

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No. _____

Originating Department:	Sheriff's Office
Division/Program: <i>(i.e. Dept. Division and Program)</i>	Emergency Management
Contract or Grant Administrator:	John Gargett
Contractor's / Agency Name:	Lake Whatcom Water and Sewer District
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="radio"/> No <input checked="" type="radio"/>	
Yes <input checked="" type="radio"/> No <input type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval? Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____	
Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement?	
Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, grantor agency contract number(s): _____ CFDA#: _____	
Is this contract grant funded?	
Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, Whatcom County grant contract number(s): _____	
Is this contract the result of a RFP or Bid process?	
Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): _____ Contract Cost Center: 16785	
Is this agreement excluded from E-Verify? No <input type="radio"/> Yes <input checked="" type="radio"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below:	
<input type="checkbox"/> Professional services agreement for certified/licensed professional.	
<input type="checkbox"/> Contract work is for less than \$100,000.	
<input type="checkbox"/> Contract work is for less than 120 days.	
<input checked="" type="checkbox"/> Interlocal Agreement (between Governments).	
<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).	
<input type="checkbox"/> Work related subcontract less than \$25,000.	
<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments): \$ 100,000	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 :
This Amendment Amount: \$ _____	
Total Amended Amount: \$ _____	
Summary of Scope:	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.
To provide emergency management services to the Lake Whatcom Water and Sewer District @ \$20,000 per year for five years.	
Term of Contract: Five Years	Expiration Date: 12/31/2024

Contract Routing:	1. Prepared by: F Burkhart	Date: 07/03/2020
	2. Attorney signoff: B Waldron (per email)	Date: 06/30/2020
	3. AS Finance reviewed: M Caldwell (per email)	Date: 06/30/2020
	4. IT reviewed (if IT related):	Date: _____
	5. Contractor signed: J Clary (per email)	Date: 07/01/2020
	6. Submitted to Exec.:	Date: _____
	7. Council approved (if necessary):	Date: _____
	8. Executive signed:	Date: _____
	9. Original to Council:	Date: _____

CONTRACT FOR SERVICES AGREEMENT
Between
Whatcom County and Lake Whatcom Water and Sewer District
Through the Whatcom County Sheriff's Office Division of Emergency Management

Lake Whatcom Water and Sewer District, hereinafter called **Requestor**, and Whatcom County, hereinafter referred to as **County**, agree and contract as set forth in this Agreement, including:

Exhibit A - Scope of Work

Copies of Exhibit A is attached hereto and incorporated herein by this reference as if fully set forth herein.

The term of this Agreement shall commence on the 1st day of January, 2020, regardless of the date of signature, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of December, 2024.

The general purpose or objective of this Agreement is for the Whatcom County Sheriff's Office Division of Emergency Management to provide emergency management services to the Lake Whatcom Water and Sewer District (LWWSD) in the City of Bellingham, WA and Whatcom County, WA.

The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

Billings shall be for a fixed annual cost of \$20,000.00 per year, to be billed semi-annually.

Payment for Services. The County shall bill the Requester for services provided and shall send billings to the Requester billing address identified in this Agreement. The Requester shall reimburse the County within 30 days of receipt of billing from the County.

Agreement Alterations and Amendments. The County and the Requester may mutually amend this Agreement. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind the County and the Requester.

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 written consent of the other party.

Governing Law. This Contract shall be governed in all respects by the laws of the State of Washington. The jurisdiction for any action hereunder shall be the Superior Court for the State of Washington. The venue of any action hereunder shall be in the Superior Court for Whatcom County, State of Washington.

INSURANCE. The Requestor shall obtain and keep in force during the terms of the Agreement, or as otherwise required, the following insurance with companies or through sources approved by the Washington State Insurance Commissioner pursuant to Title 48 RCW. The Requestor shall carry for the duration of this Agreement general liability and property damage insurance with the following minimums:
Property Damage per occurrence - \$1,000,000.00
General Liability & Property Damage for bodily injury- \$3,000,000.00 per occurrence

A Certificate of Insurance and endorsements must be provided by the Requestor that identifies the County as a named additional insured in the Requestor's insurance policy. This insurance shall be primary and shall waive all rights of subrogation. The County insurance shall be noncontributory. Proof of insurance requirements shall be provided by a Certificate of Insurance and endorsements. Requestor must submit Certificate of Insurance and Endorsements as described above to the County prior to the commencement of any work on this project.

Failure of the Requestor to take out and/or maintain any required insurance shall not relieve the Requestor from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification.

It is agreed by the parties that insurers shall have no right of recovery or subrogation against the County, including its employees and other agents and agencies. It is further agreed by the parties that insurance companies issuing the policy or policies required by this Agreement shall

have no recourse against the County (including its employees and other agents and agencies) for payment of any premiums or for assessments under any form of policy. It is further agreed by the parties that any and all deductibles in the above described insurance policies shall be assumed by and be at the sole risk of the Requestor .

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance secured by the Requestor, Whatcom County, its departments, officials, employees, agents, and volunteers will be named on all policies as an additional insured. The Requestor's insurance required by this Section shall be in all circumstances primary to any coverage for third-party liability claims or actions provided to the Sheriff's Office and/or the County by the County's membership in a Ch. 48.62 RCW "Risk Pool." The Requestor shall furnish the Whatcom County's Sheriff's Office (WCSO) with verification of insurance and endorsements required by the Agreement. The WCSO reserves the right to require complete, certified copies of all required insurance policies and any endorsements at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the WCSO.

Any coverage for third party liability claims provided to Whatcom County, its departments, employees, officials, agents, or volunteers by a "Risk Pool" created pursuant to Ch. 48.62 RCW shall be non-contributory with respect to any policy of insurance the Requestor must provide in order to comply with this Agreement.

If the proof of insurance or certificate indicating the County is an "additional insured" to a policy obtained by the Requestor refers to an endorsement (by number or name) but does not provide the full text of that endorsement, then it shall be the obligation of the Requestor to obtain the full text of that endorsement and forward that full text to the County.

INDEMNIFICATION.

A. General. Requestor shall defend, indemnify, and hold Whatcom County, its officers, officials, employees, agents, and volunteers harmless from any and all claims, injuries, damages, losses, or suits, including all legal costs and attorney fees, arising out of or in connection with the County's performance of this Agreement, except for that portion of the injuries and damages caused by the sole negligence of Whatcom County or its officers or employees.

It is further specifically and expressly understood that the indemnification provided herein constitutes the Requestor's waiver of immunity under industrial insurance, Title 51 RCW, solely for the purposes of this indemnification. The parties further acknowledge that they have mutually negotiated this waiver.

B. Indemnification and the Public Duty Doctrine. Requestor understands that, pursuant to the legal doctrine in Washington called the "public duty doctrine," Whatcom County, its Sheriff's Office, and its officers and employees of the Whatcom County Sheriff's Office, owe a general duty to the public and not a specific duty of protection or care to the Requestor. Requestor understands that by entering into this Agreement, the Sheriff's Office's and its Emergency Management Staff duties are to the public in general, and neither Whatcom County, its Sheriff's Office, nor any of its officers or employees have a specific duty of protection or care to the Requestor, its employees, subcontractors, and agents, or any of its guests, or other people on the premises of the Requestor. Moreover, neither Whatcom County, its Sheriff's Office, nor any officer or employee of Whatcom County guarantees, in any way, the safety of any person or property as a result of the work performed under this Agreement. In the event of injury to any person or property, Requestor shall not assert that Whatcom County, its Sheriff's Office, or its Emergency Management Staff owed any special duty to protect persons or property or provide care for such persons or property or had any special relationship with the owner or any other person to protect persons or property. This Agreement shall in no way create a duty for Whatcom County, its Sheriff's Office, or its Emergency Management Staff, or any of its officers or employees where none previously existed. In the event Whatcom County is sued, and a court determines that the public duty doctrine does not apply, or an exception to the public duty doctrine exists with relation to an injury to the person or property of any employee, subcontractor, guest, or other person on the premises of Requestor or on the public roadway which relates to the performance of this Agreement, Requestor shall specifically indemnify, hold harmless, and defend Whatcom County, its Sheriff's Office and Emergency Management, and each and every officer and employee thereof to the full extent permitted by law.

PARTIES ARE INDEPENDENT. The parties agree that neither shall be considered an employee or agent of the other.

Survival of Indemnity Obligations. Contracting Party with the County in this contract agrees all indemnity obligations shall survive the completion, expiration or termination of this Agreement.

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 Agreement shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto. The failure of either party 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.

REQUESTOR'S BUSINESS PERFORMED AT ITS OWN RISK. Requestor shall take all necessary precautions and shall be responsible for the safety of its employees, agents, guests, and all persons on Requestor's property and invitees at all times when Emergency Management staff or Sheriff's Office personnel are performing services pursuant to this Agreement.

EMERGENCY INTERRUPTIONS IN SERVICE. Emergency Management Staff and Sheriff's Office personnel performing services called for in this Agreement shall at all times be subject to the rules, regulations, and policies of Whatcom County and its Sheriff's Office, and shall be required to follow the orders of supervisors and command staff. Requestor understands that Emergency Management Staff and Sheriff's Office personnel, while performing services pursuant to this Agreement may, from time to time, be required to perform traditional duties for the benefit of the greater public. Therefore, from time to time, Emergency Management Staff and Sheriff's Office personnel performing services for Requestor may be required to respond to emergencies and abandon the services being called for under this Agreement.

Termination. Either party may terminate this agreement upon ninety (90) days written notice to the other party.

Compliance with Laws. Requestor agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Requestor's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of those operations.

Compliance with Civil Rights Laws. During the period of performance for this Agreement, both parties shall comply with all federal, state, and local laws nondiscrimination laws.

MISCELLANEOUS PROVISIONS.

Non-Waiver of Breach. The failure of Whatcom County to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option conferred by this Agreement in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements, or options, and the same shall be and remain in full force and effect.

Resolution of Disputes and Governing Law. Other than claims for injunctive relief, temporary restraining order, or other provisional remedy to preserve the status quo or prevent irreparable harm, 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 claim, dispute or controversy between the parties under, arising out of, or related to this Contract or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable American Arbitration Association (AAA) rules in effect on the date hereof, as modified by this Agreement. 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 Contract shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge but shall not have the power to award punitive damages. Each Party shall pay all their own costs, attorney fees and expenses of arbitration and share equally in the Arbitrator's fees and costs. 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 any court having jurisdiction. 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; provided, that either party may decline to mediate and proceed with arbitration.

Written Notice. All written notices required under this agreement shall be sent to the parties at the addresses listed on the signature pages of the Agreement or forwarded electronically to the emails of the parties listed, and notices shall be deemed received three (3) business days after the date sent.

Assignment. Any assignment of this Agreement by either party without the written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Agreement shall continue in full force and effect and no further assignment shall be made without additional written consent.

Modification. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the Whatcom County Sheriff's Office and the Requestor.

Severability. If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the 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 and the provisions of this Agreement are declared to be severable.

Entire Agreement. The written provisions and terms of this Agreement, together with any Exhibits or Attachments attached hereto or referenced herein, shall supersede all prior verbal statements of any officer or other representative of the Whatcom County Sheriff's Office and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. All of the above documents are hereby made a part of this Agreement. However, should any language in any of the Exhibits or Attachments to this Agreement conflict with any language contained in this Agreement, the terms of this Agreement shall prevail. Further, the representative signing this Agreement on behalf of Requestor swears and affirms that he or she is authorized to enter into this Agreement on behalf of Requestor and that action is binding on the Requestor.

By signing this Agreement, I represent and warrant that I am duly authorized and have legal capacity to execute and deliver this Agreement. I have read, acknowledge, and accept the Terms and Conditions set forth in this Agreement.

Each signatory below to this Contract warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and to bind the party thereto.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 2020 ____.

FOR LAKE WHATCOM WATER AND SEWER DISTRICT:

Justin Clary

Date

Contact Administrator / Contact Name: Justin Clary
General Manager
Contact Phone: 360-734-9224
Contact Email: justin.clary@lwwsd.org
Contact Mailing Address: 1220 Lakeway Drive, Bellingham, WA 98229

**FOR WHATCOM COUNTY:
Recommended for Approval:**

Whatcom County Sheriff

Date

Approved as to form:

Prosecuting Attorney

Date

Approved:

Accepted for Whatcom County

By: _____
Satpal Singh Sidhu, Whatcom County Executive Date

EXHIBIT "A"
(SCOPE OF WORK)

The Whatcom County Sheriff's Office, Division of Emergency Management (WCSO-DEM), will provide the following services to the Lake Whatcom Water & Sewer District:

Risk Assessment and Impact Analysis (RAIA) – The WCSO-DEM will provide a RAIA for the LWWSD to include all risks that impact the ability of the LWWSD to deliver services. This RAIA will be completed each year and presented to the LWWSD as a basis for the Risk, Safety Security, Emergency and Crisis Management Planning that is a continuing and ongoing effort. This will include a review of existing documentation and processes as required in the 2018 America's Water Infrastructure Act (AWIA) as applicable to the Lake Whatcom Water and Sewer District.

Risk, Safety Security, Emergency and Crisis Management Plan (R-SEC Plan) The WCSO-DEM will provide an annual update to the R-SEC Plan for the LWWSD based upon changes from the RAIA, personnel, and regulatory requirements. This R-SEC Plan will be completed by December 31 of each year as an annual update. Changes that are required during the year (such as additional action guidelines) will be issued as needed. This will include working with LWWSD staff and Engineers to conduct a Risk and Resilience Assessment as required in the 2018 America's Water Infrastructure Act (AWIA) as applicable to the Lake Whatcom Water and Sewer District. Upon completion of this Risk and Resilience Assessment, the WCSO-DEM will work with LWWSD staff to submit the Certification Letter to the Environmental Protection Agency by June 20, 2021.

Risk, Safety Security, Emergency and Crisis Management Plan (R-SEC Plan) The WCSO-DEM will provide an annual update to the R-SEC Plan for the LWWSD based upon changes from the RAIA, personnel, and regulatory requirements. This R-SEC Plan will be completed by December 31 of each year as an annual update. Changes that are required during the year (such as additional action guidelines) will be issued as needed. This will include working with LWWSD staff to conduct and ensure that the R-SEC Plan will meet the planning requirements of the 2018 America's Water Infrastructure Act (AWIA) as applicable to the Lake Whatcom Water and Sewer District.

Annual Risk, Safety Security, Emergency and Crisis Management Plan (R-SEC Plan) Workshop - The WCSO-DEM will provide an annual one-day workshop which will be held at the Whatcom Unified Emergency Coordination Center that will include each of the areas served, Facilities and public agencies that are responsible for R-SEC Planning within the LWWSD. The output of this workshop will be updated plans specific to each location, building and staff.

Assessment and Audit Exercise Design & Conduct - The WCSO-DEM will provide exercise design for the LWWSD to include at least one full-scale or functional exercise and one table-top exercises each calendar year. The specific locations and scenarios will be determined by LWWSD and the WCSO-DEM Project Manager.

Lake Whatcom Water & Sewer District Security Improvement Planning – The WCSO-DEM will provide ongoing Security Improvement Planning with the LWWSD.

Lake Whatcom Water & Sewer District Emergency Preparedness Improvement Planning – The WCSO-DEM will provide ongoing Emergency Preparedness Improvement Planning with the LWWSD to include a site visit to each location and an assessment of the capacity to support needs during and following a significant event such as an earthquake, winter storm or chemical emergency. This annual site visit will include a summary report of the preparedness level for each location.

Preparation of Annual Risk, Safety Security, Emergency and Crisis Management Improvement Plan - The WCSO-DEM will prepare an annual Improvement Plan that will be used for LWWSD planning for improvements to its R-SEC program. This plan will be the guide for the LWWSD both in terms of short term improvements that can be undertaken with existing budgets as well as a guide for capital improvements.

Assistance with Grant Applications. The WCSO-DEM will provide consulting assistance to LWWSD in preparing applications for grant funding from FEMA and other sources.

LWWSD Seat on Emergency Council or Board. The LWWSD shall be presented for consideration and a vote for inclusion on the County Emergency Management Council

Costs

The cost for this scope of work is \$20,000 per year based on a five-year contract.