

**2023 INTERLOCAL AGREEMENT
WHATCOM COUNTY & WHATCOM CONSERVATION DISTRICT
LAKE WHATCOM HOMEOWNER INCENTIVE PROGRAM ASSISTANCE**

This Interlocal AGREEMENT (“AGREEMENT”) is between the Whatcom Conservation District (“WCD”) and the Whatcom County (“COUNTY”) as public agencies pursuant to the Interlocal Cooperation Act (RCW 39.34) for implementation of the Lake Whatcom Homeowner Incentive Program (HIP) in coordination with the City of Bellingham (“CITY”).

WHEREAS, the Washington State Department of Ecology (“ECOLOGY”) issued the final Lake Whatcom Watershed Total Maximum Daily Load (TMDL) study for phosphorus and fecal coliform bacteria in 2008, which requires the CITY and the COUNTY to develop a response strategy; and,

WHEREAS, the CITY and COUNTY established HIP as a pilot program in 2011 with assistance from ECOLOGY to promote homeowner stewardship within the Lake Whatcom watershed and provide technical assistance and financial incentives to help homeowners install phosphorus-reducing best management practices (BMPs) to meet TMDL objectives; 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 CITY and the COUNTY requested assistance from the WCD beginning in 2016 to provide homeowner outreach, technical assistance, and program implementation assistance for the installation of phosphorus-reducing BMPs through HIP to the mutual advantage of all jurisdictions; and,

WHEREAS, the WCD has been providing this assistance through Interlocal Agreements with the COUNTY since 2016; and,

WHEREAS, the Lake Whatcom Management Program 2020-2024 Work Plan (Resolution 2020-023) calls for continuing to provide technical and/or financial assistance for residential-scale retrofits of private property that results in phosphorus-or flow-limiting projects through HIP or similar programs; and,

WHEREAS, the COUNTY requests continued assistance from the WCD in 2023 to support HIP on developed residential properties in the unincorporated portion of the Lake Whatcom watershed.

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

- I. *Purpose:* The purpose of this AGREEMENT is to set the terms whereby the COUNTY will make available funds to the WCD to implement tasks to support the Lake Whatcom Homeowner Incentive 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 provide support for the Lake Whatcom Homeowner Incentive Program as described in Exhibit A attached hereto.
- IV. *Whatcom County Responsibilities:* The COUNTY 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 in providing and performing the services stated.
- V. *Payment:* The WCD shall submit itemized invoices in a format approved by the COUNTY in accordance with the requirements of Exhibit B. The COUNTY 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.
- VI. *Term:* This AGREEMENT shall be effective from February 1, 2023 through January 31, 2024.
- 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, Whatcom County shall file a copy of it with the office of its 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 COUNTY as soon as problems, delays or adverse conditions become known which will materially impair its ability to meet the deliverables described in Exhibit A.
- XVI. *Audit and Inspection:* The COUNTY 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 COUNTY 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 COUNTY of any payment to the WCD constitute or be construed as a waiver by the COUNTY 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 COUNTY while any such breach or default shall exist shall in no way impair or prejudice any of the COUNTY'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 COUNTY in respect to breach or default of this AGREEMENT.

This AGREEMENT shall not relieve the COUNTY 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 COUNTY 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 County with a certificate of insurance and endorsements required by the Agreement.
2. For the commercial general liability and business automobile insurance, Whatcom County 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 COUNTY 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:
Recommended for Approval:**

Elizabeth Kosa, Interim Director Date

Approved as to form:

Christopher Quinn, Senior Civil Deputy Prosecuting Attorney Date

Approved:
Accepted for Whatcom County:

By: _____
Satpal Singh Sidhu, Whatcom County Executive

EXHIBIT A - SCOPE OF WORK

Lake Whatcom Homeowner Incentive Program Assistance

Project Background and Description

The Lake Whatcom Homeowner Incentive Program (HIP) is a City of Bellingham (City) and Whatcom County (County) non-regulatory program that provides technical assistance and cost share incentives for homeowners who voluntarily elect to install stormwater best management practices (BMPs) that reduce phosphorus runoff into Lake Whatcom. HIP was developed under a Washington State Department of Ecology grant from 2011 to 2015. This pilot project was evaluated and findings were used to develop a revised program. From 2017 to 2020, this revised HIP was jointly implemented for city and county homeowners in basins one and two of the Lake Whatcom watershed. In 2021, the City and County phased in additional program changes. Each jurisdiction now offers similar and coordinated programs modified based on their different circumstances.

The WCD has provided HIP implementation assistance since October 2016 through interlocal agreements with the County. The County requests continued assistance from the WCD in 2023 to help landowners in the County portion of the Lake Whatcom watershed who have already received an initial site visit and initiated project planning complete HIP projects.

Task 1 Administration

The WCD will complete the following administrative tasks to support this agreement:

- Monthly invoicing and reporting
- Internal meetings and coordination related to county HIP staffing, contract and project management, etc.

Deliverables and Timelines:

- Submit monthly invoices with a progress report summarizing work performed during the invoice period, progress made on each task, and the current status and progress made for each permitted County project

Task 2: Program Implementation Assistance

The WCD will provide Lake Whatcom Homeowner Incentive Program implementation assistance. Tasks include:

- External coordination meetings with County staff, providing communication of program activities, and contacting County staff with questions and/or problems in a timely manner
- Following County HIP procedures; communicate changes needed to procedures to County staff
- Providing assistance to update the HIP website and program materials as requested
- Hosting the County HIP pre and post participation surveys
- Other program implementation support as requested

Deliverables and Timelines:

- Attend coordination meetings with County staff monthly or as needed
- Notify County staff in writing of changes needed to County HIP procedures (as needed)

- Share links to updated website pages and program materials with County staff (as requested)
- Provide a report summarizing County HIP pre and post survey results by December 1, 2023

Task 3. HIP Homeowner Assistance

The WCD will provide a HIP Project Coordinator who will serve as the primary point of contact for homeowners voluntarily participating in HIP.

Homeowner assistance responsibilities include:

- Responding to homeowner inquiries
- Communicating how the program works, utilizing the Action Plan, and facilitating signing of homeowner acknowledgement forms
- Conducting site visits
- Providing project design assistance
- Providing application assistance including developing proposed improvements maps and completing HIP application forms
- Providing installation assistance as needed
- Providing project closeout assistance including:
 - Conducting final project inspections for project close out
 - Completing maintenance agreement
 - Facilitating reimbursement request process
- Maintaining the HIP project database with current, accurate information for each permitted County HIP project according to County HIP procedures. Complete monthly quality control check of the HIP project database, updating records for each permitted project to ensure they are accurate and current.
- Conducting a final HIP project database quality control for each project closed out. Complete before reimbursement request submittal.
- Responding to requests for assistance addressing maintenance problems
- Other HIP project facilitation activities as needed

Deliverables and Timelines:

- Provide monthly HIP project database quality control report
- Provide project design and permitting assistance to HIP participants in design phase.
 - Provide HIP project application forms to homeowner for submittal to County by February 28, 2023. Email to homeowner and cc County staff.
- Provide project installation technical assistance and advise to HIP participants with permitted projects.

- For each permitted HIP project, submit a copy of the Action Plan with a proposed timeline to complete the project no later than November 15, 2024 by April 1, 2023.
- Provide project close out assistance to all HIP participants with permitted projects.
 - The following must be completed and submitted to County staff within two years of the **Notification of Activity** approval date for projects approved before January 1, 2022 and by November 15, 2024 for projects approved after this date. Phased reimbursement requests require the same.
 - Final inspection form (pdf)
 - Photos showing installed BMPs uploaded to the HIP project database
 - Signed, notarized maintenance agreement with map showing actual installed location of HIP BMPs (hard copy original)
 - Reimbursement spreadsheet with WCD staff sections correctly filled out (Excel)
 - Reimbursement request form with homeowner signatures (pdf with homeowner email confirmation)

EXHIBIT B - BUDGET

Lake Whatcom Homeowner Incentive Program Assistance

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. *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. The total budget is not to exceed **\$63,500**. 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.

Position	Admin Specialist		Ed Coordinator		Wetland Specialist		LID Specialist		Direct Cost			Labor			Total
Max 2023 Wage Rate/hour	\$	36.55	\$	40.53	\$	36.55	\$	36.55	Supplies & Subscriptions	Travel	Total Direct	Hours	Cost	Indirect 30%	
Est. 2023 Comp Rate/hour	\$	56.64	\$	70.62	\$	61.93	\$	56.35							
Contract Activities	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost				Hours	Cost	Indirect 30%	
Task 1: Program Administration											\$ -	120	\$ 7,353.11	\$ 2,205.93	\$ 9,559.05
Monthly Invoicing	36	\$ 2,039.04	6	\$ 423.72		\$ -		\$ -			\$ -	42	\$ 2,462.76	\$ 738.83	\$ 3,201.59
Monthly reporting		\$ -	6	\$ 423.72	12	\$ 743.15	24	\$ 1,352.40			\$ -	42	\$ 2,519.27	\$ 755.78	\$ 3,275.06
Internal Project Management		\$ -	24	\$ 1,694.88		\$ -	12	\$ 676.20			\$ -	36	\$ 2,371.08	\$ 711.32	\$ 3,082.40
Task 2: Program Implementation Assistance											\$ 600.00	74	\$ 4,628.91	\$ 1,388.67	\$ 6,617.58
Coordination Meetings		\$ -	18	\$ 1,271.16	18	\$ 1,114.73	18	\$ 1,014.30			\$ -	54	\$ 3,400.19	\$ 1,020.06	\$ 4,420.25
Updates to website, program materials or procedures		\$ -		\$ -	8	\$ 495.44	8	\$ 450.80	\$ 500.00		\$ 500.00	16	\$ 946.24	\$ 283.87	\$ 1,730.11
pre and post participation surveys		\$ -	4	\$ 282.48		\$ -		\$ -	\$ 100.00		\$ 100.00	4	\$ 282.48	\$ 84.74	\$ 467.22
Task 3. HIP Homeowner Assistance											\$ 750.00	554	\$ 31,952.69	\$ 9,585.81	\$ 43,071.05
Monthly HIP QB QA/QC Report		\$ -	12	\$ 847.44	12	\$ 743.15	36	\$ 2,028.60	\$ 325.00		\$ 325.00	60	\$ 3,619.19	\$ 1,085.76	\$ 5,029.95
Design Phase: project design and permitting assistance		\$ -		\$ -	50	\$ 3,096.47	50	\$ 2,817.50		\$ 75.00	\$ 75.00	100	\$ 5,913.97	\$ 1,774.19	\$ 7,763.17
Permit Phase: Installation Assistance		\$ -		\$ -	100	\$ 6,192.95	164	\$ 9,241.40		\$ 200.00	\$ 200.00	264	\$ 15,434.35	\$ 4,630.30	\$ 20,264.65
Close out of Projects		\$ -		\$ -	40	\$ 2,477.18	80	\$ 4,508.00		\$ 150.00	\$ 150.00	120	\$ 6,985.18	\$ 2,095.55	\$ 9,230.73
Maintenance assistance							10	\$ 563.50		\$ 50.00	\$ 50.00	10	\$ 563.50	\$ 169.05	\$ 782.55
Contingencies Budget															
labor, supplies, subscriptions															\$ 4,252.32
Totals	36	\$ 2,039.04	70	\$ 4,943.40	240	\$ 14,863.07	402	\$ 22,089.20	\$ 925.00	\$ 475.00	\$ 1,350.00	748	\$ 43,934.71	\$ 13,180.41	\$ 63,500.00

Employee Title	Max 2023 Hourly Rate	Estimated 2023 Comp Rate
Planner	\$ 30.06	\$ 45.58
Admin Specialist	\$ 36.55	\$ 56.64
Habitat Planner	\$ 36.55	\$ 63.61
Farm Planning Coordinator	\$ 38.23	\$ 64.14
Habitat Coordinator	\$ 43.59	\$ 77.61
Planner	\$ 28.64	\$ 47.97
Ed Assistant	\$ 27.27	\$ 39.58
Wetland Specialist	\$ 36.55	\$ 61.93
Wildfire Specialist	\$ 30.06	\$ 45.58
Data Coordinator	\$ 31.57	\$ 48.55
LID Specialist	\$ 36.55	\$ 56.35
GIS Tech	\$ 44.33	\$ 67.15
District Manager	\$ 54.59	\$ 83.27
Ed Coordinator	\$ 40.53	\$ 70.62
Scientist	\$ 30.06	\$ 44.94

EXHIBIT C - INSURANCE
Lake Whatcom Homeowner Incentive Program Assistance

Enduris
EVIDENCE OF COVERAGE

INSURED/PARTICIPANT:
 Whatcom Conservation District
 6975 Hannegan Road
 Lynden, WA 98264

MEMORANDUM#: 2023-00-271

EFFECTIVE: September 1, 2022 through August 31, 2023
This is to certify that the Memorandum of Coverage has been issued to the Insured/Participant for the period indicated.

CERTIFICATE HOLDER:
 Whatcom County
 322 N. Commercial St., #120
 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		
<i>Property</i>	N/A	N/A
<i>Mobile Equipment</i>		
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
 Lake Whatcom Homeowner Incentive Program



 Authorized Representative
 December 8, 2022



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

[...]

M. 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.

Reliability in a Risky World

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www.enduris.us