



**MEMORANDUM**

**TO:** Jack Louws, County Executive

**FROM:** Erika Nuereberg, Assistant Director *EUN*

**RE:** Washington State Department of Health – Public Water System Regulation  
Interagency Agreement – Amendment #1

**DATE:** December 7, 2018

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Enclosed are two (2) originals of an agreement between Whatcom County and Washington State Department of Health for your review and signature.

▪ **Background and Purpose**

Washington State Department of Health (DOH) and Whatcom County Health Department (WCHD) carry out a joint plan of responsibility for the regulation of public water systems. This agreement delineates the responsibilities between the two parties pursuant to Chapters 70.119A and 70.116 RCW and Chapter 246-291 WAC. The purpose of this amendment is to extend the agreement through 12/31/2023 and to change the contact information on the signature page.

▪ **Funding Amount and Source**

Annual reimbursement to Whatcom County, in the amount of \$10,000, has been provided to Whatcom County through the Washington State Department of Health Consolidated Contract (Whatcom County Contracts # 201412008 and 201801023) for the last two years (2017 – 2018) and is expected to continue through 2019; these funds are included in the 2019 budget. Council approval is required per RCW 39.34.030(2) for agreements between public agencies.

Please contact John Wolpers at extension #6026 if you have any questions regarding this agreement.

Encl.



**WHATCOM COUNTY CONTRACT  
INFORMATION SHEET**

Whatcom County Contract No. \_\_\_\_\_

|   |   |
|---|---|
| Originating Department:                             | 85 Health   |
| Division/Program: (i.e. Dept. Division and Program) | 8540 Environmental Health / 854020 Drinking Water |
| Contract or Grant Administrator:                    | John Wolpers                                      |
| Contractor's / Agency Name:                         | Washington State Department of Health             |

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes  No   
 Yes  No  If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: \_\_\_\_\_

Does contract require Council Approval? Yes  No  If No, include WCC: \_\_\_\_\_  
 Already approved? Council Approval Date: \_\_\_\_\_ (see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

Is this a grant agreement? Yes  No  If yes, grantor agency contract number(s): \_\_\_\_\_ CFDA#: \_\_\_\_\_

Is this contract grant funded? Yes  No  If yes, Whatcom County grant contract number(s): 201801023

Is this contract the result of a RFP or Bid process? Contract \_\_\_\_\_  
 Yes  No  If yes, RFP and Bid number(s): \_\_\_\_\_ Cost Center: \_\_\_\_\_

Is this agreement excluded from E-Verify? No  Yes  If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:

- Professional services agreement for certified/licensed professional.
- Contract work is for less than \$100,000.
- Contract for Commercial off the shelf items (COTS).
- Contract work is for less than 120 days.
- Work related subcontract less than \$25,000.
- Interlocal Agreement (between Governments).
- Public Works - Local Agency/Federally Funded FHWA.

Contract Amount:(sum of original contract amount and any prior amendments):  
 \$ 0  
 This Amendment Amount:  
 \$ \_\_\_\_\_  
 Total Amended Amount:  
 \$ \_\_\_\_\_

Council approval required for; all property leases, contracts or bid awards **exceeding \$40,000**, and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, **except when:**

1. Exercising an option contained in a contract previously approved by the council.
2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance.
3. Bid or award is for supplies.
4. Equipment is included in Exhibit "B" of the Budget Ordinance
5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.

Summary of Scope: This agreement delineates the responsibilities between Whatcom County and the Washington State Department of Health for the regulation of public water systems.

Term of Contract: 5 Years Expiration Date: 12/31/2023

- Contract Routing:
- |   |                        |
|---|------------------------|
| 1. Prepared by: <u>JT</u>                 | Date: <u>12/7/2018</u> |
| 2. Attorney signoff: _____                | Date: _____            |
| 3. AS Finance reviewed: _____             | Date: _____            |
| 4. IT reviewed (if IT related): _____     | Date: _____            |
| 5. Contractor signed: _____               | Date: _____            |
| 6. Submitted to Exec.: _____              | Date: _____            |
| 7. Council approved (if necessary): _____ | Date: _____            |
| 8. Executive signed: _____                | Date: _____            |
| 9. Original to Council: _____             | Date: _____            |



**Full Delegation of Responsibility to Implement  
Chapter 246-291 WAC  
To the Whatcom County Health Department**

|                                      |   |
|--------------------------------------|---|
| CONTRACT NUMBER<br><b>CLH20503-1</b> | SUBRECIPIENT *<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO |
|--------------------------------------|---|

**JOINT PLAN OF RESPONSIBILITY  
INTERAGENCY AGREEMENT**

**Between  
STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
and  
WHATCOM COUNTY HEALTH DEPARTMENT**

**THIS AGREEMENT** is made and entered into by and between the DEPARTMENT OF HEALTH (DOH) and the Whatcom County Health Department (WCHD).

**THE PURPOSE OF THIS AGREEMENT** is to provide for a joint plan of responsibility which delineates the responsibilities of DOH and WCHD with respect to the regulation of water systems in Whatcom County pursuant to Chapters 70.119A and 70.116 RCW and Chapter 246-291 WAC. The intent is to transfer primary responsibility to enforce Chapter 246-291 WAC to WCHD in conformance with WAC 246-291-030(1)(b). This Agreement supersedes and replaces all prior Interagency Agreements between DOH and WCHD regarding the regulation of water systems.

**THE PURPOSE OF THIS AMENDMENT** is to extend the Period of Performance and to change the contact information on the signature page.

**THEREFORE, IT IS MUTUALLY AGREED THAT:**

**STATEMENT OF RESPONSIBILITIES**

WCHD and DOH agree to carry out this joint plan of responsibility as set forth in Exhibit A, General and Shared Responsibilities, and Exhibit B, Agency Responsibility for Program Function; attached hereto and incorporated herein.

**PERIOD OF PERFORMANCE**

Subject to its other provisions, the Period of Performance of this Amendment shall commence on January 01, 2019 and shall terminate on December 31, 2023 unless terminated sooner as provided herein.

**COSTS**

Unless otherwise specified within the Agreement, any and all expenses incurred by the parties to this Agreement are the sole responsibility of the incurring party.

**ASSIGNMENT**

The work to be provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

**AGREEMENT MANAGEMENT**

The program manager for each of the parties shall be responsible for and shall be the contact person for all communications regarding the performance of this Agreement. Either party may change its contact person by giving written notice to the other party.

The Contact Person for DOH is:

The Administrator for WCHD is:

Robert E. James  
Washington State Department of Health  
20425 72<sup>nd</sup> Ave. S., Ste. 310  
Kent, Washington 98032  
253-395-6768

John Wolpers, EH Manager  
Whatcom County Health Department  
509 Girard Street  
Bellingham, WA 98225  
360-676-6724

**AGREEMENT ALTERATIONS AND AMENDMENTS**

This Agreement may be amended by mutual agreement of the parties. Amendment to the Agreement may be required as a result of statutory and regulatory changes, including, but not limited to, amendments to the Group B Rules (Chapter 246-291 WAC). Amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

**DISPUTES**

In the event that a dispute arises under this Agreement, it shall be resolved at the lowest possible management level. If resolution is not achieved, it shall be determined in the following manner: The Director of the Office of Drinking Water at DOH shall meet with the Director of the WCHD at the local health jurisdiction to try and resolve the dispute. Failing a resolution at the management level, the Secretary of DOH shall appoint a member to a Dispute Resolution Board and the local health jurisdiction administrator shall appoint a member to the Dispute Resolution Board. The Secretary of DOH and the local health jurisdiction administrator shall jointly appoint a member to the Dispute Resolution Board.

The Dispute Resolution Board shall evaluate and resolve the dispute. The determination of the Dispute Resolution Board shall be final and binding on the parties hereto.

**GOVERNANCE**

This Agreement is entered into pursuant to and under the authority granted by the laws of the State of Washington and any applicable federal laws and local laws. The provisions of this Agreement shall be construed to conform to those laws.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. applicable state and federal laws and regulations;
- b. applicable local laws,
- c. statement of work; and
- d. any other provisions of the Agreement, including materials incorporated by reference.

### **HOLD HARMLESS**

The WCHD shall defend, protect and hold harmless the State of Washington, the department, or any employees thereof, from and against all claims, suits or action arising from any intentional or negligent act or omission of WCHD or subcontractors, or agents of either, while performing under the terms of this Agreement. Claims shall include, but not be limited to, assertions that the use or transfer of any software, book, document, report, film, tape or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, or otherwise results in an unfair trade practice.

DOH shall defend, protect and hold harmless WCHD, or any employees thereof, from and against all claims, suits or action arising from any intentional or negligent act or omission of the DOH or subcontractors, or agents of either, while performing under the terms of this Agreement. Claims shall include, but not be limited to, assertions that the use or transfer of any software, book, document, report, film, tape or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, or otherwise results in an unfair trade practice.

### **INDEPENDENT CAPACITY**

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

### **PRIVACY/SAFEGUARDING OF INFORMATION**

"Personal information" means information identifiable to any person, including but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers. "Personal information" includes information protected from disclosure under chapters 42.56, 70.02, 70.24, and 71.05 RCW, but does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

Neither WCHD nor DOH shall use or disclose Personal Information in any manner that would constitute a violation of federal or Washington State law. The parties agree to comply with all applicable federal and state laws and regulations, as currently enacted or revised, regarding data security and electronic data interchange of all Personal Information.

WCHD and DOH shall protect Personal Information collected, used, or acquired in connection with this Agreement against unauthorized use, disclosure, modification or loss, and shall use it solely for the purposes of accomplishing the services set forth in this Agreement. Both parties agree to implement physical, electronic, and managerial policies, procedures, and safeguards to prevent unauthorized access, use, or disclosure the information in any form.

### **RECORDS MAINTENANCE**

WCHD and DOH agree each will maintain books, records, documents and other supporting evidence that provides verification that they have performed their portion of the

work as described in the Statement of Work. These records will be open to inspection and/or review by authorized individuals of WCHD or DOH, individuals authorized by WCHD or DOH, the Office of the State Auditor, and federal officials, as authorized by law. All the books, records, documents, and other material relevant to this agreement will be retained for the periods established by the State Archives Office and/or the records retention periods established by each agency, whichever is longer.

Records and other documents, in any medium, furnished by one of us to the other, will remain the property of the entity furnishing the information, unless we agree otherwise. WCHD and DOH will each utilize reasonable security procedures and protections to assure that all information under this agreement is protected from erroneous disclosure to third parties .

### **SEVERABILITY**

If any provision of this Agreement or any provision of any document incorporated by reference shall become invalid as a result of statutory or regulatory amendment or be held invalid by a court of general jurisdiction, such invalidity shall not affect other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

### **TERMINATION**

Either party may terminate this Agreement upon 30 days prior written notification to the other party.

### **TERMINATION FOR CAUSE**

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 working days. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

### **WAIVER**

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

### **ALL WRITINGS CONTAINED HEREIN**

This Agreement, its attachments and all incorporations, contains all the terms and conditions agreed upon by the parties. 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.

**IN WITNESS WHEREOF**, the parties have executed this Agreement:

State of Washington  
Department of Health (DOH)

\_\_\_\_\_  
Title: Contracts Specialist

APPROVED AS TO CONTENT ONLY



Date: \_\_\_\_\_

By: Mike Means  
Title: Director, Office of Drinking Water

Date: 11/27/2018

APPROVED AS TO FORM ONLY:  
Janis Snoey  
Assistant Attorney General

WCHD APPROVAL

  
For Regina Delahunt, Director

12/7/18

\_\_\_\_\_  
Date

PROGRAM APPROVAL

  
John Wolpers, Env. Health Manager

12-7-18

\_\_\_\_\_  
Date

WHATCOM COUNTY

STATE OF WASHINGTON  
COUNTY OF WHATCOM

\_\_\_\_\_  
JACK LOUWS  
County Executive

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me personally  
appeared Jack Louws, to me known to be the executive of Whatcom County 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 Bellingham.

My Commission expires:

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy Prosecuting Attorney

12-10-18  
\_\_\_\_\_  
Date

**EXHIBIT A**  
General and Shared Responsibilities

**GENERAL:**

1. DOH will fulfill any agency responsibility under chapter 246-291 WAC and chapter 246-290 WAC that this JPR does not specifically assign to WCHD.
2. Responsibilities and authorities delegated to WCHD in this JPR are limited to the scope of chapter 246-291 WAC and chapter 246-290 WAC.
3. WCHD is primarily responsible for administrating Chapter 246-291 WAC within its jurisdiction. Exhibit B indicates allocation of specific tasks. The party assigned a function shall perform that function on a day to day basis; the other party may provide advice or assistance as resources allow; provided that nothing herein shall preclude either party from taking primary responsibility for a function by mutual agreement or where an emergency exists or when the assigned party is unable to act effectively.
4. Both parties may participate in developing an informal summary of interagency responsibilities that are outside the scope of this JPR, including but not limited to that portion of local Group B regulations, if any, which are outside the scope of chapter 246-291 WAC. If developed, such an informal summary does not amend and is not incorporated in this JPR.
5. WCHD may revise existing or adopt new regulations for the regulation of Group B water systems that alter the scope of this agreement or result in its termination. WCHD shall inform DOH within 30 days if a new or revised local Group B drinking water ordinance is adopted.

**SHARED RESPONSIBILITIES:**

1. Six months prior to the termination date, DOH and WCHD will meet to evaluate the implementation of this JPR with the objective of determining the scope of a new or renewed JPR.
2. Both parties shall transmit to the other copies of any written policies and correspondence relevant to the subject matter of this JPR.
3. Both DOH and WCHD will work together to ensure that there is effective communications when dealing with drinking water emergencies, security incidents and health risk situations related to water systems in WCHD.



**EXHIBIT B**  
Agency Responsibility for Program Function

| GROUP B PROGRAM FUNCTIONS<br>(Within the Scope of chapter 246-291 WAC)   | Assignment of Responsibility |
|--|------------------------------|
| Develop and implement a local Group B design approval fee schedule. WCHD may charge fees consistent with their adopted fee schedule in order to defray Group B program expenses incurred in maintaining a Group B drinking water program to the extent authorized under RCW 70.05.060 and RCW 70.05.070.   | WCHD                         |
| Administer a Group B public water system program to the extent authorized by this JPR.   |                              |
| Provide the applicant/purveyor with technical assistance on Group B approval requirements and design standards.  |                              |
| Review and approve all design submittals for new or expanding Group B water systems intending to serve nine or fewer dwelling units, ensuring compliance with each design approval requirement in chapter 246-291 WAC.   |                              |
| Conduct well site inspections for new Group B sources.   |                              |
| Review hydrogeologic evaluation of all potential GWI sources and determine whether the proposed source is GWI in accordance with DOH GWI program guidance.   |                              |
| Share written communications with DOH. This includes, but is not limited to, providing DOH with copies of the following within 30 days of approving the design submittal for a new or expanding Group B water system: <ul style="list-style-type: none"> <li>a. Approval letter with the name of the system, maximum number of connections to be served, the location of the system, and number of dwelling units and number of non-residential connections approved;</li> <li>b. Well log;</li> <li>c. Completed notice to title information;</li> <li>d. Completed water facility inventory (WFI) form;</li> <li>e. Hydrogeologic evaluation of potential GWI source (if applicable);</li> <li>f. Satisfactory coliform bacteria analysis lab report(s), satisfactory inorganic chemical analysis lab, and any other water quality information as may have been required for approval of the source(s).</li> </ul> |                              |
| Issue and lift health advisories, including boil water/bottled water notices, for Group B public water systems. Inform DOH of all health advisories when issued and rescinded.   |                              |
| Ensure compliance with all ongoing requirements in chapter 246-291 WAC (such as WAC 246-291-250, -300, and -360) for all Group B public water systems.   |                              |
|  | DOH                          |
| Review and approve all design submittals for public water systems serving ten or more dwelling units.  |                              |
| Share written communications with WCHD. This includes, but is not limited to, providing WCHD with copies of the following within 30 days of approving a new or expanding Group B water system: <ul style="list-style-type: none"> <li>a. Approval letter with the name of the system, maximum number of connections to be served, the location of the system, and number of dwelling units and number of non-residential connections approved;</li> <li>b. Well log;</li> <li>c. Completed notice to title information; and</li> </ul>   |                              |

|  |  |
|--|--|
| d. Completed water facility inventory (WFI) form   |  |
| Provide periodic training for WCHD staff, and provide technical assistance to WCHD staff as requested and as DOH resources permit.   |  |
| Maintain Group B Design Guidelines, the Group B Design Workbook, and the Group B Resource Web Page.  |  |
| Enter initial water facilities inventory (WFI) information into DOH's drinking water data system for each new and expanding Group B water system approved by WCHD after WCHD submits the completed WFI to DOH.                                   |  |
| Enter WFI information for existing Group B water systems that serve ten or more dwelling units for which WCHD submits a completed WFI to DOH.  |  |
| Request annual WFI updates from all public water systems approved to serve 10 or more dwelling units. DOH will share with WCHD any change in classification (Group A systems becoming Group B systems or vice versa) based on its annual review. |  |
| Enter Group B water quality lab reports which include a valid public water system identification number.   |  |

| <b>GROUP A PROGRAM FUNCTIONS<br/>(Within the Scope of chapter 246-290 WAC)</b>  | <b>Assignment of<br/>Responsibility</b> |
|---|---|
| Conduct sanitary surveys of Group A water systems in conformance with the WCHD -DOH Consolidated Contract.                        | WCHD                                    |
| Conduct well site inspections of new and expanding Group A well supplies in conformance with the WCHD -DOH Consolidated Contract. | WCHD                                    |
| Participate in epidemiological investigations of suspected or known water borne illness.  | DOH & WCHD                              |