

**2019 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 cooperation 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, on April 7, 2016, the Environmental Protection Agency (EPA) approved the Lake Whatcom Watershed Total Phosphorus and Bacteria TMDL, which identifies the reductions in phosphorus and bacteria loading needed to restore the health of Lake Whatcom; and,

WHEREAS, the CITY and COUNTY are continuing to jointly implement HIP as a component of their Lake Whatcom TMDL water quality improvement plan to reduce phosphorus levels in stormwater runoff from existing development and meet TMDL objectives through an Interlocal Agreement (Whatcom County Contract No. 201611031); 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 COUNTY and the WCD established an arrangement in 2016 through an Interlocal Agreement (Whatcom County Contract No. 201610015) wherein the COUNTY provided funding to the WCD to provide homeowner outreach, technical assistance, and program implementation assistance for the installation of phosphorus-reducing BMPs through HIP to the mutual advantage of each jurisdiction; and

WHEREAS, the County and the WCD desire to continue this agreement through the term of the County and City interlocal agreement and into early 2020 for the continued implementation of HIP; and

WHEREAS, the City will reimburse the County for expenses related to the management and administration of the HIP above the County's annual contribution according to the terms of their Interlocal Agreement.

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 for services performed from the date of signature through March 31, 2020.
- VII. *Responsible Persons:* The persons responsible for administration of this AGREEMENT shall be the Whatcom County Public Works (WCPW) Department Director and the WCD Executive Director 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.

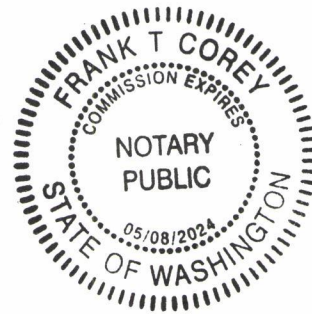
- XIX. *Proof of Insurance:* WCD shall carry for the duration of this AGREEMENT insurance with the coverage and limits provided in the attached certificate of insurance. For the commercial general liability insurance, Whatcom County shall be named as an additional insured. WCD's insurance shall be primary 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.
- 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 _____, 2019.

WHATCOM CONSERVATION DISTRICT

By Larry Davis _____ Date 2/21/19
 Larry Davis, Chairman

Approved as to form: _____ Date 2/2/19
 George J. Boggs,
 WCD Attorney



STATE OF WASHINGTON)
 COUNTY OF WHATCOM) ss


On this 21 day of February, 2019, before me personally appeared LARRY DAVIS to me known to be the Chairman of the Whatcom Conservation District and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

Frank T. Corey
 NOTARY PUBLIC in and for the State of
 Washington,
 residing at: Lynden
 My commission expires 05/08/2024

WHATCOM COUNTY

By: _____
Jack Louws, Whatcom County Executive, Date

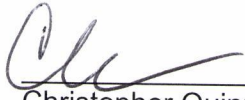
Recommended for Approval:



Jon Hutchings
Public Works Director

2/28/19
Date

Approved as to form:



Christopher Quinn
Deputy Prosecuting Attorney – Civil Division

2/27/19
Date

STATE OF WASHINGTON)
COUNTY OF WHATCOM) ss

On this ___ day of _____, 2019, before me personally appeared JACK LOUWS to me known to be the County Executive of Whatcom County and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of
Washington,
residing at: _____
My commission expires _____

EXHIBIT A - SCOPE OF WORK

Lake Whatcom Homeowner Incentive Program Assistance

Project Description

The Lake Whatcom Homeowner Incentive Program (HIP) is a joint 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 originally developed under a Washington State Department of Ecology grant from 2011 to 2015. At the end of this pilot period, the City conducted an extensive program evaluation. Findings from this evaluation were used to develop a revised HIP, which began in 2017.

HIP offers two levels of assistance to property owners. The **target program** offers a higher level of assistance and financial incentives to owners of shoreline parcels, parcels draining directly to streams, and parcels with large lawns. These properties offer the greatest opportunity for phosphorus reduction. The **DIY native landscaping program** offers technical assistance and reimbursement for materials to install native landscaping on all other parcels in the program area. The program area currently includes all developed parcels draining to Lake Whatcom basin one and two.

The WCD has provided HIP implementation assistance since October 2016 through an interlocal agreement. The County requests continued assistance from the WCD to implement HIP in 2019 and 2020 as described in this scope of work.

Task 1. Program Administration

The WCD will provide program administration and coordinate with City/County staff. Program administration tasks will include:

- Invoicing
- Attending regular coordination meetings, providing communication of program activities, and contacting City/County staff with questions and/or problems in a timely manner
- Managing databases to support HIP in order to ensure accurate tracking of customers, projects, and data for analysis and reporting
- Assistance managing GIS interface with HIP
- Providing input to City/County staff on program improvement, adaptive management, improving outreach, and revised eligibility criteria
- Assisting with program outreach and providing information about HIP
- Other administrative support as needed

Deliverables and Timelines:

- Submit invoices with a progress report summarizing landowner contacts, BMPs installed, and work performed during the invoice period every month
- Attend coordination meetings with City and County staff monthly or as needed
- Participate in program evaluation annually or as needed

- Develop and maintain a HIP project database with monthly and annual reporting capability
- Develop and manage outreach advertising as requested by City and County staff

Task 2. Target Program Assistance

The WCD will provide a HIP Project Coordinator who will serve as the primary point of contact for homeowners voluntarily participating in HIP. Additional support will be provided as needed by other WCD staff. Homeowner assistance responsibilities include:

2a. HIP Project Coordinator Training

The HIP Project Coordinator will work with City and County staff, other WCD staff, and attend professional development trainings to receive training as needed. Training activities may include but are not limited to:

- Attending meetings with City and County staff
- Site visits of past HIP projects
- Shadowing City, County, and WCD staff on new HIP site visits
- Attending professional development trainings
- Working with WCD technical experts
- Other applicable training activities

2b. Program Implementation

Engaging homeowners

- Providing assistance with landowner recruitment
- Responding to homeowner inquiries; answering questions via email, phone, and in person
- Clearly explaining program purpose, opportunities, and limitations; eligible and ineligible improvements; and instilling realistic expectations in the landowners
- Conducting site visits to answer questions, promote the program, verify parcel eligibility, and identify opportunities for phosphorus reduction improvements on the parcel
- Conveying important messages regarding water quality and landowner stewardship
- Facilitating the Homeowner Acknowledgement process and securing landowner signatures
- Other homeowner engagement activities as needed

Completing HIP Project Feasibility Studies

- Identifying site constraints and working with homeowners to develop project feasibilities
- Providing technical assistance to complete a critical areas checklist and identify and map critical areas as needed

- Working with Whatcom County and City of Bellingham staff to troubleshoot designing around critical areas or other special site-specific considerations as needed
- Completing a HIP Project Feasibility Study with site-specific information, design constraints, and conceptual ideas
- Other HIP project feasibility study activities as needed

Working with private contractors that provide design and construction services for HIP

- Responding to questions from designers and contractors regarding HIP
- Facilitating the completion of soil investigations and BMP designs
- Other coordination with private designers and construction professionals as needed
- Providing professional certification trainings/management in partnership with County and City staff
- Answering questions about material specifications

Facilitating homeowner projects from start to finish

- Once a participant agrees to move forward, the HIP Project Coordinator becomes the liaison between homeowner, professionals, and jurisdiction to provide one consistent point of contact.
- Connects homeowner to designers and contractors by providing a list of HIP certified professionals
- Advocates for projects maximizing phosphorus reduction
- Connects homeowners to approved materials as needed by providing lists and criteria
- Facilitates signing of the maintenance agreement/easement between the homeowner and City/County
- Provides assistance filling out required forms and documents
- Reviews submittals for completeness and forwards to City or County staff for review and permitting
- Reviews and approves design plan amendments and facilitates any necessary additional permit review
- Oversees pre-construction (erosion control), facility installation, and permanent stabilization
- Completes final close out inspection and documentation
- Reviews and approves reimbursement requests and forwards for payment
- Other HIP project facilitation activities as needed

Deliverables and Timelines:

- Complete HIP project feasibility study and provide to homeowners
- Submit HIP project application forms to City/County staff for review and approval

- Submit records of completed HIP projects to City/County staff including generic as-built information, signed maintenance agreements, inspection records, database entries, and other records as determined by the HIP staff team

Task 3. Do-It-Yourself Native Landscaping Program Assistance

The WCD will provide staff to serve as the primary point of contact for homeowners participating in HIP's DIY Native Landscaping program for smaller residential properties that have less potential to export phosphorus to Lake Whatcom. Additional support will be provided as needed by other WCD staff. Homeowner assistance responsibilities include but not limited to:

3.a WCD Staff Training & Coordination

- Attending professional development trainings
- Working with WCD technical experts
- Other applicable training activities
- Share information on DIY site visits with City and County staff through a shared database

3.b Program Implementation

Workshop Assistance

- Co-teach DIY Native Landscaping workshop with city & county staff with the option to take over more teaching responsibility over time
- Provide assistance with workshop registration
- Create workshop participant base maps
- Help revise and improve workshop materials

Site Visits: on-site assistance to workshop attendees

- Answer questions about how the program works
- Provide assistance developing site plans including identifying and measuring planting areas
- Provide assistance with plant selection and planting plans
- Provide assistance with HIP DIY Native Landscaping project applications

Project Close Out

- Conduct final project inspection
- Provide assistance completing maintenance agreement
- Provide assistance with reimbursement process

Deliverables and Timelines:

- Co-teach DIY Native Landscaping workshops
- Maintain DIY project site visit records in a shared database with monthly and annual reporting capability
- Submit completed final project inspection forms

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, estimated hourly rates provided below*. Composite rates are subject to WCD adjustments, annually or as needed. Revised Composite Rate forms will be provided to WC for any rate changes upon adjustment. The total budget is not to exceed **\$216,883**. Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed including mileage at the current IRS rate. 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.

Personnel	Maximum Composite Rate*	Total
Administration	\$ 46.16/hr	
Manager	\$ 74.68/hr	
Resource Specialist	\$ 51.89/hr	
HIP Coordinator	\$ 44.13/hr	
GIS Technician	\$ 54.10/hr	
Engineer	\$ 81.52/hr	
Outreach Coordinator	\$ 54.57/hr	
Outreach Technician	\$ 24.27/hr	
Farm Plan Coordinator	\$ 42.67/hr	
Farm Planner	\$ 39.82/hr	
Habitat Coordinator	\$ 64.65/hr	
Wetlands Specialist	\$ 56.20/hr	
Habitat Technician	\$ 53.31/hr	
Outreach Assistant	\$ 20.13/hr	
Science Coordinator	\$ 65.31/hr	
Data Coordinator	\$ 48.10/hr	
Research Technician	\$ 44.13/hr	
Subtotal salaries/benefits		162,147
Overhead (25% of salaries/benefits)		40,537
Total Personnel		202,683
Supplies/Postage/Rentals	Actual costs	8,000
Training	Actual costs	1,000
Mileage	Actual costs	5,200
Other (contract specific)		
Totals		216,883
*WCD staff listed may work on any task, not to exceed \$202,683 for salaries/benefits and overhead.		

EXHIBIT C - INSURANCE
Lake Whatcom Homeowner Incentive Program Assistance

Enduris
EVIDENCE OF COVERAGE

INSURED/PARTICIPANT:

Whatcom Conservation District
 6975 Hannegan Rd
 Lynden, WA 98264

MEMORANDUM#: 2019-00-271

EFFECTIVE: September 1, 2018 through August 31, 2019

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.

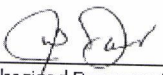
COVERAGE:	PER OCCURRENCE LIMIT	AGGREGATE LIMIT
COMPREHENSIVE GENERAL LIABILITY	\$1,000,000	\$1,000,000
<i>Professional Liability</i>	\$1,000,000	\$1,000,000
<i>Personal Liability</i>	\$1,000,000	\$1,000,000
<i>Products - Complete Operation</i>	\$1,000,000	\$1,000,000
AUTO LIABILITY	\$1,000,000	\$1,000,000
<i>Combined Single Limit; Hired and Non-Owned; Temporary Substitute</i>	\$1,000,000	\$1,000,000
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>	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:

Whatcom County is an additional covered party in respects to the 2019 Interlocal Agreement, Lake Whatcom Homeowner Incentive Program Assistance. Coverage is primary and non-contributory to the liability insurance maintained by the certificate holder. A waiver of subrogation is afforded to the certificate holder for the coverages listed above.


 Authorized Representative
 February 4, 2019



ADDENDUM B

ENDURIS AND ITS MEMBERS

MEMORANDUM OF COVERAGE

It is agreed that the "Covered Party, Covered Persons or Entities" provision is amended to include any person or entity to whom the member is obligated by virtue of a contract to provide insurance with respect to coverage afforded by this Memorandum. Said person or entity shall be covered only to the extent of such obligation of the covered party, and then only with respect to operations by or on behalf of the covered party, or of facilities of the covered party, or of facilities used by the covered party.

This policy will not insure or defend any claims for liabilities arising out of the sole fault, negligence or omission of the Additional Covered Party.

Coverage provided under this addendum is limited to the lesser of the limits stated on the Declaration page, or the minimum of coverage required in the contract.

This addendum requires written approval from Enduris.

It is further agreed that nothing herein shall act to increase Enduris' Limit of Liability.

This addendum is part of the Memorandum and takes effect on the effective date of the Memorandum unless another effective date is shown on the attached Evidence of Coverage. All other terms and conditions remain unchanged.