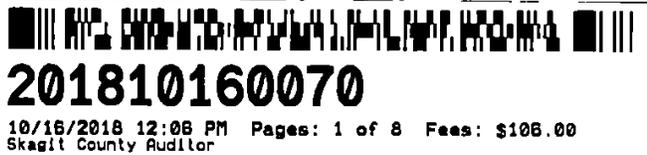


After Recording Return to:

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



INTERLOCAL COOPERATIVE AGREEMENT  
BETWEEN

SKAGIT COUNTY  
AND  
TOWN OF LYMAN

THIS AGREEMENT (herein "Agreement") is made and entered into by and between the Town of Lyman, a Washington municipal corporation (herein "Town"), and Skagit County, a political subdivision of the State of Washington (herein "County") pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT. The Town 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: Since in or about November of 2017, the Town has experienced significant problems with erosion caused by a side channel of the Skagit River, causing the destruction of homes and property within the Town, and such erosion is ongoing and continues to threaten public and private property within the Town, including the Town's streets and the Town's water utility lines located in the vicinity of the erosion. In response to such erosion the Town passed an emergency declaration resolution (Emergency Declaration 2018-2), dated September 27, 2018 (herein the "Town Emergency"). The Town desires to undertake emergency actions to attempt to abate or reduce such erosion, specifically including, but not necessarily limited to, erosion control and slope stabilization work involving excavation, trenching, and the placement of approximately fifteen thousand (15,000) tons of riprap and/or other materials in the vicinity of the Skagit River side channel by the Town (herein the "Town Project"). The County has provided the Town with a separate Emergency Access and Construction Easement, dated October 15, 2018, recorded under Skagit County Auditor's File No.: 201810160069, (herein the "Town Easement") for the purpose of allowing the Town to perform portions of the Town Project on certain County real property, at the sole cost, expense, and liability of the Town (pursuant to the terms of the Town Easement).

1.1 While the County has no formal involvement in the Town Project (except as may be expressly provided by the terms of this Agreement and the Town Easement), the County does generally support the goals and purposes of the Town Project as laudable public purpose, 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 potential public benefit to be received by the overall Skagit County community as a result of the Town Project, the County desires to contribute to the cost of the Town Project, pursuant to and subject to the terms of this Agreement.

1.3 The parties agree that the mutual benefits 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 The County 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 County may financially contribute to the Town Project by donating approximately fifteen thousand (15,000) tons of riprap and/or other materials to the Town to be used by the Town for the Town Project. Such riprap and/or other materials shall be the sole property of the Town, and the Town shall be solely and separately responsible and liable for the use of such riprap by the Town. In providing any such materials to the Town, the County in no way warrants any such materials, and the County in no way represents or warrants that such materials are suitable for use in the Town Project. In the event that the County is unable to contribute such riprap and/or other materials for any reason, or if additional riprap and/or other materials are determined by the Town to be needed, the Town shall otherwise be responsible for obtaining any such riprap and/or other materials at the Town's own expense and liability.

2.1.2 As County staffing and time constraints allow, the County may provide limited technical assistance to the Town as related to the Town Emergency. Any such technical assistance provided by the County is provided without any representations or warranties of any kind, and the Town shall be solely and separately responsible and liable for the use of any technical assistance provided by the County. The Town shall be responsible for providing or obtaining any additional technical assistance that may not be provided by the County that the Town determines to be necessary or appropriate, at the Town's own expense and liability.

2.1.3 In accordance with and subject to Section 4. of this Agreement, the County shall financially contribute to a portion of the Town's total cost for the Town Project in a total amount not to exceed Two Hundred Thousand Dollars (\$200,000).

2.1.4 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 Town Project, and the County disclaims any interest or involvement in the Town Project. The Town Project is not a County project. The parties agree that the County is not responsible or liable for the design, permitting, construction, installation, modification, implementation, use, operation, and/or maintenance of the Town Project or any other Town property or infrastructure in any way.

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

2.2.1 The Town agrees that it shall be responsible and liable for the design, permitting, construction, obtaining appropriate property access, installation, modification, implementation, use, operation, and/or maintenance of the Town Project (in accordance with the terms of this Agreement)/ The Town also agrees that the County is not responsible or liable for the design, permitting, construction, property access, implementation, use, operation, and/or maintenance of the Town Project in any way.

3. **TERM OF AGREEMENT:** This Agreement shall commence on the date of mutual execution, and shall continue for three (3) years from the date of mutual execution, unless sooner terminated pursuant to the terms herein. All terms of this Agreement concerning liability and/or indemnification shall survive the termination or expiration of this Agreement.

4. **MANNER OF FINANCING:** The County shall pay the Town a total amount not to exceed Two Hundred Thousand Dollars (\$200,000) for a portion of the Town's total actual costs and expenses incurred by the Town for the Town Project (as described in Section 2.1.3.). Upon request by the County, the Town shall provide adequate supporting documentation for all amounts invoiced to the County (to the satisfaction of the County). In accordance with the terms of this Agreement, the County shall promptly pay any such invoices from the Town in the ordinary course of business. The Town shall otherwise be responsible for funding the Town Project.

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 Public Works Director, or his/her designee.

6.2 The Town's representative shall be Mayor, or his/her designee, and/or successor(s).

6. **HOLD HARMLESS, DEFENSE, & INDEMNIFICATION:** The Town hereby unconditionally releases, forever discharges, and holds harmless the County (including the County's elected officials, employees, volunteers, officers, and/or agents in both their official and individual capacities) from any and all past, present, and/or future claims, counterclaims, demands, judgments, debts, costs, liabilities, expenses, suits, and proceedings of any kind and nature, as arising from and/or related to the Town Project. The Town agrees to be responsible for and to assume liability for all work arising from and/or related to the Town Project, including, but not limited to, the Town's own intentional, wrongful, and/or negligent acts or omissions or those of the Town's officials, officers, agents, contractors, or employees to the fullest extent required by law, and the Town further agrees to save, indemnify, defend, and hold the County harmless from any such liability. It is further provided that no liability shall attach to the County by reason of entering into this Agreement except as expressly provided herein. The terms of this section shall survive any termination of this Agreement, and shall continue in full force and effect. The foregoing indemnification obligations provided by the Town are a material inducement to the County to enter into this Agreement, and such terms are part of the mutual

consideration provided by the parties pursuant to this Agreement, and such terms have been mutually negotiated by the parties.

The Town has specifically reviewed and accepts the forgoing terms:                      (initial).

7. **LIMITATION OF LIABILITY.** Any party having a claim against Town, however arising, shall have recourse only against the Town, and shall have no recourse against the County, its appointed or elected officers, employees, volunteers or its/their assets or credits. The terms of this section shall survive any termination of this Agreement, and shall continue in full force and effect.

The Town has specifically reviewed and accepts the forgoing terms:                      (initial).

8. **TREATMENT OF ASSETS AND PROPERTY:** Except as may be expressly provided to the contrary herein, no fixed assets or personal or real property will be jointly or cooperatively, acquired, held, or used pursuant to this Agreement. The County shall not be responsible for or liable for the design, permitting, construction use, operation, maintenance, repair, or replacement of the Town Project and/or any other Town property or infrastructure pursuant to the terms of this Agreement.

9. **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 County does not represent the Town. The parties represent and warrant that they have fully read this Agreement, that they are duly authorized to enter into 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.

10. **CHANGES, MODIFICATIONS, AMENDMENTS, & WAIVERS:** The Agreement may be changed, modified, amended or waived only by written subsequent 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. **VENUE AND CHOICE OF LAW:** The parties agree that the venue for any legal action arising from and/or related to this Agreement 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.

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

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

15. **COMPLIANCE WITH LAWS, PERMITS, AND TERMS OF GRANTS:** The Town 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 Town (at the Town'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 Town Project, and the Town 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 for the Town Project. The Town shall be solely and separately responsible and liable for the costs of any mitigation (as determined to be needed by the permitting agency) to comply with any permit requirements for the Town Project.

16. **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.

17. **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.

18. **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.

**TOWN OF LYMAN**, a Washington municipal corporation.

DATED this 12th day of October, 2018.

By: Eddie Hills  
Eddie Hills, Mayor

STATE OF WASHINGTON }  
COUNTY OF SKAGIT } ss.

I certify that I know or have satisfactory evidence that Eddie Hills, is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was duly authorized execute the instrument and acknowledged it as the Mayor of the Town of Lyman, to be the free and voluntary act of such party for the uses and purposes herein mentioned.

DATED this 12 day of October, 2018.



Debora E Boyd

Notary Public  
Print name: Debora E Boyd  
Residing at: Lyman  
My appointment expires: April 27, 2019

DATED this 15 day of October, 2018.

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

Kenneth A. Dahlstedt  
Kenneth A. Dahlstedt, Chair

Lisa Janicki  
Lisa Janicki, Commissioner

Ron Wesen  
Ron Wesen, Commissioner

Attest:

Linda Hansen  
Clerk of the Board

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

Recommended:

[Signature]

Department Head

County Administrator

Approved as to form:

[Signature] 10/15/18  
Civil Deputy Prosecuting Attorney

Approved as to indemnification:

[Signature] (10-15-18)  
Risk Manager

Approved as to budget:

Lisa Joigne  
Budget & Finance Director

STATE OF WASHINGTON }  
COUNTY OF SKAGIT } ss.

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

DATED this 15 day of October, 2018.

(SEAL)



Linda Hammons.  
Notary Public  
print name: Linda Hammons  
Residing at Skagit County  
My commission expires 10-01-2019