

After Signing Return to:

Skagit County  
Public Works Department  
1800 Continental Place  
Mount Vernon, WA 98273

SKAGIT COUNTY  
Contract # C20160370  
Page 1 of 10

INTERLOCAL COOPERATIVE AGREEMENT  
BETWEEN  
PUBLIC UTILITY DISTRICT NO. 1 OF SKAGIT COUNTY  
AND SKAGIT COUNTY  
FOR THE JOSH WILSON ROAD  
HIGGINS AIRPORT WAY TO WALKER ROAD PROJECT

THIS AGREEMENT ("Agreement") is made and entered into by and between the Public Utility District No. 1 of Skagit County, a Municipal Corporation (hereinafter referred to as "District"), and Skagit County, a political subdivision of the State of Washington (hereinafter referred to as "County") pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT. The District and the County may be individually referred to herein as a "party", and may be collectively referred to herein as the "parties." In consideration of the following terms and conditions, the parties mutually agree as follows:

1. PURPOSE: The purpose of this Agreement is to allow the County to contribute partial reimbursement funding to the District for a portion of the repaving work on Josh Wilson Road, Higgins Airport Way to Walker Road Project (herein after referred to as "Project"). The District owns, operates, and maintains a water line and appurtenances thereto (the "District's facilities") within the County's right-of-way at and in the vicinity of the Project pursuant to the terms of a franchise agreement with the County (the "franchise agreement"). The franchise agreement, dated January 20, 1993 (Skagit County Contract # 14720) is recorded under Skagit County Auditor's File No.: 9305180070), and provides specific terms pertaining to the District's use of the County's right-of-way. The Project is necessary because of construction work to be conducted by the District on the District's facilities, which will require a portion of Josh Wilson Road to be repaved by the District, as provided herein. Pursuant to the terms of the franchise agreement, the District is responsible for the restoration of the County's right-of-way upon completion of the work on the District's facilities (at the expense of the District), and the County wishes to avoid the additional time and expense of independently contracting for the placement of Hot Mix Asphalt (HMA) paving on a portion of Josh Wilson Road (County Road #33000), as would otherwise be required. While the County has no formal involvement in the Project (except as may be expressly provided by the terms of this Agreement), the County does support the goals and purposes of the Project, and upon completion, the Project will result in a newly repaved portion of County road. As such, subject to the terms of this Agreement,

and in recognition of the public benefit to be received by the overall Skagit County community as a result of this Project, the County desires to contribute approximately fifty percent (50%) of the estimated cost of the Project in a total amount not to exceed one-hundred, thirty-five thousand dollars (\$135,000) as further described per Section 4., below, and otherwise pursuant to and subject to the terms of this Agreement. The parties agree that the mutual benefits provided by the terms of this Agreement are adequate consideration for this Agreement.

1.1 The project scope of work provides for a 1 ½ inch thick layer of HMA Class ½ inch, P.G. 64-22, approximately 26 feet wide across both lanes of Josh Wilson Road and within the limits of the Project.

## 2. RESPONSIBILITIES:

2.1 Pursuant to the terms of this Agreement, the District shall:

2.1.1 Provide administrative and technical support for the Project. The Project location is depicted in Exhibits "A-1" & "A-2" and, attached hereto and incorporated by reference. Administration and technical support shall be accomplished by the District in accordance with the Project contract plans and specifications and the most current edition of the Standard Specifications for Road, Bridge, and Municipal Construction as prepared by the Washington State Department of Transportation ("WSDOT"). All Project work performed by the District shall be performed in accordance with permit(s) issued by the County, in compliance with the County Utility Policy and County Road Standards, together with all applicable federal laws and regulations, and the laws and regulations of the State of Washington, the provisions of any applicable County codes, ordinances, regulations, standards and procedures as now exist. The District shall bid and manage the entire Project, pursuant and subject to the terms of this Agreement.

2.1.2 Except as otherwise provided by the terms of this Agreement, the District agrees that the District (at the District's expense) shall be responsible and liable for the design, permitting, construction and/or implementation of the Project. The District recognizes that such duties specifically include, but are not limited to, providing all necessary Project inspection services, and that the District shall also provide the County with all compaction reports, mix designs, load tickets, material submittals, observation reports, measurements, and temperature readings to verify that the work conforms to the Plans and Specifications or other documentation (as determined to be appropriate by the County) to ensure compliance with the applicable County standards.

2.1.3 As further provided in Section 4. (below), upon satisfactory completion, the District shall bill (invoice) the County for the total estimated cost of the County's portion of the Project (in a total amount not to exceed one-hundred, thirty-five thousand dollars [\$135,000]).

2.2 Pursuant to the terms of this Agreement, the County shall:

2.2.1 As further provided in Section 4. (below) upon satisfactory completion and in the ordinary course of business, the County shall promptly reimburse the District upon receipt of an invoice from the District for costs and expenses incurred by the District for the County's portion of the Project (in a total amount not to exceed one-

hundred, thirty-five thousand dollars [\$135,000]).

2.2.2 The County shall provide reasonable cooperation to the District in order to allow the District to construct the Project, including, but not limited to, implementing a temporary closure of Josh Wilson Road (in accordance with RCW 47.48). Unless specifically stated to the contrary in this Agreement, the County is not otherwise obligated to provide any funds, or perform or provide any other services, duties, or responsibilities pursuant to the terms of this Agreement.

2.2.3 Upon completion of the Project to the satisfaction of the County in accordance with the terms of this agreement, the County shall be responsible for the operation, use and/or maintenance of the roadway of Josh Wilson Road including, replacement of lane markings and shoulder grading. The County is not responsible or liable for the operation, use, and/or maintenance of the District's facilities (including, but not limited to, the District's water line or any other appurtenances associated with the District's operations).

2.2.4 Except as may be expressly provided by the terms of this Agreement to the contrary, the County makes no representations or warranties of any kind or of any nature regarding the Project, and the County disclaims any interest or involvement in the Project. The Project is not a County project. The parties agree that except as otherwise expressly provided by the terms of this Agreement, that the County is not responsible or liable for the construction and/or implementation of the Project.

2.2.5 The County may at any time perform (or have performed) any and all work that it considers necessary to repair and/or restore to a safe condition any area within any County roadway(s) which are damaged or disturbed by the Project. In the event that the County performs (or has performed) any such repair and/or restoration work to any County roadway(s), the District shall fully reimburse the County for all actual costs of such work incurred by the County (upon demand of the County, as further provided in Section 4.1, below).

3. TERM OF AGREEMENT: The term of this Agreement shall be from the date of mutual execution through completion of the Project (as shall be mutually determined by the parties), or until December 31, 2017, unless sooner terminated pursuant to the terms herein.

4. MANNER OF FINANCING: The County will contribute fifty percent (50%) of the total cost for HMA placed and invoiced under the District's Project contract for bid items A15, B14 & C14: *Furnish and Place HMA Class ½-Inch, PG64-22, for Surface Paving*. In addition, the County will contribute one-hundred percent (100%) of the total cost for HMA placed and invoiced under the District's Project contract for unscheduled paving of two portions of Josh Wilson Road (STA 10+60.08 to 21+37.76 and STA 46+61.52 to 54+34.57). The County's total financial contribution to the cost of the Project shall not exceed one-hundred, thirty-five thousand dollars (\$135,000) pursuant to the terms of this Agreement. Additional information regarding the County's contribution toward the total estimated cost of the Project is attached hereto as Exhibit "B" and is hereby incorporated by reference. Upon completion of the Project and receipt of an invoice(s) from the District, the County shall promptly reimburse the District in the ordinary course of business for the total cost of the County's portion of the Project pursuant to the terms of this Agreement.

4.1 In the event that the County performs (or contracts to have performed) work that the County considers necessary (at the sole judgment and discretion of the County) pursuant to Section 2.2.5 of this Agreement (to repair and/or restore to a safe condition any area within any County roadway[s] which are damaged or disturbed by the Project), the County shall be reimbursed by the District for the actual costs and expenses incurred by the County for any such repair and/or restoration work (including, but not limited to, labor, materials, supplies, use of County equipment, and County staff time); and, in addition thereto, nine percent (9%) of the total actual costs and expenses incurred by the County shall be added for overhead costs for accounting, billing, and administrative services, provided that the County shall submit to the District a certified statement of the costs, and within thirty (30) days thereafter the District shall pay to the County the amount of said statement.

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

5.1 The County's Representative shall be the County Engineer, or their designee.

5.2 The District's Representative shall be the General Manager, or their designee.

6. TREATMENT OF ASSETS AND PROPERTY: No fixed assets or personal or real property will be jointly or cooperatively, acquired, held, used, or disposed of pursuant to this Agreement. Upon completion of the Project, the District shall be and remain solely and separately liable and responsible for the use, maintenance, repair, replacement, and operation of the District's facilities (and any other District facilities or infrastructure at or in the vicinity of the Project).

7. INDEMNIFICATION: Except as otherwise set forth per the terms of this Agreement, each party agrees to be responsible and assume liability for its own wrongful and/or negligent acts or omissions or those of their officials, officers, agents, or employees to the fullest extent required by law, and further agrees to save, indemnify, defend, and hold the other party harmless from any such liability. It is further provided that no liability shall attach to the County or the District by reason of entering into this contract except as expressly provided herein.

8. LIMITATION OF LIABILITY: Any third party having a claim against the District, however arising, shall have recourse only against the District, and shall have no recourse against the County, its appointed or elected officers, employees, volunteers or its/their assets or credits (subject to the terms of Section 7., herein).

9. TERMINATION: Prior to award of a bid for the Project by the District, either party hereto may terminate this Agreement upon providing thirty (30) days' notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

10. CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS: The Agreement may be changed, modified, amended or waived only by subsequent written agreement duly executed by the parties hereto. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

11. SEVERABILITY: In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this Agreement are declared severable.

12. ENTIRE AGREEMENT: This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

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

14. NO THIRD PARTY BENEFICIARIES: This Agreement is not intended to nor does it create any third party beneficiary or other rights in any third person or party, including, but not limited to, property owners and/or residents located at or in the vicinity of the Project, or any agent, contractor, subcontractor, consultant, volunteer, or other representative of either party.

15. STATUS OF AGREEMENT: This Agreement is in addition to, and is not intended to replace, substitute, modify, or otherwise amend any other agreements by and between the parties. Any other agreements by and between the parties shall continue in full force and effect. The terms of this Agreement do not replace, substitute, modify, alter, or amend the terms of the franchise agreement between the parties, which shall continue in full force and effect.

16. COMPLIANCE WITH LAWS: The parties to this Agreement shall comply with all applicable federal, state, and local laws, rules, and regulations in carrying out the terms and conditions of this Agreement. If applicable, compliance with laws shall specifically include, but not be limited to, compliance with laws pertaining to the payment of prevailing wage on public works (including, but not necessarily limited to RCW 39.12). If applicable, compliance with laws shall also specifically include, but not be limited to, compliance with laws for the procurement of contracts for architectural and engineering services (including, but not necessarily limited to RCW 39.80). If necessary, the parties shall obtain and comply with all necessary permits and approvals from all applicable jurisdictions prior to commencing any work related to this Agreement.

17. ASSIGNMENT AND SUBCONTRACTING: Unless otherwise expressly provided herein, no portion of this Agreement may be assigned, contracted, and/or subcontracted by the District to any other individual, firm, company, and/or other entity without the express and prior written approval of the County.

18. USE OF DOCUMENTS AND MATERIALS PRODUCED: Both parties shall have the right to use and distribute any and all documents, writings, programs, data, public records or other materials prepared by any party (and/or any party's contractors, consultants, and/or subcontractors), in connection with performance of this Agreement. Unless privileged or otherwise exempt from public disclosure, the parties recognize and agree that any documents and/or materials arising from and/or related to this Agreement may be subject to public disclosure pursuant to applicable law (including RCW 42.56).

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

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

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

**PUBLIC UTILITY DISTRICT No. 1 of Skagit County ("District"):**

DATED this 8<sup>th</sup> day of AUGUST, 2016.

By:   
George Sidhu, P.E.  
Interim General Manager



DATED this 22 day of August, 2016.

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

  
\_\_\_\_\_  
Lisa Janicki, Chair


  
\_\_\_\_\_  
Ron Wesen, Commissioner

  
\_\_\_\_\_  
Kenneth A. Dahlstedt, Commissioner

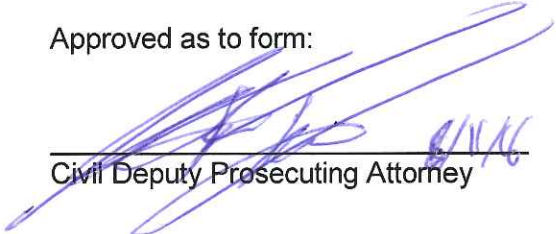
Attest:


  
\_\_\_\_\_  
Clerk of the Board

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

Recommended:   
\_\_\_\_\_  
Department Head

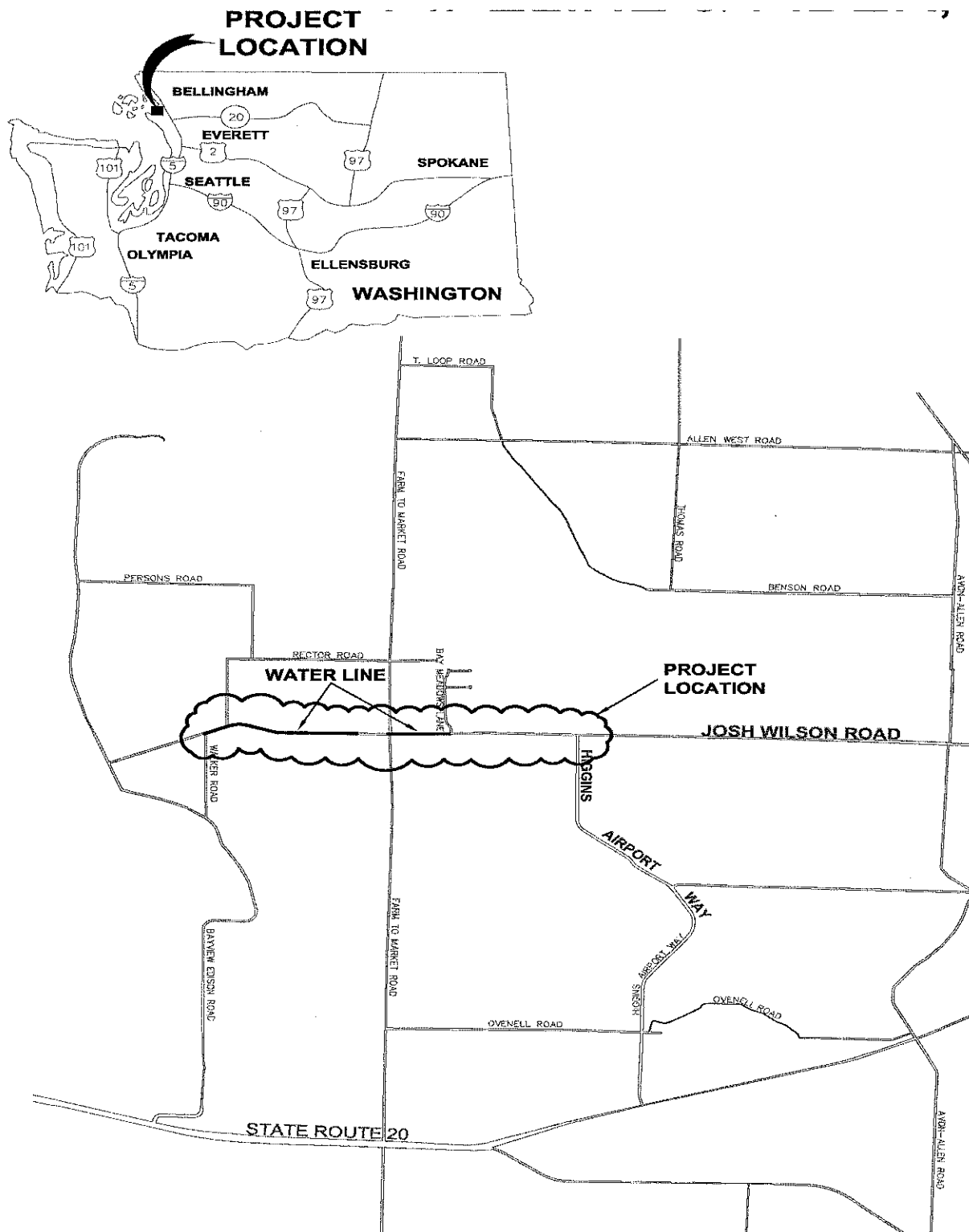
\_\_\_\_\_  
County Administrator

Approved as to form:  
  
\_\_\_\_\_  
Civil Deputy Prosecuting Attorney

Approved as to indemnification:  
  
\_\_\_\_\_  
Risk Manager

Approved as to budget:  
  
\_\_\_\_\_  
Budget & Finance Director

# Exhibit "A - 1"







## Exhibit "B"

Josh Wilson Road Paving Skagit County portion
---

Schedule A STA 54+34.57 to 83+07.98

Area in SF	1 1/2" Asphalt	Area in CY	Total Tons	Cost/Ton	Total Cost
35,725	0.125	165.39	339.06	\$95.00	\$32,210.48

Schedule A STA 21+37.76 to 46+61.52

34,962	0.125	161.86	331.82	\$95.00	\$31,522.74
--------	-------	--------	--------	---------	-------------

Schedule B STA 8+17.85 to 10+60.08

4,477	0.125	20.73	42.49	\$95.00	\$4,036.27
-------	-------	-------	-------	---------	------------

Schedule C STA 0+54.46 to 8+17.85

10,284	0.125	47.61	97.60	\$95.00	\$9,272.24
--------	-------	-------	-------	---------	------------

Subtotal	\$77,041.72
----------	-------------

Unscheduled Paving for Josh Wilson Road

STA 10+60.08 to 21+37.76 and STA 46+61.52 to 54+34.57

Area in SF	1 1/2" Asphalt	Area in CY	Total Tons	Cost/Ton	Total Cost
48,240	0.125	223.33	457.83	\$95.00	\$ 43,494.17

Subtotal	\$120,535.89
Tax (8.4%)	\$10,125.01
<b>TOTAL</b>	<b>\$130,660.90</b>

The County's total financial contribution to the cost of the Project shall not exceed one-hundred, thirty-five thousand dollars (\$135,000) pursuant to the terms of this Agreement.