

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.
202311045

Originating Department:	Public Works
Division/Program: <i>(i.e. Dept. Division and Program)</i>	Natural Resources (907010)
Contract or Grant Administrator:	Becky Snijder van Wissenkerke
Contractor's / Agency Name:	Whatcom Conservation District
<p>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"/></p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____</p> <p>Does contract require Council Approval? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If No, include WCC: _____</p> <p>Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)</p> <p>Is this a grant agreement? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, grantor agency contract number(s): _____ CFDA#: _____</p> <p>Is this contract grant funded? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, Whatcom County grant contract number(s): _____</p> <p>Is this contract the result of a RFP or Bid process? Contract Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, RFP and Bid number(s): _____ Cost Center: <u>169121</u></p> <p>Is this agreement excluded from E-Verify? No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> If no, include Attachment D Contractor Declaration form.</p> <p>If YES, indicate exclusion(s) below:</p> <p><input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Goods and services provided due to an emergency</p> <p><input type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract for Commercial off the shelf items (COTS).</p> <p><input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Work related subcontract less than \$25,000.</p> <p><input checked="" type="checkbox"/> Interlocal Agreement (between Governments). <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.</p>	
<p>Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>33,000</u></p> <p>This Amendment Amount: \$ _____</p> <p>Total Amended Amount: \$ _____</p>	<p>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:</p> <ol style="list-style-type: none"> 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.
<p>Summary of Scope: The Whatcom Conservation District will implement the Enhanced Whatcom Water Alliance Program, which includes support for water utilities through resource sharing, administration of a household water use rebate program, and implementation of a youth education program.</p>	
Term of Contract: 13 months	Expiration Date: January 31, 2025

Contract Routing:	1. Prepared by: <u>BSvW</u>	Date: <u>10/27/2023</u>
	2. Attorney signoff: <u>C Quinn</u>	Date: <u>11/13/2023</u>
	3. AS Finance reviewed: <u>A Martin</u>	Date: <u>11/16/2023</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Executive contract review: _____	Date: _____
	7. Council approved (if necessary): <u>AB2023-795</u>	Date: <u>12/05/2023</u>
	8. Executive signed: _____	Date: _____
	9. Original to Council: _____	Date: _____

**2023 INTERLOCAL AGREEMENT BETWEEN
WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT AND
WHATCOM CONSERVATION DISTRICT FOR
DOMESTIC-MUNICIPAL WATER USE EFFICIENCY PROJECT**

This Interlocal AGREEMENT (“AGREEMENT”) is between the Whatcom Conservation District (“WCD”) and the Whatcom County Flood Control Zone District (“FCZD”) as public agencies pursuant to the Interlocal Cooperation Act (RCW 39.34) for coordinating a domestic-municipal water use efficiency program.

WHEREAS, Whatcom County has participated in cooperative watershed planning since at least 1999 through the Watershed Planning Act (RCW 90.82) and the Streamflow Restoration Act (RCW 90.94) as well as through other processes; and,

WHEREAS, during development of an amendment to the Water Resources Inventory Area (WRIA) 1 Watershed Management Plan in 2019, as required under RCW 90.94, water use efficiency was identified as a recommended measure to offset the impacts from permit-exempt wells; and,

WHEREAS, although an amendment to the Watershed Management Plan was not approved within the statutory time limit, the measures identified in the proposed plan to offset the impacts of permit-exempt wells, including water use efficiency, had broad support; and,

WHEREAS, the FCZD and WCD executed Interlocal AGREEMENTS 201910017, 202101029, and 202111006 as public agencies pursuant to the Interlocal Cooperation Act (RCW 39.34), to develop and implement a domestic-municipal water use efficiency program; and,

WHEREAS, the WCD, working through the Whatcom Water Alliance (WWA), which includes representatives from all the publicly-owned water systems in Whatcom County, implemented a three-year domestic-municipal water use efficiency program plan in 2021-2023 and developed a second three-year program plan for 2024-2026; and,

WHEREAS, the FCZD requests assistance from the WCD for continued implementation of the domestic-municipal water use efficiency program in 2024; and,

WHEREAS, the WCD was formed in 1946 pursuant to RCW 89.08 as a public agency to undertake the conservation of renewable resources in all of Whatcom County; and,

WHEREAS, the FCZD has the authority to utilize the services and expertise of other agencies to further efforts beneficial to the residents and citizens of Whatcom County; and,

WHEREAS, the WCD desires to provide such services to the FCZD.

NOW, THEREFORE, the WCD and FCZD agree as follows:

- I. *Purpose:* The purpose of this AGREEMENT is to set the terms whereby the FCZD will make available funds to the WCD to implement the Enhanced Whatcom Water Alliance Program as described in Exhibit A attached hereto.
- II. *Administration:* No new or separate legal or administrative entity is created to administer the provisions of this AGREEMENT.
- III. *Whatcom Conservation District Responsibilities:* The WCD hereby agrees to conduct the work described in Exhibit A attached hereto.
- IV. *FCZD Responsibilities:* The FCZD hereby agrees to reimburse the WCD, not to exceed the total budget amount allocated to the WCD as shown in Exhibit B attached hereto, for the costs of providing and performing the services stated.
- V. *Payment:* The WCD shall submit itemized invoices in a format approved by the FCZD in accordance with the requirements of Exhibit B. The FCZD will compensate the WCD for services rendered within thirty (30) days following receipt of an approved invoice, provided all other terms and conditions of the contract have been met and are certified as such by the Contract Administrator.
The Contract Administrator for this agreement is Becky Snijder van Wissenkerke, Program Specialist, who can be reached at rsnijder@co.whatcom.wa.us.
- VI. *Term:* This AGREEMENT shall be effective for services performed from January 1, 2024 through January 31, 2025.
- VII. *Responsible Persons:* The persons responsible for administration of this AGREEMENT shall be the Whatcom County Public Works (WCPW) Department Director and the WCD District Manager or their respective designees.
- VIII. *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.
- 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 agree 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. *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.
- XI. *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 herefrom shall be in the Superior Court of the State of Washington in and for Whatcom County.

- XII. *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.
- XIII. *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.
- XIV. *Recordation:* Upon execution of this Agreement, FCZD shall file a copy of it with the office of the County Auditor pursuant to the requirements of RCW 39.34.040.
- XV. *Performance:* The parties agree to satisfy all aspects of this AGREEMENT in a timely and professional manner. The WCD shall notify the FCZD as soon as problems, delays, or adverse conditions become known that will materially impair its ability to meet the deliverables described in Exhibit A.
- XVI. *Audit and Inspection:* The FCZD and WCD shall maintain records pursuant to this AGREEMENT in accordance with generally accepted accounting principles and practices consistently applied. Records shall be subject at all reasonable times to inspection and audit and State auditor. The FCZD and WCD shall preserve and make such records available to said parties until expiration of three (3) years from the date of final payment under this AGREEMENT.
- XVII. *Dispute Resolution:* The parties to this AGREEMENT shall first attempt to resolve disputes informally at the staff level. In the event that the dispute cannot be resolved at the staff level, a dispute resolution procedure shall be followed under the guidance of the Whatcom Dispute Resolution Center.
- XVIII. *Rights and Remedies:* In no event shall a making by the FCZD of any payment to the WCD constitute or be construed as a waiver by the FCZD of any breach of covenant or any default that may then exist on the part of the WCD. The making of any such payment by the FCZD while any such breach or default shall exist shall in no way impair or prejudice any of the FCZD's rights, which are hereby expressly recognized, to recover payments or portions thereof, to which the WCD has not entitled under this AGREEMENT, or where any payments were made by mistake, or to pursue any other remedy available to the FCZD in respect to breach or default of this AGREEMENT.

This AGREEMENT shall not relieve the FCZD or the WCD of any obligation or responsibility imposed by law except that performance pursuant to this AGREEMENT may, where appropriate, be offered in satisfaction of an obligation or responsibility conveyed to the FCZD or the WCD by law.

XIX. *Insurance Requirements:* WCD shall carry for the duration of this AGREEMENT insurance with the coverage and limits as follows:

A. Commercial General Liability (CGL) Insurance

Property damage	\$500,000.00 per occurrence
General Liability & Bodily Injury	\$1,000,000.00 per occurrence
Annual Aggregate	\$2,000,000.00

B. Business Automobile Liability

\$500,000.00 Minimum, per occurrence
\$1,000,000.00 Minimum, Annual Aggregate

WCD shall provide auto liability coverage for owned, non-owned and hired autos using ISO Business Auto Coverage form CA 00 01 or the exact equivalent with a limit of no less than \$500,000 per accident. If Contractor owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

C. Additional Insurance Requirements and Provisions

1. WCD shall provide FCZD with a certificate of insurance and endorsements required by the Agreement.
2. For the commercial general liability and business automobile insurance, Whatcom County Flood Control Zone District shall be named as an additional insured.
3. WCD's insurance shall be primary and non-contributory, and shall waive all rights of subrogation against Whatcom County and its coverage. Whatcom County's insurance shall not serve as a source of contribution.

In the alternative, either party to this agreement may fulfill the insurance obligations contained herein by maintaining membership in a joint self-insurance program authorized by RCW 48.62. In this regard, the parties understand that the party to this agreement who is a member of such a program is not able to name the other party as an "additional insured" under the liability coverage provided by the joint self-insurance program.

XX. *Miscellaneous:* No obligation in this AGREEMENT shall limit the WCD in fulfilling its responsibilities otherwise defined by law. No obligation in this AGREEMENT shall limit the FCZD in fulfilling its responsibilities otherwise defined by law.

XXI. *Signatures:* The undersigned representatives accept the provisions of this AGREEMENT. This AGREEMENT shall be in effect when signed by both parties.

IN WITNESS WHEREOF, the parties have signed this Agreement this _____ day of _____, 2023.

WHATCOM CONSERVATION DISTRICT

Brandy Reed, District Manager Date

Whatcom Conservation District
6975 Hannegan Road
Lynden, WA 98264

**WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT:
Recommended for Approval:**

Elizabeth Kosa, Director Public Works Date

Approved as to form:

Christopher Quinn, Senior Civil Deputy Prosecuting Attorney Date

Approved:

Accepted for Whatcom County Flood Control Zone District:

By: _____
Satpal Singh Sidhu, Whatcom County Executive Date

EXHIBIT A - SCOPE OF WORK
Domestic-Municipal Water Use Efficiency Project Coordination
Implementation of the Enhanced Whatcom Water Alliance Program

Background

The Whatcom Water Alliance (WWA) includes representatives from publicly-owned water systems in Whatcom County. The Enhanced Whatcom Water Alliance (EWWA) Program is a domestic-municipal water use efficiency program developed by the WWA to increase the consistency and impact of water conservation messaging and activities across jurisdictions in Whatcom County. This program increases opportunities and benefits for smaller water utilities through collaboration and resource sharing. It also identifies conservation measures applicable to residences and businesses that get water service from a large or small utility as well as those using individual private water sources.

Program Elements

The WCD will work with the WWA to implement the following program elements:

- Maintenance of a website that will be a portal for water conservation information as well as for WWA members to access water use efficiency tools and resources
- Improvement of coordinated outreach that will include conservation calendar, in-person learning and media campaigns.
- Continuation of a rebate program to incentivize residents to adopt water conservation behaviors and practices.
- Facilitation of the WWA network to improve communication and coordination among Whatcom County water utilities and to recruit additional members
- Expanding youth education programming in select school districts

Task 1: Program Administration

The WCD will provide program administration as project lead. This will include tracking/reporting on progress of project, and end of project reporting. Tasks will include:

- Invoicing and reporting
- Internal meetings and coordination related to staffing, contracting, etc.
- Other program implementation and administrative support as needed
- Evaluating the EWWA Program from 2021 to 2024

Deliverables:

- Invoices will be submitted by the 15th of every month or quarterly if no work was performed in a given month with a short progress report summarizing work performed during the invoice period

Task 2: Whatcom Water Alliance Member Support

WCD will work to improve coordination, collaboration and communication among WWA members and public water utilities in Whatcom County to achieve greater efficiency and effectiveness in delivering retail water services. Tasks will include:

- Membership support and meeting facilitation for approximately four meetings
- Quarterly member communications with outreach toolkit
- Water Use Efficiency (WUE) reporting reminders and support
- Update and management of Data Portal
- Collection and reporting of WUE data from members
- Building membership participation

Deliverables:

- Quarterly facilitated meetings that ensure an engaged membership and recruitment of new members.
- Quarterly member communications toolkits to enhance reach of coordinated outreach strategy.
- WUE data collection and reporting for collective impact of WWA membership

Task 3: Outreach & Education Program

Historically in Whatcom County each water purveyor, municipality or district has created their own unique water used efficiency outreach strategy. With this Enhanced WWA program, these efforts, funding and time, can be leveraged for the county as a whole. Through this effort a comprehensive and robust program will reinforce messaging and reach a broader and more diverse audience using a multi-media outreach strategy and coordinated website.

The WWA household water use rebate program will be available to Whatcom County residential water-use customers, managed through Whatcom Conservation District and available through the Whatcom Water Alliance website on the Rebate Program page. Rebates to individuals are not funded out of this agreement. This agreement funds the rebate program marketing and outreach. Additionally, in collaboration with the Whatcom Coalition of Environmental Educators, a comprehensive youth education program will be expanded.

Work completed under this task will include:

- Content development and management of the Whatcom Water Alliance website
- Develop and implement a multi-media WUE multi-media outreach campaign building on successful strategies used in the past few years
- Administration and outreach for county-wide rebate program
- Establish a youth education program for select school districts for Spring and Fall 2024
 - 3 school districts, 10 schools, ~28 classes and ~700 students

Deliverables:

- Management and improvement of a coordinated Whatcom Water Alliance website
- Provide WWA members with access to electronic files of advertisements, educational materials and social media toolkit
- Rebate program outreach materials and metrics
- Copy of lesson plans used for 4th grade students
- Number of classrooms and students reached through in-person education

EXHIBIT B - BUDGET

Domestic-Municipal Water Use Efficiency Project

Implementation of the Enhanced Whatcom Water Alliance Program

As consideration for services provided in Exhibit A, Scope of Work, the County agrees to compensate the contractor according to the actual composite hourly rates of personnel working on this project. The total budget is not to exceed **\$33,000**. *Composite rates are based on actual taxes and benefits, which may vary by month. Estimated hourly composite rates are provided below. Revised Composite Rate forms will be provided to the County for any rate changes upon adjustment. Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed including mileage at the current IRS rate. For mileage reimbursement submit: copies of mileage records, including the name of staff member, date of travel, and number of miles traveled. Lodging and per diem for training shall not exceed the GSA rate for the location where training is provided. Other expenditures such as supplies, postage, and rentals shall be reimbursed at actual cost. Expense reimbursement requests must be accompanied by copies of paid invoices. Contractor certifies that all personnel charging to this contract are program personnel and are not also included in the Contractor’s overhead rate. Any work performed prior to the effective date or continuing after the completion date of the contract, unless otherwise agreed upon in writing, will be at the contractor’s expense.

The Responsible Persons identified in Section VII. of this Agreement may approve budget reallocations between tasks or expense categories through written agreement communicated over email. Invoices will be submitted by the 15th of every month or quarterly if no work was performed in a given month with a short progress report summarizing work performed during the invoice period.

Title	Maximum 2024 Comp Rate	Task 1 Admin Hours	Task 2 Member support Hours	Task 3 Outreach & Youth Education Hours	total per staff per year	monthly hours per staff	Total cost per employee
Farm Planner Resource Specialist	\$48.16				0	0	\$ -
Administrative Specialist	\$58.23	24			24	2	\$ 1,397.42
CREP Resource Specialist	\$66.08				0	0	\$ -
Conservation Planning Manager	\$68.74				0	0	\$ -
Fish & Wildlife Habitat Improvement Manager	\$80.05				0	0	\$ -
Farm Planner Resource Specialist	\$50.58				0	0	\$ -
Outreach & Education Specialist	\$51.01		90	100	190	16	\$ 9,691.90
Riparian & Stormwater Specialist	\$68.12				0	0	\$ -
Green Infrastructure Programs Specialist	\$46.65				0	0	\$ -
Wildfire Resilience Specialist	\$46.65				0	0	\$ -
Water Quality Data Coordinator	\$49.80				0	0	\$ -
Cartographer & IT Specialist	\$69.23				0	0	\$ -
District Manager	\$78.56				0	0	\$ -
Habitat Restoration Specialist	\$41.46				0	0	\$ -
Outreach & Education Manager	\$73.29	40	40	40	120	10	\$ 8,794.61
Conservation Research Specialist	\$48.16				0	0	\$ -
Wildfire Resilience Technician	\$37.23				0	0	\$ -
Outreach & Education Technician	\$37.22		25	98	123	10	\$ 4,577.61
		\$4,328.96	\$ 8,452.84	\$ 11,679.74		sub-total	\$ 24,461.54
		\$ 1,298.69	\$ 2,535.85	\$ 3,503.92		Overhead 30%	\$ 7,338.46
		\$ 5,627.64	\$ 10,988.70	\$ 15,183.66		total personnel plus	\$ 31,800.00
			\$ 1,000.00			Supplies/postage	\$ 1,000.00
			\$ 50.00	\$ 150.00		Mileage	\$ 200.00
		\$ 5,627.64	\$ 12,038.70	\$ 15,333.66		Total	\$ 33,000.00

EXHIBIT C - INSURANCE
Domestic-Municipal Water Use Efficiency Project
Implementation of the Enhanced Whatcom Water Alliance Program

Enduris
EVIDENCE OF COVERAGE

INSURED/PARTICIPANT:

Whatcom Conservation District
 6975 Hannegan Road
 Lynden, WA 98264

MEMORANDUM#: 2024-00-271

EFFECTIVE: September 1, 2023 through August 31, 2024

This is to certify that the Memorandum of Coverage has been issued to the Insured/Participant for the period indicated.

CERTIFICATE HOLDER:

Whatcom Co Flood Control Zone
 322 N. Commercial, Suite 201
 Bellingham, WA 98225

The Evidence of Coverage does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

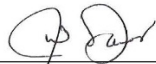
COVERAGE:	PER OCCURRENCE LIMIT	AGGREGATE LIMIT
COMPREHENSIVE GENERAL LIABILITY	\$1,000,000	\$2,000,000
<i>Professional Liability</i>	\$1,000,000	\$2,000,000
<i>Personal Liability</i>	\$1,000,000	\$2,000,000
<i>Products – Complete Operation</i>	\$1,000,000	\$2,000,000
AUTO LIABILITY	\$1,000,000	\$2,000,000
<i>Combined Single Limit; Hired and Non-Owned; Temporary Substitute</i>	\$1,000,000	\$2,000,000
CRIME BLANKET COVERAGE WITH FAITHFUL PERFORMANCE OF DUTY	N/A	N/A
<i>Per Occurrence Aggregate</i>	N/A	N/A
PROPERTY/MOBILE EQUIPMENT/BOILER AND MACHINERY	N/A	N/A
<i>Property</i>	N/A	N/A
<i>Mobile Equipment</i>	N/A	N/A
AUTOMOBILE PHYSICAL DAMAGE	N/A	N/A
OTHER COVERAGE: N/A	N/A	N/A

CANCELLATION:

Should any of the above described coverage be cancelled before the expiration date of thereof. Notice will be delivered in accordance with the provisions of the MOC.

MEMO:

Evidence of Member Coverage to contracted party
 Reference: 2023 Interlocal Agreement
 Domestic-Municipal Water Use Efficiency Project



Authorized Representative
 November 7, 2023



Contracted Party Notice

Enduris Washington is a joint self-insurance program for public entities authorized by RCW 48.62.

Under RCW 48.62.061, the state risk manager shall adopt rules governing the management and operation of both individual and joint local government self-insurance programs covering property or liability risks. The rules are contained in the Washington Administrative Code (WAC) 200-100 and summarized as follows:

- Only members who sign the interlocal agreement binding them to contributions and assessments may participate in a local government risk pool (WAC 200-100-020).
- Only members may participate in the self-insured retention layer, and only members may participate in the joint purchase of insurance or reinsurance (WAC 200-100-02005).
- Nonmembers shall not participate in any coverages of the joint self-insurance program including the self-insured retention layer and the excess insurance or reinsurance layer (WAC 200-100-02007).

The state risk manager and the Washington Administrative Code prohibit Enduris of Washington from granting additional insured status to nonmembers.

However, Enduris can cover the contractual liability undertaken by its members in most cases. As long as the contract between an Enduris member and a third party qualifies as a “member contract” and the claims against the indemnitee third party are otherwise covered by the terms of the Memorandum of Coverage, the member district’s indemnity obligation should also be covered.

Enduris Washington’s memorandum of coverage (MOC) contains the definition of a “member contract” as follows:

SECTION IV – DEFINITIONS

[...]

O. Member Contract means a written contract that satisfies all of the following:

1. The agreement pertains to the Named Member's routine governmental operations, including professional services and mutual aid agreements, and by the contract terms the Named Member assumes the Tort liability of another to pay damages because of Bodily Injury or Property Damage to a third person or organization, or with respect to Professional Services to pay damages because of Public Officials Errors and Omissions to a third person or organization, and;
2. The agreement was entered into prior to the damage for which a claim is made.

Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

A Member Contract does not include any part of any contract or agreement that indemnifies any person or organization for any claim and/or suit that is excluded by the terms of this Memorandum, or that indemnifies an architect, engineer, or surveyor arising out of preparing, approving, or failing to approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or giving or failing to give directions or instructions, unless the architect, engineer or surveyor is an employee of the Named Member and the services are part of the Named Member's routine governmental operations. A Member Contract also does not include the indemnification of any person or organization for damages by fire, explosion, or water damages to premises rented or loaned to the Named Member.