coverage beyond three (3) years after final acceptance is available at a commercially reasonable price.** Owner agrees to compensate Designer for any added costs beyond commercially reasonable prices for the additional three (3) year period provided that Designer provides full and complete information about its insurance program costs and quotations., Broad Form Property Damage including Completed Operations, Personal Injury with Employment Exclusion (if any) deleted, Blanket XCU and Blanket Contractual Liability insurance applicable to Designer's defense and indemnity obligations under Article 10, and other contractual indemnities assumed by Designer under the Contract Documents. Commercial General Liability insurance shall include "stop gap" coverage for work in those states where Workers' Compensation insurance is provided through a state

fund if Employer's liability coverage is not available. Comprehensive Automobile Liability insurance required under this paragraph shall include coverage for all owned, hired and non-owned automobiles. Workers' Compensation coverage shall include a waiver of subrogation against Owner and Owner.

If the required Professional Errors and Omissions insurance is written on a claims made basis, the retroactive date shall be prior to the start of Designer's Work. If insurances are commercially available to obtain, Designer agrees to maintain such coverage for 6 years after final acceptance of the Project by the Owner or such longer period as the Contract Documents may require. Renewal policies during this period shall maintain the same retroactive date.

- 9.1.3** Employer's Liability, Commercial General Liability and Comprehensive Automobile Liability insurance may be arranged under single policies for full minimum limits required, or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy. The general aggregate on the Commercial General Liability coverage shall apply on a project specific basis.
- 9.1.4** Designer shall endorse its Commercial General Liability (including products/completed operations coverage): and Comprehensive Automobile Liability and Umbrella/Excess Liability policies to add Owner, and such other parties as Owner is required under the Contract Documents to name the County, officials, employees and agents as additional insureds on Designer's insurance, as "additional insureds" with respect to liability arising out of (a) operations performed for Owner or Owner's Representative by or for Designer, (b) acts or omissions of Owner or Owner's Representative in connection with their general supervision of operations by or for Designer, (c) Designer's use of Owner's tools and equipment, and (d) claims for bodily injury or death brought against Owner or Owner's Representative by Designer's employees or the employees of Designer's consultants of any tier, however caused, related to the performance of Services under this Agreement. Such insurance afforded to Owner, Owner, and others as additional insureds under Designer's policies shall be primary insurance and not excess over, and Owner's insurance shall be non-contributory. Designer's insurance waives all rights of subrogation.
- 9.1.5** Designer shall require its Design Consultants to procure and maintain, from insurance companies authorized to do business in the state in which the Project is located, the insurance coverages set forth in this Article.
- 9.1.7** Designer shall maintain in effect all insurance coverages required under this Article, or by the other Contract Documents, at Designer's sole expense and with insurance carriers licensed to do business in the State 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 Owner in writing. Deductibles or Self Insured Retention on any policies furnished for this project shall not be more than \$100,000 for each claim.
- 9.1.8** Prior to commencing any services hereunder, Designer shall provide Owner with Certificates and Endorsements evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled. Owner shall have the right to examine any policy required under this Agreement Copies of the complete insurance policies to be provided under this agreement shall be provided to Owner within seven (7) of the signing of this contract , which includes requests made by email.
- 9.1.9** All insurance policies shall contain a provision that coverages and limits afforded thereunder shall not be canceled, materially changed, non-renewed, or restrictive modifications added, without thirty (30) days prior written notice to Owner. Certificates of Insurance and Endorsements shall be filed with Owner prior to start of Designer's Work. Renewal Certificates and Endorsements shall be provided to Owner not less than ten (10) days prior to the expiration date of any of the required policies. All Certificates of Insurance and Endorsements shall be in a form acceptable to Owner and shall provide satisfactory evidence that



Designer has complied with all insurance requirements. Owner shall not be obligated to review such certificates or other evidence of insurance, or to advise Designer of any deficiencies in such documents, and receipt thereof shall not relieve Designer from, nor be deemed a waiver of Owner's right to enforce, the terms of Designer's obligations hereunder.

**9.1.10** The required minimum limits of insurance indicated above shall not in any way restrict or diminish Designer's liability under this Agreement. Owner's right to recover under insurance provided under this article shall not be limited by other portions of the agreement that limit the liability of any party to the proportion of its relative fault for the purpose of indemnification for certain types of claims.

**9.2 Waiver of Subrogation:** Designer and Designer's insurance waives all rights of subrogation.

**9.2.1** Designer and Owner waive against each other and Design Consultants, Owner's separate Designers, Consultants, Sub-Consultants, agents and employees of each and all of them, all damages covered by Builder's Risk insurance, except such rights as they may have to the proceeds of such insurance. Owner and Designer shall, where appropriate, require similar waivers of subrogation from Design Consultants and Consultants and shall require each of them to include similar waivers in their contracts.

### **10.1 Patent and Copyright Infringement**

**10.1.1** Designer shall defend any action or proceeding brought against Owner or Owner's Representative based on any claim that the Project, or any part thereof, or the operation or use of the Project or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Designer of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Designer shall indemnify and hold harmless Owner and Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Owner's Representative in any such action or proceeding. Designer agrees to keep Owner informed of all developments in the defense of such actions.

**10.1.2** If Owner is enjoined from the operation or use of the Project, or any part thereof, as the result of any such patent or copyright suit, claim, or proceeding, Designer shall at its sole expense take reasonable steps to procure the Owner's right to operate or use the Project, or applicable part thereof. If Designer cannot so procure such right within a reasonable time, Designer shall promptly, at Designer's option and at Designer's expense, (i) modify the Project, or applicable part thereof, so as to avoid infringement of any patents, or copyrights, or (ii) replace said work with work that does not infringe or violate any such patent or copyright, and is consistent with the Contract Documents.

**10.1.3** Sections 10.1.1 and 10.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner or Owner's Representative and not offered or recommended by Designer to Owner or Owner's Representative; or (ii) arising from modifications to the Project by Owner or Owner's Representative after acceptance of the Project. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Designer to the same extent Designer is obligated to defend, indemnify and hold harmless Owner in Section 10.1 . 1 above.

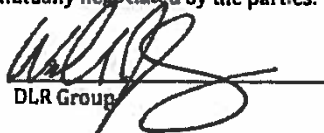
**10.1.4** The obligations set forth in this Section 10.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or

**11.1 Designer's General Indemnification Responsibilities**

**11.2.1 Indemnification by Designer.** To the fullest extent permitted by law, the Designer 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 which 1) are caused in whole or in part by the negligent act or omission, of the Designer its employees, agents or volunteers or Designer's subcontractors or consultants 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 Designer or its subcontractors' or consultants' use of, presence upon or proximity to the property of the County. In the event of the concurrent negligence of the Designer, its subcontractors, consultants', employees or agents, and the County, its employees or agents, this indemnification obligation of the Owner shall be valid and enforceable only to the extent of the negligence of the Designer, its subcontractors, consultants', employees and agents.

If Whatcom County is required to resort to litigation or arbitration to enforce Designer's Indemnification and Defense obligations it shall be entitled to recover its reasonable costs of establishing its right to indemnity including but not limited to all costs, expenses, arbitration filing fees, arbitrator's fees, and attorney fees.

This indemnification obligation of the Designer 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 Designer hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the Designer are a material inducement to County to enter into this Agreement, are reflected in the Designer's compensation, and have been mutually negotiated by the parties.

  
DLR Group

  
Whatcom County

**Participation by County - No Waiver.** 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 Designer's indemnity obligations under this Agreement.

**Survival of Designer's Indemnity Obligations.** The Designer agrees all Designer's indemnity obligations shall survive the completion, expiration or termination of this Agreement.

**Indemnity by Subcontractors.** In the event the Designer enters into subcontracts to the extent allowed under this Agreement, the Designer's subcontractors shall indemnify the County on a basis equal to or exceeding Designer's indemnity obligations to the County and subcontractors shall provide proof of insurance verifying this condition.

**11.2.2** If an employee of Designer, anyone employed directly or indirectly by Designer or anyone for whose acts any of them may be liable has a claim against any party indemnified pursuant to Section 11.2.1 above, Designer's indemnity obligation set forth in Section 11.2.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Designer, or other entity under any employee benefit acts, including workers' compensation or disability acts.

**11.2.3** Designer agrees to procure, maintain and pay for such general liability insurance coverage and endorsements as will insure the provisions for this paragraph.

**11.6 Duty to Continue Performance**

**11.6.1** Unless provided to the contrary in the Contract Documents, Designer shall continue to perform the Services and Owner shall continue to satisfy its payment obligations to Designer, pending the final resolution of any dispute or disagreement between Owner and Designer.

**11.7** Owner Design and Construction Contingency. Owner shall establish a contingency amount equal to Three Per Cent (3%) of the construction contract amount between Owner and Contractor for the project. This contingency shall be part of the contract sum between Owner and Contractor. This contingency may be expended, at the sole discretion of Owner, on (1) Unknown or changed conditions, (2) design clarifications or modifications, (3) Contractor claims, including correction of work because of design errors, ambiguities, omissions. (4) changes required because of Requests for Information (RFI's). (5) cost overruns in construction.

**Provided** that such contingency shall not be used by reason of any correction or amendment of Designer-Created documents for the project as part of the design or bidding process, but rather only after the owner has executed a Construction agreement with the Contractor.

**12.1 Assignment**

**12.1.1** Neither Designer nor Owner shall, without the written consent of the other, assign, transfer or sublet any portion or part of the Services or the obligations required by the Contract Documents.

**12.2 Successorship**

**12.2.1** Owner and Designer intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

**12.3 Governing Law, Venue**

**12.3.1** This Agreement and all Contract Documents shall be governed by the laws of the State of Washington.

**12.3.2** The Venue of any action in court or of any alternative disputes procedures, including, but not limited to arbitration proceedings, if any shall be in Whatcom County, Washington.

**12.4 Severability**

**12.4.1** If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements or court order, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

**12.5.1** The failure of either Owner or Designer to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

## **12.6 Headings**

**12.6.1** The headings used in this Agreement or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

## **12.7 Notice**

**12.7.1** Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in this Agreement or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the number of the intended recipient.

## **12.8 Amendments**

**12.8.1** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

## **12.9 Survival**

**12.9.1** Designer's obligations under this Agreement shall not be released, and shall specifically survive, the completion of all Services hereunder, final payment to Designer, and the termination of this Agreement for any reason.

## **12.10 No Release of Information for Advertising and Promotion**

**12.10.1** Designer shall not publish, release, disclose or announce to any member of the public, press, official body or any other third party any information concerning this Agreement, or any part thereof, without the prior written consent of Owner and/or Owner's Representative, except as required by law. Neither the names of Owner or Owner's Representative, nor of the site, shall be used in any advertising or other promotional context by Designer without the prior written consent of Owner and/or Owner's Representative.

**2 Design Contingency.** It is understood and agreed that the nature of the design process is such that plans, specifications and other documentation prepared by or related services performed by Designer under this agreement will contain errors, omissions, conflicts, ambiguities or design uncertainties requiring clarifications, corrections or modification. Accordingly, the Owner agrees to establish a design contingency equal to 2% of the cost of the work in addition to the construction contingency provided in section 11.7. Such design contingency shall be utilized for the cost attributed to errors, omissions, conflicts, ambiguities or design uncertainties, excluding any improvements or betterments costs implemented by the Owner. Costs incurred by the Owner, excluding any improvements or betterment cost, in excess of this design contingency shall be the responsibility of Designer, but only to the extent caused by the Designer and its SubConsultants, negligent acts, errors, or omissions in the performance of services under this agreement. Any cost over the 2% contingency for negligent errors, omissions, conflicts, ambiguities or design uncertainties requiring clarifications, corrections or modification will be paid by Designer.

### **12.11.1 Termination for Default:**

If the Designer 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 Designer 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 Designer'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 Designer 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 Designer. The Designer 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.

**12.11.2 Termination for Reduction in Funding: Not Applicable**

**12.11.3 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 Designer shall be entitled to payment for actual work acceptably performed for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, and shall be based upon the Designer's provable costs directly allocable this contract, 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. If any termination for cause is determined by any forum to have been wrongful, in that case it shall be converted to a termination for Public Convenience and Designer shall be compensated under the terms of this Section.

***Series 20-29: Provisions Related to Consideration and Payments***

**20.1 Accounting and Payment for Designer Services:**

Payment to the Designer 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 Designer for any costs or expenses incurred by the Designer in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Designer, 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 Designer understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Designer authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Designer 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 Designer to make the necessary estimated tax payments throughout the year, if any, and the Designer is solely liable for any tax obligation arising from the Designer's performance of this Agreement. The Designer hereby agrees to indemnify the County against any demand to pay taxes arising from the Designer'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 Designer must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Designer'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 Designer 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 Designer 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 Designer to termination or damages, provided that the County promptly gives notice in writing to the Designer 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 Designer 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 Designer 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 Designer, (3) to set off any amount so paid or incurred from amounts due or to become due the Designer. In the event the Designer obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Designer by reason of good faith withholding by the County under this clause.

**23.1 Labor Standards:**

The Designer agrees to comply with state and federal requirements, as applicable, 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 Designer:**

The Designer's services shall be furnished by the Designer as an independent Designer, 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 Designer as an independent Designer.

The Designer acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Designer 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 Designer 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.

Designer 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 Designer. 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.

**31.1 Ownership of Items Produced:**

When the Designer creates any copyrightable materials or invents any patentable property, the Designer 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. Designer further agrees to make research, notes, and other work products produced in the performance of this Agreement available to the County upon request.

**32.1 Confidentiality:**

The Designer, its employees, SubConsultants, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Designer 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. Designer shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Designer 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 Designer'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 Designer 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. Designer 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 Designer, then the Designer agrees to notify the Administrative Officer as soon as it is practical.

**34.2 Industrial Insurance Waiver:**

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

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

**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 Designer 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 Designer is governed by such laws, the Designer 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, sexual orientation, age, marital status, 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 Designer 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 Consultant, provided that the foregoing provision shall not apply to contracts or Consultants for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

**35.2 Non-Discrimination in Client Services: Not Applicable**

**36.1 Waiver of Noncompetition: Not Applicable**

**36.2 Conflict of Interest:**

If at any time prior to commencement of, or during the term of this Agreement, Designer 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 Designer 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 Designer 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 Designer 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 Designer 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 Russell, Facilities Manager  
Whatcom County Facilities Management  
316 Lottie Street  
Bellingham, WA 98225  
(360) 676-6746

**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 Designer to the County's Administrative Officer under this Agreement. Notice to the Designer for all purposes under this Agreement shall be given to the address provided by the Designer herein above in the "Designer Information" section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

***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 Designer Commitments, Warranties and Representations:** Not Applicable

**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: consultant**

a. General:

All disputes or differences between the Designer and the County, arising under or related to this agreement or any additional services, 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 Designer 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 Designer 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 Designer 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. Designer 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 Designer 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 Designer 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 and all claims, 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 then current American Arbitration Association (AAA) Construction Industry rules in effect on the date hereof, as modified by this Agreement. The parties may elect to provide for administration of the arbitration by other than the AAA. 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 Washington State substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, including expenses, costs and attorney fees to the prevailing party and pre-award interest, if provided by statute but shall not have the power to award punitive damages. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in the Superior Court for the State of Washington, in Whatcom County. 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 or be considered a condition precedent to arbitration.

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

**43.1 Venue and Choice of Law:**

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

**44.1 Survival:**

The provisions of paragraphs 11.1, 11.2, 11.3 , 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

**45.1 Entire Agreement:**

*This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.*

**EXHIBIT A**  
**SCOPE OF WORK**

The scope of services for the requested authorized modifications is for the portion of professional services through schematic design inclusive of the CUP for EPF permitting process only. It is anticipated that once the project is funded following a successful August 2015 funding election that the balance of professional services will be authorized.

Based on the CUP for EPF application checklist and the permitting meeting (May 22, 2014) with the City of Ferndale the following is the understanding of the scope of work:

1. Schematic Design Process and Stakeholder Meetings to a level of effort (Roughly 60% Schematic Design) that allows for the development of a singular design concept and solution. Scope of the Schematic Design Services is outlined in the following section.
2. This portion of the Schematic Design Process results in the following permit applications that will be completed and submitted to the authorities having jurisdiction (AHJ) by A/E with the assistance of Whatcom County:
  - a. Master Application
  - b. CUP for EPF
  - c. Eagle Compliance Check List (As stipulated in the CUP for EPF)
  - d. Encroachment Permit Application
  - e. Planning Application
  - f. Shoreline Management Application
  - g. Site Plan Application
  - h. Civil Plan Applications
    - i. Sanitary Sewer Application – Ferndale
    - ii. Storm Sewer Application – Ferndale
    - iii. Water Application – Ferndale
    - iv. Wetland Mitigation – Ferndale & USACE
3. Stakeholder meetings, executive team meetings, design team meetings, Council presentations and public meetings as needed as a course of the schematic design process and permit applications stated above.
4. Schematic Design Cost Estimates of MACC (Maximum Allowed Construction Cost) and Whole Project Cost of the singular design solution to confirm the project is on Budget
5. Development of Project Schedule inclusive of public funding process
6. Provide public outreach and support including schematic design graphics, coordination with public outreach committee, and attend public presentations.
7. Traffic Consultant
8. Site Survey
9. Geotechnical Engineering – Infiltration & Groundwater Testing, Preload Requirements, Soil Bearing Properties.
10. Geotechnical Engineering – Geothermal Conductivity Analysis.

### **Schematic Design Services**

In the Schematic Design Phase, the Architect/Engineer (A/E) provides those services necessary to prepare Schematic Design Documents consisting of drawings and other documents illustrating the general scope, scale, and relationship of project components for approval by the agency. Design should be conceptual in character, based on the requirements developed during the Predesign Phase, approved by the agency, or program requirements provided by the agency and reviewed and agreed upon by the A/E. Schematic Design includes the following:

#### **Project Administration**

Services consisting of schematic design administrative functions including consultation, meetings and correspondence, and progress design review conferences.

#### **Disciplines Coordination**

Coordination between the architectural work and engineering work and other involved consultants for the project. When specialty consultants are used, additional coordination beyond basic services may be required and negotiated for appropriate phases of the work.

#### **Document Checking**

Review and coordination of project documents

#### **Consulting Permitting Authority**

Consultations, research of critical applicable regulations, preparation of written and graphic explanatory materials. The services apply to applicable laws, statutes, regulations and codes.

#### **Data Coordination User Agency**

Review and coordination of data furnished for the project by the agency

#### **Architectural Design**

Services responding to scope of work (program /predesign) requirements and consisting of preparation of conceptual site and building plans, schematic sections and elevations, preliminary selection of buildings systems and materials, development of approximate dimensions, areas and volumes.

#### **Structural Design**

Services consisting of recommendations regarding basic structural material and systems, analysis, and development of conceptual design solutions.

#### **Mechanical Design**

Services consisting of consideration for alternate materials, systems and equipment , and development of conceptual design solutions for energy sources/conservation, heating, ventilating and air conditioning (HVAC), plumbing, fire protection, and general space requirements.

#### **Electrical Design**

Services consisting of consideration of alternate systems, recommendations regarding basic electrical materials, systems and equipment, analysis, and development of conceptual design solutions for power service and distribution, lighting, communication raceways, fire detection and alarms, and general space requirements.

#### **Civil/Site Design**

Services consisting of site planning including layout of site features, building position, preliminary grading, location of paving for walkways, driveways and parking, and fencing locations. Also included are the normal connections required to service the building such as water, drainage, and sanitary systems, if applicable.

#### **Civil and Site Development**

- All permit applications will be prepared by the Design Team. The OWNER will develop the actual permit application and required reports and pay all permit processing fees. This is inclusive of the Conditional Use Permit for Essential Public Facility siting process, and City Planning permit.
- Identify local stormwater control agency, document restrictions as they pertain to the proposed project, define permitting requirements; identify any local public work standards as they pertain to roads, stormwater, sewer etc.; any local restriction regarding dust control, demolition, construction traffic/noise, excess earthwork disposal, any existing floodplain restrictions, etc.
- Civil Engineers will confirm adequacy of topographical and boundary mapping provided by surveyors. A/E team will evaluate legal, ownership, permitting and zoning constraints. Identify environmentally sensitive areas such as wetlands, flood plains, known hazardous waste areas, etc.
- Develop and validate site layout. This will include activities such as: (1) determine structure size, locations, and orientation; (2) layout roadways/truck access corridors and define maneuvering requirements (design vehicle); (3) size and locate parking lots for employees and visitors to the facility; (4) determine emergency vehicle access requirements. (5) evaluate flood plain impacts and constraints; (6) local stormwater management facilities (GSI and LID) (7) locate utility, piping, and duct bank (electrical, communications, and fiber) corridors (horizontal and vertical).
- Civil Engineers will coordinate with surveyors; define surveyors' scope of work; coordinate with geotechnical engineers on additional boring locations; record boring locations on site drawings.
- Develop preliminary erosion control plan for project. Determine if erosion control ponds are required; locate ponds on site plan drawings as required. Prepare preliminary storm water calculations suitable for submission to local site permitting authorities. Develop preliminary storm water control concepts (swales, curb and gutter). Meet with local storm water and erosion and sediment control agency to determine permitting requirements for site plans, and impact of requirements on preparation of contract documents. Document findings.
- Set preliminary finished floor levels for new structures. Establish preliminary finished grades; overall major surfaces, road profiles, etc. Iterate preliminary surfaces and structures to optimize earthwork if necessary.
- Perform preliminary sizing calculations
- Prepare a list of required technical specification.
- Perform ongoing design coordination with other design disciplines.
- Perform quantity take-offs of civil elements for inclusion in the schematic design cost estimate.
- Review and revise LEED and EAGLE checklist.
- Review concepts and draft work products with and seek approval from quality control reviewer.

#### **Offsite Civil Schematic Design**

- Develop preliminary erosion control plan for offsite work
- Develop LaBounty Road frontage improvements, channelization, and paving sections
- Perform ongoing design coordination with other design disciplines.

- Perform quantity take-offs of civil elements for inclusion in the schematic design cost estimate
- Review concepts and draft work products with and seek approval from quality control reviewer.
- Wetland Mitigation and Remediation. Provide mitigation and planning and design services to compensate for up to 3 acres of unavoidable impact sot wetlands.

**Design Field Surveying:**

- Design Field Surveying , Topographic Surveys, Property Boundary and Right of Way Surveys, Offsite Survey Support, Basemap and Design Plan Production.

**Cost Estimating**

Services consisting of development of a probably construction cost from quantity surveys and unit costs of building elements for the project. Costs shall reflect the level of design elements presented in the Schematic Design documents, plus appropriate design contingencies to encompass unidentified scope ultimately included in the program. Assist user agency with analyzing scope, schedule, and budget options to stay within the MACC.

**Presentations**

Service consisting of appropriate presentation(s) of the CUP for EPF documents by the A/E to agency representatives.

**Materials Research**

Services consisting of identification of potential of architectural materials, systems, and equipment as required by the CUP for EPF application process.

**Scheduling**

Services consisting of reviewing and updating previously established project schedules or initial development of schedules for decision-making, design and documentation.

**Public Outreach**

Provide public outreach and support on an as needed hourly not to exceed basis. Scope of services will accommodate approximately 500 man hours to public outreach expertise and support services.

- Assistance in developing a coordinated message and developing graphics to support the message. Graphics include images of existing facilities that illustrate intent of the Whatcom County Jail, and rendering of the facility on a site.
- Perform 3<sup>rd</sup> party community polling of the community issues
- Anticipate attending 2 Council meetings as part of the development of the community outreach process
- Anticipate attending 6 public outreach steering committee meetings as part of the development of the community outreach process.
- Supporting the public outreach steering committee in developing materials for presentations and mailers.
- Participate as a technical resource to the County for presentations to support organizations and public information meetings as part of the communication plan.

**EXHIBIT B  
(COMPENSATION)**

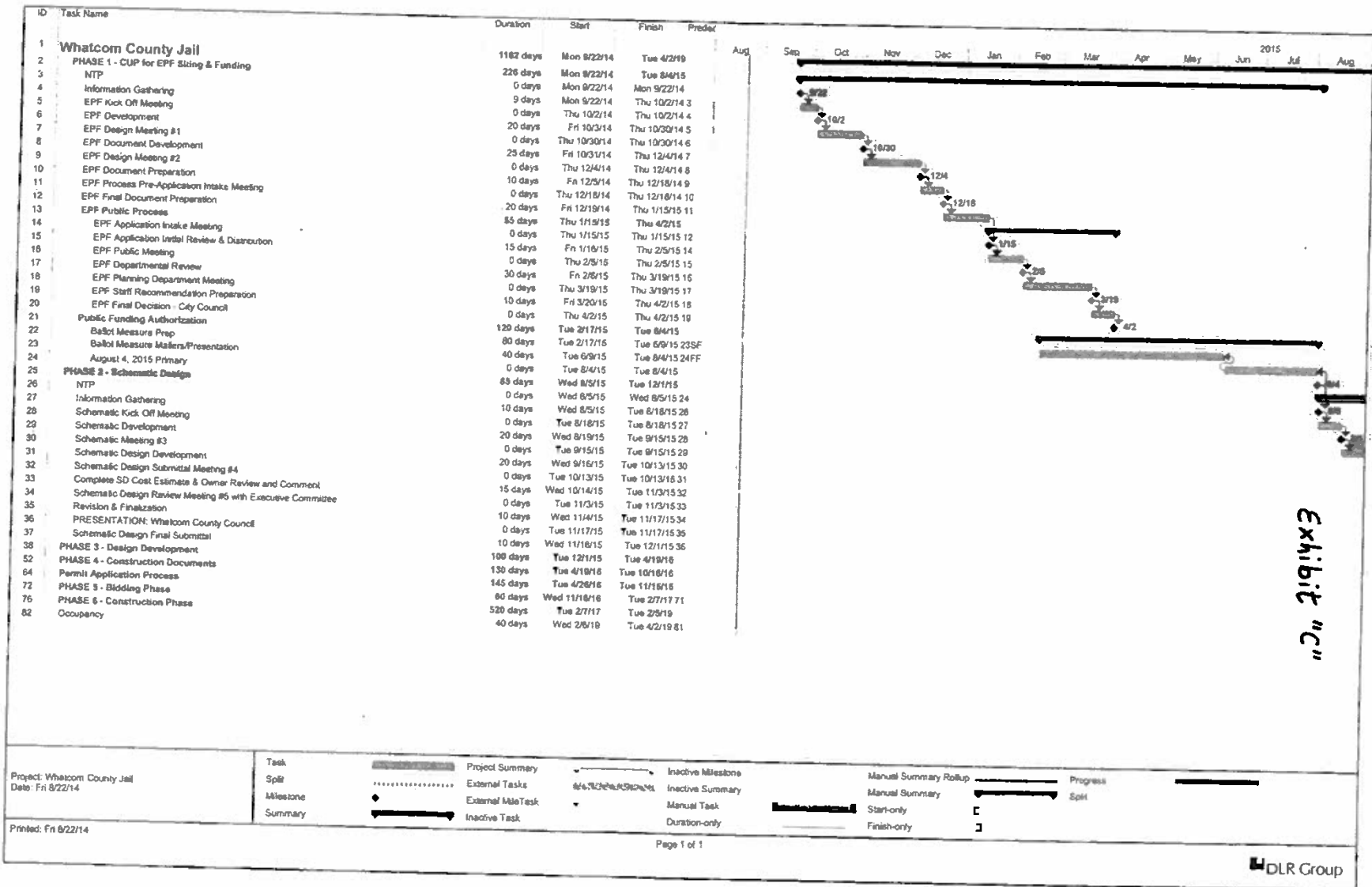
As consideration for the services provided pursuant to Exhibit A, Scope of work allowable expenses, the county agrees to compensate the Designer according to the fee schedule provided. Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed. Mileage at IRS rate, lodging and per diem at a rate not to exceed the GSA rate for location where services were provided. 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. Other expenditures such as printing, postage and telephone charges shall be reimbursed at actual cost plus 10%. 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 Designer's expense.

The Contract Number, set forth, shall be included on all billings or correspondence in connection therewith. The Consultant may bill the County progressively not more than once per month (30 days). Progressive billings will be for the amount of work complete.

		<b>SD Phase – CUP for EPF ONLY</b>	<b>Remaining DS to PC Phase (if approved)</b>
1	Space Programming and Pre-Design Services (Completed)	\$0	\$0
2	Design Project Administration & Project Management Fee	\$33,595	\$397,097
3	Architectural Design Fee	\$134,376	\$1,588,388
4	Structural Engineering Design Fee	\$53,750	\$635,355
5	Mechanical Engineering Design Fee	\$80,625	\$953,033
6	Electrical Engineering Design Fee	\$33,594	\$397,097
7	"Engineers" Cost Estimating Services for EPF Process	Included	N/A
8	Cost Estimating Services (SD, DD& CD Phases) includes VE & Bid Assistance	\$0	\$119,000
9	Life Cycle Analysis	\$0	\$40,000
10	On Site CA Phase Representation (Basic Services includes Bi-monthly. Addition Services would result in weekly	N/A	\$93,600
11	Renderings & Models	Included	Included
12	Interiors, Furnishings, FF&E, U.S. Communities Program (Design & Purchasing Schedule Only)	\$0	\$276,000
13	Detention & Courts Electronic Systems & Security Design	\$4,000	\$456,000
14	Kitchen & Laundry Consulting Design Services	\$0	\$49,400
15	Participation in Commissioning, Program Managed by Others	\$0	\$80,000
16	LEED Certification Documentation Process	\$10,000	\$90,000
17	Civic Engineering Consultant; Wetlands, On-Site & Partial Off-Site CUP for EPF includes Task 2, 3, & 7.1, 7.2, & 7.3	\$136,707	\$534,950
18	Landscape, Hardscape, Community Integration Consultant	\$61,510	\$323,071
19	Traffic Consulting	\$7,500	\$0
20	Civil Engineering Consultant; Site Survey – Task 8	\$43,142	\$0
21	Geotechnical Engineering - Infiltration & groundwater testing, Preload Requirements, Soil Bearing Properties	\$77,185	\$0
22	Geotechnical Engineering – Geothermal Conductivity Analysis	\$35,313	\$0
	<b>Subtotal Professional Lump Sum Services</b>	<b>\$711,297</b>	<b>\$6,032,990</b>
23	Reimbursable Costs, Design Printing, Mailing. Note: Bid set printing is by Owner	\$28,452	\$241,320



24	Public Outreach – As Needed Hourly, Not to Exceed	\$86,138	\$0
<b>Services by Others, not included in DLR Group contract scope unless designated to (continued):</b>			
25	Independent Commissioning Agent (Owner's consultant)		
26	LEED Certification Fee (Owner project cost)		
27	Interior Furnishings, FF&E, U.S. Communities Program (Purchasing & Installation by Owner)		
28	Testing and Balancing (Owner project cost)		
29	Hazardous Materials Study & Abatement (Owner project cost)		
30	Preload Monitoring (Owner project cost)		
31	Materials Testing (Owner project cost)		
32	Roofing Consultant (Owner project cost)		
	<b>Grand Total Design Services – This Contract</b>	<b>\$825,887</b>	<b>\$6,274,310</b>



Project: Whatcom County Jail  
Date: Fri 8/22/14

Task		Project Summary		Inactive Milestone		Manual Summary Rollup		Progress	
Split		External Tasks		Inactive Summary		Manual Summary		Split	
Milestone		External MileTask		Manual Task		Start-only			
Summary		Inactive Task		Duration-only		Finish-only			

Printed: Fri 8/22/14

**NOTICE OF CIVIL RIGHTS VIOLATIONS AND NOTICE OF REASON TO BELIEVE  
RCW 42.17A IS BEING OR HAS BEEN VIOLATED**

Via Email and Regular Mail, [REDACTED]

- TO: Washington Attorney General Bob Ferguson  
1125 Washington St SE  
PO Box 40100  
Olympia, WA 98504
- TO: Whatcom County Prosecutor, David S. McEachran (Hand  
311 Grand Avenue, Suite 201  
Bellingham, WA 98225
- TO: Public Disclosure Commission  
711 Capital Way #206  
PO Box 40908  
Olympia, WA 98504-0908

Pursuant to RCW 42.17A, be advised of the following civil rights violations and reasons to believe RCW 42.17A is being or has been violated.

The flyer attached hereto as **Exhibit A** ("Flyer") was mailed to select registered Whatcom County voters for the promotion of Whatcom County Ballot Proposition No. 1, and Whatcom County Proposition No. 2015-1 and for the purpose of assisting a campaign for the election to public office. This Notice incorporates the facts reported in the October 15, 2015, Bellingham Herald Article (*Whatcom County uses tax revenue to send mailer about jail tax measure*), attached hereto as **Exhibit B**. Whatcom County, Whatcom County Executive Jack Louws, Whatcom County Prosecutor Dave McEachran, and Whatcom County Sheriff Bill Elfo, and other unknown individuals used funds and facilities of a public office or agency, or agencies (directly or indirectly), including the County Executive's Office, the Sheriff's Department, and the Prosecutor's Office for the purpose of assisting the promotion of the two ballot propositions and for the purpose of assisting the campaigns for election of Louws and Elfo.

RCW 42.17A.555 provides, in part,

No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to

any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency....

**A. The Flyer is an impermissible attempt to influence the outcome of the ballot propositions.**

The Flyer is a one-sided pitch for mass incarceration. The Flyer completely omits the incarceration facts being examined nationwide at all levels of government. Having examined cost and injustice of our 40-year history of mass incarceration, Republicans, Democrats, Police Chiefs, and Prosecutors nationwide are calling for reduced incarceration. The nation is becoming aware that the U.S. holds 25% of the planet's incarcerated people, yet has only 5% of the planet's free population.

We as people of color in Whatcom County are especially concerned about mass incarceration and the potential ramping up of mass incarceration in Whatcom County, especially with our proximity to the northern border and the large presence of Homeland Security. The Whatcom County Jail is disproportionately filled with people of color. With this notice, we therefore intend to put Washington, Whatcom County, and local law enforcement on notice of the existing civil rights violations, and our belief that ramping up mass incarceration while ignoring the system's racism is a deliberate exacerbation of ongoing racial profiling and civil rights violations. The Flyer, and the three proponents' (Louws, Elfo, and McEachran) support of the Flyer, increases the level of distrust that communities of color have in Whatcom County law enforcement system.

Mass incarceration is a racist system implemented at the end of, and in reaction to, the gains made during the Civil Rights era. Today, we have a prison-industrial complex expanded to include immigration detention. The Administration, several Congressional leaders, and conservative groups agree that mass incarceration is a serious issue that needs to be addressed throughout our country. The Department of Justice recently announced they are releasing 6,000 prisoners.<sup>1</sup> In Whatcom County, community members and groups have fought for the last decade to bring attention to local leaders and law enforcement, regarding issues of racial profiling and the racially disproportionate population in Whatcom County jails.

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<sup>1</sup> <http://www.ibtimes.com/immigration-2015-one-third-6000-prisoners-due-release-are-undocumented-immigrants-2131042.a>

The entire country is waking up to years of systemic racism and injustice thanks to community awareness, activism, and books like Michelle Alexander's *The New Jim Crow: Mass Incarceration in the Age of Color Blindness*. "More than 130 of the nation's top law-enforcement officials including big-city police chiefs, sheriffs, prosecutors and attorneys general, have joined the call to end the harsh, counter-productive practices and policies that have driven America's [mass incarceration] boom, destroyed communities and written off an entire generation of young men of color."<sup>2</sup> In contrast to reality, a voter reading the Flyer would come away with the impression that there is no alternative to increasing the size of Whatcom County's jail.

The Flyer was created, in part, by the company hired by the County to provide "full design services" and "assistance in developing a coordinated message and developing graphics to support the message." The October 1, 2014, DLR Group Contract for Services Agreement is attached hereto as **Exhibit C**. Local government agencies "...shall not coordinate informational activities with campaign efforts, in a manner that makes the agency appear to be supporting or opposing a ballot measure." January 12, 2015, PDC Letter.

As opposed to an "objective and fair presentation of the facts," the message, apparently, is that a new, expensive, larger jail in Ferndale is necessary. The Flyer uses official uniforms, equipment, publications, and the County seal to support its message. The flyer is one sided and fails to inform the voter of the nature, costs and impacts of the proposal—and leaves out the issues, listed below, about which community members have been educating our local leaders for the last decade:

1. The proposed jail increases the number of Whatcom County jail beds from roughly approximately 280 to 521 (the magnitude of the increase is not even disclosed);
2. The longstanding, well-reasoned testimony, public hearing statements, and oft-repeated concerns of the Whatcom County population opposed to a larger jail;
3. Whatcom County's incarceration rate is already among the highest in the world;
4. Whatcom County's booking rates are up, while statewide bookings are down;<sup>3</sup>
5. Whatcom County offers inmates less "good time" (earned early release) than 27 of Washington's 39 counties (i.e., if you serve time in Whatcom County and behave, you will serve more of your sentence than you would in roughly 7 out of 10 counties in Washington);

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<sup>2</sup> October 22, 2015, New York Times Editorial, citing position of Law Enforcement Leaders (lawenforcementleaders.org).

<sup>3</sup> <http://www.whatcomcounty.us/DocumentCenter/Home/View/827>;  
<http://www.whatcomcounty.us/449/Background-Documents-on-Jail-Planning>;  
<http://www.whatcomcounty.us/449/Background-Documents-on-Jail-Planning>; and  
<http://www.nwcitizen.com/blog-entry/the-making-of-a-jail-crisis-part-two-stuff-it>

6. The absence of Whatcom County law enforcement training regarding alternatives to booking, as in Seattle's LEAD program, which has reduced recidivism by 25%;
7. The overcrowding is the result of the unlawful mass incarceration policies (including bail recommendation, sentence recommendation, and good time policies) of Whatcom County and the three mass incarceration proponents quoted in the Flyer (Louws, McEachran, and Elfo). WCC 1.28.100 requires, amongst other things, that Sheriff Elfo release inmates early or transfer them when it is overcrowded. Sheriff Elfo and Prosecutor McEachran are also the main architects of overcrowding and unsafe crisis of the jail.
8. The feel bad pictures of inmates sleeping on the floor and the absence of adequate space for a dayroom and other programs is not caused by the size of the jail, but rather by Whatcom County's mass incarceration policies;
9. The jail was deliberately and illegally overcrowded in order to manufacture a crisis that could be used to justify plans to increase Whatcom County's capacity to incarcerate 521 (or more) inmates at a time.
10. No Flyer space is devoted to facts supportive of static or reduced incarceration rates;
11. Whether the County has made a finding (or has relied upon any information or analysis) that its current mass incarceration policy, or the proposed incarceration ramp-up is (or is not) effective at achieving any public policy goals; and if so, what are the findings and information relied upon;
12. How much Whatcom County has spent planning and promoting the plan for a larger jail verses exploring the data, science, and societal benefit, and economic savings of alternatives to incarceration<sup>4</sup>;
13. How much of the local budgets go to incarceration verses incarceration alternatives;
14. The cost of building and maintaining the proposed jail;
15. The cost of building and maintaining a smaller jail;
16. The total amount of additional tax that will be collected over 30 years in the event the proposition is approved;
17. The economic impact of choosing mass incarceration over alternatives to incarceration;
18. The societal impact of choosing mass incarceration over alternatives to incarceration;
19. The lack of an analysis regarding the current make-up (and causes thereof) of the jail population in terms of race, economic status, conviction vs. non-conviction status (i.e. incarcerated because they can't afford bail or home monitoring), mental health status; number of people incarcerated for drug

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<sup>4</sup> In this Notice, "alternatives to incarceration" is defined as alternatives to pre booking and measures to reduce to incarceration (e.g. mental health services, "Ban the Box" law, etc.)

- possession, drug use, drug sales, and driving under the influence (or if such an analysis exists, the fact that it has not been shared with the public);
20. If the jail tax passes, all of Whatcom County's public safety tax for potentially 30 years will be earmarked for incarceration (that is, by law Whatcom County may not raise any additional tax to fund alternatives to incarceration for potentially 30 years);
  21. The exacerbation of the difficulty in finding funding for incarceration alternatives, and enhanced incarceration (as listed in the Flyer by Louws) caused by the proposed tax;
  22. There is no analysis regarding incarceration rate, or even information assisting the voters in deciding that they should incarcerate more, the same, or fewer people than they do already (e.g., whether they should incarcerate 523, 403, or whether they should reduce incarceration rates by 25% to 300).
  23. Even if the jail tax passes, agreement has not been reached for housing Bellingham's non-felony inmates; Bellingham has nearly half the population of the entire county; and the County has demanded Bellingham tax payers provide additional funds before the proposed jail would permit housing of Bellingham's non-felony inmates (beyond the roughly \$120,000,000 that will be raised by the proposed county tax);
  24. The fact that Whatcom County incarcerates people of color at 5 to 7 times the rate of whites;
  25. The fact that Whatcom County law enforcement have provided the public little or no analysis regarding the existence or reduction of its own systemic racism;
  26. The absence of racial bias training in Whatcom County law enforcement which is recommended by the federal government and has been proven effective in reducing racial bias;
  27. The absence of an explanation for who the additional 120 beds will be used to incarcerate (e.g., does the proposal allow Whatcom County to rent beds to the Federal Government to incarcerate people for immigration violations?);
  28. This voting period (ending November 3, 2015) was scheduled to occur two (2) months before the publically funded Whatcom County jail alternatives task force is scheduled to make recommendations; that is, if the proposed tax is passed, 30 years of taxation (roughly \$120,000,000) will be unavailable for alternatives to incarceration.
  29. The reason for building the jail in Ferndale, rather than the County's population center (Bellingham);
  30. As people of color we are concerned that the remote location of the proposed new, big jail would make the the concerns and potential abuses less visible, less transparent to the community, and easier for abuses and violations to be carried out. "Out of sight, out of mind."

31. The DOJ recommends jails be built next to county courthouses rather than in more remote areas to reduce cost and increase function;
32. The economic impact of building a jail away from the population center (Bellingham has nearly half of the County's population);
33. The County Executive (and jail proponent in the Flyer) Jack Louws' financial interest in having the jail built in the proposed location (especially regarding the sale of land under or near the planned site);<sup>5</sup>

To fall within the WAC 290.05.271 exception, public offices or agencies must make "facilities available on a nondiscriminatory, equal access basis for political uses or [make] an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency." Further, public funds or resources may only be expended if "the preparation and distribution of information is not for the purpose of influencing the outcome of an election." PDC Interpretation No. 04-02, Page 4. "Supervisory personnel have a duty to know, apply, and communicate to their staffs the difference between acceptable information activities and inappropriate promotional activities in support of local government ballot measures." *Id.* "[I]n no case will the PDC view a marketing or sales effort related to a campaign or election as normal and regular conduct." *Id.*, at 5.

The Washington Public Disclosure Commission (PDC) has advised, "Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used." January 12, 2015, Public Disclosure Commission Letter to Local Government Agency Officials from Tony Perkins, Acting Assistant Director, Re Election-Related Communications by Local Government Agencies ("January 12, 2015, PDC Letter"). "Such a presentation should also explain, in neutral, factual terms, the outcome anticipated if the proposition is rejected by voters." *Id.* [A]n "objective and fair presentation of the facts" must **avoid** . . . Overtly promotional or oppositional content (including inflammatory or emotionally-driven language; check marks and other indications of support; and gratuitous photos that tend to provoke an emotional reaction—e.g. an image of a body on an EMT stretcher, or a house exploding in flames)." *Id.* (emphasis in original).

" 'Objective and fair presentation of the facts' means that in addition to presenting the facts, the materials should present accurately the costs and other anticipated impacts of a ballot measure." (January 12, 2015 PDC letter) The Flyer uses official uniforms, equipment, and publications, the use of which is restricted in the January 12, 2015, letter.

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<sup>5</sup> NW Citizen article by Tip Johnson, <http://www.nwcitizen.com/entry/louwsy-jail-deal>.



The facts outlined in this notice, including 1 through 33, above, demonstrate reason to believe the foregoing legal requirements have not been met.

**B. The Flyer contains false statements, conflation, and gives the voters false impressions.**

The Flyer appears to be designed to be confusing as it related to existing incarceration alternatives and incarceration alternatives that would be funded by approving the proposed ballot measure. The Flyer makes false statements, conflation, and false impressions, including –

1. States that the Jail Facilities Sales and Use Tax is proposed in Whatcom County, Washington Proposition Number 1 (Proposition Number 1 is a different proposition on the ballot this year, which we feel is designed to dilute the ability of people of color to fairly participate in electing county government who represent their interests.<sup>6</sup> The Jail Facility Sales Tax was named as Proposition 1 not once, but twice, in two different ways, on the flyer-a false statement that was amplified and repeated on King 5 News on October 29. Nowhere on the flyer is it described correctly as Proposition 2015-1. Proposition 1 is supported by large-monied industries like the agricultural industry and coal industry; its passage would solidify power for the three elected officials Louws, Elfo, and McEachran, and their allies. This mislabeling cannot be dismissed as anything but intentional.)
2. Conflates safety and incarceration rates. We agree that the Whatcom County jail should be safe. But safety does not immediately mean building a bigger jail when and where the flyer describes.
3. Conflates the need for better jail conditions with the need for a bigger jail;
4. Uses emotional photos and graphic representations to create a false dichotomy (inhumane treatment or larger jail)
5. Implies that safety issues are due to the size of the jail;
6. Implies that increased incarceration is a natural, unavoidable, and even legally required, need ("State law requires...", "liability," "By law, Whatcom County requires...");
7. Consistent with Louws, McEachran, Elfo, and others' campaign to increase the size of the jail the Flyer manufactures a false choice: Treat people humanely and approve the proposal; or reject it, and treat people inhumanely;
8. States that the need for a new jail is "critical," while at the same time stating that the need has been critical since 1999, and that the estimated date for implementing the proposed solution is 3.5 years from now - Spring of 2019;

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<sup>6</sup> <https://aclu-wa.org/cases/montes-v-city-yakima>  
<https://www.aclu.org/news/federal-court-rules-yakimas-voting-system-violates-voting-rights-act>  
[http://www.yakimaherald.com/special\\_projects/aclu/](http://www.yakimaherald.com/special_projects/aclu/)

9. Implies, confuses, and misleads voters that this measure will also help fund the alternatives, cited in the Flyer;
10. Implies, confuses, and misleads voters that the jail tax will fund the behavioral health and treatment programs listed by Louws;
11. Implies, confuses, and misleads voters that there is existing funding for the behavioral health and treatment programs Louws lists, when the proposal will make funding for such programs more difficult if not impossible;
12. Implies, confuses, and misleads voters that the County funds incarceration and alternatives to incarceration nearly equally (\$12.3 and \$11.5 million, respectively); or alternatively, implies that if the jail tax is approved, the County will fund incarceration and alternatives to incarceration nearly equally (\$12.3 and \$11.5 million, respectively);
13. Implies, confuses, and misleads voters that the County has meaningfully examined its policies regarding incarceration rates;
14. Implies, confuses, and misleads voters that the County has examined alternatives to incarceration;
15. Implies, confuses, and misleads voters that there is evidence to support the need for increased incarceration;
16. States that the new jail is "centrally located";
17. States that there are ". . . no expansion options"
18. States that the "Cities and county agree. . ."

**C. The Flyer is not normal, customary, and regular conduct.**

The Flyer was created, in part, by the company hired by the County to provide "full design services" and "assistance in developing a coordinated message and developing graphics to support the message." According to Louws, the Flyer was specifically approved in a \$27,000+ funding measure passed by the County Council. The flyer is unusual, and unlike previous information mailed to voters on other issues, including other ballot initiatives.

Passage of a tax that maxes out the ability of the County to charge tax for public safety issues for 30 years is not a normal and regular event, and creation of the Flyer is not normal and regular conduct. Passage of Proposition 1, which will likely permanently reduce the voice of voters of color in County government is not normal and regular conduct.

Further, the County Executive who approved the Flyer has profited from sale of land next to or around the proposed jail.<sup>7</sup>

WAC 390-05-273 (Definition of normal and regular conduct) provides,

Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17A.555, means conduct which is (1) lawful,

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<sup>7</sup> NW Citizen article by Tip Johnson, <http://www.nwcitizen.com/entry/louwsy-jail-deal>

i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.

"The agency must be able to demonstrate that for other major policy issues facing the jurisdiction, the agency has customarily communicated with its residents in a manner similar to that undertaken for the ballot measure." PDC Interpretation No. 04-02, Page 5.

In the event communications other than a "jurisdiction-wide mailed "fact sheet," are used, . . . the agency must be able to demonstrate that . . . the method, format, and frequency is typical of how the agency routinely communicates with its audience." January 12, 2015, PDC Letter.

**D. The Flyer is an electioneering communication that identifies political candidates and supports local political campaigns without having been submitted to voters for approval.**

Louws and Elfo are running for re-election in this voting period. They are photographed and quoted in the Flyer as authorities on the subjects. The Flyer is designed to minimize and divert attention from their roles in creating the overcrowding situation.

RCW 42.17A.300(1)(b) provides, "Electioneering communications that identify political candidates for state, local, or judicial office and that are distributed sixty days before an election for those offices are intended to influence voters and the outcome of those elections."

RCW 42.17A.550 provides,

A county, city, town, or district that establishes a program to publicly finance local political campaigns may only use funds derived from local sources to fund the program. A local government must submit any proposal for public financing of local political campaigns to voters for their adoption and approval or rejection.

**Maria E (Maru) Mora Villalpando**



**Undocumented Whatcom County Resident,  
filed October 30, 2015, only on her own behalf  
(but also happens to be Director of Latino Advocacy, LLC)**

**Contact Information for Legal Representative:**

**Junga Subedar  
P.O. Box 2444,  
Bellingham, WA 98227**

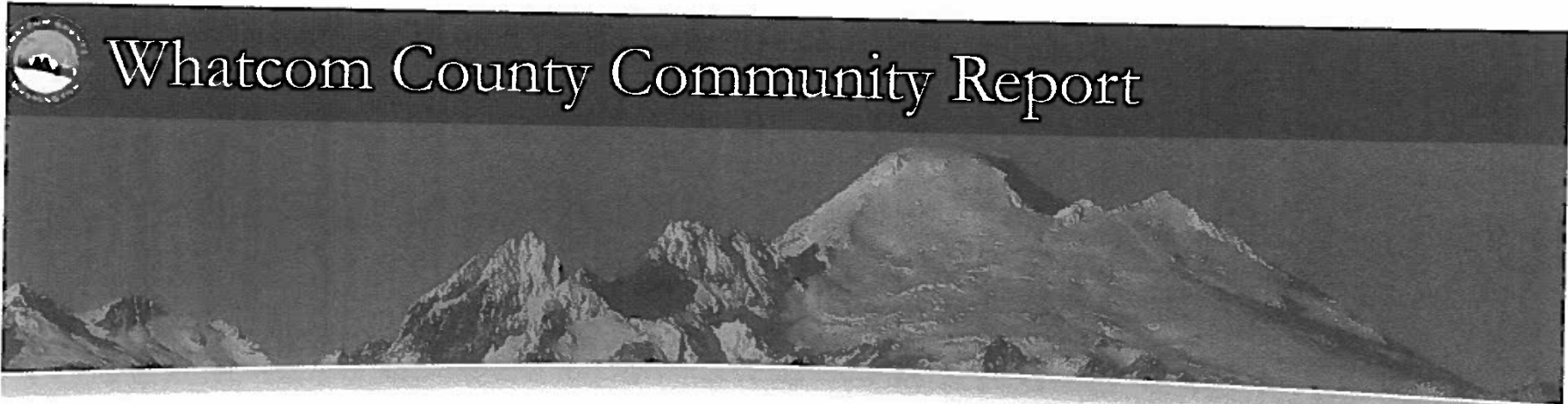
**360-746-2745**

**CC: ACLU,  
WSBA,  
Washington State Commission on Hispanic Affairs,  
Washington State Commission on African-American Affairs,  
Washington State Commission on Native American Affairs;  
Lummi Nation;  
Brothers and Sisters of Whatcom County;  
Bellingham Unitarian Fellowship;  
Senator Rick Larson;  
Senator Maria Cantwell;  
State Representatives;  
Whatcom Human Rights Task Force;  
Ralph Munro Institute, WWU Professor Vernon Johnson  
Western Washington University, Fairhaven College  
Fairhaven College, Woodring College of Education**

# EXHIBIT A



WHATCOM COUNTY  
311 GRAND STREET  
BELLINGHAM, WA 98225



# Whatcom County Community Report

# WHATCOM COUNTY IAI



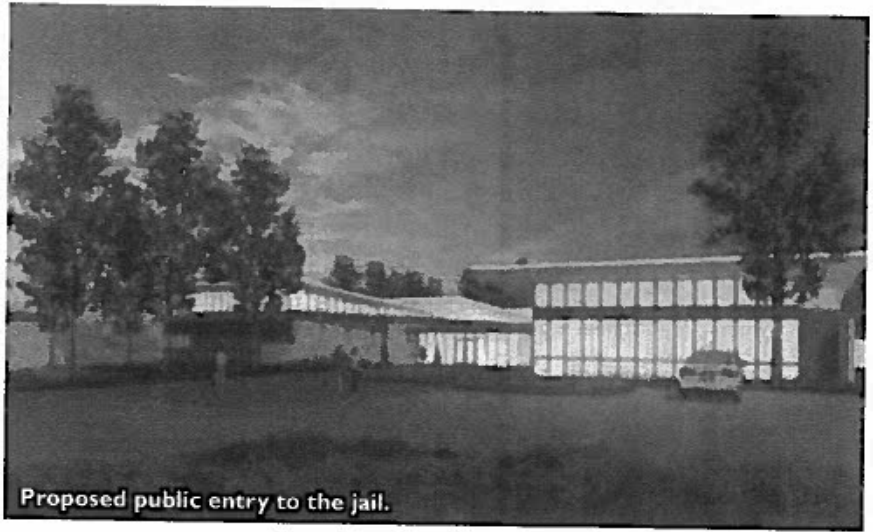
# Existing Jail - Overcrowded and Unsafe



Sheriff Bill Elfo

“The existing jail has been overcrowded and unsafe for decades. Over time, conditions have grown increasingly worse. Eighteen years of reports, findings and analysis by professional consultants, jail-planners, engineers, fire safety officials, staff, the National Institute of Corrections and multiple citizen committees consistently highlighted compelling life-safety and liability issues. Also highlighted were the lack of space for behavioral health and

other programming targeted at effective treatment and reducing recidivism. Given severe and unsustainable conditions within the jail that jeopardize staff, visitors and inmates alike as well as expose taxpayers to liability, the County cannot continue to operate the facility into the future at current population levels.”



Proposed public entry to the jail.

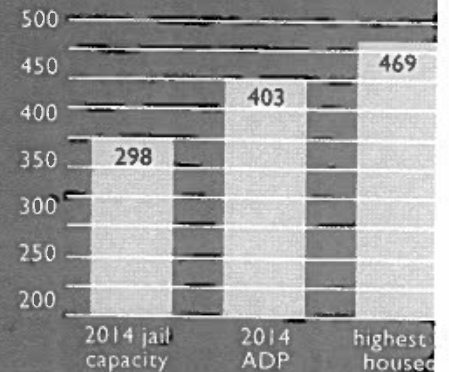
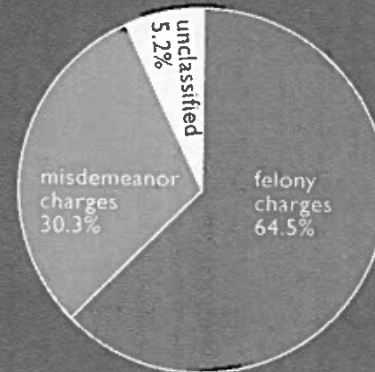
The County cannot continue to operate the facility into the future at current population levels.

Existing Whatcom County Jail has limited renovation and no expansion options.

The current jail was built in 1984 to house 148 inmates, remodel to house 212. Total jail capacity, including interim jail on Division Street, is 298. The average daily jail population (ADP) in 2014 was 403. According to statewide comparison,

**Our jail population is at 137% percent of capacity, 4th highest in the state.**

By law, Whatcom County is required to accept all accused/convicted felons whose case originate in the entire County, including Bellingham, Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas.







or eliminate our need to expand the proposed replacement jail. These behavioral health and treatment programs include:

lized training for public safety personnel;

il and community programs focused on prevention, treatment and opiate outreach;

community mental health and substance

family treatment and mental health courts;

less housing services;

ct court probation specialized behavioral health unit;

ive case management, supportive housing,

ie Rainbow Recovery Center;

ans' relief services;

trriage center;

havioral health services;

ernative programs, including electronic home

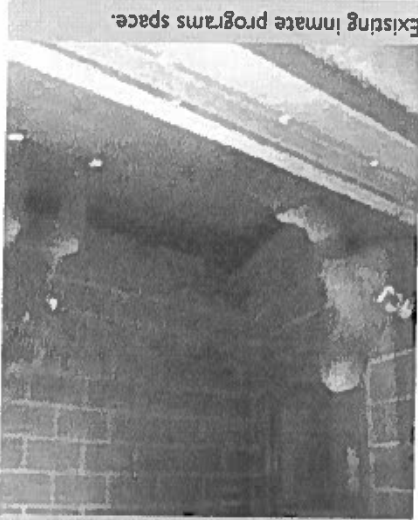
tion, work release, and jail work crews.

00  
ions net programs

00  
Alternative and Diversion Programs

# geted-for Alternatives

“One of the greatest challenges and frustrations within the current jail is the inability to provide adequate space for health services and programming. There are huge demands for services for all of the care the jail provides. The lack of clinic and counseling space



Existing inmate program space.



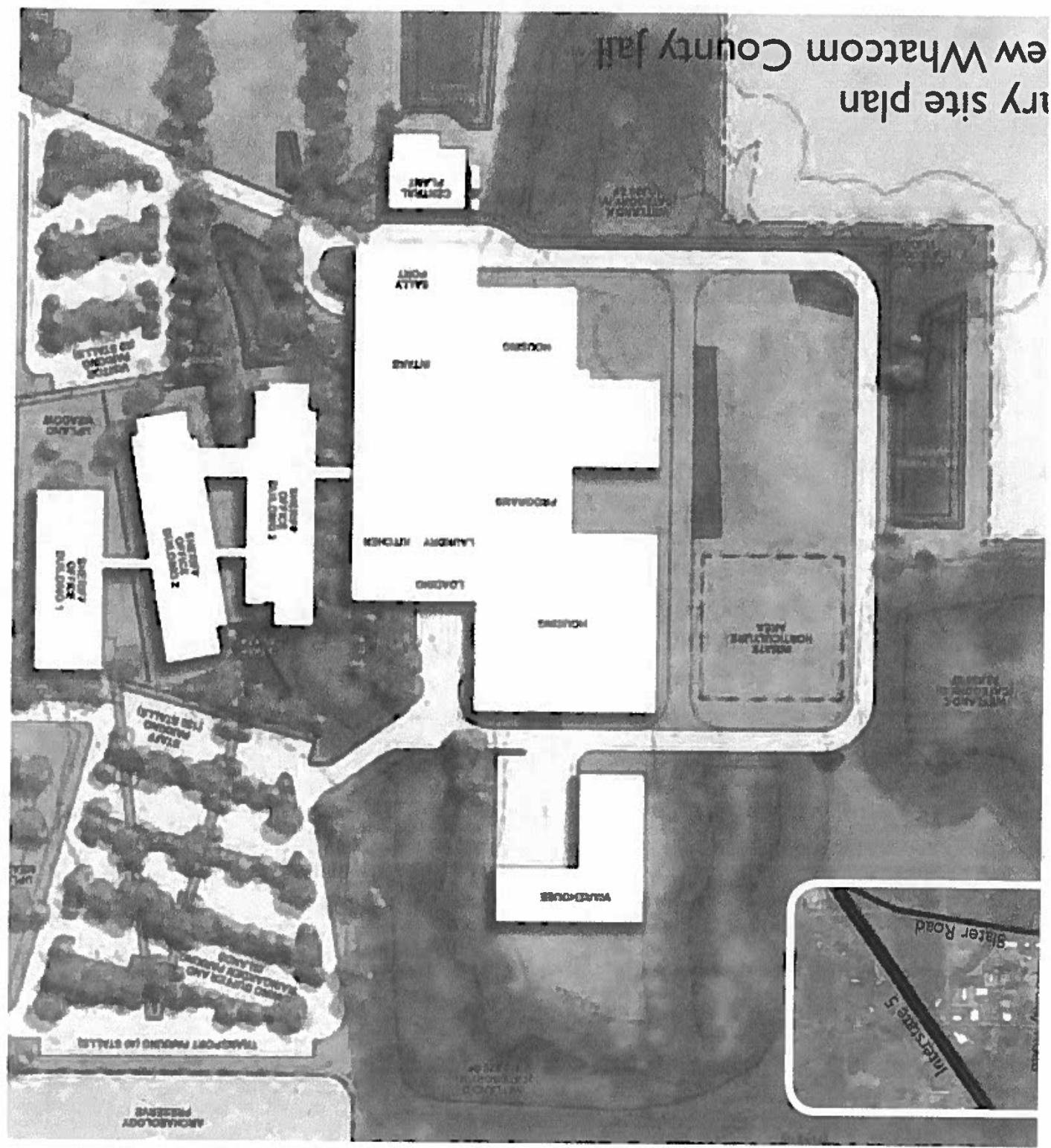
Existing shower room converted to cell.



Existing cell.



- Building site design to accommodate future growth.



Video visiting

Central control room.

# EXHIBIT B

Mailers cost \$28,000, went only to registered voters

Some question use of taxpayer money, say only one side is presented

No complaint yet filed with state Public Disclosure Commission

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Cover of the Whatcom County Community Report sent to residents. Whatcom County  
Courtesy to The Bellingham Herald

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By Samantha Wohlfeil

The Bellingham Herald

o [LINKEDINGOOGLE+PINTERESTREDDITPRINTORDER REPRINT OF THIS STORY](#)**BELLINGHAM**

Some community members are furious about the county's use of public money to mail out information about a jail sales tax measure to registered voters.

The day before many households would start to see ballots arrive from the auditor's office, each household with at least one registered voter got a flier from the county labeled the "Whatcom County Community Report: Whatcom County Jail."

I said that has to be a phony mailer, it's a fraud, there's no way the county would send something you are describing. Ken Mann, Whatcom County Council member

The mailer presents pictures of the current and proposed Whatcom County Jail and talks about the proposal to pay for it with a 0.2 percent sales tax increase (20 cents per \$100 purchase). The mailer contains information from the county, Whatcom County Executive Jack Louws, Sheriff Bill Elfo, and Prosecutor Dave McEachran, on four 11-by-17 glossy color pages.

A copy of it can be viewed on the county website, [co.whatcom.wa.us](http://co.whatcom.wa.us), by searching for "community report mailer."

The mailers cost \$28,452, according to a county contract. The money came from a 2004 sales tax that voters passed to help pay for a new jail.

State law prohibits the expenditure of public money or use of public offices or spaces to campaign for a specific candidate or promotion of or opposition to any ballot proposition, with a few exceptions. The county claims it is allowed to send out one such mailer under state guidelines.

## First impressions

After opening their mail, some of the most vocal political players in the county took to social media to vent about the flier and question whether it violated state campaign rules.

Among them was Whatcom County Council member Ken Mann, who said he first learned of the fliers when an "irate constituent" called him to say they were upset county government would spend taxpayer dollars to lobby for increased taxes.

"When she described it to me, I said that has to be a phony mailer, it's a fraud, there's no way the county would send something you are describing," Mann said.

He was wrong.

In fact, whether they knew it or not at the time, Mann and the other six sitting council members unanimously approved the money for the fliers in September 2014 as part of an \$825,887 contract amendment with DLR Group, the consultant working on the jail. The contract included funding for public outreach, which included developing materials for presentations and mailers, among other tasks.

"My initial reaction was shock and dismay and finally outrage," Mann said. "I was further outraged that they would equate public outreach with a one-sided political propaganda piece during election season."

Mann said the council "never ever never never never" talked about sending a mailer out, and he thought there was no way the council would have approved that item had it gone before them.

It gives people information to decide whether or not they support it. I feel it follows the intent of the law. Jack Louws, Whatcom County executive

Doug Starcher, who helped write the statement against the jail sales tax measure for the Whatcom County voters' guide, said the mailer was a "despicable piece of misrepresentation."

Starcher questioned the use of pictures in the mailer, specifically images of overcrowded cells.

"The first question is did those prisoners give their permission for those photographs to be taken and used," he said. "The notion that those photographs are anything other than lobbying in favor of this tax, to try and represent anything else is ridiculous."

He also questioned the use of pictures of Louws and Elfo, who are both up for re-election.

"There's a picture of the County Executive, who is running for office, then it lands in people's mailboxes the day before or the day that their ballots arrive," Starcher said. "That looks a little sketchy to me."

Following the rules

On Friday morning, Oct. 16, Louws said the county followed the guidelines for such mailers as laid out by the state Public Disclosure Commission.

"We're following the PDC guidelines," he said. "I think it is a fact-based document."

The PDC used to offer to review mailers for compliance before they were sent out, but that program was cut in January this year, said Lori Anderson, a PDC spokeswoman.

The county referenced a memo from the PDC in putting together the mailer. The executive's office, sheriff's office and prosecutor's office all worked to make sure the flier was fact-based and met the requirements, Louws said. The number of staff hours working on the flier was not specifically tracked.

The county cites a PDC interpretation as giving them "not only the right, but the responsibility" to "inform the general public of the operational and maintenance issues" and tells the county it may "distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure."

"This shows where we're at," Louws said. "It doesn't propose a position on it, but it does identify that we're putting it forward to the voters for reasons based on a jail task force and on a resolution the Whatcom County Council has passed."

When asked if he believed the flier was objective, Louws said, "It gives people information to decide whether or not they support it. I feel it follows the intent of the law."

Deputy Prosecuting Attorney Dan Gibson, who helped review the text of the flier, which was compiled by other staff, said those who worked on it had framed their work using similar types of fliers that had been used in other counties. One of those was a flier sent out in Skagit County when their new jail sales tax increase was on the ballot.

The title, Whatcom County Community Report, was similar to the title used in Skagit, Louws said.

"Whenever an informational flier is presented, you talk about what is the current situation," Gibson said. "People are providing factual information, and doing so obviously within a context. In this case, it's people who work within the facility describing it as it currently exists, and how it would exist if a new facility was constructed."

Mann said the legality of the flier wasn't important, but that it's a matter of principle.

"Whether you're a Republican or a Democrat or an independent, it's just so far over the line," Mann said. "Even if they found some loophole that they can claim this is legit, that does not make it right, and it does not make it ethical."

#### Additional concerns and complaint

It was too soon to tell if anyone would file a complaint with the PDC as of Friday afternoon, although several people said they were looking to see if they might have a case to do so.

Richard May, who served on the County Charter Review Commission, said he was most concerned about the title of the ballot measure used in the flier.

"In this mailed piece it says this is Proposition 1," May said. "The jail vote on the ballot is Proposition 2015-1. Proposition 1 on the ballot is district-only voting."

People who follow politics closely and think about such issues all the time will be able to make that distinction, May said, but the majority of voters don't have a lot of time to do background research.

"If they get that piece of mail and say, 'Yes, I want to vote yes for the jail,' and it says in giant letters 'Proposition 1,' a single-issue voter may say 'I've got to make sure to vote yes for Proposition 1,'" May said. "That could boost the district-only vote by hundreds or even thousands of votes, so that's a huge issue."

When asked about the potential for mistaking the two similarly named propositions, Gibson said he didn't think it was an issue.

"I'm assuming that every voter reads the language of the proposition upon which they are voting," he said. "I think that's a fair assumption. The reason we put the language in there is so that people will read it."



What we want most is for people to be informed on the election and not confused on anything, including all of these (charter) amendments. Charlie Crabtree, Whatcom County Republicans chairman

Tanya Baumgart, who helped produce this year's Bellingham/Whatcom County League of Women Voters forums, said she was surprised to see the mailer as she thought the county was not allowed to send them out. She did not speak as a representative of the League, which has not taken a stance for or against the measure.

"I had to work with the PDC to make sure we were in compliance with their guidelines for our forums," Baumgart said. "The PDC gave me the example that basically any time the taxpayer monies are being used for printing fliers is kind of an illustration of something that violates PDC guidelines."

Though the flier isn't explicitly in favor of the ballot measure, Baumgart said, "it definitely gives the one side of the ballot measure but doesn't give the other side. There were both sides presented at our forums."

She said that what is included in the flier is reasonably accurate and it appears to be an educational piece, but questioned the fact that it was only sent to voters.

"So that's not just an educational piece for the community, it's a targeted mailing to voters," she said. "That gives me pause."

Charlie Crabtree, chair of the Whatcom County Republicans, said the Republicans had not been involved in the flier.

When asked about spending taxpayer money on the materials, Crabtree said the PDC states it needs to be used in the public interest, and educational fliers are allowed when school districts are putting out information on levies.

"At the same time, I think that's a heck of a lot of money," he said.

Crabtree said he believed the piece was meant to inform the public about what's on the ballot, and he would stand by the Republicans' endorsement for the jail measure, but said he could understand the concerns about spending taxpayer money.

"I can tell you there are a lot of conservatives worried about the jail costs, and probably this just adds to that, I don't know," Crabtree said. "But when it gets down to it, as far as the Republicans are concerned, what we want most is for people to be informed on the election and not confused on anything, including all of these (charter) amendments."

General election ballots are due to drop boxes or must be postmarked by Nov. 3.

*Reach Samantha Wohlfel at 360-715-2274 or*

*[samantha.wohlfel@bellinghamherald.com](mailto:samantha.wohlfel@bellinghamherald.com). Follow her on Twitter at [@BhamPolitics](https://twitter.com/BhamPolitics).*

# EXHIBIT C



**WHATCOM COUNTY:**  
**Approved as to form:**

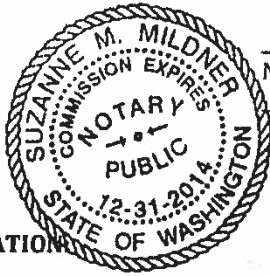
By: *J. Gallon* *September 23, 2014*  
Prosecuting Attorney Date

**Approved:**  
Accepted for Whatcom County:

By: *[Signature]*  
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON )  
  ) ss  
COUNTY OF WHATCOM )

On this *1st* day of *October*, 20*14*, 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.



*Suzanne M. Mildner*  
NOTARY PUBLIC in and for the State of Washington, residing at  
*Billings* My commission expires *12-31-14*.

**DESIGNER INFORMATION**

DLR Group  
Address:  
DLR Group  
51 University Street, Suite 600  
Seattle WA 98101  
Contact Name: Bill Valdez  
Contact Phone: (206) 461-6000  
Contact FAX: (206) 461-6049

## GENERAL CONDITIONS

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

#### **1.1.1 Scope of Services:**

The Designer agrees to provide to the County professional 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. The intent of the drawings and specifications is to include all items necessary for the proper execution and completion of the project: **Included in the base fees are Professional Services through schematic design inclusive of the Conditional Use Permit for Essential Public Facilities permitting process only.**

#### **1.2.1** Terms used in this Agreement shall have the meanings set forth unless otherwise provided herein, with the following specific terms defined as follows:

- .1** *Additional Services* refers to those services identified in Section 2.8 hereof.
- .2** *Agreement* refers to this executed contract between Owner and Designer.
- .3** *Construction Phase Services* refers to those services identified in Section 2.7 hereof.
- .4** *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.
- .5** *Design Consultant* is a qualified, licensed design professional who is not an employee of Designer, but is retained by Designer, or employed or retained by anyone under contract with Designer, to furnish design services required under the Contract Documents.
- .6** *Design Phase Services* refers to those services set forth in Sections 2.5 and 2.6 hereof.
- .7** *Design Schedule* refers to the schedule setting forth the dates by which Designer must perform the various Services required herein, consistent with the Project Schedule.
- .8** *Designer's Fee* shall refer to the compensation due Designer for the performance of the Services as set forth herein.
- .9** *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.
- .10** *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, or any Services.
- .11** *Owner's Project Criteria* are developed by or for Owner to describe Owner's program, requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements. Owner's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

- .12 *Project Schedule* refers to the schedule setting forth the dates by which the various stages of both the design and construction of the Project must be performed so as to satisfy Designer's obligations to Owner.
- .13 *Site* is the land or premises on which the Project is located.
- .14 *Bases of Design* the intent is to provide a complete specification & drawing package. The intent of the complete package is to include all necessary items for the proper execution and completion of work; however, any item or detail not specifically mentioned in the specifications or shown on the drawings, but which is necessary to produce the intended results shall be included.
- .15 *Designer* is any person or entity retained by Owner as an independent Designer to perform a portion of the construction work for the Project and shall include materialmen and suppliers.
- .16 *Sub-Consultant* is any person or entity retained by a Designer as an independent Designer to perform any portion of the Designer's work and shall include materialmen and suppliers.
- .17 *Substantial Completion* is the date on which the Project, or an agreed upon portion of the Project, is sufficiently complete so that Owner can occupy and use the Project or a portion thereof for its intended purposes.
- .18 *Services* shall include all Design Phase Services, Construction Phase Services and Additional Services required by the Contract Documents or as may be authorized in writing by Owner.

### **1.3 Contract Documents**

**1.3.1** The Contract Documents, in addition to this Agreement, are comprised of the following:

- .1 All written modifications, amendments and change orders to this Agreement;
- .2 This Agreement, including all exhibits and attachments, executed by Owner and Designer;
- .3 Written Supplementary Conditions, if any, executed by Owner and Designer;
- .4 The design Schedule;

**1.4.1** The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, this Agreement shall take precedence.

**2.1.1** Designer shall, consistent with applicable state licensing laws, provide the Services, including architectural, engineering and other design professional services, as described in this Agreement and in accordance with the Contract Documents. Designer agrees that such Services shall be provided through qualified, licensed design professionals who are either (i) employed by Designer or (ii) procured by Designer from qualified, licensed Design Consultants.

**2.1.2** Designer shall not engage the services of any Design Consultant without first obtaining the approval of Owner, which approval shall not be unreasonably withheld. Designer agrees that each Design Consultant shall be fully bound to Designer in the same manner as Designer is bound to Owner for all the requirements of the Contract Documents to the extent applicable to the Design Consultant's scope of services. Designer

shall at all times be responsible for the services performed by its Design Consultants, and shall coordinate the services of its Design Consultants to satisfy Designer's obligations under the Contract Documents. Nothing in this Agreement shall relieve Designer from responsibility for the services performed by its Design Consultants, or create any legal or contractual relationship between Owner and any Design Consultant.

- 2.1.3 If Owner or Owner Representative performs other work on the Project with separate design professionals under Owner's or Owner's Representative control, Designer agrees to reasonably cooperate and coordinate its activities with those of such separate design professionals so that the Project can be completed in an orderly and coordinated manner and without disruption.
- 2.1.4 Designer shall only communicate with Owner, Consultant(s), or Sub-Consultants through Owner unless the parties agree otherwise.
- 2.1.5 Within seven (7) days after execution of this Agreement, Owner and Designer will meet to discuss issues affecting the administration of the Services and to implement the necessary procedures, including but not limited to those relating to the schedule for the Services, schedule updates, review of submittals, and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents and allow Designer to meet its obligations to design the Project consistent with the Contract Documents, without compromising any professional obligations of Designer.

## 2.2 Standard of Care

2.2.1 The standard of care for all design professional services performed by Designer and its Design Consultants pursuant to this Agreement shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project for projects of similar size and complexity. Notwithstanding the preceding sentence, if the Agreement specifically identifies performance standards for the Services, Designer agrees that all such Services shall be performed to achieve such standards.

## 2.3 Legal Requirements

- 2.3.1 Designer agrees to perform the Services in accordance with all applicable Legal Requirements.
- 2.3.2 Designer's Fee and/or the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Services. Such effects may include, without limitation, revisions Designer is required to make to the Construction Documents because of changes in Legal Requirements.
- 2.4.1 Designer agrees that the Key Personnel assigned to perform the Services shall be as listed in paragraph 2.4.2 below. Designer shall not change such personnel without prior written approval by the Owner.
- 2.4.2 Key Personnel. The following individuals/positions are considered KEY PERSONNEL.
  - Principal -
  - Project Architect -
  - Draftsperson -
  - Clerical -
- 2.5.2 Designer shall provide reasonable assistance to Owner in obtaining any permits, approvals, and licenses which are not Designer's obligation to obtain, but which are required for the construction of the Project.



**2.5.3** Designer shall make any revisions to the Construction Documents reasonably necessary to secure permits, approvals, and licenses, including those which have been denied for failure of the Construction Documents to meet Legal Requirements. If such revisions are necessary for reasons beyond the control of Designer or its Design Consultants, Designer shall be compensated for such revisions as a change to this Agreement.

## **2.6 Design Services**

**2.6.1** In accordance with the times set forth in the Design Schedule, Designer shall submit to Owner all interim design submissions and revisions required. Such design submissions shall be in the form and quantity called for in the Contract Documents and may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Owner and Designer agree that prior to the scheduled date for submitting all design submissions to Owner, Owner's Representative and Designer will hold meetings for the purpose of discussing and monitoring the design for consistency with the requirements of the Contract Documents, as well as Owner's pricing and other assumptions.

**2.6.2** In accordance with the Contract Documents and the times set forth in the Design Schedule, Designer shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Project. The Construction Documents shall be consistent with the latest set of interim design submissions; as such submissions may have been modified in a design review meeting. Designer shall provide the Construction Documents in the form and quantity called for in the Contract Documents; actual costs for the printing of these submission documents shall be paid for out of the reimbursable cost set forth in Exhibit "A", if available. Designer shall perform agreed upon revisions and submit revised Construction Documents to Owner for Owner's approval.

**2.6.3** Designer shall attend and participate in such meetings as are held between Owner and Designer to discuss interim design submissions and the Construction Documents. If requested, Designer shall identify during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Owner and provided to all attendees for review.

**2.6.4** In addition to the interim design submissions and the Construction Documents, Designer shall, if requested by Owner, prepare interim design submissions and Construction Documents the parties agree are required to permit commencement of construction on a portion of the Project before the entire Construction Documents for the Project are completed.

**2.6.5** Owner's approvals of interim design submissions and the Construction Documents are for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Contract Documents.

**2.6.6** Designer will, at its own cost, revise any interim design submission or the Construction Documents to correct any of its errors, mistakes or omissions. Designer shall also design to a Fixed Design Budget and, at its own cost, make such revisions as are required to achieve such budget, Any and all such revisions required of this paragraph shall be performed timely and so as not to jeopardize the Design Schedule and/or the Project Schedule. The expense of such revisions shall not be charged against the 5% contingency established in section 12.10.2

## **2.7 Construction Phase Services**

**2.7.1** Designer shall assist Owner in preparing bidding documents for specified portions of the Project's construction, and clarifying and responding to questions involving the bidding documents.

- 2.7.2** Designer shall timely provide requested clarifications and interpretations of the Construction Documents (often referred to as "RFI's"), which shall be consistent with the intent of, and reasonably inferable from, the Contract Documents. Designer shall make all revisions to the Construction Documents necessary for the proper construction of the Project. Such revisions will be accomplished at the Designer's expense if and to the extent necessitated by an ambiguity, error or omission of the Designer; all other revisions will be an Additional Service. Responses to RFI's, for whatever reason required shall be timely and shall not cause delays to the approved critical path schedule for the project.
- 2.7.3** Designer shall review and approve such submittals, including shop drawings, product data and samples, as may be required by the Design-Build Agreement or as reasonably required by the Owner. Such review shall be accomplished in accordance with the project schedule within the times for such review provided in the critical path schedule submitted by the Contractor and approved by the owner. The time within which Designer shall review and respond to submittals under will be discussed at the meeting provided in Section 2.1.5, but shall be finally established upon the approval of critical path for the construction of the project. Designer shall expeditiously inform Owner of any revisions that are necessary as a condition to Designer's approval of submittals. Designer's review and approval shall not relieve Contractor of responsibility for construction means and methods, or safety precautions. Except for performance based specification submittals, designer's approval will not apply to a change from the design shown in the Construction Documents unless the change is expressly noted as a change to the Construction Documents by clouding in the submittal.
- 2.7.4** Designer shall review, and if acceptable approve, any substitutions for materials or equipment proposed by Owner.
- 2.7.5** Designer shall, if requested by Owner, review any inspection reports or tests involving the construction of the Project and provide its comments to Owner. Designer is not responsible for the accuracy or completeness of the tests or inspections.
- 2.7.6** Designer shall at appropriate intervals visit the Site to determine in general if the construction is proceeding in accordance with the Construction Documents. Designer shall promptly notify Owner of any defects, deficiencies, deviations, omissions, or violations observed by Designer in the construction of the Project, and make recommendations to Owner on how to proceed. Designer and Designer's consultants shall visit the Site an average of once per month during the period of construction, or more as necessary to perform their professional duties under this Agreement.
- 2.7.7** Designer shall attend meetings with Owner, Contractors, and Consultants to discuss design issues which may arise during construction.
- 2.7.8** Designer shall provide such certifications as may be necessary relative to Substantial Completion.
- 2.7.9** Designer's provision of the Construction Phase Services shall not be construed to make Designer responsible for (i) the acts or omissions of Contractor, or any Sub-Contractors, (ii) the means, methods, sequences, and techniques of construction of the Project or (iii) safety precautions and programs in connection with the construction of the Project. Nothing in this Agreement shall create any duties to or legal or contractual relationship between Designer or any Contractor or Subcontractor. If the Owner authorizes deviations from the documents prepared by the Designer or its Consultants without written agreement of the Designer, the Owner shall indemnify, defend and hold harmless the Designer, its Consultants and their respective agents and employees from and against claims, damages, losses and expenses, arising out of or resulting from such deviations.

## **2.8 Additional Services**

**2.8.1** Additional Services, if any, agreed upon by the parties shall be compensated as set forth in Exhibit A or in an amendment to this Agreement. Additional Services are those services not specifically described as part of Services in this Agreement. Additional Services include, without limitation, making revisions to documents due to adjustments in the program, project budget, enactment of revisions to codes subsequent to the preparation of such documents and providing services required due to significant changes in the Project including, but not limited to: size, quality, complexity, construction cost, schedule or method of bidding or negotiation and contracting for construction. Additional Services will not include necessary modifications or corrections that were missed or miscalculated by the Designer.

### **Timely Reviews, Approvals and Submittals**

**3.1.1** Owner shall provide timely reviews and approvals of all interim design submissions and the Construction Documents consistent with the turnaround times set forth in the Design Schedule and the Design-Build Agreement, or as agreed to by the parties at the meeting required under Section 2.1.5 hereof.

**3.1.2** Owner shall, in the contract for construction, require Contractor to submit timely to Designer all submittals, including shop drawings, product data and samples, for Designer's review and approval consistent with the Project Schedule. Timely submittal means in accordance with the times noted in the submittal schedule included in the project critical path schedule for the project; (Standard two weeks for most submittals with a portion of the submittals required to be processed quicker) times to be agreed upon between Designer, Contractor and Owner when appropriate. Designer will provide a schedule of items to be submitted by Owner for Designer's review.

**3.1.3** Owner shall provide timely notice to Designer of any delays to the Project caused by Designer.

**3.1.4** Owner shall provide the following information and materials to Designer, unless otherwise agreed.

- .1** Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
- .2** Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
- .3** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Designer to perform the Services;
- .4** A legal description of the Site;
- .5** As-built and record drawings of any existing structures at the Site;
- .6** Environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site;
- .7** Owner's Project Criteria;
- .8** Test and Inspection reports.

- 3.4.1** If Designer's performance of the Services are delayed for any reason so as to impact the Design Schedule or the Project Schedule, Designer shall promptly notify Owner in writing of the cause(s) of such delay within sufficient time to permit Owner to provide timely notice to Contractors or Consultants. To the extent the delay is due to any negligent act, error or omission on the part of Designer, Design Consultants, or anyone for whom they are responsible, Designer shall compensate and indemnify Owner for all costs, damages, and expenses arising from such delay. If the delay is caused by Owner or others for whom Owner is responsible, the Designer's Fee and the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of the delay. If the delay is caused by Owner or other causes, the Designer's Fee and the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of the delay if and only to the extent Owner secures such compensation and time from the Owner.

**Section Numbers 3.4.2 through 6.1.0 are purposely omitted from this contract.**

- 6.1.1** Designer's Fee shall be the compensation due Designer for the performance of the Services, including all Design Phase Services, Construction Phase Services, and Additional Services, and for Reimbursable Costs, all as set forth in this Agreement. Unless otherwise provided in the Contract Documents, the Designer's Fee is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

- 6.1.2** Designer will be compensated for the Design Phase Services, Construction Phase Services, Additional Services, if any, and Reimbursable Costs as set forth in Exhibit A.

**6.2 Applications for Payment**

- 6.2.1** Beginning with the first month after the Date of Commencement, Designer shall submit on a monthly basis for Owner's review and approval, Designer's certified Application for Payment requesting payment for all Services performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.5 hereof. Once approved, Owner will submit Designer's Application for Payment to Owner with Design- Builder's next application.

- 6.2.2** The Application for Payment shall constitute Designer's representation that (i) the Services have been performed consistent with the Contract Documents, (ii) the Services have progressed to the point indicated in the Application for Payment, (iii) Design Consultants have been paid all amounts previously received by Designer on account of their services, and (iv) there are no claims, obligations or liens outstanding or unsatisfied for labor, services, taxes, or other items performed, furnished, or incurred for or in connection with the Services.

- 6.2.3** Owner shall make payment on Designer's properly submitted and accurate Application for Payment within thirty (30) days after Owner's receipt of payment from Owner on account of Designer's monthly Application for Payment

At the time Designer submits its final Application for Payment to Owner, Designer shall provide (i) all deliverables required by the Contract Documents; (ii) an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for or in connection with the Services which will in any way affect Owner's or Owner's interests; (iii) a general release executed by Designer waiving, upon receipt of final payment by Designer, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment; and (iv) certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents. Owner shall make payment on Designer's properly submitted and accurate final Application for Payment within thirty (30) days after Owner's receipt of final payment from Owner on account of Designer's final Application for Payment, provided also that Designer has satisfied the requirements for final payment set forth herein.

**8.2.1** Designer designates the individual listed below as its Senior Representative ("Designer's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes:

Name: William Valdez  
 Title: Vice President, Principal  
 Address: 51 University Street, Suite 600  
 Seattle WA 98101  
 Telephone: (206) 461-6000

**9 Designer's Insurance Requirements**

**9.1.1** Prior to starting the Work, Designer shall procure, maintain and pay for such insurance as will protect against claims for bodily injury or death, or for damage to property (including loss of use) and loss or damage resulting from professional errors and omissions, which may arise out of operations by Designer or by any Design Consultants or by anyone employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall not be less than the greater of coverages and limits of liability specified below, any coverages and limits of liability specified in the Contract Documents or coverages and limits required by law.

**9.1.2** Designer shall procure and maintain the following minimum insurance coverages and limits of liability and provide proof of coverage by a Certificate of Insurance and endorsements and specifically name this County Project under the coverage:

Workers' Compensation		Statutory Limits
Employer's Liability	\$1,000,000 each	accident
	\$1,000,000 disease	policy limit
	\$1,000,000 disease	each employee
Commercial General Liability	\$2,000,000 each	occurrence
	\$2,000,000	aggregate (applicable on a per project basis)
Comprehensive Automobile Liability	\$2,000,000 each	accident
Professional Errors and Omissions	\$2,000,000 each	claim
	\$2,000,000 annual	aggregate

Commercial General Liability insurance required under this paragraph shall be written on an occurrence form (ISO Form CG 00 01 or equivalent) and, shall include coverage for Products/Completed Operations extending six (6) years after final acceptance of the Project by Owner or such longer period as the Contract Documents may require. **Provided, however that such coverage beyond three (3) years after final acceptance is available at a commercially reasonable price.** Owner agrees to compensate Designer for any added costs beyond commercially reasonable prices for the additional three (3) year period provided that Designer provides full and complete information about its insurance program costs and quotations., Broad Form Property Damage including Completed Operations, Personal Injury with Employment Exclusion (if any) deleted, Blanket XCU and Blanket Contractual Liability insurance applicable to Designer's defense and indemnity obligations under Article 10, and other contractual indemnities assumed by Designer under the Contract Documents. Commercial General Liability insurance shall include "stop gap" coverage for work in those states where Workers' Compensation insurance is provided through a state

fund if Employer's liability coverage is not available. Comprehensive Automobile Liability insurance required under this paragraph shall include coverage for all owned, hired and non-owned automobiles. Workers' Compensation coverage shall include a waiver of subrogation against Owner and Owner.

If the required Professional Errors and Omissions Insurance is written on a claims made basis, the retroactive date shall be prior to the start of Designer's Work. If insurances are commercially available to obtain, Designer agrees to maintain such coverage for 6 years after final acceptance of the Project by the Owner or such longer period as the Contract Documents may require. Renewal policies during this period shall maintain the same retroactive date.

- 9.1.3** Employer's Liability, Commercial General Liability and Comprehensive Automobile Liability insurance may be arranged under single policies for full minimum limits required, or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy. The general aggregate on the Commercial General Liability coverage shall apply on a project specific basis.
- 9.1.4** Designer shall endorse its Commercial General Liability (including products/completed operations coverage); and Comprehensive Automobile Liability and Umbrella/Excess Liability policies to add Owner, and such other parties as Owner is required under the Contract Documents to name the County, officials, employees and agents as additional insureds on Designer's insurance, as "additional insureds" with respect to liability arising out of (a) operations performed for Owner or Owner's Representative by or for Designer, (b) acts or omissions of Owner or Owner's Representative in connection with their general supervision of operations by or for Designer, (c) Designer's use of Owner's tools and equipment, and (d) claims for bodily injury or death brought against Owner or Owner's Representative by Designer's employees or the employees of Designer's consultants of any tier, however caused, related to the performance of Services under this Agreement. Such insurance afforded to Owner, Owner, and others as additional insureds under Designer's policies shall be primary insurance and not excess over, and Owner's insurance shall be non-contributory. Designer's insurance waives all rights of subrogation.
- 9.1.5** Designer shall require its Design Consultants to procure and maintain, from insurance companies authorized to do business in the state in which the Project is located, the insurance coverages set forth in this Article.
- 9.1.7** Designer shall maintain in effect all insurance coverages required under this Article, or by the other Contract Documents, at Designer's sole expense and with insurance carriers licensed to do business in the State 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 Owner in writing. Deductibles or Self Insured Retention on any policies furnished for this project shall not be more than \$100,000 for each claim.
- 9.1.8** Prior to commencing any services hereunder, Designer shall provide Owner with Certificates and Endorsements evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled. Owner shall have the right to examine any policy required under this Agreement Copies of the complete insurance policies to be provided under this agreement shall be provided to Owner within seven (7) of the signing of this contract , which includes requests made by email.
- 9.1.9** All insurance policies shall contain a provision that coverages and limits afforded thereunder shall not be canceled, materially changed, non-renewed, or restrictive modifications added, without thirty (30) days prior written notice to Owner. Certificates of Insurance and Endorsements shall be filed with Owner prior to start of Designer's Work. Renewal Certificates and Endorsements shall be provided to Owner not less than ten (10) days prior to the expiration date of any of the required policies. All Certificates of Insurance and Endorsements shall be in a form acceptable to Owner and shall provide satisfactory evidence that

Designer has complied with all insurance requirements. Owner shall not be obligated to review such certificates or other evidence of insurance, or to advise Designer of any deficiencies in such documents, and receipt thereof shall not relieve Designer from, nor be deemed a waiver of Owner's right to enforce, the terms of Designer's obligations hereunder.

**9.1.10** The required minimum limits of insurance indicated above shall not in any way restrict or diminish Designer's liability under this Agreement. Owner's right to recover under insurance provided under this article shall not be limited by other portions of the agreement that limit the liability of any party to the proportion of its relative fault for the purpose of indemnification for certain types of claims.

**9.2 Waiver of Subrogation:** Designer and Designer's insurance waives all rights of subrogation.

**9.2.1** Designer and Owner waive against each other and Design Consultants, Owner's separate Designers, Consultants, Sub-Consultants, agents and employees of each and all of them, all damages covered by Builder's Risk insurance, except such rights as they may have to the proceeds of such insurance. Owner and Designer shall, where appropriate, require similar waivers of subrogation from Design Consultants and Consultants and shall require each of them to include similar waivers in their contracts.

## **10.1 Patent and Copyright Infringement**

**10.1.1** Designer shall defend any action or proceeding brought against Owner or Owner's Representative based on any claim that the Project, or any part thereof, or the operation or use of the Project or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Designer of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Designer shall indemnify and hold harmless Owner and Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Owner's Representative in any such action or proceeding. Designer agrees to keep Owner informed of all developments in the defense of such actions.

**10.1.2** If Owner is enjoined from the operation or use of the Project, or any part thereof, as the result of any such patent or copyright suit, claim, or proceeding, Designer shall at its sole expense take reasonable steps to procure the Owner's right to operate or use the Project, or applicable part thereof. If Designer cannot so procure such right within a reasonable time, Designer shall promptly, at Designer's option and at Designer's expense, (i) modify the Project, or applicable part thereof, so as to avoid infringement of any patents, or copyrights, or (ii) replace said work with work that does not infringe or violate any such patent or copyright, and is consistent with the Contract Documents.

**10.1.3** Sections 10.1.1 and 10.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner or Owner's Representative and not offered or recommended by Designer to Owner or Owner's Representative; or (ii) arising from modifications to the Project by Owner or Owner's Representative after acceptance of the Project. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Designer to the same extent Designer is obligated to defend, indemnify and hold harmless Owner in Section 10.1.1 above.

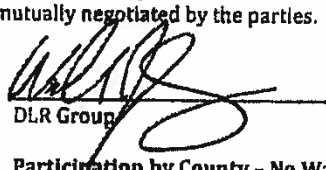
**10.1.4** The obligations set forth in this Section 10.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or

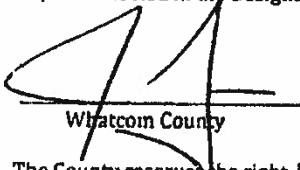
**11.1 Designer's General Indemnification Responsibilities**

**11.2.1 Indemnification by Designer.** To the fullest extent permitted by law, the Designer 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 which 1) are caused in whole or in part by the negligent act or omission, of the Designer its employees, agents or volunteers or Designer's subcontractors or consultants 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 Designer or its subcontractors' or consultants' use of, presence upon or proximity to the property of the County. In the event of the concurrent negligence of the Designer, its subcontractors, consultants, employees or agents, and the County, its employees or agents, this indemnification obligation of the Owner shall be valid and enforceable only to the extent of the negligence of the Designer, its subcontractors, consultants, employees and agents.

If Whatcom County is required to resort to litigation or arbitration to enforce Designer's Indemnification and Defense obligations it shall be entitled to recover its reasonable costs of establishing its right to indemnity including but not limited to all costs, expenses, arbitration filing fees, arbitrator's fees, and attorney fees.

This indemnification obligation of the Designer 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 Designer hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the Designer are a material inducement to County to enter into this Agreement, are reflected in the Designer's compensation, and have been mutually negotiated by the parties.

  
DLR Group

  
Whatcom County

**Participation by County - No Waiver.** 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 Designer's indemnity obligations under this Agreement.

**Survival of Designer's Indemnity Obligations.** The Designer agrees all Designer's indemnity obligations shall survive the completion, expiration or termination of this Agreement.

**Indemnity by Subcontractors.** In the event the Designer enters into subcontracts to the extent allowed under this Agreement, the Designer's subcontractors shall indemnify the County on a basis equal to or exceeding Designer's indemnity obligations to the County and subcontractors shall provide proof of insurance verifying this condition.

**11.2.2** If an employee of Designer, anyone employed directly or indirectly by Designer or anyone for whose acts any of them may be liable has a claim against any party indemnified pursuant to Section 11.2.1 above, Designer's indemnity obligation set forth in Section 11.2.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Designer, or other entity under any employee benefit acts, including workers' compensation or disability acts.



**11.2.3** Designer agrees to procure, maintain and pay for such general liability insurance coverage and endorsements as will insure the provisions for this paragraph.

#### **11.6 Duty to Continue Performance**

**11.6.1** Unless provided to the contrary in the Contract Documents, Designer shall continue to perform the Services and Owner shall continue to satisfy its payment obligations to Designer, pending the final resolution of any dispute or disagreement between Owner and Designer.

**11.7** Owner Design and Construction Contingency. Owner shall establish a contingency amount equal to Three Per Cent (3%) of the construction contract amount between Owner and Contractor for the project. This contingency shall be part of the contract sum between Owner and Contractor. This contingency may be expended, at the sole discretion of Owner, on (1) Unknown or changed conditions, (2) design clarifications or modifications, (3) Contractor claims, including correction of work because of design errors, ambiguities, omissions. (4) changes required because of Requests for Information (RFI's). (5) cost overruns in construction. **Provided** that such contingency shall not be used by reason of any correction or amendment of Designer-Created documents for the project as part of the design or bidding process, but rather only after the owner has executed a Construction agreement with the Contractor.

#### **12.1 Assignment**

**12.1.1** Neither Designer nor Owner shall, without the written consent of the other, assign, transfer or sublet any portion or part of the Services or the obligations required by the Contract Documents.

#### **12.2 Successorship**

**12.2.1** Owner and Designer intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

#### **12.3 Governing Law, Venue**

**12.3.1** This Agreement and all Contract Documents shall be governed by the laws of the State of Washington.

**12.3.2** The Venue of any action in court or of any alternative disputes procedures, including, but not limited to arbitration proceedings, if any shall be in Whatcom County, Washington.

#### **12.4 Severability**

**12.4.1** If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements or court order, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

**12.5.1** The failure of either Owner or Designer to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

## **12.6 Headings**

**12.6.1** The headings used in this Agreement or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

## **12.7 Notice**

**12.7.1** Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in this Agreement or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the number of the intended recipient.

## **12.8 Amendments**

**12.8.1** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

## **12.9 Survival**

**12.9.1** Designer's obligations under this Agreement shall not be released, and shall specifically survive, the completion of all Services hereunder, final payment to Designer, and the termination of this Agreement for any reason.

## **12.10 No Release of Information for Advertising and Promotion**

**12.10.1** Designer shall not publish, release, disclose or announce to any member of the public, press, official body or any other third party any information concerning this Agreement, or any part thereof, without the prior written consent of Owner and/or Owner's Representative, except as required by law. Neither the names of Owner or Owner's Representative, nor of the site, shall be used in any advertising or other promotional context by Designer without the prior written consent of Owner and/or Owner's Representative.

**2 Design Contingency.** It is understood and agreed that the nature of the design process is such that plans, specifications and other documentation prepared by or related services performed by Designer under this agreement will contain errors, omissions, conflicts, ambiguities or design uncertainties requiring clarifications, corrections or modification. Accordingly, the Owner agrees to establish a design contingency equal to 2% of the cost of the work in addition to the construction contingency provided in section 11.7. Such design contingency shall be utilized for the cost attributed to errors, omissions, conflicts, ambiguities or design uncertainties, excluding any improvements or betterments costs implemented by the Owner. Costs incurred by the Owner, excluding any improvements or betterment cost, in excess of this design contingency shall be the responsibility of Designer, but only to the extent caused by the Designer and its SubConsultants, negligent acts, errors, or omissions in the performance of services under this agreement. Any cost over the 2% contingency for negligent errors, omissions, conflicts, ambiguities or design uncertainties requiring clarifications, corrections or modification will be paid by Designer.

### **12.11.1 Termination for Default:**

If the Designer 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 Designer 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 Designer'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 Designer 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 Designer. The Designer 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.

**12.11.2 Termination for Reduction in Funding: Not Applicable**

**12.11.3 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 Designer shall be entitled to payment for actual work acceptably performed for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, and shall be based upon the Designer's provable costs directly allocable this contract, 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. If any termination for cause is determined by any forum to have been wrongful, in that case it shall be converted to a termination for Public Convenience and Designer shall be compensated under the terms of this Section.

***Series 20-29: Provisions Related to Consideration and Payments***

**20.1 Accounting and Payment for Designer Services:**

Payment to the Designer 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 Designer for any costs or expenses incurred by the Designer in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Designer, 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 Designer understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Designer authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Designer 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 Designer to make the necessary estimated tax payments throughout the year, if any, and the Designer is solely liable for any tax obligation arising from the Designer's performance of this Agreement. The Designer hereby agrees to indemnify the County against any demand to pay taxes arising from the Designer'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 Designer must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Designer'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 Designer 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 Designer 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 Designer to termination or damages, provided that the County promptly gives notice in writing to the Designer 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 Designer 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 Designer 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 Designer, (3) to set off any amount so paid or incurred from amounts due or to become due the Designer. In the event the Designer obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Designer by reason of good faith withholding by the County under this clause.

**23.1 Labor Standards:**

The Designer agrees to comply with state and federal requirements, as applicable, 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 Designer:**

The Designer's services shall be furnished by the Designer as an independent Designer, 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 Designer as an independent Designer.

The Designer acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Designer 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 Designer 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.

Designer 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 Designer. 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.

**31.1 Ownership of Items Produced:**

When the Designer creates any copyrightable materials or invents any patentable property, the Designer 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. Designer further agrees to make research, notes, and other work products produced in the performance of this Agreement available to the County upon request.

**32.1 Confidentiality:**

The Designer, its employees, SubConsultants, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Designer 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. Designer shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Designer 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 Designer'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 Designer 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. Designer 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 Designer, then the Designer agrees to notify the Administrative Officer as soon as it is practical.

**34.2 Industrial Insurance Waiver:**

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

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

**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 Designer 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 Designer is governed by such laws, the Designer 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, sexual orientation, age, marital status, 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 Designer 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 Consultant, provided that the foregoing provision shall not apply to contracts or Consultants for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

**35.2 Non-Discrimination in Client Services: Not Applicable**

**36.1 Waiver of Noncompetition: Not Applicable**

**36.2 Conflict of Interest:**

If at any time prior to commencement of, or during the term of this Agreement, Designer 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 Designer 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 Designer 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 Designer 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 Designer 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 Russell, Facilities Manager  
Whatcom County Facilities Management  
316 Lottie Street  
Bellingham, WA 98225  
(360) 676-6746

**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 Designer to the County's Administrative Officer under this Agreement. Notice to the Designer for all purposes under this Agreement shall be given to the address provided by the Designer herein above in the "Designer Information" section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

***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 Designer Commitments, Warranties and Representations:** Not Applicable

**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: *consultant***

a. General:

All disputes or differences between the Designer and the County, arising under or related to this agreement or any additional services, 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 Designer 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 Designer 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 Designer 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. Designer 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 Designer 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 Designer 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 and all claims, 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 then current American Arbitration Association (AAA) Construction Industry rules in effect on the date hereof, as modified by this Agreement. The parties may elect to provide for administration of the arbitration by other than the AAA. 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 Washington State substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, including expenses, costs and attorney fees to the prevailing party and pre-award interest, if provided by statute but shall not have the power to award punitive damages. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in the Superior Court for the State of Washington, in Whatcom County. 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 or be considered a condition precedent to arbitration.

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

**43.1 Venue and Choice of Law:**

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.



**44.1 Survival:**

The provisions of paragraphs 11.1, 11.2, 11.3 , 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

**45.1 Entire Agreement:**

*This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.*

**EXHIBIT A**  
**SCOPE OF WORK**

The scope of services for the requested authorized modifications is for the portion of professional services through schematic design inclusive of the CUP for EPF permitting process only. It is anticipated that once the project is funded following a successful August 2015 funding election that the balance of professional services will be authorized.

Based on the CUP for EPF application checklist and the permitting meeting (May 22, 2014) with the City of Ferndale the following is the understanding of the scope of work:

1. Schematic Design Process and Stakeholder Meetings to a level of effort (Roughly 60% Schematic Design) that allows for the development of a singular design concept and solution. Scope of the Schematic Design Services is outlined in the following section.
2. This portion of the Schematic Design Process results in the following permit applications that will be completed and submitted to the authorities having jurisdiction (AHJ) by A/E with the assistance of Whatcom County:
  - a. Master Application
  - b. CUP for EPF
  - c. Eagle Compliance Check List (As stipulated in the CUP for EPF)
  - d. Encroachment Permit Application
  - e. Planning Application
  - f. Shoreline Management Application
  - g. Site Plan Application
  - h. Civil Plan Applications
    - i. Sanitary Sewer Application – Ferndale
    - ii. Storm Sewer Application – Ferndale
    - iii. Water Application – Ferndale
    - iv. Wetland Mitigation – Ferndale & USACE
3. Stakeholder meetings, executive team meetings, design team meetings, Council presentations and public meetings as needed as a course of the schematic design process and permit applications stated above.
4. Schematic Design Cost Estimates of MACC (Maximum Allowed Construction Cost) and Whole Project Cost of the singular design solution to confirm the project is on Budget
5. Development of Project Schedule inclusive of public funding process
6. Provide public outreach and support including schematic design graphics, coordination with public outreach committee, and attend public presentations.
7. Traffic Consultant
8. Site Survey
9. Geotechnical Engineering – Infiltration & Groundwater Testing, Preload Requirements, Soil Bearing Properties.
10. Geotechnical Engineering – Geothermal Conductivity Analysis.

#### **Schematic Design Services**

In the Schematic Design Phase, the Architect/Engineer (A/E) provides those services necessary to prepare Schematic Design Documents consisting of drawings and other documents illustrating the general scope, scale, and relationship of project components for approval by the agency. Design should be conceptual in character, based on the requirements developed during the Predesign Phase, approved by the agency, or program requirements provided by the agency and reviewed and agreed upon by the A/E. Schematic Design includes the following:

#### **Project Administration**

Services consisting of schematic design administrative functions including consultation, meetings and correspondence, and progress design review conferences.

#### **Disciplines Coordination**

Coordination between the architectural work and engineering work and other involved consultants for the project. When specialty consultants are used, additional coordination beyond basic services may be required and negotiated for appropriate phases of the work.

#### **Document Checking**

Review and coordination of project documents

#### **Consulting Permitting Authority**

Consultations, research of critical applicable regulations, preparation of written and graphic explanatory materials. The services apply to applicable laws, statutes, regulations and codes.

#### **Data Coordination User Agency**

Review and coordination of data furnished for the project by the agency

#### **Architectural Design**

Services responding to scope of work (program /predesign) requirements and consisting of preparation of conceptual site and building plans, schematic sections and elevations, preliminary selection of buildings systems and materials, development of approximate dimensions, areas and volumes.

#### **Structural Design**

Services consisting of recommendations regarding basic structural material and systems, analysis, and development of conceptual design solutions.

#### **Mechanical Design**

Services consisting of consideration for alternate materials, systems and equipment , and development of conceptual design solutions for energy sources/conservation, heating, ventilating and air conditioning (HVAC), plumbing, fire protection, and general space requirements.

#### **Electrical Design**

Services consisting of consideration of alternate systems, recommendations regarding basic electrical materials, systems and equipment, analysis, and development of conceptual design solutions for power service and distribution, lighting, communication raceways, fire detection and alarms, and general space requirements.

#### **Civil/Site Design**

Services consisting of site planning including layout of site features, building position, preliminary grading, location of paving for walkways, driveways and parking, and fencing locations. Also included are the normal connections required to service the building such as water, drainage, and sanitary systems, if applicable.

#### Civil and Site Development

- All permit applications will be prepared by the Design Team. The OWNER will develop the actual permit application and required reports and pay all permit processing fees. This is inclusive of the Conditional Use Permit for Essential Public Facility siting process, and City Planning permit.
- Identify local stormwater control agency, document restrictions as they pertain to the proposed project, define permitting requirements; identify any local public work standards as they pertain to roads, stormwater, sewer etc.; any local restriction regarding dust control, demolition, construction traffic/noise, excess earthwork disposal, any existing floodplain restrictions, etc.
- Civil Engineers will confirm adequacy of topographical and boundary mapping provided by surveyors. A/E team will evaluate legal, ownership, permitting and zoning constraints. Identify environmentally sensitive areas such as wetlands, flood plains, known hazardous waste areas, etc.
- Develop and validate site layout. This will include activities such as: (1) determine structure size, locations, and orientation; (2) layout roadways/truck access corridors and define maneuvering requirements (design vehicle); (3) size and locate parking lots for employees and visitors to the facility; (4) determine emergency vehicle access requirements. (5) evaluate flood plain impacts and constraints; (6) local stormwater management facilities (GSI and LID) (7) locate utility, piping, and duct bank (electrical, communications, and fiber) corridors (horizontal and vertical).
- Civil Engineers will coordinate with surveyors; define surveyors' scope of work; coordinate with geotechnical engineers on additional boring locations; record boring locations on site drawings.
- Develop preliminary erosion control plan for project. Determine if erosion control ponds are required; locate ponds on site plan drawings as required. Prepare preliminary storm water calculations suitable for submission to local site permitting authorities. Develop preliminary storm water control concepts (swales, curb and gutter). Meet with local storm water and erosion and sediment control agency to determine permitting requirements for site plans, and impact of requirements on preparation of contract documents. Document findings.
- Set preliminary finished floor levels for new structures. Establish preliminary finished grades; overall major surfaces, road profiles, etc. Iterate preliminary surfaces and structures to optimize earthwork if necessary.
- Perform preliminary sizing calculations
- Prepare a list of required technical specification.
- Perform ongoing design coordination with other design disciplines.
- Perform quantity take-offs of civil elements for inclusion in the schematic design cost estimate.
- Review and revise LEED and EAGLE checklist.
- Review concepts and draft work products with and seek approval from quality control reviewer.

#### Offsite Civil Schematic Design

- Develop preliminary erosion control plan for offsite work
- Develop LaBounty Road frontage improvements, channelization, and paving sections
- Perform ongoing design coordination with other design disciplines.

- Perform quantity take-offs of civil elements for inclusion in the schematic design cost estimate
  - Review concepts and draft work products with and seek approval from quality control reviewer.
  - Wetland Mitigation and Remediation. Provide mitigation and planning and design services to compensate for up to 3 acres of unavoidable impact sot wetlands.
- Design Field Surveying:
- Design Field Surveying , Topographic Surveys, Property Boundary and Right of Way Surveys, Offsite Survey Support, Basemap and Design Plan Production.

#### Cost Estimating

Services consisting of development of a probably construction cost from quantity surveys and unit costs of building elements for the project. Costs shall reflect the level of design elements presented in the Schematic Design documents, plus appropriate design contingencies to encompass unidentified scope ultimately included in the program. Assist user agency with analyzing scope, schedule, and budget options to stay within the MACC.

#### Presentations

Service consisting of appropriate presentation(s) of the CUP for EPF documents by the A/E to agency representatives.

#### Materials Research

Services consisting of identification of potential of architectural materials, systems, and equipment as required by the CUP for EPF application process.

#### Scheduling

Services consisting of reviewing and updating previously established project schedules or initial development of schedules for decision-making, design and documentation.

#### Public Outreach

Provide public outreach and support on an as needed hourly not to exceed basis. Scope of services will accommodate approximately 500 man hours to public outreach expertise and support services.

- Assistance in developing a coordinated message and developing graphics to support the message. Graphics include images of existing facilities that illustrate intent of the Whatcom County Jail, and rendering of the facility on a site.
- Perform 3<sup>rd</sup> party community polling of the community issues
- Anticipate attending 2 Council meetings as part of the development of the community outreach process
- Anticipate attending 6 public outreach steering committee meetings as part of the development of the community outreach process.
- Supporting the public outreach steering committee in developing materials for presentations and mailers.
- Participate as a technical resource to the County for presentations to support organizations and public information meetings as part of the communication plan.

**EXHIBIT B  
(COMPENSATION)**

As consideration for the services provided pursuant to Exhibit A, Scope of work allowable expenses, the county agrees to compensate the Designer according to the fee schedule provided. Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed. Mileage at IRS rate, lodging and per diem at a rate not to exceed the GSA rate for location where services were provided. 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. Other expenditures such as printing, postage and telephone charges shall be reimbursed at actual cost plus 10%. 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 Designer's expense.

The Contract Number, set forth, shall be included on all billings or correspondence in connection therewith. The Consultant may bill the County progressively not more than once per month (30 days). Progressive billings will be for the amount of work complete.

		<b>SD Phase – CUP for EPF ONLY</b>	<b>Remaining DS to PC Phase (if approved)</b>
1	Space Programming and Pre-Design Services (Completed)	\$0	\$0
2	Design Project Administration & Project Management Fee	\$33,595	\$397,097
3	Architectural Design Fee	\$134,376	\$1,588,388
4	Structural Engineering Design Fee	\$53,750	\$635,355
5	Mechanical Engineering Design Fee	\$80,625	\$953,033
6	Electrical Engineering Design Fee	\$33,594	\$397,097
7	"Engineers" Cost Estimating Services for EPF Process	Included	N/A
8	Cost Estimating Services (SD, DD& CD Phases) includes VE & Bid Assistance	\$0	\$119,000
9	Life Cycle Analysis	\$0	\$40,000
10	On Site CA Phase Representation (Basic Services includes Bi-monthly. Addition Services would result in weekly)	N/A	\$93,600
11	Renderings & Models	Included	Included
12	Interiors, Furnishings, FF&E, U.S. Communities Program (Design & Purchasing Schedule Only)	\$0	\$276,000
13	Detention & Courts Electronic Systems & Security Design	\$4,000	\$456,000
14	Kitchen & Laundry Consulting Design Services	\$0	\$49,400
15	Participation in Commissioning, Program Managed by Others	\$0	\$80,000
16	LEED Certification Documentation Process	\$10,000	\$90,000
17	Civic Engineering Consultant; Wetlands, On-Site & Partial Off-Site CUP for EPF includes Task 2, 3, & 7.1, 7.2, & 7.3	\$136,707	\$534,950
18	Landscape, Hardscape, Community Integration Consultant	\$61,510	\$323,071
19	Traffic Consulting	\$7,500	\$0
20	Civil Engineering Consultant; Site Survey – Task 8	\$43,142	\$0
21	Geotechnical Engineering – Infiltration & groundwater testing, Preload Requirements, Soil Bearing Properties	\$77,185	\$0
22	Geotechnical Engineering – Geothermal Conductivity Analysis	\$35,313	\$0
	<b>Subtotal Professional Lump Sum Services</b>	\$711,297	\$6,032,990
23	Reimbursable Costs, Design Printing, Mailing. Note: Bid set printing is by Owner	\$28,452	\$241,320

Contract for Services Agreement  
DLR Group – Design Services Conditional Use Permitting

24	Public Outreach - As Needed Hourly, Not to Exceed	\$86,138	\$0
<b>Services by Others, not included in DLR Group contract scope unless designated to (continued):</b>			
25	Independent Commissioning Agent (Owner's consultant)		
26	LEED Certification Fee (Owner project cost)		
27	Interior Furnishings, FF&E, U.S. Communities Program (Purchasing & Installation by Owner)		
28	Testing and Balancing (Owner project cost)		
29	Hazardous Materials Study & Abatement (Owner project cost)		
30	Preload Monitoring (Owner project cost)		
31	Materials Testing (Owner project cost)		
32	Roofing Consultant (Owner project cost)		
<b>Grand Total Design Services - This Contract</b>		<b>\$825,887</b>	<b>\$6,274,310</b>





**NOTICE OF CIVIL RIGHTS VIOLATIONS AND NOTICE OF REASON TO BELIEVE  
RCW 42.17A IS BEING OR HAS BEEN VIOLATED**

Via Email and Regular Mail,

TO: Washington Attorney General Bob Ferguson  
1125 Washington St SE  
PO Box 40100  
Olympia, WA 98504

TO: Whatcom County Prosecutor, David S. McEachran  
311 Grand Avenue, Suite 201  
Bellingham, WA 98225

TO: Public Disclosure Commission  
711 Capital Way #206  
PO Box 40908  
Olympia, WA 98504-0908

Pursuant to RCW 42.17A, be advised of the following civil rights violations and reasons to believe RCW 42.17A is being or has been violated.

The flyer attached hereto as **Exhibit A** ("Flyer") was mailed to select registered Whatcom County voters for the promotion of Whatcom County Ballot Proposition No. 1, and Whatcom County Proposition No. 2015-1 and for the purpose of assisting a campaign for the election to public office. This Notice incorporates the facts reported in the October 15, 2015, Bellingham Herald Article (*Whatcom County uses tax revenue to send mailer about jail tax measure*), attached hereto as **Exhibit B**. Whatcom County, Whatcom County Executive Jack Louws, Whatcom County Prosecutor Dave McEachran, and Whatcom County Sheriff Bill Elfo, and other unknown individuals used funds and facilities of a public office or agency, or agencies (directly or indirectly), including the County Executive's Office, the Sheriff's Department, and the Prosecutor's Office for the purpose of assisting the promotion of the two ballot propositions and for the purpose of assisting the campaigns for election of Louws and Elfo.

RCW 42.17A.555 provides, in part,

No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to

any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency....

**A. The Flyer is an impermissible attempt to influence the outcome of the ballot propositions.**

The Flyer is a one-sided pitch for mass incarceration. The Flyer completely omits the incarceration facts being examined nationwide at all levels of government. Having examined cost and injustice of our 40-year history of mass incarceration, Republicans, Democrats, Police Chiefs, and Prosecutors nationwide are calling for reduced incarceration. The nation is becoming aware that the U.S. holds 25% of the planet's incarcerated people, yet has only 5% of the planet's free population.

We as people of color in Whatcom County are especially concerned about mass incarceration and the potential ramping up of mass incarceration in Whatcom County, especially with our proximity to the northern border and the large presence of Homeland Security. The Whatcom County Jail is disproportionately filled with people of color. With this notice, we therefore intend to put Washington, Whatcom County, and local law enforcement on notice of the existing civil rights violations, and our belief that ramping up mass incarceration while ignoring the system's racism is a deliberate exacerbation of ongoing racial profiling and civil rights violations. The Flyer, and the three proponents' (Louws, Elfo, and McEachran) support of the Flyer, increases the level of distrust that communities of color have in Whatcom County law enforcement system.

Mass incarceration is a racist system implemented at the end of, and in reaction to, the gains made during the Civil Rights era. Today, we have a prison-industrial complex expanded to include immigration detention. The Administration, several Congressional leaders, and conservative groups agree that mass incarceration is a serious issue that needs to be addressed throughout our country. The Department of Justice recently announced they are releasing 6,000 prisoners.<sup>1</sup> In Whatcom County, community members and groups have fought for the last decade to bring attention to local leaders and law enforcement, regarding issues of racial profiling and the racially disproportionate population in Whatcom County jails.

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<sup>1</sup> <http://www.ibtimes.com/immigration-2015-one-third-6000-prisoners-due-release-are-undocumented-immigrants-2131042.a>

The entire country is waking up to years of systemic racism and injustice thanks to community awareness, activism, and books like Michelle Alexander's *The New Jim Crow: Mass Incarceration in the Age of Color Blindness*. "More than 130 of the nation's top law-enforcement officials including big-city police chiefs, sheriffs, prosecutors and attorneys general, have joined the call to end the harsh, counter-productive practices and policies that have driven America's [mass incarceration] boom, destroyed communities and written off an entire generation of young men of color."<sup>2</sup> In contrast to reality, a voter reading the Flyer would come away with the impression that there is no alternative to increasing the size of Whatcom County's jail.

The Flyer was created, in part, by the company hired by the County to provide "full design services" and "assistance in developing a coordinated message and developing graphics to support the message." The October 1, 2014, DLR Group Contract for Services Agreement is attached hereto as **Exhibit C**. Local government agencies "...shall not coordinate informational activities with campaign efforts, in a manner that makes the agency appear to be supporting or opposing a ballot measure." January 12, 2015, PDC Letter.

As opposed to an "objective and fair presentation of the facts," the message, apparently, is that a new, expensive, larger jail in Ferndale is necessary. The Flyer uses official uniforms, equipment, publications, and the County seal to support its message. The flyer is one sided and fails to inform the voter of the nature, costs and impacts of the proposal—and leaves out the issues, listed below, about which community members have been educating our local leaders for the last decade:

1. The proposed jail increases the number of Whatcom County jail beds from roughly approximately 280 to 521 (the magnitude of the increase is not even disclosed);
2. The longstanding, well-reasoned testimony, public hearing statements, and oft-repeated concerns of the Whatcom County population opposed to a larger jail;
3. Whatcom County's incarceration rate is already among the highest in the world;
4. Whatcom County's booking rates are up, while statewide bookings are down;<sup>3</sup>
5. Whatcom County offers inmates less "good time" (earned early release) than 27 of Washington's 39 counties (i.e., if you serve time in Whatcom County and behave, you will serve more of your sentence than you would in roughly 7 out of 10 counties in Washington);

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<sup>2</sup> October 22, 2015, New York Times Editorial, citing position of Law Enforcement Leaders ([lawenforcementleaders.org](http://lawenforcementleaders.org)).

<sup>3</sup> <http://www.whatcomcounty.us/DocumentCenter/Home/View/827>;  
<http://www.whatcomcounty.us/449/Background-Documents-on-Jail-Planning>;  
<http://www.whatcomcounty.us/449/Background-Documents-on-Jail-Planning>; and  
<http://www.nwcitizen.com/blog-entry/the-making-of-a-jail-crisis-part-two-stuff-it>

6. The absence of Whatcom County law enforcement training regarding alternatives to booking, as in Seattle's LEAD program, which has reduced recidivism by 25%;
7. The overcrowding is the result of the unlawful mass incarceration policies (including bail recommendation, sentence recommendation, and good time policies) of Whatcom County and the three mass incarceration proponents quoted in the Flyer (Louws, McEachran, and Elfo). WCC 1.28.100 requires, amongst other things, that Sheriff Elfo release inmates early or transfer them when it is overcrowded. Sheriff Elfo and Prosecutor McEachran are also the main architects of overcrowding and unsafe crisis of the jail.
8. The feel bad pictures of inmates sleeping on the floor and the absence of adequate space for a dayroom and other programs is not caused by the size of the jail, but rather by Whatcom County's mass incarceration policies;
9. The jail was deliberately and illegally overcrowded in order to manufacture a crisis that could be used to justify plans to increase Whatcom County's capacity to incarcerate 521 (or more) inmates at a time.
10. No Flyer space is devoted to facts supportive of static or reduced incarceration rates;
11. Whether the County has made a finding (or has relied upon any information or analysis) that its current mass incarceration policy, or the proposed incarceration ramp-up is (or is not) effective at achieving any public policy goals; and if so, what are the findings and information relied upon;
12. How much Whatcom County has spent planning and promoting the plan for a larger jail verses exploring the data, science, and societal benefit, and economic savings of alternatives to incarceration<sup>4</sup>;
13. How much of the local budgets go to incarceration verses incarceration alternatives;
14. The cost of building and maintaining the proposed jail;
15. The cost of building and maintaining a smaller jail;
16. The total amount of additional tax that will be collected over 30 years in the event the proposition is approved;
17. The economic impact of choosing mass incarceration over alternatives to incarceration;
18. The societal impact of choosing mass incarceration over alternatives to incarceration;
19. The lack of an analysis regarding the current make-up (and causes thereof) of the jail population in terms of race, economic status, conviction vs. non-conviction status (i.e. incarcerated because they can't afford bail or home monitoring), mental health status; number of people incarcerated for drug

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<sup>4</sup> In this Notice, "alternatives to incarceration" is defined as alternatives to pre booking and measures to reduce to incarceration (e.g. mental health services, "Ban the Box" law, etc.)

- possession, drug use, drug sales, and driving under the influence (or if such an analysis exists, the fact that it has not been shared with the public);
20. If the jail tax passes, all of Whatcom County's public safety tax for potentially 30 years will be earmarked for incarceration (that is, by law Whatcom County may not raise any additional tax to fund alternatives to incarceration for potentially 30 years);
  21. The exacerbation of the difficulty in finding funding for incarceration alternatives, and enhanced incarceration (as listed in the Flyer by Louws) caused by the proposed tax;
  22. There is no analysis regarding incarceration rate, or even information assisting the voters in deciding that they should incarcerate more, the same, or fewer people than they do already (e.g., whether they should incarcerate 523, 403, or whether they should reduce incarceration rates by 25% to 300).
  23. Even if the jail tax passes, agreement has not been reached for housing Bellingham's non-felony inmates; Bellingham has nearly half the population of the entire county; and the County has demanded Bellingham tax payers provide additional funds before the proposed jail would permit housing of Bellingham's non-felony inmates (beyond the roughly \$120,000,000 that will be raised by the proposed county tax);
  24. The fact that Whatcom County incarcerates people of color at 5 to 7 times the rate of whites;
  25. The fact that Whatcom County law enforcement have provided the public little or no analysis regarding the existence or reduction of its own systemic racism;
  26. The absence of racial bias training in Whatcom County law enforcement which is recommended by the federal government and has been proven effective in reducing racial bias;
  27. The absence of an explanation for who the additional 120 beds will be used to incarcerate (e.g., does the proposal allow Whatcom County to rent beds to the Federal Government to incarcerate people for immigration violations?);
  28. This voting period (ending November 3, 2015) was scheduled to occur two (2) months before the publically funded Whatcom County jail alternatives task force is scheduled to make recommendations; that is, if the proposed tax is passed, 30 years of taxation (roughly \$120,000,000) will be unavailable for alternatives to incarceration.
  29. The reason for building the jail in Ferndale, rather than the County's population center (Bellingham);
  30. As people of color we are concerned that the remote location of the proposed new, big jail would make the the concerns and potential abuses less visible, less transparent to the community, and easier for abuses and violations to be carried out. "Out of sight, out of mind."

31. The DOJ recommends jails be built next to county courthouses rather than in more remote areas to reduce cost and increase function;
32. The economic impact of building a jail away from the population center (Bellingham has nearly half of the County's population);
33. The County Executive (and jail proponent in the Flyer) Jack Louws' financial interest in having the jail built in the proposed location (especially regarding the sale of land under or near the planned site);<sup>5</sup>

To fall within the WAC 290.05.271 exception, public offices or agencies must make "facilities available on a nondiscriminatory, equal access basis for political uses or [make] an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency." Further, public funds or resources may only be expended if "the preparation and distribution of information is not for the purpose of influencing the outcome of an election." PDC Interpretation No. 04-02, Page 4. "Supervisory personnel have a duty to know, apply, and communicate to their staffs the difference between acceptable information activities and inappropriate promotional activities in support of local government ballot measures." *Id.* "[I]n no case will the PDC view a marketing or sales effort related to a campaign or election as normal and regular conduct." *Id.*, at 5.

The Washington Public Disclosure Commission (PDC) has advised, "Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used." January 12, 2015, Public Disclosure Commission Letter to Local Government Agency Officials from Tony Perkins, Acting Assistant Director, Re Election-Related Communications by Local Government Agencies ("January 12, 2015, PDC Letter"). "Such a presentation should also explain, in neutral, factual terms, the outcome anticipated if the proposition is rejected by voters." *Id.* [A]n "objective and fair presentation of the facts" must **avoid** . . . Overtly promotional or oppositional content (including inflammatory or emotionally-driven language; check marks and other indications of support; and gratuitous photos that tend to provoke an emotional reaction—e.g. an image of a body on an EMT stretcher, or a house exploding in flames)." *Id.* (emphasis in original).

" 'Objective and fair presentation of the facts' means that in addition to presenting the facts, the materials should present accurately the costs and other anticipated impacts of a ballot measure." (January 12, 2015 PDC letter) The Flyer uses official uniforms, equipment, and publications, the use of which is restricted in the January 12, 2015, letter.

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<sup>5</sup> NW Citizen article by Tip Johnson, <http://www.nwcitizen.com/entry/louwsy-jail-deal>.

The facts outlined in this notice, including 1 through 33, above, demonstrate reason to believe the foregoing legal requirements have not been met.

**B. The Flyer contains false statements, conflations, and gives the voters false impressions.**

The Flyer appears to be designed to be confusing as it related to existing incarceration alternatives and incarceration alternatives that would be funded by approving the proposed ballot measure. The Flyer makes false statements, conflations, and false impressions, including –

1. States that the Jail Facilities Sales and Use Tax is proposed in Whatcom County, Washington Proposition Number 1 (Proposition Number 1 is a different proposition on the ballot this year, which we feel is designed to dilute the ability of people of color to fairly participate in electing county government who represent their interests.<sup>6</sup> The Jail Facility Sales Tax was named as Proposition 1 not once, but twice, in two different ways, on the flyer-a false statement that was amplified and repeated on King 5 News on October 29. Nowhere on the flyer is it described correctly as Proposition 2015-1. Proposition 1 is supported by large-monied industries like the agricultural industry and coal industry; its passage would solidify power for the three elected officials Louws, Elfo, and McEachran, and their allies. This mislabeling cannot be dismissed as anything but intentional.)
2. Conflates safety and incarceration rates. We agree that the Whatcom County jail should be safe. But safety does not immediately mean building a bigger jail when and where the flyer describes.
3. Conflates the need for better jail conditions with the need for a bigger jail;
4. Uses emotional photos and graphic representations to create a false dichotomy (inhumane treatment or larger jail)
5. Implies that safety issues are due to the size of the jail;
6. Implies that increased incarceration is a natural, unavoidable, and even legally required, need ("State law requires...", "liability," "By law, Whatcom County requires...");
7. Consistent with Louws, McEachran, Elfo, and others' campaign to increase the size of the jail the Flyer manufactures a false choice: Treat people humanely and approve the proposal; or reject it, and treat people inhumanely;
8. States that the need for a new jail is "critical," while at the same time stating that the need has been critical since 1999, and that the estimated date for implementing the proposed solution is 3.5 years from now - Spring of 2019;

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<sup>6</sup> <https://aclu-wa.org/cases/montes-v-city-yakima>  
<https://www.aclu.org/news/federal-court-rules-yakimas-voting-system-violates-voting-rights-act>  
[http://www.yakimaherald.com/special\\_projects/aclu/](http://www.yakimaherald.com/special_projects/aclu/)

9. Implies, confuses, and misleads voters that this measure will also help fund the alternatives, cited in the Flyer;
10. Implies, confuses, and misleads voters that the jail tax will fund the behavioral health and treatment programs listed by Louws;
11. Implies, confuses, and misleads voters that there is existing funding for the behavioral health and treatment programs Louws lists, when the proposal will make funding for such programs more difficult if not impossible;
12. Implies, confuses, and misleads voters that the County funds incarceration and alternatives to incarceration nearly equally (\$12.3 and \$11.5 million, respectively); or alternatively, implies that if the jail tax is approved, the County will fund incarceration and alternatives to incarceration nearly equally (\$12.3 and \$11.5 million, respectively);
13. Implies, confuses, and misleads voters that the County has meaningfully examined its policies regarding incarceration rates;
14. Implies, confuses, and misleads voters that the County has examined alternatives to incarceration;
15. Implies, confuses, and misleads voters that there is evidence to support the need for increased incarceration;
16. States that the new jail is "centrally located";
17. States that there are ". . . no expansion options"
18. States that the "Cities and county agree. . ."

**C. The Flyer is not normal, customary, and regular conduct.**

The Flyer was created, in part, by the company hired by the County to provide "full design services" and "assistance in developing a coordinated message and developing graphics to support the message." According to Louws, the Flyer was specifically approved in a \$27,000+ funding measure passed by the County Council. The flyer is unusual, and unlike previous information mailed to voters on other issues, including other ballot initiatives.

Passage of a tax that maxes out the ability of the County to charge tax for public safety issues for 30 years is not a normal and regular event, and creation of the Flyer is not normal and regular conduct. Passage of Proposition 1, which will likely permanently reduce the voice of voters of color in County government is not normal and regular conduct.

Further, the County Executive who approved the Flyer has profited from sale of land next to or around the proposed jail.<sup>7</sup>

WAC 390-05-273 (Definition of normal and regular conduct) provides,

Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17A.555, means conduct which is (1) lawful,

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<sup>7</sup> NW Citizen article by Tip Johnson, <http://www.nwcitizen.com/entry/louwsy-jail-deal>



i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.

"The agency must be able to demonstrate that for other major policy issues facing the jurisdiction, the agency has customarily communicated with its residents in a manner similar to that undertaken for the ballot measure." PDC Interpretation No. 04-02, Page 5.

In the event communications other than a "jurisdiction-wide mailed "fact sheet," are used, . . . the agency must be able to demonstrate that . . . the method, format, and frequency is typical of how the agency routinely communicates with its audience." January 12, 2015, PDC Letter.

**D. The Flyer is an electioneering communication that identifies political candidates and supports local political campaigns without having been submitted to voters for approval.**

Louws and Elfo are running for re-election in this voting period. They are photographed and quoted in the Flyer as authorities on the subjects. The Flyer is designed to minimize and divert attention from their roles in creating the overcrowding situation.

RCW 42.17A.300(1)(b) provides, "Electioneering communications that identify political candidates for state, local, or judicial office and that are distributed sixty days before an election for those offices are intended to influence voters and the outcome of those elections."

RCW 42.17A.550 provides,

A county, city, town, or district that establishes a program to publicly finance local political campaigns may only use funds derived from local sources to fund the program. A local government must submit any proposal for public financing of local political campaigns to voters for their adoption and approval or rejection.

Neah Monteiro



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Whatcom County Resident,  
filed October 30, 2015, only on her own behalf  
(but also happens to be Steering Committee Member of the Bellingham Racial Justice Coalition)

**Contact Information for Legal Representative:**

Edward Alexander  
Law Office of Edward S. Alexander  
114 West Magnolia, Suite 400  
Bellingham, WA 98225

360-392-2872

CC: NAACP,  
ACLU,  
WSBA,  
Washington State Commission on Hispanic Affairs,  
Washington State Commission on African-American Affairs,  
Washington State Commission on Native American Affairs;  
Lummi Nation;  
Brothers and Sisters of Whatcom County;  
Bellingham Unitarian Fellowship;  
Senator Rick Larson;  
Senator Maria Cantwell;  
State Representatives;  
Whatcom Human Rights Task Force;  
Ralph Munro Institute, WWU Professor Vernon Johnson  
Western Washington University, Fairhaven College  
Fairhaven College, Woodring College of Education

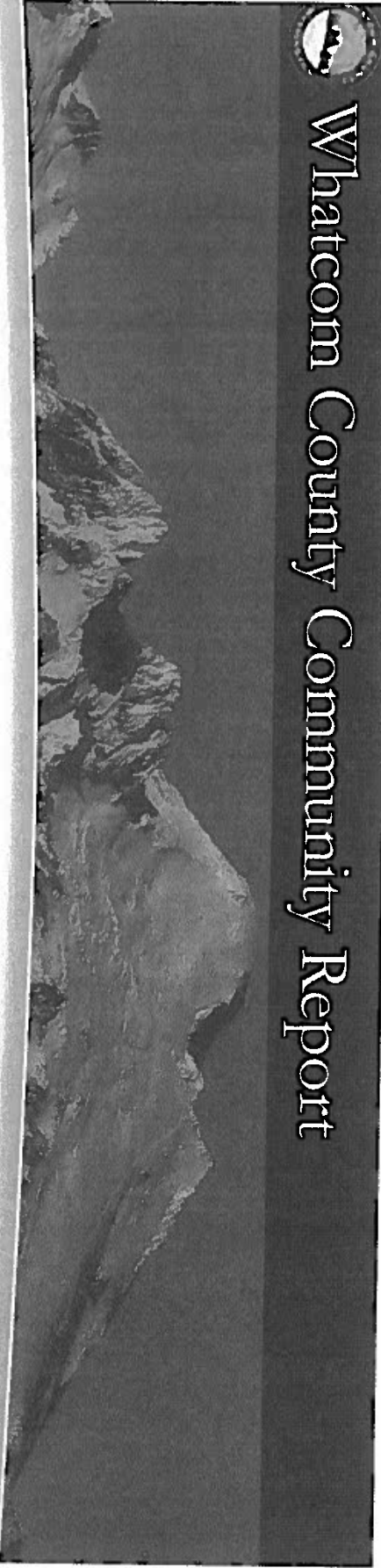
# EXHIBIT A



WHATCOM COUNTY  
311 GRAND STREET  
BELLINGHAM, WA 98225



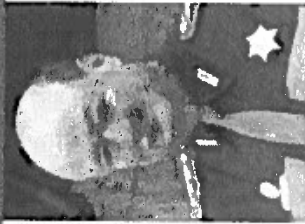
# Whatcom County Community Report



# WHATCOM COUNTY IA II

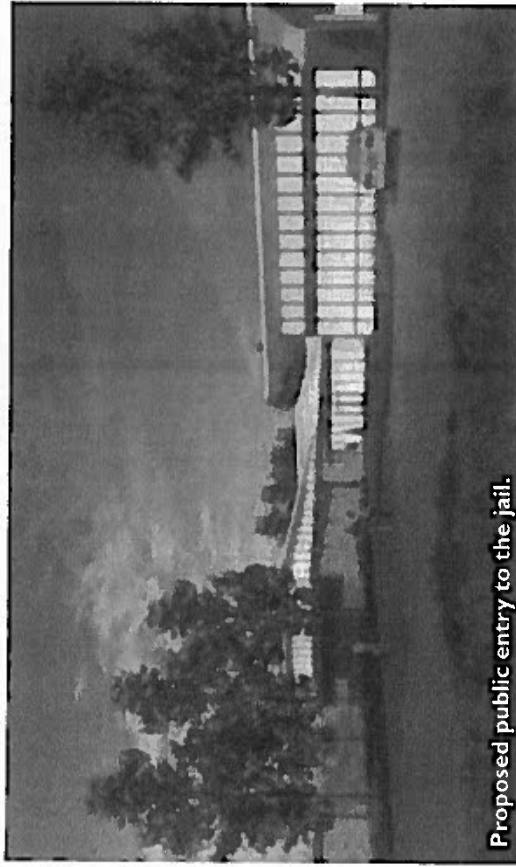


## Existing Jail - Overcrowded and Unsafe



Sheriff Bill Fifo

"The existing jail has been overcrowded and unsafe for decades. Over time, conditions have grown increasingly worse. Eighteen years of reports, findings and analysis by professional consultants, jail-planners, engineers, fire safety officials, staff, the National Institute of Corrections and multiple citizen committees consistently highlighted compelling life-safety and liability issues. Also highlighted were the lack of space for behavioral health and other programming targeted at effective treatment and reducing recidivism. Given severe and unsustainable conditions within the jail that jeopardize staff, visitors and inmates alike as well as expose taxpayers to liability, the County cannot continue to operate the facility into the future at current population levels."



Proposed public entry to the jail.

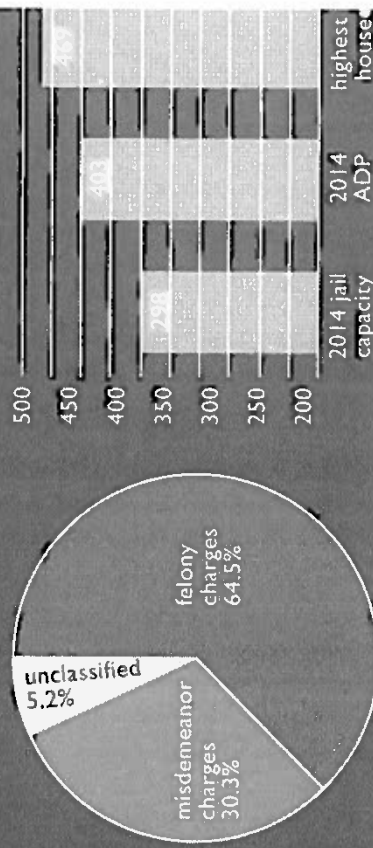
The County cannot continue to operate the facility into the future at current population levels.

Existing Whatcom County Jail has limited renovation and no expansion options.

By law, Whatcom County is required to accept all accused/convicted felons whose case originate in the entire County, including Bellingham, Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas.

The current jail was built in 1984 to house 148 inmates, remodel to house 212. Total jail capacity, including interim jail on Division Street, is 298. The average daily jail population (ADP) in 2014 was 403. According to statewide comparison,

**Our jail population is at 137% percent of capacity, 4th highest in the state.**



**Occupy Jail**

echoing findings recommended by other citizen committees tasked to examine jail issues over the last two decades, including in 1999-2000, 2004 and 2008.

and other health issues. Additio counseling and classroom space education, literacy, substance ab and other training and treatmer

# Ballot Measure

WHATCOM COUNTY,  
 PROPOSITION NUMBER 1  
 JAIL FACILITIES SALES AND USE TAX

Whatcom County Council passed Resolution 2015-024 authorizing a proposition authorizing a sales and use tax on construction of jail facilities. This proposition would impose a sales and use tax of two tenths of one percent (20 cents for every \$100) for constructing and operating jail facilities for persons charged or convicted of misdemeanor and felony offenses and for other public safety purposes, as authorized by RCW 82.14.450. Half of this tax (10 cents for every \$100) would expire upon repayment of bonds issued to construct the facilities, no later than 30 years after issuance.

If this proposition be:

Approved

Rejected

## Current Sales Tax Rates Puget Sound Region

Whatcom County	.085
Hamlet	.087
Lynden	.085
North Bend	.085
Princeton	.087
Yacolt	.087
Black River	.085
Blaine	.085
Clinton	.085
Vernon	.085
St. Johns	.092
Bellevue	.095
Maple Valley	.096
Allyn	.095

The proposition before County voters would add sales and use tax at the rate of 0.2% for construction and operation of jail facilities, adult corrections programs including inmate mental health programs and for other public safety purposes as authorized by RCW 82.14.450.

State law requires the County to provide for a jail. The County Council has determined the current jail does not meet existing and future needs.

If Proposition #1 passes, the County and participating cities will build a replacement jail on Labounty Road in Ferndale, demolish the existing Prospect Street jail and construct new facilities for inmate transfer at the County Courthouse. Construction of a new jail facility will house felons, misdemeanants plus space for behavioral health, medical and administration.



or eliminate our need to expand the proposed replacement jail. These behavioral health and treatment programs include:

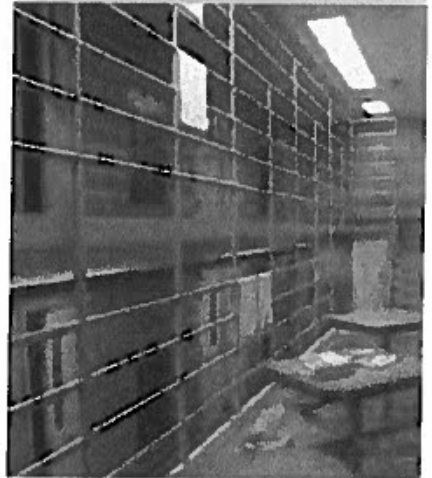
- specialized training for public safety personnel;
- individual and community programs focused on prevention, treatment, intervention and family support programs;
- in-custody court/detention behavioral health services;
- community mental health and substance abuse treatment and opiate outreach;
- family treatment and mental health courts;
- homeless housing services;
- direct court probation specialized behavioral health unit;
- intensive case management, supportive housing, and the Rainbow Recovery Center;
- veterans' relief services;
- a triage center;
- behavioral health services;
- alternative programs, including electronic home monitoring, work release, and jail work crews.



Existing cell.



Existing shower room converted to cell.



Existing dayroom.



Existing inmate programs space.

## Targeted-for Alternatives

Alternative and Diversion Programs  
00

Intensive case management programs  
00

“ One of the greatest challenges and frustrations within the current jail is the inability to provide adequate space for health services and programming.



*There are huge demands for services for all of the care the jail provides. The lack of clinic and counseling space*





# EXHIBIT B

Mailers cost \$28,000, went only to registered voters

Some question use of taxpayer money, say only one side is presented

No complaint yet filed with state Public Disclosure Commission

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Cover of the Whatcom County Community Report sent to residents. Whatcom County  
Courtesy to The Bellingham Herald

i

By Samantha Wohlfeil

The Bellingham Herald

- o [LINKEDINGOOGLE+PINTERESTREDDITPRINTORDER REPRINT OF THIS STORY](#)**BELLINGHAM**

Some community members are furious about the county's use of public money to mail out information about a jail sales tax measure to registered voters.

The day before many households would start to see ballots arrive from the auditor's office, each household with at least one registered voter got a flier from the county labeled the "Whatcom County Community Report: Whatcom County Jail."

I said that has to be a phony mailer, it's a fraud, there's no way the county would send something you are describing. Ken Mann, Whatcom County Council member

The mailer presents pictures of the current and proposed Whatcom County Jail and talks about the proposal to pay for it with a 0.2 percent sales tax increase (20 cents per \$100 purchase). The mailer contains information from the county, Whatcom County Executive Jack Louws, Sheriff Bill Elfo, and Prosecutor Dave McEachran, on four 11-by-17 glossy color pages.

A copy of it can be viewed on the county website, [co.whatcom.wa.us](http://co.whatcom.wa.us), by searching for "community report mailer."

The mailers cost \$28,452, according to a county contract. The money came from a 2004 sales tax that voters passed to help pay for a new jail.

State law prohibits the expenditure of public money or use of public offices or spaces to campaign for a specific candidate or promotion of or opposition to any ballot proposition, with a few exceptions. The county claims it is allowed to send out one such mailer under state guidelines.

## First impressions

After opening their mail, some of the most vocal political players in the county took to social media to vent about the flier and question whether it violated state campaign rules.

Among them was Whatcom County Council member Ken Mann, who said he first learned of the fliers when an "irate constituent" called him to say they were upset county government would spend taxpayer dollars to lobby for increased taxes.

"When she described it to me, I said that has to be a phony mailer, it's a fraud, there's no way the county would send something you are describing," Mann said.

He was wrong.

In fact, whether they knew it or not at the time, Mann and the other six sitting council members unanimously approved the money for the fliers in September 2014 as part of an \$825,887 contract amendment with DLR Group, the consultant working on the jail. The contract included funding for public outreach, which included developing materials for presentations and mailers, among other tasks.

"My initial reaction was shock and dismay and finally outrage," Mann said. "I was further outraged that they would equate public outreach with a one-sided political propaganda piece during election season."

Mann said the council "never ever never never never" talked about sending a mailer out, and he thought there was no way the council would have approved that item had it gone before them.

It gives people information to decide whether or not they support it. I feel it follows the intent of the law. Jack Louws, Whatcom County executive

Doug Starcher, who helped write the statement against the jail sales tax measure for the Whatcom County voters' guide, said the mailer was a "despicable piece of misrepresentation."

Starcher questioned the use of pictures in the mailer, specifically images of overcrowded cells.

"The first question is did those prisoners give their permission for those photographs to be taken and used," he said. "The notion that those photographs are anything other than lobbying in favor of this tax, to try and represent anything else is ridiculous."

He also questioned the use of pictures of Louws and Elfo, who are both up for re-election.

"There's a picture of the County Executive, who is running for office, then it lands in people's mailboxes the day before or the day that their ballots arrive," Starcher said. "That looks a little sketchy to me."

Following the rules

On Friday morning, Oct. 16, Louws said the county followed the guidelines for such mailers as laid out by the state Public Disclosure Commission.

"We're following the PDC guidelines," he said. "I think it is a fact-based document."

The PDC used to offer to review mailers for compliance before they were sent out, but that program was cut in January this year, said Lori Anderson, a PDC spokeswoman.

The county referenced a memo from the PDC in putting together the mailer. The executive's office, sheriff's office and prosecutor's office all worked to make sure the flier was fact-based and met the requirements, Louws said. The number of staff hours working on the flier was not specifically tracked.

The county cites a PDC interpretation as giving them "not only the right, but the responsibility" to "inform the general public of the operational and maintenance issues" and tells the county it may "distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure."

"This shows where we're at," Louws said. "It doesn't propose a position on it, but it does identify that we're putting it forward to the voters for reasons based on a jail task force and on a resolution the Whatcom County Council has passed."

When asked if he believed the flier was objective, Louws said, "It gives people information to decide whether or not they support it. I feel it follows the intent of the law."

Deputy Prosecuting Attorney Dan Gibson, who helped review the text of the flier, which was compiled by other staff, said those who worked on it had framed their work using similar types of fliers that had been used in other counties. One of those was a flier sent out in Skagit County when their new jail sales tax increase was on the ballot.

The title, Whatcom County Community Report, was similar to the title used in Skagit, Louws said.

"Whenever an informational flier is presented, you talk about what is the current situation," Gibson said. "People are providing factual information, and doing so obviously within a context. In this case, it's people who work within the facility describing it as it currently exists, and how it would exist if a new facility was constructed."

Mann said the legality of the flier wasn't important, but that it's a matter of principle.

"Whether you're a Republican or a Democrat or an independent, it's just so far over the line," Mann said. "Even if they found some loophole that they can claim this is legit, that does not make it right, and it does not make it ethical."

#### Additional concerns and complaint

It was too soon to tell if anyone would file a complaint with the PDC as of Friday afternoon, although several people said they were looking to see if they might have a case to do so.

Richard May, who served on the County Charter Review Commission, said he was most concerned about the title of the ballot measure used in the flier.

"In this mailed piece it says this is Proposition 1," May said. "The jail vote on the ballot is Proposition 2015-1. Proposition 1 on the ballot is district-only voting."

People who follow politics closely and think about such issues all the time will be able to make that distinction, May said, but the majority of voters don't have a lot of time to do background research.

"If they get that piece of mail and say, 'Yes, I want to vote yes for the jail,' and it says in giant letters 'Proposition 1,' a single-issue voter may say 'I've got to make sure to vote yes for Proposition 1,'" May said. "That could boost the district-only vote by hundreds or even thousands of votes, so that's a huge issue."

When asked about the potential for mistaking the two similarly named propositions, Gibson said he didn't think it was an issue.

"I'm assuming that every voter reads the language of the proposition upon which they are voting," he said. "I think that's a fair assumption. The reason we put the language in there is so that people will read it."

What we want most is for people to be informed on the election and not confused on anything, including all of these (charter) amendments. Charlie Crabtree, Whatcom County Republicans chairman

Tanya Baumgart, who helped produce this year's Bellingham/Whatcom County League of Women Voters forums, said she was surprised to see the mailer as she thought the county was not allowed to send them out. She did not speak as a representative of the League, which has not taken a stance for or against the measure.

"I had to work with the PDC to make sure we were in compliance with their guidelines for our forums," Baumgart said. "The PDC gave me the example that basically any time the taxpayer monies are being used for printing fliers is kind of an illustration of something that violates PDC guidelines."

Though the flier isn't explicitly in favor of the ballot measure, Baumgart said, "it definitely gives the one side of the ballot measure but doesn't give the other side. There were both sides presented at our forums."

She said that what is included in the flier is reasonably accurate and it appears to be an educational piece, but questioned the fact that it was only sent to voters.

"So that's not just an educational piece for the community, it's a targeted mailing to voters," she said. "That gives me pause."

Charlie Crabtree, chair of the Whatcom County Republicans, said the Republicans had not been involved in the flier.

When asked about spending taxpayer money on the materials, Crabtree said the PDC states it needs to be used in the public interest, and educational fliers are allowed when school districts are putting out information on levies.

"At the same time, I think that's a heck of a lot of money," he said.

Crabtree said he believed the piece was meant to inform the public about what's on the ballot, and he would stand by the Republicans' endorsement for the jail measure, but said he could understand the concerns about spending taxpayer money.

"I can tell you there are a lot of conservatives worried about the jail costs, and probably this just adds to that, I don't know," Crabtree said. "But when it gets down to it, as far as the Republicans are concerned, what we want most is for people to be informed on the election and not confused on anything, including all of these (charter) amendments."

General election ballots are due to drop boxes or must be postmarked by Nov. 3.

*Reach Samantha Wohlfeil at 360-715-2274 or*

*samantha.wohlfeil@bellinghamherald.com. Follow her on Twitter at @BhamPolitics.*



# EXHIBIT C





## GENERAL CONDITIONS

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

#### **1.1.1 Scope of Services:**

The Designer agrees to provide to the County professional 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. The intent of the drawings and specifications is to include all items necessary for the proper execution and completion of the project: **Included in the base fees are Professional Services through schematic design inclusive of the Conditional Use Permit for Essential Public Facilities permitting process only.**

**1.2.1** Terms used in this Agreement shall have the meanings set forth unless otherwise provided herein, with the following specific terms defined as follows:

- .1 *Additional Services* refers to those services identified in Section 2.8 hereof.
- .2 *Agreement* refers to this executed contract between Owner and Designer.
- .3 *Construction Phase Services* refers to those services identified in Section 2.7 hereof.
- .4 *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.
- .5 *Design Consultant* is a qualified, licensed design professional who is not an employee of Designer, but is retained by Designer, or employed or retained by anyone under contract with Designer, to furnish design services required under the Contract Documents.
- .6 *Design Phase Services* refers to those services set forth in Sections 2.5 and 2.6 hereof.
- .7 *Design Schedule* refers to the schedule setting forth the dates by which Designer must perform the various Services required herein, consistent with the Project Schedule.
- .8 *Designer's Fee* shall refer to the compensation due Designer for the performance of the Services as set forth herein.
- .9 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.
- .10 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, or any Services.
- .11 *Owner's Project Criteria* are developed by or for Owner to describe Owner's program, requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements. Owner's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

- .12 *Project Schedule* refers to the schedule setting forth the dates by which the various stages of both the design and construction of the Project must be performed so as to satisfy Designer's obligations to Owner.
- .13 *Site* is the land or premises on which the Project is located.
- .14 *Bases of Design* the intent is to provide a complete specification & drawing package. The intent of the complete package is to include all necessary items for the proper execution and completion of work; however, any item or detail not specifically mentioned in the specifications or shown on the drawings, but which is necessary to produce the intended results shall be included.
- .15 *Designer* is any person or entity retained by Owner as an independent Designer to perform a portion of the construction work for the Project and shall include materialmen and suppliers.
- .16 *Sub-Consultant* is any person or entity retained by a Designer as an independent Designer to perform any portion of the Designer's work and shall include materialmen and suppliers.
- .17 *Substantial Completion* is the date on which the Project, or an agreed upon portion of the Project, is sufficiently complete so that Owner can occupy and use the Project or a portion thereof for its intended purposes.
- .18 *Services* shall include all Design Phase Services, Construction Phase Services and Additional Services required by the Contract Documents or as may be authorized in writing by Owner.

### 1.3 Contract Documents

1.3.1 The Contract Documents, in addition to this Agreement, are comprised of the following:

- .1 All written modifications, amendments and change orders to this Agreement;
- .2 This Agreement, including all exhibits and attachments, executed by Owner and Designer;
- .3 Written Supplementary Conditions, if any, executed by Owner and Designer;
- .4 The design Schedule;

1.4.1 The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, this Agreement shall take precedence.

2.1.1 Designer shall, consistent with applicable state licensing laws, provide the Services, including architectural, engineering and other design professional services, as described in this Agreement and in accordance with the Contract Documents. Designer agrees that such Services shall be provided through qualified, licensed design professionals who are either (i) employed by Designer or (ii) procured by Designer from qualified, licensed Design Consultants.

2.1.2 Designer shall not engage the services of any Design Consultant without first obtaining the approval of Owner, which approval shall not be unreasonably withheld. Designer agrees that each Design Consultant shall be fully bound to Designer in the same manner as Designer is bound to Owner for all the requirements of the Contract Documents to the extent applicable to the Design Consultant's scope of services. Designer

shall at all times be responsible for the services performed by its Design Consultants, and shall coordinate the services of its Design Consultants to satisfy Designer's obligations under the Contract Documents. Nothing in this Agreement shall relieve Designer from responsibility for the services performed by its Design Consultants, or create any legal or contractual relationship between Owner and any Design Consultant.

- 2.1.3 If Owner or Owner Representative performs other work on the Project with separate design professionals under Owner's or Owner's Representative control, Designer agrees to reasonably cooperate and coordinate its activities with those of such separate design professionals so that the Project can be completed in an orderly and coordinated manner and without disruption.
- 2.1.4 Designer shall only communicate with Owner, Consultant(s), or Sub-Consultants through Owner unless the parties agree otherwise.
- 2.1.5 Within seven (7) days after execution of this Agreement, Owner and Designer will meet to discuss issues affecting the administration of the Services and to implement the necessary procedures, including but not limited to those relating to the schedule for the Services, schedule updates, review of submittals, and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents and allow Designer to meet its obligations to design the Project consistent with the Contract Documents, without compromising any professional obligations of Designer.

## 2.2 Standard of Care

2.2.1 The standard of care for all design professional services performed by Designer and its Design Consultants pursuant to this Agreement shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project for projects of similar size and complexity. Notwithstanding the preceding sentence, if the Agreement specifically identifies performance standards for the Services, Designer agrees that all such Services shall be performed to achieve such standards.

## 2.3 Legal Requirements

- 2.3.1 Designer agrees to perform the Services in accordance with all applicable Legal Requirements.
- 2.3.2 Designer's Fee and/or the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Services. Such effects may include, without limitation, revisions Designer is required to make to the Construction Documents because of changes in Legal Requirements.
- 2.4.1 Designer agrees that the Key Personnel assigned to perform the Services shall be as listed in paragraph 2.4.2 below. Designer shall not change such personnel without prior written approval by the Owner.
- 2.4.2 Key Personnel. The following individuals/positions are considered KEY PERSONNEL.

- Principal –
- Project Architect –
- Draftsperson –
- Clerical –

- 2.5.2 Designer shall provide reasonable assistance to Owner in obtaining any permits, approvals, and licenses which are not Designer's obligation to obtain, but which are required for the construction of the Project.

**2.5.3** Designer shall make any revisions to the Construction Documents reasonably necessary to secure permits, approvals, and licenses, including those which have been denied for failure of the Construction Documents to meet Legal Requirements. If such revisions are necessary for reasons beyond the control of Designer or its Design Consultants, Designer shall be compensated for such revisions as a change to this Agreement.

## **2.6 Design Services**

**2.6.1** In accordance with the times set forth in the Design Schedule, Designer shall submit to Owner all interim design submissions and revisions required. Such design submissions shall be in the form and quantity called for in the Contract Documents and may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Owner and Designer agree that prior to the scheduled date for submitting all design submissions to Owner, Owner's Representative and Designer will hold meetings for the purpose of discussing and monitoring the design for consistency with the requirements of the Contract Documents, as well as Owner's pricing and other assumptions.

**2.6.2** In accordance with the Contract Documents and the times set forth in the Design Schedule, Designer shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Project. The Construction Documents shall be consistent with the latest set of interim design submissions; as such submissions may have been modified in a design review meeting. Designer shall provide the Construction Documents in the form and quantity called for in the Contract Documents; actual costs for the printing of these submission documents shall be paid for out of the reimbursable cost set forth in Exhibit "A", if available. Designer shall perform agreed upon revisions and submit revised Construction Documents to Owner for Owner's approval.

**2.6.3** Designer shall attend and participate in such meetings as are held between Owner and Designer to discuss interim design submissions and the Construction Documents. If requested, Designer shall identify during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Owner and provided to all attendees for review.

**2.6.4** In addition to the interim design submissions and the Construction Documents, Designer shall, if requested by Owner, prepare interim design submissions and Construction Documents the parties agree are required to permit commencement of construction on a portion of the Project before the entire Construction Documents for the Project are completed.

**2.6.5** Owner's approvals of interim design submissions and the Construction Documents are for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Contract Documents.

**2.6.6** Designer will, at its own cost, revise any interim design submission or the Construction Documents to correct any of its errors, mistakes or omissions. Designer shall also design to a Fixed Design Budget and, at its own cost, make such revisions as are required to achieve such budget, Any and all such revisions required of this paragraph shall be performed timely and so as not to jeopardize the Design Schedule and/or the Project Schedule. The expense of such revisions shall not be charged against the 5% contingency established in section 12.10.2

## **2.7 Construction Phase Services**

**2.7.1** Designer shall assist Owner in preparing bidding documents for specified portions of the Project's construction, and clarifying and responding to questions involving the bidding documents.

- 2.7.2** Designer shall timely provide requested clarifications and interpretations of the Construction Documents (often referred to as "RFI's"), which shall be consistent with the intent of, and reasonably inferable from, the Contract Documents. Designer shall make all revisions to the Construction Documents necessary for the proper construction of the Project. Such revisions will be accomplished at the Designer's expense if and to the extent necessitated by an ambiguity, error or omission of the Designer; all other revisions will be an Additional Service. Responses to RFI's, for whatever reason required shall be timely and shall not cause delays to the approved critical path schedule for the project.
- 2.7.3** Designer shall review and approve such submittals, including shop drawings, product data and samples, as may be required by the Design-Build Agreement or as reasonably required by the Owner. Such review shall be accomplished in accordance with the project schedule within the times for such review provided in the critical path schedule submitted by the Contractor and approved by the owner. The time within which Designer shall review and respond to submittals under will be discussed at the meeting provided in Section 2.1.5, but shall be finally established upon the approval of critical path for the construction of the project. Designer shall expeditiously inform Owner of any revisions that are necessary as a condition to Designer's approval of submittals. Designer's review and approval shall not relieve Contractor of responsibility for construction means and methods, or safety precautions. Except for performance based specification submittals, designer's approval will not apply to a change from the design shown in the Construction Documents unless the change is expressly noted as a change to the Construction Documents by clouding in the submittal.
- 2.7.4** Designer shall review, and if acceptable approve, any substitutions for materials or equipment proposed by Owner.
- 2.7.5** Designer shall, if requested by Owner, review any inspection reports or tests involving the construction of the Project and provide its comments to Owner. Designer is not responsible for the accuracy or completeness of the tests or inspections.
- 2.7.6** Designer shall at appropriate intervals visit the Site to determine in general if the construction is proceeding in accordance with the Construction Documents. Designer shall promptly notify Owner of any defects, deficiencies, deviations, omissions, or violations observed by Designer in the construction of the Project, and make recommendations to Owner on how to proceed. Designer and Designer's consultants shall visit the Site an average of once per month during the period of construction, or more as necessary to perform their professional duties under this Agreement.
- 2.7.7** Designer shall attend meetings with Owner, Contractors, and Consultants to discuss design issues which may arise during construction.
- 2.7.8** Designer shall provide such certifications as may be necessary relative to Substantial Completion.
- 2.7.9** Designer's provision of the Construction Phase Services shall not be construed to make Designer responsible for (i) the acts or omissions of Contractor, or any Sub-Contractors, (ii) the means, methods, sequences, and techniques of construction of the Project or (iii) safety precautions and programs in connection with the construction of the Project. Nothing in this Agreement shall create any duties to or legal or contractual relationship between Designer or any Contractor or Subcontractor. If the Owner authorizes deviations from the documents prepared by the Designer or its Consultants without written agreement of the Designer, the Owner shall indemnify, defend and hold harmless the Designer, its Consultants and their respective agents and employees from and against claims, damages, losses and expenses, arising out of or resulting from such deviations.



## **2.8 Additional Services**

**2.8.1** Additional Services, if any, agreed upon by the parties shall be compensated as set forth in Exhibit A or in an amendment to this Agreement. Additional Services are those services not specifically described as part of Services in this Agreement. Additional Services include, without limitation, making revisions to documents due to adjustments in the program, project budget, enactment of revisions to codes subsequent to the preparation of such documents and providing services required due to significant changes in the Project including, but not limited to: size, quality, complexity, construction cost, schedule or method of bidding or negotiation and contracting for construction. Additional Services will not include necessary modifications or corrections that were missed or miscalculated by the Designer.

### **Timely Reviews, Approvals and Submittals**

- 3.1.1** Owner shall provide timely reviews and approvals of all interim design submissions and the Construction Documents consistent with the turnaround times set forth in the Design Schedule and the Design-Build Agreement, or as agreed to by the parties at the meeting required under Section 2.1.5 hereof.
- 3.1.2** Owner shall, in the contract for construction, require Contractor to submit timely to Designer all submittals, including shop drawings, product data and samples, for Designer's review and approval consistent with the Project Schedule. Timely submittal means in accordance with the times noted in the submittal schedule included in the project critical path schedule for the project; (Standard two weeks for most submittals with a portion of the submittals required to be processed quicker) times to be agreed upon between Designer, Contractor and Owner when appropriate. Designer will provide a schedule of items to be submitted by Owner for Designer's review.
- 3.1.3** Owner shall provide timely notice to Designer of any delays to the Project caused by Designer.
- 3.1.4** Owner shall provide the following information and materials to Designer, unless otherwise agreed.
- .1** Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
  - .2** Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
  - .3** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Designer to perform the Services;
  - .4** A legal description of the Site;
  - .5** As-built and record drawings of any existing structures at the Site;
  - .6** Environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site;
  - .7** Owner's Project Criteria;
  - .8** Test and inspection reports.

**3.4.1** If Designer's performance of the Services are delayed for any reason so as to impact the Design Schedule or the Project Schedule, Designer shall promptly notify Owner in writing of the cause(s) of such delay within sufficient time to permit Owner to provide timely notice to Contractors or Consultants. To the extent the delay is due to any negligent act, error or omission on the part of Designer, Design Consultants, or anyone for whom they are responsible, Designer shall compensate and indemnify Owner for all costs, damages, and expenses arising from such delay. If the delay is caused by Owner or others for whom Owner is responsible, the Designer's Fee and the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of the delay. If the delay is caused by Owner or other causes, the Designer's Fee and the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of the delay if and only to the extent Owner secures such compensation and time from the Owner.

**Section Numbers 3.4.2 through 6.1.0 are purposely omitted from this contract.**

**6.1.1** Designer's Fee shall be the compensation due Designer for the performance of the Services, including all Design Phase Services, Construction Phase Services, and Additional Services, and for Reimbursable Costs, all as set forth in this Agreement. Unless otherwise provided in the Contract Documents, the Designer's Fee is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

**6.1.2** Designer will be compensated for the Design Phase Services, Construction Phase Services, Additional Services, if any, and Reimbursable Costs as set forth in Exhibit A.

**6.2 Applications for Payment**

**6.2.1** Beginning with the first month after the Date of Commencement, Designer shall submit on a monthly basis for Owner's review and approval, Designer's certified Application for Payment requesting payment for all Services performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.5 hereof. Once approved, Owner will submit Designer's Application for Payment to Owner with Design- Builder's next application.

**6.2.2** The Application for Payment shall constitute Designer's representation that (i) the Services have been performed consistent with the Contract Documents, (ii) the Services have progressed to the point indicated in the Application for Payment, (iii) Design Consultants have been paid all amounts previously received by Designer on account of their services, and (iv) there are no claims, obligations or liens outstanding or unsatisfied for labor, services, taxes, or other items performed, furnished, or incurred for or in connection with the Services.

**6.2.3** Owner shall make payment on Designer's properly submitted and accurate Application for Payment within thirty (30) days after Owner's receipt of payment from Owner on account of Designer's monthly Application for Payment

At the time Designer submits its final Application for Payment to Owner, Designer shall provide (i) all deliverables required by the Contract Documents; (ii) an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for or in connection with the Services which will in any way affect Owner's or Owner's interests; (iii) a general release executed by Designer waiving, upon receipt of final payment by Designer, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment; and (iv) certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents. Owner shall make payment on Designer's properly submitted and accurate final Application for Payment within thirty (30) days after Owner's receipt of final payment from Owner on account of Designer's final Application for Payment, provided also that Designer has satisfied the requirements for final payment set forth herein.

8.2.1 Designer designates the individual listed below as its Senior Representative ("Designer's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes:

Name: William Valdez  
Title: Vice President, Principal  
Address: 51 University Street, Suite 600  
Seattle WA 98101  
Telephone: (206) 461-6000

9 Designer's Insurance Requirements

9.1.1 Prior to starting the Work, Designer shall procure, maintain and pay for such insurance as will protect against claims for bodily injury or death, or for damage to property (including loss of use) and loss or damage resulting from professional errors and omissions, which may arise out of operations by Designer or by any Design Consultants or by anyone employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall not be less than the greater of coverages and limits of liability specified below, any coverages and limits of liability specified in the Contract Documents or coverages and limits required by law.

9.1.2 Designer shall procure and maintain the following minimum insurance coverages and limits of liability and provide proof of coverage by a Certificate of Insurance and endorsements and specifically name this County Project under the coverage:

Workers' Compensation		Statutory Limits
Employer's Liability	\$1,000,000 each	accident
	\$1,000,000 disease	policy limit
	\$1,000,000 disease	each employee
Commercial General Liability	\$2,000,000 each	occurrence
	\$2,000,000	aggregate (applicable on a per project basis)
Comprehensive Automobile Liability	\$2,000,000 each	accident
Professional Errors and Omissions	\$2,000,000 each	claim
	\$2,000,000 annual	aggregate

Commercial General Liability insurance required under this paragraph shall be written on an occurrence form (ISO Form CG 00 01 or equivalent) and, shall include coverage for Products/Completed Operations extending six (6) years after final acceptance of the Project by Owner or such longer period as the Contract Documents may require, **Provided, however that such coverage beyond three (3) years after final acceptance is available at a commercially reasonable price.** Owner agrees to compensate Designer for any added costs beyond commercially reasonable prices for the additional three (3) year period provided that Designer provides full and complete information about its insurance program costs and quotations., Broad Form Property Damage including Completed Operations, Personal Injury with Employment Exclusion (if any) deleted, Blanket XCU and Blanket Contractual Liability insurance applicable to Designer's defense and indemnity obligations under Article 10, and other contractual indemnities assumed by Designer under the Contract Documents. Commercial General Liability insurance shall include "stop gap" coverage for work in those states where Workers' Compensation insurance is provided through a state

fund if Employer's liability coverage is not available. Comprehensive Automobile Liability insurance required under this paragraph shall include coverage for all owned, hired and non-owned automobiles. Workers' Compensation coverage shall include a waiver of subrogation against Owner and Owner.

If the required Professional Errors and Omissions insurance is written on a claims made basis, the retroactive date shall be prior to the start of Designer's Work. If insurances are commercially available to obtain, Designer agrees to maintain such coverage for 6 years after final acceptance of the Project by the Owner or such longer period as the Contract Documents may require. Renewal policies during this period shall maintain the same retroactive date.

- 9.1.3** Employer's Liability, Commercial General Liability and Comprehensive Automobile Liability insurance may be arranged under single policies for full minimum limits required, or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy. The general aggregate on the Commercial General Liability coverage shall apply on a project specific basis.
- 9.1.4** Designer shall endorse its Commercial General Liability (including products/completed operations coverage); and Comprehensive Automobile Liability and Umbrella/Excess Liability policies to add Owner, and such other parties as Owner is required under the Contract Documents to name the County, officials, employees and agents as additional insureds on Designer's insurance, as "additional insureds" with respect to liability arising out of (a) operations performed for Owner or Owner's Representative by or for Designer, (b) acts or omissions of Owner or Owner's Representative in connection with their general supervision of operations by or for Designer, (c) Designer's use of Owner's tools and equipment, and (d) claims for bodily injury or death brought against Owner or Owner's Representative by Designer's employees or the employees of Designer's consultants of any tier, however caused, related to the performance of Services under this Agreement. Such insurance afforded to Owner, Owner, and others as additional insureds under Designer's policies shall be primary insurance and not excess over, and Owner's insurance shall be non-contributory. Designer's insurance waives all rights of subrogation.
- 9.1.5** Designer shall require its Design Consultants to procure and maintain, from insurance companies authorized to do business in the state in which the Project is located, the insurance coverages set forth in this Article.
- 9.1.7** Designer shall maintain in effect all insurance coverages required under this Article, or by the other Contract Documents, at Designer's sole expense and with insurance carriers licensed to do business in the State 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 Owner in writing. Deductibles or Self Insured Retention on any policies furnished for this project shall not be more than \$100,000 for each claim.
- 9.1.8** Prior to commencing any services hereunder, Designer shall provide Owner with Certificates and Endorsements evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled. Owner shall have the right to examine any policy required under this Agreement Copies of the complete insurance policies to be provided under this agreement shall be provided to Owner within seven (7) of the signing of this contract , which includes requests made by email.
- 9.1.9** All insurance policies shall contain a provision that coverages and limits afforded thereunder shall not be canceled, materially changed, non-renewed, or restrictive modifications added, without thirty (30) days prior written notice to Owner. Certificates of Insurance and Endorsements shall be filed with Owner prior to start of Designer's Work. Renewal Certificates and Endorsements shall be provided to Owner not less than ten (10) days prior to the expiration date of any of the required policies. All Certificates of Insurance and Endorsements shall be in a form acceptable to Owner and shall provide satisfactory evidence that

Designer has complied with all insurance requirements. Owner shall not be obligated to review such certificates or other evidence of insurance, or to advise Designer of any deficiencies in such documents, and receipt thereof shall not relieve Designer from, nor be deemed a waiver of Owner's right to enforce, the terms of Designer's obligations hereunder.

**9.1.10** The required minimum limits of insurance indicated above shall not in any way restrict or diminish Designer's liability under this Agreement. Owner's right to recover under insurance provided under this article shall not be limited by other portions of the agreement that limit the liability of any party to the proportion of its relative fault for the purpose of indemnification for certain types of claims.

**9.2 Waiver of Subrogation:** Designer and Designer's insurance waives all rights of subrogation.

**9.2.1** Designer and Owner waive against each other and Design Consultants, Owner's separate Designers, Consultants, Sub-Consultants, agents and employees of each and all of them, all damages covered by Builder's Risk insurance, except such rights as they may have to the proceeds of such insurance. Owner and Designer shall, where appropriate, require similar waivers of subrogation from Design Consultants and Consultants and shall require each of them to include similar waivers in their contracts.

**10.1 Patent and Copyright Infringement**

**10.1.1** Designer shall defend any action or proceeding brought against Owner or Owner's Representative based on any claim that the Project, or any part thereof, or the operation or use of the Project or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Designer of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Designer shall indemnify and hold harmless Owner and Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Owner's Representative in any such action or proceeding. Designer agrees to keep Owner informed of all developments in the defense of such actions.

**10.1.2** If Owner is enjoined from the operation or use of the Project, or any part thereof, as the result of any such patent or copyright suit, claim, or proceeding, Designer shall at its sole expense take reasonable steps to procure the Owner's right to operate or use the Project, or applicable part thereof. If Designer cannot so procure such right within a reasonable time, Designer shall promptly, at Designer's option and at Designer's expense, (i) modify the Project, or applicable part thereof, so as to avoid infringement of any patents, or copyrights, or (ii) replace said work with work that does not infringe or violate any such patent or copyright, and is consistent with the Contract Documents.

**10.1.3** Sections 10.1.1 and 10.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner or Owner's Representative and not offered or recommended by Designer to Owner or Owner's Representative; or (ii) arising from modifications to the Project by Owner or Owner's Representative after acceptance of the Project. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Designer to the same extent Designer is obligated to defend, indemnify and hold harmless Owner in Section 10.1 . 1 above.

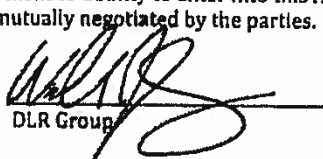
**10.1.4** The obligations set forth in this Section 10.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or

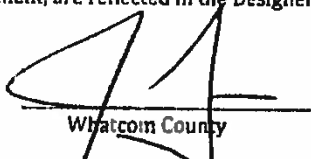
**11.1 Designer's General Indemnification Responsibilities**

**11.2.1 Indemnification by Designer.** To the fullest extent permitted by law, the Designer 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 which 1) are caused in whole or in part by the negligent act or omission, of the Designer its employees, agents or volunteers or Designer's subcontractors or consultants 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 Designer or its subcontractors' or consultants' use of, presence upon or proximity to the property of the County. In the event of the concurrent negligence of the Designer, its subcontractors, consultants', employees or agents, and the County, its employees or agents, this indemnification obligation of the Owner shall be valid and enforceable only to the extent of the negligence of the Designer, its subcontractors, consultants', employees and agents.

If Whatcom County is required to resort to litigation or arbitration to enforce Designer's Indemnification and Defense obligations it shall be entitled to recover its reasonable costs of establishing its right to indemnity including but not limited to all costs, expenses, arbitration filing fees, arbitrator's fees, and attorney fees.

This indemnification obligation of the Designer 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 Designer hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the Designer are a material inducement to County to enter into this Agreement, are reflected in the Designer's compensation, and have been mutually negotiated by the parties.

  
DLR Group

  
Whatcom County

**Participation by County - No Waiver.** 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 Designer's indemnity obligations under this Agreement.

**Survival of Designer's Indemnity Obligations.** The Designer agrees all Designer's indemnity obligations shall survive the completion, expiration or termination of this Agreement.

**Indemnity by Subcontractors.** In the event the Designer enters into subcontracts to the extent allowed under this Agreement, the Designer's subcontractors shall indemnify the County on a basis equal to or exceeding Designer's indemnity obligations to the County and subcontractors shall provide proof of Insurance verifying this condition.

**11.2.2** If an employee of Designer, anyone employed directly or indirectly by Designer or anyone for whose acts any of them may be liable has a claim against any party indemnified pursuant to Section 11.2.1 above, Designer's indemnity obligation set forth in Section 11.2.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Designer, or other entity under any employee benefit acts, including workers' compensation or disability acts.

**11.2.3** Designer agrees to procure, maintain and pay for such general liability insurance coverage and endorsements as will insure the provisions for this paragraph.

#### **11.6 Duty to Continue Performance**

**11.6.1** Unless provided to the contrary in the Contract Documents, Designer shall continue to perform the Services and Owner shall continue to satisfy its payment obligations to Designer, pending the final resolution of any dispute or disagreement between Owner and Designer.

**11.7** Owner Design and Construction Contingency. Owner shall establish a contingency amount equal to Three Per Cent (3%) of the construction contract amount between Owner and Contractor for the project. This contingency shall be part of the contract sum between Owner and Contractor. This contingency may be expended, at the sole discretion of Owner, on (1) Unknown or changed conditions, (2) design clarifications or modifications, (3) Contractor claims, including correction of work because of design errors, ambiguities, omissions. (4) changes required because of Requests for Information (RFI's). (5) cost overruns in construction. **Provided** that such contingency shall not be used by reason of any correction or amendment of Designer-Created documents for the project as part of the design or bidding process, but rather only after the owner has executed a Construction agreement with the Contractor.

#### **12.1 Assignment**

**12.1.1** Neither Designer nor Owner shall, without the written consent of the other, assign, transfer or sublet any portion or part of the Services or the obligations required by the Contract Documents.

#### **12.2 Successorship**

**12.2.1** Owner and Designer intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

#### **12.3 Governing Law, Venue**

**12.3.1** This Agreement and all Contract Documents shall be governed by the laws of the State of Washington.

**12.3.2** The Venue of any action in court or of any alternative disputes procedures, including, but not limited to arbitration proceedings, if any shall be in Whatcom County, Washington.

#### **12.4 Severability**

**12.4.1** If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements or court order, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

**12.5.1** The failure of either Owner or Designer to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

## **12.6 Headings**

**12.6.1** The headings used in this Agreement or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

## **12.7 Notice**

**12.7.1** Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in this Agreement or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the number of the intended recipient.

## **12.8 Amendments**

**12.8.1** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

## **12.9 Survival**

**12.9.1** Designer's obligations under this Agreement shall not be released, and shall specifically survive, the completion of all Services hereunder, final payment to Designer, and the termination of this Agreement for any reason.

## **12.10 No Release of Information for Advertising and Promotion**

**12.10.1** Designer shall not publish, release, disclose or announce to any member of the public, press, official body or any other third party any information concerning this Agreement, or any part thereof, without the prior written consent of Owner and/or Owner, except as required by law. Neither the names of Owner or Owner's Representative, nor of the site, shall be used in any advertising or other promotional context by Designer without the prior written consent of Owner and/or Owner's Representative.

**2 Design Contingency.** It is understood and agreed that the nature of the design process is such that plans, specifications and other documentation prepared by or related services performed by Designer under this agreement will contain errors, omissions, conflicts, ambiguities or design uncertainties requiring clarifications, corrections or modification. Accordingly, the Owner agrees to establish a design contingency equal to 2% of the cost of the work in addition to the construction contingency provided in section 11.7. Such design contingency shall be utilized for the cost attributed to errors, omissions, conflicts, ambiguities or design uncertainties, excluding any improvements or betterments costs implemented by the Owner. Costs incurred by the Owner, excluding any improvements or betterment cost, in excess of this design contingency shall be the responsibility of Designer, but only to the extent caused by the Designer and its SubConsultants, negligent acts, errors, or omissions in the performance of services under this agreement. Any cost over the 2% contingency for negligent errors, omissions, conflicts, ambiguities or design uncertainties requiring clarifications, corrections or modification will be paid by Designer.

### **12.11.1 Termination for Default:**

If the Designer 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 Designer 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 Designer'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 Designer 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 Designer. The Designer 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.

**12.11.2 Termination for Reduction in Funding:** Not Applicable

**12.11.3 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 Designer shall be entitled to payment for actual work acceptably performed for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, and shall be based upon the Designer's provable costs directly allocable this contract, 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. If any termination for cause is determined by any forum to have been wrongful, in that case it shall be converted to a termination for Public Convenience and Designer shall be compensated under the terms of this Section.

***Series 20-29: Provisions Related to Consideration and Payments***

**20.1 Accounting and Payment for Designer Services:**

Payment to the Designer 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 Designer for any costs or expenses incurred by the Designer in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Designer, 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 Designer understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Designer authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Designer 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 Designer to make the necessary estimated tax payments throughout the year, if any, and the Designer is solely liable for any tax obligation arising from the Designer's performance of this Agreement. The Designer hereby agrees to indemnify the County against any demand to pay taxes arising from the Designer'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 Designer must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Designer'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 Designer 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 Designer 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 Designer to termination or damages, provided that the County promptly gives notice in writing to the Designer 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 Designer 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 Designer 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 Designer, (3) to set off any amount so paid or incurred from amounts due or to become due the Designer. In the event the Designer obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Designer by reason of good faith withholding by the County under this clause.

**23.1 Labor Standards:**

The Designer agrees to comply with state and federal requirements, as applicable, 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 Designer:**

The Designer's services shall be furnished by the Designer as an independent Designer, 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 Designer as an independent Designer.

The Designer acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Designer 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 Designer 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.

Designer 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 Designer. 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.

**31.1 Ownership of Items Produced:**

When the Designer creates any copyrightable materials or invents any patentable property, the Designer 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. Designer further agrees to make research, notes, and other work products produced in the performance of this Agreement available to the County upon request.

**32.1 Confidentiality:**

The Designer, its employees, SubConsultants, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Designer 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. Designer shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Designer 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 Designer'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 Designer 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. Designer 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 Designer, then the Designer agrees to notify the Administrative Officer as soon as it is practical.

**34.2 Industrial Insurance Waiver:**

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

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

**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 Designer 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 Designer is governed by such laws, the Designer 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, sexual orientation, age, marital status, 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 Designer 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 Consultant, provided that the foregoing provision shall not apply to contracts or Consultants for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

**35.2 Non-Discrimination in Client Services: Not Applicable**

**36.1 Waiver of Noncompetition: Not Applicable**

**36.2 Conflict of Interest:**

If at any time prior to commencement of, or during the term of this Agreement, Designer 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 Designer 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 Designer 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 Designer 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 Designer 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 Russell, Facilities Manager  
Whatcom County Facilities Management  
316 Lottie Street  
Bellingham, WA 98225  
(360) 676-6746

**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 Designer to the County's Administrative Officer under this Agreement. Notice to the Designer for all purposes under this Agreement shall be given to the address provided by the Designer herein above in the "Designer Information" section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

***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 Designer Commitments, Warranties and Representations:** Not Applicable

**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: consultant**

a. **General:**

All disputes or differences between the Designer and the County, arising under or related to this agreement or any additional services, 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 Designer 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 Designer 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 Designer 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. Designer 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 Designer 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 Designer 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 and all claims, 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 then current American Arbitration Association (AAA) Construction Industry rules in effect on the date hereof, as modified by this Agreement. The parties may elect to provide for administration of the arbitration by other than the AAA. 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 Washington State substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, including expenses, costs and attorney fees to the prevailing party and pre-award interest, if provided by statute but shall not have the power to award punitive damages. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in the Superior Court for the State of Washington, in Whatcom County. 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 or be considered a condition precedent to arbitration.

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

**43.1 Venue and Choice of Law:**

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

**44.1 Survival:**

The provisions of paragraphs 11.1, 11.2, 11.3 , 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

**45.1 Entire Agreement:**

*This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.*

**EXHIBIT A**  
**SCOPE OF WORK**

The scope of services for the requested authorized modifications is for the portion of professional services through schematic design inclusive of the CUP for EPF permitting process only. It is anticipated that once the project is funded following a successful August 2015 funding election that the balance of professional services will be authorized.

Based on the CUP for EPF application checklist and the permitting meeting (May 22, 2014) with the City of Ferndale the following is the understanding of the scope of work:

1. Schematic Design Process and Stakeholder Meetings to a level of effort (Roughly 60% Schematic Design) that allows for the development of a singular design concept and solution. Scope of the Schematic Design Services is outlined in the following section.
2. This portion of the Schematic Design Process results in the following permit applications that will be completed and submitted to the authorities having jurisdiction (AHJ) by A/E with the assistance of Whatcom County:
  - a. Master Application
  - b. CUP for EPF
  - c. Eagle Compliance Check List (As stipulated in the CUP for EPF)
  - d. Encroachment Permit Application
  - e. Planning Application
  - f. Shoreline Management Application
  - g. Site Plan Application
  - h. Civil Plan Applications
    - i. Sanitary Sewer Application - Ferndale
    - ii. Storm Sewer Application - Ferndale
    - iii. Water Application - Ferndale
    - iv. Wetland Mitigation - Ferndale & USACE
3. Stakeholder meetings, executive team meetings, design team meetings, Council presentations and public meetings as needed as a course of the schematic design process and permit applications stated above.
4. Schematic Design Cost Estimates of MACC (Maximum Allowed Construction Cost) and Whole Project Cost of the singular design solution to confirm the project is on Budget
5. Development of Project Schedule inclusive of public funding process
6. Provide public outreach and support including schematic design graphics, coordination with public outreach committee, and attend public presentations.
7. Traffic Consultant
8. Site Survey
9. Geotechnical Engineering - Infiltration & Groundwater Testing, Preload Requirements, Soil Bearing Properties.
10. Geotechnical Engineering - Geothermal Conductivity Analysis.



#### **Schematic Design Services**

In the Schematic Design Phase, the Architect/Engineer (A/E) provides those services necessary to prepare Schematic Design Documents consisting of drawings and other documents illustrating the general scope, scale, and relationship of project components for approval by the agency. Design should be conceptual in character, based on the requirements developed during the Predesign Phase, approved by the agency, or program requirements provided by the agency and reviewed and agreed upon by the A/E. Schematic Design includes the following:

#### **Project Administration**

Services consisting of schematic design administrative functions including consultation, meetings and correspondence, and progress design review conferences.

#### **Disciplines Coordination**

Coordination between the architectural work and engineering work and other involved consultants for the project. When specialty consultants are used, additional coordination beyond basic services may be required and negotiated for appropriate phases of the work.

#### **Document Checking**

Review and coordination of project documents

#### **Consulting Permitting Authority**

Consultations, research of critical applicable regulations, preparation of written and graphic explanatory materials. The services apply to applicable laws, statutes, regulations and codes.

#### **Data Coordination User Agency**

Review and coordination of data furnished for the project by the agency

#### **Architectural Design**

Services responding to scope of work (program /predesign) requirements and consisting of preparation of conceptual site and building plans, schematic sections and elevations, preliminary selection of buildings systems and materials, development of approximate dimensions, areas and volumes.

#### **Structural Design**

Services consisting of recommendations regarding basic structural material and systems, analysis, and development of conceptual design solutions.

#### **Mechanical Design**

Services consisting of consideration for alternate materials, systems and equipment , and development of conceptual design solutions for energy sources/conservation, heating, ventilating and air conditioning (HVAC), plumbing, fire protection, and general space requirements.

#### **Electrical Design**

Services consisting of consideration of alternate systems, recommendations regarding basic electrical materials, systems and equipment, analysis, and development of conceptual design solutions for power service and distribution, lighting, communication raceways, fire detection and alarms, and general space requirements.

#### **Civil/Site Design**

Services consisting of site planning including layout of site features, building position, preliminary grading, location of paving for walkways, driveways and parking, and fencing locations. Also included are the normal connections required to service the building such as water, drainage, and sanitary systems, if applicable.

#### Civil and Site Development

- All permit applications will be prepared by the Design Team. The OWNER will develop the actual permit application and required reports and pay all permit processing fees. This is inclusive of the Conditional Use Permit for Essential Public Facility siting process, and City Planning permit.
- Identify local stormwater control agency, document restrictions as they pertain to the proposed project, define permitting requirements; identify any local public work standards as they pertain to roads, stormwater, sewer etc.; any local restriction regarding dust control, demolition, construction traffic/noise, excess earthwork disposal, any existing floodplain restrictions, etc.
- Civil Engineers will confirm adequacy of topographical and boundary mapping provided by surveyors. A/E team will evaluate legal, ownership, permitting and zoning constraints. Identify environmentally sensitive areas such as wetlands, flood plains, known hazardous waste areas, etc.
- Develop and validate site layout. This will include activities such as: (1) determine structure size, locations, and orientation; (2) layout roadways/truck access corridors and define maneuvering requirements (design vehicle); (3) size and locate parking lots for employees and visitors to the facility; (4) determine emergency vehicle access requirements. (5) evaluate flood plain impacts and constraints; (6) local stormwater management facilities (GSI and LID) (7) locate utility, piping, and duct bank (electrical, communications, and fiber) corridors (horizontal and vertical).
- Civil Engineers will coordinate with surveyors; define surveyors' scope of work; coordinate with geotechnical engineers on additional boring locations; record boring locations on site drawings.
- Develop preliminary erosion control plan for project. Determine if erosion control ponds are required; locate ponds on site plan drawings as required. Prepare preliminary storm water calculations suitable for submission to local site permitting authorities. Develop preliminary storm water control concepts (swales, curb and gutter). Meet with local storm water and erosion and sediment control agency to determine permitting requirements for site plans, and impact of requirements on preparation of contract documents. Document findings.
- Set preliminary finished floor levels for new structures. Establish preliminary finished grades; overall major surfaces, road profiles, etc. Iterate preliminary surfaces and structures to optimize earthwork if necessary.
- Perform preliminary sizing calculations
- Prepare a list of required technical specification.
- Perform ongoing design coordination with other design disciplines.
- Perform quantity take-offs of civil elements for inclusion in the schematic design cost estimate.
- Review and revise LEED and EAGLE checklist.
- Review concepts and draft work products with and seek approval from quality control reviewer.

#### Offsite Civil Schematic Design

- Develop preliminary erosion control plan for offsite work
- Develop LaBounty Road frontage improvements, channelization, and paving sections
- Perform ongoing design coordination with other design disciplines.

- Perform quantity take-offs of civil elements for inclusion in the schematic design cost estimate
  - Review concepts and draft work products with and seek approval from quality control reviewer.
  - Wetland Mitigation and Remediation. Provide mitigation and planning and design services to compensate for up to 3 acres of unavoidable impact sot wetlands.
- Design Field Surveying:
- Design Field Surveying , Topographic Surveys, Property Boundary and Right of Way Surveys, Offsite Survey Support, Basemap and Design Plan Production.

**Cost Estimating**

Services consisting of development of a probably construction cost from quantity surveys and unit costs of building elements for the project. Costs shall reflect the level of design elements presented in the Schematic Design documents, plus appropriate design contingencies to encompass unidentified scope ultimately included in the program. Assist user agency with analyzing scope, schedule, and budget options to stay within the MACC.

**Presentations**

Service consisting of appropriate presentation(s) of the CUP for EPF documents by the A/E to agency representatives.

**Materials Research**

Services consisting of identification of potential of architectural materials, systems, and equipment as required by the CUP for EPF application process.

**Scheduling**

Services consisting of reviewing and updating previously established project schedules or initial development of schedules for decision-making, design and documentation.

**Public Outreach**

Provide public outreach and support on an as needed hourly not to exceed basis. Scope of services will accommodate approximately 500 man hours to public outreach expertise and support services.

- Assistance in developing a coordinated message and developing graphics to support the message. Graphics include images of existing facilities that illustrate intent of the Whatcom County Jail, and rendering of the facility on a site.
- Perform 3<sup>rd</sup> party community polling of the community issues
- Anticipate attending 2 Council meetings as part of the development of the community outreach process
- Anticipate attending 6 public outreach steering committee meetings as part of the development of the community outreach process.
- Supporting the public outreach steering committee in developing materials for presentations and mailers.
- Participate as a technical resource to the County for presentations to support organizations and public information meetings as part of the communication plan.

**EXHIBIT B  
(COMPENSATION)**

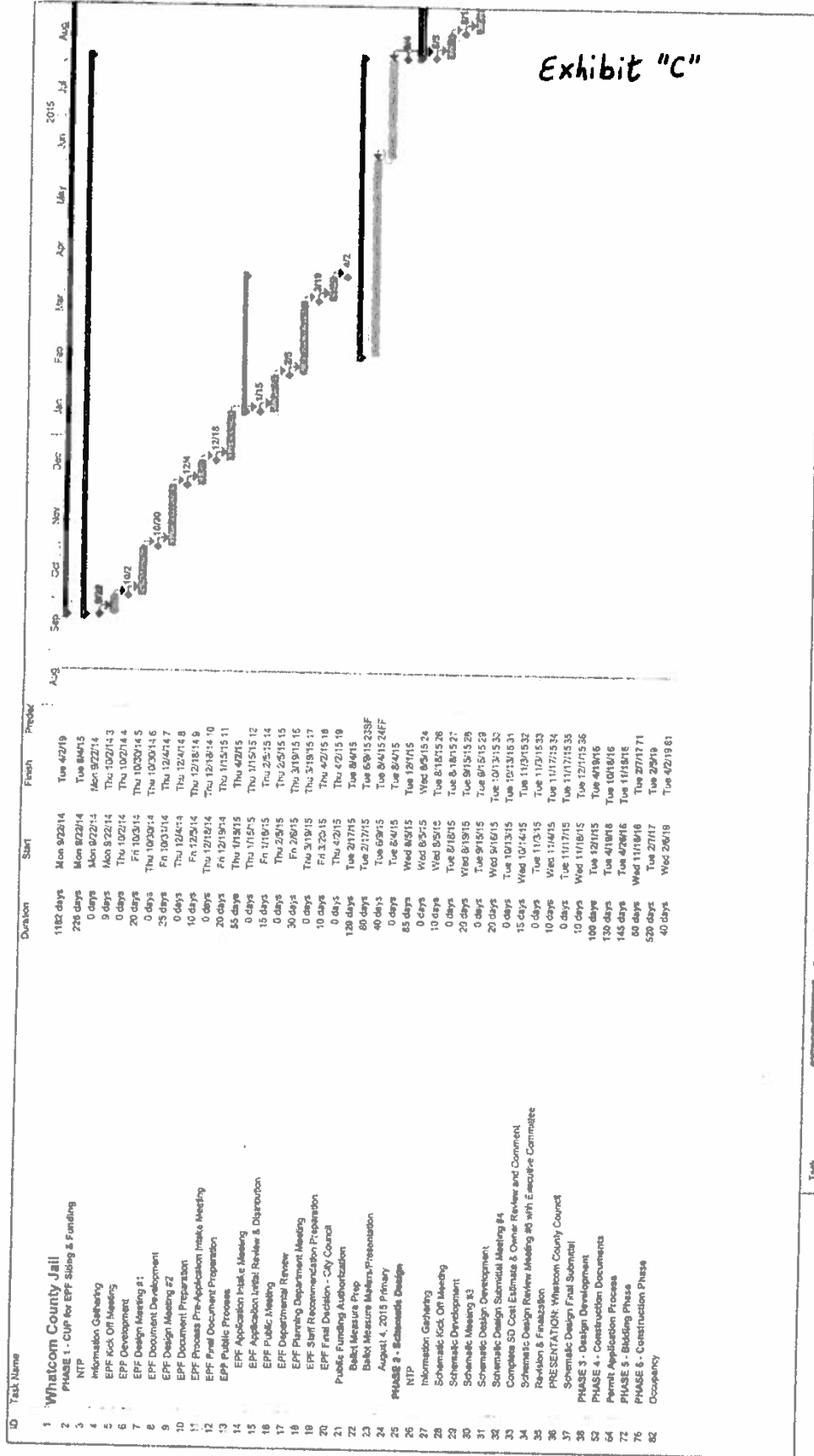
As consideration for the services provided pursuant to Exhibit A, Scope of work allowable expenses, the county agrees to compensate the Designer according to the fee schedule provided. Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed. Mileage at IRS rate, lodging and per diem at a rate not to exceed the GSA rate for location where services were provided. 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. Other expenditures such as printing, postage and telephone charges shall be reimbursed at actual cost plus 10%. 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 Designer's expense.

The Contract Number, set forth, shall be included on all billings or correspondence in connection therewith. The Consultant may bill the County progressively not more than once per month (30 days). Progressive billings will be for the amount of work complete.

		<b>SD Phase – CUP for EPF ONLY</b>	<b>Remaining DS to PC Phase (if approved)</b>
1	Space Programming and Pre-Design Services (Completed)	\$0	\$0
2	Design Project Administration & Project Management Fee	\$33,595	\$397,097
3	Architectural Design Fee	\$134,376	\$1,588,388
4	Structural Engineering Design Fee	\$53,750	\$635,355
5	Mechanical Engineering Design Fee	\$80,625	\$953,033
6	Electrical Engineering Design Fee	\$33,594	\$397,097
7	"Engineers" Cost Estimating Services for EPF Process	Included	N/A
8	Cost Estimating Services (SD, DD& CD Phases) includes VE & Bid Assistance	\$0	\$119,000
9	Life Cycle Analysis	\$0	\$40,000
10	On Site CA Phase Representation (Basic Services includes Bi-monthly. Addition Services would result in weekly	N/A	\$93,600
11	Renderings & Models	Included	Included
12	Interiors, Furnishings, FF&E, U.S. Communities Program (Design & Purchasing Schedule Only)	\$0	\$276,000
13	Detention & Courts Electronic Systems & Security Design	\$4,000	\$456,000
14	Kitchen & Laundry Consulting Design Services	\$0	\$49,400
15	Participation in Commissioning, Program Managed by Others	\$0	\$80,000
16	LEED Certification Documentation Process	\$10,000	\$90,000
17	Civic Engineering Consultant; Wetlands, On-Site & Partial Off-Site CUP for EPF includes Task 2, 3, & 7.1, 7.2, & 7.3	\$136,707	\$534,950
18	Landscape, Hardscape, Community Integration Consultant	\$61,510	\$323,071
19	Traffic Consulting	\$7,500	\$0
20	Civil Engineering Consultant; Site Survey – Task 8	\$43,142	\$0
21	Geotechnical Engineering – Infiltration & groundwater testing, Preload Requirements, Soil Bearing Properties	\$77,185	\$0
22	Geotechnical Engineering – Geothermal Conductivity Analysis	\$35,313	\$0
	<b>Subtotal Professional Lump Sum Services</b>	<b>\$711,297</b>	<b>\$6,032,990</b>
23	Reimbursable Costs, Design Printing, Mailing. Note: Bid set printing is by Owner	\$28,452	\$241,320

24	Public Outreach – As Needed Hourly, Not to Exceed	\$86,138	\$0
<b>Services by Others, not included in DLR Group contract scope unless designated to (continued):</b>			
25	Independent Commissioning Agent (Owner's consultant)		
26	LEED Certification Fee (Owner project cost)		
27	Interior Furnishings, FF&E, U.S. Communities Program (Purchasing & Installation by Owner)		
28	Testing and Balancing (Owner project cost)		
29	Hazardous Materials Study & Abatement (Owner project cost)		
30	Preload Monitoring (Owner project cost)		
31	Materials Testing (Owner project cost)		
32	Roofing Consultant (Owner project cost)		
	<b>Grand Total Design Services - This Contract</b>	<b>\$825,887</b>	<b>\$6,274,310</b>

# Exhibit "C"



Project: Whatcom County Jail  
 Date: Fri 9/22/14  
 Project: Fri 8/22/14

Task Milestone Summary

Project Summary  
 External Tasks  
 External Milestones  
 Inactive Task

Task Summary  
 External Milestones  
 Inactive Summary  
 Manual Task  
 Duration

Manual Summary Rollup  
 Manual Summary  
 Start-only  
 Finish-only

Progress  
 Split

Page 1 of 1

DJR Group

**Whatcom County Officials – Complaint by Marinel Kniseley – October 31, 2015**

Whatcom County mailed promotional material for a ballot measure that seems in violation of RCW 42.17A.555 and WAC 390-05-273. It is clearly in favor of building a new jail and, on top of this, states misleading information (especially with regards to using the wrong Proposition number... which also seems intentional because the resulting confusion would have readers vote in a way that ALSO benefits the writer of this material). Using tax payers' money to pay for this is a crime, and many people are very, very angry about this, including this voter.

## REQUEST FOR INVESTIGATION

To: **Whatcom County Incarceration Reduction and Prevention Task Force  
& Whatcom County Ethics Commission**

### ~ NOTICE OF IMPROPER CONDUCT ~

#### **Section A: Election interference**

Whatcom County mailed promotional material for a ballot measure that seems in violation of RCW 42.17A.555 and WAC 390-05-273.

1. Please view the [original](#) mailer file or a [copy](#) as it was designed to be read.
2. Consultant DLR Group, advising the County on jail design and construction, produced the mailer. [Whatcom County Contract No. 20140913](#) stipulates (Exhibit A - Scope of Services/ Public Outreach) that the consultant will develop a “*coordinated message and...graphics to support the message*”. The message appears to be supportive of the sales tax measure. It is not clear how a coordinated message and supporting graphics is intended to constitute a fair and objective fact sheet as required by law.
3. The DLR group has received millions of dollars in fees for this jail project, from research, planning, permitting, designing and now promoting the tax to fund the jail. We assert that promoting the jail tax is a conflict of interest.
4. Jurisdictions are permitted to distribute a jurisdiction-wide fact sheet on ballot measures, but there is strong evidence that the mailer was sent to select voters instead of property addresses. It is not clear how select voting recipients constitutes a jurisdiction-wide distribution.
5. The mailer includes photos, some with quotes, from three elected officials, two of whom are running for re-election in this campaign.
6. The mailer confuses two different ballot measures, twice referring to Proposition 2015-1 (the Jail Tax) as Proposition 1 (District Only voting) - a separate measure regarding Charter Review Commission proposed amendments regarding the method of electing council members.
7. The mailer includes ‘feel bad’ pictures of real inmates in overcrowded conditions and ‘feel good’ pictures of imaginary future inmates in pristine new-jail conditions, in violation of PDC guidance.
8. Stake holders have identified a number of inaccuracies in the mailer:
  - a. The Sheriff’s statement avoids responsibility by implying overcrowding and conditions are decades old. That is misleading. The taxpayers already approved two taxes in 2004 (Jail Tax) and in 2008 (Mental Health tax) to provide funding for these same problems. That information is missing in the report.



- b. The Sheriff implies that failure of the jail and inhumane conditions are the result of lack of funding. This is not true. The Sheriff's department has received millions from previously approved taxes and not used them to solve the problems taxpayers expected. The jail has been poorly maintained and allowed to run down. Hundreds of people are currently being mistreated and housed inhumanely inside the current jail.
- c. The mailer fails to disclose that the tax ascribes 100% of public safety sales tax funding for the jail, meaning future taxes will be needed for emergency services.
- d. The mailer infers that the County has obtained the agreement of all parties through a comprehensive and complete planning process. This is lacking substantial facts.
  - 1. The assumptions of the so-called Needs Assessment used to justify the jail expansion raised considerable public concern but were never questioned. An [earlier unbiased review](#) found many planning deficiencies but they were never addressed.
  - 2. The City of Bellingham, representing almost half the county population, has not signed off on the agreement as alleged.
  - 3. The Jail Task Force was an appointed group that excluded critical voices and limited public comment.
  - 4. There is no evidence of a pre-approved public participation plan for the jail project intended to be funded by the sales tax measure on the ballot. Most citizen comments were dismissed as being "outside the scope" of the [FEIS](#).
  - 5. The Executive fast tracked this sales tax through the Council to the ballot without collaboration with critical community partners as the mailer suggests.
- e. Executive Jack Louws takes credit for \$11.5 Million dollars in Behavioral Health Services spending. This is misleading. Most has been spent on planning and bureaucratic expansion. There is little evidence this money made it to the streets for pre-booking diversions as recommended by the [County's own staff](#).
- f. The Prosecutor suggests the tax will improve jail alternatives. In fact, the Prosecutor's case management and unwillingness to review cases or release people from the jail is in large part responsible for the overcrowding. The Restorative Community Coalition outlined [fifteen ways](#) the Executive Branch over-criminalizes citizens with bureaucratic revenue generating tactics. Their recommendations have been steadfastly ignored. This is especially disturbing in light of the [USA Today review of FBI statistics](#), reported by local jurisdictions, wherein Whatcom County has a [racial arrest disparity rate](#) greater than that of Ferguson, MO.

## **Section B: Fiscal Mismanagement**

Besides election law issues related to the impartiality and veracity of the mailer, there are a number of related taxpayer concerns about misuse of funds:

1. There is [evidence](#) that the construction, interest and operating costs of the jail proposal could potentially bankrupt the County and necessitate a sale/lease-back to a Real Estate Investment Trust - a financial strategy that has not been publicly discussed. The size, design and odd location of the jail strongly support this concern.
2. Disturbing [peculiarities](#) regarding the jail property's price, acquisition and [site selection](#) have been noted.
3. The purchase of the jail property was completed in a 10 day administrative rush, without public comment, 45 days after the publication of the SDEIS, following a 3-day weekend and before the Council had time to read the FEIS. The Executive and the DLR group both advised the Council that public hearings were not necessary in considering the jail property acquisition.
4. The decision for the jail site and style was presumptive throughout the planning process. The only alternative was the No Action Alternative, not really an option. In particular, a central location, currently available on either side of the courthouse was [never considered](#) despite being indicated as preferred in both [USDOJ](#) site selection and [NIC](#) jail design guidance.
5. The extent of jail improvements funded by an earlier 2004 Jail Sales Tax is unclear. The County represents the jail as being in disrepair despite tax funding. Major public safety personnel organizations have noted the language of both the earlier approved and the proposed jail taxes allow receipts to be ["squandered on other things"](#). The Police Guild and Firefighters have adopted this position. The Sheriff's guild posted a link to this notice on their website newfeed. It has since been removed.
6. The fate of 2008 approved Hargrove tax funds earmarked for mental health and chemical dependency is unclear. Service provision organizations have seen little indication these funds are reaching those in need. The County has been spending money, but not on pre-booking diversions internally identified by the County's own staff as the [most necessary](#), important and cost effective.

## **Section C: Fiduciary Irresponsibility**

The County's fiduciary responsibility to the safety of taxpayers is in question, including the inmates, employees and people of Whatcom County as per Whatcom County Charter, State Law and Federal law.

1. Consideration of alternative jail sites such as a central jail near the courthouse was avoided. County documents rationalizing this choice are [false](#) and [misleading](#). The County received constant information about jail alternatives for over five years. These were systematically ignored.
2. Substantial funds were produced from a confusing [\\$18.75 million property/fund swap](#) including large contributions from the supposedly dedicated Road Fund and the Economic

Development Investment Fund - a fund for which revenues, expenditures and balances are not published in the publicly available [budget](#) report.

3. A pattern of skirting the law has been evidenced with regard to election laws, environmental and planning procedure, and housing of inmates in humane conditions. [Whatcom County Code 1.28.100](#) instructs the Sheriff to remedy inhumane conditions but has not been followed. Inhumane treatment is clearly admitted to by the administration in recent testimony and press statements. The conditions remain. The administration has [substantially increased bookings](#) while statewide bookings are down, and focused efforts on lobbying and selling the sales tax.
4. There is pointed concern that these irregularities indicate a more intentional strategy, not yet publicly discussed, to mislead, intimidate, dominate and manipulate public officials, service organizations, voters and the people of Whatcom County for the purpose of expanding the jail industrial complex at taxpayer expense.

#### **Section D: Ancillary Concerns**

Beyond those indicated above, there are other indications our law enforcement policies and practices may need review for excessive force and potential violations of civil liberties. For example, in the recent past, we have seen:

1. The creation of a 501C3 Sheriff's foundation to do projects for the Sheriff that are not funded by the Whatcom County Council.
2. Four police-caused deaths apparently excused by the prosecutor.
3. Multiple suicides inside the Whatcom County Jail.
4. What seems to be an excessive number of SWAT team callouts, SWAT practices at schools with students present, and the WWU 'riot' now widely perceived as having been escalated by the police.
5. Aggressive efforts to bring in surveillance software, armoring and heavy military equipment continues in spite of continuous public testimony in opposition.
6. Exaggerated reporting and dramatic demonstrations by the Sheriff, including inflammatory assertions and unusual actions to influence public opinion, such as claiming there are [31 Whatcom gangs](#) with 900 members and associates, hosting events with armed officers, and serving warrants and conducting sweeps that intimidate the public with excessive shows of force.

Together, these indicate an aggressive executive branch initiative toward excessive incarceration and for a jail size, style and location that has not been sufficiently justified. The system was gamed for a predetermined outcome that is not in the public's best interests. The use or misuse of power and public funds should be investigated. Pre-booking jail alternatives should be prioritized and a [jail adjacent to the courthouse](#) should be carefully considered.

Submitted by: **The Restorative Community Coalition** - 10/26/2015

A digital edition of this document is available at [www.RestorativeCommunity.com](http://www.RestorativeCommunity.com)

## **Whatcom County Officials – Complaint by Tina McKim, November 1, 2015**

I write today in complaint of a misleading mailer sent out to Whatcom County residents at over \$28,000 expense of taxpayer money. The jail tax mailer sent out is heavily biased and potentially a misuse of public funds, office, facility and staff resources. I have included a formal statement from the Restorative Justice Coalition with further details. Thank you for your time.

## REQUEST FOR INVESTIGATION

To: **Whatcom County Incarceration Reduction and Prevention Task Force  
& Whatcom County Ethics Commission**

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2. Disturbing [peculiarities](#) regarding the jail property's price, acquisition and [site selection](#) have been noted.
3. The purchase of the jail property was completed in a 10 day administrative rush, without public comment, 45 days after the publication of the SDEIS, following a 3-day weekend and before the Council had time to read the FEIS. The Executive and the DLR group both advised the Council that public hearings were not necessary in considering the jail property acquisition.
4. The decision for the jail site and style was presumptive throughout the planning process. The only alternative was the No Action Alternative, not really an option. In particular, a central location, currently available on either side of the courthouse was [never considered](#) despite being indicated as preferred in both [USDOJ](#) site selection and [NIC](#) jail design guidance.
5. The extent of jail improvements funded by an earlier 2004 Jail Sales Tax is unclear. The County represents the jail as being in disrepair despite tax funding. Major public safety personnel organizations have noted the language of both the earlier approved and the proposed jail taxes allow receipts to be ["squandered on other things"](#). The Police Guild and Firefighters have adopted this position. The Sheriff's guild posted a link to this notice on their website newsfeed. It has since been removed.
6. The fate of 2008 approved Hargrove tax funds earmarked for mental health and chemical dependency is unclear. Service provision organizations have seen little indication these funds are reaching those in need. The County has been spending money, but not on pre-booking diversions internally identified by the County's own staff as the [most necessary](#), important and cost effective.

## **Section C: Fiduciary Irresponsibility**

The County's fiduciary responsibility to the safety of taxpayers is in question, including the inmates, employees and people of Whatcom County as per Whatcom County Charter, State Law and Federal law.

1. Consideration of alternative jail sites such as a central jail near the courthouse was avoided. County documents rationalizing this choice are [false](#) and [misleading](#). The County received constant information about jail alternatives for over five years. These were systematically ignored.
2. Substantial funds were produced from a confusing [\\$18.75 million property/fund swap](#) including large contributions from the supposedly dedicated Road Fund and the Economic

Development Investment Fund - a fund for which revenues, expenditures and balances are not published in the publicly available [budget](#) report.

3. A pattern of skirting the law has been evidenced with regard to election laws, environmental and planning procedure, and housing of inmates in humane conditions. [Whatcom County Code 1.28.100](#) instructs the Sheriff to remedy inhumane conditions but has not been followed. Inhumane treatment is clearly admitted to by the administration in recent testimony and press statements. The conditions remain. The administration has [substantially increased bookings](#) while statewide bookings are down, and focused efforts on lobbying and selling the sales tax.
4. There is pointed concern that these irregularities indicate a more intentional strategy, not yet publicly discussed, to mislead, intimidate, dominate and manipulate public officials, service organizations, voters and the people of Whatcom County for the purpose of expanding the jail industrial complex at taxpayer expense.

#### **Section D: Ancillary Concerns**

Beyond those indicated above, there are other indications our law enforcement policies and practices may need review for excessive force and potential violations of civil liberties. For example, in the recent past, we have seen:

1. The creation of a 501C3 Sheriff's foundation to do projects for the Sheriff that are not funded by the Whatcom County Council.
2. Four police-caused deaths apparently excused by the prosecutor.
3. Multiple suicides inside the Whatcom County Jail.
4. What seems to be an excessive number of SWAT team callouts, SWAT practices at schools with students present, and the WWU 'riot' now widely perceived as having been escalated by the police.
5. Aggressive efforts to bring in surveillance software, armoring and heavy military equipment continues in spite of continuous public testimony in opposition.
6. Exaggerated reporting and dramatic demonstrations by the Sheriff, including inflammatory assertions and unusual actions to influence public opinion, such as claiming there are [31 Whatcom gangs](#) with 900 members and associates, hosting events with armed officers, and serving warrants and conducting sweeps that intimidate the public with excessive shows of force.

Together, these indicate an aggressive executive branch initiative toward excessive incarceration and for a jail size, style and location that has not been sufficiently justified. The system was gamed for a predetermined outcome that is not in the public's best interests. The use or misuse of power and public funds should be investigated. Pre-booking jail alternatives should be prioritized and a [jail adjacent to the courthouse](#) should be carefully considered.

Submitted by: **The Restorative Community Coalition** - 10/26/2015

A digital edition of this document is available at [www.RestorativeCommunity.com](http://www.RestorativeCommunity.com)



## **Whatcom County Officials – Complaint by Liisa Wale, November 2, 2015**

Hello -

I am writing to file a complaint with the Public Disclosure Commission about a recent election mailer ( <http://www.whatcomcounty.us/documentcenter/view/13253>) that I received about the upcoming election and the Whatcom County Jail Tax. I was appalled that \$28,000 of tax payers money was allowed to be spent on that. It was very obviously trying to sway the vote and influence the election. Not to mention that a number of people who are listed are currently running for reelection.

I stand behind the statements of the Restorative Community Coalitions request for an investigation. Link here:( [http://www.restorativecommunity.com/wp-content/uploads/2015/10/REQUEST-FOR-INVESTIGATION\\_10272015.pdf](http://www.restorativecommunity.com/wp-content/uploads/2015/10/REQUEST-FOR-INVESTIGATION_10272015.pdf)). I also agree with complaint that was filed by community members of color in Bellingham stating "NOTICE OF CIVIL RIGHTS VIOLATIONS AND NOTICE OF REASON TO BELIEVE RCW 42.17A IS BEING OR HAS BEEN VIOLATED" (link: <https://noisywatersnw.files.wordpress.com/2015/10/10-29-15-notice-of-civil-rights-violations-and-notice-of-reason-to-believe-rcw-42-final.pdf>).

Thank you for taking time out to read this and for taking these complaints seriously.

Warm Regards,

Liisa Wale  
3201 Elwood Ave #302  
Bellingham, WA 98225

**Whatcom County Officials – Complaint by League of Women Voters of Bellingham/Whatcom County, 11/2/15**

Dear Sirs,

I have just attempted to submit a formal complaint electronically. However, it is not clear whether that process was successful. Therefore I am also attaching our complaint to this email.

On behalf of the League of Women Voters of Bellingham/Whatcom County, the three League co-presidents are submitting a formal complaint concerning an election mailing sent by Whatcom County, 310 Grand Ave, Bellingham WA on or about October 16th, 2015. We believe this mailing concerning a proposed ballot measure is in violation of RCW 42.17A and other statutes.

The full complaint is attached.

*Judy Hopkinson, Co-President  
League of Women Voters® of Bellingham/Whatcom County  
CoPres3@LWVbellinghamwhatcom.org  
360 920 1728 [www.LWVbellinghamwhatcom.org](http://www.LWVbellinghamwhatcom.org)  
Join the League*

*where hands on work to safeguard democracy leads to civic improvement!  
Please consider the environment before printing this email*

Office Use Only: No. \_\_\_\_\_



## **WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION**

### **COMPLAINT FORM**

#### **Description of Complaint**

##### **RESPONDENT:**

**Identify who you are filing a complaint against and provide all contact information you have for them. Give names and titles, if any, for individuals, and the full name of any organization. Please note that the PDC does not enforce federal campaign finance laws or local ordinances.**

Whatcom County  
311 Grand Avenue  
Bellingham, WA 98225

##### **ALLEGED VIOLATIONS:**

**Explain how and when you believe the people/entities you are filing a complaint against violated RCW 42.17/RCW 42.17A or Title 390 WAC. Be as detailed as possible about dates, times, places and acts. If you can, cite which specific laws or rules you believe were violated. Attach additional**

**pages if needed. (Note that the RCW 42.17 citation applies to conduct before 2012 and the RCW 42.17A citation applies to conduct on or after January 1, 2012.)**

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**The League of Women voters of Bellingham/Whatcom County alleges that a brochure mailed by Whatcom County administration simultaneously with the 2015 ballots was political campaign material intended to influence the outcome of a ballot measure and therefore is in violation of the law. We ask that the PDC investigate fully the following details:**

- 1. Was this brochure sent only to registered voters?** We believe this mailing was sent to all registered voters rather than to all households in Whatcom County.

If mailed only to voters, this brochure cannot be justified as a public service announcement under WAC 390-05-525 which states:

(1) "Public service announcement" means a communication meets all the following criteria. The communication is:

(a) Designed to benefit or promote the community's health, safety or welfare or nonprofit community events;

(b) Not selling a product or service;

(c) Sponsored by an organization with a history of routinely providing the community such outreach public service messages in the service area of the organization;

**(d) Of primary interest to the general public and is not targeted to reach only voters or voters in a specific jurisdiction;**

(e) Not coordinated with or controlled or paid for by a candidate's authorized committee or political committee;

(f) Subject to the policies for public service announcements of the entity broadcasting, transmitting, mailing, erecting, distributing or otherwise publishing the communication including policies regarding length, timing and manner of distribution; and

(g) One for which the arrangements to include a reference or depiction of the candidate or candidates in the communication were made at least six months before the candidate became a candidate.

- 1) Was this brochure intended to influence the vote on the proposed jail tax ballot measure? We believe this brochure is campaign literature produced at public expense and intended to influence the outcome of the proposed jail tax ballot measure. As such it is in violation of RCW 42.17A.555**

RCW 42.17A.555 prohibits local government officials and employees from using or authorizing the use of public facilities to assist a candidate's campaign, or to promote or oppose a ballot proposition. WAC 390-05-271 of the Public Disclosure Commission's rules states that this prohibition "does not prevent a public office or agency from... making an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency."

- (1) RCW 42.17A.555 does not restrict the right of any individual to express his or her own personal views concerning, supporting, or opposing any candidate or ballot proposition, if such expression does not involve a use of the facilities of a public office or agency.
- (2) RCW 42.17A.555 does not prevent a public office or agency from (a) making facilities available on a nondiscriminatory, equal access basis for political uses or **(b) making an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency.**

Guidelines for Local Government Agencies in Election Campaigns were clarified by PDC interpretation 04-02 in which the Commission held that "it is not only the right, but the responsibility of local government to inform the general public of the operational and maintenance issues facing local agencies." and further clarified that "Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used."

The League of Women Voters of Bellingham/Whatcom County alleges that this brochure is not an objective and fair presentation of facts and does not accurately portray the costs and other anticipated impacts of the ballot proposition for the following reasons:

1. It did not state the cost of the proposed jail or administrative offices
2. It did not state the amount of taxes to be raised.
3. It did not provide a breakdown of the proposed expenditures.
4. It implied that amounts currently spent for prevention, alternative and diversion programs were related to the proposed tax when they were not.
5. It did not clarify that passage of the ballot measure would mean that all available sales taxing authority for criminal justice programs for the next 30 years would be tied up by the proposed jail, and therefore municipalities in Whatcom County would be unable to raise tax revenue to fund any other programs to increase public safety for the next 30 years.
6. The comparison chart of current sales tax rates lists only those areas with tax rates higher than Whatcom County and none of those with lower rates such as Anacortes, Burlington, Skagit, and San Juan, to name a few.

**The failure to include critical and unbiased information about costs and potential negative long term impacts of the ballot measure constitutes a one-sided presentation of the issue to the public, and therefore a use of public funds to campaign in favor of passage of a ballot measure. This brochure appears to meet the PDC criteria for political advertising**

WAC 390-05-290 Political advertising definitions.

- (1) "Mass communication" means a communication intended to reach a large audience through any of the following methods:
  - (a) Advertising displays, newspaper advertising, billboards, signs;
  - (b) Brochures, articles, tabloids, fliers, periodicals;
  - (c) Radio or television presentations;
  - (d) Sample ballots (see WAC 390-17-030);

- (e) Online or other electronic transmission methods;
- (f) One hundred or more letters, e-mails, text messages or similar communications that are identical or substantially similar in nature, directed to specific recipients, and sent within a thirty-day period; and
- (g) Other mass means of disseminating political advertising, unless excluded by chapter 42.17A RCW or commission rule.

(2) "Online" means disseminating through a network of interconnected computers or devices, such as the internet or similar systems enabling electronic dissemination or exchange of communications. Examples include, but are not limited to, internet web sites, web-based social media (such as Facebook, Twitter, and other electronic publishing platforms), e-mails, and text messages.

**(3) "Political advertising" is defined under RCW 42.17A.005 to include a mass communication used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.**

(4) Political advertising does not include letters to the editor, news or feature articles, editorial comment or replies thereto in a regularly published newspaper, periodical, or on a radio or television broadcast where payment for the space or time is not normally required.

[Stat

**3) Why was the number of the ballot measure stated incorrectly?** It is unclear why County Administration incorrectly identified the number of the jail tax ballot measure as "1" rather than the correctly as "2015-01". Measure number 1 on the ballot was a hotly contested measure supported by one political party (to which all the individuals pictured in the mailing belong) that would have established district only voting in Whatcom County. Since it is simply not possible that the County administration was unaware of the numbering system for ballot measures, **the public deserves to know whether this erroneous numbering was a deliberate attempt to influence the vote on ballot measure number 1 as well as ballot measure 2015-01.**

**4) What was the actual cost of the mailing and what was/were the funding source(s)?**

Although the cost reported in the Bellingham Herald article was \$28,000, there are approximately 150,000 registered voters in Whatcom County. Printing and mailing a large, glossy, color brochure to that many individuals would be expected to cost far more than \$28,000. Were in-kind services or materials provided by others? If so, who?

**In Summary: The timing of the brochure, distribution to registered voters, and the exclusion of information critical for informed decision making, qualify this mailing as campaign literature. The use of public resources to prepare and send the mailing therefore constitute a violation of the law and a subversion of the democratic process. It is our belief that public officials should hold dear the process of democracy and be held accountable when their actions undermine our system of government. Moreover, the League of Women Voters of Bellingham/Whatcom County is concerned about the precedent this will set for future use of public funds in election campaigns. We ask that the PDC protect the public interest by mounting a full investigation of this incident and by holding accountable any public official found to have acted in violation of the law.**

## Evidence and Witnesses

### 3. EVIDENCE:

List the documents or other evidence you have that support your complaint, if any, and attach copies to this form. If you do not have copies, provide any information you have about where you believe the documents or evidence can be found and how to obtain it. Attach additional pages if needed.

The brochure in question is described in an article by the Bellingham Herald which can be found at this web site:

<http://www.bellinghamherald.com/news/politics-government/election/local-election/article39560088.html>

~~Comparitive~~Comparitive sales tax rates or areas of Washington State can be found at the following web site: <http://www.tax-rates.org/washington/sales-tax-by-county>

### WITNESSES:

List the names and contact information, if known, of any witnesses or other persons who have knowledge of facts that support your complaint. Attach additional pages if needed.

**Evidence for targeted mailing to registered voters:** This is based on reports from households who received a number of brochures equal to the number of ballots sent to their homes. For example, one of our co-presidents, Rebecca Johnson, received 4 ballots for 4 household voters and 4 jail brochures from the county. Ms Johnson can be reached at [rm\\_johnson@outlook.com](mailto:rm_johnson@outlook.com), 360 734 7922.

## Certification

In signing this complaint:

- We have provided all information, documents and other evidence of which I am aware;

- If we become aware of additional information, documents or evidence related to my complaint, I will promptly provide it to the PDC; and,
- We are providing the PDC current information on how to contact me, and will promptly update that information if it changes.

**Judy Hopkinson, Co-President, League of Women Voters of Bellingham/Whatcom County**

**Rebecca Johnson, Co-President, League of Women Voters of Bellingham/Whatcom County**

**Jayne Freudenberger, Co-President, League of Women Voters of Bellingham/Whatcom County**

**Address:**

**League of Women Voters of Bellingham/ Whatcom County  
c/o Judy Hopkinson  
1446 Franklin St., Apt B  
Bellingham, WA 98225**

**360 920 1728**

**[co-president3@lwvbellinghamwhatcom.org](mailto:co-president3@lwvbellinghamwhatcom.org)**

## **Oath**

**Required for complaints against elected officials or candidates for elective office:**

I certify (or declare) under penalty of perjury under the laws of the State of Washington that this complaint is complete, true and correct to the best of my knowledge and belief.\*

**Your signature**

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**Date signed**

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**Place signed (city and county)**

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**City County**

*\*RCW 9A.72.040 says that "(1) A person is guilty of false swearing if he makes a false statement which he knows to be false, under an oath required or authorized by law. (2) False swearing is a misdemeanor."*

## **Whatcom County Officials – Complaint filed by James Ace, November 17, 2015**

I received a mailer before the election that I believe was biased and improper and should not have been paid for with taxpayer dollars. See below for further details. As a taxpayer of Whatcom County, I believe it is inappropriate and potentially illegal for Jack Louws to have engaged in this behavior. At the very least it creates the appearance of impropriety. I respectfully request a full, fair, and objective investigation of this incident and complete transparency and disclosure. If Mr. Louws violated the, I urge you to prosecute him.

Section A: Election interference Whatcom County mailed promotional material for a ballot measure that seems in violation of RCW 42.17A.555 and WAC 390-05-273.

1. Please view the original mailer file or a copy as it was designed to be read.
2. Consultant DLR Group, advising the County on jail design and construction, produced the mailer. Whatcom County Contract No. 20140913 stipulates (Exhibit A - Scope of Services/ Public Outreach) that the consultant will develop a “coordinated message and...graphics to support the message”. The message appears to be supportive of the sales tax measure. It is not clear how a coordinated message and supporting graphics is intended to constitute a fair and objective fact sheet as required by law.
3. The DLR group has received millions of dollars in fees for this jail project, from research, planning, permitting, designing and now promoting the tax to fund the jail. We assert that promoting the jail tax is a conflict of interest.
4. Jurisdictions are permitted to distribute a jurisdiction-wide fact sheet on ballot measures, but there is strong evidence that the mailer was sent to select voters instead of property addresses. It is not clear how select voting recipients constitutes a jurisdiction-wide distribution.
5. The mailer includes photos, some with quotes, from three elected officials, two of whom are running for re-election in this campaign.
6. The mailer confuses two different ballot measures, twice referring to Proposition 2015-1 (the Jail Tax) as Proposition 1 (District Only voting) - a separate measure regarding Charter Review Commission proposed amendments regarding the method of electing council members.
7. The mailer includes ‘feel bad’ pictures of real inmates in overcrowded conditions and ‘feel good’ pictures of imaginary future inmates in pristine new-jail conditions, in violation of PDC guidance.
8. Stake holders have identified a number of inaccuracies in the mailer: a. The Sheriff’s statement avoids responsibility by implying overcrowding and conditions are decades old. That is misleading. The taxpayers already approved two taxes in 2004 (Jail Tax) and in 2008 (Mental Health tax) to provide funding for these same problems. That information is missing in the report. b. The Sheriff implies that failure of the jail and inhumane conditions are the result of lack of funding. This is not true. The Sheriff’s department has received millions from previously approved taxes and not used them to solve the problems taxpayers expected. The jail has been poorly maintained and allowed to run down. Hundreds of people are currently being mistreated

and housed inhumanely inside the current jail. c. The mailer fails to disclose that the tax ascribes 100% of public safety sales tax funding for the jail, meaning future taxes will be needed for emergency services. d. The mailer infers that the County has obtained the agreement of all parties through a comprehensive and complete planning process.

This is lacking substantial facts.

1. The assumptions of the so-called Needs Assessment used to justify the jail expansion raised considerable public concern but were never questioned. An earlier unbiased review found many planning deficiencies but they were never addressed.
2. The City of Bellingham, representing almost half the county population, has not signed off on the agreement as alleged.
3. The Jail Task Force was an appointed group that excluded critical voices and limited public comment.
4. There is no evidence of a pre-approved public participation plan for the jail project intended to be funded by the sales tax measure on the ballot. Most citizen comments were dismissed as being “outside the scope” of the FEIS.
5. The Executive fast tracked this sales tax through the Council to the ballot without collaboration with critical community partners as the mailer suggests. e. Executive Jack Louws takes credit for \$11.5 Million dollars in Behavioral Health Services spending. This is misleading. Most has been spent on planning and bureaucratic expansion. There is little evidence this money made it to the streets for pre-booking diversions as recommended by the County’s own staff. f. The Prosecutor suggests the tax will improve jail alternatives. In fact, the Prosecutor’s case management and unwillingness to review cases or release people from the jail is in large part responsible for the overcrowding. The Restorative Community Coalition outlined fifteen ways the Executive Branch over-criminalizes citizens with bureaucratic revenue generating tactics. Their recommendations have been steadfastly ignored. This is especially disturbing in light of the USA Today review of FBI statistics ,reported by local jurisdictions, wherein Whatcom County has a racial arrest disparity rate greater than that of Ferguson, MO. Section B: Fiscal Mismanagement Besides election law issues related to the impartiality and veracity of the mailer, there are a number of related taxpayer concerns about misuse of funds: 1. There is evidence that the construction, interest and operating costs of the jail proposal could potentially bankrupt the County and necessitate a sale/lease-back to a Real Estate Investment Trust - a financial strategy that has not been publicly discussed. The size, design and odd location of the jail strongly support this concern. 2. Disturbing peculiarities regarding the jail property’s price, acquisition and site selection have been noted. 3. The purchase of the jail property was completed in a 10 day administrative rush, without public comment, 45 days after the publication of the SDEIS, following a 3-day weekend and before the Council had time to read the FEIS. The Executive and the DLR group both advised the Council that public hearings were not necessary in considering the jail property acquisition. 4. The decision for the jail site and style was presumptive throughout the planning process. The only alternative was the No Action Alternative, not really an option. In particular, a central location, currently available on either side of the courthouse was never considered despite being indicated as preferred in both USDOJ site selection and NIC

jail design guidance. 5. The extent of jail improvements funded by an earlier 2004 Jail Sales Tax is unclear. The County represents the jail as being in disrepair despite tax funding. Major public safety personnel organizations have noted the language of both the earlier approved and the proposed jail taxes allow receipts to be “squandered on other things”. The Police Guild and Firefighters have adopted this position. The Sheriff’s guild posted a link to this notice on their website newsfeed. It has since been removed.

6. The fate of 2008 approved Hargrove tax funds earmarked for mental health and chemical dependency is unclear. Service provision organizations have seen little indication these funds are reaching those in need. The County has been spending money, but not on prebooking diversions internally identified by the County’s own staff as the most necessary, important and cost effective. Section C: Fiduciary Irresponsibility The County’s fiduciary responsibility to the safety of taxpayers is in question, including the inmates, employees and people of Whatcom County as per Whatcom County Charter, State Law and Federal law. 1. Consideration of alternative jail sites such as a central jail near the courthouse was avoided. County documents rationalizing this choice are false and misleading. The County received constant information about jail alternatives for over five years. These were systematically ignored. 2. Substantial funds were produced from a confusing \$18.75 million property/fund swap including large contributions from the supposedly dedicated Road Fund and the Economic Development Investment Fund - a fund for which revenues, expenditures and balances are not published in the publicly available budget report. 3. A pattern of skirting the law has been evidenced with regard to election laws, environmental and planning procedure, and housing of inmates in humane conditions. Whatcom County Code 1.28.100 instructs the Sheriff to remedy inhumane conditions but has not been followed. Inhumane treatment is clearly admitted to by the administration in recent testimony and press statements. The conditions remain. The administration has substantially increased bookings while statewide bookings are down, and focused efforts on lobbying and selling the sales tax. 4. There is pointed concern that these irregularities indicate a more intentional strategy, not yet publicly discussed, to mislead, intimidate, dominate and manipulate public officials, service organizations, voters and the people of Whatcom County for the purpose of expanding the jail industrial complex at taxpayer expense. Section D: Ancillary Concerns Beyond those indicated above, there are other indications our law enforcement policies and practices may need review for excessive force and potential violations of civil liberties. For example, in the recent past, we have seen: 1. The creation of a 501C3 Sheriff’s foundation to do projects for the Sheriff that are not funded by the Whatcom County Council. 2. Four police-caused deaths apparently excused by the prosecutor. 3. Multiple suicides inside the Whatcom County Jail. 4. What seems to be an excessive number of SWAT team callouts, SWAT practices at schools with students present, and the WWU ‘riot’ now widely perceived as having been escalated by the police. 5. Aggressive efforts to bring in surveillance software, armoring and heavy military equipment continues in spite of continuous public testimony in opposition. 6. Exaggerated reporting and dramatic demonstrations by the Sheriff, including inflammatory assertions and unusual actions to influence public opinion, such as claiming there are 31 Whatcom gangs with 900 members and associates, hosting events with armed officers, and serving warrants and conducting sweeps that intimidate the public with excessive shows of force. Together, these indicate an aggressive executive branch initiative toward excessive incarceration and for a jail size, style and location that has not been sufficiently justified. The system was gamed for a predetermined outcome that is not in the public’s best interests. The use or misuse of power and public funds should be

investigated. Pre-booking jail alternatives should be prioritized and a jail adjacent to the courthouse should be carefully considered.

## WHATCOM COUNTY'S RESPONSE TO PDC INQUIRY

### RE: OCTOBER 2015 FACT SHEET MAILING

#### SUMMARY OF FACTS

Whatcom County's jail is thirty-two (32) years old and, as would be expected, it has a number of well-documented operational and maintenance problems due to its age, including overcrowding. The County began preparing to build a new jail more than seventeen (17) years ago.

Since that time, the County has spent at least eight (8) hundred thousand dollars researching and informing the public about the issue, assembled numerous panels, done multiple studies, and commissioned several plans to address the issue. The following is a simplified timeline demonstrating the volume and types of resources devoted to the issue:<sup>1</sup>

- 2000 plan,
- 2003 group,
- 2003 study,
- 2004 review,
- 2008 report,
- 2011 report,
- 2011 resolution,
- 2012 task force,
- 2012 plan.

The County then approved the purchase of a six (6) million dollar site for the proposed new jail.

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<sup>1</sup> The County highly recommends that, before the PDC considers whether the information in its mailing has a sufficient basis in fact, it read the attached April 9 and 23, 2015 letters from Bill Elfo summarizing panels, reports, and studies over the last seventeen (17) years. Exhibit B.

During this seventeen-plus (17+) year-long process, the public was notified of the findings of the panels and the progress of the jail research regularly and in the normal course of business via website postings, open public meetings, interviews with media, etc.. The panels, studies, and research have been consistent in their findings since the beginning of the process; they indicate that the aging jail facility must be replaced. There are innumerable details, and the County has consistently delivered this same basic information to the public over the course of the entire process.

As part of its responsibility to keep the public informed, in September of 2014 (more than a year prior to the election) the County Council approved a contract with DLR Group, a company which regularly develops informational mailings for government entities. DLR was hired, in part, to “inform the general public of operational and maintenance issues facing” Whatcom County, as allowed per PDC Interpretation 04-02. As part of the contract approved by the County Council, DLR was to create two mailings to be distributed jurisdiction-wide. The mailings were meant to inform the public of the maintenance and operational issues, the proposed solution, and the cost of the tax that would pay for it, if passed.

Finally, after many years of preparation, in 2015 the Council passed a resolution to send the specific issue of a tax to pay for a new jail facility to the voters.

In preparing the informational mailings approved in 2014, DLR and Whatcom County studied the law related to election-season mailings and confirmed that a single jurisdiction-wide factual mailing was the legal and customary method for government entities to inform the public about issues that appear on a ballot. Tony Perkins’ January 12, 2015 letter to Local Government Agency Officials provided the rule on this issue.<sup>2</sup> Per the PDC’s advisory, Whatcom County decided to do only one mailing, per PDC guidelines.

DLR and Whatcom County researched examples of fact sheet mailings from other jurisdictions, including school districts, fire districts, and the recent similar Skagit County jail proposal.<sup>3</sup> These fact sheets took various forms, including flyers, pamphlets, and newsletters. DLR and Whatcom

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<sup>2</sup> PDC letter attached. Exhibit A, page 4-5.

<sup>3</sup> Exhibit H. Though Whatcom County considered the *format* of the Skagit mailing, Whatcom County made the content of its own mailing both less lengthy and *much* more sterile/neutral. Skagit County’s mailing did not prompt a PDC investigation.

County chose a four page fold-out newsletter, consistent with other mailers Whatcom County has issued in the past.

Once this fact sheet was developed, DLR and Whatcom County sought official review by the state Public Disclosure Commission (PDC). The PDC had traditionally provided review of proposed mailings. The PDC declined to provide official review of Whatcom County's mailing, because budget cuts had eliminated this service.

Whatcom County then contacted the PDC (via DLR) to obtain the best advice available. The PDC then provided specific advice, and Whatcom County was told precisely what it was allowed to do in response to specific questions. Whatcom County's October 16, 2015 letter from DLR details this exchange exactly.<sup>4</sup> In pertinent part, it says:

Justin Stranzl with DLR Group talked with the PDC on Wednesday, September 2, 2015 regarding the following criteria that should be implemented with the mailers. Justin initially tried to connect with PDC filer assistance specialist Jennifer Hansen, who didn't return his initial phone calls. Later, on Wednesday, September 2, 2015, Justin connected with the other filer assistance specialist, Chip Beatty. Mr. Beatty confirmed the following.

1. If regular informational mailers are not sent to the public by the County, then only one informational per measure mailer may be sent to the public.
2. We asked the question, "Can we send to registered voters if not by party?" PDC indicated that the list of Registered Voters may be used as a mailing list. The list may be filtered as required as long as the filters are not restricted by political party or voting platforms. All filters shall be bi-partisan.
3. The mailer should not directly advocate, and should only present the facts of the project and information to allow the voters to make an informed decision on the funding question.

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<sup>4</sup> October 16, 2015 letter from DLR Group. Exhibit A.



4. There was one statement on the timeline for sending a mailer. This is not a requirement that impacts or prohibits the timeline of the mailer being sent at the time of ballots.

a. Note on Timing of Activities: A particular activity may be subject to the scrutiny of the Public Disclosure Commission depending in part on whether it is a part of the “normal and ordinary” conduct of a local government agency.

Generally, activities that occur after the elected legislative body has passed a resolution authorizing a measure to be placed on the ballot will be subject to greater scrutiny by the Public Disclosure Commission than those occurring before such a resolution has been passed.

Whatcom County then reviewed and revised the mailing using the PDC’s above advice in response to Whatcom County’s specific questions. Whatcom County also used the statutory references PDC provided for review, along with several examples of written advice the PDC previously gave to other counties.

The fact sheet was distributed jurisdiction-wide to voters on a non-partisan basis, per the PDC’s advice above.

As the election approached, a County Council member who opposed the jail tax appeared in the local newspaper proclaiming “shock, dismay and outrage” about the mailing, apparently not realizing that he had approved its creation and that jurisdictions (such as schools, fire districts *and* counties) are allowed by law to send such mailings and regularly do.<sup>5</sup>

Opponents of the jail then followed suit and, on the eve of the election, filed fourteen complaints with the PDC, alleging RCW 42.17A violations along with “systemic racism,” illegal “mass incarceration policies,” “deliberate overcrowding,” and other philosophical objections with a sharp anti-incarceration tone. The controversy that was created garnered attention in the local press.<sup>6</sup>

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<sup>5</sup> See complaint of Rosalinda Guillen at Guillen’s Exhibit B. The Council member later conceded that it was legal to send this type of mailing, though he referred to it as a “loophole.”

<sup>6</sup> *Id.*

The Proposition then failed.<sup>7</sup>

Meanwhile, on October 27, 2015, the PDC indicated that it was conducting a “preliminary investigation” of the RCW 42.17A issues, and gave Whatcom County the opportunity to respond so the PDC could “determine whether a formal investigation is warranted.” Below is the language of the email from the PDC:

**From:** PDC Support [mailto:pdc@pdc.wa.gov]

**Sent:** Tuesday, October 27, 2015 3:16 PM

**To:** Jack Louws

**Subject:** Re: PDC - Community Report Mailer on Whatcom County Jail Sales Tax Ballot Measure (Proposition 2015-1)

Jack Louws, County Executive,

The Public Disclosure Commission (PDC) has received five complaints recently concerning the Whatcom County mailing entitled, "Whatcom County Community Report." I am conducting a preliminary investigation of the complaints to determine whether a formal investigation is warranted.

The complaints are similar in nature, and allege that County officials have violated RCW 42.17A.555 by using County facilities to support Proposition 2015-1, the ballot measure that if passed will increase the sales tax by 0.2 percent to pay for a new Whatcom County jail. The complaints allege that the mailer is not a fair and objective presentation of facts, that some of the pictures are inflammatory, that two officials whose pictures were included in the mailer are up for election in 2015, and that the mailing was targeted to households with at least one registered voter, rather than being sent to all households.

The complaints are from:

Richard Jenn, Debra David, Douglas Starcher, Marissa McGrath, Sara Holodnick

I am attaching each of the five complaints along with the attachments submitted with each complaint. Ms. McGrath's complaint included an attachment that appears to be one page of the mailer, with Sheriff Elfo's picture, but I was not able to save a PDF to attach to this email.

Please provide a response to the allegations in each of the complaints no later than November 10, 2015. You may address the issues raised in the five complaints in a single response. However, ensure that you address each issue alleged. The PDC will inform you of the results of our preliminary investigation and let you know whether a formal investigation is warranted.

Phil Stutzman

Sr. Compliance Officer

(360) 664-8853

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<sup>7</sup> As of now (November 9, 2015) it is mathematically impossible for the jail tax to pass, given the current count and outstanding ballots. The election will be certified on November 24.

To respond, please reply to this email.

Washington Public Disclosure Commission

<http://www.pdc.wa.gov>

1.360.753.1111

A November 5, 2015 email from the PDC notified Whatcom County of five additional identical complaints from individuals and from members of the Bellingham Racial Justice Coalition. Separate new complaints were also received from the League of Women Voters and the Restorative Community Coalition. The PDC added to, and revised the issues. The PDC also revised the process, asking Whatcom County (via phone on November 4, 2015) to prepare its response in anticipation of a “formal” investigation.

The complaints now allege that Whatcom County’s mailing:

- (1) is not a fair and objective presentation of facts because (a) it does not accurately present the costs and other anticipated impacts of the ballot measure and (b) because some of the pictures are inflammatory;
- (2) included the pictures of two officials up for election;
- (3) was targeted to registered voters;
- (4) failed to disclose that passage would max out the county's ability to tax for public safety issues for 30 years;
- (5) coordinated the distribution of information about the ballot measure with campaign efforts;
- (6) referred to Proposition 1 rather than Proposition 2015-1, creating confusion about which measure concerned the jail issue;
- (7) distribution of the mailer was not a Normal and Regular activity for the county as contemplated under RCW 42.17A.555; and
- (8) that the mailer constituted an Electioneering Communication as defined in RCW 42.17A.005(19)(a) that would require reporting under RCW 42.17A.305.

## RESPONSE

**Allegation 1(a) - The mailer is not a fair and objective presentation of facts because, (a) it does not accurately present the costs and other anticipated impacts of the ballot measure.**

### *The mailing's presentation of facts.*

The mailing is factual. It presents a very condensed summary of a vast quantity of information the County has gathered over more than seventeen (17+) years regarding its failing jail. The facts that appear in the mailing are the product of many studies, plans, and panels of experts who have researched the issue. The mailing includes the following elements:

- Quote from Executive Jack Louws, who is responsible for budget and behavioral health programming. He provides the cost of such programs - \$11.5 million dollars and lists a number of current treatment programs.
- Prosecutor David McEachran states that lack of programming space in the existing jail is a problem. He indicates in neutral language that a new facility would provide this space.
- Sheriff Bill Elfo lists law enforcement concerns about the existing jail. These include overcrowding, safety, liability, and programming space, all drawn from the findings of the studies, panels, and reports he lists in his attached letters.<sup>8</sup>
- The layout and design of the proposed new facility is provided in a site map without comment.
- "Proposed design" comments explain six modern features a new facility would provide that would remedy maintenance and operations issues in the existing jail. These are provided in a neutral/sterile tone.
- There are photos of the existing jail and proposed jail (photos addressed below at allegation 1b).
- Jail capacity statistics.
- Factual statement that the current jail cannot operate at current population levels or expand at its current site.
- Statement that Whatcom County must, by law, house felons.

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<sup>8</sup> Exhibit B.

- Sterile factual statements indicating that the County Council has determined the existing jail does not meet the County’s needs and that the County would build a new facility in Ferndale if the proposition passes.
- Current sales tax rates in the region.
- The language of the ballot measure, including the exact rate.
- Statement of the percentage increase the tax would add.
- The procedural history of the process for planning for a new jail. “Citizens and Experts Develop Plan...”
- A timeline for a new facility if the proposition passed.

All of the above elements of the mailing are factual. They are important, but not particularly sensational. In fact, the most notable feature of them is how mundane they are.<sup>9</sup>

Whatcom County (via DLR) developed these elements in accordance with the PDC’s January 12, 2015 advice to “Local Government Agency Officials” via its “Election-Related Communications by Local Government Agencies” letter from Tony Perkins, Acting Assistant Director. Whatcom County used this advisory to review its mailer. Per this advisory, the above list of elements in the Whatcom County mailer:

- are not overtly promotional or oppositional.
- do not speculate about secondary or tertiary impacts.
- do not minimize the cost through comparisons to small ticket items.
- do not purport to describe/promise responsible fiscal management.
- do not offer detailed tax exemption information.
- do not offer information about the conduct of the election.

Whatcom County also reviewed samples of past advice provided by the PDC.<sup>10</sup> For example, per PDC memorandum dated May 31, 2012 from Tony Perkins to the City Attorney of Sequim, the Whatcom County mailing:

- does not refer readers to outside sources,

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<sup>9</sup> This is especially true when they are viewed outside the context of the politicized debate amongst interested advocates and opponents.

<sup>10</sup> Exhibit A, page 6 onward.

- does not encourage voter participation,
- does not use emotionally laden language,
- does not convey a tenor of support through words telling the voters they “should, need, must” support this tax to fix the existing jail problem,<sup>11</sup>
- does not indicate that this is a good time for financing or job creation,
- does not describe the tax as “small,”
- does not ask voters to ask themselves whether the tax is right for them and to make a decision,
- does not “sell” the tax via minimizing the financial impact,
- does not discuss the “fairness” of the proposed tax.

The list goes on. What is important for the PDC to know, and hopefully recognize, is that Whatcom County (and DLR Group) researched this issue extensively in cooperation with the PDC, and worked hard to condense the considerable mass of information it had gathered about the failing jail over eighteen (18) years into a workable mailing that would inform the public and conform to PDC guidelines.

*Cost.*

To be clear, this is a sales tax, not a property tax. There is no fixed cost. The cost is variable for citizens depending upon, for lack of a better word, “sales.” Thus, the most accurate declaration of the tax impact on individual voters is the rate. That rate is expressed in exactly the ballot measure language—the most accurate representation of the cost. The same rate is repeated as a percentage in a parenthetical to the right. Below the ballot measure language, the “Sales Tax Rates from Puget Sound Region” are provided without comment. Per the PDC’s advice in the Winlock review of January 10, 2012, Whatcom County provided tax rates “in a range of comparable local (regional in our case) districts, and let the numbers speak for themselves.”

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<sup>11</sup> Note: the issue for the voters to decide is whether the proposed *tax* is “needed.” Whatcom County’s mailing does not advise that voters need, must, or should pass this tax. The issue of whether an improved facility is needed is not a voter issue—the need for a better facility is an administrative decision that has been factually determined and already decided via panels and studies. The County may legally and factually state that it “needs” a new facility. The County may not (according to PDC advice) tell voters that they “need” to pass this tax to fund that facility. This is a subtle but important distinction.

The County has not hidden the cost, confused the cost, or minimized the cost. Note that sales tax is an easily understood tax, with which citizens of Washington are very familiar.

Note also that complex financing details for a jail facility and its secondary cost impacts could fill book-length reports. If the complaints allege that those secondary impacts should have been included, they are mistaken. That is not the purpose of an informational mailing and, in fact, is prohibited. The County refrained from discussing such prohibited secondary/tertiary cost concerns, such as rising construction costs if a new jail is delayed, job creation, and numerous other related financing details that could have been used to either support or oppose the proposition.

In sum, an easily understood expression of the cost was provided to citizens in a neutral format that did not go too far.

**Allegation 1(b) - Some of the pictures are inflammatory.**

Complainants object to photos depicting inmates in the existing jail. Complainants claim the conditions of the existing jail are “deplorable,” and, thus, the photos are inflammatory (or “intended to trigger an emotional response”).<sup>12</sup>

There are three photos depicting inmates. These photos are factual. The photos depict the actual condition of the jail. One photo depicts three inmates sitting on a bench. Another shows three inmates in a room with two bunks and a cot. The final photo depicts eight inmates in a room with four bunks and four cots. The room in this final photo appears crowded.

The captions for the photos are:

1. “Existing inmate programs space.”
2. “Existing cell.”
3. “Existing shower room converted to cell.”

There is no allegation that the captions are inflammatory. There is no allegation that the three photos are doctored, staged, or dramatized. There is no allegation that the final image of the crowded room is factually inaccurate. Thus, complainants appear to contend that providing the

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<sup>12</sup> Per Merriam Webster’s dictionary, inflammatory = to excite anger.

public with an accurate depiction of overcrowding is inflammatory or emotional. Indeed, one complainant describes the actual condition of the existing jail as “deplorable.”<sup>13</sup> No one disputes this. The fact that the existing jail is overcrowded is the very reason the proposition is on the ballot. However, a photo of a crowded cell does not depict this fact in an inflammatory manner (a manner intended to trigger an emotional response).

The PDC provides examples of inflammatory photos—they include dead bodies on stretchers and houses bursting into flames.<sup>14</sup> Such photos threaten the public by implying, “look at what could happen if you don’t pass this proposition!” Whatcom County’s photos don’t threaten future injury or disaster—the mundane business of overcrowding does not approach death and destruction. A crowded cell is not likely to excite anger or trigger an emotional response. Instead, the photos provide a fair and objective look at the actual maintenance and operations problems facing the County in the same way a photo of potholes in a road might, or people waiting in overly long lines at the Auditor’s office might.

Happily, most citizens do not see the inside of Whatcom County’s aging jail. They might or might not find the current housing of multiple inmates per room “deplorable.” Importantly, Whatcom County did not caption the photos with charged language, such as “deplorable.” The factual photographs allow each reader of the mailer to make her/his own decision regarding the condition of the jail.

**Allegation 2 - Two officials whose pictures were included in the mailer are up for election in 2015.**

*The complaints are not under oath.*

It appears that none of the complaints against the officials are under oath. Thus, they do not comply with PDC rules for filing complaints against officials. The only complaint filed under oath seems to be the complaint from the League of Women Voters, but that complaint is against the mailing only, not against the officials. Although the PDC certainly knows this rule, it is reprinted below for convenience:

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<sup>13</sup> Complaint of Debra David.

<sup>14</sup> PDC advisory to Local Government Agency Officials from Tony Perkins, dated January 12, 2015. Exhibit A, pages 4-5.



## Filing a Complaint

Anyone who believes a violation of the laws or rules enforced by the Commission has occurred may file a written complaint with the PDC, by email or mail. All complaints filed with the PDC are public records.

In order to be processed, the complaint must include:

- A description of the alleged violation(s), including the date, time, and place of each alleged violation, and the name of the person or entity responsible.
- All available documents and other evidence demonstrating a reason for believing that the violation(s) occurred;
- Contact information for the person submitting the complaint (Complainant);
- For complaints relating to elected officials or candidates for elective office, the Complainant's signature certifying under oath that the complaint is complete, true, and correct under penalty of perjury.

(emphases added).

Unless the PDC has received executed oaths that Whatcom County has not seen, there has not been a valid complaint filed against the officials under the PDC rules. Thus, issues raised regarding the officials in the complaints cannot “be processed” and must be dismissed.

Whatcom County respectfully asks that any issues regarding the officials contained in the complaints be dismissed.

*Even if the PDC finds that the complaints are somehow under oath, the appearance of the officials in the mailing is not for campaign purposes.*

The PDC asks initially who requested and authorized/approved the use of pictures of officials running for election this year, namely Bill Elfo (unopposed) and Jack Louws.

“Please address who authorized including pictures of Sheriff Elfo and Executive Louws in the mailing. Did Sheriff Elfo or Executive Louws

request, authorize, or approve of their pictures being included in the mailing?"<sup>15</sup>

In short, neither official requested that a photo be included. DLR developed the mailing and requested the photos. Upon that request, each official authorized DLR to use a photo, with the understanding that the mailing would be reviewed by the PDC and the Whatcom County Prosecuting Attorney's Office for legality before dissemination.<sup>16</sup>

Bill Elfo was contacted on November 6, 2015, and he responded to the PDC's request for information in a straightforward manner as follows:

When I was first shown a mock up of the flyer, my photo had already been inserted by DLR (similar to the flyer that was disseminated by Skagit County that contained a photograph of the Sheriff in uniform). I had not provided DLR a photo and assumed they pulled it from the public domain (internet). I had no direct communication with DLR on this issue. On September 29th, I was requested by Tawni [Assistant in County Executive's Office] to provide a higher resolution of the photo. I sent her three photographs. It appears that they did not use the photograph I sent them and used the lower resolution one they had pulled from the public domain.

The photo they had found on the internet had been the subject of a PDC complaint in 2011 (during Sheriff's election) – the PDC ultimately ruled that since I owned the uniform and associated items (badge/collar brass) and that the Sheriff's insignia was blurred, it did not violate any PDC rules regarding the use of the uniform (as a public facility).

I was under the impression that the entire flyer would be reviewed and approved by the PDC and our local counsel prior to final printing and dissemination. While I did not specifically authorize the dissemination, I certainly expressed a positive view that it would go a long way in assisting voters in making a decision and in providing the higher resolution photo (which was not used), implied that my photo could be used if ultimately deemed legal and appropriate by the PDC and the Prosecuting Attorney's Office.

Jack Louws responded (via Tyler Schroeder), indicating that DLR Group designed the mailing and chose to use a photo of him. He then approved the use of his photo with the

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<sup>15</sup> PDC email to Whatcom County of November 5, 2015.

<sup>16</sup> As mentioned above, the PDC ultimately declined to review the mailer due to lack of funding.

understanding that the legality of the entire mailing would be reviewed with the PDC and the Whatcom County Prosecuting Attorney's Office.

The complaints are a bit unclear in their citation to statute, but presumably they allege that, by appearing via photo in the County fact sheet mailing, two of the officials ran afoul of either (1) the prohibition against appearing in a "public service announcement" (PSA) near election time, or (2) the general prohibition against using public funds to campaign.

1. The PSA prohibition.

RCW 42.17A.575

Public service announcements.

No state-elected official or municipal officer may speak or appear in a public service announcement that is broadcast, shown, or distributed in any form whatsoever during the period beginning January 1st and continuing through the general election if that official or officer is a candidate. If the official or officer does not control the broadcast, showing, or distribution of a public service announcement in which he or she speaks or appears, then the official or officer shall contractually limit the use of the public service announcement to be consistent with this section prior to participating in the public service announcement. This section does not apply to public service announcements that are part of the regular duties of the office that only mention or visually display the office or office seal or logo and do not mention or visually display the name of the official or officer in the announcement.

Public service announcements are defined by WAC as follows:

WAC 390-05-525

Public service announcement.

(1) "Public service announcement" means a communication meets all the following criteria. The communication is:

(a) Designed to benefit or promote the community's health, safety or welfare or nonprofit community events;

(b) Not selling a product or service;

(c) Sponsored by an organization with a history of routinely providing the community such outreach public service messages in the service area of the organization;

(d) Of primary interest to the general public and is not targeted to reach only voters or voters in a specific jurisdiction;

(e) Not coordinated with or controlled or paid for by a candidate's authorized committee or political committee;

(f) Subject to the policies for public service announcements of the entity broadcasting, transmitting, mailing, erecting, distributing or otherwise publishing the communication including policies regarding length, timing and manner of distribution; and

(g) One for which the arrangements to include a reference or depiction of the candidate or candidates in the communication were made at least six months before the candidate became a candidate.

(2) Examples of public service announcements include but are not limited to communications regarding nonprofit community events, outreach or awareness activities such as: Breast cancer screening, heart disease, domestic violence, organ donation, emergency or other disaster relief for organizations such as the Red Cross, programs designed to encourage reading by school children, childhood safety, fund drives for charitable programs such as United Way, and similar matters.

The Whatcom County mailing arguably does not meet several of the above criteria and would not be a PSA. Additionally, the publication at issue here is a newsletter, which is specifically exempted from the above rule under PDC Interpretation 10-01, page 5. The fact that mailing is not a PSA is a fair interpretation, and it makes good sense, because the Whatcom County mailer is markedly unlike the examples of PSAs in subsection (2).

The three officials who appear in Whatcom County's mailing—the County Executive, Sheriff, and Prosecutor—are responsible for (and experts regarding) jail operations and/or budgeting for the facility. Indeed, jail safety and operations are core job duties for Bill Elfo. Similarly, Jack Louws' core duties include jail financing and jail maintenance (through his supervision of the County Facilities Department). For these officials, appearing in the mailer is more akin to lending expert testimony to a fact-based report than a gratuitous appearance on behalf of a traditionally popular cause, nonprofit organization, or event.<sup>17</sup>

The prohibition against appearing in PSAs was not meant for this situation.

2. The general prohibition against using public funds to campaign.

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<sup>17</sup> In fact, jails and taxes are traditionally *not* popular.

RCW 42.17A.555

Use of public office or agency facilities in campaigns —  
Prohibition — Exceptions.

No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities:

(1) Action taken at an open public meeting by members of an elected legislative body or by an elected board, council, or commission of a special purpose district including, but not limited to, fire districts, public hospital districts, library districts, park districts, port districts, public utility districts, school districts, sewer districts, and water districts, to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body, members of the board, council, or commission of the special purpose district, or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

(2) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;

(3) Activities which are part of the normal and regular conduct of the office or agency.

(4) This section does not apply to any person who is a state officer or state employee as defined in RCW 42.52.010.

(emphasis added).

The basic standards in the above prohibition for each official here are (1) use of public facilities (2) for the purpose of assisting his campaign.

The Sheriff and Executive are responsible for providing jail facilities and programs. This is part of their core job duties. The Sheriff, as chief law enforcement officer, is responsible for the operation of the jail. Whatcom County Code Chapter 1.28. Per the home rule charter, Article 3, the Executive is responsible for capital improvements (such as a new jail facility), the budgeting therefore, the administration of the capital construction bidding and purchasing system (WCC 3.08.020), and behavioral health/treatment programs (jail programs) through the Health Department.

Throughout the multi-year process of researching the jail maintenance and operations issues, these three officials have regularly appeared and spoken to inform the public and local legislature about the process and its progress. This activity has been part of the normal and regular conduct of their respective offices. In fact, it is their duty, and it is permitted under exception (3) “Activities which are part of the normal and regular conduct of the office or agency.”

Additionally, there is no indication that the purpose of lending their expertise to the informational process was to assist the officials’ own campaigns. The quotes in the mailing pertain only to jail facts. The quotes do not tout accomplishments or qualities of the officials, nor do they ask for public support of any official’s personal campaign. Indeed, the fact that any of these officials are candidates for election goes completely unmentioned in the mailing. In fact, one of the three officials is not running for office this year, and another is running unopposed. Note also that building a new jail is not popular and is primarily associated with raising a tax. This fact makes it highly unlikely that the purpose of the officials’ appearance in the mailing was to assist their own campaigns.

In sum, the exception for normal and regular conduct applies to officials whose core duty it is to provide information and expertise to the public on maintenance and operation issues throughout the years-long process of vetting a new jail. Also, these officials did not appear for the purpose of assisting their campaigns. The photos do not meet the specific “purpose” standard of the broader prohibition under RCW42.17A.555.

Remember that Bill Elfo is running unopposed—it is *extremely* unlikely that he leant his expertise on the facility he runs to this mailing for the “purpose of assisting” his unopposed “campaign.” That makes no sense.

**Allegation 3 - The mailing was targeted to households with at least one registered voter, rather than being sent to all households.**

Whatcom County contacted the PDC (via DLR Group) regarding this question and was told exactly what it was allowed to do. Whatcom County’s October 16, 2015 letter from DLR Group details this exchange exactly. Below is the content of DLR’s letter, in pertinent part:

Justin Stranzl with DLR Group talked with the PDC on Wednesday, September 2, 2015 regarding the following criteria that should be implemented with the mailers. Justin initially tried to connect with PDC filer assistance specialist Jennifer Hansen, who didn’t return his initial phone calls. Later, on Wednesday, September 2, 2015, Justin connected with the other filer assistance specialist, Chip Beatty. Mr. Beatty confirmed the following.

1. If regular informational mailers are not sent to the public by the County, then only one informational per measure mailer may be sent to the public.
2. We asked the question, “Can we send to registered voters if not by party?” PDC indicated that the list of Registered Voters may be used as a mailing list. The list may be filtered as required as long as the filters are not restricted by political party or voting platforms. All filters shall be bi-partisan.

There is no language in an RCW or WAC requiring such mailings to go to all households. The rule is a product of PDC interpretation. Whatcom County, through DLR Group, sought the interpretation of the PDC and received it. Whatcom County then followed the PDC’s interpretation.

There is no violation.

**Allegation 4 – the effect of the tax would be to tie up law enforcement tax dollars for thirty (30) years.**

As a reminder, this is a sales tax, not a property tax. There is no fixed cost. The cost is variable depending upon *sales*. Thus, the most accurate description of the tax impact is the rate, which is stated clearly in the mailing.

Complainants demand that the County's mailing include a discussion of the alleged secondary/tertiary effect<sup>18</sup> of the proposition on the County's statutory taxing structure as it pertains to future potential funding of separate public safety issues that do not yet exist. This would be beyond the scope of the proposition.<sup>19</sup>

As above, at allegation 1(a), the complex financing details for a jail facility and its secondary cost impacts could fill book-length reports. If the complaints allege that those secondary impacts must be included, they are mistaken. That is not the purpose of an informational mailing and, in fact, is prohibited. The County refrained from discussing prohibited secondary/tertiary cost concerns *or* benefits (such as rising construction costs if a new jail is delayed, job creation, etc.) either to support or oppose the proposition. In like manner, services the public could theoretically spend its money on instead of a new jail facility were not included in the mailing.<sup>20</sup>

Whatcom County is not required to include a description of the services the public theoretically might not receive in the future via one form of taxation if the public votes for the current tax proposition.

**Allegation 5 – coordinated the distribution of information about the ballot measure with campaign efforts;**

The mailing was not coordinated with campaign efforts. No examples of coordinated campaign efforts were cited in the complaints. Public outreach was ongoing from September of 2014 through the election per the DLR contract.<sup>21</sup>

The PDC advised Whatcom County on the timing of fact sheet mailers as follows:

Note on Timing of Activities: A particular activity may be subject to the scrutiny of the Public Disclosure Commission depending in

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<sup>18</sup> As the PDC is aware, inclusion of secondary/tertiary effects of propositions in mailings is prohibited.

<sup>19</sup> It is also simplistic and inaccurate to imply that this tax would preclude funding for all other law enforcement services for decades. There are other methods for obtaining tax dollars for public safety. For example, an Emergency Medical Services levy is available. Property taxes can also be levied, as the PDC is well aware.

<sup>20</sup> The general concept that passing a large tax could limit future tax monies available for other services is also *not* unique.

<sup>21</sup> Exhibit G, pages 1 (date) and 25 (public outreach clause).



part on whether it is a part of the “normal and ordinary” conduct of a local government agency. Generally, activities that occur after the elected legislative body has passed a resolution authorizing a measure to be placed on the ballot will be subject to greater scrutiny by the Public Disclosure Commission than those occurring before such a resolution has been passed.

Whatcom County’s fact sheet mailer was issued after the legislative body authorized the measure to be placed on the ballot (of course, a fact sheet about a measure cannot practically be sent until after the measure is placed on the ballot). Thus, Whatcom County’s fact sheet mailing is now receiving “greater scrutiny” than the activities surrounding the jail for the seventeen years preceding the resolution. Whatcom County was aware of this, which is exactly why Whatcom County was careful in creating the mailing and consulted with the PDC before issuing it.

The timing/coordination (whichever way it is characterized) of the mailing was not nefarious.

**Allegation 6 – Whatcom County misstated the proposition number.**

Complainants allege that Whatcom County purposefully misstated the proposition number in the mailing.

Whatcom County’s mailing referred to the proposition as “Proposition Number 1,” while the eventual ballot referred to the proposition as “Proposition 2015-1” (adding the current year to the title). A separate Proposition 1 appeared on the ballot regarding a different measure, creating some confusion.

The motive complainants allege for this subtle discrepancy is unclear, but it appears they are accusing the County of intending to somehow trick/fool/confuse voters. This accusation is not supported by facts, and does not effectively explain why the County would desire confusion or how confusion would benefit the alleged promotion of the jail proposition. However, Whatcom County has tracked down the moment in time when the title of proposition was communicated to DLR Group for the mailing, so that the PDC can see that there was no intent to trick/fool/confuse the voters.

On August 19, 2015, the Whatcom County Auditor's office sent the County Executive's Office (via Tyler Schroeder) an email with the final version of the ballot title. Auditor employee Amy Grasher said: "I believe this is the final version (see attached)." The attachment was titled: "Explanatory Statement & ballot text.docx." When opened, the attachment listed the proposition title as "Proposition Number 1."<sup>22</sup> This language was forwarded by Tyler Schroeder to DLR, and the mailing was created from this version.

It's that simple.

It has since been discovered that the official Voters Pamphlet itself refers to both Proposition No. 2015-1 (top of page) and Proposition #1 (body of text).<sup>23</sup> Even the email from the auditor with the attachment that declared "Proposition Number 1" the official title of the proposition had a conflicting header that said "Prop 2015-1."

It's clear that some confusion is inherent when a "Proposition 1" measure with the year added to its title appears on the ballot alongside a separate "Proposition 1" measure with no year in its title. This confusion was not the invention of the Whatcom County Executive's Office. This was a universal problem that even the Auditor fell victim to.

There was no intent by the County Executive's Office to trick/fool/confuse the voters.

**Allegation 7 – Whatcom County's issuance of a mailing is not "normal and regular conduct," but instead an "extraordinary means or manner" of notifying the public of its jail facility's maintenance and operations issues.**

In September of 2014, Whatcom County contracted with DLR for numerous jail development services, including permitting, design, engineering, and ongoing "public outreach" throughout the jail development process.<sup>24</sup> This outreach included a number of services—the contract explicitly included development of images, community polling, attendance at public Council meetings, public steering committee meetings, presentations, mailers, and technical support for County presentations. Thus, mailings were one aspect of a large and ongoing public information process. This was all done in the regular course of business. In fact, the plan for

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<sup>22</sup> Both the email and the attachment are attached at Exhibit F.

<sup>23</sup> Exhibit F, page 4.

<sup>24</sup> Exhibit G, page 25.

mailings was contained within a standard business contract memorialized in writing. Thus, mailings were planned more than a year before the election as part of a normal and ongoing public information process. They were not “effected or authorized in or by some extraordinary means or manner...”

If the alleged conduct of the agency is “normal and regular conduct,” that conduct is allowed under RCW 42.17A.555(3).

WAC 390-05-273

Definition of normal and regular conduct.

Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17A.555, means conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner...

An election-related communication to the public from a county could run afoul of the above RCW and WAC if it is done (1) unlawfully,<sup>25</sup> or (2) “by some extraordinary means or manner.” Thus, an “extraordinary” communication could be a violation of the RCW/WAC. For example, a barrage of repeated mailings by a county that never does mailings might be extraordinary, or a prime-time television ad run by a county that does not run television ads might be extraordinary.

However, a single mailing is generally a normal and regular means of communicating with the public in and not seen as extraordinary. Indeed, the PDC recognizes that one mailing is typically allowed and considered normal in any jurisdiction.<sup>26</sup> Whatcom County also regularly uses mailings to inform the public of maintenance and operations issues, as well as to provide facts about research and studies the County has done. Whatcom County issues several types of these mailings, and they address various issues. Some mailings pertain to legislative issues, such

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<sup>25</sup> Mailings are not unlawful, of course.

<sup>26</sup> Exhibit A, page 4-5.

as the comprehensive plan or this jail facility. Others inform the public about county research and studies. Still others report on successful programs or warn about County problems that need to be fixed. Whatcom County mailers typically include statistics to back the research and schematics/examples to make the issues clear. They also typically include photographs of people involved in the issues. Attached are the following examples:<sup>27</sup>

- “Ag News” – a multi-page glossy mailing from 2015 regarding comprehensive plan legislative updates, statistics regarding soils, a study of rural lands, an interview with a farmer, a description of farm plans, information about a watershed project, photographs of people involved, and photographs and schematics to illustrate the information.
- “Our Watershed” – a multi-page glossy mailing from 2015 regarding a recreational water quality/supply related event, stormwater projects information, subwatershed master plans (legislative), beach clean-up efforts, water quality updates, waste advisory, rain/flood advisory, photographs of people involved, and photographs and schematics to illustrate the information.
- “State of the Watershed Report” – a 2014/2015 twelve-page newsprint style newsletter regarding watershed statistics and scientific research, information on indigenous animals, historical context, watershed health information and research, maps of the area with labeled sites, salmon recovery group information, water quality statistics and research, healthy watershed advisories, statistics regarding actions taken to improve water quality, a list of community resources, photographs of people involved, and photographs and schematics to illustrate the information.
- “Flooding in Whatcom County” – a multi-page foldout mailing regarding flood hazards, floodplain dynamics, the flood warning system, advice to prepare for flooding, a flood location map, advice during and after a flood, contact information for county and local resources, photographs of people involved, and photographs and schematics to illustrate the information.

It is not “extraordinary” for Whatcom County to issue a mailing to notify the public of *any* issue. Maintenance and operations issues, in particular, are common components of

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<sup>27</sup> Exhibit C.

Whatcom County mailings. Frankly, it would be extraordinary if Whatcom County did years of research on a public issue and did not notify the public.

Whatcom County's jail mailing is a normal "means" of notifying the public of maintenance and operations issues, and the "manner" of its delivery (format) is comparable to the above examples. Given the years of study that went into the jail facility research, the mailing is not of extraordinary length—note that the jail mailing is not even the most lengthy of the examples above. It is certainly not "extraordinary" when compared with other mailings from Whatcom County.

And, again, the mailing was contracted for in the normal course of business as part of a larger public outreach campaign.

In sum, the jail mailing complies with the WAC definition of normal and regular conduct—it was lawful and "usual, i.e., not effected or authorized in or by some extraordinary means or manner..." under WAC 390-05-273. Thus, it is allowed under RCW 42.17A.555(3).

**Allegation 8 - the mailer constituted an Electioneering Communication as defined in RCW 42.17A.005(19)(a) that would require reporting under RCW 42.17A.305.**

This issue is really just a variation/extension of allegations 2 and 7 above. Electioneering Communication is defined under RCW 42.17A.005(19). The definition has exceptions/exemptions as follows:

RCW 42.17.005(19)

(a)...

(b) "Electioneering communication" does not include:

...

(vi) Public service announcements;

...

(ix) Any other communication exempted by the commission through rule consistent with the intent of this chapter.

If the Commission finds under allegation 2 above that the communication is a PSA, then it is not an electioneering communication per section (vi).

If the Commission finds under allegation 7 above that a single informational mailing is normal and regular (i.e. not extraordinary), then the communication is “Any other communication exempted by the commission through rule consistent with the intent of this chapter” per section (ix). As discussed extensively above, the PDC has a rule that exempts a single informational fact sheet mailing as normal and regular conduct. Thus, a fact sheet is exempted from RCW 42.17.005(19). The fact sheet exemption rule is consistent with the intent of the chapter (spirit of the law), because such an informational fact sheet is, by its nature, informational, and not election advocacy.

### **Summary & Conclusion**

In 2014, Whatcom County authorized public outreach to inform the public of a major County issue, as is its duty. This outreach included mailings. Because the issue was large and had been researched for over seventeen years (17+), the mailings would contain a lot of information detailing the problem. This was no different from what other jurisdictions do, and Whatcom County has issued similar mailings regarding other local issues over the years, including four (4) examples from this year alone.

Because the election on this issue was within the year, the County made substantial efforts to research election statutes, gain advice from the PDC, find examples of election-related mailings, and craft its mailings to inform the public appropriately under the law. The PDC indicated that one mailing was normal and regular. Whatcom County created one mailing, which was a condensed version of many facts collected over decades concerning the undisputed need to remedy a failing facility. The mailing was similar in form and content to other mailers Whatcom County distributes. The Whatcom County Prosecuting Attorney’s Office was consulted to ensure the language was factual and did not appeal to emotion. The mailing informed the public of the documented problems with the jail and stated in neutral language that a tax was being sought to remedy them.

Nowhere did the mailer ask the public to vote in favor of the tax.

Opponents filed complaints about the mailing on the eve of the election, garnering significant public attention.<sup>28</sup>

The proposition then failed.

Despite the fact that the mailing was obviously politicized after its release and that the proposition was voted down, Whatcom County takes these complaints very seriously. In response to the PDC investigation, Whatcom County has now offered as much information as possible<sup>29</sup> and explained in detail the history and process of the fact sheet mailing's creation.

Whatcom County is aware that, whether or not its legal and technical positions are accepted, the PDC may wish to take a global view of Whatcom County's efforts to conform to election law. In this regard, Whatcom County asks that its significant efforts to ensure compliance be recognized. There was no nefarious purpose or intended violation of election law in the mailing's preparation or distribution.

The County is prepared to answer any further questions the PDC might have to help resolve this inquiry

Respectfully,



Royce Buckingham Bar #22503

Deputy Prosecuting Attorney for Whatcom County

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<sup>28</sup> See, for example, the October 15, 2015 Bellingham Herald article contained in the complaint of Rosalinda Guillen at Guillen's Exhibit B, and the October 30, 2015 press release by complainant's attorney Junga Subedar at <http://noisywatersnw.com/2015/10/30/complaint-filed-for-whatcom-county-community-report-jail-mailer-press-release-junga-subedar/>.

<sup>29</sup> Please excuse the length of the response—the complaints were numerous and lengthy.

# EXHIBIT A





Architecture Engineering Planning Interiors

51 University Street  
Suite 600  
Seattle, WA 98101

o: 206/461-6000  
f: 206/461-6049

October 26, 2015

Tyler Schroeder  
Whatcom County Executive's Office  
County Courthouse  
311 Grand Avenue, Suite 108  
Bellingham, WA 98225-4082  
[tschroed@co.whatcom.wa.us](mailto:tschroed@co.whatcom.wa.us)

Project Name: Whatcom County Adult Corrections Facility and Sheriff Headquarters  
DLR Group Project No.: 73-15102-00

Re: DLR Group Experience with PDC

Dear Tyler:

You had requested that I provide you with information regarding two items. First, what was our communication with the Washington Public Disclosure Commissions (PDC); and second what is DLR Group's previous experience with preparing formal mailers and or informational documentation for public agencies that required PDC compliance. The following is the information you have requested on both items.

**COMMUNICATION WITH PDC:**

In the past PDC would provide individualized review of draft public education and informational facts documents prepared by public agencies for the objective and fair presentation of facts for each ballot measure. However, as indicated on the January 2015 PDC Memorandum on PDC Staff Compliance Review – RCW42.17A.555, it states that:

"In the past, PDC staff has reviewed draft agency publications on ballot propositions upon request and provided individualized written comments and recommendations to local governments in order to facilitate compliance with RCW 42.17A.555. Current staff resources do not allow for individualized guidance. Accordingly, staff makes this memo available to answer common questions about agency publications and RCW 42.17A.555. What follows are representative examples of draft agency publications, and the guidance that PDC staff provided to the sponsoring agencies".

Justin Stranzl with DLR Group, talked with the PDC on Wednesday September 2, 2015 regarding the following criteria that should be implemented with the mailers. Justin initially tried to connect with PDC filer assistance specialist Jennifer Hansen, who didn't return his initial phone calls. Later, on Wednesday September 2, 2015 Justin connected with the other filer assistance specialist, Chip Beatty. Mr. Beatty confirmed the following:

1. If regular informational mailers are not sent to the public by the County, then only one informational per measure mailer may be sent to the public.
2. We asked the question, "Can we send to registered voters if not by party?" PDC

Seattle	Chicago	Colorado Springs	Denver	Des Moines	Honolulu	dlrgroup.com
Kansas City	Las Vegas	Lincoln	Los Angeles	Minneapolis	Omaha	facebook.com/dlrgroup
Pasadena	Phoenix	Portland	Riverside	Sacramento	Tucson	twitter.com/dlrgroup

indicated that the list of Registered Voters may be used as a mailing list. The list may be filtered as required as long as the filters are not restricted by political party or voting platforms. All filters shall be bi-partisan.

3. The mailer should not directly advocate, and should only present the facts of the project and information to allow the voters to make an informed decision on the funding question. This is point; it was discussed and outlined in the January 2015 PDC Memorandum on PDC Staff Compliance Review – RCW42.17A.555 regarding the legality and responsibility of Whatcom County in the publishing of information to inform the general public:

"In PDC Interpretation 04-02, Guidelines for Local Government Agencies in Election Campaigns, the Commission held that "it is not only the right, but the responsibility of local government to inform the general public of the operational and maintenance issues facing local agencies." Accordingly, the Interpretation states that "[t]he PDC will presume that every agency may distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure," typically a jurisdiction-wide "fact sheet" mailing. Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used."

4. There was one statement discussed on the call on the timeline for sending a mailer. This is not a requirement that impacts or prohibits the timing of when an informational facts mailer should be sent or the legality of the timing of the informational mailer with the timing of the distribution of the ballots. It was discussed that on the timing of informational activities, that a particular activity may be subject to the scrutiny of the Public Disclosure Commission depending in part on whether it is a part of the "normal and ordinary" conduct of a local government agency. Generally, activities that occur after the elected legislative body has passed a resolution authorizing a measure to be placed on the ballot will be subject to greater scrutiny by the Public Disclosure Commission than those occurring before such a resolution has been passed.

#### **DLR Group's EXPERIENCE WITH PREPARING INFORMATIONAL MAILERS REQUIRING PDC COMPLIANCE IN THE STATE OF WASHINGTON:**

DLR Group's experience is in preparing project conceptual graphics and informational content to public clients and the ballot measures Political Action Committees (PACs). In some cases the informational documents are distributed by the public agency, in others they are distributed by the PAC and in others they are distributed by both. I share this statement simply to illustrate that every ballot measure is unique. The following are our recent experience with supporting the preparation of informational documents for public ballot measures that required compliance with the State of Washington PDC:

- 2015 Whatcom County Jail – Prepared graphics and information content. Co-developed and distributed the one-time informational mailer with Whatcom County staff.
- 2014 Mukilteo School District – Prepared graphics and information content, and provided to School District who distributed through their information outreach system (web).
- 2013 Tahoma School District - Prepared graphics and information content, and provided to School District who distributed through their information outreach system (web and mailer).
- 2013 Skagit County Jail – Prepared graphics and information content, and provided to Skagit County who developed and distributed the information as part of the periodic County report to the community.
- 2011 Tahoma School District - Prepared graphics and information content and provided to School District who distributed through their information outreach system (web and mailer).

**DLR Group**  
Seattle, Washington  
o: 206/461-6000  
f: 206/461-6049

If you have any further questions or need any additional information regarding these items please do not hesitate to contact me. I look forward to continuing to work with Whatcom County on this exciting and beneficial project.

Sincerely,

**DLR Group**

A handwritten signature in black ink, appearing to read "William J. Valdez". The signature is fluid and cursive, with a period at the end.

William J. Valdez  
Principal

Encl: Washington Public Disclosure Commissions (PDC) Election-Related Communications Memorandums and Examples.

cc:

**DLR Group**  
Seattle, Washington  
o: 206/461-6000  
f: 206/461-6049



STATE OF WASHINGTON  
**PUBLIC DISCLOSURE COMMISSION**

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DATE: January 12, 2015  
TO: Local Government Agency Officials  
FROM: Tony Perkins, Acting Assistant Director  
SUBJECT: **Election-Related Communications by Local Government Agencies**

RCW 42.17A.555 prohibits local government officials and employees from using or authorizing the use of public facilities to assist a candidate's campaign, or to promote or oppose a ballot proposition. WAC 390-05-271 of the Public Disclosure Commission's rules states that this prohibition *"does not prevent a public office or agency from... making an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency."*

In PDC Interpretation 04-02, *Guidelines for Local Government Agencies in Election Campaigns*, the Commission held that *"it is not only the right, but the responsibility of local government to inform the general public of the operational and maintenance issues facing local agencies."* Accordingly, the Interpretation states that *"[t]he PDC will presume that every agency may distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure,"* typically a jurisdiction-wide "fact sheet" mailing. Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used.

In the past, PDC staff has reviewed draft agency publications on ballot propositions upon request and provided individualized written comments and recommendations to local governments in order to facilitate compliance with RCW 42.17A.555. Current staff resources do not allow for individualized guidance. Accordingly, staff makes this memo available to answer common questions about agency publications and RCW 42.17A.555. What follows are representative examples of draft agency publications, and the guidance that PDC staff provided to the sponsoring agencies.

As illustrated in the attached guidance, an "objective and fair presentation of the facts" concerning a property tax levy means stating the proposed tax increase in terms of the additional annual cost to the owner of a home of average value in the jurisdiction. Such a presentation should also explain, in neutral, factual terms, the outcome anticipated if the proposition is rejected by voters.



In addition, an “objective and fair presentation of the facts” must **avoid** the following:

- Overtly promotional or oppositional content (including inflammatory or emotionally-driven language; check marks and other indications of support; and gratuitous photos that tend to provoke an emotional reaction—e.g. an image of a body on an EMT stretcher, or a house exploding in flames);
- Statements that speculate about possible secondary or tertiary impacts of a ballot proposition;
- Statements seeking to minimize the cost of a ballot proposition, e.g., through comparisons to small-ticket items such as coffee, pizza, or a magazine subscription;
- Statements purporting to describe the sponsoring agency’s responsible fiscal management;
- Detailed information about property tax exemptions; and
- Detailed information about the conduct of elections (e.g. ballot drop-off locations), unless it is the normal and regular conduct of the agency to provide such information in the manner of the proposed publication.

Finally, if an agency wishes to go beyond a single jurisdiction-wide mailed “fact sheet,” for example, to make multiple election-related communications or communications in multiple formats, the agency must be able to demonstrate that these other communications are a part of the agency’s normal and regular conduct. In other words, that the method, format, and frequency is typical of how the agency routinely communicates with its audience.

### **Resources**

In addition to this memo and the attached examples of PDC staff’s guidance, local government officials are encouraged to use the following resources to assist in compliance with the law:

RCW 42.17A.555

WAC 390-05-271 - General applications of RCW 42.17A.555

WAC 390-05-273 - Definition of normal and regular conduct

PDC Interpretation 01-03, Guidelines for School Districts in Election Campaigns

PDC Interpretation 04-02, Guidelines for Local Government Agencies in Election Campaigns

Although PDC staff cannot currently provide individualized review of proposed agency publications on ballot propositions, we are available to answer questions. Contact 360-753-1111 or 1-877-601-2828 for assistance, or email [pdcc@pdcc.wa.gov](mailto:pdcc@pdcc.wa.gov).

**Examples of PDC Staff Guidance  
Regarding Ballot Proposition “Fact Sheets”  
and RCW 42.17A.555**



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**MEMORANDUM**

To: Shannon Criss, Superintendent, Winlock School District  
From: Tony Perkins, Lead Political Finance Specialist  
Date: January 10, 2012  
Subject: Review of Information Regarding Levy Election in Winlock School District

BY ELECTRONIC MAIL

PDC staff members reviewed the proposed fact sheet that you submitted by email on January 4, 2012, regarding the proposed maintenance and operations levy on the February 14, 2012 special election ballot in the Winlock School District.

As part of our review process, we look at aspects such as the timing, tone, and tenor of a communication, and the “normal and regular” conduct of the agency. In addition, we also review whether a communication appears to be an objective and fair presentation of the facts that, if lacking, could make the communication objectionable under RCW 42.17A.555.

Our review and comments are meant to give you our best opinion as to the apparent fairness and objectivity of the information being communicated in accordance with PDC Interpretation #01-03, Guidelines for School Districts in Election Campaigns. That interpretation may be found on our Web site at [www.pdc.wa.gov](http://www.pdc.wa.gov) by hovering on “Home,” then on “Laws and Rules,” and finally clicking on “Commission Interpretations.” (Please note that the *Guidelines* are only an interpretation that, combined with this memorandum, is meant to aid and assist in compliance with the law. The *Guidelines* do not constitute actual rules. Please also note that although the *Guidelines* refer to RCW 42.17.130, effective January 1, 2012 this statute was recodified as RCW 42.17A.555.)

We cannot certify that the proposed fact sheet would not be found objectionable even after our review, should a complaint be filed by a citizen under RCW 42.17A.555. The communication of this information, when combined with other activities to communicate information about the levy, may be construed by residents of the Winlock School District as “campaigning” in support of a ballot proposition.

Reviewing the proposed fact sheet, we found that in part, it represented an objective and fair presentation of the facts. However, there were several areas of concern, prompting the following recommendations:

- We recommend that statements such as *“Taxpayers of the Winlock School District can be assured that the funds of the district are being spent wisely”* be omitted from the proposed publication, since they communicate no particular fact about the levy, and in addition convey a tenor of support for the measure.
- We recommend that you provide more specific information about the cost of the levy, in terms of the dollars and cents levied against a home of average value in the school district.
- Rather than simply stating that Winlock maintains one of the smallest levies in the county, we recommend that you cite the levy amounts in a range of comparable local districts, and let the numbers speak for themselves.
- Rather than stating that *“The Winlock Board of Directors feel they can maintain district priorities with the levy being proposed,”* we recommend that you simply state that the levy, if renewed, would preserve current programs.
- We recommend that you explain the prospect of state levy matching funds without calling it *“A very important point to remember.”*
- Rather than stating that the failure of the levy replacement *“would be devastating to current programs and student offerings,”* we recommend that you explain in concrete terms, the cuts that the school district plans to make in the event the levy is not approved.
- The statement *“Winlock School District staff and School Board have made a strong commitment to use every penny appropriately to provide our students with a quality education that will prepare them for life beyond high school”* does not communicate any particular fact about the levy, and in addition conveys a tenor of support for the measure. We recommend that this statement be omitted from the proposed publication.

Following this memo is a copy of the draft fact sheet reviewed by PDC staff. For your reference, the segments that our staff suggests be omitted or modified have been marked in yellow; click on the highlighted content to review staff’s comments and recommendations.

While we cannot require you to follow PDC staff’s recommendations, they do constitute



Shannon Criss, Superintendent, Winlock School District  
Review of Information Regarding February 14, 2012 Levy Election  
Page – 3 –

our best advice for compliance with RCW 42.17A.555. As stated above, our review should not be considered as authorizing or approving the changes recommended or the information included in the proposed fact sheet. Those decisions are the responsibility of the Winlock School District, and the district's legal counsel.

If you have questions, please feel free to contact me at (360) 586-1042, toll free at 1-877-601-2828, or by email at [tony.perkins@pdc.wa.gov](mailto:tony.perkins@pdc.wa.gov).

## MAINTENANCE AND OPERATIONS REPLACEMENT LEVY

Winlock School District is running a replacement levy in February, 2012 for the levy that will soon be expiring. This replacement levy is used to help supplement the programs currently existing in the district. Listed below are nine areas that your levy dollars are used for. This money goes into the general fund which allows your Board of Director's to apply the money to the areas that need the most financial assistance. Taxpayers of the Winlock School District can be assured that the funds of the district are being spent wisely. Current economic instability along with existing and potential reductions of both State and Federal funds to our district makes levy money all the more critical to maintaining quality programs that are focused on supporting the youth of our community.

The replacement levy will remain the same as what we asked for in the past levy. We are requesting \$700,000 for 2013 and 2014. Winlock still maintains one of the smallest levies in the county. The Winlock Board of Directors feel they can maintain district priorities with the levy being proposed.

A very important point to remember is that we receive state matching funds in the form of Levy Equalization if we pass our levy. With an already dwindling district budget, the loss of levy equalization funds, compounded by loss of levy dollars would be devastating to current programs and student offerings.

Your LEVY dollars support:

- Full day kindergarten
- Textbook adoptions and curriculum materials
- Utilities
- Extra curricular programs
- Transportation costs not covered by the State
- Maintenance of our facilities
- Staff
- Technology
- College credits offered at the high school level

Winlock School District staff and School Board have made a strong commitment to use every penny appropriately to provide our students with a quality education that will prepare them for life beyond high school. This is a replacement levy, not a new tax.



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**MEMORANDUM**

To: Craig Ritchie, City Attorney, City of Sequim  
From: Tony Perkins, Lead Political Finance Specialist  
Date: May 31, 2012  
Subject: Review of Information Regarding Sales Tax Election in the City of Sequim

BY ELECTRONIC MAIL

PDC staff members reviewed the proposed fact sheet that you submitted by email on May 30, 2012, regarding Proposition 1, a sales tax measure on the August 7, 2012 primary ballot in the City of Sequim.

As part of our review process, we look at aspects such as the timing, tone, and tenor of a communication, and the “normal and regular” conduct of the agency. In addition, we also review whether a communication appears to be an objective and fair presentation of the facts that, if lacking, could make the communication objectionable under RCW 42.17A.555.

Our review and comments are meant to give you our best opinion as to the apparent fairness and objectivity of the information being communicated in accordance with PDC Interpretation #04-02, Guidelines for Local Government Agencies in Election Campaigns. That interpretation may be found on our Web site at [www.pdc.wa.gov](http://www.pdc.wa.gov) by hovering on “Home,” then on “Laws and Rules,” and finally clicking on “Commission Interpretations.” (Please note that the *Guidelines* are only an interpretation that, combined with this memorandum, is meant to aid and assist in compliance with the law. The *Guidelines* do not constitute actual rules. Please also note that although the *Guidelines* refer to RCW 42.17.130, effective January 1, 2012 this statute was recodified as RCW 42.17A.555.)

We cannot certify that the proposed fact sheet would not be found objectionable even after our review, should a complaint be filed by a citizen under RCW 42.17A.555. The communication of this information, when combined with other activities to communicate information about the sales tax proposal, may be construed by residents of the City of Sequim as “campaigning” in support of a ballot proposition.

Reviewing the proposed fact sheet, we noted areas of some concern, prompting the following recommendations:

- We recommend that you omit the statement, *“Please follow this discussion in your local papers and in the community as well.”* In the proposed fact sheet, the City of Sequim should communicate, according to its normal and regular conduct, an objective and fair set of facts concerning Proposition 1, including the planned use of the proposed funding, and the costs and other anticipated impacts of the measure. The city should not refer readers to outside sources of information, which could include editorial content and political campaign activity. City residents may find such information on their own, if they wish.
- The city should encourage voter participation in the Proposition 1 election only if the city routinely communicates such encouragement for every primary, general and special election, in the manner of the proposed fact sheet. Otherwise, we recommend that you omit the statement, *“Your vote on Proposition 1 is very important”* from the fact sheet.
- In this fact sheet, we recommend that you describe the facilities that would be included in a new police station and EOC, and the use that would be made of such facilities. We recommend that you avoid the use of emotionally-laden language such as *“Our Police Department provides us with excellent service under extremely difficult circumstances... It has really never had the benefit of a dedicated, up-to-date professional facility.”*
- Although the city proposes to include a new police station and EOC in its development of the recently-acquired downtown property, we recommend that you avoid statements indicating that these facilities *“should be a part of that development.”* Such language conveys a tenor of support for Proposition 1, and does not explain any particular fact about what is on the ballot.
- The statement, *“There has never been a better time to consider taking on capital civic improvements and the associated long-term debt”* conveys a clear tenor of support for Proposition 1. In place of this statement, we recommend that you explain, in a neutral tone, the plan to finance the proposed police station and EOC, including the specific interest rates that the plan anticipates.
- We recommend that you refrain from statements regarding the state of the local construction industry, and the need for job creation. Proposition 1 authorizes the collection of sales tax, not job creation, and the function of an objective and fair presentation of the facts should be to explain in a neutral, informative manner what is on the ballot.

- We recommend that you refrain from describing the proposed sales tax increase as “small.” Statements which minimize the cost of Proposition 1 are likely to be viewed as an attempt to promote the proposition.
- We recommend that you omit the statements, “*IS THIS TAX RIGHT FOR SEQUIM? Only the voters of our city can make that decision.*” Such statements do not communicate any particular fact about the sales tax proposal.
- Although it is appropriate to explain the structuring of Sequim’s sales tax revenue, we recommend that you do so in a manner that does not “sell” Proposition 1, as in “*Less than one third will come out of your pocket.*”
- If the retail and tourism sectors of Sequim’s economy have impacted police services in any particular manner, it is appropriate to explain this impact with reference to specific figures, e.g. trends in the number of incident responses, and increases or decreases in associated costs. It is also appropriate to explain the city council’s decision to pass these costs on to area visitors through a sales tax increase. However, we recommend that you refrain from commenting on the propriety of fairness of this decision, since such emotionally-laden language conveys a tenor of support for Proposition 1.

Following this memo is a copy of the draft fact sheet reviewed by PDC staff. For your reference, the segments that our staff suggests be omitted or modified have been marked in yellow; click on the highlighted content to review staff’s comments and recommendations.

While we cannot require you to follow PDC staff’s recommendations, they do constitute our best advice for compliance with RCW 42.17A.555. As stated above, our review should not be considered as authorizing or approving the changes recommended or the information included in the proposed fact sheet. Those decisions are the responsibility of the City of Sequim, and the agency’s legal counsel.

If you have questions, please feel free to contact me at (360) 586-1042, toll free at 1-877-601-2828, or by email at [tony.perkins@pdc.wa.gov](mailto:tony.perkins@pdc.wa.gov).

## An Open Letter to Residents in the City of Sequim From your City Council

### Proposition 1 Public Safety Sales Tax

Last November the Sequim City Council decided to put a Public Safety Initiative on the August 7, 2012, ballot. This letter will help you understand the reasons for the Council's decision and give you some of the information you will need when you cast this critical vote. Please follow this discussion in your local papers and in the community as well. **Your vote on Proposition 1 is very important**

**WHAT IS A PUBLIC SAFETY SALES TAX?** It is a local option tax authorized by Washington law. If approved by a majority of city voters, it would raise local sales taxes by one tenth of one percent (0.1%). Specifically, the income from the tax "shall support **capital public safety facilities including a Police Station (and) Combined Emergency Operations Disaster Center**" as well as other public safety/crime prevention services.

**WHY DO WE NEED IT?** As we approach Sequim's centennial year, we find our Police Department without a permanent home. We lease a facility (\$90,000 per year) in a local retail strip mall. **This space will never meet national accreditation facility standards.** Evidence processing and storage (including separate areas for drugs, firearms and ammunition) are inadequate. Prisoner holding cells do not meet State requirements. There are no adequate lockers or showers for our officers. **Our Police Department provides us with excellent service under extremely difficult circumstances. It has really never had the benefit of a dedicated, up-to-date professional facility.**

**WHY NOW?** The City has acquired land in the heart of our downtown and plans to build a civic center. A new Police Station and Emergency Operations Center (EOC) should be a part of that development. **There has never been a better time to consider taking on capital civic improvements and the associated long-term debt. Interest rates have never been lower and the local construction industry is suffering – we need the jobs and the construction costs should be the most competitive we have seen in years.**

**HOW MUCH MONEY WOULD THE PUBLIC SAFETY TAX RAISE?** This sales tax would raise approximately \$240,000 annually for the City. Combining that revenue with the \$90,000 in yearly rent that we pay for the current police facilities, the City could support issuing a 30-year, tax free municipal bond. That bond would generate the \$6.4 million needed to build the Police Station and EOC. It should be noted that State requirements for this Public Safety Tax would also send about \$40,000 per year to Clallam County to support its public safety services to the broader community.

**WHAT WILL IT COST YOU?** This small tax increase will be levied on non-food purchases at grocery stores, on restaurant meals and on retail items bought at our local stores. **It will not add to the costs of necessities** such as groceries, prescriptions, gasoline, insurance, or rent and mortgage payments. It would add one cent to the cost of a \$10 fast food meal. If you spend as much as \$100 per week on discretionary items, your weekly costs would increase by 10 cents.

**IS THIS TAX RIGHT FOR SEQUIM?** Only the voters of our city can make that decision. **We need to remember that over two thirds of Sequim's sales tax revenue comes from neighbors and tourists. Less than one third will come out of your pocket. Big box stores and increased tourism put additional burdens on your police department. It's seems appropriate that friends from outside our community should pay their fair share of these costs.**



STATE OF WASHINGTON  
**PUBLIC DISCLOSURE COMMISSION**

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112  
Toll Free 1-877-601-2828 • E-mail: [pdc@pdc.wa.gov](mailto:pdc@pdc.wa.gov) • Website: [www.pdc.wa.gov](http://www.pdc.wa.gov)

**MEMORANDUM**

To: Virginia Olsen, City Clerk, City of Mountlake Terrace  
From: Tony Perkins, Lead Political Finance Specialist  
Date: March 21, 2013  
Subject: Review of "Fact Sheet" Regarding Civic Center Bond Proposal

BY ELECTRONIC MAIL

PDC staff members reviewed the proposed fact sheet that you submitted by email on March 14, 2013, regarding the upcoming bond measure on the April 23, 2013 general election ballot in the City of Mountlake Terrace.

As part of our review process, we look at aspects such as the timing, tone, and tenor of a communication, and the "normal and regular" conduct of the agency. In addition, we also review whether a communication appears to be an objective and fair presentation of the facts that, if lacking, could make the communication objectionable under RCW 42.17A.555.

Our review and comments are meant to give you our best opinion as to the apparent fairness and objectivity of the information being communicated in accordance with PDC Interpretation #04-02, Guidelines for Local Government Agencies in Election Campaigns. That interpretation may be found on our Web site at [www.pdc.wa.gov](http://www.pdc.wa.gov) by hovering on "Home," then on "Laws and Rules," and finally clicking on "Commission Interpretations." (Please note that the *Guidelines* are only an interpretation that, combined with this memorandum, is meant to aid and assist in compliance with the law. The *Guidelines* do not constitute actual rules. Please also note that although the *Guidelines* refer to RCW 42.17.130, effective January 1, 2012 this statute was recodified as RCW 42.17A.555.)

We cannot certify that the proposed fact sheet would not be found objectionable even after our review, should a complaint be filed by a citizen under RCW 42.17A.555. The communication of this information, when combined with other activities to communicate information about the bond proposal, may be construed by residents of the City of

Mountlake Terrace as “campaigning” in support of a ballot proposition.

Reviewing the proposed fact sheet, we found that much of the information included represented an objective and fair presentation of the facts. However, there were areas of some concern, prompting the following recommendations:

- We recommend that in this fact sheet, you refrain from describing the civic center proposal or any facet of it as "important," and refrain from underlining the importance of the information being communicated. Such language lends an urgent tone to the publication that may be perceived as an attempt to promote a ballot proposition.
- We recommend that you refrain from pointing out that the library is 25 years old. (It is sufficient to point out that the roof and cooling system require replacement).
- We recommend that you simply state that there is no funding to continue renting the interim city hall past 2013, and omit the statement that “*Voters may not know...*”
- The results of the August 2012 bond election and the city council's feelings about those results are not facts about the April 23, 2013 Proposition 1 election. We recommend that you omit such discussion from this fact sheet.
- In place of the statement that certain facility upgrades need to be performed “*soon before they become emergent,*” we recommend that you provide more specific information about the projected need for those repairs—e.g., the anticipated life span of the HVAC system in the current library structure.
- We recommend that you omit the word "good" from the statement, “*Additionally, the project makes good use of the vacant Civic Center property the city already owns [.]*”
- We recommend that you omit the paragraph beginning “*The Civic Center project will add community amenities and contribute to economic development...*” from this fact sheet. This statement does not communicate any particular fact about the civic center bond proposal, and conveys a strong tenor of support for the bond to the fact sheet.
- Rather than specifying the age and income thresholds for property tax exemptions, we recommend that you direct readers to the county assessor’s office, whose normal and regular conduct it is to provide such detailed information.
- PDC staff advises agencies that when they have arrived at an objective and fair presentation of the facts concerning a ballot proposition, they may proceed to



communicate that information in accordance with their normal and regular conduct. For some agencies, a single jurisdiction-wide “fact sheet” mailing would be normal and regular. For others, normal and regular conduct may include holding community meetings. The City of Mountlake Terrace is free to conduct informational meetings concerning the civic center issue (“Civic Center 101”), however the city should be able to demonstrate that for other major policy issues facing the city, they have communicated information to the public in a similar manner.

Following this memo is a copy of the draft fact sheet reviewed by PDC staff. For your reference, the segments that our staff suggests be modified or omitted have been marked in yellow.

While we cannot require you to follow PDC staff’s recommendations, they do constitute our best advice for compliance with RCW 42.17A.555. As stated above, our review should not be considered as authorizing or approving the changes recommended, or the information included in the proposed fact sheet. Those decisions are the responsibility of the City of Mountlake Terrace, and the agency’s legal counsel.

If you have questions, please feel free to contact me at (360) 586-1042, toll free at 1-877-601-2828, or by email at [tony.perkins@pdc.wa.gov](mailto:tony.perkins@pdc.wa.gov).

DRAFT

# IMPORTANT INFORMATION ABOUT MOUNTLAKE TERRACE PROPOSITION 1

**MOUNTLAKE  
TERRACE**  
PO BOX 72  
Mountlake Terrace, WA  
98043

PRESORTED  
STANDARD  
US POSTAGE PAID  
LYNNWOOD, WA  
PERMIT #134

ECRWSS  
POSTAL CUSTOMER

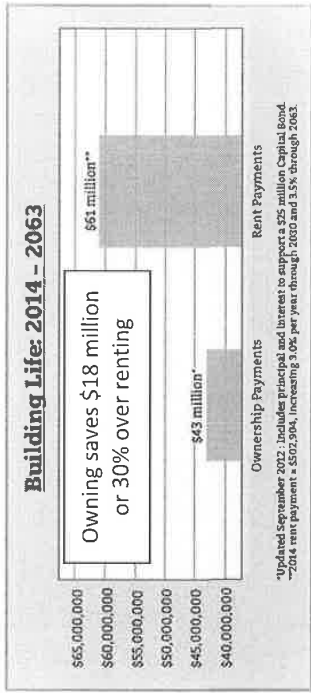
## What is Proposition 1?

A 30-year capital bond measure for \$25 million is on the April 23, 2013 ballot to fund construction of a new Civic Center including an expansion and remodel of the current Police Station to allow for important security and space needs, a new roof and heating/cooling system for the 25 year-old Library, community activity center with space for seniors and other community groups and individuals, natural amphitheater, and green open space for a downtown gathering place that connects the Civic Center together with Veterans Memorial Park.

## Why is this measure back on the ballot?

Voters may not be aware that there is no funding available to continue renting the Interim City Hall beginning in 2014. The city has been renting an interim facility since the former 48 year-old City Hall had a collapsed ceiling; the building was then deemed unsafe and demolished in 2010.

Proposition 1 fell just 124 votes short of the required 60% supermajority in the August 2012 election. The City Council felt there was positive momentum from the nearly 57% approval and the city will save at least \$18 million or 30% by building new than continuing to rent over the life of a 50-year facility. The project also addresses important facility needs at the aging Police Station and Library that will need to be done soon before they become emergent.



Additionally, the project makes good use of the vacant Civic Center property the city already owns at 232<sup>nd</sup> Street SW and 58<sup>th</sup> Avenue W. The Civic Center project will add community amenities and contribute to economic development and the growing vibrancy of downtown by providing leadership for redevelopment and revitalization.

If approved, the city will move into design phase and select an architect. Once a firm is selected, the city will invite the public to participate in design workshops similar to those held during the Town Center Plan process. The project will be completed in spring/summer of 2016.

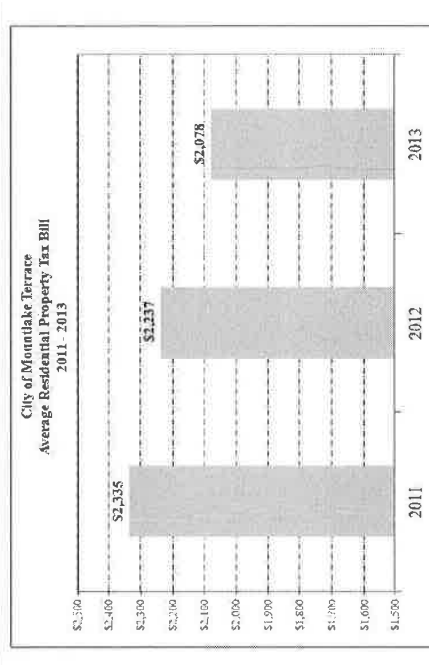
If not approved, a property tax measure (requiring 50% to pass) will likely be proposed to continue to pay rent indefinitely and/or essential services such as public safety and parks services will be cut.

**DRAFT**

**What is your property tax impact?**

If the measure passes, there is no impact in 2013. An increase of \$3.77 per month for the owner of an average home in Mountlake Terrace will take place in 2014 for design and the average from 2014 until the bond is paid off is \$10.13 per month.

**DID YOU KNOW** your average 2013 property tax bill decreased by \$159 since 2012 and \$257 since 2011? This proposition will add about \$122 per year on average from 2014 until the debt is retired after 30 years. The Civic Center is expected to last 50-100 years.



Source: Snohomish County Assessor's Office

**Is there a senior citizen exemption?**

Senior citizens, age 61 and older by December 31 of this year, as well as disabled persons, with a combined income of less than \$35,000 a year may be exempt from all or part of special levy taxes. Call Snohomish County Assessor's Office at (425) 388-3540 for more information.

**How can you learn more?**

Visit our website at [www.cityofmlt.com](http://www.cityofmlt.com) and find "Civic Center" under most requested services. Or, contact the

city at [cityhall@ci.mt.wa.us](mailto:cityhall@ci.mt.wa.us) or (425) 744-6206. The city is also available to provide a "Civic Center 101" informational presentation to you and your neighbors or community group.

**What are the components and cost of the project?\***

PROJECT COMPONENTS	COST & PERCENTAGE OF PROJECT
Building Construction	\$11.4 million 45.7%
Site Development	\$ 6.7 million 27.0%
Architect & Design	\$ 2.9 million 11.9%
Sales Tax	\$ 1.8 million 7.4%
Construction Contingencies	\$ 1.4 million 5.7%
Equipment & Furnishings	\$ 383,000 1.5%
Municipal Arts Fund	\$ 213,000 0.9%
<b>TOTAL PROJECT COST</b>	<b>\$25.0 million 100%</b>

\*Based on construction in 2014-2016

**Could this amount be less?**

Yes, this amount will be less if construction costs or interest rates are lower than projected, and as more taxpayers are added to the tax rolls in the next 30 years. The interest rate is estimated high at 4%. Construction contingencies and cost escalators to account for construction in 2014-2016 are already included as shown above.

**How was the plan developed?**

The Civic Center plan, including all the community amenities and police/library facility improvements, was developed by citizens who served on the Civic Facilities Advisory Task Force in 2008-2009. They received input from other citizens at 13 open public meetings and 4 town hall meetings. The Task Force recommended funding the project with a 30-year voter-approved capital bond. The City Council adopted the citizen Task Force recommendation.



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**MEMORANDUM**

To: John Sinclair, Fire Chief, Kittitas County Fire District #2  
From: Tony Perkins, Lead Political Finance Specialist  
Date: March 19, 2014  
Subject: Review of Information Regarding Fire Station Bond Proposition

BY ELECTRONIC MAIL

PDC staff members reviewed the proposed mailing that you submitted by email on March 18, 2014, regarding the upcoming bond measure in Kittitas County Fire District #2.

As part of our review process, we look at aspects such as the timing, tone, and tenor of a communication, and the “normal and regular” conduct of the agency. In addition, we also review whether a communication appears to be an objective and fair presentation of the facts that, if lacking, could make the communication objectionable under RCW 42.17A.555.

Our review and comments are meant to give you our best opinion as to the apparent fairness and objectivity of the information being communicated in accordance with PDC Interpretation #04-02, Guidelines for Local Government Agencies in Election Campaigns. That interpretation may be found on our Web site at [www.pdc.wa.gov](http://www.pdc.wa.gov) by hovering on “Home,” then on “Laws and Rules,” and finally clicking on “Commission Interpretations.” (Please note that the *Guidelines* are only an interpretation that, combined with this memorandum, is meant to aid and assist in compliance with the law. The *Guidelines* do not constitute actual rules.)

We cannot certify that the proposed mailing would not be found objectionable even after our review, should a complaint be filed by a citizen under RCW 42.17A.555. The communication of this information, when combined with other activities to communicate information about the bond proposal, may be construed by residents of Kittitas County Fire District #2 as “campaigning” in support of a ballot proposition.

Reviewing the proposed mailing, we found that much of it represented an objective and fair presentation of the facts. However, there were areas of some concern, prompting the following recommendations:

- In this fact sheet mailing, we recommend that you identify the bond ballot proposition number, and state the date of the election.
- If Kittitas County Fire District #2 proposes to include information about current bond rates in this fact sheet, we recommend that the agency include more specific information, e.g. trends in bond financing costs over the last decade. Otherwise, you may wish to omit statements concerning the favorability of the current bond climate.
- The heading, “*How will emergency services improve?*” and the paragraph that follows convey a tenor of support for the proposed bond. In place of this content, you may wish to simply describe the agency’s considerations in choosing a location for its new fire station. In addition, since the proposed bond is not being sponsored by the City of Ellensburg, and would not fund or require any expansion of the city’s police facilities, we recommend that you omit discussion regarding the police department’s handling of emergency calls.
- The heading, “*What is unique about the fire station property?*” and the paragraph that follows convey a tenor of support for the proposed bond. In this fact sheet, you may wish to include basic information identifying and describing the property chosen for the new fire station. However, we recommend that you omit statements such as, “*This will allow us to place an important piece of property into community service,*” since such statements do not communicate any essential fact about the bond proposal, and convey a tenor of support for the bond.
- We recommend that you omit discussion of options for a bond proposal that were considered and then rejected (e.g., the original \$12.6 million price tag). An objective and fair presentation of the facts concerning a ballot proposition should present the facts about what is on the ballot, rather than speak about what is *not* on the ballot.

Following this memo is a copy of the draft mailing reviewed by PDC staff. For your reference, the segments that our staff suggests be modified have been highlighted in blue; click on the highlighted content to review staff’s comments and recommendations.

While we cannot require you to follow PDC staff’s recommendations, they do constitute our best advice for compliance with RCW 42.17A.555. As stated above, our review should not be considered as authorizing or approving the changes recommended or the information included in the proposed mailing. Those decisions are the responsibility of Kittitas County Fire District #2, and the agency’s legal counsel.

If you have questions, please feel free to contact me at (360) 586-1042, toll free at 1-877-601-2828, or by email at [tony.perkins@pdc.wa.gov](mailto:tony.perkins@pdc.wa.gov).

**KITTITAS VALLEY  
FIRE & RESCUE**

PO Box 218  
Ellensburg, WA 98926  
(509) 856-7714  
[www.kvfr.org](http://www.kvfr.org)

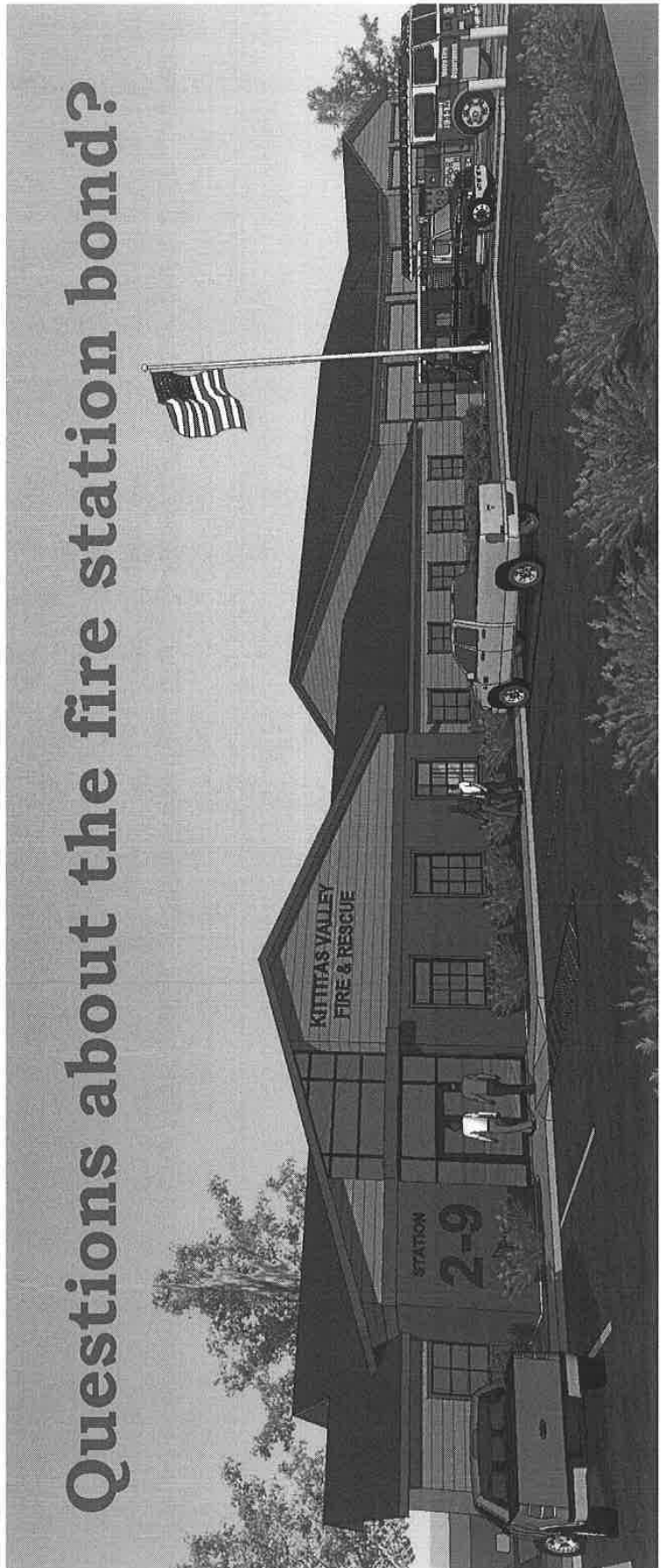


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US POSTAGE

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IQ DIRECT  
98201

Questions about the fire station bond?



# We have the answers.

## What is on my election ballot?

Kittitas County Fire District 2 (Kittitas Valley Fire and Rescue) is asking voters to approve a bond to build a fire station on East Mountain View Avenue.

## Why is my fire district asking for this?

The fire district currently leases space from the City of Ellensburg, which needs the space for its police department. Building a fire station is the next step in a plan to improve emergency services for the community. Our lease expires at the end of 2016 at which time construction on the new fire station should be complete. In addition, bond rates to fund construction are at historic lows.

## How will emergency services improve?

The location for the fire station on East Mountain View Avenue is closer to a majority of fire and emergency medical calls we receive. Allowing the police department to expand at its current location is better for the types of emergency calls it receives, too.

## What is unique about the fire station property?

The fire district purchased property on East Mountain View Avenue, which was home to Mackner Scales for many years. Grants are being pursued to pay for the environmental cleanup required at the site. This will allow us to place an important piece of property into community service.

## How long will the bond last? How much will it raise?

The bond will last for 20 years and will raise \$6.7 million to build the station.

## What was the original amount?

Originally, the fire district considered building one fire station on East Mountain View and renovating another along Vantage Highway for \$12.6 million. Our Citizen Advisory Group said that was too much, so we scaled back the project to one station on East Mountain View Avenue for \$6.7 million.

## Does the fire district have any other bond?

No, this would be the first bond measure for Kittitas Valley Fire and Rescue. The fire district is debt-free, operates under a balanced budget and has passed all financial and accountability audits by the State of Washington.

## How much will it cost?

The fire station would cost 20 cents per \$1,000 of assessed valuation, or approximately \$3.33 per month for the owner of a \$200,000 home. You can use this chart to find your property's assessed value and what the bond would be.

Property Assessed Value (0.20/\$1000)	Monthly Cost	Annual Cost
\$100,000	\$1.67	\$20
\$150,000	\$2.50	\$30
\$200,000	\$3.33	\$40
\$250,000	\$4.17	\$50
\$300,000	\$5.00	\$60
\$350,000	\$5.83	\$70
\$400,000	\$6.67	\$80
\$450,000	\$7.50	\$90
\$500,000	\$8.33	\$100
\$600,000	\$10.00	\$120

Amounts have been rounded to the nearest cent.

## Where can I find additional information?

Additional information can be found on our web site at [www.kvfr.org](http://www.kvfr.org). Chief John Sinclair can be reached at (509) 856-7714 ([sinclairj@kvfr.org](mailto:sinclairj@kvfr.org)), or Pat Clerf, Chair of the Board of Fire Commissioners at (509) 925-7447 are available to answer any questions.

Thank you for taking the time to read our materials. Please contact us with any questions or comments!



# EXHIBIT B



WHATCOM COUNTY  
SHERIFF'S OFFICE

BILL ELFO  
SHERIFF

PUBLIC SAFETY BUILDING  
311 Grand Avenue  
Bellingham, WA 98225-4078  
(360) 676-6650



JEFF PARKS  
UNDERSHERIFF  
ART EDGE  
CHIEF DEPUTY  
DOUG CHADWICK  
CHIEF DEPUTY  
STEVE COOLEY  
CHIEF INSPECTOR  
WENDY JONES  
CHIEF OF CORRECTIONS

April 9, 2015

Dear Members of the Whatcom County Council:

The purpose of this communication is to provide you with information I wish you to consider in conjunction with the public hearing entitled on the agenda as "*comment on the proposal for a new Whatcom County Jail and offer specific ideas for jail diversion programs*" scheduled for April 14<sup>th</sup>, 2015.

I previously testified before Council and provided written information regarding the conditions within the Whatcom County Jail and Sheriff's Office headquarters. As Sheriff, I am responsible for operating the Jail in a safe, constitutional and humane manner. I am also responsible for our dedicated and professional jail staff that put their lives on the line every day to protect the citizens of Whatcom County; the many contracted service providers who work in the Jail; and those who visit the facility.

We have a desperate need to replace the failing Whatcom County Jail. I join the Whatcom County Public Defender, the Whatcom County Prosecuting Attorney, all four Whatcom County Superior Court Judges, both Whatcom County District Court Judges and the County Executive in emphasizing the critical state we are in and the urgency of moving forward. While it is ultimately the County Council's responsibility to determine whether or not the Jail will be replaced and the timetable for doing so, the consequences of not moving forward will place Whatcom County and other jurisdictions that use the Jail in a precarious position. I fully understand the complexity of this issue given the cost and the need for concurrence seven mayors and city council bodies. However the cost of delaying or ignoring this issue indefinitely will be higher

Given significant concerns regarding the structural integrity of the building; the constant failure of critical operating systems; reports from the United States Department of Justice National Institute of Corrections and the Bellingham Fire Department that raised the specter of a "catastrophic loss of life," in the event of fire or other calamity; a report by the Jail Planning Task Force identifying a "critical" need to replace the jail citing "life-safety" issues; and our consistent exceeding of rated jail capacity by substantial margins, I have serious reservations about our ability to continue to maintain legal, safety and health standards. Long before my initial appointment as Sheriff in 2003, published standards for correctional facilities that included physical plant criteria for space, plumbing and infrastructure requirements were suspended because of "overcrowded conditions." The deviation from these standards has only grown worse.

The extent and nature of the problem are not new and were identified in the 1990s by the "Blue Ribbon Committee on Criminal Justice." A 2003 Bellingham Herald editorial referenced: "*jail*

overcrowding and its consequences have been apparent for at least six years [1997]...because local law makers have been unable or unwilling to find ways to pay for new facilities." In 2008, the Whatcom County Law and Justice Council reported on progress on a 2000 Law and Justice Report recommendation that identified a need to build a new jail and stated "[T]he Law and Justice Council puts building a new main jail as soon as possible as its highest priority recommendation." The report went on to discuss the need to expand secure adult jail facilities and noted that the then new work center was expected to be filled primarily with misdemeanor commitments for jail time due to the lack of jail space and noted that its impact on the main jail and would be minimal. It emphasized the County's plan to move ahead with a larger expandable facility to meet the county's need for fifty years and anticipated that the project would take five to eight years.<sup>ii</sup>

The Sheriff's Office established one of the highest standards for the recruitment and selection of Corrections Deputies. We do not experience misconduct issues involving inmate abuse that are described in articles from around the country that were sent to Council. Our Corrections deputies have made huge concessions to keep the facility functioning. However, in part due to conditions within the facility, we are finding it challenging to attract and retain our high-quality personnel. This has resulted in workplace safety issues and deputies constantly being summoned back to work for mandatory overtime. If we are going to maintain the degree of professionalism that now exists, the jail issue needs to be resolved and working conditions improved.

The main Jail facility opened in 1984. Over the years jail population levels were significantly impacted by a variety of factors including legislative mandates relating to sentences for driving under the influence and related offenses; mandatory arrest and incarceration for domestic violence offenses; and a series of changes to sentencing laws that transferred responsibility for convicted felons from the State Department of Corrections to County Jails.

For example, in this Legislative session, 2SHB1884 proposed to convert sentences for several serious crimes from state prison to county jail sentences and once again, did not provide any of the operational or capital funding needed to effectuate this change.

OFFENSE	CURRENT	2SHB1885
3 <sup>rd</sup> time Auto Theft	17-22 months state prison	Possible 60 days county jail
3 <sup>rd</sup> time Burglary 2 <sup>nd</sup>	12-16 months state prison	Possible 30 days county jail
3 <sup>rd</sup> time Identity Theft	12-14 months state prison	Possible 30 days County Jail

Local ordinances criminalizing various behaviors often result in arrests for either the crime committed or in arrest warrants for failing to appear in court for the alleged violation of the ordinance. For example, while Bellingham police officers exercise good discretion, they have no choice but to arrest a person wanted on a warrant for failure to appear or when there is a threat or a continual issue of public disorder. Below is a list of 2014 bookings into the Whatcom County Jail on charges of violating various provisions of the Bellingham Municipal Code.

**Bellingham Municipal Code Violations  
(does not include violations of RCW)**

**Number of Offenses Booked into Whatcom  
County Jail**

Person under 21 <40 grams of marijuana 10.08.020A	2
--	---

Unlawful Inhalation 10.080.030	2
Shoplifting Less than \$50 goods 10.12.020	175
Disorderly Conduct/Abusive Language 10.24.010.A	6
Disorderly Conduct/Disrupt Lawful Assembly 10.24.010D	1
Disorderly Conduct / Cause/Engage/Provoke Fight 10.24.010D	19
Disorderly Conduct/Disturbing the Peace	11
Urinating in Public 10.24.020	15
Sitting or Lying on Public Sidewalks 10.24.070	15
Obstructing 10.24.100	61
Discharging Firearms 10.30.010	1
Stun Guns/Tasers 10.30.020	4
Animal Cruelty 7.16.010	2
Parks Restricted Area 8.04.130	4
Garbage Violation 9.12.080	19
Rodent Control 9.28.060	1

During the 1990s and early 2000s, space designated for storage, education and treatment were converted to hold inmates and additional beds were installed in cells and showers. The bottom line is that the facility, originally designed to hold 148 inmates with mixed security and classification ratings, has held up to 321. As most low-risk sentenced offenders are now housed at the Jail Work Center, the population of the Main Jail consists mostly of higher risk offenders; those who are dangerously mentally ill; and those who may not for a variety of circumstances be diverted.



**Eight inmates housed in a cell originally designed as a shower room and converted to hold two inmates**

Our County Jail system is the only jail system in Whatcom County and since opening, has booked and detained offenders on charges and sentences generated by all municipalities, tribes, state agencies and the courts. We are also required by law to detain all fugitives from justice wanted in other states. County Executive Louws recent presentation to Council highlighted the division of jail beds and bookings by the responsible entity and presented a plan that includes continuing to provide jail space for the cities and other entities to incarcerate their misdemeanor and gross misdemeanor offenders.

Structural failures have raised grave security concerns. Inmates have been able to push out windows and drop lines to the street below to introduce contraband into the facility; manipulate locks to open cell doors; and gain access to adjoining cells by removing grout between the cinder block walls. Public health and the control of contagious disease within the facility is a major problem given that a large segment of the population does not exercise good hygiene or health practices and are detained closely together in small cells. Our staff has contracted some of these contagious diseases that include Methicillin-resistant *Staphylococcus aureus* (MRSA).

Aggravating matters further is a constantly failing plumbing system that results in toilets backing up; sewage pipes leaking and a frequent lack of hot water for hand washing, showering and general sanitation. In 2013, the Jail experienced an increase in its water usage by 1 million gallons. This continued into 2014. The County Facilities Department has not definitively determined the reason for this dramatic increase but believes the issue is attributable to an antiquated and overused plumbing system and its manipulation by inmates. The County Facilities staff does its best to address these issues but problems constantly recur and remediation is expensive.

While the electronic control system was recently replaced through a retrofit, failures posing security risks continue. I recently gave a tour of the facility to a group of citizens when a cell door opened without any prompting from staff. Many of these deficiencies in the physical structure and operating systems are likely the result of decades of use far beyond their designed purpose.

Questions arose about diverting offenders from jail and the issue of bail for those housed within the jail. Law enforcement only has the discretion to book a person into jail for up to 24 hours on

either probable cause to believe a crime has been committed or in their execution of an arrest warrant commanding them to take a named person into custody. Within 24 hours, the incarcerated person will generally appear before a judge who will render a decision on release conditions. While I do not purport to speak for the ten separate courts that adjudicate issues related to inmates within our jail, these decisions are made on the basis of existing law and court rules. Many offenders are released on their own recognizance after first appearance.

Specific questions were raised about the appropriateness of bail as a condition of release. Rules for setting bail are promulgated by the Washington State Supreme Court and contained in Criminal Court Rules (Superior Court) and the Criminal Rules for Courts of Limited Jurisdiction (District and Municipal Court).<sup>iii</sup> The Rules state that there is a presumption in the law that a person charged with a non-capital crime shall be entitled to release pending trial on their personal recognizance. The court may impose a number of conditions of release, including bail, if it makes a finding that such recognizance will not assure the accused's appearance; there is a likely danger that the accused will commit a violent crime; or that the accused will seek to intimidate witnesses or unlawfully interfere with the administration of justice. The court may require bail only if no less restrictive condition or combination of conditions would reasonably assure the safety of the community; prevent witness intimidation or the administration of justice. In setting a bond, the court is required to consider the accused's financial resources. During 2014, 58% of the people who are booked into the Whatcom County Jail are released within 3 days and 64.6% are released within 7 days.

The court is also responsible for sentencing and consistent with the requirements of the law, determine if and for how long a person will remain incarcerated in the jail.

As Sheriff, I formerly had the authority to release sentenced inmates when the jail reached critical peaks. The courts ordered a halt to this practice and the Sheriff does not have the authority to unilaterally release sentenced offenders as a mechanism to control the jail population. While judges are attuned to the problem and are very cooperative in helping control the jail population crisis, they must follow the law in making their release decisions.

Sheriff's deputies and most other law enforcement officers make extensive use of field citations as an alternative to booking misdemeanor and gross misdemeanor offenders who are charged with relatively minor crimes not involving an imminent threat to public safety. In 2014, Whatcom County deputy sheriffs alone cited and released 566 misdemeanor/gross misdemeanor offenders without booking them into jail. Jail staff also has the ability to "book and release" misdemeanor/gross misdemeanor offenders with a field citation to help free up jail space and move appropriate offenders out of custody. Law enforcement may not unilaterally release a suspect if there is an outstanding arrest warrant. Most domestic violence and order violations and cases involving Driving Under the Influence (DUI) also mandate booking. In many instances law enforcement officers refer cases (felony and misdemeanor) directly to the appropriate prosecutor's office for a decision as to whether charges will be filed. In these cases, offenders are often issued a summons to appear in court rather than physically arrested and booked into jail.

Many offenders are diverted from Jail due to the efforts of Whatcom County District Court Probation which supervises over 2,000 pre-trial and convicted misdemeanor and gross misdemeanor offenders.

I previously provided Council with an extensive review and information on the Sheriff's Office internal jail alternative programs that provide appropriately classified offenders alternatives to incarceration in the main jail. Whatcom County Sheriff's Office operates one of the most robust

jail alternative programs in Washington State maximizing the use of electronic home monitoring; electronic home detention; and out of custody and in-custody work crews to the extent these programs are consistent with public safety and the advice we receive from the Prosecuting Attorney's Office regarding the law and liability. These programs often enable offenders to maintain employment and continue their education while serving their sentence. For others, the programs help instill the habits and skills needed to gain employment. In essence, every sentenced offender who meets appropriate security classifications is eligible to participate.

At present, there are approximately 300 offenders who are required to serve court-imposed jail sentences (e.g. DUI) that the Sheriff's Office has not been able to accept into the facility due to the lack of space. These offenders make arrangements to commence serving their sentences to move on with their lives. However upon reporting to Jail, we all too often have to turn them away as the jail population has swelled and there is no space available.

There have been questions about mental illness, addiction and the use of jail space. America is experiencing a disturbing and increasing trend in the number of offenders housed in its county jails that suffer from severe, persistent and often dangerous forms of mental illness and addiction disorders. The Whatcom County Jail is no exception. While most people with mental illness do not commit crime, certain types of mental illness and addictions ultimately lead to crime and incarceration. The severity of crimes varies greatly, but range from offenses against public order and property to those involving extremely serious and violent offenses such as rape, arson and murder.

Over the past 60 years, there has been a 95% reduction in the supply of inpatient psychiatric beds in the United States. Correspondingly, alternative treatment models never materialized so as to fully meet needs. As a result, there is less access to long-term care options. This population includes those assessed as lacking insight, chronically unable to care for themselves, and potentially dangerous to themselves and the public.<sup>iv</sup> The lack of available treatment and housing for those suffering from dangerous forms of mental illness and addictions has unfortunately resulted in jails becoming the largest mental health care providers in America. The United States Department of Justice Bureau of Justice Assistance reported that over 64% of people in jails suffer from mental health problems (24% reported as "serious mental illness) and 68% have a substance abuse disorder.<sup>v</sup> The Whatcom County Jail population approximates these same proportions and many offenders have co-occurring mental health and addiction issues.

Over the past decade, reductions in state and federal funding for community-based mental health and substance abuse treatment in Washington State have resulted in a crisis in terms of available treatment and housing. The Associated Press reported: "A report by Mental Health America that ranked states based on whether mentally ill people had access to care placed Washington 48<sup>th</sup>."<sup>vi</sup> The presentation by Mr. Valentine of the North Sound Regional Service Network on the State's expanded Medicaid program at the March and the potential funding of crisis centers at the March 31<sup>st</sup> Council Finance Committee meeting does offer some potential opportunities for improvement.

Research further indicates that even when treatment is available; it is often episodic and lacks the continuity needed to stabilize symptoms. Many patients become homeless, which may increase the likelihood of crime and arrest. Family members of people with mental illness who attempt to intervene and seek involuntary treatment are often frustrated by the lack of services and the high threshold criteria for involuntary commitments. Psychiatric in-patient care providers frequently refuse to admit patients because they are ill; have co-occurring addiction issues; or are violently

out of control. In some cases, hospitals and other health care providers refer patients for arrest because they are unmanageable and assault staff and other patients.

Several years ago, following recommendations from the Law and Justice Council, leaders in the Sheriff's Office Law Enforcement and Corrections Bureaus; the Health Department; the Prosecuting Attorney's Office; local police representatives and the mental health community were tasked with forming a working group to study the need for a fully functional mental health triage center. A plan was developed to provide a fully functional center that would allow law enforcement to divert minor offenders with mental health issues from the criminal justice system to treatment. While in 2007 a 14-bed behavioral health triage center opened to divert offenders whose main issues were mental health, alcohol or substance abuse, the facility was not fully funded for its intended and recommended purpose. It currently does little to directly divert offenders from jail. <sup>vii</sup>

Law enforcement has the ability to involuntarily take people who as a result of mental illness are gravely disabled or present a likelihood of serious harm. The local process involves taking them to the emergency room for an evaluation by a mental health professional. A frequently occurring theme is for the person to be quickly released from custody. For example, in February deputies responded to a 9-1-1 call from a man who indicated that he had armed himself with a knife and wanted deputies to kill him. Deputies arrived to find the man standing in the middle of the road waiving a knife and hammer. He took off his clothes. Our crisis negotiators spent over an hour convincing him to surrender. He was taken for a mental health evaluation and within 24 hours, was released from the hospital and was on the Sheriff's Office Facebook page wanting to know how to get his knife back. He continued to make implied threats against law enforcement the following week. This example is not an aberration but rather a common theme officers encountered by officers on a recurring basis.

While some options exist under existing federal law for the use of crisis stabilization units and triage centers as an alternative to incarceration, the Legislature enacted a series of statutes (RCW 10.31-110-10.31.120) that will allow law enforcement to divert an *"individual who committed acts constituting a non-felony crime that is not a serious offense as identified in RCW 10.77.092 and the individual is known by history or consultation with the regional support network to suffer from a mental disorder"* to several alternatives that include triage and crisis stabilization units. The law takes effect on April 1, 2016 and requires concurrence with the Prosecutor.

Compounding the problem are Washington State laws governing competency determinations and treatment to restore the competency and stability to offenders with acute symptoms of mental illness. While the law requires that evaluations and involuntary treatment be performed at Western State Hospital, the Legislature in recent years reduced the programs that provide these services. The result is very violent offenders accused of the most dangerous of crimes remain confined in the County Jail for months while they await the treatment needed to restore competency and stability. The backlog of those awaiting competency determinations and treatment within jails exacerbates existing safety and offender management issues.

One only has to do a Google search of news articles to find that Western State Hospital is the highest risk place to work in Washington State. Workers are assaulted by violence the job 60 times more than the average worker in the State. These offenders are now housed for longer periods in our jail which has little room to manage them. This has exposed staff and contracted workers to increased risk.

The Whatcom County Jail is the de facto largest behavioral health institution in our community. However, it operates at nearly twice its designed capacity and lacks sufficient space to safely house, manage or optimally treat those with serious forms of mental illness and addiction issues.

Offenders requiring close monitoring are housed in a busy booking area that operates 24-hours a day. As little space exists for mental health and chemical dependency professionals to communicate with offenders, evaluation, treatment and counseling normally occur through a hatch in the steel door that separates inmates from staff. These physical limitations and the lack of privacy hamper the effectiveness of treatment and efforts to restore stability. The lack of staffing and space also preclude frequent visitation and the maintenance of family connections that are often vital to post-release success. An absence of appropriate housing for those with dangerous forms of mental illness creates enormous safety issues for staff and other inmates. Persistently overcrowded conditions often aggravate existing mental health symptoms.



**Close Observation cell used for housing offenders with significant and threatening mental health issues is located in the noisy and busy booking area**



**Mental health services are often delivered by “whispering” through a food tray hatch in the cell door**

While jails may not be the optimal first default for minor offenders with behavioral disorders who do not pose a threat to public safety, the law requires and will likely continue to require that jails hold some people who suffer from mental illness or addiction issues who have committed crimes. While these offenders are committed to our custody, we have a moral, ethical and legal obligation to hold them in a safe and humane manner and not aggravate or compound existing disorders.

While there are no simple or immediate solutions to this problem, the Sheriff's Office worked within the parameters of existing limitations to ensure that the offenders with serious mental health and addiction problems are to the extent possible, evaluated and treated while in jail. However, our experience with recidivism demonstrated many offenders upon being released from jail, either lacked access to or had an unwillingness to follow through with referrals for community-based treatment and soon re-offended. Without appropriate treatment and medication, disabling symptoms often generate the same behaviors that send them back to jail as



a direct result of their untreated disorders. Nationally, studies report that offenders with serious mental illness are 2 to 3 times more likely than those without mental illness to be re-incarcerated.

viii

One major obstacle to the availability of community-based mental health services for released offenders is their inability to pay. Most mentally ill offenders are uninsured. Even when eligible for health care subsidies, most have not enrolled. While many are eligible for Medicaid that would otherwise help pay costs, federal and state regulations suspend Medicaid eligibility once offenders are incarcerated in jail. Re-enrollment in Medicaid and application for other federal insurance benefits is an onerous process. Mentally ill and chronically addicted offenders often need help to access these benefits. Without these benefits and the connection to treatment, their untreated symptoms may quickly return them to jail.

In 2008, the County Council enacted Chapter 3.37 "Sales and Use Tax for Chemical Dependency or Mental Health Treatment Services and Therapeutic Court Programs" *for the purpose of "providing new or expanded chemical dependency or mental health treatment services and for the operation of new or expanded therapeutic court programs, and as otherwise authorized by the laws of the state of Washington..."* Revenues collected pursuant to that sales and use tax have funded programs that have made significant improvements to the delivery of mental health services within the jail and to offenders who re-entering the community. Ms. Deacon of the Health Department and her staff provided you a summary of these programs at the March 31<sup>st</sup> Council meeting.

In 2013, the Sheriff's Office partnered with the County Health Department to enhance the delivery of mental health and addiction services within the jail through the "Jail Behavioral Health Program." Relying on sales tax funding, the goal of this program is to stabilize behavioral health symptoms for those incarcerated in the jail and ensure effective connections to community-based services upon their release. A local psychiatric clinic places professionals within the jail to diagnose and treat acute symptoms. This process includes screening, triage, assessment, treatment planning, medications, counseling, coordination of civil commitment and evaluations. Behavioral health staff develop release plans that include solid connections and follow up with community-based treatment; assistance with health care enrollment or re-enrollment; and if needed, assisting with "co-pays" and housing. Ms. Deacon and her staff provided you with the most recent program evaluation and report on these jail-based programs at the March 31<sup>st</sup> Council meeting.

As law enforcement is often the first and the only 24/7 first responders available to address emergencies involving mental health crisis, the Sheriff's Office has trained all deputies to address issues involving those in mental health crisis. It also established a specialized team of highly-trained professionals to peaceably resolve the most dangerous and challenging of cases.

As highlighted by Ms. Deacon and her staff, the sales tax has supported a number of prevention and treatment programs external to the Sheriff's Office that helps prevent persons from entering the criminal justice system.

Juvenile Detention Alternative Initiative an evidence-based program that dramatically dropped the number of incarcerated children in the Whatcom County Juvenile Detention Center and resulted in a decrease in the number of children who go on to commit crime as adults;

School Based Behavioral Health Specialist Program: at least one behavioral health specialist is assigned to every school district in Whatcom County to address issues of addiction and manifestations of mental illness;

Behavioral Health Triage Center: provides mental health crisis and substance abuse treatment; while originally envisioned as a potential means for law enforcement to divert those in crisis from the criminal justice to the mental health system, changes in funding streams prevented the facility from fully serving this purpose; however, it provides an alternative for those seeking professional assistance before committing crimes. Recent developments related to the expansion of the state Medicaid program may fund future expanded capabilities and capacity;

Mental Health Courts: Whatcom County funded the recently established Mental Health Courts within the Whatcom County District Court and the Bellingham Municipal Court. These courts are modeled under evidence-based research and success in other jurisdictions and follow a model requiring treatment and compliance;

Drug Court: Whatcom County completely funds the Whatcom Superior Court Drug Court that offers treatment alternatives for selected offenders whose crimes can be attributed to addictions;


Special Intensive District Court Probation: This program provides intensive pre-trial and post-conviction supervision and treatment of those with addiction issues and has helped reduce jail population through community-based supervision and successful no-return rates for habitual offenders.

I appreciate the support of the Council in working with the Legislature to establish a fourth Superior Court Judge position in and for Whatcom County. This may help the courts more rapidly resolve felony cases and ultimately, help control the jail population.

As Sheriff I fully supported treatment and diversion programs and have worked in close partnership with the Health Department and the Executive's Office to make these programs successful. While opportunities may exist to reduce or control jail needs, the current jail needs to be replaced as quickly as possible. The proposed new jail will provide space for mental health and substance abuse programs for those that must be incarcerated while providing safe and humane conditions for visitors, staff and offenders.

Please be assured of my continued coordination and cooperation as treatment and diversion programs external to the Sheriff's Office are expanded or pursued.

Sincerely,

  
Bill Elfo, Sheriff

<sup>i</sup> The Sheriff's Office headquarters is grossly inadequate, undersized and faces structural issues. Located in the basement of the Jail, it is constantly plagued with breaking overhead water and sewer pipes that have repeatedly contaminated and flooded work areas and destroyed important records. The small lobby and reception area is not accessible to persons with disabilities and often has standing-room only. Sex offenders waiting to register frequently come into contact with victims of crime and those seeking to renew their pistol licenses. Detectives work in cramped spaces and limited room exists to ensure the privacy of victims or to secure suspects. The Sheriff's Office has rented discounted off-site space for patrol functions resulting in four moves when the space is needed by the landlords for other purposes.

<sup>ii</sup> Whatcom County Law and Justice 2008 Plan 5. Expand Secure Adult Jail Facilities  
The Whatcom County Sheriff's website reports that "Jail booking restrictions initiated in the mid-1990s because of jail overcrowding, have increased in severity to the point where law enforcement officers are unable to book offenders for some serious crimes such as drunk driving, theft and assault. Even when offenders fail to appear in court and judges issue arrest warrants, law enforcement is precluded from taking them into custody. A situation exists where hard-core and repeat offenders openly mock the system and a breakdown in respect for the criminal justice have occurred. As offenders cannot be booked, they are not identified and a strong possibility exists that wanted felons from across the country evade justice by simply giving officers the wrong name. Short and long-range plans have been developed to address this problem."  
In late 2003 the County developed a plan to build a medium security community corrections center on six acres in the Bakerview Spur area of Bellingham. State law allowed the County to propose an increase in the sales tax by 1/10th of 1% to finance construction and operation of corrections facilities. A citizens committee, "People for a Safer Community", campaigned successfully. Voters approved the tax increase in November 2004. The new Jail Work Center, built on time and within budget, opened in November 2006. It provides 150 male and female beds, a staging area for expanded alternative to jail work programs, kitchen and laundry facilities, and a co-located 14-bed mental health and substance abuse Behavioral Health Triage Center operated by the County Health Department. The Work Center is expected to be filled primarily with misdemeanants with unserved commitments for jail time or with outstanding warrants unserved due to the lack of space in the main jail. It will help to control overcrowding, but its impact on the main jail may be minimal. Meanwhile the County's long range plan is to replace the current jail with a larger expandable facility that will meet the county's needs for fifty years. It is anticipated that this project will take five to eight years. The Work Center is designed to facilitate conversion and sale for industrial use when the permanent jail project is completed. Facility and program planning is underway in 2008 for the new main jail.

<sup>iii</sup> Washington CrR 3.2 "Release of Accused" and Washington CrRLJ 3.2

<sup>iv</sup> Dominic Sisti, Andrea Segal and Ezekiel Emanuel, Department of Medical Ethics and Health Policy, Perelman School of Medicine at the University of Pennsylvania, Philadelphia *Opinion: Improving Long-Term Psychiatric Care - Bring Back the Asylum*, Journal of American Medical Association, January 20, 2015 Vol. 313, Number 3

<sup>v</sup> James DJ, Glaze LE. *Mental Health Problems of Prison and Jail Inmates*, Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (2006)

<sup>vi</sup> Bernton, H. and Carter M., "Families seek an easier way to detain mentally ill involuntarily," The Associated Press as reported in the Bellingham Herald, February 9<sup>th</sup>, 2015

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vii 2008 Whatcom Law and Justice Council Plan: *Behavioral Health Triage Center. Develop plans to maintain Triage Center behavioral health services. The Triage Center is now co-located with the Jail Work Center at 2003 Division Street. The Center provides crisis screening and assessment, stabilization, and referral to treatment services for individuals picked up by officers on the street, whose behavior seems primarily caused by mental health problems, alcohol or substance abuse. Thirteen beds are available for recovery 24 hours a day. Detoxification is provided by the Whatcom Psychiatric Clinic and Pioneer Human Services. Its purpose is to divert eligible individuals from jail and prevent recidivism in that population, providing a control to jail overcrowding . When a new main jail is built in eight to ten years, the Triage Center building is slated to be closed and converted to private industrial use.*

viii Baillargeon J, Binswanger IA, Penn JV, Williams BA, Murray OJ. Psychiatric disorders and repeat incarcerations: the revolving prison door. *Am J Psychiatry.* 2009;166(1):103-109.

WHATCOM COUNTY  
SHERIFF'S OFFICE

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WENDY JONES  
CHIEF OF CORRECTIONS

April 23, 2015

Dear Executive Louws:

The purpose of this communication is to provide the County Executive's Office the Sheriff's Office perspective on issues raised by County Council members relating to the proposed replacement jail and Sheriff's Office headquarters project. In reviewing this communication, it must be remembered that the Sheriff is responsible for the operation of the jail. The County Facilities Division is responsible for maintenance and the assessment of the physical condition of the facility. However, even as a "non-architect, non-engineer and having no expertise in building codes," I would be remiss if I did not provide perspective on known issues that have been repeatedly highlighted by those with expertise and have been very apparent for well over a decade to all who work in and directly rely on the jail.

Please feel free to incorporate this information into your response to Council.

**Questions were raised regarding the feasibility and approximate cost of remodeling the current downtown jail for continued use as opposed to replacing the facility.**

From my perspective as Sheriff, it would be imprudent to invest major capital to remodel and continue utilizing a facility that experts have repeatedly described as inadequate, failing and dangerous.

From a matter of public policy, the County Council expressed concerns about locating a correctional facility less than one mile from a public or private school. On March 9, 2004 the County Council adopted Ordinance 2004-014, an essential public facilities plan that precludes locating correctional facilities within one mile of a public or private school.<sup>1</sup> While I will need to defer to others for a decision on whether a remodel as extensive as the one contemplated would trigger the need to comport with County policies on siting essential facilities, the former County Executive articulated this as one of many reasons why the replacement county jail should not be located downtown. The courthouse and jail area are within a mile of Bellingham High School, Whatcom Middle School and the School of the Church of the Assumption.

The current jail "footprint" is limited and will not likely be able to accommodate future needs if and when they arise. Building essential modifications into the current facility will undoubtedly result in a loss of desperately needed inmate housing areas. Furthermore, the current facility has no space for secure refuge in the event of an emergency evacuation.

I was reinforced in my decision not to recommend or advocate for a remodel of the current facility by a number of reports, recommendations and policy decisions that included:

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<sup>1</sup> While the County ordinance only has applicability in unincorporated Whatcom County, the language requiring a one mile setback from schools was not contained in the language proposed by staff but was added by motion of a Council member and adopted by the County Council on a 6-0 vote.

- 1999 and 2000 Whatcom County Law and Justice Plan, Vol. 1 & 2;
- 2002 to 2010 assessments and reports of the HDR Jail Planning Group
- 2003 Whatcom County Public Safety Building Evaluation, HDR Group;
- 2003 Whatcom County Public Safety Building Preliminary Study for Story Addition, Geiger Engineers;
- 2004 public policy of not locating jails near schools as reflected in the unanimously ordinance adopted by the Whatcom County Council in the Essential Public Facilities Ordinance (2004-014) (requiring one mile setbacks of jails from schools);
- 2004 United States Department of Justice, National Institute of Corrections Technical Assistance Report "Operational Review of the Whatcom County Jail;"
- 2008 Whatcom Law and Justice Council Report;
- 2011 United States Department of Justice, National Institute of Corrections Technical Assistance Report "Assessment of Existing Jail and Work Center;"
- Whatcom County Council Resolution 2011-14 "Establishing a Jail Planning Task Force;"
- Whatcom County Jail Planning Task Force report to Council dated March 29, 2012;
- 2013 Whatcom County Council decision to retain jail planners, architects, engineers and others relative to planning for the replacement jail and sheriff's office headquarters in Ferndale;
- 2013 Whatcom County Council decision to purchase the LaBounty site in Ferndale for the jail and Sheriff's Office;
- 2014 Whatcom County Council decision to pursue a conditional use permit for a jail and sheriff's office headquarters in Ferndale;
- Evaluations from the County Facilities Division and their contactors;
- Apparent conditions and the below listed considerations relating to remodeling.

#### **1999 & 2000 Whatcom County Law and Justice Plan**

In 2000, under the auspices of the Northwest Regional Council, the County engaged consultants, Alvin Cohn, Ph.D. and Stuart Readio to prepare a Law & Justice Plan. In phase II of the report it stated:

*Much of the discussion of remodeling the existing county jail in Bellingham is applicable to this discussion. The catalyst for new construction is the chronic crowding of the existing jail, anticipated future demands for secure space in Whatcom County, and the crippling effects of constrained incarceration on local law enforcement practices, judicial prerogatives, and the ability to change offender behaviors.*

#### **2003 Whatcom County Public Safety Building Evaluation, HDR Group**

When I took office in 2003 the jail planning firm HDR was engaged in a building evaluation for the Whatcom County Public Safety Building. This report included a preliminary study by Geiger Engineers, done in 2003, and incorporated findings from Fire and Life Safety Report, prepared by DLR Group in 2000. The HDR report concluded that due to the type of construction and the building configuration, the Whatcom County Public Safety building does not conform to current standards of design for detention facilities, has a limited useful life potential, recognizes that it will be necessary to replace this structure sometime in the future and that the structure is not a candidate for reuse:

The Public Safety Building does not conform to current standards of design for detention facilities. This facility is chronically overcrowded and cannot meet the levels of offender classification that are required. The support functions are inadequate and the detention areas are ill configured.

The security systems are inadequate and the structure and mechanical systems are unsound. Smoke evacuation for the central control room is currently a security and life safety issue and needs to be rectified as soon as possible. Emergency power is inadequate to this facility and also needs to be rectified.

The security monitoring system is outdated and does not adequately cover all the detention areas well. This system also needs to be replaced with a state of the art system.

The 2000 life safety assessment by the DLR Group needs to be implemented in its entirety if this building continues to be utilized as a detention center. The issues are too important to be dismissed and could cause the county potential liability.

This building has a limited useful life potential and it will be necessary to replace this structure sometime in the future. Any upgrades or renovations to this building should be looked at as short term operational and life safety fixes, only. Large monetary expenditures on this building are not recommended and funds should be set aside to construct new detention facilities. If funding cannot be found to abandon this facility completely, then it would be still be possible to utilize this building in the interim as a post adjudication or alternative detention facility. This would reduce the functional and security demands on this building until a new facility could be constructed.

The support functions for this facility, such as food service and laundry, are undersized for the number of offenders that are housed here. Programmatically these functions are stressed beyond capacity and this condition will need to be rectified. As mentioned in the evaluation of the courthouse, there is no secure loading dock or service area. This also needs to be rectified in order to provide efficient and secure operational and functional support. Due to the type of construction and the building configuration, this structure is not a candidate for reuse.

The report also indicates that large monetary expenditures on the building are not recommended and any upgrades and renovations to this building should be looked at as short term operational and life safety fixes. A number of the short term operational and life safety fixes including; ADA compliance, Jail Control Project, limited HVAC work, limited electrical work, boiler work, new roof installed, exterior wall work, have been made in the last decade as the County continued to plan for a New Countywide Jail.

This report was discussed during the Jail Planning Task Force meetings and used to inform the task force's recommendation on the need for a "new jail" as discussed later in this document.

### **2003 Whatcom County Public Safety Building Preliminary Study for Story Addition, Geiger Engineers**

In 2003, Geiger Engineers performed a preliminary study for an additional story addition on the Whatcom County Public Safety Building. This study was done in coordination with the 2003 HDR building evaluation. The report recognized that "in reviewing the original project plans, we confirmed that the building was initially designed for this addition. However, past structural modifications and current changes to the building codes have influenced the potential for future expansions." The scope of the study was intended to be a first step in such an assessment, and included document review of construction plans, approximate gravity and lateral loads of a new story, and structural review based on

the 1997 Uniform Building Code. The results from the structural review were that "the addition of a top story to the existing structure will be costly, yet may be possible." The conclusions and recommendations of the report are as follows:

We have identified several structural deficiencies that would require extensive modifications to accommodate the addition of a new floor. Some of these modifications (such as addition of transverse shearwalls) may have severe architectural and/or cost ramifications. However, the gravity load-resisting system appears mostly adequate to handle the weight of the new story. With required modifications, the addition of a new level may be possible. If there is further interest in adding a level to the existing building, we recommend a more comprehensive review be performed to more closely identify problem areas as well as possible solutions and approximate costs. Ideally, this review will include a preliminary geotechnical investigation, as well as architectural input to provide a better idea of what the new story would be comprised of. Further engineering analysis will better illuminate the extent of structural modifications that will be necessary.

This preliminary study, done in 2003, is the last study prepared by an engineer on the likelihood of additions or remodels to the Whatcom County Public Safety Building. This is because the focus and discussion at the Whatcom County Council and Administration turned to finding an appropriate location for a New Countywide Jail.

#### **United States Department of Justice, National Institute of Corrections (2004)**

In 2004, I requested that the United States Department of Justice's National Institute of Corrections conduct a review of the Whatcom County Jail. A portion of the report focused on the "Current Whatcom County Jail that made it readily apparent that a remodel was not a viable alternative. The following "2004 United States Department of Justice, National Institute of Corrections Technical Assistance Report (TA#04J1051)-"Operational Review of the Whatcom County Jail" by Jeffrey Schwartz, PhD highlighted the limitations and safety issues inherent in the current main jail:

The current Whatcom County Jail was opened in late 1983. The design, however, is reminiscent of jails built ten and fifteen years before that, with small dormitories and linear cell blocks. No portion of the Jail was designed for direct supervision and if the current jail were to be operated with inmates being actively supervised, it would be staff intensive and expensive.

Even as an indirect supervision facility, the Jail design is poor. There is only one control room for all three floors and there is little visibility from that control room except by security cameras and monitors. Visibility from the corridors into the living areas is poor and even general population areas have "vestibules" or sally ports between the living units and the main corridor, further restricting visibility and speed of access. There are no waiting or seating areas for inmates in the booking and intake process, except for a few "tanks". The overarching problem is the Jail building is much too small for its current number of inmates and the number of inmates in the Jail is much too small to meet the County's needs. There are many other problematic design issues, but a thorough analysis of these is beyond the scope of this report.

The infrastructure within the Jail is perhaps worse than its design. The control panels which operate the doors and gates throughout the Jail are almost constantly malfunctioning to some degree, and whole panels stop working frequently. That means large areas of the Jail must be operated manually, keying each door. The company that manufactured the control panel system has been out of business for some



years and the County reputedly purchased the system at a discount because it was obsolete even at that time, in the early '80's. The fire alarm system doesn't work, and hasn't worked for years. That is shocking, particularly in a jail that is dramatically under-staffed and over-crowded. The door locks in some portions of the Jail do not function properly. While the consultant was in the Jail, a water pipe in the preheating unit of the HVAC system ruptured. The first sign to staff that something was amiss was large quantities of water pouring from the ceiling of the first floor in a number of different locations. It soon became apparent that there was far too much water to be explained as a toilet intentionally stopped up by an inmate. A maintenance staff person did an admirable job of locating the problem quickly and turning off the preheat water, but leaking continued on two floors of the Jail for another half day. Again, a comprehensive treatment of the infrastructure problems in the Jail is beyond the intent of this report and determination about which infrastructure problems are due to lack of maintenance and which are due to overuse or aging is well beyond the expertise of the consultant. On a related note, the jail alternatives building, across the street from the current jail, is itself in very poor physical condition.

The lowest level of the Jail's four levels, was designed and built as a storage area. Some years later it was decided to retrofit the garage area as office space and move the Sheriff's office into it. This wrongheaded decision was compounded when the building alterations were done improperly, removing some vertical support columns that were essential to the building's lateral stability and resistance to collapse. Earthquake risk in Bellingham is substantial and all of the employees who work in the Sheriff's administrative offices joke morbidly about the top three floors of the Jail "pancaking" the garage level during a seismic event. The morning after the water pipe rupture described above, the consultant was meeting with the Sheriff in his office. Several water leaks through the suspended ceiling in that office were still active.

The Sheriff, the Undersheriff and county officials are well aware of the limitations and severe problems in the current Jail. When Dr. Schwartz met with the County Executive and his Deputy, and later with three County Council members, they were to a person dismayed by the past County planning failures with the Jail and firmly committed to building a new jail that will take account of County growth and projections for the long term, and not leave future County officials in the difficult position in which they find themselves.

The County is currently moving on three fronts to deal with the Jail situation. The County Executive Office and the County Council are now beginning to analyze alternative designs and plans that have been developed by architectural consultants. The County is actively examining short and mid-term measures that might mitigate the situation until the new jail is constructed. The County is also spending a substantial amount of money replacing some of the systems that are most seriously compromised in the current Jail. (All Emphasis Added)

#### **Whatcom County Law and Justice Council Report (2008)**

The Whatcom Law and Justice Council extensively reviewed the County's jail requirements and the adequacy of existing facilities.

In 2008, the Whatcom County Law and Justice Council provided a Law and Justice Report containing recommendations that identified a need to build a new jail and stated "[T]he Law and Justice Council puts building a new main jail as soon as possible as its highest priority recommendation." The report went on to discuss the need to expand secure adult jail facilities and noted that the then new work center was expected to be filled primarily with misdemeanor commitments for jail time due to the lack

of jail space and noted that its impact on the main jail and would be minimal. It emphasized the County's plan to move ahead with a larger expandable facility to meet the county's need for fifty years and anticipated that the project would take five to eight years.

#### **United States Department of Justice, National Institute of Corrections (2011)**

An August 31, 2011 report by the United States Department of Justice's National Institute of Corrections "Assessment of Existing Jail and Work Center," highlighted the physical limitations of the existing jail that made in apparent that remodeling the facility was not a viable alternative to replacing the facility to include findings that:

- Mixed booking, suicide watch and medical housing area and reported that these functions which were and are mixed, should be separated;
- The lack of "confidential" medical interview capacity and noted that interviews are performed through a food portal;
- The lack of appropriate accommodations for inmates with substance abuse and mental health issues;
- The use of cells exceeding their designed capacity;
- The difficulty of seeing into housing units; the necessity for intermittent supervision; drab and potentially dangerous conditions;
- That almost all space has been converted to accommodate housing needs and inmates often sleep on the floor;
- The lack of inmate recreation space and negative impacts on inmate mental health;
- The lack of storage;
- The laundry now serving twice as many inmates as originally intended;
- The "very crowded" kitchen serving more than twice as many meals as intended;
- The availability of an array of programs and volunteers but limited space for conducting them.

#### **Whatcom County Council Resolution 2011-14**

Whatcom County Council Resolution 2011-14 "Establishing a Jail Planning Task Force" was put forth by then County Executive Kremen and passed by the County Council on April 26<sup>th</sup>, 2011 on a vote of 7-0. The first clause of the Resolution states: "**Whereas, the existing jail at the Courthouse is in poor condition and a permanent facility for housing higher risk offenders is needed.**" The second clause stated: "**Whereas we require a new jail that will be the right size for present jail population projections, sited at a reasonable location and be designed in a manner to maximize efficiencies and accommodate expansion if and when the need arises.**" The resolution resolved that the Jail Planning Task Force be "charged with providing the County Council and the County Executive advice on the appropriate size and location of new jail facilities."

#### **Whatcom County Jail Planning Task Force Recommendations 2012**

The Jail Planning Task Force (JPTF) issued a Final Report to the Whatcom County Council on March 29, 2012. The summary of the report highlighted the need for a "**new jail**" and highlighted the inadequacies of the facility: "*Due to inadequate existing conditions of the physical plant, life safety concerns and overcrowding, significant and urgent improvements are*

*needed to current adult correctional facilities....”* The Task Force provided a comprehensive list on non-discretionary jail structure needs that should be incorporated into the replacement facility and indicated that the facility should be located reasonably close to I-5 and the courthouse.

#### **DLR 2012-2015**

DLR, a jail planning firm retained by the County to extensively review and plan for jail needs, did not recommend for consideration nor was direction given, to remodeling the current jail facility.

#### **Factors to Consider Relative to Re-Modeling the Main Jail**

Some factors that should be assessed if a serious pursuit of whether the main jail facility should be remodeled rather than replaced include:

- Careful consideration to the afore stated reports from the United States Department of Justice National Institution of Corrections as well as the Jail Planning Task Force regarding the capacity, structural and operating system of the building and associated life-safety issues;
- Known and existing problems as documented by the County Facilities Division that relate to HVAC; water and drain pipes; boilers; kitchen including refrigeration units; security locks on cell doors. The plumbing issues include constantly leaking pipes, contamination from sewage and the lack of hot water for sanitary purposes; Code and legal requirements triggered by extensive remodeling to include bringing the building into compliance with:
  - Applicable building and seismic codes requirements;
  - Americans with Disability Act and similar provisions of state law including ADA accessible showers;
  - Federal Prison Rape Elimination Act facility requirements as applicable to local jails to include reconfiguring showers and changing areas;
  - Elimination of all blind spots;
  - Contemporary legal standards for lighting and access to natural light;
- Consideration of how extensive remodeling would affect recently installed electronic control system and the possible needs and costs of restructuring and replacing portions of the system;
- The difficulty of retrofitting electronic control systems in an aging and poorly designed facility that has been repeatedly evidenced by failures in the recently installed control system;
- Plan and design cells to accommodate diverse inmate population including growing proportion of female inmates; the ability to segregate inmates exhibiting severe or dangerous disciplinary issues and the need to house sex offenders and other vulnerable inmates from the general population;
- Plan for the creation of housing areas for those mentally ill inmates requiring specialized housing and observation;
- Consideration of the impact of the removal of housing units to create other required spaces that will need to be incorporated into a major remodel of the existing jail facility.

- Plan space for expanding behavioral health evaluation and treatment;
- Plan for secure space for prison bus when transferring inmates to the custody of the Department of Corrections to ensure the safety of the public;
- Legal question as to whether an extensively remodeled jail would be considered a “new” jail for purposes of the County Code relating to the Siting of Essential Facilities which precludes siting jails within one mile of any school (Whatcom Middle School) and public policy implications;
- Issues relating to relocating all or a substantial portion of the offender population during reconstruction and transportation of inmates to jail space that likely would be available in Des Moines or Yakima; costs and the impact on the justice system and families of inmates. At this point, it is likely that some of the more difficult to manage inmates (particularly those with severe mental or physical health issues) would not be accepted into either facility;
- Issues related to our highly dedicated, professional, experienced and loyal jail staff during the construction period and the potential need to train a large cadre of new and largely inexperienced employees when the project was completed;
- The inability to expand the facility to meet future needs should they become available and the likelihood of incurring expenses relating to the operations of additional correctional facilities.

**Questions were raised about the fiscal impact (capital and operations) of using the jail work center as a Sheriff’s Office headquarters and retaining the Jail Work Center as a lower security facility, thereby reducing the build out on site.**

Separating the Sheriff’s Office staff, law enforcement and other functions from the Correctional Facility will result in increased operational expenses and decreased efficiencies. Each facility or operation not co-located on a main jail/headquarters campus will require additional staff to operate, which translates into significant ongoing personnel costs. Consideration should be given to:

- Locating the Law Enforcement and Support functions of the Sheriff’s Office is central to our campus and neighborhood security plan. This vision was presented to interested stakeholders including the City of Ferndale, neighbors and the public. It is also contemplated in the conditional use permit application that was submitted to the City of Ferndale;
- As a condition of receiving a conditional use permit, the then County Executive with the concurrence of the County Council committed to the City of Bellingham that it would vacate the Jail Work Center at the end of its use (5-7 years); sell the property and put the it back on the City’s industrial tax base. To effectuate this intent, the structure was designed and constructed to industrial standards;
- The proximity of the current work center to the population and geographical areas primarily served by the Sheriff’s Office. The current site in downtown Bellingham is not located central to primary response areas or the major north-south and east-west routes to the unincorporated areas. Re-locating to Division Street would not result in much of an improvement. The Sheriff’s Office current attempts to remedy this situation by renting space for patrol deputies. This has

resulted in communication issues and multiple daily trips outside primary patrol areas. The entire Sheriff's Office should be located on a single campus (jail and other operations);

- The proximity of the current Sheriff's Office to the primary population we serve is inconvenient for citizens seeking services. The facility should be more centrally located for convenient accessibility to residents of unincorporated Whatcom County-the co-located facility is a "one-shop stop" for all Sheriff's Office services;
- Having the Sheriff's Office located on site is central to our plan for security and extra manpower including supporting and controlling emergency operations on a single campus. This will have a fiscal impact on staffing needs relative to the operation of separate facilities that were not included in operational budget projections;
- The plan of the Sheriff's Office is to reduce future support costs by combining similar functions within its Bureau of Law Enforcement; Bureau of Support and Bureau of Corrections. Currently there are separate staff and facilities for records, finance, reception, etc. located in separate building – we need to take advantage of all opportunities for consolidation to control future costs;
- Having all Sheriff's Office functions co-located on the same campus supports our vision of "One Sheriff's Office" and associated team-building, morale and member loyalty;
- Detectives and other deputies are frequently called upon to investigate crimes that occur within the jail (assaults, contraband smuggling, etc.). The physical separation of these functions will increase costs and decrease efficiencies;
- The current site plan calls for a single warehouse structure to accommodate law enforcement and correctional needs (food and supply storage; evidence; etc.) Siting these functions separately will result in a need for two separate buildings;
- Over past years, the Sheriff's Office has embarked on sharing resources, personnel and intellect among bureaus. Physically separating people and resources will impair that process and the resulting efficiencies;
- Retaining the Jail Work Center as a minimum security facility would frustrate the prior commitment made by the former County Executive with the concurrence of the County Council, to the City of Bellingham, promising vacation of the Jail Work Center at the end of its use (5-7 years); and to sell the property and put it back on the City's industrial tax base. To effectuate this intent, the structure was designed and constructed to industrial standards so it could easily be converted to commercial use.
- Retaining the Jail Work Center as a minimum security facility would require the maintenance of redundant medical, behavioral health, food service and commissary functions leading to an increase in costs;
- Retaining the Jail Work Center as a minimum security facility would require that volunteer groups such as those associated with churches, Narcotics/Alcoholics Anonymous, etc. continue

- The efficiencies inherent in the replacement facility should help control future staffing needs;
- We plan on combing reception functions with other functions of the Sheriff's Office to reduce some personnel needs;
- Security features in the replacement facility may allow us to transition some positions that currently require a commissioned corrections officer, to be performed by a non-commissioned clerical-type position;
- We are affected by unpredictable court decisions that continually evolve and set new standards affecting jail operations. For example, a recent appellate court decision limited the use of handcuffs when a defendant appears before the court at preliminary hearings. This was a major shift in the law requiring us to adapt security procedures that have reduced the number of offenders who can be transported into a courtroom and the number of deputies needed to maintain safety and control;
- We want to ensure that we have resources to continue to provide programming for education, evaluation and treatment – all of which are important to the community.

Cost saving will result from a consolidation of Sheriff's Office and Corrections Administrative Functions to include the elimination of redundancies to include:

- Receptionist—all three facilities
- Records processing and storage—all three facilities
- Hiring and Personnel Administration—Law Enforcement, Support and Corrections Administration
- Training—Law Enforcement and Corrections
- Finance—bookkeeping, accounting and billing tasks
- Purchasing—Law Enforcement and Corrections

Centralizing these functions will streamline the processes and increase efficiency. It will also allow for a greater degree of cross-training and shift coverage. Currently, in the Corrections Bureau, when our receptionists are out due to vacation/illness, their position is covered with a commissioned Corrections Deputy.

- Consolidation of space requirements. We currently have items such as records, supplies, evidence and tactical equipment stored in a variety of different places, as no one space is large enough. The new facility is designed with this consolidation in mind;
- Staff areas: staff locker rooms and support areas (training space, conference space, break rooms, etc.) will be common areas used by all Sheriff's Office staff with one exception; There will be a small break room within the secure confines of the jail portion of the new facility. This is so that in the case of an emergency, Deputies will be able to respond quickly.
- Increase in productivity: Since the administrative functions will be centralized, there will be less time moving back and forth between the facilities.

A question was raised as to whether we can we divert 15% of the jail population and what would be the savings if we did: (Chief Corrections Deputy Jones responded): Short term, maybe, depending on how we did it. Longer term, probably not, due to a number of factors beyond the Sheriff's and County's control.

If the reduction were due to forces outside of the criminal justice process, there would be a small variable cost reduction to the jail budget. Since the jail is a heavily fixed cost enterprise, this would have a relatively minor impact on the overall expenditures. There would be off-setting increases in costs to other budgets, most probably in the Behavioral Health sector.

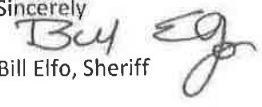
A significant caution in depending on social service programs to effect long-term reductions in jail populations is the lack of stability in funding. Given the multiple demands on State funds, Behavioral Health programs are often the targets of reductions. One example was the \$17.4 million dollars statewide that were cut from community health programs in 2011.

If the population reduction were due to forces within the criminal justice programs, such as increased use of program such as Electronic Home Detention, increases in the number of offenders placed on probation, or participation in specialty courts, there would be a possible reduction in full custody offenders. The variable costs would be shifted, but not eliminated.

If the reduction were due to changes such as a decrease in the amount of time to move a felony case through the system, it could result in a variable cost decrease, as the offender would be resolved more quickly and may either be transferred to the Department of Corrections or be eligible for participation in jail programs.

The major difficulty in responding to this question is that the jail is a reactionary entity. There are a myriad of outside influences on the jail population on any given day, and limits to the ability of local policy decisions to control it.

Sincerely

  
Bill Elfo, Sheriff

# EXHIBIT C



# Flooding in Whatcom County

## What to do Before, During, and After a Flood

My parents-in-law lived on the Emmerson Road near Everson for many years. They were right next to the river, and flooding was a fact of life for them. Like them, many in Whatcom County have earned a healthy respect for our rivers and streams. They have learned that it pays to be prepared when waters rise beyond their banks.

Your county government strives to minimize the hazards and perils of flood season. This newsletter is distributed as part of our advance planning to give you the information you need to deal with flooding. It describes the hazards, shows the general locations of our flood-prone areas, and explains what to do and what to expect when flooding occurs.

Flooding in Whatcom County is a reality. Our ability to safely respond to a flood event is a partnership between the County and you - please do your part. Be aware. Be prepared.



Jack Louws  
County Executive

### Flooding Hazards in Whatcom County

Whatcom County floods occur between the months of November and February. The Nooksack River and its tributaries impact the largest area of the county, including the overflow corridor between Everson and Sumas. The Sumas River, Samish River, numerous alluvial fan areas, lakes, and coastal areas of Whatcom County are also susceptible to flooding. Significant floods occurred in 1935, 1945, 1951, 1955, 1975, 1989, 1990, 1995, and 2009, and more major floods are likely in the future.

### Natural & Beneficial Functions of our Floodplain

The floodplain – the low land adjacent to a river or stream that is susceptible to flooding – is essentially nature’s “safety valve” for managing floods. One of its crucial functions is to store and slow down excess water. When a river has access to its floodplain, floodwaters from rain or snowmelt spread over a wider area, reducing and slowing the amount of water heading downstream. When the size of a floodplain is reduced by dikes or altered by impervious surfaces like pavement, the speed, depth, and peak flows of floodwaters increase and may cause greater damage to both natural and manmade resources.

Floodplains are shaped by a river’s movement. In the Nooksack basin, the floodplain contains old river channels and side channels that are critical for fish and wildlife, particularly for local salmon runs that use them for spawning and rearing. Old river channels provide storage for floodwaters and sediment, and help to dissipate the force and energy, of floodwaters. Fresh sediments deposited by floodwaters on floodplains help to enrich soils, making for fertile agricultural areas.

South-easterly view of Guide Meridian at the Nooksack River during January 2009 flood.



Debris flow in the South Fork Valley during January 2009

### Flood Warning System

Whatcom County and the National Weather Service work together before and during a potential flood event to try to warn county residents of imminent flooding. If warranted, the Emergency Alert System (EAS) may be activated. The following local stations broadcast emergency information:

- KGMI – AM 790
- KISM – FM 92.9
- KPUG – AM 1170

Flood information is also aired on NOAA Weather Radio at 162.425 MHz (Puget Sound), 162.525 MHz (Blaine) and WeatherRadio Canada 162.55 MHz.

The Whatcom County Division of Emergency Management records important information on an Incident Hotline during floods and other emergencies. You can reach the hotline at (360) 738-4551. To request sandbags during a flood, please call (360) 778-8500.

If an evacuation is advised, you will be notified either by telephone, the Emergency Alert System, door-to-door visits, or public address systems. During times of heavy rain, listen closely to one of the radio stations listed above, or call the hotline.

If you have internet access, visit these sites for flood information:

- Weather warnings: [www.wrh.noaa.gov/scw](http://www.wrh.noaa.gov/scw)
- River forecast: [www.nwrhc.noaa.gov](http://www.nwrhc.noaa.gov)
- River levels: [wa.water.usgs.gov/data/realtime/adr/interactive/index2.html](http://wa.water.usgs.gov/data/realtime/adr/interactive/index2.html)

This newsletter is published by:

Whatcom County River and Flood Division  
322 N. Commercial Street, Suite 120  
Bellingham, WA 98225  
(360) 676-6876  
[www.whatcomcounty.us/publicworks/riverflood](http://www.whatcomcounty.us/publicworks/riverflood)



# Before A Flood

## Protecting Your Property

Before flood season starts in earnest, take steps to limit your losses.

- Buy flood insurance.
- Elevate your house above the 100-year flood elevation.
- Floodproof structures – either make them watertight or able to withstand flooding with little or no damage.
- Construct barriers or berms between the river and your home.
- Fight floods using sandbags, plywood and plastic during a flood event.

For more details or for help in selecting and planning property protection measures, stop by the Whatcom County River and Flood Division at 322 N. Commercial Street, Bellingham, or call (360) 676-6876.

## Flood Insurance

You don't need to live in a floodplain to purchase flood insurance. In fact, because Whatcom County participates in the National Flood Insurance Program (NFIP), any property owner is eligible for flood insurance. About 50% of all flood damages nationwide occur outside of the mapped 100-year floodplain area. Note that flood damage is not covered under standard homeowner's insurance policies, and lenders require flood insurance for most floodplain home loans.

There is a 30-day waiting period, so contact an insurance agent about getting flood insurance now.

For more information about NFIP visit [www.fema.gov/business/nfip](http://www.fema.gov/business/nfip), or call 1-877-FEMA-MAP (1-877-336-2627).

## Where Will It Flood?

The blue areas of the map show Whatcom County's 100-year floodplain – the high-risk flood hazard areas in the county. These areas are lands in the floodplain that have a 1% or greater chance of flooding in any year. If your property is in the 100-year floodplain, it has about a 25% chance of being flooded over the term of a 30-year mortgage.

## Floodplain Development Permits

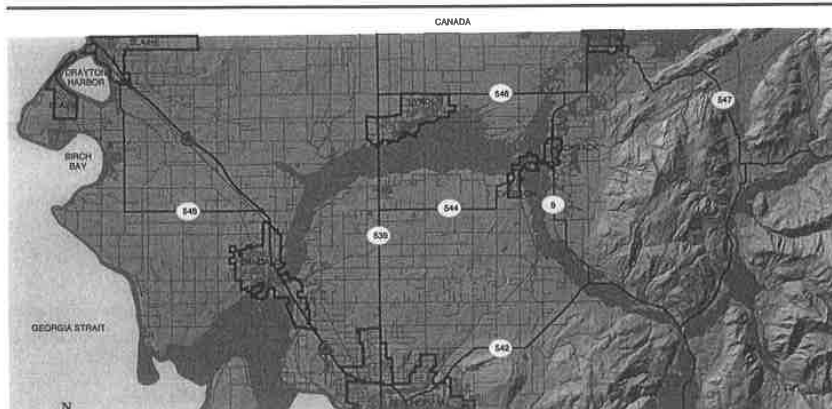
Before you build, remodel, repair, fill or re-grade, check with the county or city government in which you are working. Permits and conditions will be required. It is always best to get all the necessary permits before you commit to any plans, construction or improvements.

If your proposed repair or improvement is the same or less than the value of the existing structure, then your project will be considered new construction. For more information on the requirements for construction, substantial grading in the floodplain, please contact either the County of Whatcom at (360) 676-6876 or Planning and Development at (360) 676-6907.

## Drainage System Maintenance

When flooding occurs, a common problem is clogged drainage systems. It is important to inspect and maintain drainage systems and remove debris that may clog or reduce the flow of water. A plugged channel cannot discharge water effectively.

If you would like more information regarding floodplain development, or flood preparedness, including whether your property is in a floodplain, please contact the County of Whatcom Public Works at (360) 676-6876 or the Bellingham and Whatcom sections of the Bellingham and Whatcom.



# During A Flood

## Flood Advisories

When there is a possibility of a flood, the National Weather Service issues flood advisories. The advisories may use these terms:

**River Forecast Point:** A river gauge site that represents a specific reach of the river and has a flood stage established by local emergency management officials and the National Weather Service.

**Flood Stage:** The water level height in feet at a river forecast point where flood waters begin to potentially damage buildings, roadways and bridges.

**Flood Outlooks, Watches and Warnings:** These are the three levels of flood awareness that provide communities lead time and raise awareness and preparedness before and during a flood.

- **Hydrologic (Flood Potential) Outlook:** The initial level, which raises awareness of and preparedness for a possible flood event in 2 or 3 days.
- **Flood Watch:** The next level of community flood awareness and preparedness, when conditions are becoming more likely for flooding in a day or so, but are not yet imminent or certain.
- **Flood Warning:** The highest flood level message, when flooding is imminent within 12 hours or is occurring. Since there are many variables in a flood forecast, they are issued with an accuracy of plus or minus one foot.

## Flood Safety

Flooding can be extremely dangerous and unpredictable. Long periods of rain may cause slowly rising floodwaters over several hours or days, but a dam or levee failure could cause a rapid and dramatic rise in floodwaters.

To decrease the potential for injury due to flooding:

- Know the flood warning procedures.
- Move to a safe area before access is cut off.
- Don't drive where water is over the road; the road may be washed out.
- If your vehicle stalls in a flooded area, abandon it if it is safe to do so, and seek higher ground.
- If you are caught in the house by suddenly rising waters, move to the second floor and, if necessary, the roof.
- Keep children away from floodwaters, ditches, culverts and storm drains.

# After A Flood

## Food and Drinking Water Safety

- Do not use food or water that has been exposed to floodwaters, it may be contaminated.
- Until the public water system or your private well has been declared safe, water for drinking and preparing food should be boiled vigorously for 10 minutes.

## Re-Entering Your Home

- Return home only when local officials say it is safe to do so.
- Before entering, check for structural damage that could cause collapse. Turn off any outside gas lines at the meter, or tank, and let the house air for several minutes.
- Do not strike a match when entering your home. There may have been a gas leak.
- Be careful about turning the power on again. Watch for electrical shorts or live wires. Do not use water-damaged appliances.
- Document your flood losses and contact your insurance agent for flood loss claims.
- Dry your house slowly. Carpets and drywall may have to be removed. Remember, water can be trapped between walls and will not dry.
- If your home or business has suffered extensive structural damage, this may be the time to elevate or floodproof the structure.
- Contact the Whatcom County chapter of the American Red Cross for disaster assistance at (360) 733-3290. The Red Cross provides shelter, food, and health and mental health services to address basic human needs.

## If You Evacuate

- Secure your home. Cut off all electrical circuits at the fuse panel or disconnect switches. If you can't, turn off or disconnect all electrical appliances. Shut off the water and gas.
- Pack your disaster supplies kit, prescription drugs, eyeglasses, clothing, money, ID, child supplies and personal items.
- Don't forget about your pets. Most shelters don't allow any animals other than service dogs, so make arrangements before a flood for your household pets.

Debris from the November 1990 flood lies across Ferndale Road. Photo courtesy of The Bellingham Herald.





Sandbags can provide temporary protection from floods. During a flood emergency, county residents can request sandbags by calling (360) 778-8500. Photo courtesy of The Bellingham Herald.

## Contact Information

### Before a Flood

Whatcom County Public Works, River and Flood Division: (360) 676-6876

Whatcom County Division of Emergency Management: (360) 676-6681

Whatcom County Planning and Development Services: (360) 676-6907  
[www.whatcomready.org](http://www.whatcomready.org)

American Red Cross - Whatcom Chapter: (360) 733-3290

### During a Flood

Incident Hotline: (360) 738-4551

Sandbag Requests: (360) 778-8500

### After a Flood

American Red Cross: (360) 733-3290

Damage Report: (360) 778-8500

## Emergency Information

### Radio and Internet

Emergency Alert System messages are broadcast on:

KGMI - AM 790

KISM - FM 92.9

KPUG - AM 1170

NOAA Weather Radio - Puget Sound (162.425 MHz)

NOAA Weather Radio - Blaine (162.525 MHz)

WeatherRadio Canada (162.55 MHz)

Weather information is available at:

[www.weather.gov/seattle](http://www.weather.gov/seattle)

### Incident Hotline: (360) 738-4551

During incidents, call this number for up-to-date information.

### Evacuation

If an evacuation is advised, you will be notified either by telephone, the Emergency Alert System, door-to-door contact or public address systems.



Whatcom County River and Flood Division  
 322 N. Commercial Street, Suite 120  
 Bellingham, WA 98225



## Create a 72-Hour Kit

When a disaster strikes, your community emergency services and government agencies may not be able to respond to your needs immediately. Their buildings, equipment, personnel, communications and mobility may be severely hampered by the event. They will be overwhelmed.

Experts warn that you should be prepared to be on your own for a minimum of three days after a disaster. One of the most important elements of this preparedness is the 72-hour kit for your home or office. The contents of this kit will vary, but in every case it should contain the things you need to survive for three days on your own.

Your home 72-hour kit should contain at least the following items:

- One gallon of water per person per day. This means at least three gallons of water per person.
- Sufficient non-perishable food for three days. Ideally, these foods will be lightweight and high in energy. If you pack canned foods, remember a can opener!
- Prescription and non-prescription medications. If you wear glasses, include a spare pair.
- Battery-powered portable radio. This may be your only source of information during a disaster.
- First aid kit. The small camping kits work well. Remember to get enough supplies for the number of people who may be using them.
- Personal hygiene items
- Clothing and bedding. A spare pair of socks and a space saver blanket would be a minimum.
- Special items such as baby needs or contact lens supplies, etc.
- Personal comfort items. Books, games, personal electronics, etc.

Remember, this is only a bare bones kit. You can add things to this list that you or your family will need.

*This information was taken from the Whatcom County Division of Emergency Management's website. For more details visit [www.whatcomcounty.us/idem](http://www.whatcomcounty.us/idem)*

## Protecting prime soils in Whatcom County

According to the Natural Resource Conservation Service (NRCS), Whatcom County has 222,932 acres of prime farmland soils. Of the prime soil acreage 81,996 acres are protected through agricultural zoning. Of course, just because soil is prime does not mean that it is actively being farmed, contains ideal farming characteristics, or should be protected for agricultural use. But these numbers do illustrate that there is a very significant amount of prime soil in Whatcom County beyond that zoned agriculture.

The NRCS published policy and procedures on prime and unique farmlands in the "Federal Register," Vol. 43, No.21, January 31, 1978, p.4030 through p. 4033. This document states that prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops, and is also available for these uses. It has the soil quality, growing season, and moisture supply needed to economically produce sustained high yields of crops when treated and managed, including water management, according to acceptable farming methods.

In general, prime farmlands have an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content, and few or no rocks. They are permeable to water and air. Prime farmlands are not excessively erodible or saturated with water for a long period of time, and they either do not flood frequently or are protected from flooding.

### Rural Study Areas

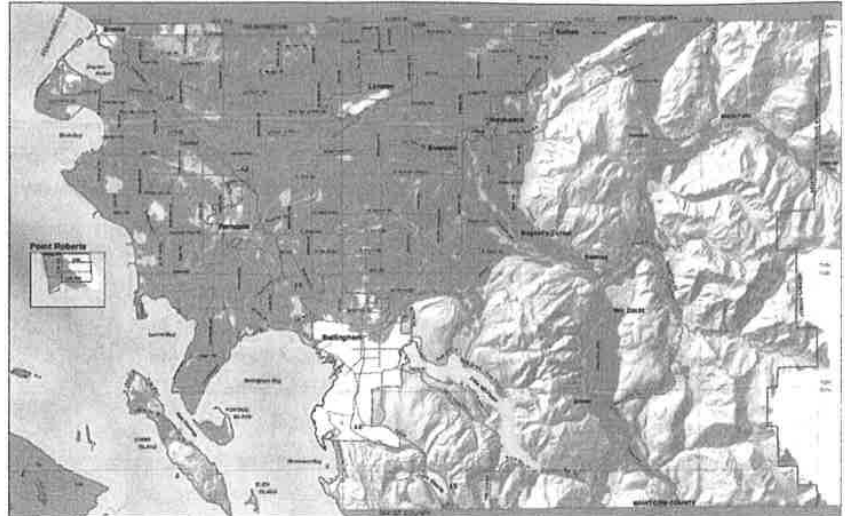
Whatcom County completed the Rural Land Study Area Report in 2007. This report addresses the impacts of development on rural zoned agricultural land and was drafted due to the rapid residential development of agricultural and forest lands resulting in the need for greater protection efforts by the community. The Rural Land Study Areas (RSAs) are made up of 21,950 acres of agricultural soils in the county zoned rural, not agriculture, but in close proximity to the heart of actively farmed land within Whatcom County. The Agricultural Advisory Committee recommended that Whatcom County develop heightened agricultural protection measures for the rural areas identified by this study. This study was updated in 2013 with the Whatcom County Agricultural Land Cover Analysis.

Staff recently released a report that analyzes potentially rezoning these RSAs from their respective Rural district (R-5 and R-10) to a Small Lot Agriculture District (Ag-5, Ag-10, or Ag-20) at densities higher than the County's current Agriculture zone (Ag-40). Such a small-lot ag district could add heightened protection to these productive agricultural areas by: 1) reducing the types and number of non-agricultural uses and increasing the types and number of permitted agricultural uses in these areas; and 2) reducing the likelihood of the affected parcels being taken out of agricultural use by rezoning them to increase residential density in the future.

Whatcom County could help mitigate losses through both its existing Purchase of Development Rights (PDR) Program and by implementing a new Transfer of Development Rights (TDR) Program.

### Purchase of Development Rights Program

Through the PDR Program, Whatcom County has preserved 826 acres and removed 118 development rights from prime agricultural



soils in the past 13 years. Willing property owners can apply to sell development rights on their prime agricultural land to permanently preserve farmland for current and future farmers. If you have additional questions about the program or would like to know whether your property is eligible, please contact PDR Outreach Coordinator Chris Elder at [celder@whatcomcounty.us](mailto:celder@whatcomcounty.us) or at (360)676-6907

## Farmer Spotlight: Chris Paul

Chris Paul and her husband Clarence operated the Paul Dairy for many years off of Haynie Road. They loved dairying and enjoyed the open space and agricultural nature of Northwest Whatcom County. But Chris and Clarence were not immune to the challenges of being a dairy family. They hadn't taken a vacation in over a decade and each year they continued the cycle of borrowing money to keep the operation running and paying it back with each gallon of milk sold. In 2003, the Paul's lost their son who played an important role in the dairy operation. This prompted them to take advantage of that year's dairy buyout and sell off their herd. But this didn't completely clear them from some of the debt they had acquired from running the dairy.

At that time they heard about the Purchase of Development Rights Program from some friends with a dairy who were also exploring the program. The Paul's worked with the current PDR Program Administrator through the process of applying and getting their development rights appraised. In the end, Chris and Clarence sold 31 development rights on 157 acres of prime farmland to permanently preserve their land for current and future farmers. Through the sale of these development rights, the Paul's were able to finally pay off all of their debts and continue on with the next phase of their life debt-free.

Chris Paul is also a local hero. She is one of the founding members of the Whatcom County Youth Fair. This is an organization that began primarily teaches young people how to care for livestock and how to compete in livestock shows but has expanded over the years to include other areas such as photography, chess, homemaking, and much more. This year's fair had over 500 young people in attendance. This included many of our Whatcom County 4H and FFA youth but also many others from around the state. Chris believes in the next generation of farmers. She supports their learning process and wants to see the land remain for them to use. She is concerned about a possible future when there are no farmers left. She has taken many steps to ensure that farming remains a viable opportunity for current and future residents of Whatcom County.



## Farm Plans and how they can work for you

A farm plan is a living document that can provide a number of benefits to a property owner. A farm plan supports a property owner in developing a land management system that encourages productive land use as well as the maintenance of a healthy ecosystem.

Many things are considered in a farm plan including farm acreage available for grazing/hayland, soil types, slope of the land, location of well head and septic system, proximity to streams, wetlands, and/or water bodies (i.e. swales, ditches, ponds, etc.), type and numbers of livestock or crops, and resources such as machinery or buildings.

A farm plan can provide the property owner with relief from the standard buffers required by the County's Critical Areas Ordinance and still ensure that watershed values are being protected. Through the process of creating and following a farm plan, a property owner can assess farm goals and objectives. This acknowledges ways to actively (rather than passively) manage your animals and your land in a way that is protective of water quality and critical areas habitats. You'll find that what protects our environment also benefits you through better livestock health and through better forage production that can save you money in the long run! Debbie VanderVeen of Veen Huizen Farms, LLC says that "A Farm Plan assists the farmer in his efficiency of using Best Management Practices to grow highly productive crops, keep water clean, and soils nutrient rich."



You don't have to be a commercial operation to benefit from developing a farm plan! The Whatcom Conservation District works with farms of all sizes, from backyard horse or llama owners to dairy and beef operations with larger numbers of livestock.

For more information on Farm Conservation Plans contact the Whatcom Conservation District at (360)526-2381, [wcd@whatcomcd.org](mailto:wcd@whatcomcd.org), or at 6975 Hannegan Road just South of Lynden. Whatcom Conservation District is a non-enforcement subdivision of the State of Washington and is supported by grants. The District is charged with the duties of protecting the soil and water of Whatcom County, particularly in relation to farming and animal keeping practices, through technical assistance and education. Development of farm plans is a free service offered by the District.





## Whatcom County Planning and Development Services

Northwest Annex  
5280 Northwest Drive  
Bellingham, WA 98226-9099



AG NEWS ~ SPRING 2015



We're On the Web!  
[www.whatcomcounty.us](http://www.whatcomcounty.us)

### Ag Watershed Project

**The Ag-Watershed Project (June 2012-June 2015) is examining how incentive-based tools can work with current regulation to strengthen agricultural viability while enhancing large-scale watershed processes and functions.**

The project research team has been testing various scientific measurement tools with the help of landowners, project review committee members and partners.

The prototype Ag Metric tool has been designed to quantify changes in ag function and viability resulting from specific actions taken by landowners on ag lands (e.g., protection of land from conversion, provision of adequate drainage, protection of ag fields from flooding etc). For more information see *Ag News*, Spring 2014.

Other scientific measurement tools tested in this project have focused on quantifying the watershed benefits of specific actions (e.g., wet-land function, stream function, stream shading by riparian vegetation) that could be taken at a site (a farm or group of farms). The tools have been tested at two pilot sites on farmland in the North Lynden watersheds.

**Phase 1** work identified *potential* projects involving specific voluntary actions on agricultural lands in the project focus area that could advance both watershed and ag land planning objectives in Whatcom County.

**Phase 2** focused on adapting and testing tools for measuring, tracking and accounting for specific ag and watershed benefits that could be achieved in these potential projects, in order to examine how an incentive-based marketplace approach might be used to encourage voluntary actions that go above and beyond what is required.

The project ends in June 2015. The research reports will be released via the website. Karin Beringer will be accepting comments and can be contacted for notification when scientific tools and technical reports are posted. Karin can be contacted at [kberinge@co.whatcom.wa.us](mailto:kberinge@co.whatcom.wa.us)

For more information visit the project website  
<https://sites.google.com/site/wcwatershedag/>

Whatcom County Planning and Development Services has applied for a Department of Ecology National Estuary Program Grant to continue refining the metrics and mapping that were developed in the first phases of the AgWatershed Project. The grant proposal also focuses on developing a mitigation program for the loss of agricultural land.



If you liked this newsletter, and would like to see more like it in the future, email [kberinge@co.whatcom.wa.us](mailto:kberinge@co.whatcom.wa.us) and let us know!



# Ag News

Whatcom County  
Planning and  
Development Services

Issue 3

Spring 2015

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## 2016 Comprehensive Plan Update

Whatcom County Planning and Development Services (PDS) is working to amend the Comprehensive Plan as part of our 2016 update. Chapter 8 Resource Lands describes policies in place to protect and support agriculture in Whatcom County.

Whatcom County has been actively farming a little more than 100,000 acres for the past 20+ years, according to the United States AgCensus. In that same period the market value produced on that acreage continues to increase. The chart below illustrates the significant value of agricultural products in Whatcom County and reinforces our resolve to protect it.

The 2016 Update of the Comprehensive Plan has amended language to encourage continued protection of agricultural lands and includes the following highlights.

*Policy 8A-2 Maintain a working agricultural land base sufficient to support a viable local agricultural industry by considering the impacts to farmers and agricultural lands as part of the legislative decision making process. Measures that can be taken to support working farms and maintain the agricultural land base may include (only a few highlighted for this article):*

1. Maintaining a Purchase of Development Rights (PDR) program that facilitates the removal of development rights from productive farmland and provides permanent protection of those agricultural lands through the use of conservation easements or other legal mechanisms.
2. Implementing a Transfer of Development Rights (TDR) Program in which the development potential of a site could be transferred to another location where development is more favorable.

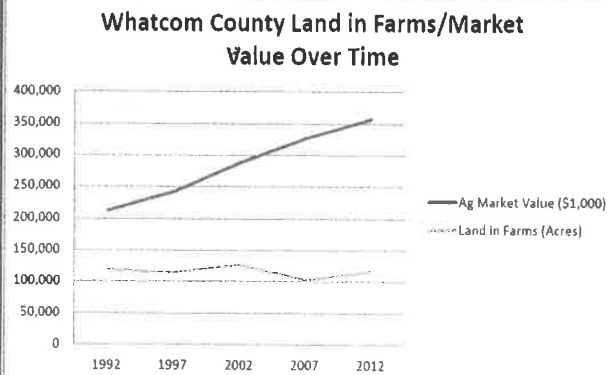


4. Implementing land use policies that encourage farming on Rural lands of high agricultural productivity and potential.

6. Mitigation for loss of productive agricultural lands.

Policy 8A-2 can be found on page 8-6 in the 2016 Comprehensive Plan update draft.

The drafts of the comprehensive plan elements are currently posted online at [www.whatcomcounty.us/1170/Comprehensive-Plan-Updates](http://www.whatcomcounty.us/1170/Comprehensive-Plan-Updates).



Whatcom County PDS is currently accepting public comments on the draft elements as well as the draft Environmental Impact Statement of the Update. The Planning Commission is currently scheduled to review Chapter 8 at the June 11 meeting (Meeting time is subject to change). The public is encouraged to attend and address the Planning Commission with any comments or concerns. Planning commission meeting schedule can be found at <http://www.whatcomcounty.us/552/Planning-Commission>.

Comments can be mailed to:

Whatcom County Planning Attn: Becky Boxx 5280 Northwest Drive Bellingham, WA 98226

Or emailed to: [PDS\\_Planning\\_Commission@co.whatcom.wa.us](mailto:PDS_Planning_Commission@co.whatcom.wa.us)

## Whatcom County Ag Organizations:

- ◆ Washington Red Raspberry Commission: [www.red-raspberry.org](http://www.red-raspberry.org)
- ◆ Washington Blueberry Commission: [www.blueberrycommission.com](http://www.blueberrycommission.com)
- ◆ Washington Seed Potato Commission: [www.waseedpotato.com](http://www.waseedpotato.com)
- ◆ Whatcom County Cattlemen's Association: Call Wes Kentch ~ [wkentch@comcast.net](mailto:wkentch@comcast.net)
- ◆ Whatcom County Dairy Federation: [www.wadairyfederation.org](http://www.wadairyfederation.org)
- ◆ Whatcom County Farm Bureau: [www.whatcomfarmbureau.com](http://www.whatcomfarmbureau.com)
- ◆ Whatcom Farm Friends: [www.wcfarmfriends.com](http://www.wcfarmfriends.com)
- ◆ Sustainable Connections: [www.sconnect.org](http://www.sconnect.org)

## Whatcom County Entities Related to Ag:

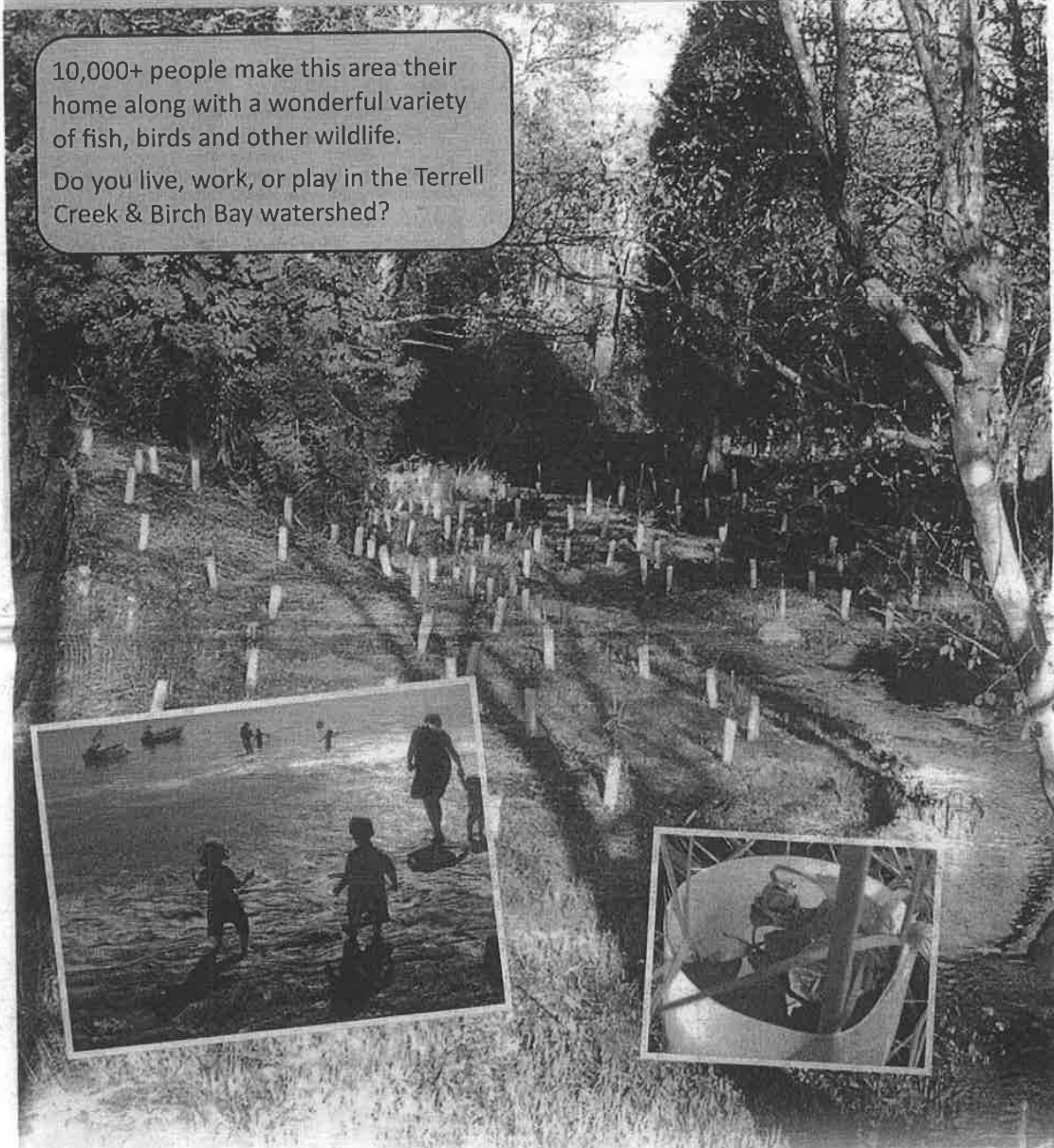
- ◆ Whatcom Conservation District: [www.whatcomcd.org](http://www.whatcomcd.org)
- ◆ WSU Extension: [whatcom.wsu.edu](http://whatcom.wsu.edu)
- ◆ USDA Service Center: 6975 Hannegan Rd, Lynden 98264



# Terrell Creek & Birch Bay State of the Watershed Report

10,000+ people make this area their home along with a wonderful variety of fish, birds and other wildlife.

Do you live, work, or play in the Terrell Creek & Birch Bay watershed?



**CHUMS**  
**Terrell Creek**  
Whatcom Conservaton District  
6975 Hannegan Road  
Lynden, WA 98264

Nonprofit Organization  
U.S. Postage Paid  
Lynden, WA  
Permit No. 192

**What's Inside:**

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# What is a Watershed?

**A watershed is an area of land where water falls and drains to a common place.**

The Terrell Creek/Birch Bay watershed is home to about 10,400 people and a large variety of fish and wildlife. A healthy watershed has healthy water quality, healthy flows, and healthy habitat. The future of Terrell Creek and Birch Bay will be shaped by the efforts of the community to keep water clean and restore habitat today.

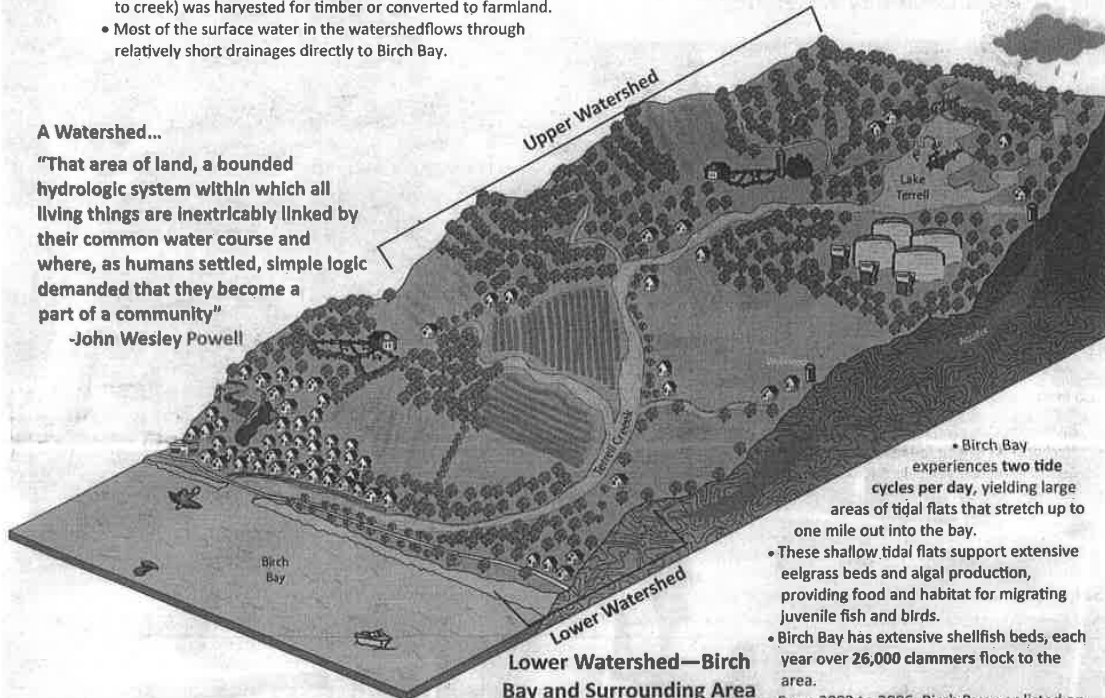
## Upper Watershed—Terrell Creek Highlands

- The upper watershed is the area of land surrounding Lake Terrell east to Ferndale and west towards Point Whitehorn.
- Approximately 17 square miles in area.
- The highest point in the watershed is 240 feet above sea level.
- Historically, 58% of the Terrell Creek riparian zone (area next to creek) was harvested for timber or converted to farmland.
- Most of the surface water in the watershed flows through relatively short drainages directly to Birch Bay.
- Terrell Creek is approximately 9 miles long and originates in a large area of ponds and wetlands including Lake Terrell.
- Historically, coho salmon and steelhead trout had prolific runs in Terrell Creek. Currently, these fish are found in significantly lower numbers along with chum salmon.

### A Watershed...

**"That area of land, a bounded hydrologic system within which all living things are inextricably linked by their common water course and where, as humans settled, simple logic demanded that they become a part of a community"**

**-John Wesley Powell**



## Lower Watershed—Birch Bay and Surrounding Area

- Approximately 20 square miles in area.
- 19 miles of marine shoreline.
- Birch Bay State Park was established in 1954, totals 194 acres, and includes a campground.
- 8,000+ people live in the Birch Bay community.
- Birch Bay experiences two tide cycles per day, yielding large areas of tidal flats that stretch up to one mile out into the bay.
- These shallow tidal flats support extensive eelgrass beds and algal production, providing food and habitat for migrating juvenile fish and birds.
- Birch Bay has extensive shellfish beds, each year over 26,000 clammers flock to the area.
- From 2003 to 2006, Birch Bay was listed on the Washington State Dept. of Health's list of "threatened" shellfish harvesting areas due to poor water quality.
- Since 2008, marine water quality in Birch Bay has consistently been good, meeting the Department of Health's highest standard for marine water quality.

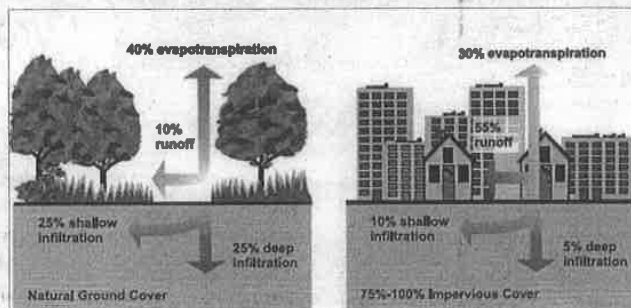
## How does this watershed flow?

Rain and snow falls in the watershed. Some of it soaks into the ground to recharge underground aquifers. The rest becomes surface flow traveling downhill through ditches, then creeks, and then into Birch Bay.

The upper most reaches of the Terrell Creek watershed begin as small streams and ditches flowing into a large wetland area that includes Lake Terrell. Terrell Creek then flows through a rural residential area with a mix of open space, agriculture, and industry where it picks up more water from Fingalson Creek and other small tributary streams.

At Birch Bay State Park, Terrell Creek takes a right-hand turn and runs parallel to the marine shoreline through residential and commercial properties before entering Birch Bay. Smaller systems of ditches and unnamed streams drain the remainder of the watershed around Birch Point, central Birch Bay, and Point Whitehorn.

## How development effects natural watershed function



Credit Environmental Protection Agency.

Development increases the volume and rate of potentially unhealthy runoff from a site, and reduces groundwater recharge and evapotranspiration (evaporation from soil, plants, and other surfaces into atmosphere).

# Who Lives Here?

## People and Their Animals

From multigenerational families to short term vacationers, people live, work, and play in this watershed.



Enjoying Birch Bay with a canine friend.

- Fishing, clamming, and crabbing in Birch Bay are as popular as ever.
- Domestic animals found in this watershed include cows, horses, sheep, llamas, alpacas, goats, chickens, ducks, rabbits, dogs, and cats. All of these animals contribute to quality of life in the watershed, but they can also be sources of pollution.
- Over 3,000 acres of the watershed are owned by British Petroleum and Intalco Alcoa, both of which lease a portion of their land to agricultural operations and Department of Fish and Wildlife for wildlife reserves.



Landowner enjoys the company of his Scottish Highlander cattle and sheep.



Bald Eagles and Great Blue Heron found in Birch Bay.

## Birds

The wetlands, fields, forests, streams, saltwater estuaries, and Birch Bay itself are home to many bird species from Bald Eagles to hummingbirds.



- Great Blue Herons are a fixture in Birch Bay and elsewhere in the watershed. No visit to Birch Bay would be complete without viewing herons feeding in the mudflats.
- Waterfowl use Lake Terrell, Birch Bay, and other wet areas for feeding, nesting, and migration stopovers. Lake Terrell is one of the premier duck and goose hunting sites in the state and is also frequented by swans and other waterfowl.
- Birch Bay provides incredible overwintering habitat for a variety of water loving birds like Dullin, brant, and goldeneye.
- Resident and migratory song birds frequent all habitats in the watershed. Avid birdwatchers love the area for Pileated Woodpeckers, Red-winged Blackbirds, and many more.
- Birds of prey like Great Horned Owls, Red-Tailed Hawks, and Marsh Hawks are common in the area and are invaluable allies in controlling rodent populations.

## Mammals

By land or by sea, wildlife love this watershed with impressive populations closest to the water. Many residents have learned to "share" their gardens with local deer. Others are occasionally surprised to find that beavers also like their trees.

- River otters, beaver, mink, and muskrat all use Terrell Creek and other streams.
- Harbor seals can be found feeding in Birch Bay.
- Coyotes and weasels help the hawks and owls control rodent populations.
- Beavers can be aggravating when they build dams and flood property, but they also fill an essential role by storing water in their ponds and creating incredible stream habitat.
- Raccoons may be the most commonly seen wild mammal in the watershed. They are drawn to human neighborhoods where they can find an easy meal in a garbage can or pet dish.



Black-tailed deer at a Butler Creek restoration site. 'Blue tubes' protect the plants from foraging wildlife.

## Salmon & Trout



Can you see the fish?

Terrell Creek was once home to robust fish populations. Now salmon are making a comeback thanks to the efforts of volunteers, improving spawning habitat with the Chums of Terrell Creek and the Nooksack Salmon Enhancement Association (NSEA).

- Coho and chum salmon can often be seen in Terrell Creek in November and December.
- Juvenile fry emerge from spawning gravels in the spring and either migrate directly to the salt water or spend a year growing in the stream.
- Threatened Chinook salmon and bull trout use Birch Bay for overwintering and foraging.
- Eelgrass beds in Birch Bay provide habitat for young salmon and other marine species.

## Forage Fish



Healthy eelgrass.

Small forage fish in Birch Bay are food for many other animals including salmon, other marine fish, birds, and mammals.

- Eelgrass in Birch Bay provides critical habitat for these fish.
- Pacific herring, pacific sand lance, and surf smelt all provide an important link in the Birch Bay food chain and make excellent bait fish for salmon fishermen.



Seagull eating a clam in the Birch Bay tidal flats.

## Shellfish



Family trying their hand at clamming on the Birch Bay tidal flats.

Shellfish are an important and delicious food for humans, birds, and other mammals in this watershed.

- Dungeness crab shells and claws are among kids' favorite beach treasures.
- Crab harvest seasons are posted annually.
- Horse, butter, native littleneck, and manila littleneck clams can all be found and harvested in Birch Bay.
- Know Before You Dig: [www.doh.wa.gov/ShellfishSafety.htm](http://www.doh.wa.gov/ShellfishSafety.htm)
- Recreational Shellfish Safety Hotline: 1-800-562-5632



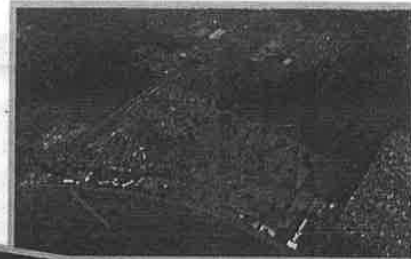
Fresh butter clams cleaned and ready to be cooked.



# Watershed History

Prior to 1800, the Semiahmoo tribe, a group of Coast Salish people, inhabited the area from Boundary Bay to Point Whitehorn. Archaeological evidence indicates the Lummi and the Nooksack Tribes used Birch Bay seasonally as foraging and ceremonial grounds. The Lummi called the area *Strav-a-wa*, which means 'the place for clams'. The Spanish and British explored Birch Bay in the late 1700s. The Spanish called the area Garzon, but the British named it Birch Bay because of the thick stands of black birch trees that grew in abundance near the shore. Like much of the Puget Sound region, early explorers and settlers were attracted to Birch Bay and the surrounding areas by the abundance of natural resources.

The Fraser Valley Gold Rush and the Boundary Survey of the 49<sup>th</sup> Parallel created a short lived wave of new settlers in the late 1850s. In the 1870s, homesteading brought a second influx of settlers to the small but growing community at the northern terminus of the Union Pacific Railway. By the early 20<sup>th</sup> century, much of the timber resources in the area had been depleted and new regulations banning the use of fish traps served to further dissolve the local natural resource-based economy. By the 1920s, local entrepreneurs in the Birch Bay area were focusing their efforts on an international recreation and resort community serving Canadian and U.S. residents.



Birch Bay aerial view 2014



Birch Bay aerial view 1950

Bay Center Resort, Birch Bay. C. 1946. Presently it is Bay Center Market at the intersection of Harborview and Birch Bay Drive.



## Clam Bake Anyone?

According to Robert Hawley's *Skagge Mus*, or *Pioneer Days on the Nooksack*, Lynden residents established an annual community clam bake near the turn of the 20<sup>th</sup> century that still exists today.

The tradition started in November 1891, when four men from Lynden traveled all day by wagon to Birch Bay. They collected butter and horse clams by night when the tides were low enough and celebrated with a community clam bake the following day when they returned to Lynden creating the Clam Diggers Club.



Clam Diggers at Birch Bay display their catch.

## Lake Terrell

A large wetland historically known as Lake Terrell was expanded into a much larger open water lake in 1950 following construction of the Lake Terrell dam.

The lake and land around it was acquired by the Washington State Department of Fish and Wildlife in the 1940s primarily for waterfowl habitat preservation and recreation. The area was historically used by Native American tribes now known as the Semiahmoo and Lummi for deer and elk hunting and beaver trapping.



Prior to dam construction in 1950, Lake Terrell was primarily a wetland.

## Agricultural History of Whatcom County

As the harvest of timber continued to clear land, the agriculture economy grew. By the 1880s, agriculture was established throughout the county. Hops fields appeared in Everson, Nooksack, Lynden, and Birch Bay. Ferridale farmers grew sugar beets, while others grew potatoes, lettuce, and celery.

Dairy and poultry production was also gaining ground during this time and the first creamery was opened in Custer in 1892. Lynden and Sumas opened creameries in 1894 and Bellingham followed in 1896. In 1919, the Whatcom Dairyman association formed and in 1920 started another Lynden creamery which is now the site of the Darigold powdered milk plant.

Today, dairying is still prominent, while poultry production has significantly decreased. Hops are no longer grown commercially in Whatcom County, but the last decade has seen a significant increase in the production of blueberries and raspberries. Agriculture in Whatcom County now supports over a \$326 million economy.

Birch Bay's first post office in 1853.



Many women and men are captured here socializing on the veranda of the vacation resort Shore Acres at Birch Bay in 1937.



# Watershed Health

## Healthy People and Communities

The people living in the Terrell Creek/Birch Bay watershed depend on healthy water quality, adequate stream flows, and healthy habitat for fish, shellfish, and wildlife.

- Safe water to wade or play in.
- Reduced risk of flooding.
- Safe shellfish harvesting from Birch Bay.
- Backyards free of bacteria and pathogens from pet waste.
- Fish and wildlife to see and enjoy.



Children explore the tide flats.



Marine Resources Committee volunteers conduct a shellfish population survey in clam seeding areas.

## Healthy Water

Healthy watersheds need clean water. In the Terrell Creek/Birch Bay watershed, the focus is on keeping pollutants that threaten public health and harm wildlife out of the water. Pollutants include nutrients, pathogens, and bacteria come from yard fertilizers, animals manure, and septic systems.



Warm summer water causes an algae bloom in lower Terrell Creek that can lead to low dissolved oxygen levels.

Native trees shade creeks throughout the summer keeping water temperatures low and dissolved oxygen high.

### Bacteria

Fecal coliform bacteria live in the intestines of warm-blooded animals. When found in water, they indicate that human or animal waste has entered the water upstream and it may be contaminated with disease-causing organisms. Keeping sources of bacteria out of the water is necessary to keep Terrell Creek and Birch Bay safe for swimming, fishing, and shellfish harvesting.

### Temperature & Dissolved Oxygen

When it comes to healthy water, cold is good. Salmon, especially vulnerable juvenile salmon, need cold water (less than 16°C or 60°F) to avoid stress or death. Cold water holds more dissolved oxygen (DO) which fish and other aquatic animals need to live. Increasing shade trees, protecting wetlands, and restoring stream channels can help lower summer water temperatures in Terrell Creek and keep DO levels from getting too low.

## Healthy Flows

Healthy watersheds need reliable stream flows—not too much or too little. With development, hard surfaces like pavement and roof tops have replaced forests and wetlands changing stream flows in our watershed. However, retaining or planting trees and native plants, protecting wetlands, and using building techniques that limit hard surfaces and allow stormwater to soak into the ground help maintain healthy stream flow. This also ensures adequate groundwater recharge to keep the aquifer full and support the needs of county wells for both drinking and agriculture.



### Too Much Water

Hard, or impervious, surfaces don't allow rainfall to enter the soil for groundwater recharge. As a result, water rushes downstream during storms causing flooding, erosion, and property damage.



### Too Little Water

Summer flows diminish because of increased temperature and less precipitation. Low flows harm fish and wildlife when temperatures get too high and dissolved oxygen levels get too low. Low flows also lead to unpleasant, stagnant water in Terrell Creek which increases the growth of bacteria and algae.



### Just the Right Amount

There will always be winter floods and summer droughts, but taking steps to limit impervious surfaces and retain native plants as streamside vegetation helps keep seasonally appropriate flows in our streams.

## Healthy Habitat

Healthy watersheds provide good habitat for fish and wildlife. Good habitat has good water quality, healthy stream flows, natural stream channels, and lots of native plants.



Left: A channelized reach of Terrell Creek.



Right: A natural reach of Terrell Creek with bends and low banks provides good habitat.

### Natural Stream Channels

Natural stream channels that change over time have bends, pools, flood plains, and downed trees which offer great habitat for fish and wildlife. People have altered these natural stream channels over time, like when the Lake Terrell dam was built, upper Terrell Creek was dug straight and deep. Lower Terrell Creek may have once entered the bay at Birch Bay State Park. Now its channel is locked in place behind Birch Bay Drive. Many smaller stream channels that used to flow into Birch Bay have been replaced with pipes. Stream restoration projects recreate a more natural channel and improve habitat in areas where the channel has been altered.

### Native Plants

Maintaining native plants along our waterways creates healthy habitat and protects water quality. Native plants provide food and shelter for fish and wildlife. They also keep the water cool and filter pollutants out of stormwater. In many areas, native plants have been removed from streambanks and invasive plants like reed canarygrass or Himalayan blackberry have taken over. Replanting native species in these areas creates healthy habitat in our watershed for people and wildlife.

# Explore Terrell C



**Cottonwood Bioswale**

Bioswales are engineered drainage features that use soils and plants to naturally filter pollutants from stormwater. The Cottonwood Bioswale was built in 2013 at the corner of Seaview Drive and Maple Crest Avenue. Stormwater runoff from the neighborhood is directed into a series of six cells with plants and a special soil mix that trap pollutants. Clean water collects in a layer of drain rock and flows out through a pipe to Birch Bay.



**Mutt Mitt Stations**

Protect Birch Bay water quality by picking up after your pet. You will find these stations all along the bay and at most parks. Please remember, dogs must be on leash.



**Birch Bay Beaches**

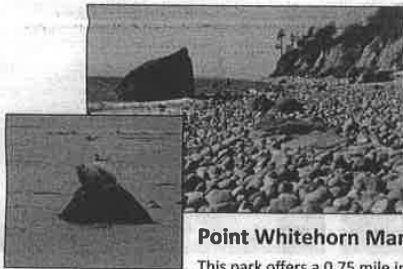
Birch Bay is a popular destination for summer fun, clamming, and crabbing. There are multiple public beach access points around the bay.

**Birch Bay Visitor Center**

7900 Birch Bay Dr

**Birch Bay State Park**

BBSP has 8,255 feet of saltwater shoreline on Birch Bay and 15,000 feet of freshwater shoreline along Terrell Creek. The park has an active summer interpretive program, a half mile Terrell Marsh Interpretive Trail, and four interpretive signs throughout the park.



**Point Whitehorn Marine Reserve**

This park offers a 0.75 mile interpretive trail that meanders through forested wetlands on a level, gravel path interspersed with boardwalks and passes four viewpoints with benches to enjoy the views, and ends with stairs down the final bluff to the beach. Going left from the stairs you can walk along the Cherry Point Aquatic Reserve. This is a hiker only trail, no pets.



**Lake Terrell Dam Before**

**Lake Terrell Dam**

The Lake Terrell dam was modified in 2012 to restore fish passage and improve flows in Terrell Creek. The dam was replaced with a concrete weir that meters out summer flows and an elevated stream channel to provide fish passage over the dam. Funding for this project came from the National Fish and Wildlife Foundation and British Petroleum.



**Lake Terrell Dam After**

## Legend

- ▲ Stormwater Projects
- Mutt Mitt Stations
- ⊖ Fish Passage Projects
- Place of Interest
- Remote Site Incubator
- Restoration Projects
- ▲ Beach Access Parking
- Birch Bay Drive & Pedestrian

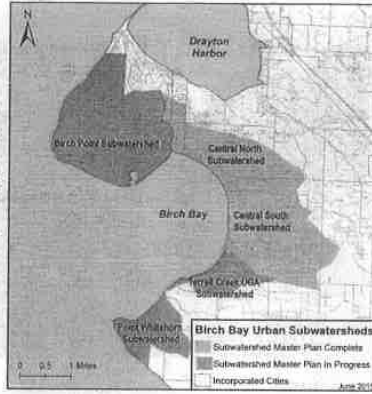
# Nooksack and Birch Bay

## Beach Restoration

Restoring the beach along Birch Bay has been a long-term community goal. Plans to build a more natural, soft shoreline and berm to protect Birch Bay Drive from storm damage started in the 1970s. Whatcom County completed a portion of restored beach berm in 1986 and is currently planning to extend the area of restored berm with improved pedestrian facilities.

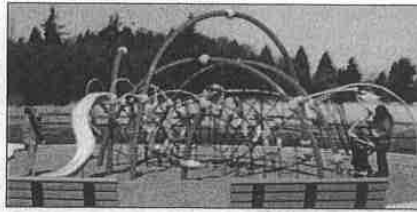
## Subwatershed Master Plans

BBWARM is completing subwatershed master plans for developed subbasins in the Birch Bay watershed. Each plan identifies and evaluates stormwater problems and recommends solutions. To learn more and download completed plans visit [www.bbwarm.whatcomcounty.org/programs/swmp](http://www.bbwarm.whatcomcounty.org/programs/swmp)



## Sunset Farm Equestrian Park

70 acre horse park is open to the public and includes riding trails, a cross country jump field, round pen, and all weather arena. For more information visit: [www.friendsofsunsetfarm.org](http://www.friendsofsunsetfarm.org)



## Bay Horizon Park

7467 Gemini St, Blaine, WA 98230  
This 6.82 acre neighborhood park features a basketball court, playground, open grassy fields and activity center. This park was home to the Blaine Air Force Station from 1951 - 1979 and was acquired by Whatcom County in 2005.

## Salmon Remote Site Incubator

The Nooksack Salmon Enhancement Association, assisted by the Bellingham Technical College fisheries program and the Chums of Terrell Creek, are reintroducing chum salmon to Terrell Creek by incubating salmon eggs and releasing the fry to migrate downstream. The incubator has a capacity for up to 100,000 eggs, but the number incubated yearly depends on how many eggs the hatchery can supply.

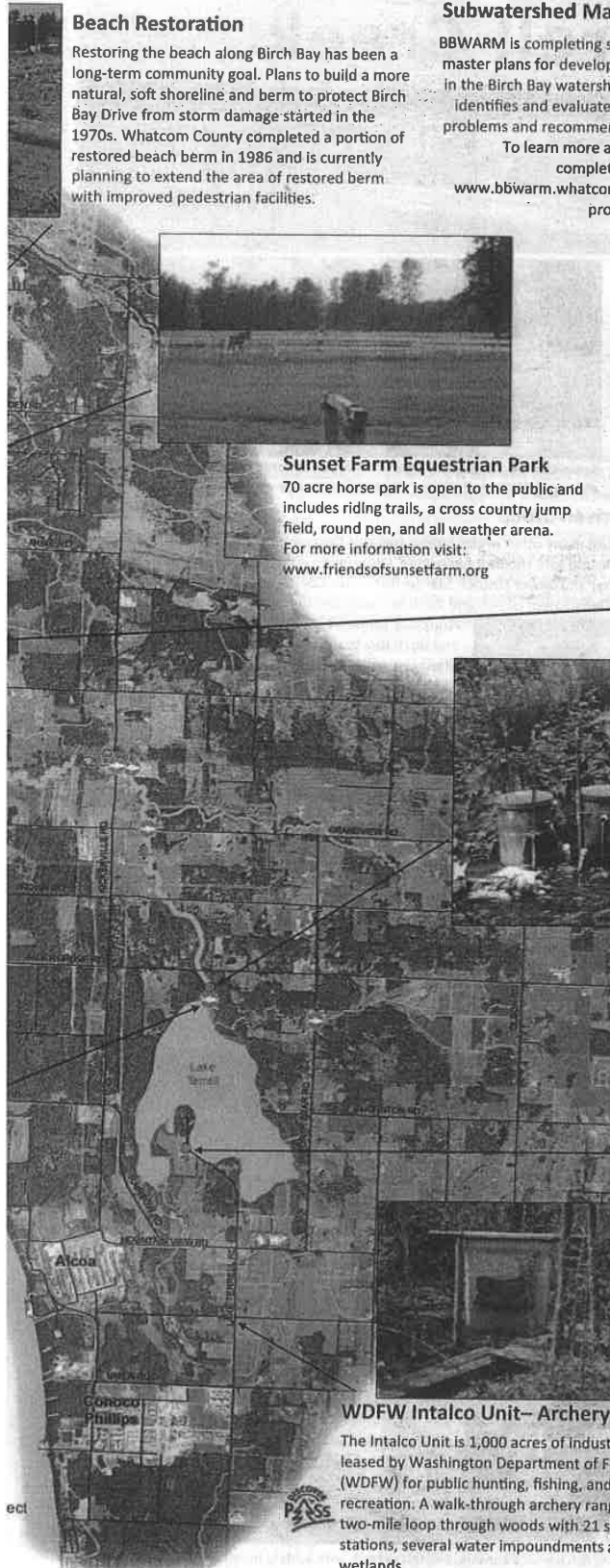


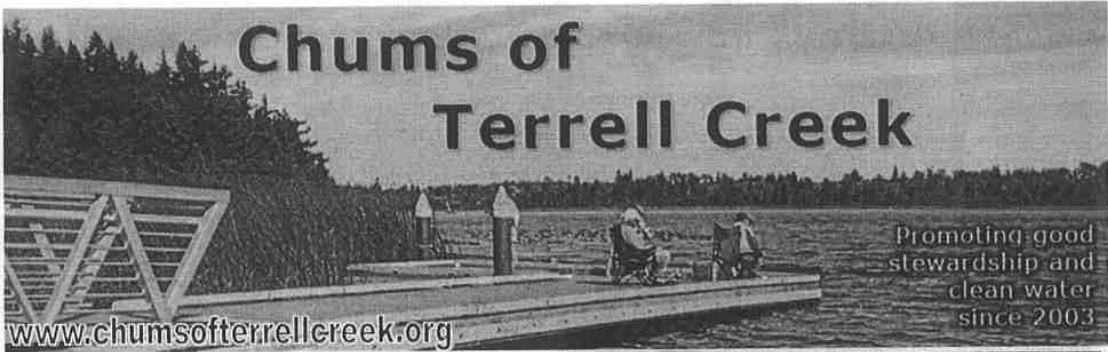
## Lake Terrell

Perhaps the most well known feature of the upper watershed is 500 acre Lake Terrell. The lake and surrounding areas are managed for recreation and as a wildlife refuge. Bird watching, waterfowl hunting and fishing are among the activities making Lake Terrell popular among residents and visitors alike.

## WDFW Intalco Unit- Archery Range

The Intalco Unit is 1,000 acres of industrial property, leased by Washington Department of Fish and Wildlife (WDFW) for public hunting, fishing, and other wildlife recreation. A walk-through archery range includes a two-mile loop through woods with 21 shooting stations, several water impoundments and associated wetlands.





**Meet your Chums**

The Chums of Terrell Creek (Chums) were organized in 2003 to promote salmon recovery in the Terrell Creek watershed. In response to community concerns about safe shellfish harvesting and clean recreational water they have expanded their efforts to improve water quality in Terrell Creek and Birch Bay. Clean water is not just an environmental concern, it's also a health concern for everyone using water for recreation.



Samantha the Salmon and Chums Advisory Committee members Elie and John along with WCD staff at the Earth Day community work party.



Chums and NSEA organize a work party to clean up a stretch of Terrell Creek that was historically used as a dumping area.

**Community Driven Group**

The Chums work with many other organizations towards the common goal of improved water quality, healthy fish, and safe shellfish harvesting. Other partners include: British Petroleum (BP), Birch Bay Water and Sewer District, Marine Resources Committee, Birch Bay State Park, Washington State Department of Fish and Wildlife, Whatcom Conservation District (WCD), Nooksack Salmon Enhancement Association (NSEA), and Birch Bay Watershed and Aquatic Resources Management (BBWARM) District.



Chums making a difference: Earth Day community work party on Jackson Road. 192 volunteers planted 1000 trees along Terrell Creek.

**Clean Terrell Campaign**

A scenic lake, a meandering stream and a beautiful bay; these are the natural features that make the Terrell Creek watershed and Birch Bay a special place to live, work, and play. However the health of these features depends upon one very real constraint: clean water (water quality). Humans, fish, and shellfish all need clean and cool water. Clean water is free of harmful pathogens and other pollutants. Cool water provides habitat for native fish, helps to keep dissolved oxygen levels high for fish and other aquatic organisms, and inhibits the growth of harmful and unsightly algae.

**Run with the Chums**

The annual Run with the Chums occurs in September during Whatcom Water Weeks. This is a family friendly 5k Fun Run or Walk and 1k kids Smolt Sprint. The event promotes watershed stewardship by exploring the watershed you live in; what fish, wildlife and animals live here; how the water quality is impacted; and how you can reduce your run off through stormwater management.



Asher Louis finishes the 1K Smolt Sprint.



Over 250 folks take off from the start line and run 5K around BP Highlands.

**Making a Difference**

Since the Chums and NSEA began rallying resources for the watershed, six major barriers to fish passage have been removed and native tree and shrub buffers have been planted along nearly five miles of stream bank, improving habitat from the bay, upstream to Lake Terrell and beyond.

**Interested in joining the Chums?**

Contact Rachel Vasak, your watershed steward  
(360) 715-0283 x 108  
rvasak@n-sea.org



Rachel Vasak  
NSEA, Executive Director



Replacing fish passage barriers, like this culvert, with bridges improves the opportunity for returning salmon to navigate upstream toward Lake Terrell. NSEA replaced this culvert in 2014.





# Water Quality

## What's happening in YOUR watershed?

### Bacteria

When fecal coliform bacteria is in your water, it indicates that animal waste has entered the water upstream and that water could carry disease-causing organisms. This creates a public health concern for people wading, playing, or harvesting shellfish. To protect public health, **monitoring for fecal coliform bacteria occurs at over 40 sites** throughout the Birch Bay and Terrell Creek watershed. Look at the map on this page for a monitoring site near you to see if water quality standards have been met over the past three years in your neighborhood.



Collecting a water quality sample at the mouth of Terrell Creek (Ingrid Enschede, BBWARM).

### Where does the bacteria come from?

Fecal coliform bacteria comes from many different sources including: pet and wildlife waste, failing septic systems, leaks in sewer connections or sewer lines, farm animals, and poorly managed manure. Waste from these sources enters waterways flowing to Birch Bay.

### Is the water clean?

We have good news. Thanks to all of the farm improvements, septic maintenance, and stream restoration projects by local citizens, the marine water in Birch Bay is clean with low bacteria levels well within state marine water quality standards. In addition, the State Department of Health is considering lifting a shellfish harvest closure area around the mouth of Terrell Creek due to improving water quality. But sections of Terrell Creek still have elevated bacteria levels, so continued efforts by watershed residents to protect water quality essential. Keeping animal waste and bacteria out of Terrell Creek and the many small drainages entering Birch Bay through stormwater pipes in an on-going challenge. These freshwater streams and ditches have variable bacteria levels—sometimes very low and sometimes very high, exceeding fresh water quality standards. Comparing the one year and three year geometric mean (average bacteria level) at each monitoring site is one way to evaluate if water quality is improving or declining at that location. **Look at the graph on this page and see for yourself.**

### Who is doing the monitoring?

Water quality monitoring is performed by different organizations and citizen volunteers. Whatcom County Public Works (WCPW) Natural Resources manages the water quality monitoring program in the Birch Bay and Terrell Creek watershed with assistance from BBWARM, Whatcom County Marine Resources Committee, Nooksack Salmon Enhancement Association (NSEA), Whatcom Conservation District (WCD), and volunteers.

### Want to get involved?

Visit [www.whatcomcd.org/volunteer-opportunities](http://www.whatcomcd.org/volunteer-opportunities)

### Want more information?

Water quality data summaries, maps, and monitoring reports are posted on the BBWARM website at [www.bbwarm.whatcomcounty.org/programs/wq](http://www.bbwarm.whatcomcounty.org/programs/wq).



BBWARM



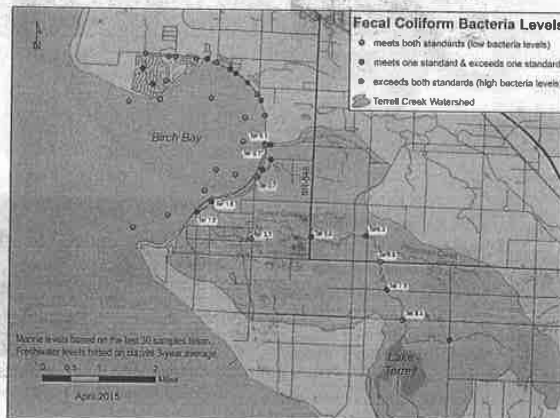
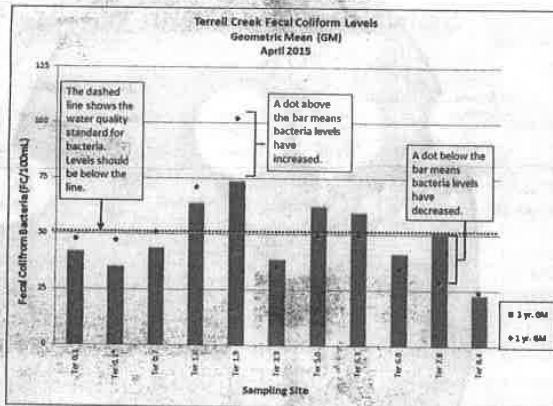
WCD

An up to date map on fecal coliform water quality throughout Whatcom County is available from Whatcom County Public Works at: [www.whatcomcounty.civicplus.com/1072/Water-Quality](http://www.whatcomcounty.civicplus.com/1072/Water-Quality)

and Whatcom Conservation District at: [www.whatcomcd.org/watershed-health-assessment](http://www.whatcomcd.org/watershed-health-assessment)



Collecting a water quality sample from Terrell Creek (Melissa Roberts, BBWARM).



### Terrell Creek Completed and Proposed Restoration Projects

8 miles to Birch Bay

- 2011 Lake Terrell dam removal project (WCD & NSEA)
- Proposed culvert replacement project at Alder Grove Rd. (NSEA & Whatcom County)
- 2013 Instream / riparian habitat improvement project (NSEA)
- Proposed instream/riparian project (NSEA)
- 2017 Barrier culvert replacement at Brown Rd. (NSEA)
- 2013 LWD, gravel placement and riparian planting (NSEA)
- 2017 Barrier culvert replacement at Grandview Road (WSDOT)
- 2013 Riparian planting (NSEA)
- 2007-2011 LWD Placement and Riparian Planting (NSEA)
- Concrete dam removal at Kickerville Rd. (NSEA)
- 2011 NSEA & County culvert replacement at Kickerville Rd.
- Barrier culvert replacement (WSDOT) at Blaine Rd.
- Proposed riparian planting site (NSEA)
- LWD placement and riparian planting at Jackson Rd. (NSEA & DP-WCPW)
- \*LWD - Large woody debris - provides fish habitat and bank stabilization
- 2011-2012 Birch Bay State Park riparian planting (NSEA)

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# Keep Your Watershed Healthy

From Lake Terrell to Birch Bay, the entire watershed needs out help. Clean beaches, an abundance of fish and shellfish, and healthy streams will take all of our efforts to protect.

Watershed Health Goals		
<p><b>Water Quality</b></p> <p><b>GOAL:</b> Meet freshwater standards for Fecal Coliform established by the state (&lt;50 FC/100ml) to ensure safe swimming and shellfish harvesting downstream.</p> <p><b>GOAL:</b> Decrease amounts of excess nutrients and harmful pesticides entering the stream system through improved landscaping and farming practices and by regular inspection and maintenance of septic systems.</p> <p><b>GOAL:</b> Maintain high levels of dissolved oxygen to support aquatic life.</p>	<p><b>GOAL:</b> Maintain cool summer water temperatures to allow salmon and other aquatic organisms to survive.</p> <p><b>GOAL:</b> Minimize sediment runoff through wetland preservation and replanting riparian areas.</p>	<p><b>GOAL:</b> Minimize runoff through wetland preservation and enhancement to facilitate increased groundwater storage.</p>
<b>Water Quantity</b>		
<p><b>GOAL:</b> Work with Lake Terrell management to release adequate flows from Lake Terrell through the summer months.</p> <p><b>GOAL:</b> Minimize water use to sustain resource.</p> <p><b>GOAL:</b> Reduce impervious surfaces to decrease stormwater runoff.</p>		
<b>In-stream Habitat</b>		
<p><b>GOAL:</b> Replace culverts that are fish passage barriers.</p> <p><b>GOAL:</b> Replant stream channels with native plants and remove invasive species.</p> <p><b>GOAL:</b> Improve fish spawning habitat with placement of large woody debris in channel and re-naturalize altered channels.</p>		

## What can you do?

### Keep Bacteria and Pathogens Out of Water

#### Do you have a pet?

Pick up pet waste and put it in the trash both in your backyard and on walks. Check for Muttt stations at beaches and parks.



Muttt station

#### Where do you keep garbage?



Secure trash from wildlife

Raccoons create latrines in ditches and creek bottoms where pathogens from their feces enter water. Make sure raccoons can't find their next meal at your house. Keep pet food inside. Secure garbage cans and compost bins.

### Keep Water Clean and Clear

#### Do you compost?

Dispose of lawn clippings and yard waste away from waterways to prevent flooding and pollution. Decaying plant material and extra nutrients reduce oxygen available in streams, harming aquatic life. Yard waste may contain chemicals, fertilizers, or pet waste that can harm water quality. Use a compost bin or the Food Plus composting service.



Porta potties are placed along Birch Bay drive every summer for visitors to use.

### Inspect your Septic System

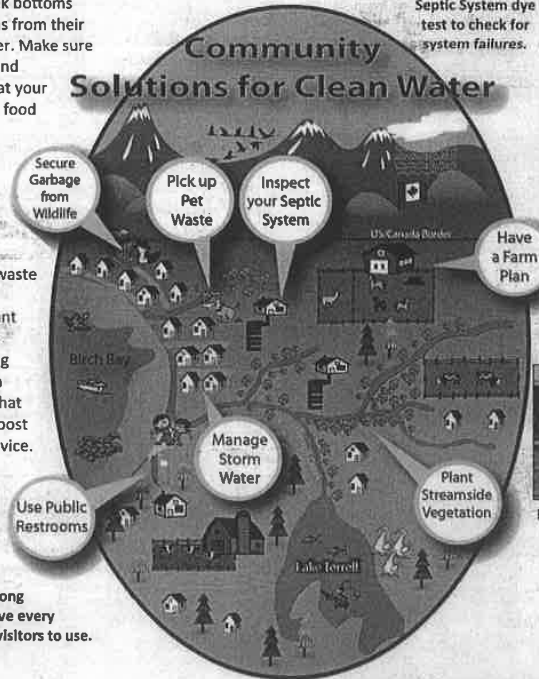
A regularly inspected and maintained system will decrease the need for expensive repairs and ensure that only clean water leaves your property. Contact the Whatcom County Health Department for more information. [www.whatcomcounty.us/health](http://www.whatcomcounty.us/health)



Septic System dye test to check for system failures.



New risers installed on septic tank for easier inspection and maintenance.



### Have a Farm Plan

#### Do you have livestock or crops?

A free confidential, consultation may help you save money, improve animal health, increase production, and ensure that water leaving your farm is clean.

Developing a farm plan is an easy way to both improve your farm and protect water quality in your watershed. Financial assistance may be available to assist you with good stewardship practices that will improve your farm. Contact Whatcom



Conservation District for more information.

Heavy Use Area [www.whatcomcd.org](http://www.whatcomcd.org)



Cross fencing is used to improve forage through pasture rotation.

### Plant Native Plants

Are there streams, ditches, ponds, or wetlands on your property?

Improving the area along your waterway by planting native trees and shrubs is an easy way to help keep the water clean. You may qualify for programs to fund planting along your stream or wetland.



Native plant garden provides habitat and filters surface water.



New riparian planting in progress

[www.whatcomcd.org](http://www.whatcomcd.org)

Do you have a landscaped yard? Native plants are beautiful, and they are easy to grow without extra water, fertilizer, or chemicals. Native plants slow down rainfall and help filter pollutants out of stormwater before it enters the bay.

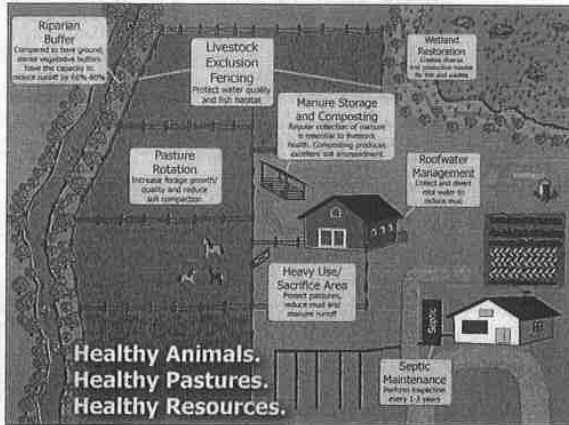
# Every Action Makes a Difference

Landowners, organizations, agencies, and businesses have been hard at work installing best management practices (BMPs).

Scott and Kristy Mcallister have been living in the Terrell Creek area with their daughters for the last eight years. The Mcallisters raise alpacas, pigmy goats, chickens, donkeys, and a pony. They learned how to build their small farm through trial and error along with advice from 4H and FFA. They were thrilled to work alongside a Whatcom Conservation District (WCD) farm planner to develop a pasture rotation system, wetland restoration site, and roof water management on their five acre farm.



"We learned so much from WCD, it was actually embarrassing some of the things we didn't know. We found simple, easy solutions to mud management, healthier animals, and greener pastures."



After hearing about the efforts by the Chums, Harry and Mary Pardue enrolled in the Conservation Reserve Enhancement Program (CREP) through WCD to improve the functionality of 3.9 acres of stream banks and wetland on their property. Their riparian buffer and wetland restoration included 1,350 native trees and shrubs. These plants will help protect water quality, reduce erosion, create shade, provide habitat, and add an aesthetic backdrop to their lovely home.

"We didn't know how degraded our backyard wetland had been because of all of the invasive plants; the scotch broom, blackberries and reed canary grass. Knowing all that, and at our age, we couldn't have done it ourselves. CREP was a package deal and how could we say no? They did everything for us."



Birch Bay and Blaine area residents are installing rain barrels to reduce stormwater runoff from their property, conserve water, and save money on their summer water bill. BBWARM and the Birch Bay Water and Sewer District have been hosting free rain barrel workshops every spring since 2011. Participants receive a free barrel and learn how to install their barrel at home. Look for rain barrels around your neighborhood. For more information visit [www.bbwarm.whatcomcounty.org/programs/education/rainbarrels](http://www.bbwarm.whatcomcounty.org/programs/education/rainbarrels).



## Stormwater Capital Improvement Projects

The BBWARM stormwater program is building stormwater capital improvement projects around the Birch Bay watershed to replace or improve old stormwater drainage systems that no longer work properly. These construction projects are designed to reduce the risk of flooding and erosion and improve water quality. In 2013 and 2014 improvements included:

- Installing a bioswale and a storm filter vault to remove pollutants from stormwater flows.
- Building new high level/high flow stormwater systems down Cedar Avenue, Park Lane, Fern Street, and Beachway Drive.
- Building new low level/low flow stormwater systems along Birch Bay Drive.
- Removing a derelict concrete boat ramp to improve the shoreline.



Installing a new culvert under Birch Bay Drive.

Dave Klieber and his family moved from Seattle about nine years ago to the Terrell Creek area for more space for his kids and to enjoy a more rural lifestyle. Their early 1900s farm house, however, had an aging septic system. They were thankful for the WCD's financial assistance to help with the cost of a new system.

"Programs like this are great motivators to keep you moving down the path toward doing the right thing. The Whatcom Conservation



District had plans in place, the steps to take and motivation to get the work done, we would not have done it as quickly otherwise."



Citizen Action

- ✓ 5,276 feet of exclusion fence installed
- ✓ 5 manure/composting storage facilities installed
- ✓ 163 rain barrels installed (8,965 gallon storage capacity)
- ✓ 9 septic systems inspected, 3 repaired and 2 replaced
- ✓ 23 Farms Assessed, 9 Farm Plans Developed



Fish Passage Improvement

- ✓ 6 fish barriers replaced
- ✓ 15 stream miles opened to fish
- ✓ 2012 Lake Terrell Dam made fish passable through improvements
- ✓ Up to 100,000 fish eggs incubated yearly in the Lake Terrell Remote Site Incubator



Habitat Restoration 2012-2015

- ✓ 5 Miles of Terrell Creek restored
- ✓ 18,000 native plants planted by landowners, volunteers, NSEA and CREP
- ✓ 14 large woody debris structures installed
- ✓ 14 Volunteer work parties, 610 volunteers

# Community Resources

## The Chums of Terrell Creek

A community group made of Terrell Creek/Birch Bay citizens and associated organizations that work to improve water quality and fish habitat in the watershed. [www.chumsofterrellcreek.org](http://www.chumsofterrellcreek.org)



Restoration of Butler Creek, a Terrell Creek tributary that begins west of Ferndale.



## Birch Bay Watershed and Aquatic Resources Management District (BBWARM)

Works to protect water quality and reduce storm water impacts.  
c/o Whatcom County Public Works (360) 715-7450 or [www.bbwarm.whatcomcounty.org](http://www.bbwarm.whatcomcounty.org)



## Whatcom Land Trust

Preserves and protects wildlife habitat, scenic, agricultural, and open space lands in Whatcom County for future generations by securing interests in land and promoting land stewardship. (360) 650-9470 or [www.whatcomlandtrust.org](http://www.whatcomlandtrust.org)



## Birch Bay State Park

Provides great public waterfront access and educational opportunities. (360) 371-2800 or [www.parks.wa.gov/170/Birch-Bay](http://www.parks.wa.gov/170/Birch-Bay)



## WSU Whatcom County Extension

Provides educational and volunteer opportunities for agriculture, gardening, composting, nutrition, food safety, health, and natural resources. (360) 676-6736 or [www.whatcom.wsu.edu](http://www.whatcom.wsu.edu)



## Friends of Birch Bay State Park

Supports education programs at Birch Bay State Park. [www.fobbsp.org](http://www.fobbsp.org)

## Nooksack Salmon Enhancement Association (NSEA)

A community based nonprofit organization dedicated to restoring sustainable wild salmon runs in Whatcom County. (360) 715-0283 or [www.n-sea.org](http://www.n-sea.org)



## Whatcom Conservation District (WCD)

Helps landowners plan and implement best management farming practices, assists landowners with riparian restoration, and sponsors an annual native plant sale. (360) 526-2381 or [www.whatcomcd.org](http://www.whatcomcd.org)



## Marine Resources Committee (MRC)

A citizen-based group committed to revitalizing and preserving marine resources for future generations. c/o Whatcom County Public Works (360) 676-6876 or [www.mrc.whatcomcounty.org](http://www.mrc.whatcomcounty.org)



## Butler Ditch District

Maintains agricultural drainage provided by the Butler Ditch from Northstar Rd. east to Olson Rd. c/o Whatcom County Public Works (360) 676-6876

## Washington Department of Fish and Wildlife (WDFW)

**Whatcom Wildlife Area**—Provides public recreation opportunities on lands around Lake Terrell and manages public access on lands owned by British Petroleum and ALCOA. (360) 384-4723 or [www.wdfw.wa.gov](http://www.wdfw.wa.gov)



## Hunting, fishing, and shellfish harvesting permits and regulations

Shellfish Rule Change Hotline (866) 880-5431

## Washington State Department of Health

Water quality monitoring and shellfish safety programs. Establishes marine biotoxin closures. Shellfish Safety Hotline (800) 562-5632 or [ww4.doh.gov/gis/mogifs/biotoxin.htm](http://ww4.doh.gov/gis/mogifs/biotoxin.htm)



## Whatcom County

**Planning and Development Services**—Oversees and regulates development, construction, and land use activities. (360) 676-6907 or [www.whatcomcounty.us](http://www.whatcomcounty.us)



**Department of Health**—Provides services and programs to protect public health including the On-Site Sewage System Program with homeowner education and regulatory enforcement of on-site septic systems. (360) 676-6724 or [www.whatcomcounty.us](http://www.whatcomcounty.us)

**Public Works Natural Resources (WCPW) and Stormwater Divisions**—Manages water quality monitoring and improvement programs, species recovery, and stormwater projects. (360) 676-6876 or [www.whatcomcounty.us](http://www.whatcomcounty.us)

## RE Sources for Sustainable Communities

The North Sound Baykeeper Team is charged with protecting and restoring the marine and nearshore habitats of the northern Puget Sound region. (360) 733-8307 or [www.re-sources.org](http://www.re-sources.org)



## Other Contacts

Lummi Natural Resources (360) 312-2319  
Nooksack Indian Tribe (360) 592-5176  
Washington State Department of Ecology (360) 715-5200

## Report Sponsors:

Whatcom Conservation District  
Whatcom County Public Works  
Birch Bay Watershed & Aquatic Resources Management District  
Environmental Protection Agency  
Nooksack Salmon Enhancement Association







# our Watershed

BBWARM Newsletter • Issue 4 • Summer 2015

## Run with the Chums & Whatcom Water Weeks

Join the Chums of Terrell Creek for the 3rd Annual Run with the Chums 5k fun run during Whatcom Water Weeks. Run or walk on a scenic loop through the BP highlands and learn more about watershed health while taking care of your own health. This family friendly event offers a kids' Smolt Sprint, prizes, and more. Free registration, T-shirts, and fun for all ages!

Saturday, September 19  
10 a.m. (come early to park and walk to the start)  
Jackson Road south of Grandview  
**To register: [www.chumsofterrellcreek.org](http://www.chumsofterrellcreek.org)**

Whatcom Water Weeks is a two-week long event that celebrates our local water resources. Events are happening all over Whatcom County September 12-26.  
**[www.whatcomwaterweeks.org](http://www.whatcomwaterweeks.org)**



2014 Run with the Chums Celebration

## Improving Stormwater Systems with Capital Projects

BBWARM constructs stormwater capital improvement projects to address flooding and water quality problems in places where the existing infrastructure is undersized, failing, or non-existent.

**Beachway Drive and Fern/Park Stormwater Improvements 2014-2015** —This project replaced a failing drainage system with a new high-level system from Park Lane and Fern Street down Beachway Drive to the bay and a new low-level drainage system along Birch Bay Drive. A treatment vault was installed at the intersection of Fern Street and Beachway Drive to remove pollutants from stormwater as it flows to Birch Bay.

**Seaview Drive Drainage Upgrade 2015**—Construction is scheduled for this fall to replace the failing drainage system along Seaview Drive. The new system will capture stormwater flows and direct them to the bioswale at the corner of Seaview Drive and Maple Crest Avenue.

### Current Projects Under Development:

- Birch Point Collaborative Drainage System Repair
- Harborview Road High and Low Drainage Systems
- Harborview Road Culvert Replacement



Installing a new stormwater vault on Beachway Drive

Want more information on BBWARM capital projects?  
[www.bbwarm.whatcomcounty.org/programs/cip](http://www.bbwarm.whatcomcounty.org/programs/cip)

## Community Involvement Beach Clean-Up

Every 4th of July, Birch Bay is a popular destination for beach parties and fireworks. This year, Birch Bay's beaches were especially full and the fireworks impressive. Unfortunately, the amount of trash left behind was staggering, damaging wildlife habitat, polluting the water, and impacting beachgoers. Every summer, the Birch Bay community steps up to clean-up, and this year your efforts were impressive.

- More than 75 volunteers
- Over 100 hours spent
- 5.43 tons of trash removed
- 258 garbage bags used
- 3 dumpsters filled

Clean-up efforts are organized by the Birch Bay Chamber of Commerce with help from the Sanitary Service Company, Whatcom County Health, and the Alternative Jail Offender Crew.

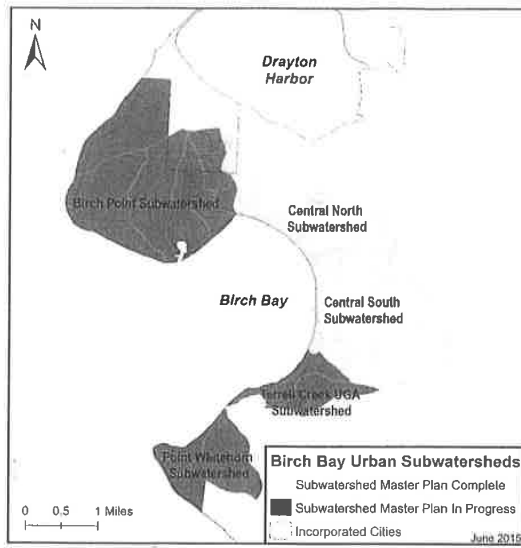


Trash waiting for pick up after the 4th of July beach clean-up



[www.chumsofterrellcreek.org](http://www.chumsofterrellcreek.org)

## Subwatershed Master Plans—Taking a closer look at drainage problems



Download completed plans at  
[www.bbwarm.whatcomcounty.org/programs/swmp](http://www.bbwarm.whatcomcounty.org/programs/swmp)

BBWARM is completing subwatershed master plans for developed subbasins in the Birch Bay watershed. Each plan identifies and evaluates stormwater problems and solutions. BBWARM uses these plans to identify and prioritize capital improvement, small works, and maintenance projects.

**Your input is important.** In 2015, BBWARM will begin field work for the remaining subwatersheds (see map). To receive notification of future subwatershed master plan meetings and provide your input on stormwater problems in these areas, sign up to receive BBWARM email notifications at [www.bbwarm.whatcomcounty.org](http://www.bbwarm.whatcomcounty.org).

## Chumming Around with Elie

In 2003, the Nooksack Salmon Enhancement Association reached out to Terrell Creek area residents and asked for their help with salmon recovery. Elie Friedlob responded with enthusiasm and started working with other community members as the Chums of Terrell Creek. The Chums have been working hard ever since organizing tree planting parties, monitoring a chum egg incubator, and increasing community awareness of salmon restoration and water quality issues. Elie shared important lessons she has learned from her work with the Chums.

- Success comes from perseverance; it is critical to not ever give up.
- Everything is related; doing the right thing for salmon helps every species in the ecosystem, including people, thrive.
- Nature is very resilient, and salmon represent incredible strength.

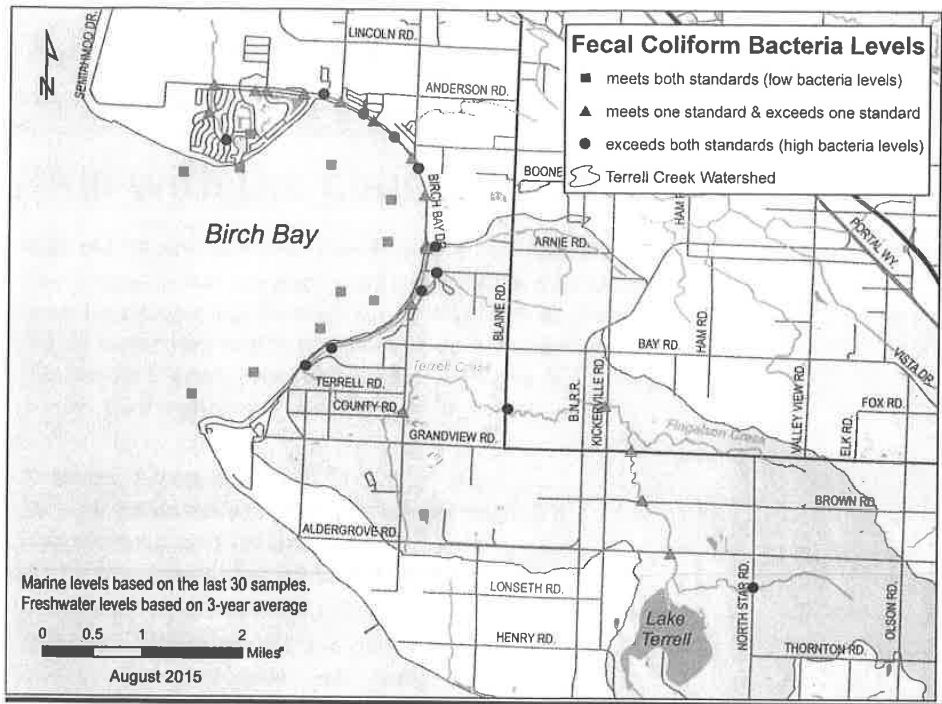
Join Elie and the Chums of Terrell Creek and make a difference!  
[www.whatcomcd.org/volunteer-opportunities](http://www.whatcomcd.org/volunteer-opportunities)

BBWARM is partnering with the Chums and Whatcom Conservation District to support the **Terrell Creek Landowner Stewardship Program**. This program helps rural landowners make improvements on their land that benefit both them and the watershed. For more information or to schedule a free and confidential home visit, contact Rachel Vasak, Terrell Creek Watershed Steward, at (360) 715-0283 or [rvasak@n-sea.org](mailto:rvasak@n-sea.org).



Elie at the Chums 2015 Earth Day celebration

# Water Quality Update



Visit [www.bbwarm.whatcomcounty.org/programs/wq](http://www.bbwarm.whatcomcounty.org/programs/wq) for more information.

# Getting Ready for Rain

It's easy to forget about rain during this long, dry summer, but Birch Bay residents are frequently faced with soggy yards, wet crawl spaces, and other drainage problems during the winter time. Most drainage problems are due to poorly draining clay soils and/or poorly functioning drainage systems. Some areas have no drainage system at all. Now is a good time to take stock of drainage problems you experienced last winter and do what you can to address them before the fall rains return.



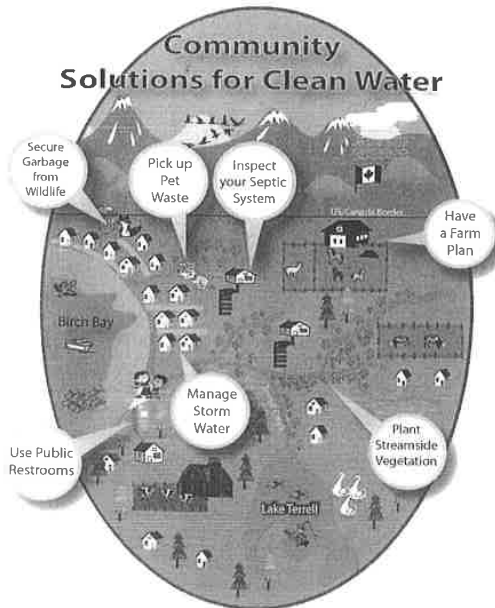
Flooding on Morrison Avenue, December 2014

# Your Backyard—Keep it clean

Keeping our water clean requires a little help from everyone. There are many possible sources of pollution in your backyard.

## What can you do to keep pollutants out of stormwater runoff?

- ✓ Pick up pet waste and put it in the trash.
- ✓ Inspect and maintain septic systems.
- ✓ Compost yard waste away from waterways or use FoodPlus!\*
- ✓ Don't feed wildlife and secure your garbage (reduces bacteria from wildlife waste).
- ✓ Use a farm plan.
- ✓ Plant streamside vegetation.
- ✓ Limit your use of chemicals and fertilizer in yard care.
- ✓ Fix engine leaks.
- ✓ Use a commercial car wash.



\*FoodPlus! is a curbside compost service. Visit [www.ssc-inc.com](http://www.ssc-inc.com) for more information.

## What can you do?

- Make sure your gutters and downspouts are clean and in good repair.
- Direct the water from your downspouts to a location where it won't cause flooding (ditch, catch basin, rain barrel, or rain garden)
- Talk to your neighbors about installing a shared drainage system and get two dry yards for the price of one!
- Install a sump pump if your crawl space fills up with water. Pump the water to the nearest ditch or catch basin.

Call the BBWARM Stormwater 1-call Hotline to report drainage or water quality problems  
**(360) 778-6300**

Please note our new hotline number.



Whatcom County Public Works Stormwater  
322 N. Commercial St., Suite 301  
Bellingham, WA 98225  
360.778.6210

## our Watershed

BBWARM Newsletter • Issue 4 • Summer 2015

### Look Inside For Information On

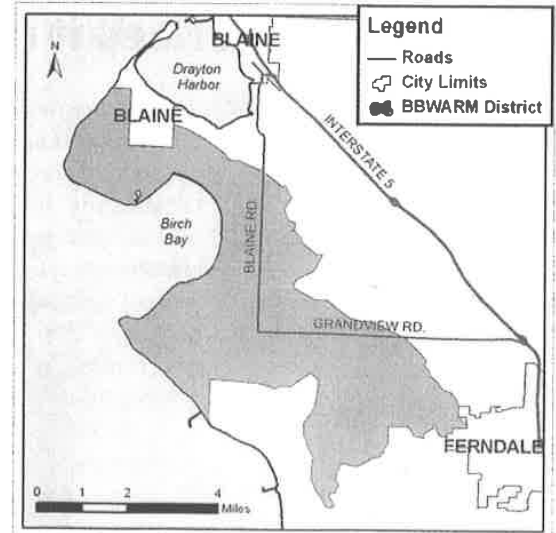
- 3rd Annual Run with the Chums & Whatcom Water Weeks
- Stormwater capital improvement projects
- Birch Bay subwatershed master planning
- The Chums of Terrell Creek
- Birch Bay 4th of July clean-up
- Water quality monitoring information
- Community solutions for clean water
- Getting ready for the rain

### What is BBWARM?

The Birch Bay Watershed and Aquatic Resources Management (BBWARM) District is the stormwater management district for the Birch Bay watershed. BBWARM was established by the Whatcom County Council to address citizen concerns about water quality, flooding, and the loss of aquatic habitat.

[www.bbwarm.whatcomcounty.org](http://www.bbwarm.whatcomcounty.org)

Visit our website to learn about BBWARM programs, history, and funding. Sign up to receive email notifications of meetings and special events.



BBWARM District location





# EXHIBIT D

## Royce Buckingham

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**From:** Royce Buckingham <rbucking@co.whatcom.wa.us>  
**Sent:** Tuesday, September 29, 2015 10:53 AM  
**To:** Daniel Gibson; Tyler Schroeder  
**Subject:** RE: Whatcom - Mailer FINAL DRAFT - content

Tyler,

Dan says, and I agree, that if you can run this by the Public Disclosure Commission for their feedback, that is the best check on the content.

Royce Buckingham  
Civil Deputy Prosecutor for Whatcom County  
[rbucking@co.whatcom.wa.us](mailto:rbucking@co.whatcom.wa.us)  
360-778-5710

---

**From:** Daniel Gibson  
**Sent:** Monday, September 28, 2015 11:35 AM  
**To:** Royce Buckingham  
**Subject:** FW: Whatcom - Mailer FINAL DRAFT

Royce:  
FYI re: mailer for the New Jail.

---

**From:** Tyler Schroeder  
**Sent:** Monday, September 28, 2015 11:34 AM  
**To:** Jack Louws; Bill Elfo; David McEachran  
**Cc:** Daniel Gibson; Dewey Desler; Tawni Helms  
**Subject:** FW: Whatcom - Mailer FINAL DRAFT

Jack, Bill, and Dave,

Here is the Final Draft for the mailer associated with the New Jail. This is a 11"x17" mailer that is folded in half and then accordion style. Please share with me any thought that you may have so that I can incorporate them into the final mailer.

If you have head photos that you would like me to use please forward them onto me. I do have Dave's and they will be using that instead of the one shown.

Thanks,

Tyler R. Schroeder  
Whatcom County Executive Office's Project Manager



Whatcom County Executive's Office  
311 Grand Avenue, Suite 108  
Bellingham, WA 98225  
Ph 360 778 5207

# EXHIBIT E

**WHATCOM COUNTY  
EXECUTIVE'S OFFICE**  
County Courthouse  
311 Grand Ave. Suite #108  
Bellingham, WA 98225



**Jack Louws**  
County Executive

MEMO TO: County Council Chair  
County Council Members

FROM: Jack Louws, County Executive

DATE: October 16, 2015

SUBJECT: Jail Proposition Mailer

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In the DLR services contract unanimously passed by the Whatcom Council on September 30<sup>th</sup>, 2014 there was a budget allocation authorizing public outreach on the project. This activity included providing assistance in developing clear public information and developing graphics, including images of the existing facilities and renderings of the new facility. The planned public information for the project also included developing materials for presentations and mailers. The schedule in the contract included the community report concerning the ballot measure. This report is being distributed to every registered voter household in Whatcom County.

According to the PDC guidelines, **"one jurisdiction-wide objective and fair presentation of the facts per ballot measure is appropriate;"**

*"In PDC Interpretation 04-02, Guidelines for Local Government Agencies in Election Campaigns, the Commission held that "it is not only the right, but the responsibility of local government to inform the general public of the operational and maintenance issues facing local agencies." Accordingly, the Interpretation states that "[t]he PDC will presume that every agency may distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure," typically a jurisdiction-wide "fact sheet" mailing. Such a presentation must accurately portray the cost and other anticipated impacts of a ballot proposition, and must not promote or oppose the proposition in the tenor or tone of the language used."*

The Administration worked with the Prosecuting Attorney's office to ensure consistency with state law in regards to local government and election activities. We also worked with the Public Disclosure Commission (PDC) that has prepared guidance on this subject (<http://www.pdc.wa.gov/archive/filerassistance/manuals/pdf/Fact.Sheets.pdf>).

The community report is consistent with public information efforts executed in other communities, such as the recent Skagit jail/sales tax measure. The report is a fair and factual presentation of the new jail project including the background leading to its development, the laws and circumstances related to the project and relevant information from key county officials. It neither asks for support or rejection of the ballot measure.

If you have additional questions please do not hesitate to call me for additional information.

Office 360 778 5200

Fax 360 778 5201

TDD 711

# EXHIBIT F

**Royce Buckingham**

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**From:** VotersPamphlet  
**Sent:** Wednesday, August 19, 2015 11:52 AM  
**To:** Ray Baribeau; Tyler Schroeder; VotersPamphlet  
**Cc:** Susan McClendon; Pat Brown  
**Subject:** RE: Questions for Rebuttal of Prop 2015-1 (Jail) due Aug. 20  
**Attachments:** Explanatory Statement & ballot text.docx

Ray,

I believe this is the final version (see attached).

**Amy Grasher**

Whatcom County Auditor - Election Division  
360-778-5102 [www.whatcomcounty.us/auditor/](http://www.whatcomcounty.us/auditor/)

*Email showing  
that we received a  
"final version" of the  
ballot proposition language  
"(see attached)"*

---

**From:** Ray Baribeau [mailto:[ray\\_baribeau@q.com](mailto:ray_baribeau@q.com)]  
**Sent:** Wednesday, August 19, 2015 11:36 AM  
**To:** Tyler Schroeder; VotersPamphlet  
**Cc:** Susan McClendon; Pat Brown  
**Subject:** RE: Questions for Rebuttal of Prop 2015-1 (Jail) due Aug. 20

Tyler & Amy,

Can you answer the two questions below. We never got the wording for Prop. 2015-1 from the county attorney.

Thanks,

Ray

Begin forwarded message:

**From:** Susan McClendon <[susan.mcclendon@gmail.com](mailto:susan.mcclendon@gmail.com)>  
**Subject:** Re: Rebuttal of Prop 2015-1 (Jail) due Aug. 20  
**Date:** August 19, 2015 11:21:59 AM PDT  
**To:** Ray Baribeau <[ray\\_baribeau@q.com](mailto:ray_baribeau@q.com)>  
**Cc:** Pat Brown <[pat077@comcast.net](mailto:pat077@comcast.net)>

Did we ever get the document the county attorney is supposed to write on this propositions?

Do you know whether the \$ to be charged to the cities for housing their inmates is the same under the new jail plan or different from the current charges?

On Tue, Aug 18, 2015 at 8:38 AM, Ray Baribeau <[ray\\_baribeau@q.com](mailto:ray_baribeau@q.com)> wrote:

Team,

As you can see below, we have the text of the CON committee to prepare a 75 word rebuttal. Laster today I'll send my thoughts.

Peace,

Ray

>

## **Voter Explanatory Statement – New Jail Sales and Use Tax**

State law requires the County to provide for a jail. The County Council has determined the current jail does not meet existing and future needs. If Proposition #1 passes, the County will build a replacement jail on LaBounty Road in Ferndale, demolish the existing Prospect Street jail and construct facilities for inmate transfer at the County Courthouse.

The proposition before County voters would add sales and use tax at the rate of 0.2% for construction and operation of jail facilities, adult corrections programs including inmate mental health programs, and for other public safety purposes, as authorized by RCW 82.14.450.

## **Ballot Proposition Language – New Jail Sales and Use Tax**

Whatcom County, Washington

### **Proposition Number 1**

Jail Facilities Sales And Use Tax

The Whatcom County Council passed Resolution 2015-024 concerning a proposition authorizing a sales and use tax for jail facilities. This proposition would impose a sales and use tax of two tenths of one percent (20 cents for every \$100) for constructing and operating jail facilities for inmates charged or convicted of misdemeanor and felony acts, and for other public safety purposes, as authorized by RCW 82.14.450. Half of this tax (10 cents for every \$100) would expire upon repayment of bonds issued to finance the facilities, no later than 30 years after issuance. Should this proposition be:

Approved \_\_\_\_\_ Rejected \_\_\_\_\_

*Attachment to  
Amy Graster  
Aug. 19, 2015  
email re: final  
version.*





## Ballot Measure

Voter Pamphlet showing  
both Proposition No. 2015-1  
and Proposition #1. 39

### Whatcom County Proposition No. 2015-1 Jail Facilities Sales and Use Tax

The Whatcom County Council passed Resolution 2015-024 concerning a proposition authorizing a sales and use tax for jail facilities. This proposition would impose a sales and use tax of two tenths of one percent (20 cents for every \$100) for constructing and operating jail facilities for inmates charged or convicted of misdemeanor and felony acts, and for other public safety purposes, as authorized by RCW 82.14.450. Half of this tax (10 cents for every \$100) would expire upon repayment of bonds issued to finance the facilities, no later than 30 years after issuance. Should this proposition be:

Approved \_\_\_\_\_ Rejected \_\_\_\_\_

#### Explanatory Statement:

State law requires the County to provide for a jail. The County Council has determined the current jail does not meet existing and future needs. If Proposition #1 passes, the County will build a replacement jail on LaBounty Road in Ferndale, demolish the existing Prospect Street jail, and construct facilities for inmate transfer at the County Courthouse. The proposition before County voters would add sales and use tax at the rate of 0.2% for construction and operation of jail facilities, adult corrections programs including inmate mental health programs, and for other public safety purposes, as authorized by RCW 82.14.450.

#### Statement For:

The Whatcom County Jail is an essential public facility and the only detention option in the County. Opening in 1984 to house 148 inmates, our existing Jail currently operates at nearly twice its designed capacity. Overcrowding and structural deficiencies have shortened the Jail's lifespan. Visitors, staff and inmates are endangered by increasingly failing; security, structural integrity, life-safety systems; and lack of space to safely and responsibly house inmates with a variety of disorders. A fire or other catastrophe could result in an enormous loss of life and taxpayer liability. The planned replacement Jail incorporates design features and systems to maximize safety, security and operational efficiencies. The new Jail provides for educational and treatment programs to prevent recidivism, including a separate specialized mental health and substance abuse unit. The replacement Jail site is centrally located and accommodates incremental expansion for future needs. The 0.2% sales tax (20 cents on \$100 purchase) will fund the construction, partial operations and maintenance of this desperately needed replacement facility while ensuring non-residents share in costs. One-half of the tax will expire upon repayment of the construction bonds. Operating an efficient, safe and humane Jail is essential to our quality of life and fiscal responsibility.

Statement For prepared by: Ray Baribeau, Susan McClendon, and Pat Brown

#### Statement Against:

Vote *no* on the latest *jail tax*! In 2004, 61% of voters agreed to a sales tax to fund a new jail. Now the County is asking us to *pass another unstable sales tax for the same project* instead of a stable property tax. If we pass this tax it will lock up all of our public safety funding into one project. We do need a new jail, but let's not sign another blank check. We also need cost effective alternative programs with stable funding. These programs reduce criminal justice costs. All of this sales tax will go into the jail - the most expensive option versus cost effective, humane alternatives. This jail won't even house misdemeanants from Bellingham! The county jail plan up for voter approval calls for charging housing city misdemeanants \$150/day. The cost is so high Bellingham has refused to join this plan and will save money by sending inmates to Yakima at a cost of \$65/day. In addition to this tax increase for a large jail, the county plans to use more than \$20-million in other funds for a new Sheriff's office complex. Voters should set funding priorities and say *no* to this sales tax increase.

Statement Against prepared by: Patrick Alesse, Dan McShane, and Doug Starcher

Statements For, Statements Against, and Rebuttals are the opinions of the authors and have not been checked for accuracy by any government agency.

#### Rebuttal of

#### Statement For:

*This tax doesn't include funding for much-needed programs that reduce incarceration; it's just for a very expensive jail. This also isn't a jail for all of Whatcom County; it will exclude misdemeanants from Bellingham. You already passed a sales tax in 2004 for a new jail and those funds are still being collected. Do not give a rubberstamp approval for this flawed jail proposal: vote no on this second sales tax for the jail!*

#### Rebuttal of

#### Statement Against:

The 2004 tax is used for the interim work release facility, jail improvements, design and future operation of a new jail. Existing jail diversion programs are currently funded at \$11.5M and expanding. Property tax increases are not available for needed income to make bond payments. The elected leaders of 6 of our cities support a countywide agreement to build and operate a new jail. Costs of sending misdemeanants to another county have not been verified.

# EXHIBIT G





## GENERAL CONDITIONS

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

#### **1.1.1 Scope of Services:**

The Designer agrees to provide to the County professional 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. The intent of the drawings and specifications is to include all items necessary for the proper execution and completion of the project; **Included in the base fees are Professional Services through schematic design inclusive of the Conditional Use Permit for Essential Public Facilities permitting process only.**

#### **1.2.1** Terms used in this Agreement shall have the meanings set forth unless otherwise provided herein, with the following specific terms defined as follows:

- .1** *Additional Services* refers to those services identified in Section 2.8 hereof.
- .2** *Agreement* refers to this executed contract between Owner and Designer.
- .3** *Construction Phase Services* refers to those services identified in Section 2.7 hereof.
- .4** *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.
- .5** *Design Consultant* is a qualified, licensed design professional who is not an employee of Designer, but is retained by Designer, or employed or retained by anyone under contract with Designer, to furnish design services required under the Contract Documents.
- .6** *Design Phase Services* refers to those services set forth in Sections 2.5 and 2.6 hereof.
- .7** *Design Schedule* refers to the schedule setting forth the dates by which Designer must perform the various Services required herein, consistent with the Project Schedule.
- .8** *Designer's Fee* shall refer to the compensation due Designer for the performance of the Services as set forth herein.
- .9** *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.
- .10** *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, or any Services.
- .11** *Owner's Project Criteria* are developed by or for Owner to describe Owner's program, requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements. Owner's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

- .12 *Project Schedule* refers to the schedule setting forth the dates by which the various stages of both the design and construction of the Project must be performed so as to satisfy Designer's obligations to Owner.
- .13 *Site* is the land or premises on which the Project is located.
- .14 *Bases of Design* the intent is to provide a complete specification & drawing package. The intent of the complete package is to include all necessary items for the proper execution and completion of work; however, any item or detail not specifically mentioned in the specifications or shown on the drawings, but which is necessary to produce the intended results shall be included.
- .15 *Designer* is any person or entity retained by Owner as an independent Designer to perform a portion of the construction work for the Project and shall include materialmen and suppliers.
- .16 *Sub-Consultant* is any person or entity retained by a Designer as an independent Designer to perform any portion of the Designer's work and shall include materialmen and suppliers.
- .17 *Substantial Completion* is the date on which the Project, or an agreed upon portion of the Project, is sufficiently complete so that Owner can occupy and use the Project or a portion thereof for its intended purposes.
- .18 *Services* shall include all Design Phase Services, Construction Phase Services and Additional Services required by the Contract Documents or as may be authorized in writing by Owner.

### 1.3 Contract Documents

1.3.1 The Contract Documents, in addition to this Agreement, are comprised of the following:

- .1 All written modifications, amendments and change orders to this Agreement;
- .2 This Agreement, including all exhibits and attachments, executed by Owner and Designer;
- .3 Written Supplementary Conditions, if any, executed by Owner and Designer;
- .4 The design Schedule;

1.4.1 The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, this Agreement shall take precedence.

2.1.1 Designer shall, consistent with applicable state licensing laws, provide the Services, including architectural, engineering and other design professional services, as described in this Agreement and in accordance with the Contract Documents. Designer agrees that such Services shall be provided through qualified, licensed design professionals who are either (i) employed by Designer or (ii) procured by Designer from qualified, licensed Design Consultants.

2.1.2 Designer shall not engage the services of any Design Consultant without first obtaining the approval of Owner, which approval shall not be unreasonably withheld. Designer agrees that each Design Consultant shall be fully bound to Designer in the same manner as Designer is bound to Owner for all the requirements of the Contract Documents to the extent applicable to the Design Consultant's scope of services. Designer

shall at all times be responsible for the services performed by its Design Consultants, and shall coordinate the services of its Design Consultants to satisfy Designer's obligations under the Contract Documents. Nothing in this Agreement shall relieve Designer from responsibility for the services performed by its Design Consultants, or create any legal or contractual relationship between Owner and any Design Consultant.

- 2.1.3 If Owner or Owner Representative performs other work on the Project with separate design professionals under Owner's or Owner's Representative control, Designer agrees to reasonably cooperate and coordinate its activities with those of such separate design professionals so that the Project can be completed in an orderly and coordinated manner and without disruption.
- 2.1.4 Designer shall only communicate with Owner, Consultant(s), or Sub-Consultants through Owner unless the parties agree otherwise.
- 2.1.5 Within seven (7) days after execution of this Agreement, Owner and Designer will meet to discuss issues affecting the administration of the Services and to implement the necessary procedures, including but not limited to those relating to the schedule for the Services, schedule updates, review of submittals, and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents and allow Designer to meet its obligations to design the Project consistent with the Contract Documents, without compromising any professional obligations of Designer.

## 2.2 Standard of Care

2.2.1 The standard of care for all design professional services performed by Designer and its Design Consultants pursuant to this Agreement shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project for projects of similar size and complexity. Notwithstanding the preceding sentence, if the Agreement specifically identifies performance standards for the Services, Designer agrees that all such Services shall be performed to achieve such standards.

## 2.3 Legal Requirements

- 2.3.1 Designer agrees to perform the Services in accordance with all applicable Legal Requirements.
- 2.3.2 Designer's Fee and/or the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Services. Such effects may include, without limitation, revisions Designer is required to make to the Construction Documents because of changes in Legal Requirements.
- 2.4.1 Designer agrees that the Key Personnel assigned to perform the Services shall be as listed in paragraph 2.4.2 below. Designer shall not change such personnel without prior written approval by the Owner.
- 2.4.2 Key Personnel. The following individuals/positions are considered KEY PERSONNEL.
  - Principal -
  - Project Architect -
  - Draftsperson -
  - Clerical -
- 2.5.2 Designer shall provide reasonable assistance to Owner in obtaining any permits, approvals, and licenses which are not Designer's obligation to obtain, but which are required for the construction of the Project.

**2.5.3** Designer shall make any revisions to the Construction Documents reasonably necessary to secure permits, approvals, and licenses, including those which have been denied for failure of the Construction Documents to meet Legal Requirements. If such revisions are necessary for reasons beyond the control of Designer or its Design Consultants, Designer shall be compensated for such revisions as a change to this Agreement.

## **2.6 Design Services**

**2.6.1** In accordance with the times set forth in the Design Schedule, Designer shall submit to Owner all interim design submissions and revisions required. Such design submissions shall be in the form and quantity called for in the Contract Documents and may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Owner and Designer agree that prior to the scheduled date for submitting all design submissions to Owner, Owner's Representative and Designer will hold meetings for the purpose of discussing and monitoring the design for consistency with the requirements of the Contract Documents, as well as Owner's pricing and other assumptions.

**2.6.2** In accordance with the Contract Documents and the times set forth in the Design Schedule, Designer shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Project. The Construction Documents shall be consistent with the latest set of interim design submissions; as such submissions may have been modified in a design review meeting. Designer shall provide the Construction Documents in the form and quantity called for in the Contract Documents; actual costs for the printing of these submission documents shall be paid for out of the reimbursable cost set forth in Exhibit "A", if available. Designer shall perform agreed upon revisions and submit revised Construction Documents to Owner for Owner's approval.

**2.6.3** Designer shall attend and participate in such meetings as are held between Owner and Designer to discuss interim design submissions and the Construction Documents. If requested, Designer shall identify during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Owner and provided to all attendees for review.

**2.6.4** In addition to the interim design submissions and the Construction Documents, Designer shall, if requested by Owner, prepare interim design submissions and Construction Documents the parties agree are required to permit commencement of construction on a portion of the Project before the entire Construction Documents for the Project are completed.

**2.6.5** Owner's approvals of interim design submissions and the Construction Documents are for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Contract Documents.

**2.6.6** Designer will, at its own cost, revise any interim design submission or the Construction Documents to correct any of its errors, mistakes or omissions. Designer shall also design to a Fixed Design Budget and, at its own cost, make such revisions as are required to achieve such budget, Any and all such revisions required of this paragraph shall be performed timely and so as not to jeopardize the Design Schedule and/or the Project Schedule. The expense of such revisions shall not be charged against the 5% contingency established in section 12.10.2

## **2.7 Construction Phase Services**

**2.7.1** Designer shall assist Owner in preparing bidding documents for specified portions of the Project's construction, and clarifying and responding to questions involving the bidding documents.



- 2.7.2 Designer shall timely provide requested clarifications and interpretations of the Construction Documents (often referred to as "RFI's"), which shall be consistent with the intent of, and reasonably inferable from, the Contract Documents. Designer shall make all revisions to the Construction Documents necessary for the proper construction of the Project. Such revisions will be accomplished at the Designer's expense if and to the extent necessitated by an ambiguity, error or omission of the Designer; all other revisions will be an Additional Service. Responses to RFI's, for whatever reason required shall be timely and shall not cause delays to the approved critical path schedule for the project.
- 2.7.3 Designer shall review and approve such submittals, including shop drawings, product data and samples, as may be required by the Design-Build Agreement or as reasonably required by the Owner. Such review shall be accomplished in accordance with the project schedule within the times for such review provided in the critical path schedule submitted by the Contractor and approved by the owner. The time within which Designer shall review and respond to submittals under will be discussed at the meeting provided in Section 2.1.5, but shall be finally established upon the approval of critical path for the construction of the project. Designer shall expeditiously inform Owner of any revisions that are necessary as a condition to Designer's approval of submittals. Designer's review and approval shall not relieve Contractor of responsibility for construction means and methods, or safety precautions. Except for performance based specification submittals, designer's approval will not apply to a change from the design shown in the Construction Documents unless the change is expressly noted as a change to the Construction Documents by clouding in the submittal.
- 2.7.4 Designer shall review, and if acceptable approve, any substitutions for materials or equipment proposed by Owner.
- 2.7.5 Designer shall, if requested by Owner, review any inspection reports or tests involving the construction of the Project and provide its comments to Owner. Designer is not responsible for the accuracy or completeness of the tests or inspections.
- 2.7.6 Designer shall at appropriate intervals visit the Site to determine in general if the construction is proceeding in accordance with the Construction Documents. Designer shall promptly notify Owner of any defects, deficiencies, deviations, omissions, or violations observed by Designer in the construction of the Project, and make recommendations to Owner on how to proceed. Designer and Designer's consultants shall visit the Site an average of once per month during the period of construction, or more as necessary to perform their professional duties under this Agreement.
- 2.7.7 Designer shall attend meetings with Owner, Contractors, and Consultants to discuss design issues which may arise during construction.
- 2.7.8 Designer shall provide such certifications as may be necessary relative to Substantial Completion.
- 2.7.9 Designer's provision of the Construction Phase Services shall not be construed to make Designer responsible for (i) the acts or omissions of Contractor, or any Sub-Contractors, (ii) the means, methods, sequences, and techniques of construction of the Project or (iii) safety precautions and programs in connection with the construction of the Project. Nothing in this Agreement shall create any duties to or legal or contractual relationship between Designer or any Contractor or Subcontractor. If the Owner authorizes deviations from the documents prepared by the Designer or its Consultants without written agreement of the Designer, the Owner shall indemnify, defend and hold harmless the Designer, its Consultants and their respective agents and employees from and against claims, damages, losses and expenses, arising out of or resulting from such deviations.

## **2.8 Additional Services**

- 2.8.1** Additional Services, if any, agreed upon by the parties shall be compensated as set forth in Exhibit A or in an amendment to this Agreement. Additional Services are those services not specifically described as part of Services in this Agreement. Additional Services include, without limitation, making revisions to documents due to adjustments in the program, project budget, enactment of revisions to codes subsequent to the preparation of such documents and providing services required due to significant changes in the Project including, but not limited to: size, quality, complexity, construction cost, schedule or method of bidding or negotiation and contracting for construction. Additional Services will not include necessary modifications or corrections that were missed or miscalculated by the Designer.

### **Timely Reviews, Approvals and Submittals**

- 3.1.1** Owner shall provide timely reviews and approvals of all interim design submissions and the Construction Documents consistent with the turnaround times set forth in the Design Schedule and the Design-Build Agreement, or as agreed to by the parties at the meeting required under Section 2.1.5 hereof.
- 3.1.2** Owner shall, in the contract for construction, require Contractor to submit timely to Designer all submittals, including shop drawings, product data and samples, for Designer's review and approval consistent with the Project Schedule. Timely submittal means in accordance with the times noted in the submittal schedule included in the project critical path schedule for the project; (Standard two weeks for most submittals with a portion of the submittals required to be processed quicker) times to be agreed upon between Designer, Contractor and Owner when appropriate. Designer will provide a schedule of items to be submitted by Owner for Designer's review.
- 3.1.3** Owner shall provide timely notice to Designer of any delays to the Project caused by Designer.
- 3.1.4** Owner shall provide the following information and materials to Designer, unless otherwise agreed.
- .1** Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
  - .2** Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
  - .3** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Designer to perform the Services;
  - .4** A legal description of the Site;
  - .5** As-built and record drawings of any existing structures at the Site;
  - .6** Environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site;
  - .7** Owner's Project Criteria;
  - .8** Test and Inspection reports.

- 3.4.1** If Designer's performance of the Services are delayed for any reason so as to impact the Design Schedule or the Project Schedule, Designer shall promptly notify Owner in writing of the cause(s) of such delay within sufficient time to permit Owner to provide timely notice to Contractors or Consultants. To the extent the delay is due to any negligent act, error or omission on the part of Designer, Design Consultants, or anyone for whom they are responsible, Designer shall compensate and indemnify Owner for all costs, damages, and expenses arising from such delay. If the delay is caused by Owner or others for whom Owner is responsible, the Designer's Fee and the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of the delay. If the delay is caused by Owner or other causes, the Designer's Fee and the Design Schedule shall be adjusted to compensate Designer for the effects, if any, of the delay if and only to the extent Owner secures such compensation and time from the Owner.

**Section Numbers 3.4.2 through 6.1.0 are purposely omitted from this contract.**

- 6.1.1** Designer's Fee shall be the compensation due Designer for the performance of the Services, including all Design Phase Services, Construction Phase Services, and Additional Services, and for Reimbursable Costs, all as set forth in this Agreement. Unless otherwise provided in the Contract Documents, the Designer's Fee is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

- 6.1.2** Designer will be compensated for the Design Phase Services, Construction Phase Services, Additional Services, if any, and Reimbursable Costs as set forth in Exhibit A.

**6.2 Applications for Payment**

- 6.2.1** Beginning with the first month after the Date of Commencement, Designer shall submit on a monthly basis for Owner's review and approval, Designer's certified Application for Payment requesting payment for all Services performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.5 hereof. Once approved, Owner will submit Designer's Application for Payment to Owner with Design- Builder's next application.

- 6.2.2** The Application for Payment shall constitute Designer's representation that (i) the Services have been performed consistent with the Contract Documents, (ii) the Services have progressed to the point indicated in the Application for Payment, (iii) Design Consultants have been paid all amounts previously received by Designer on account of their services, and (iv) there are no claims, obligations or liens outstanding or unsatisfied for labor, services, taxes, or other items performed, furnished, or incurred for or in connection with the Services.

- 6.2.3** Owner shall make payment on Designer's properly submitted and accurate Application for Payment within thirty (30) days after Owner's receipt of payment from Owner on account of Designer's monthly Application for Payment

At the time Designer submits its final Application for Payment to Owner, Designer shall provide (i) all deliverables required by the Contract Documents; (ii) an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for or in connection with the Services which will in any way affect Owner's or Owner's interests; (iii) a general release executed by Designer waiving, upon receipt of final payment by Designer, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment; and (iv) certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents. Owner shall make payment on Designer's properly submitted and accurate final Application for Payment within thirty (30) days after Owner's receipt of final payment from Owner on account of Designer's final Application for Payment, provided also that Designer has satisfied the requirements for final payment set forth herein.

8.2.1 Designer designates the individual listed below as its Senior Representative ("Designer's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes:

Name: William Valdez  
Title: Vice President, Principal  
Address: 51 University Street, Suite 600  
Seattle WA 98101  
Telephone: (206) 461-6000

9 Designer's Insurance Requirements

9.1.1 Prior to starting the Work, Designer shall procure, maintain and pay for such insurance as will protect against claims for bodily injury or death, or for damage to property (including loss of use) and loss or damage resulting from professional errors and omissions, which may arise out of operations by Designer or by any Design Consultants or by anyone employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall not be less than the greater of coverages and limits of liability specified below, any coverages and limits of liability specified in the Contract Documents or coverages and limits required by law.

9.1.2 Designer shall procure and maintain the following minimum insurance coverages and limits of liability and provide proof of coverage by a Certificate of Insurance and endorsements and specifically name this County Project under the coverage:

Workers' Compensation		Statutory Limits
Employer's Liability	\$1,000,000 each	accident
	\$1,000,000 disease	policy limit
	\$1,000,000 disease	each employee
Commercial General Liability	\$2,000,000 each	occurrence
	\$2,000,000	aggregate (applicable on a per project basis)
Comprehensive Automobile Liability	\$2,000,000 each	accident
Professional Errors and Omissions	\$2,000,000 each	claim
	\$2,000,000 annual	aggregate

Commercial General Liability Insurance required under this paragraph shall be written on an occurrence form (ISO Form CG 00 01 or equivalent) and, shall include coverage for Products/Completed Operations extending six (6) years after final acceptance of the Project by Owner or such longer period as the Contract Documents may require, **Provided, however that such coverage beyond three (3) years after final acceptance is available at a commercially reasonable price.** Owner agrees to compensate Designer for any added costs beyond commercially reasonable prices for the additional three (3) year period provided that Designer provides full and complete information about its insurance program costs and quotations., Broad Form Property Damage including Completed Operations, Personal Injury with Employment Exclusion (if any) deleted, Blanket XCU and Blanket Contractual Liability insurance applicable to Designer's defense and indemnity obligations under Article 10, and other contractual indemnities assumed by Designer under the Contract Documents. Commercial General Liability insurance shall include "stop gap" coverage for work in those states where Workers' Compensation insurance is provided through a state

fund if Employer's liability coverage is not available. Comprehensive Automobile Liability insurance required under this paragraph shall include coverage for all owned, hired and non-owned automobiles. Workers' Compensation coverage shall include a waiver of subrogation against Owner and Owner.

If the required Professional Errors and Omissions insurance is written on a claims made basis, the retroactive date shall be prior to the start of Designer's Work. If insurances are commercially available to obtain, Designer agrees to maintain such coverage for 6 years after final acceptance of the Project by the Owner or such longer period as the Contract Documents may require. Renewal policies during this period shall maintain the same retroactive date.

- 9.1.3** Employer's Liability, Commercial General Liability and Comprehensive Automobile Liability insurance may be arranged under single policies for full minimum limits required, or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy. The general aggregate on the Commercial General Liability coverage shall apply on a project specific basis.
- 9.1.4** Designer shall endorse its Commercial General Liability (including products/completed operations coverage); and Comprehensive Automobile Liability and Umbrella/Excess Liability policies to add Owner, and such other parties as Owner is required under the Contract Documents to name the County, officials, employees and agents as additional insureds on Designer's insurance, as "additional insureds" with respect to liability arising out of (a) operations performed for Owner or Owner's Representative by or for Designer, (b) acts or omissions of Owner or Owner's Representative in connection with their general supervision of operations by or for Designer, (c) Designer's use of Owner's tools and equipment, and (d) claims for bodily injury or death brought against Owner or Owner's Representative by Designer's employees or the employees of Designer's consultants of any tier, however caused, related to the performance of Services under this Agreement. Such insurance afforded to Owner, Owner, and others as additional insureds under Designer's policies shall be primary insurance and not excess over, and Owner's insurance shall be non-contributory. Designer's insurance waives all rights of subrogation.
- 9.1.5** Designer shall require its Design Consultants to procure and maintain, from insurance companies authorized to do business in the state in which the Project is located, the insurance coverages set forth in this Article.
- 9.1.7** Designer shall maintain in effect all insurance coverages required under this Article, or by the other Contract Documents, at Designer's sole expense and with insurance carriers licensed to do business in the State 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 Owner in writing. Deductibles or Self Insured Retention on any policies furnished for this project shall not be more than \$100,000 for each claim.
- 9.1.8** Prior to commencing any services hereunder, Designer shall provide Owner with Certificates and Endorsements evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled. Owner shall have the right to examine any policy required under this Agreement. Copies of the complete insurance policies to be provided under this agreement shall be provided to Owner within seven (7) of the signing of this contract, which includes requests made by email.
- 9.1.9** All insurance policies shall contain a provision that coverages and limits afforded thereunder shall not be canceled, materially changed, non-renewed, or restrictive modifications added, without thirty (30) days prior written notice to Owner. Certificates of Insurance and Endorsements shall be filed with Owner prior to start of Designer's Work. Renewal Certificates and Endorsements shall be provided to Owner not less than ten (10) days prior to the expiration date of any of the required policies. All Certificates of Insurance and Endorsements shall be in a form acceptable to Owner and shall provide satisfactory evidence that

Designer has complied with all insurance requirements. Owner shall not be obligated to review such certificates or other evidence of insurance, or to advise Designer of any deficiencies in such documents, and receipt thereof shall not relieve Designer from, nor be deemed a waiver of Owner's right to enforce, the terms of Designer's obligations hereunder.

**9.1.10** The required minimum limits of insurance indicated above shall not in any way restrict or diminish Designer's liability under this Agreement. Owner's right to recover under insurance provided under this article shall not be limited by other portions of the agreement that limit the liability of any party to the proportion of its relative fault for the purpose of indemnification for certain types of claims.

**9.2 Waiver of Subrogation:** Designer and Designer's insurance waives all rights of subrogation.

**9.2.1** Designer and Owner waive against each other and Design Consultants, Owner's separate Designers, Consultants, Sub-Consultants, agents and employees of each and all of them, all damages covered by Builder's Risk insurance, except such rights as they may have to the proceeds of such insurance. Owner and Designer shall, where appropriate, require similar waivers of subrogation from Design Consultants and Consultants and shall require each of them to include similar waivers in their contracts.

#### **10.1 Patent and Copyright Infringement**

**10.1.1** Designer shall defend any action or proceeding brought against Owner or Owner's Representative based on any claim that the Project, or any part thereof, or the operation or use of the Project or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Designer of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Designer shall indemnify and hold harmless Owner and Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Owner's Representative in any such action or proceeding. Designer agrees to keep Owner informed of all developments in the defense of such actions.

**10.1.2** If Owner is enjoined from the operation or use of the Project, or any part thereof, as the result of any such patent or copyright suit, claim, or proceeding, Designer shall at its sole expense take reasonable steps to procure the Owner's right to operate or use the Project, or applicable part thereof. If Designer cannot so procure such right within a reasonable time, Designer shall promptly, at Designer's option and at Designer's expense, (i) modify the Project, or applicable part thereof, so as to avoid infringement of any patents, or copyrights, or (ii) replace said work with work that does not infringe or violate any such patent or copyright, and is consistent with the Contract Documents.

**10.1.3** Sections 10.1.1 and 10.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner or Owner's Representative and not offered or recommended by Designer to Owner or Owner's Representative; or (ii) arising from modifications to the Project by Owner or Owner's Representative after acceptance of the Project. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Designer to the same extent Designer is obligated to defend, indemnify and hold harmless Owner in Section 10.1 . 1 above.

**10.1.4** The obligations set forth in this Section 10.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or

**11.1 Designer's General Indemnification Responsibilities**

**11.2.1 Indemnification by Designer.** To the fullest extent permitted by law, the Designer 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 which 1) are caused in whole or in part by the negligent act or omission, of the Designer its employees, agents or volunteers or Designer's subcontractors or consultants 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 Designer or its subcontractors' or consultants' use of, presence upon or proximity to the property of the County. In the event of the concurrent negligence of the Designer, its subcontractors, consultants', employees or agents, and the County, its employees or agents, this indemnification obligation of the Owner shall be valid and enforceable only to the extent of the negligence of the Designer, its subcontractors, consultants', employees and agents.

If Whatcom County is required to resort to litigation or arbitration to enforce Designer's Indemnification and Defense obligations it shall be entitled to recover its reasonable costs of establishing its right to indemnity including but not limited to all costs, expenses, arbitration filing fees, arbitrator's fees, and attorney fees.

This indemnification obligation of the Designer 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 Designer hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the Designer are a material inducement to County to enter into this Agreement, are reflected in the Designer's compensation, and have been mutually negotiated by the parties.

  
DLR Group

  
Whatcom County

**Participation by County - No Waiver.** 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 Designer's indemnity obligations under this Agreement.

**Survival of Designer's Indemnity Obligations.** The Designer agrees all Designer's indemnity obligations shall survive the completion, expiration or termination of this Agreement.

**Indemnity by Subcontractors.** In the event the Designer enters into subcontracts to the extent allowed under this Agreement, the Designer's subcontractors shall indemnify the County on a basis equal to or exceeding Designer's indemnity obligations to the County and subcontractors shall provide proof of insurance verifying this condition.

**11.2.2** If an employee of Designer, anyone employed directly or indirectly by Designer or anyone for whose acts any of them may be liable has a claim against any party indemnified pursuant to Section 11.2.1 above, Designer's indemnity obligation set forth in Section 11.2.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Designer, or other entity under any employee benefit acts, including workers' compensation or disability acts.

**11.2.3** Designer agrees to procure, maintain and pay for such general liability insurance coverage and endorsements as will insure the provisions for this paragraph.

**11.6 Duty to Continue Performance**

**11.6.1** Unless provided to the contrary in the Contract Documents, Designer shall continue to perform the Services and Owner shall continue to satisfy its payment obligations to Designer, pending the final resolution of any dispute or disagreement between Owner and Designer.

**11.7** Owner Design and Construction Contingency. Owner shall establish a contingency amount equal to Three Per Cent (3%) of the construction contract amount between Owner and Contractor for the project. This contingency shall be part of the contract sum between Owner and Contractor. This contingency may be expended, at the sole discretion of Owner, on (1) Unknown or changed conditions, (2) design clarifications or modifications, (3) Contractor claims, including correction of work because of design errors, ambiguities, omissions. (4) changes required because of Requests for Information (RFI's). (5) cost overruns in construction. **Provided** that such contingency shall not be used by reason of any correction or amendment of Designer-Created documents for the project as part of the design or bidding process, but rather only after the owner has executed a Construction agreement with the Contractor.

**12.1 Assignment**

**12.1.1** Neither Designer nor Owner shall, without the written consent of the other, assign, transfer or sublet any portion or part of the Services or the obligations required by the Contract Documents.

**12.2 Successorship**

**12.2.1** Owner and Designer intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

**12.3 Governing Law, Venue**

**12.3.1** This Agreement and all Contract Documents shall be governed by the laws of the State of Washington.

**12.3.2** The Venue of any action in court or of any alternative disputes procedures, including, but not limited to arbitration proceedings, if any shall be in Whatcom County, Washington.

**12.4 Severability**

**12.4.1** If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements or court order, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

**12.5.1** The failure of either Owner or Designer to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.



## **12.6 Headings**

**12.6.1** The headings used in this Agreement or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

## **12.7 Notice**

**12.7.1** Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in this Agreement or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the number of the intended recipient.

## **12.8 Amendments**

**12.8.1** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

## **12.9 Survival**

**12.9.1** Designer's obligations under this Agreement shall not be released, and shall specifically survive, the completion of all Services hereunder, final payment to Designer, and the termination of this Agreement for any reason.

## **12.10 No Release of Information for Advertising and Promotion**

**12.10.1** Designer shall not publish, release, disclose or announce to any member of the public, press, official body or any other third party any information concerning this Agreement, or any part thereof, without the prior written consent of Owner and/or Owner's Representative, except as required by law. Neither the names of Owner or Owner's Representative, nor of the site, shall be used in any advertising or other promotional context by Designer without the prior written consent of Owner and/or Owner's Representative.

**2 Design Contingency.** It is understood and agreed that the nature of the design process is such that plans, specifications and other documentation prepared by or related services performed by Designer under this agreement will contain errors, omissions, conflicts, ambiguities or design uncertainties requiring clarifications, corrections or modification. Accordingly, the Owner agrees to establish a design contingency equal to 2% of the cost of the work in addition to the construction contingency provided in section 11.7. Such design contingency shall be utilized for the cost attributed to errors, omissions, conflicts, ambiguities or design uncertainties, excluding any improvements or betterment costs implemented by the Owner. Costs incurred by the Owner, excluding any improvements or betterment cost, in excess of this design contingency shall be the responsibility of Designer, but only to the extent caused by the Designer and its SubConsultants, negligent acts, errors, or omissions in the performance of services under this agreement. Any cost over the 2% contingency for negligent errors, omissions, conflicts, ambiguities or design uncertainties requiring clarifications, corrections or modification will be paid by Designer.

### **12.11.1 Termination for Default:**

If the Designer 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 Designer 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 Designer'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 Designer 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 Designer. The Designer 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.

**12.11.2 Termination for Reduction in Funding: Not Applicable**

**12.11.3 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 Designer shall be entitled to payment for actual work acceptably performed for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, and shall be based upon the Designer's provable costs directly allocable to this contract, 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. If any termination for cause is determined by any forum to have been wrongful, in that case it shall be converted to a termination for Public Convenience and Designer shall be compensated under the terms of this Section.

***Series 20-29: Provisions Related to Consideration and Payments***

**20.1 Accounting and Payment for Designer Services:**

Payment to the Designer 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 Designer for any costs or expenses incurred by the Designer in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Designer, 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 Designer understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Designer authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Designer 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 Designer to make the necessary estimated tax payments throughout the year, if any, and the Designer is solely liable for any tax obligation arising from the Designer's performance of this Agreement. The Designer hereby agrees to indemnify the County against any demand to pay taxes arising from the Designer'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 Designer must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Designer'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 Designer 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 Designer 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 Designer to termination or damages, provided that the County promptly gives notice in writing to the Designer 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 Designer 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 Designer 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 Designer, (3) to set off any amount so paid or incurred from amounts due or to become due the Designer. In the event the Designer obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Designer by reason of good faith withholding by the County under this clause.

**23.1 Labor Standards:**

The Designer agrees to comply with state and federal requirements, as applicable, 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 Designer:**

The Designer's services shall be furnished by the Designer as an independent Designer, 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 Designer as an independent Designer.

The Designer acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Designer 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 Designer 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.

Designer 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 Designer. 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.

**31.1 Ownership of Items Produced:**

When the Designer creates any copyrightable materials or invents any patentable property, the Designer 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. Designer further agrees to make research, notes, and other work products produced in the performance of this Agreement available to the County upon request.

**32.1 Confidentiality:**

The Designer, its employees, SubConsultants, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Designer 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. Designer shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Designer 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 Designer'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 Designer 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. Designer 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 Designer, then the Designer agrees to notify the Administrative Officer as soon as it is practical.

**34.2 Industrial Insurance Waiver:**

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

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

**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 Designer 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 Designer is governed by such laws, the Designer 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, sexual orientation, age, marital status, 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 Designer 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 Consultant, provided that the foregoing provision shall not apply to contracts or Consultants for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

**35.2 Non-Discrimination in Client Services: Not Applicable**

**36.1 Waiver of Noncompetition: Not Applicable**

**36.2 Conflict of Interest:**

If at any time prior to commencement of, or during the term of this Agreement, Designer 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 Designer 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 Designer 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 Designer 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 Designer 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 Russell, Facilities Manager  
Whatcom County Facilities Management  
316 Lottie Street  
Bellingham, WA 98225  
(360) 676-6746

**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 Designer to the County's Administrative Officer under this Agreement. Notice to the Designer for all purposes under this Agreement shall be given to the address provided by the Designer herein above in the "Designer Information" section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

***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 Designer Commitments, Warranties and Representations:** Not Applicable

**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: consultant**

a. General:

All disputes or differences between the Designer and the County, arising under or related to this agreement or any additional services, 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 Designer 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 Designer 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 Designer 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. Designer 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 Designer 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 Designer 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 and all claims, 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 then current American Arbitration Association (AAA) Construction Industry rules in effect on the date hereof, as modified by this Agreement. The parties may elect to provide for administration of the arbitration by other than the AAA. 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 Washington State substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, including expenses, costs and attorney fees to the prevailing party and pre-award interest, if provided by statute but shall not have the power to award punitive damages. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in the Superior Court for the State of Washington, in Whatcom County. 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 or be considered a condition precedent to arbitration.

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

**43.1 Venue and Choice of Law:**

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

**44.1 Survival:**

The provisions of paragraphs 11.1, 11.2, 11.3 , 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

**45.1 Entire Agreement:**

*This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.*



**EXHIBIT A**  
**SCOPE OF WORK**

The scope of services for the requested authorized modifications is for the portion of professional services through schematic design inclusive of the CUP for EPF permitting process only. It is anticipated that once the project is funded following a successful August 2015 funding election that the balance of professional services will be authorized.

Based on the CUP for EPF application checklist and the permitting meeting (May 22, 2014) with the City of Ferndale the following is the understanding of the scope of work:

1. Schematic Design Process and Stakeholder Meetings to a level of effort (Roughly 60% Schematic Design) that allows for the development of a singular design concept and solution. Scope of the Schematic Design Services is outlined in the following section.
2. This portion of the Schematic Design Process results in the following permit applications that will be completed and submitted to the authorities having jurisdiction (AHJ) by A/E with the assistance of Whatcom County:
  - a. Master Application
  - b. CUP for EPF
  - c. Eagle Compliance Check List (As stipulated in the CUP for EPF)
  - d. Encroachment Permit Application
  - e. Planning Application
  - f. Shoreline Management Application
  - g. Site Plan Application
  - h. Civil Plan Applications
    - i. Sanitary Sewer Application – Ferndale
    - ii. Storm Sewer Application – Ferndale
    - iii. Water Application – Ferndale
    - iv. Wetland Mitigation – Ferndale & USACE
3. Stakeholder meetings, executive team meetings, design team meetings, Council presentations and public meetings as needed as a course of the schematic design process and permit applications stated above.
4. Schematic Design Cost Estimates of MACC (Maximum Allowed Construction Cost) and Whole Project Cost of the singular design solution to confirm the project is on Budget
5. Development of Project Schedule inclusive of public funding process
6. Provide public outreach and support including schematic design graphics, coordination with public outreach committee, and attend public presentations.
7. Traffic Consultant
8. Site Survey
9. Geotechnical Engineering – Infiltration & Groundwater Testing, Preload Requirements, Soil Bearing Properties.
10. Geotechnical Engineering – Geothermal Conductivity Analysis.

Contract for Services Agreement  
DLR Group – Design Services Conditional Use Permitting

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#### **Schematic Design Services**

In the Schematic Design Phase, the Architect/Engineer (A/E) provides those services necessary to prepare Schematic Design Documents consisting of drawings and other documents illustrating the general scope, scale, and relationship of project components for approval by the agency. Design should be conceptual in character, based on the requirements developed during the Predesign Phase, approved by the agency, or program requirements provided by the agency and reviewed and agreed upon by the A/E. Schematic Design includes the following:

#### **Project Administration**

Services consisting of schematic design administrative functions including consultation, meetings and correspondence, and progress design review conferences.

#### **Disciplines Coordination**

Coordination between the architectural work and engineering work and other involved consultants for the project. When specialty consultants are used, additional coordination beyond basic services may be required and negotiated for appropriate phases of the work.

#### **Document Checking**

Review and coordination of project documents

#### **Consulting Permitting Authority**

Consultations, research of critical applicable regulations, preparation of written and graphic explanatory materials. The services apply to applicable laws, statutes, regulations and codes.

#### **Data Coordination User Agency**

Review and coordination of data furnished for the project by the agency

#### **Architectural Design**

Services responding to scope of work (program /predesign) requirements and consisting of preparation of conceptual site and building plans, schematic sections and elevations, preliminary selection of buildings systems and materials, development of approximate dimensions, areas and volumes.

#### **Structural Design**

Services consisting of recommendations regarding basic structural material and systems, analysis, and development of conceptual design solutions.

#### **Mechanical Design**

Services consisting of consideration for alternate materials, systems and equipment, and development of conceptual design solutions for energy sources/conservation, heating, ventilating and air conditioning (HVAC), plumbing, fire protection, and general space requirements.

#### **Electrical Design**

Services consisting of consideration of alternate systems, recommendations regarding basic electrical materials, systems and equipment, analysis, and development of conceptual design solutions for power service and distribution, lighting, communication raceways, fire detection and alarms, and general space requirements.

#### **Civil/Site Design**

Services consisting of site planning including layout of site features, building position, preliminary grading, location of paving for walkways, driveways and parking, and fencing locations. Also included are the normal connections required to service the building such as water, drainage, and sanitary systems, if applicable.

#### Civil and Site Development

- All permit applications will be prepared by the Design Team. The OWNER will develop the actual permit application and required reports and pay all permit processing fees. This is inclusive of the Conditional Use Permit for Essential Public Facility siting process, and City Planning permit.
  - Identify local stormwater control agency, document restrictions as they pertain to the proposed project, define permitting requirements; identify any local public work standards as they pertain to roads, stormwater, sewer etc.; any local restriction regarding dust control, demolition, construction traffic/noise, excess earthwork disposal, any existing floodplain restrictions, etc.
  - Civil Engineers will confirm adequacy of topographical and boundary mapping provided by surveyors. A/E team will evaluate legal, ownership, permitting and zoning constraints. Identify environmentally sensitive areas such as wetlands, flood plains, known hazardous waste areas, etc.
  - Develop and validate site layout. This will include activities such as: (1) determine structure size, locations, and orientation; (2) layout roadways/truck access corridors and define maneuvering requirements (design vehicle); (3) size and locate parking lots for employees and visitors to the facility; (4) determine emergency vehicle access requirements. (5) evaluate flood plain impacts and constraints; (6) local stormwater management facilities (GSI and LID) (7) locate utility, piping, and duct bank (electrical, communications, and fiber) corridors (horizontal and vertical).
  - Civil Engineers will coordinate with surveyors; define surveyors' scope of work; coordinate with geotechnical engineers on additional boring locations; record boring locations on site drawings.
  - Develop preliminary erosion control plan for project. Determine if erosion control ponds are required; locate ponds on site plan drawings as required. Prepare preliminary storm water calculations suitable for submission to local site permitting authorities. Develop preliminary storm water control concepts (swales, curb and gutter). Meet with local storm water and erosion and sediment control agency to determine permitting requirements for site plans, and impact of requirements on preparation of contract documents. Document findings.
  - Set preliminary finished floor levels for new structures. Establish preliminary finished grades; overall major surfaces, road profiles, etc. Iterate preliminary surfaces and structures to optimize earthwork if necessary.
  - Perform preliminary sizing calculations
  - Prepare a list of required technical specification.
  - Perform ongoing design coordination with other design disciplines.
  - Perform quantity take-offs of civil elements for inclusion in the schematic design cost estimate.
  - Review and revise LEED and EAGLE checklist.
  - Review concepts and draft work products with and seek approval from quality control reviewer.
- #### Offsite Civil Schematic Design
- Develop preliminary erosion control plan for offsite work
  - Develop LaBounty Road frontage improvements, channelization, and paving sections
  - Perform ongoing design coordination with other design disciplines.

- Perform quantity take-offs of civil elements for inclusion in the schematic design cost estimate
  - Review concepts and draft work products with and seek approval from quality control reviewer.
  - Wetland Mitigation and Remediation. Provide mitigation and planning and design services to compensate for up to 3 acres of unavoidable impact sot wetlands.
- Design Field Surveying:**
- Design Field Surveying , Topographic Surveys, Property Boundary and Right of Way Surveys, Offsite Survey Support, Basemap and Design Plan Production.

**Cost Estimating**

Services consisting of development of a probably construction cost from quantity surveys and unit costs of building elements for the project. Costs shall reflect the level of design elements presented in the Schematic Design documents, plus appropriate design contingencies to encompass unidentified scope ultimately included in the program. Assist user agency with analyzing scope, schedule, and budget options to stay within the MACC.

**Presentations**

Service consisting of appropriate presentation(s) of the CUP for EPF documents by the A/E to agency representatives.

**Materials Research**

Services consisting of identification of potential of architectural materials, systems, and equipment as required by the CUP for EPF application process.

**Scheduling**

Services consisting of reviewing and updating previously established project schedules or initial development of schedules for decision-making, design and documentation.

**Public Outreach**

Provide public outreach and support on an as needed hourly not to exceed basis. Scope of services will accommodate approximately 500 man hours to public outreach expertise and support services.

- Assistance in developing a coordinated message and developing graphics to support the message. Graphics include images of existing facilities that illustrate intent of the Whatcom County Jail, and rendering of the facility on a site.
- Perform 3<sup>rd</sup> party community polling of the community issues
- Anticipate attending 2 Council meetings as part of the development of the community outreach process
- Anticipate attending 6 public outreach steering committee meetings as part of the development of the community outreach process.
- Supporting the public outreach steering committee in developing materials for presentations and mailers.
- Participate as a technical resource to the County for presentations to support organizations and public information meetings as part of the communication plan.

**EXHIBIT B  
(COMPENSATION)**

As consideration for the services provided pursuant to Exhibit A, Scope of work allowable expenses, the county agrees to compensate the Designer according to the fee schedule provided. Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed. Mileage at IRS rate, lodging and per diem at a rate not to exceed the GSA rate for location where services were provided. 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. Other expenditures such as printing, postage and telephone charges shall be reimbursed at actual cost plus 10%. 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 Designer's expense.

The Contract Number, set forth, shall be included on all billings or correspondence in connection therewith. The Consultant may bill the County progressively not more than once per month (30 days). Progressive billings will be for the amount of work complete.

		<b>SD Phase - CUP for EFP ONLY</b>	<b>Remaining DS to PC Phase (if approved)</b>
1	Space Programming and Pre-Design Services (Completed)	\$0	\$0
2	Design Project Administration & Project Management Fee	\$33,595	\$397,097
3	Architectural Design Fee	\$134,376	\$1,588,388
4	Structural Engineering Design Fee	\$53,750	\$635,355
5	Mechanical Engineering Design Fee	\$80,625	\$953,033
6	Electrical Engineering Design Fee	\$33,594	\$397,097
7	"Engineers" Cost Estimating Services for EPF Process	Included	N/A
8	Cost Estimating Services (SD, DD& CD Phases) includes VE & Bid Assistance	\$0	\$119,000
9	Life Cycle Analysis	\$0	\$40,000
10	On Site CA Phase Representation (Basic Services includes Bi-monthly. Addition Services would result in weekly)	N/A	\$93,600
11	Renderings & Models	Included	Included
12	Interiors, Furnishings, FF&E, U.S. Communities Program (Design & Purchasing Schedule Only)	\$0	\$276,000
13	Detention & Courts Electronic Systems & Security Design	\$4,000	\$456,000
14	Kitchen & Laundry Consulting Design Services	\$0	\$49,400
15	Participation in Commissioning, Program Managed by Others	\$0	\$80,000
16	LEED Certification Documentation Process	\$10,000	\$90,000
17	Civic Engineering Consultant; Wetlands, On-Site & Partial Off-Site CUP for EFP includes Task 2, 3, & 7.1, 7.2, & 7.3	\$136,707	\$534,950
18	Landscape, Hardscape, Community Integration Consultant	\$61,510	\$323,071
19	Traffic Consulting	\$7,500	\$0
20	Civil Engineering Consultant; Site Survey - Task 8	\$43,142	\$0
21	Geotechnical Engineering - Infiltration & groundwater testing, Preload Requirements, Soil Bearing Properties	\$77,185	\$0
22	Geotechnical Engineering - Geothermal Conductivity Analysis	\$35,313	\$0
	<b>Subtotal Professional Lump Sum Services</b>	<b>\$711,297</b>	<b>\$6,032,990</b>
23	Reimbursable Costs, Design Printing, Mailing. Note: Bid set printing is by Owner	\$28,452	\$241,320

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24	Public Outreach – As Needed Hourly, Not to Exceed	\$86,138	\$0
<b>Services by Others, not included in DLR Group contract scope unless designated to (continued):</b>			
25	Independent Commissioning Agent (Owner's consultant)		
26	LEED Certification Fee (Owner project cost)		
27	Interior Furnishings, FF&E, U.S. Communities Program (Purchasing & Installation by Owner)		
28	Testing and Balancing (Owner project cost)		
29	Hazardous Materials Study & Abatement (Owner project cost)		
30	Preload Monitoring (Owner project cost)		
31	Materials Testing (Owner project cost)		
32	Roofing Consultant (Owner project cost)		
	<b>Grand Total Design Services - This Contract</b>	<b>\$825,887</b>	<b>\$6,274,310</b>

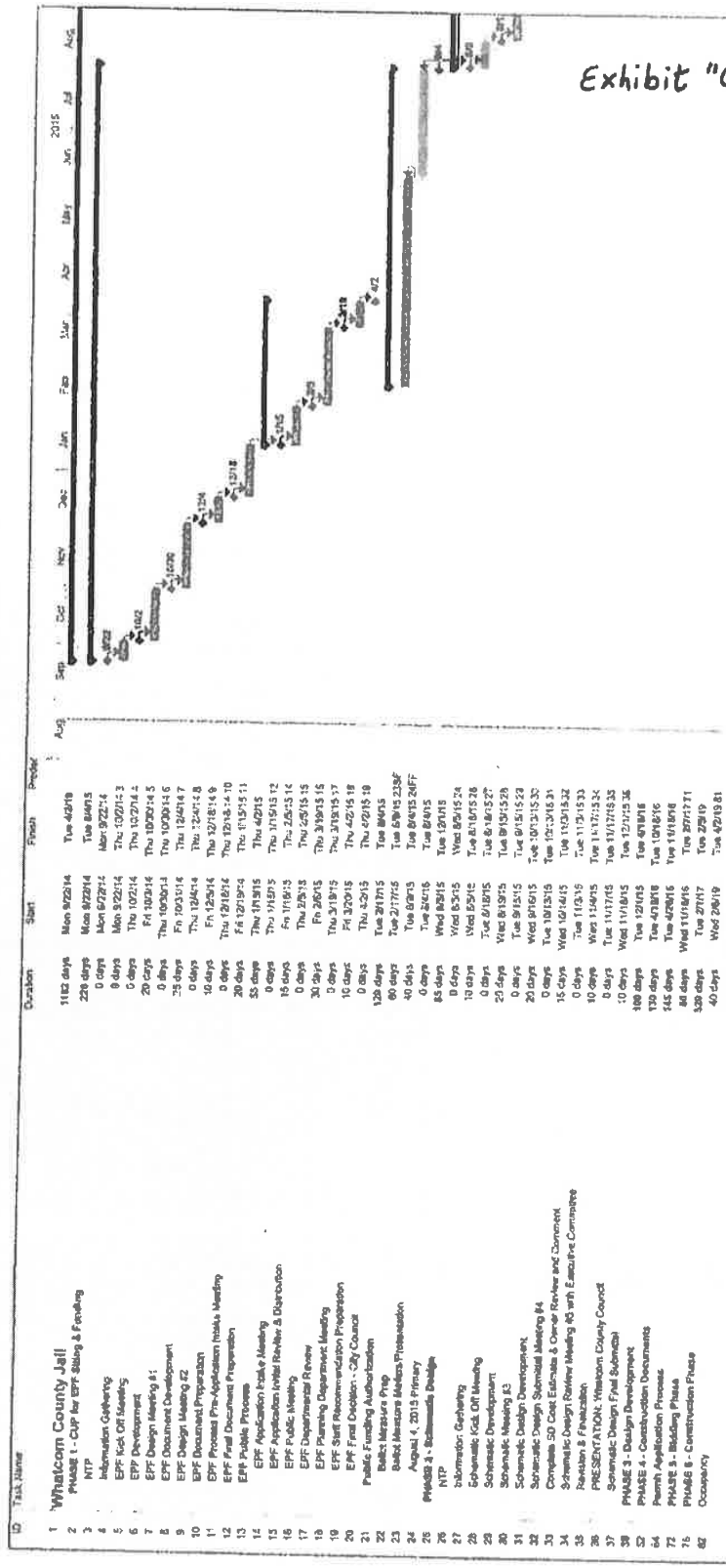


Exhibit "C"

ID	Task Name	Duration	Start	Finish	Project
1	Whatcom County Jail	1182 days	Mon 8/25/14	Tue 4/29/16	
2	PHASE 1 - CUP for EPP Siting & Fencing	228 days	Mon 8/25/14	Tue 8/18/15	
3	NTP	0 days	Mon 8/25/14	Mon 8/25/14	
4	Information Gathering	0 days	Mon 8/25/14	Mon 8/25/14	
5	EPP Kick Off Meeting	0 days	Mon 8/25/14	Mon 8/25/14	
6	EPP Development	0 days	Mon 8/25/14	Mon 8/25/14	
7	EPP Design Meeting #1	20 days	Fri 10/24/14	Thu 10/24/14	
8	EPP Document Development	0 days	Fri 10/24/14	Fri 10/24/14	
9	EPP Design Meeting #2	28 days	Fri 10/24/14	Thu 11/19/14	
10	EPP Document Preparation	10 days	Fri 12/18/14	Thu 12/18/14	
11	EPP Process Pre-Application Intake Meeting	20 days	Fri 12/18/14	Thu 1/15/15	
12	EPP Final Document Preparation	35 days	Fri 12/18/14	Thu 1/15/15	
13	EPP Public Process	0 days	Fri 12/18/14	Fri 12/18/14	
14	EPP Application Intake Meeting	10 days	Fri 1/16/15	Thu 1/15/15	
15	EPP Application Initial Review & Discussion	0 days	Fri 1/16/15	Fri 1/16/15	
16	EPP Public Meeting	0 days	Fri 1/16/15	Fri 1/16/15	
17	EPP Departmental Review	31 days	Fri 1/16/15	Thu 2/12/15	
18	EPP Planning Department Meeting	0 days	Fri 1/16/15	Fri 1/16/15	
19	EPP Staff Recommendation Preparation	10 days	Fri 1/16/15	Thu 2/12/15	
20	EPP Final Decision - City Council	10 days	Fri 1/16/15	Thu 2/12/15	
21	Public Funding Authorization	10 days	Fri 1/16/15	Thu 2/12/15	
22	Public Meetings Prep	10 days	Fri 1/16/15	Thu 2/12/15	
23	Public Meetings Meetings Presentation	10 days	Fri 1/16/15	Thu 2/12/15	
24	August 4, 2015 Primary Meeting #1 - Schematics Design	85 days	Fri 1/16/15	Thu 4/10/15	
25	NTP	10 days	Fri 1/16/15	Thu 2/12/15	
26	Submittal/Designing	10 days	Fri 1/16/15	Thu 2/12/15	
27	Schematic Kick Off Meeting	0 days	Fri 1/16/15	Fri 1/16/15	
28	Schematic Development	0 days	Fri 1/16/15	Fri 1/16/15	
29	Schematic Meeting #3	20 days	Fri 1/16/15	Thu 2/12/15	
30	Schematic Design Development	20 days	Fri 1/16/15	Thu 2/12/15	
31	Schematic Design Submittal Meeting #4	15 days	Fri 1/16/15	Thu 2/12/15	
32	Concepts 3D Cost Estimate & Owner Review and Comment	0 days	Fri 1/16/15	Fri 1/16/15	
33	Schematic Design Review Meeting #5 with Executive Committee Review & Finalization	10 days	Fri 1/16/15	Thu 2/12/15	
34	PRESENTATION: Wisconsin County Council	0 days	Fri 1/16/15	Fri 1/16/15	
35	Schematic Design Final Submittal	10 days	Fri 1/16/15	Thu 2/12/15	
36	PHASE 3 - Design Development	130 days	Fri 1/16/15	Thu 4/10/15	
37	PHASE 4 - Construction Documents	145 days	Fri 1/16/15	Thu 4/10/15	
38	Phase 4 - Construction Process	80 days	Fri 1/16/15	Thu 4/10/15	
39	PHASE 5 - Building Phase	320 days	Fri 1/16/15	Thu 4/10/15	
40	PHASE 6 - Construction Phase	40 days	Fri 1/16/15	Thu 4/10/15	
41	Occupancy	0 days	Fri 1/16/15	Fri 1/16/15	

# EXHIBIT H



**Cities and County reach agreement**

# Jail overcrowding prompts call for new county facility

**L**ike independent nations united to fight a common enemy, county and city leaders have joined forces to address the realities of a growing inmate population in Skagit County. On August 6, they will ask the voters of this region to finance a public safety initiative focused on the need for a new county jail.

After years of increasing stress on the public safety system in Skagit County, the decision was made in July 2012 to establish the Skagit County Public Safety Jail Coordinating Council.

That council, comprised primarily of elected public officials, represented Skagit County communities with voting members including three mayors, one county commissioner, two judges, one city supervisor and the county sheriff (see membership list, page 2).

After 10 months of study and deliberations, members of the council unanimously agreed on the need for a new county jail.

That proposal is dependent on a three-tenths of 1 percent increase of the sales tax in Skagit County – an increase that requires the approval of voters on the August 6, 2013 ballot.

Elected leaders and law enforcement officials endorse this plan as vital to the safety of this county’s residents. Facts compiled by Skagit County and the Public Safety Jail Coordinating Council in anticipation of this ballot proposal are included on the pages of this publication.

Skagit County Commissioner Ken Dahlstedt, who

represented the Board of Commissioners on the Council, expressed his thanks to those whose work led to the recommendation to build a new jail.

“We are grateful for the significant contributions made by Council members,” said Dahlstedt. “Our



**Law enforcement leaders from Skagit County meet on a monthly basis. At their May session, discussion included the importance of a new facility to replace the 30-year-old Skagit County Jail. Pictured above are (left to right) Sheriff Will Reichardt, Sedro-Woolley Police Chief Doug Wood, Anacortes Police Chief Bonnie Bowers, Burlington Police Chief Bill VanWieringen and Mount Vernon Police Chief Jerry Dodd. See statements, page eight.**

deliberations sometimes reflected the desire to protect the interests of specific constituencies, and we still have some details to hash out in coming months. But in the end everyone agreed to a course of action intended to protect public safety in all corners of Skagit County, rural and municipal.”

**Why a new jail?**



Cities in Skagit County do not operate municipal jails, in keeping with a 1980 agreement mandated before granting \$6.4 million in state funds to build the existing Skagit County Jail. By law, Skagit County is required to accept into the county jail all accused/convicted felons whose cases originate in local municipalities.



In the first few years following the opening of the current Skagit County Jail in 1984, approximately 2,500 inmates were booked each year. By 2004, that number had grown to more than 6,000 inmates per year. In the last 30 years, the Skagit County Jail has experienced a 240 percent increase in the average daily population.



The current jail was built in 1984 to house 83 inmates (\$6.4 million in state funds, \$800,000 in county funds to meet local needs including an increase in the number of single cells). It was expanded in 1991 to 160 beds; again in 2002 to 180 beds.

The daily average jail population today (on-site inmates) is 200, a fact that translates to serious staffing challenges and safety issues both inside and outside the jail.

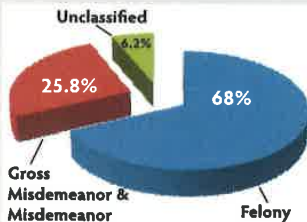


Jail overcrowding creates a “shell game” scenario, both inside the Skagit County Jail and between this facility and Snohomish County Jail. Due to severely limited space, Skagit County has been forced to contract the services of Snohomish County to house an average of 25 inmates (up from 15 in 2012). This alternative is costly in terms of “outsourcing” fees and transportation costs associated with moving individuals back and forth between the distant jail and the local court system.



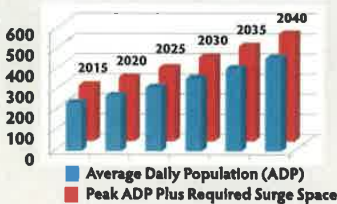
### Statistics tell the story

Average Inmate Population Primarily Arrested or Convicted of Serious Crimes



Nine out of 10 inmates in the most seriously crowded section of the Skagit County Jail (North End males) fall into the felon category. The vast majority of inmates have been arrested or convicted of serious crimes, resulting in sentences of more than 30 days. At one point last spring the Skagit County Jail housed 13 people charged with homicide. Only one in four inmates is serving a short term sentence. "Unclassified" offenses include "holds" for the state Department of Corrections, other county felony warrants and federal agencies.

Average Daily Population Projections, 2015 - 2040



### Members of the Skagit County Public Safety Jail Coordinating Council

- |                            |                |
|----------------------------|----------------|
| Mayor Dean Maxwell         | Anacortes      |
| Mayor Steve Sexton         | Burlington     |
| Mayor Jill Boudreau        | Mount Vernon   |
| Supervisor Eron Berg       | Sedro-Woolley  |
| Sheriff Will Reichardt     | Skagit County  |
| Commissioner Ken Dahlstedt | Skagit County  |
| Judge Michael Rickert      | Superior Court |
| Judge David Svaren         | District Court |

## Local leaders unanimous in call for new county jail

Today's issues of law and justice are complex, but local leaders unanimously agree that a new Skagit County jail is vital to the goal of protecting law abiding residents, their families and properties.

In recent months Skagit County Commissioners and the mayors of Anacortes, Burlington, Mount Vernon and Sedro-Woolley have conducted a series of discussions regarding a state provision to utilize sales tax to fund public safety/police and fire protection services.

In turn, mayors and city council members have conducted public meetings regarding the proposal to ask voters to approve a three-tenths of 1 percent sales tax increase on the August 6, 2013 ballot. Each city has also deliberated over possible use of sales tax funds in excess of those committed to construction and operation of a new Skagit County Jail.

Prior to a deadline on August 6 ballot proposals, all four mayors of Skagit County's largest cities endorsed a provisional agreement with the Skagit County Board of Commissioners. At the local level, city council members also gave unanimous support to the proposal (Among

four councils: 27 "yes" votes, 0 "no" votes).

Under terms of the provisional agreement among Skagit County and cities, a "bed rate" for County Jail services will be eliminated, and some cities will also receive funds from the Public Safety Sales Tax fund for consideration in funding staff, services and equipment in police and fire departments.



Skagit County Commissioners Sharon Dillon, Ken Dahlstedt and Ron Wesen recently approved a provisional agreement to build and operate a new county jail.

## Deficient county jail facility compromises entire system

Sheriff Will Reichardt has spent his entire law enforcement career in Skagit County. Over the years he worked his way up through the ranks, serving as Chief Criminal Deputy before being elected sheriff in 2010.

"As a new deputy in Skagit County in 1984, I began my career working in the newly opened Skagit County Jail," Reichardt recalls. "At the time it seemed as though it would last forever and we could never possibly fill it up. Unfortunately that was almost 30 years ago. The reality is that the jail began having 'growing pains' in the mid-1990s and by early 2000s we were seriously overcrowded."

"Today," the sheriff continued, "the jail is routinely housing mostly felons at numbers that compromise safety to inmates and staff alike. The need for a new jail is critical. It is no longer acceptable to delay implementing this long overdue solution to this crisis."

"Every day as Skagit County Sheriff, I see the work being done by the officers and deputies 'on the street' solving crimes and making our community safer," said Reichardt. "Unfortunately, they are often left with no place to incarcerate these individuals."

"I also see our judges, prosecutors and probation officers trying to hold criminals accountable," he said. "But with no room in the jail they are often forced to make decisions based less on justice and more on what an outdated, overcrowded jail can handle."

Reichardt terms the jail "a critical component of the justice system," adding: "When it ceases to function efficiently, the entire system is compromised."

"Skagit County has always been a community that prides itself on compassion and tolerance," Reichardt concluded. "We expect civility and will hold those accountable who don't respect the law. A new jail with room to hold those needing to be incarcerated and room to provide programming for those receptive to treatment as they pay their debt to society is in keeping with the vision for Skagit County that I believe we all share."



Sheriff Reichardt



Female inmates are housed in two 'dorm settings' including this space formerly used as an indoor recreational yard.



Jail security technology is outdated.

## Scenes from inside the Skagit County Jail



Male inmates are in most cases housed three to a cell.



The jail booking area is a 'pinch point,' often overcrowded due to multiple requirements for the space.

### The Ballot Proposal

#### Skagit County Proposition No. 1 Sales and Use Tax for Jail Facilities and Police and Fire Protection

The Skagit County Board of County Commissioners has adopted Resolution No. R20130102 concerning a sales and use tax pursuant to RCW 82.14.450. If approved, this proposition would authorize an additional sales and use tax at a rate of 0.3 percent to be used for the construction, maintenance and operation of jail facilities and police and fire protection. Should this proposition be:

Approved \_\_\_\_\_  
Rejected \_\_\_\_\_

The proposed Public Safety sales tax increase that will appear on the August 6, 2013 ballot is three-tenths of 1 percent, or three cents on a \$10 purchase. Exemptions from this sales tax are: retail sale of motor vehicles, and lease of motor vehicles up to the first 36 months.

□□□  
Funds from this sales tax will be utilized by cities for a variety of Public Safety services, ranging from law enforcement to fire and emergency services. Under terms of the agreement, city "bed rates" for jail services will be eliminated.

□□□  
Funds to Skagit County will be applied to construction of a new, \$60 million facility that would house a 400-inmate jail plus a space for legal activities including court arraignments. Sales tax revenue will also fund maintenance and operation of the jail.

□□□  
Contributors to the Public Safety sales tax fund will include Canadian shoppers and U.S. shoppers from outside Skagit County.

#### Sales tax rates from Puget Sound region

Belleuve	.095
Bellingham	.087
Everett	.092
Oak Harbor	.087
Port Townsend	.090
Seattle	.095
Tacoma	.095
Anacortes	.082
Burlington	.082
Mount Vernon	.082
Sedro-Woolley	.083
Skagit County	.082





Mayors on Public Safety

Mount Vernon

Mayor Jill Boudreau notes: "Public safety is a priority for the City of Mount Vernon. Years of overcrowding in the Skagit County Jail have left us vulnerable to the criminal element of our society. Funding public safety needs continues to be a challenge for both cities and counties in the State of Washington. Those needs include police and fire protection, public defense, jail housing, prisoner medical expenses, equipment and personnel."



Mayor Jill Boudreau

Burlington

Burlington Mayor Steve Sexton sees the provisional agreement among local cities and Skagit County as important in two key areas: fire and police service improvements in the city, and adequate county jail inmate space and services.



Mayor Sexton

The mayor says: "The county is responsible for housing felons. When you look back 10-15 years at the people who should be going to jail and aren't because of overcrowding, they are for the most part city misdemeanants.

These are the folks who are committing crimes against our residents and stealing from our businesses. We owe it to both residents and business people to make sure those criminals are serving time, and the new jail will provide the capacity we need to do so."

Sexton noted that funds from the proposed sales tax would not only support construction and operation of a new jail, but: "They would allow us to provide public safety improvements in both our fire and police departments. It is key to us that we give our businesses and residents the services they deserve - and this plan will get us to that point."

Jail chief and staff cite safety as a daily challenge for all

Given the opportunity to do so, Skagit County Chief of Corrections Charlie Wend would invite as many people as possible to tour the 30-year-old downtown Mount Vernon facility. To see the jail firsthand, says the career corrections professional, is to recognize the need for a new jail at another location.

Wend is proud of a corrections staff working under increasingly challenging circumstances, but on a tour of the jail he delivers a powerful mix of statistics and visible evidence leading to the same conclusion: this facility suffers from space and design limitations that cannot be solved at the current location.

Wend, who worked 30 years in the state prison system, came to Skagit County in 2011. He has been Skagit County Jail Chief for two and a half years, during which time increased inmate population levels and an aging facility have combined to create a law enforcement crisis that impacts every community in Skagit County.

The Skagit County Sheriff's Office Corrections Division is responsible for detaining pretrial defendants, convicted offenders waiting for transport to a state prison, and for incarcerating inmates sentenced to serve less than one year (or more than one year in the case of consecutive sentences).

Wend points out that while inmates are in custody, the Sheriff and his corrections staff are responsible for their supervision, safety, health and well being. Staff is called to ensure that inmates appear in court when needed - and are transported to other jurisdictions when necessary.

The existing jail, built in 1984 to hold 83 inmates (11 females and 72 males), is consistently overcrowded despite past efforts to accommodate a larger population. Since 1989 the number of beds has been increased by converting most individual cells to two- and three-person cells. Recreation areas have been converted to dorm-like housing spaces, bringing the total number of beds to 180.

In the meantime, the "core" of the jail -- laundry, medical, food service, recreation areas and the like -- are still in the same space designed to serve 83. There is only one multi-purpose space for programming, and this space is also utilized for other important jail activities.

Additional staff challenges, said Wend, include sharing break room space with work stations, making it impossible to separate from the pressures of the jail environment even for brief periods of time. The booking area designed to process a handful of inmates each day often sees 15-20

bookings daily. With already incarcerated inmates moving in and out of the space on the way to court appearances, attorney sessions and the like, the booking area becomes a significant "choke point."

Because of inadequate space, the jail has only one multi-purpose space which serves as library, chapel, and the jail's program space. Programming - which can lead to a positive future for inmates with root issues like substance abuse, becomes difficult to impose upon all of the inmates who need it.

"Often criminal behavior is tied to an addiction," said Wend, "so if you treat the addiction you can get a handle on the criminal behavior. That's a positive outcome for everyone."

In the jail's "north end," inmates are only allowed out of their cramped cells for very limited periods of time. Because of overcrowding, Wend said, an individual arrested for Driving Under the Influence (DUI) might find himself housed with someone with a history of violent offenses.

"It becomes a real challenge," he said. "Often we find high risk offenders mixed in just because we don't have space elsewhere. We also have no way to safely segregate inmates, to pull someone out into a more isolated or secure setting. That can be dangerous."

Design and inadequate space also prevent Wend and staff from the kind of "direct supervision and interaction with inmates" that he would like to see.

"You really diminish your problems when you are able to provide that kind of direct involvement," he said, "but that is just not possible as long as we are stuck with this space."

"We're playing a shell game," said Wend. "The risk in this place, to staff and inmates, is not small. There are many issues here, from inadequate space to poor design and outdated technology. The nature of the construction makes it expensive, or impossible, to do technology upgrades or remodeling. The location of the building makes it impossible to expand on site."

"Overcrowding has a negative impact not only on those here in the jail, but in our communities as well," Wend concluded. "In one recent week (June 2-June 8), we turned away 70 bookings due to overcrowding, which means people who should have been in jail were still on the street. Clearly we need a new facility at another location," said Wend.



Jail Chief Charlie Wend



# Superior Court Judge says new jail 'vital' to public safety

Ask Superior Court Judge Michael Rickert whether a new Skagit County Jail is necessary and he will tell you the verdict is clear: "We are at crisis level, with an inmate population that is critically over capacity."

Rickert, a Superior Court Judge for 21 years, brought his experience and courtroom perspective to the table as a member of the Skagit County Public Safety Jail Coordinating Council.

"In 1984 we opened a jail that we were told would serve us well into the future," he recalls. "Well, we didn't make it very far."

Rickert said safety issues apply not only inside the jail for inmates and law enforcement staff, but outside in Skagit County communities as well.

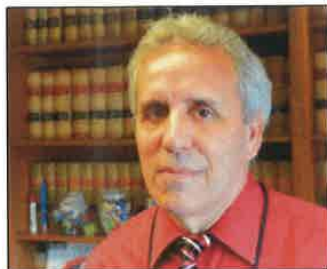
"Because we are over capacity we are releasing individuals who should be held, and more than ever we are making decisions not to book people because there is no place to put them."

"We are able to keep Class A

felons," he continued, "but we are releasing a lot of 'frequent flyers' in the area of property crimes. Literally, some are not paying the price for committing property crimes – or they are paying the price at a reduced level."

The judge expressed support for a public process that led to the proposal to build and operate a new county jail.

"Skagit County residents should be aware of the fact that unlike Congress and many state legislatures, this council was able to come together with a solution," he said. "There was a lot of give and take in a process that ended up with the support of all mayors, council members and commissioners. People were able to put their



Superior Court Judge Michael Rickert

differences on the back burner, coming together with a plan rather than kicking it down the road for a future generation."

Rickert also spoke of a common desire to reduce recidivism, a growing rate of inmates who repeatedly serve time in jail.

"The programs we have been able to run have been very successful, but there is no room for more programs or a higher rate of participation," he said. "The plan for a new jail was created with an eye to the future. We are not going to put ourselves in a position again of having no option for remodel or expansion. I have great optimism that given the space, our programs will play a much greater role in the day to day lives of our prisoners."

In regard to the suggestion that a new jail facility is a privilege criminals do not deserve, Rickert said: "The idea that jail is 'cushy' is a misnomer. I have visited many jails during my years as a judge, one of the most recent being the SCORE facility in King County. Listen, jail is jail. Once you walk inside it is stark – stainless steel with glaring light 24 hours a day. Prisoners sit on stainless steel seats, sleep on stainless steel with a two-inch mattress. Most often recreation is an indoors walk-around because of liability issues."

"Jails are a necessity, and they are expensive to operate," he concluded. "The only way to make it is to make things very spartan. That's the way our jail will be."

## District Court judge notes challenges

There is a Washington statute requiring the county jail to accept and hold any person the Superior Court orders held, notes District Court Judge David Svaren.

"When the jail has inadequate capacity, District and Municipal Court bench warrants and jail commitments become a second priority," he said.

"In Skagit County," Svaren continued, "law enforcement officers routinely contact defendants with outstanding warrants and, instead of arresting them, give them a notice for a new hearing date. Some of these defendants attend court on the new date, but most don't. Even when the warrant reflects that booking the defendant into the

jail is essential, sometimes there is simply no room and the defendant is turned away."

"This should concern the citizens of Skagit County for several reasons, the judge continued. "Sometimes the defendant in question is a serial DUI driver in an alcoholic or drug induced tailspin who is endangering anyone on our roads. At other times it may be a defendant charged with multiple counts of domestic violence crimes. In any event, the common knowledge that there is no consequence for defying a court order or refusing to come to court when summoned erodes respect for the rule of law upon which this country is based."

### Mayors on Public Safety

#### Anacortes

Mayor Dean Maxwell says: "There is absolutely no question that the cities and Skagit County government must partner to meet the needs of jail overcrowding in order to keep our valley safe. As a member of the Jail Coordinating Council I have worked first and foremost to help identify



Mayor Dean Maxwell

a solution to jail overcrowding. I am glad that we are looking to find solutions to the recidivism we see in the current system, whether it be mental health or drug related programming."

#### Sedro-Woolley

Sedro-Woolley residents approved a Public Safety sales tax of one-tenth of 1 percent last year, with a city pledge to commit funds to the purchase of fire and police equipment. Under terms of a provisional agreement with Skagit County, the city would commit an annual amount equal to 85 percent of the city's Public Safety sales tax for construction and operation of the



Mayor Mike Anderson

County Jail. Anderson related a story that he said has become too common: a drug dealer with a record of convictions was arrested, but booked and then released due to lack of inmate space in the county jail. "It has become increasingly difficult to hold criminals accountable because you can't hold them in jail due to overcrowding," said the mayor. "The burglar who broke into your neighbor's house today will be at your house tomorrow. We can catch them, but we can't always keep them."



### Proposed jail sites in Mount Vernon



Alf Christianson Seed site



Truck City site

### What they are saying ...

Regarding work accomplished by the Skagit County Public Safety Jail Coordinating Council: "We ended up with a compromise that was well thought out. It would be duplicative and costly to run multiple jails. A single county-wide jail facility is the best option as it saves our police officers' time and taxpayers' money. We have a plan that will serve us for the foreseeable future."

Sedro-Woolley Supervisor Eron Berg

## The case for new jail location

Project Manager Marc Estvold recalls his initial conclusion that a remodel and expansion of the existing facility was the seemingly obvious option for addressing the overcrowding crisis at the Skagit County Jail.

Closer examination of the situation, however, soon revealed that staying in the current building on the existing site was not an option.

Among the reasons a new jail site is required:

Based upon Skagit County population projections, anticipated incarceration rates and local crime statistics it became overwhelmingly obvious that a new facility with an opening capacity of 400 inmate beds, and with significant future growth potential was necessary. Further study of the existing facility and site revealed that it would not be possible to meet future needs in the current location due to existing site restrictions.

The current jail site is "landlocked" in a downtown location straddled by a railroad line and high traffic city streets,

plus poor soil conditions that make it impracticable to go up. Given the current highly competitive construction and real estate markets, cost studies show that it would be less expensive to purchase property and construct a new facility than it would be to renovate and add on to the existing Jail structure. New construction also allows an opportunity to design to today's standards, take advantage of today's technologies and provide for future expansion.

Research into the existing structure determined that required technology and

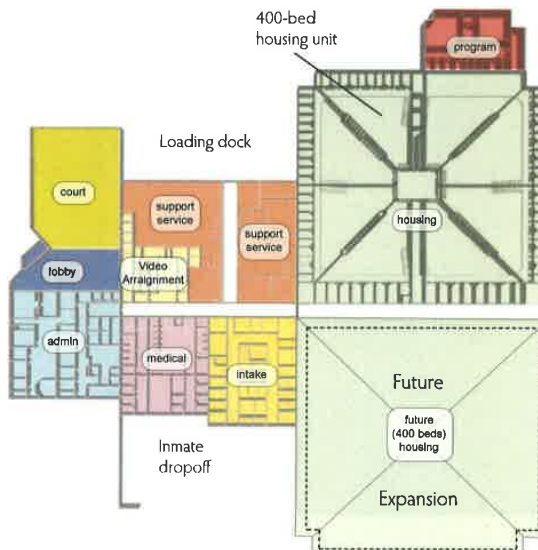
infrastructure upgrades, as well as expansion of the existing 30-year-old jail building, would be cost-prohibitive. In short, investment in the existing structure and site would provide an expensive, unsatisfactory, short-term solution to this public safety challenge.

*Skagit County and the City of Mount Vernon will conduct an environmental review of the site selection process, which will assure early and continuous opportunity for public involvement and comment.*



Marc Estvold

### Conceptual layout of new county jail



#### Attributes of jail design

- New facility can be constructed with no impact on current jail operations
- Single story design will substantially increase operational efficiencies
- 400-bed plan meets and exceeds current need with forethought given to future expansion
- Opportunity to institute new technologies including video surveillance, video arraignments and video visitation
- Facility designed to meet current codes and correctional facility standards
- Building and site design to accommodate substantial future growth





# Prosecuting Attorney's office struggles with jail frustrations

Skagit County Prosecuting Attorney Richard Weyrich believes the negative community impacts from an overcrowded jail call for remedy as soon as possible.

"People used to ask me if we really need a new jail," said the prosecuting attorney. "Now the question is: 'When are we going to get a new jail?'"

"The need," said Weyrich, "is overwhelming."

Elements of the challenge posed by the existing jail are many, but most are related to building size and the fact that an expansion is not possible at the present Mount Vernon site.

One of the frustrations faced by the prosecutor is the fact that because of space limitations, many people who are guilty of property crimes are booked and released because priority for incarceration goes to violent criminals and others whose jail time is mandated by law.

"What happens is that too many criminals are released time and again, or not even taken in because the jail is too full with murderers, rapists and other very dangerous individuals," said Weyrich. "But tell that to the people who come home to find their house ransacked and all of their valuables gone. Tell that to the crime victim whose sense of safety in their home has been shattered. The people who do these things have no regard for anyone and deserve to be locked up, but all too often there is simply no room in the jail."



Prosecuting Attorney Richard Weyrich

"My office is frustrated when we have to deal with victims and tell them that someone who turned their lives upside down is going to receive the proverbial slap on the wrist, not due to anyone's fault except our inability to house these dangerous people in an inadequate facility," he said.

Weyrich emphasizes that no one in local law enforcement is to blame for this situation.

"The Sheriff's Office has done an amazing job of keeping the most dangerous in custody," he said. "But until we have more capacity, the people of Skagit County will continue to be the victims of criminals not going to jail merely due to the fact that 'the inn is full.' We need to act now to build a new jail so we can all sleep a little better at night."

Another prime area of concern for the prosecuting attorney is inadequate space for jail programs.

"I don't think it is an exaggeration that 85 to 90 percent of the people in jail are there due to substance abuse, alcohol abuse or mental health issues," he said.

"For many of these people the jail is merely a revolving door without

opportunity for treatment that might keep them from returning to jail. It has been shown that treatment works for most of these people. They may get their families back and they may get a job. With a new jail, we will have the ability to treat the criminals while they serve out their time."

## Alternatives Program tapped

In Skagit County, alternatives to confinement in jail are utilized at double the national rate. The Skagit County Jail Alternatives Program, created in 1995 as way of reducing overcrowding in the jail, includes Electronic Home Monitoring, Community Service Work Program (such as litter cleanup, washing SKAT buses), Work Release, Litter Crew and In-Custody Work.

The goal of the Jail Alternatives Program is to provide options to total incarceration, or jail time.

For instance, the Work Release program allows participants the opportunity to retain their jobs by allowing them to go to work from the jail, and return to the jail after work. This allows them to pay their financial obligations, including victim restitution and court fees and

finances. Most offenders also pay a fee to participate in the program.

Individuals on the Community Work Program and Litter Crew have been involved in numerous projects, with continuing benefits for the citizens of Skagit County. These include litter removal, clean up of dump sites, maintenance of courthouse and park grounds.

There is also a one-day program based at the Skagit County Fairgrounds (quarterly).

Programs such as these give individuals the opportunity to be involved in positive community projects, while at the same time fulfilling their obligations to the judicial system.

### Jail Facts

The existing Skagit County jail is "landlocked," limiting renovation/expansion options and making future expansion impossible. Outdated technology and overdue facility improvements to the 30-year-old building are cost-prohibitive. Although the site for a new jail is still under consideration (two alternatives, see page 6), both potential sites feature space for expansion of the jail to accommodate future demand.



Drug and alcohol abuse, the greatest "root cause" sources of crime in Skagit County, have increased dramatically in recent years. Criminals with drug and alcohol abuse issues are the most receptive to treatment programs, but the space crisis at the Skagit County Jail prevents the opportunity for treatment programs.



Technology improvements in the new Jail would include monitors for "real time" surveillance of confinement spaces with a recording option (potential source of evidence in the event of criminal activity by inmates). Video could also be provided for such activities as inmate visitations, arraignments and legal counseling.

### Public monitors online Skagit 'Crime Map'



Among the most popular elements on our website ([www.skagitcounty.net](http://www.skagitcounty.net)) is the up-to-date "Crime Map."

This detailed source of local crime data allows the user to search by address, road name or case number. Other options include selection of a region (for example, Guemes Island or Edison) or incident type (such as burglary, domestic violence, criminal homicide).

The detailed map can be viewed in small, medium or large format, with color graphics distinguishing types of incidents and the locations where they occurred.

Also available is a calendar search window that allows the user to search data within a particular period of time.



# Sheriff and City Police Chiefs agree: New Skagit County jail is key to public safety

## Anacortes Police Chief Bonnie Bowers

"The majority of prisoners currently housed in the Skagit County Jail are pre-sentence felons. Many have committed violent crimes, and if released would pose a safety risk to



Bonnie Bowers

our community. Because our county jail is full of the most dangerous offenders, some less dangerous criminals walk the streets. Very few thieves are booked into jail."

"Property crimes are a serious issue in Skagit County – one of the few crime categories that has not shown a significant decrease in recent years.

Because of a perceived lack of consequences for their actions, many thieves will re-offend while awaiting trial on previous offenses."

"Not every offender belongs in jail. Not every offender poses a serious risk to our county. However, it is imperative that we have a large enough facility to house the most dangerous offenders as well as those offenders who need to know that there are serious consequences for repeatedly breaking the law."

## Sedro-Woolley Police Chief Doug Wood

Overcrowding in Skagit County Jail routinely forces law enforcement officers to make decisions



Doug Wood

based not on law, but on the question of whether there is space to incarcerate an individual.

"A new jail is vital to the safety of all our residents," said Sedro-Woolley Police Chief Doug Wood. "Nobody really wants to pay more to fund it, but it is necessary to have a facility to house prisoners. When all is said and done, we need a new jail."

## Mount Vernon Police Chief Jerry Dodd

"The county jail is central to local public safety operations and



Jerry Dodd

criminal justice involvement. It houses the inmates involved in a wide variety

of offenses (mostly felons), and is used by all of the local jurisdictions, including tribal police and in some cases even federal agencies. Inmate population will rise for years to come."

"Our citizens deserve a new jail. The jail is overcrowded, outdated and not designed to be expanded – presenting a clear threat to public safety and taxpayer liability."

"Replacing the jail is a major undertaking that cannot be avoided. We need to end streaming tax dollars from our community to other counties to outsource our inmates."

"The new jail will offer a win/win situation for the corrections officers, inmates, law enforcement

agencies, courts and most important the community. I strongly suggest that if you have an opportunity to tour the jail, please do so to see for yourselves the real problems Skagit County is facing. The need exists. This is the right time to meet our public safety need."

## Burlington Police Chief Bill VanWieringen

"The Skagit County Jail is an essential tool for law enforcement in protecting the public from the criminal element."

"The current jail situation, with its overcrowding and booking restrictions, at times does not allow our officers to carry out



Bill VanWieringen

their duties to the fullest. Many repeat misdemeanor offenders contacted by our officers are immediately released even when they have outstanding warrants."

"Without more jail capacity offenders are not and will not be fully held accountable for their actions."

### Proposed Jail Project Timeline

- ✓ Determine Funding Source Spring 2013
- ✓ Interlocal Agreement with Users Spring 2013
- Proposal to Voters August 2013
- Complete Facility Design Summer 2015
- Start Facility Construction Fall 2015
- Construction Complete Fall 2017



## Skagit County Government

1800 Continental Place, Suite 100  
Mount Vernon, WA 98273

Questions or comments? Contact information below:

Telephone: (360) 336-9300 Email: [commissioners@co.skagit](mailto:commissioners@co.skagit).



Ken Dahlstedt



Sharon Dillon



Ron Wesen

The Board of Commissioners generally meets each Monday and Tuesday for regularly scheduled agenda items. Agendas are available on the website in the "Agenda" section, or you can listen to a recorded agenda for the upcoming week by calling (360) 419-7600.

[www.skagitcounty.net](http://www.skagitcounty.net)



# EXHIBIT I

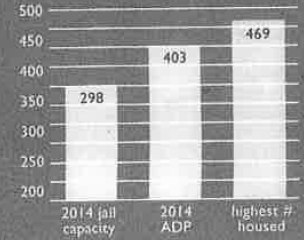
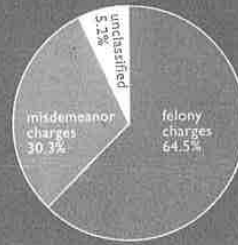
The County cannot continue to operate the facility into the future at current population levels.

Existing Whatcom County jail has limited renovation and no expansion options.

By law, Whatcom County is required to accept all accused/convicted felons whose case originate in the entire County, including Bellingham, Blaine, Everson, Ferndale, Lynden, Nooksack, and Sumas.

The current jail was built in 1984 to house 148 inmates, remodeled to house 212. Total jail capacity, including interim jail on Division Street, is 298. The average daily jail population (ADP) in 2014 was 403. According to statewide comparison,

**Our jail population is at 137% percent of capacity, 4th highest in the state.**



WHATCOM COUNTY  
311 GRAND STREET  
BELLINGHAM, WA 98225

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# Whatcom County Community Report



## WHATCOM COUNTY JAIL



### Existing Jail - Overcrowded and Unsafe



Sheriff Bill Elfo

"The existing jail has been overcrowded and unsafe for decades. Over time, conditions have grown increasingly worse. Eighteen years of reports, findings and analysis by professional consultants, jail-planners, engineers, fire safety officials, staff, the National Institute of Corrections and multiple citizen committees consistently highlighted compelling life-safety and liability issues. Also highlighted were the lack of space for behavioral health and

other programming targeted at effective treatment and reducing recidivism. Given severe and unsustainable conditions within the jail that jeopardize staff, visitors and inmates alike as well as expose taxpayers to liability, the County cannot continue to operate the facility into the future at current population levels."



Proposed public entry to the jail.

# Whatcom County's Commitment to Behavioral Health Services



Executive Jack Louws

Whatcom County spends \$11.5 million annually on a wide and varied behavioral health continuum of care services for citizens designed to make it possible for people to stay out of jail, or to re-enter society after jail with the tools needed for success. This financial commitment to programming is very close to equaling the amount we spend to operate the jail annually. Whatcom County Council has established a task force to target enhanced alternatives to corrections, that would reduce or eliminate our need to expand the proposed replacement jail. These behavioral health and treatment programs include:

- Specialized training for public safety personal;
- School and community programs focused on prevention, treatment, intervention and family support programs;
- Juvenile court/detention behavioral health services;
- Community mental health and substance use treatment and opiate outreach;
- Drug, family treatment and mental health courts;
- Homeless housing services;
- District court probation specialized behavioral health unit;
- Intensive case management, supportive housing, and the Rainbow Recovery Center;
- Veterans' relief services;
- Crisis triage center;
- Jail behavioral health services;
- Jail alternative programs, including electronic home detention, work release, and jail work crews.

## Budgeted-for Alternatives

Prevention, Alternative and Diversion Programs  
\$ 11,500,000

Jail Operations net programs  
\$ 12,300,000

“ One of the greatest challenges and frustrations within the current jail is the inability to provide adequate space for health services and programming.



David S. McEachran  
Prosecuting Attorney

*There are huge demands for services for all of the care the jail provides. The lack of clinic and counseling space limits the care the jail can provide which often exacerbates mental health conditions. Mental health and chemical dependency issues are a significant issue for law and*

*justice and the community as a whole. The new jail facility is designed with dedicated programming space. This space will allow for treatment opportunities for those offenders receptive to programs that give them the best chance of staying out of jail.*”

## Existing Jail Conditions



Existing cell.



Existing shower room converted to cell.



Existing dayroom.



Existing inmate programs space.



Existing central control room.

# PROPOSED DESIGN

## Modern Jail Features

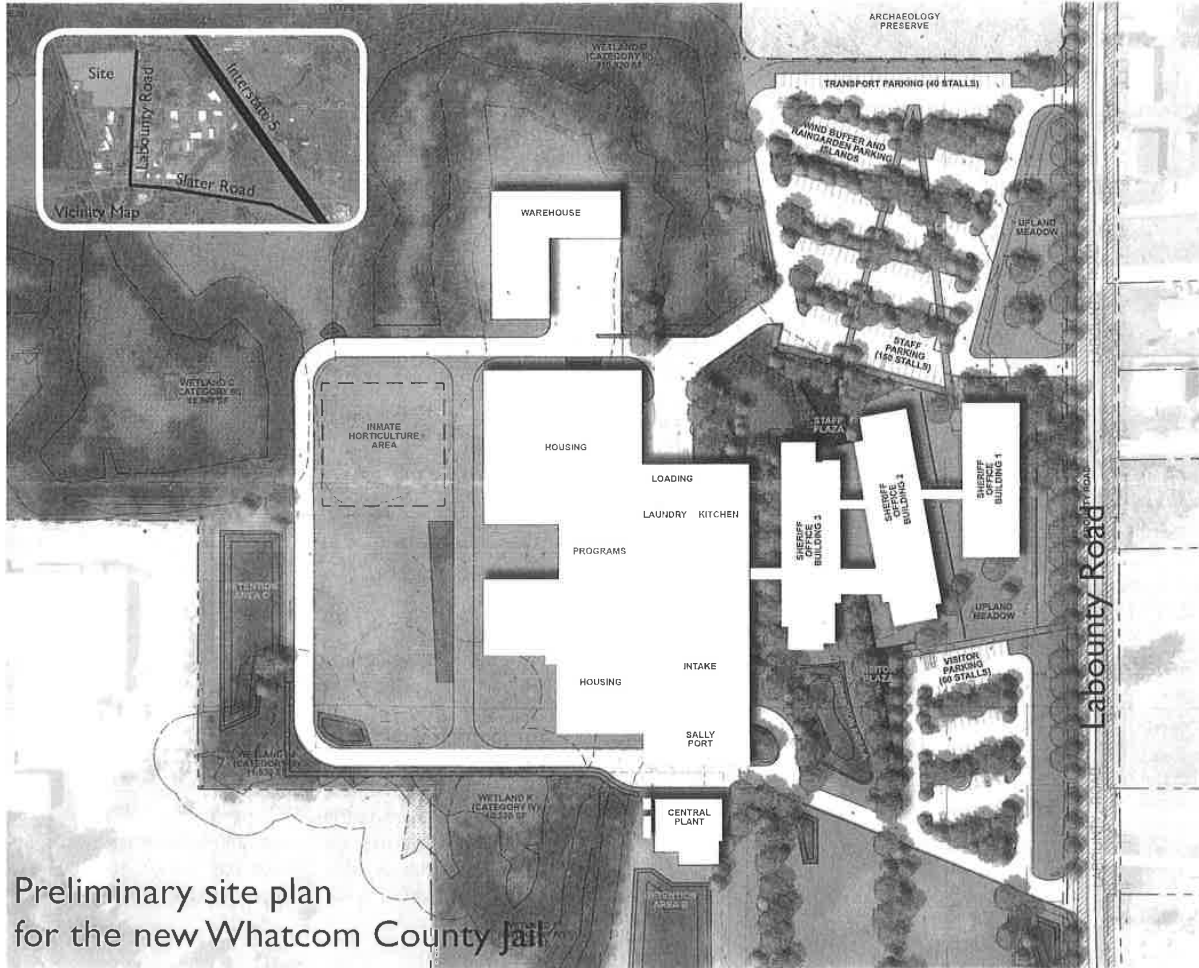


Dayroom with inmate video visiting



Central control room.

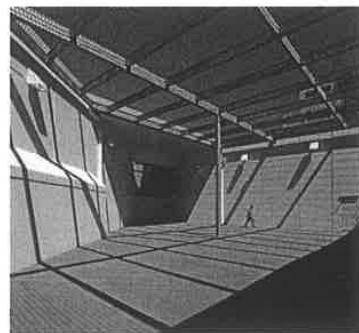
- New facility can be constructed with no impact on current jail operations.
- Single story design will substantially increase operational efficiencies.
- New bed count meets and exceeds current need with forethought given to future expansion.
- Opportunity to institute new technologies including video surveillance, video arraignments and video visitation.
- Facility designed to meet current codes and correctional facility standards.
- Building site design to accommodate substantial future growth.



Preliminary site plan for the new Whatcom County Jail



Four person cell.



Secure outdoor recreation area.



Medical clinic and infirmary for observation.

## Timeline for New Facility

- ✓ April 2015 - Authorizing Permit Issued by City of Ferndale
- ✓ July 2015 - County Council Authorizes Sales Tax Ballot Measure
- ✓ August 2015 - Cities and County Agree to Construct and Operate Jail
- November 2015 - Public Vote for Sales Tax
- Winter 2015-2016 - Following vote approval, final Design Work
- Spring 2017 - Start Jail Facility Construction
- Spring 2019 - Occupy Jail

## Citizens and Experts Develop Plan for the New Whatcom County Jail

In 2011, the County Council tasked a 13-member Jail Planning Task Force (JPTF) to recommend size, location and programming to replace the main jail and conducted 16 public meetings soliciting community input and comments from citizens and stakeholders. In 2013, the JPTF presented unanimous findings to reporting, "Due to overcrowding, life/safety and physical plant concerns in the main jail facility, Whatcom County needs a new jail." It described the need as "critical" echoing findings recommended by other citizen committees tasked to examine jail issues over the last two decades, including in 1999-2000, 2004 and 2008.

County Executive Jack Louws developed a proposal to replace the jail and implement the JPTF recommendations. The County Council approved the purchase of the Labounty Road Property in 2013, a centrally located site near I-5, reasonably close to the courthouse and sufficiently sized to accommodate long-term growth if needed. The site selection was unanimously endorsed by the County Police Chiefs' Association.

Modern design features will maximize operational efficiencies and help control expenses and provide needed areas for behavioral and other health issues. Additional medical, counseling and classroom space will facilitate education, literacy, substance abuse, life-skills and other training and treatment programs.

## The Ballot Measure

WHATCOM COUNTY,  
WASHINGTON PROPOSITION NUMBER 1  
JAIL FACILITIES SALES AND USE TAX

The Whatcom County Council passed Resolution 2015-024 concerning a proposition authorizing a sales and use tax for jail facilities. This proposition would impose a sales and use tax of two tenths of one percent (20 cents for every \$100) for constructing and operating jail facilities for inmates charged or convicted of misdemeanor and felony acts, and for other public safety purposes, as authorized by RCW 82.14.450. Half of this tax (10 cents for every \$100) would expire upon repayment of bonds issued to finance the facilities, no later than 30 years after issuance.

Should this proposition be:

Approved

Rejected

### Current Sales Tax Rates from Puget Sound Region

Unincorp. Whatcom County	.085
Bellingham	.087
Blaine	.085
Everson	.085
Ferndale	.087
Lynden	.087
Nooksack	.085
Sumas	.085
Burlington	.085
Mount Vernon	.085
Everett	.092
Bellevue	.095
Seattle	.096
Tacoma	.095

The proposition before County voters would add sales and use tax at the rate of 0.2% for construction and operation of jail facilities, adult corrections programs including inmate mental health programs, and for other public safety purposes, as authorized by RCW 82.14.450.

State law requires the County to provide for a jail. The County Council has determined the current jail does not meet existing and future needs.

If Proposition #1 passes, the County and participating cities will build a replacement jail on Labounty Road in Ferndale, demolish the existing Prospect Street jail and construct facilities for inmate transfer at the County Courthouse. Construction of a new jail facility will house felons and misdemeanants plus space for behavioral health, medical and administration areas.

