

WHATCOM COUNTY CONTRACT INFORMATION SHEET	Whatcom County Contract No. 202302036
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Originating Department:	85 Health
Division/Program: (i.e. Dept. Division and Program)	8540 Environmental Health / 854085 Solid Waste
Contract or Grant Administrator:	Jennifer Hayden
Contractor's / Agency Name:	City of Lynden

Is this a New Contract?	If not, is this an Amendment or Renewal to an Existing Contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:		

Does contract require Council Approval?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	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?	If yes, grantor agency contract number(s):	CFDA#:	
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			
Is this contract grant funded?	If yes, Whatcom County grant contract number(s):		
Yes <input type="checkbox"/> No <input type="checkbox"/>			

Is this contract the result of a RFP or Bid process?	Contract Cost Center:	
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, RFP and Bid number(s):		N/A


Is this agreement excluded from E-Verify?	No <input type="checkbox"/> Yes <input checked="" type="checkbox"/>
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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 for Commercial off the shelf items (COTS).
<input type="checkbox"/> Contract work is for less than 120 days.	<input type="checkbox"/> Work related subcontract less than \$25,000.
<input checked="" type="checkbox"/> Interlocal Agreement (between Governments).	<input type="checkbox"/> 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 : <ol style="list-style-type: none"> Exercising an option contained in a contract previously approved by the council. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. Bid or award is for supplies. Equipment is included in Exhibit "B" of the Budget Ordinance 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.
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Summary of Scope: The Health Department will provide technical assistance site visits and prevention pollution education to Small Quantity Generators of dangerous waste within the City of Lynden.

Term of Contract:	2 Years	Expiration Date:	12/31/2024
Contract Routing:	1. Prepared by:	JT	Date: 01/18/2023
	2. Attorney signoff:	RB	Date: 01/25/2023
	3. AS Finance reviewed:	AM	Date: 02/10/2023
	4. IT reviewed (if IT related):		Date:
	5. Contractor approved:		Date:
	6. Executive Contract Review:		Date: 3/9/2023
	7. Council approved (if necessary):	AB2023-135	Date: 02/21/2023
	8. Executive signed:		Date: 3/9/2023
	9. Original to Council:		Date:



MEMORANDUM

TO: Satpal Sidhu, County Executive
FROM: Erika Lautenbach, Director
RE: City of Lynden – Source Control Small Quantity Generator Inspections Interlocal Agreement
DATE: March 8, 2023

Attached is a contract between Whatcom County and the City of Lynden for your review and signature.

■ **Background and Purpose**

Whatcom County is under contract with the Washington State Department of Ecology through the Pollution Prevention Assistance (PPA) Program to promote pollution source control and conduct inspections of potential pollutant generating enterprises within Whatcom County's jurisdiction (for this purpose, this includes all Whatcom County cities except Bellingham, which has its own PPA Program). This Interlocal Agreement establishes an agreement wherein the County will provide PPA to small quantity generators (SQG – less than 220 pounds or less than 2.2 pounds of certain kinds of highly toxic waste, in any month) of dangerous waste within the jurisdictional limits of the City of Lynden. To the mutual advantage of the County and the City, this arrangement fulfills a part of the City's Western Washington Phase II Municipal Stormwater Permit (Phase II Permit) requirement to develop and implement a Source Control Program for Existing Development.

The Health Department will provide technical assistance site visits and prevention pollution education to SQGs. Technical assistance and education efforts are designed to eliminate hazardous waste and other pollutants at the source through best management practices that prevent spills and discharges to the ground, air and water.

■ **Funding Amount and Source**

As a PPA Contractor, the County will use their inspections within Lynden City limits to partially fulfill their PPA agreement with the Department of Ecology (WC Contract #202109011). Therefore, the City is not required to provide payment for these inspections. Conducting work within the City of Lynden is funded by Ecology's PPA Agreement through 06/30/2023 and is expected to be extended for an additional two-year period at the same funding level beginning on 07/01/2023. Ecology has expressed support for this agreement. Council approval is required per RCW 39.34.030(2) for agreements between public agencies.

Please contact Jennifer Hayden, Environmental Health Supervisor at 360-778-6036 (JHayden@co.whatcom.wa.us) or Sue Sullivan, Environmental Health Manager at 360-778-6026 (SSulliva@co.whatcom.wa.us), if you have any questions or concerns regarding this request.



Whatcom County Contract No.
202302036

**INTERLOCAL AGREEMENT
CITY OF LYNDEN AND WHATCOM COUNTY**

**Source Control Business Inspections in Lynden as part of the
Pollution Prevention Assistance Program**

This Interlocal Agreement is made and entered into by the City of Lynden, herein referred to as the “City” and Whatcom County, herein referred to as “County”, collectively referred to as “Parties”, to establish an arrangement pursuant to RCW Chapter 39.34 wherein the County will provide pollution prevention assistance to potential pollutant generating businesses within the jurisdictional limits of the City. The County is under contract with the Department of Ecology through the Pollution Prevention Assistance (PPA) program to provide support promoting pollution source control to businesses located in Whatcom County jurisdiction. This Interlocal Agreement acknowledges the County will conduct selected business inspections within the City limits to fulfill a part of the City’s Western Washington Phase II Municipal Stormwater Permit (Phase II Permit) requirement to develop and implement a Source Control Program for Existing Development (Section S5.C8) to the mutual advantage of the Parties.

As a PPA contractor, the County will provide technical assistance site visits and pollution prevention education to Small Quantity Generators (SQGs) of dangerous waste (less than 220 pounds or less than 2.2 pounds of certain kinds of highly toxic waste, in any month). Technical assistance and education efforts are designed to reduce or eliminate hazardous waste and other pollutants at the source through best management practices that prevent spills and discharges to ground, air, and water (especially to industrial wastewater and stormwater).

WHEREAS, the County is equipped to provide SQG inspections for pollution prevention assistance; and

WHEREAS, the County is under grant contract with Department of Ecology to conduct inspections of potential pollutant generating enterprises within Whatcom County, and

WHEREAS, the City is required to inspect annually a percentage of SQGs with the potential to pollute stormwater runoff to Waters of the State, and

WHEREAS, it is in the best interest of each party to enter into this Agreement; and
WHEREAS, the recitals herein are a material part of this Agreement;

NOW THEREFORE, the City and County agree as follows:

1. *Purpose:* The purpose of this Agreement is to set the terms whereby the County will be a partner with the City in regard to the development and implementation of a stormwater source control program intended to satisfy the requirements of the City's NPDES Phase II Permit, as provided herein. In accordance with the terms of this Agreement, the County shall conduct SQG inspections and specific source control program activities related to stormwater management within the City limits as specified in Exhibit A (attached hereto and incorporated by reference). The purpose of the SQG inspections is to reduce or eliminate pollutants at the source through best management practices that prevent spills and discharges to stormwater.

- I. *Administration:* No new or separate legal or administrative entity is created to administer the provisions of this Agreement.
- II. *Whatcom County Responsibilities:* The County agrees to provide services as described in Exhibit A, Scope of Work, attached hereto.
- III. *City Responsibilities:* The City hereby agrees to work with the County where they exceed the responsibilities as stated in section III above.
- IV. *Payment:* As a PPA contractor, the County will use their inspections within the City limits to partially fulfill their agreement with the Department of Ecology. Therefore, the City is not required to provide payment for these inspections.
- V. *Term:* This Agreement shall be effective from January 1, 2023, through December 31, 2024; however, this Agreement may be extended by two additional years by mutual written agreement of the terms.
- VI. *Responsible Persons:* The persons responsible for administration of this Agreement shall be the City of Lynden Public Works Director and the Whatcom County Health Department Director, or their respective designees.
- VII. *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.
- VIII. *Relationship of the Parties:* The Parties are separate entities organized under the laws of the State of Washington and this Agreement is not intended to create any new legal or corporate entity. No agent, employee, servant, or representative of any party shall be deemed to be an employee, agent, servant, or representative of any other party for any purpose. Each party will be solely responsible for its acts and for the acts of its agents, employees, and servants during the term of this Agreement.
- IX. *Indemnification:* 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 Parties by reason of entering into this Agreement except as expressly provided herein.
- X. *Non-discrimination in Employment and Client Services:* Neither Party shall discriminate against any person on the grounds of race, creed, color, national origin, sex, marital status, age, religion, or on the presence of any sensory, mental or physical handicap. No Party shall discriminate against any employee or applicant for employment because of handicap; provided that, this provision shall not apply if the particular disability prevents proper performance of the work involved.
- XI. *Termination:* This Agreement may be terminated by either party effective upon sixty (60) days written notice, mailed postage pre-paid by certified mail, return receipt requested, to the other party's last known address for the purposes of giving notice under this section. 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.

- XII. *Modifications:* This Agreement may be changed, modified, amended or waived only by 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.
- XIII. *Applicable Law:* In the performance of this Agreement, it is mutually understood and agreed upon by the Parties hereto that this Agreement shall be governed by the laws and regulations of the State of Washington and the federal government, both as to interpretation and performance. The venue of any action arising here from shall be in the Superior Court of the State of Washington in and for Whatcom County.
- XIV. *Severability:* In the event any term or condition of this Agreement or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement that can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this Agreement are declared severable.
- XV. *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.
- XVI. *Counterparts:* This Agreement may be executed in multiple counterparts and each shall be deemed an original, but all of which together constitute a single instrument.
- XVII. *Effective Date:* This Agreement shall be in full force and effect on January 1, 2023.

IN WITNESS WHEREOF, the Parties have signed this Agreement on: 3/9/2023

WHATCOM COUNTY

CITY OF LYNDEN

By: Satpal Singh Sidhu

By: Scott Korthuis

Title: County Executive

Title: Mayor

DocuSigned by:

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Approved as to form:


 City Attorney

WHATCOM COUNTY:

APPROVAL AS TO PROGRAM:

DocuSigned by:
Sue Sullivan 3/8/2023
051358A396BB46E...

Sue Sullivan, Environmental Health Manager Date

DEPARTMENT HEAD APPROVAL:

DocuSigned by:
Erika Lautenbach 3/9/2023
955C651A30374BD...

Erika Lautenbach, Health Department Director Date

APPROVAL AS TO FORM:

DocuSigned by:
Royce Buckingham 3/9/2023
1EE5DDBD9542404...

Royce Buckingham, Senior Civil Deputy Prosecutor Date

Exhibit A Scope of Work

The tasks outlined below describe the services to be performed by Whatcom County Health Department (WCHD) for the City pursuant to this Agreement.

With the full cooperation of the City, the County shall be responsible for the completion of SQG inspections as part of a mutually beneficial Phase II Permit source control program.

The City recognizes and agrees that the services provided by WCHD for the City herein (regarding the City's Permit terms and conditions, as required and directed by Ecology) represent and provide an anticipated significant savings in time, costs, expenses, and other resources for the City. Furthermore, the City is and would otherwise be solely and separately liable and responsible for full compliance with the terms and conditions of the City's Permit as required by Ecology. The parties recognize and agree that the County PPA program has finite and limited resources to provide the services for the City, and that the County provides no guarantees, representations, or warranties (express or implied) concerning the services provided by WCHD, per the terms of this Agreement.

The City recognizes and agrees that WCHD is not obligated or otherwise responsible for undertaking any specific Permit enforcement action(s) on behalf of the City as part of the services to be performed by WCHD as described herein, and WCHD shall not be responsible or liable for any alleged failure to identify (or timely identify) and communicate any potential Permit enforcement matters, for any Permit enforcement outcomes by the City, and/or for other costs and expenses incurred by the City arising from or related to the services to be provided by WCHD unless such costs and expenses result from WCHD's sole negligence.

Source Control Program for Existing Development for the City's Municipal Stormwater Permit (Phase II Permit) Compliance

Task 1.0 - Source Control Program for Existing Development

This Agreement establishes a partnership with WCHD regarding completion of SQG inspections as part of the City's Phase II Permit source control program ("program"), as provided per the terms of this Agreement. The City generated an inventory of publicly and privately owned institutional, commercial, and industrial sites, which have the potential to generate pollutants to the Municipal Separate Storm Sewer System (MS4). As a component of the program, WCHD will conduct a portion, set between 30 and 35% and capped at 20 inspections, of the City's required (20% of SQGs annually, per the City's NPDES Phase II Permit) inspections each year that this Agreement is in effect.

WCHD will perform PPA inspections using the PPA program criteria which may differ slightly but cover the Phase II requirements. The services involving source control inspection will include prescribing Best Management Practices (BMPs), as mandated by the Permit. The BMPs and the sources they address are provided in Ecology's most current version of the Stormwater Management Manual for

Western Washington (SWMMWW). The City is and will continue to be solely and separately responsible and liable for updating its own site inventories and for separately and independently responding to and adequately addressing all referrals or demands for Permit enforcement, as received from the County and/or Ecology.

Task 1.1 Outreach

WCHD shall share with the City the educational materials and methods that will be made available to publicly and privately owned institutional, commercial, and industrial sites, which have the potential to generate pollutants to the MS4 identified in the City's inventory, and to meet the conditions of the Phase II Permit. The essential goal of the materials includes improving public knowledge of local stormwater issues, receiving public input, and working to build support for the source control program from SQG owners and the public.

Required Tasks and Deliverables:

WCHD, as a part of the Program, shall provide education and outreach materials for selected sites in the City's inventory to support the work of the source control inspection program.

Task 1.2-Site Inventory

The City is responsible for at least one (1) annual update to its inventory of all publicly and privately owned institutional, commercial, and industrial sites, which have the potential to generate pollutants to the MS4. WCHD may assist in this effort when staff becomes aware of any changes in the inventory, including inactive sites or newly discovered, qualifying sites, that are not part of the inventory.

Required Tasks and Deliverables:

The City will provide annual updates of its site inventory to WCHD no later than January 1 each year.

Task 1.3-Annual Inspection Rate

The Permit requires an annual inspection rate equal to twenty percent (20%) of the total inventory number annually. Each individual site visit, including multiple visits to one (1) site or a site visit in response to a credible complaint, count towards that twenty percent (20%) rate.

Required Tasks and Deliverables:

WCHD will conduct between 30-35% (capped at 20 inspections) of the City's required annual inspections. WCHD will document and make available the total number of inspections conducted in the previous year no later than March 1 each year. The City shall respond to its Annual Report questions due March 31 each year.

Task 1.4-Inspection of All Credible Complaints

WCHD will reasonably consult with the City regarding any credible Permit related complaint received by WCHD to allow the City to determine the

best course of action to take concerning such complaints, including, but not limited to potential Permit enforcement actions by the City.

Required Tasks and Deliverables:

WCHD will notify the City regarding all credible Permit related complaints received by WCHD and located in the City's jurisdiction.

Task 1.5- Progressive Enforcement Actions

If WCHD determines a site in the City's jurisdiction is in danger of being out of compliance with source control program Permit requirements, as mandated by the State (via Ecology), WCHD will reasonably inform the City about the site so that the City may determine and undertake potential appropriate actions, as may be required by the Permit.

Required Tasks and Deliverables:

Upon determination of potential Permit compliance, WCHD will reasonably document sites potentially in need of Permit enforcement action by the City and refer such information to the City, which is and shall continue to be separately liable and responsible for the City's own enforcement of Permit violations per the source control program.

Task 1.6 - Maintenance of Records

The City will request access to the Pollution Prevention Assistance database on the Washington Secure Access website. This web-based database will provide the City with information regarding WCHD inspections including: general site information, date and time of inspection, contact information, any issues identified, appropriate BMPs prescribed, communications, and any other information deemed necessary by WCHD staff. WCHD will assure that the City will have access to such information.

Task 1.7- Ecology Referrals

The City **will be** solely and separately responsible for any referrals to Ecology regarding sites in the City's jurisdiction.

Required Tasks and Deliverables:

WCHD will refer sites with compliance issues to the City for enforcement actions. Ecology referrals will be the responsibility of the City.