

After Recording Return to:

SKAGIT COUNTY BOARD OF COMMISSIONERS
1800 CONTINENTAL PLACE, STE. 100
MOUNT VERNON, WA 98273

INTERLOCAL COOPERATIVE AGREEMENT

BETWEEN

City of Sedro-Woolley

AND

Skagit County

THIS AGREEMENT (herein "Agreement") is made and entered into by and between the City of Sedro-Woolley, a Washington municipal corporation ("City") and Skagit County, a political subdivision of the State of Washington ("County") pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT. The City and the County may be individually referred to herein as a "party", and may be collectively referred to herein as the "parties". In consideration of the following, the parties mutually agree as follows:

1. PURPOSE: In accordance with the terms of this Agreement, the City will perform work within County right-of-way known as Rhodes Road (County Road Number: 62300) in the vicinity of State Route 9 and also at a County owned property commonly described as Skagit County Assessor Parcel Number P37594 (collectively herein the "Project Property"). The "Jameson Arterial Extension to SR-9" project includes the removal and realignment of a section of Rhodes Road to a new roundabout at the intersection of State Route 9 and an extension of Jameson Street (referred to herein as the "Project"). The Project will replace an existing offset uncontrolled intersection on SR-9 at Rhodes Road and Nelson Street with a safer intersection that provides a more direct route to Sedro Woolley and serve as an alternative route to State Route 20. The parties agree that the Project shall not involve any excavation, digging, or subsurface work at the portion of the Project Property commonly described as Skagit County Assessor Parcel Number P37594, and that work at such location by the City shall primarily be limited to the placement of approximately eighteen inches (18") of clean fill material. Aside from this Agreement, the County has no involvement in the Project, and the Project is to be designed, constructed, implemented, used, operated, maintained, and managed by the City as a project of the City (without further involvement from the County), at the sole cost, expense, and liability of the City. 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 (in concept) generally support the goals and purposes of the Project as laudable public purposes, with public benefit for the Skagit County community as a whole. 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 the Project, the County desires to contribute to the Project, pursuant to and subject to the terms of this Agreement. The parties agree that the mutual benefit provided by the terms of this Agreement are adequate consideration for this Agreement.

2. RESPONSIBILITIES: The parties to this Agreement mutually agree as follows:

2.1 City shall perform the following duties and obligations pursuant to the terms of this Agreement (upon and subject to the following conditions):

2.1.1 The City shall, at its own cost, expense, and liability, perform all Project work, including Project management, design, construction, implementation, and other work associated with the performance of the Project.

2.1.2 All Project work performed by the City pursuant to this Agreement located outside of the City 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.

2.1.3 The City shall restore the surface of the County roadways (specifically including Rhodes Road) and the Project Property that are disturbed or damaged by the Project to at least the same (or better) condition as existed immediately prior to any such work. The County (at the County's sole judgment and discretion) shall have final approval as to the condition of the County's roadways and the Project Property after completion of the Project (in accordance with applicable County codes, ordinances, regulations, standards, policies, and procedures as now exist or as may be hereafter amended or superseded). All survey monuments which are disturbed or displaced by the City in its performance of any Project work shall be referenced and restored by the City in accordance with applicable laws, rules, and regulations (including, but not limited to WAC 332-120).

2.2 The County shall perform the following duties and obligations pursuant to the terms of this Agreement (upon and subject to the following conditions):

2.2.1 Unless specifically stated to the contrary in this Agreement, the County is not obligated to pay or provide any funds to the City or perform or provide any other services, duties, or responsibilities pursuant to the terms of this Agreement.

2.2.2 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) and Project Property 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) and Project Property, the City 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., below).

2.2.3 The County makes no representations or warranties of any kind or of any nature regarding the Project and/or of the condition of Rhodes Road, the Project Property, and/or other County right-of-way at or in the vicinity of the Project, and the County disclaims any interest or involvement in the Project. The Project is not a County project. The parties agree that the County is not responsible or liable for the design, construction, project management, implementation, maintenance and/or use of the Project in any way.

2.2.4 Concurrent with or immediately subsequent to the mutual execution of this Agreement, the County shall provide the City with a temporary construction easement for the portion of the Project (as described per this Agreement) located on the portion of the Project Property commonly described as Skagit County Assessor Parcel Number P37594, the substantial form of which is attached hereto as Exhibit "A" and is hereby incorporated by reference. The parties agree that but for the terms of this Agreement the County would not have provided the Temporary Construction Easement, and that the terms of this Agreement are sufficient consideration for the Temporary Construction Easement.

3. TERM OF AGREEMENT: The term of this Agreement shall be from the date of mutual execution, and shall continue until completion of the Project, or until December 31, 2020 (whichever occurs sooner), unless otherwise terminated earlier pursuant to the terms herein.

4. MANNER OF FINANCING: The County is not obligated to pay or provide any funds to the City for the Project pursuant to the terms of this Agreement. The City shall be solely and separately responsible and liable for funding the Project.

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 2.2.2 of this Agreement (to repair and/or restore to a safe condition any area within any County roadway(s) and/or the Project Property which are damaged or disturbed by the Project), the County shall be reimbursed by the City 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 City a certified statement of the costs, and within thirty (30) days thereafter, City 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:

Skagit County Engineer, or their designee
1800 Continental Place
Mount Vernon, WA 98273
Phone: (360) 416-1400

5.2 The City's representative shall be:

Sedro Woolley Public Works Director, or their designee
325 Metcalf Street
Sedro Woolley, WA 98284
Phone: (360) 855-0771

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. While the County shall continue to be responsible for the maintenance of County roads (and County right of way) after completion of the Project, the County shall not be responsible for or liable for the construction, project management, use, operation, maintenance, repair, and/or replacement of the Project pursuant to the terms of this Agreement.

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

8. 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, the general public, third party property owners and residents at or in the vicinity of the Project, any other organization or entity, or any agent, contractor, subcontractor, consultant, employee, volunteer, or other representative of any party.

9. USE OF DOCUMENTS AND MATERIALS PRODUCED: Unless privileged or otherwise exempt from public disclosure, the County 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. 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).

10. INDEMNIFICATION: Except as provided to the contrary herein, 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 City by reason of entering into this contract except as expressly provided herein.

11. LIMITATION OF LIABILITY. Any party having a claim against the City, however arising, shall have recourse only to the extent of assets and property of the City, and shall have no recourse against the County, its appointed or elected officers, employees, volunteers or its/their assets or credits.

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

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

14. 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.

15. 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.

16. 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.

17. COMPLIANCE WITH LAWS AND TERMS OF GRANTS: The parties to this Agreement shall comply with all applicable federal, state, and local laws, rules, and regulations in carrying out the terms and conditions of this Agreement. As necessary, the City (at the City's own expense and liability) shall obtain and comply with all necessary permits and approvals from all applicable jurisdictions prior to commencing any work on the Project, and individually the City shall be solely and separately responsible and liable for compliance with all terms and conditions of any permit(s) and/or grant(s) obtained or procured in such party's name. To the maximum extent allowed by law, the City shall defend, indemnify, and hold the County harmless from any liability arising from and/or related to non-compliance with any permit(s), approval(s), and/or grant(s) for the Project.

18. ASSIGNMENT AND SUBCONTRACTING: The parties recognize and agree that the City may hire consultant(s), contractor(s), and/or subcontractor(s) to assist with the implementation of the Project by the City. Unless otherwise expressly provided herein, no portion of this Agreement may be assigned, contracted, and/or subcontracted to any other individual, firm, company, and/or other entity without the express and prior written approval of the County. The City shall be responsible and liable for the performance and completion of any Project work which is agreed to by the County to be assigned, contracted, and/or subcontracted pursuant to the terms herein.

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

22. 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.

CITY OF SEDRO-WOOLLEY:

By: Keith S. Wagoner
Keith Wagoner, Mayor
(Date 12 FEB, 2016)

Mailing Address:

City of Sedro-Woolley
325 Metcalf Street
Sedro-Woolley, WA 98284

Approved as to form:

Eron Berg
Eron Berg, City Attorney

DATED this 8 day of February, 2016.

BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON

Lisa Janicki
Lisa Janicki, Chair

Ron Wesen
Ron Wesen, Commissioner

Kenneth A. Dahlstedt
Kenneth A. Dahlstedt, Commissioner

Attest:

Amber K. Magrin
Clerk of the Board

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

Recommended:

[Signature]
Department Head

[Signature]
County Administrator

Approved as to form:

[Signature] 2/15/16
Civil Deputy Prosecuting Attorney

Approved as to indemnification:

[Signature]
Risk Manager

Approved as to budget:

[Signature]
Budget & Finance Director

EXHIBIT "A"

TEMPORARY CONSTRUCTION EASEMENT.

City of Sedro-Woolley
325 Metcalf St
Sedro Woolley, WA 98284
Attention: Mark A. Freiburger, PE, Director of Public Works

TEMPORARY CONSTRUCTION EASEMENT

Grantor(s): Skagit County, Washington, a Political Subdivision of the State of Washington
Grantee: City of Sedro-Woolley
Abbreviated Legal: Section 25, Township 35 North, Range 4 East; Ptn. N ½ NW ¼
Tax Parcel No.: P37594, 350425-0-007-0108
Project Name: Jameson Arterial Extension Project

THE GRANTOR(S), Skagit County, Washington, a Political Subdivision of the State of Washington, for and in consideration of mutual benefits and in further consideration of the general public welfare and of the peculiar and special benefits to accrue to us therefrom, do(es) by these presents grant and convey to the City of Sedro-Woolley a Municipal Corporation in Skagit County, Washington, its agents, employees, and contractors the nonexclusive right to enter upon lands now owned by the Grantor(s) for any and all purposes incidental to the construction of the above-mentioned improvement, which lands are situated in Skagit County, State of Washington, described as follows, to wit:

Per Exhibit A attached hereto and made a part hereof by this reference

It is understood and agreed that the rights herein granted shall be at all times exercised in a manner that does not unreasonably interfere with the use of the property by the grantor.

It is further understood and agreed that the City of Sedro-Woolley agrees to indemnify and save the grantors harmless from all claims and causes of action of any nature whatsoever arising out of the exercise by the City of the rights herein granted.

It is further understood and agreed that the City will give 30 calendar days' notice prior to start of construction within the temporary easement area, and that the City will limit work within the temporary construction area to 90 calendar days.

This permit, and all rights granted hereunder, shall terminate automatically and without notice upon the completion of the above project or on December 31, 2016, whichever occurs first.

The Grantor(s) acknowledge(s) that the property and/or property rights conveyed herein are a donation; the consideration is a mutual benefit to be derived; and the Grantor(s) has been informed of its right to receive just compensation and have waived said rights.

IN WITNESS WHEREOF, said corporation has caused this instrument to be executed by its proper officers this 8 day of February, 2016.

BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON

Lisa Janicki
Lisa Janicki, Chair

Kenneth A. Dahlstedt
Kenneth A. Dahlstedt, Commissioner

Ron Wesen
Ron Wesen, Commissioner

Attest:

Amber Kllogjeri
Clerk of the Board

Approved as to form:

[Signature]
Civil Deputy Prosecuting Attorney

STATE OF WASHINGTON }
County of } SS.

I certify that I know or have satisfactory evidence that Lisa Janicki, Ron Wesen and Kenneth A. Dahlstedt (is/are) the person(s) who appeared before me, and said person(s) acknowledged that ~~he/she~~ they signed this instrument, on oath stated that ~~he is/she is~~ they are authorized to execute the instrument and acknowledged it as the County Commissioners and _____ of Skagit County, Washington, a Political Subdivision of the State of Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

DATED: 02/08/2016

Amber Kllogjeri
Name (typed or printed):
NOTARY PUBLIC in and for the State of Washington
Residing at Mount Vernon
My appointment expires: 1-23-2017



EXHIBIT A

TEMPORARY CONSTRUCTION EASEMENT (P37594)

That portion of the former Burlington Northern Railroad Company's (now Skagit County, Washington's) 370.0 foot wide Station Ground property at Sedro Woolley, Washington, located on the Branch Line right of way, being 200.0 feet wide on the Westerly side and 170.0 feet wide on the Easterly side of the Main Track centerline, upon, over and across the N ½ NW ¼ of Section 25, Township 35 North, Range 4 East, W.M., bounded on the South by the South line of said N ½ NW ¼ and bounded on the North by the North line of Jameson Avenue in the City of Sedro Woolley, Washington, more particularly described as follows:

Commencing at the intersection of the Centerlines of Jameson Street and Batey Road; thence S78°08'36"E on the centerline of vacated James Young and Sterling Road a distance of 30.78 feet to the West right of way of Batey Road; thence S1°04'06"W on said West Right of way a distance of 30.78 feet to the South right of way of Jameson Street; thence N78°08'36"E on said South right of way a distance of 165.56 feet to the West line of said Burlington Northern Company's Station Ground and the Actual Point of Beginning; thence continuing N78°08'36"E on said South right of way a distance of 88.78 feet; thence S88°32'33"E continuing on said South right of way a distance of 20.59 feet; thence S11°51'24"E a distance of 15.26 feet; thence S87°08'36"W parallel with said South right of way a distance of 117.29 to said West line of said Burlington Northern Railroad Company's Station Ground; thence N11°06'37"E on said West line a distance of 21.72 feet to the Point of Beginning,

Containing 2,214 square feet.

Situate in the City of Sedro Woolley, County of Skagit, State of Washington.

SEE ATTACHED EXHIBIT B (MAP)

NOT INCLUDED.



EXHIBIT "B"

SKAGIT COUNTY DONATION LETTER



**SKAGIT COUNTY
BOARD OF COMMISSIONERS**

RON WESEN, First District
KENNETH A. DAHLSTEDT, Second District
LISA JANICKI, Third District

February 8, 2016

City of Sedro-Woolley
325 Metcalf St
Sedro Woolley, WA 98284

Attention: Mark A. Freiburger, PE, Director of Public Works

RE: City of Sedro-Woolley
Jameson Arterial Extension to SR9 Project
Tax Parcel No. 350425-0-007-0108 (P37594) / Skagit County

Dear Mr. Freiburger:

Our contribution of the following described property, to the City of Sedro-Woolley, a Municipal Corporation of the State of Washington, for highway/transportation purposes is made voluntarily and with full knowledge of our entitlement to receive just compensation therefor. We hereby release the City of Sedro-Woolley from its obligation to obtain an appraisal for the acquisition of the property.

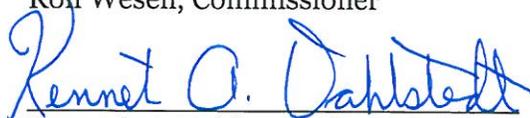
1. P37594; 2,214 square feet, more or less, for a temporary construction easement.

Sincerely,

**BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY WASHINGTON**


Lisa Janicki, Chair


Ron Wesen, Commissioner


Kenneth A. Dahlstedt, Commissioner