

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No. _____

Originating Department:	Public Works
Division/Program: <i>(i.e. Dept. Division and Program)</i>	Stormwater-Homeowner Incentive Program (907620)
Contract or Grant Administrator:	Ingrid Enschede
Contractor's / Agency Name:	City of Bellingham

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes No
 Yes No If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____

Does contract require Council Approval? Yes No If No, include WCC: _____
 Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

Is this a grant agreement?
 Yes No If yes, grantor agency contract number(s): _____ CFDA#: _____

Is this contract grant funded?
 Yes No If yes, Whatcom County grant contract number(s): _____

Is this contract the result of a RFP or Bid process?
 Yes No If yes, RFP and Bid number(s): _____ Contract _____
 Cost Center: D3211

Is this agreement excluded from E-Verify? No Yes If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:

- Professional services agreement for certified/licensed professional.
- Contract work is for less than \$100,000.
- Contract work is for less than 120 days.
- Interlocal Agreement (between Governments).
- Contract for Commercial off the shelf items (COTS).
- Work related subcontract less than \$25,000.
- Public Works - Local Agency/Federally Funded FHWA.

Contract Amount:(sum of original contract amount and any prior amendments):
 \$ \$350,000

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:**

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.

Summary of Scope: This agreement defines City of Bellingham (City) and Whatcom County (County) obligations for the continued cooperative administration of the Lake Whatcom Homeowner Incentive Program (HIP). It will replace the current agreement (#201611031) and extend the term through the end of 2020. The purpose of the HIP is to protect water quality in Lake Whatcom. HIP is a non-regulatory program that provides technical and cost share incentives to landowners who voluntarily install stormwater best management practices (BMPs) that improve water quality.

Term of Contract: 16 months Expiration Date: 12/31/2020

Contract Routing:	1. Prepared by: <u> Ingrid Enschede </u>	Date: <u> 7/26/2019 </u>
	2. Attorney signoff: <u> KNF </u>	Date: <u> 7/26/19 </u>
	3. AS Finance reviewed: <u> bbennett </u>	Date: <u> 7/26/19 </u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Submitted to Exec.: _____	Date: _____
	7. Council approved (if necessary): _____	Date: _____
	8. Executive signed: _____	Date: _____
	9. Original to Council: _____	Date: _____

**2019-2020 INTERLOCAL AGREEMENT
CITY OF BELLINGHAM – WHATCOM COUNTY
LAKE WHATCOM HOMEOWNER INCENTIVE PROGRAM**

THIS INTERLOCAL AGREEMENT (the “Agreement”) is made and entered into by and between the City of Bellingham (the “City”), 210 Lottie Street, Bellingham, WA 98225, and Whatcom County (the “County”), County Courthouse, 311 Grand Avenue, Bellingham, WA 98225 pursuant to the Washington Interlocal Cooperation Act Chapter 39.34 Revised Code of Washington. The City and the County shall herein be referred to jointly as the “Parties”.

RECITALS

WHEREAS, the geographic area comprising the Lake Whatcom watershed is located partially within the corporate limits of the City and partially within unincorporated areas of the County; and

WHEREAS, the United States Environmental Protection Agency approved the final Total Maximum Daily Load (TMDL) study for phosphorus and fecal coliform bacteria in April 2016, which requires the City and the County to develop a response strategy; and

WHEREAS, from 2011-2016 the Parties partnered to implement a pilot program known as the Homeowner Incentive Program (HIP) to support homeowner-driven water quality Best Management Practices (BMPs) on private properties; and

WHEREAS, the City conducted extensive research and program evaluation at the end of the pilot HIP, and findings from this effort were used to develop a revised HIP and were implemented in 2017 as a joint City-County program; and

WHEREAS, the current Lake Whatcom Management Program (LWMP) 5-year Work Plan (2015-2019) lists the HIP as a significant and shared effort to be undertaken by the City and County as program partners and co-managers of the Lake Whatcom Reservoir, under Section 2, Stormwater; and

WHEREAS, the explicit purpose of the HIP is to improve water quality in Lake Whatcom by managing runoff from private properties in both jurisdictions by implementing a cooperative program that shares resources and funding to achieve a shared goal; and

WHEREAS, funding associated with the Lake Whatcom Management Program (LWMP) can be utilized for this shared program for tasks described as: (i) program administration, (ii) outreach and education, (iii) geotechnical research, (iv) technical assistance and project review, (v) financial cost-sharing for HIP-approved best management practices (BMPs), (vi) construction assistance and inspection, and (vii) follow up visual monitoring and assessment; and

WHEREAS, individual components of the HIP may be contracted by either the City or the County; and

WHEREAS, the County has entered into an interlocal agreement with the Whatcom Conservation District to implement significant portions of the HIP activities, with the support of both the City and County; and

WHEREAS, the Parties desire to enter into this Agreement in order to define their respective obligations for the cooperative administration of the HIP through 2020.

NOW THEREFORE, the City and the County agree as follows:

TERMS AND CONDITIONS

1. **Purpose**. The purpose of this Agreement is to set the terms whereby the Parties will work cooperatively to administer the HIP within Basins 1 and 2 of the Lake Whatcom watershed located both within City limits and in unincorporated areas of the County as shown in Exhibit "A".

2. **Administration**. No new or separate legal or administrative entity is created to administer the provisions of this Agreement. As a recipient of City funds, the County shall, as a condition of this Agreement, comply with all requirements for administration of the program as outlined in Exhibit "B", Homeowner Incentive Program (HIP) General Guidelines and Requirements ("Guidelines").

3. **County Responsibilities**.

3.1 The County, and/or its subcontractors and agents, will perform work necessary to implement the HIP as described in the Guidelines, including but not limited to contacting interested landowners, aiding interested landowners in plan development, approving plan designs that meet the HIP requirements, inspecting projects to assure compliance with design requirements, and aiding landowners in submitting project reimbursement requests. The County will provide at least 0.5 full-time equivalent level (FTE) staff to support HIP. Additional assistance will be provided through subcontractors and agents.

3.2 The County will ensure that eligible reimbursement payments are made to landowners in a timely fashion and in conformance with the Guidelines.

3.3 The County will document and inspect HIP projects completed during the term of this Agreement and during the term of the previous HIP Interlocal Agreement COB contract # 2017-0047 to verify compliance with HIP requirements and participants' adherence to the terms of the relevant landowner agreements.

3.4 The County will provide funding for the HIP at \$100,000 per year for 2019 and 2020 and will seek reimbursement from the City for additional HIP costs and expenditures exceeding the County's annual contribution. The County is developing a Lake Whatcom Stormwater Utility. The County anticipates the Utility funds will allow the County to contribute a more equitable level of funding beginning in 2021.

4. **City Responsibilities**.

4.1 The City agrees to contribute funding for the program in the amount of \$350,000 by reimbursing the County for County-incurred expenses related to management and administration of the HIP as described in the Guidelines. Such HIP-related expenses may include, but are not limited to, interlocal agreements, employment of consultants, equipment, studies, outreach activities, and specific material purchases related to HIP-approved activities.

4.2 The City will reimburse the County for payments made to landowners as reimbursement of landowner-incurred expenses to complete an approved HIP project as described in the Guidelines.

4.3 The City will provide staff support as needed up to 0.5 FTE to implement the HIP as described in the Guidelines.

5. **Payment.** Each request for payment herein is to be submitted in the usual form of a claim for services rendered, which claims shall be supported by detailed documentation of the services actually performed and expenses incurred so as to comply with auditing requirements and the terms of participation in HIP. Payment shall be upon City approval of claims and in accordance with customary procedures.

6. **Term.** This Agreement shall be effective for services performed from the approval date of this Agreement through December 31, 2020 and, once approved, shall replace the 2017-2019 Interlocal Agreement (City of Bellingham Contract # 2017-0047, Whatcom County Contract # 201611031). It may be terminated by either party upon the giving of 30 days' written notice to the other, at which time any remaining financial obligations for services rendered shall be paid in full according to the provisions of **Section 5. Payment**, above. Immediately upon receipt of a termination notice, the County shall cease incurring or authorizing additional expenditures pursuant to this Agreement.

7. **Responsible Persons.** The persons responsible for administration of this Agreement shall be the Whatcom County Public Works Director and the City of Bellingham Public Works Director or their respective designees. The current designees are:

Jason Porter
Storm and Surface Water Manager
City of Bellingham Public Works
2221 Pacific St.
Bellingham, WA. 98229
Phone:(360) 778-7800
Fax: (360) 778-7801

Gary Stoyka
Natural Resources Program Manager
Whatcom County Public Works
322 N. Commercial St., Suite 110
Bellingham, WA 98225
Phone: (360) 778-6218
Fax: (360) 778-6231

The City contact and telephone number for billing/invoice questions is Chita Russo, Public Works Financial Services (360) 778-7700

The County contact and telephone number for billing/invoice questions is Randy Rydel, Public Works Administration, (360) 778-6217.

8. **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, except that the documentary products of the Lake Whatcom Homeowner Incentive Program shall be deemed the property of both of the Parties to this Agreement.

9. **Liability.** The City agrees to defend and indemnify the County from any claims, damages or liabilities arising out of the City's negligent acts or omissions. Likewise, the County agrees to defend and indemnify the City from any claims, damages or liabilities arising out of the County's negligent acts or omissions.

10. **Subcontracting.** The County shall be as fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it. The County shall insert in each subcontract appropriate provisions requiring compliance with the provisions of this Agreement, and subcontractors shall be deemed to be bound by all the terms hereof.

11. **Rights in Data.** All documents, maps, and other materials of whatever kind prepared by the County or its agents pursuant to this Agreement shall be deemed property of the City and County upon completion of the HIP or termination of this Agreement.

12. **Modifications.** The terms of 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.

13. **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 of the State of Washington, both as to interpretation and performance, and the venue of any action arising herefrom shall be in the Superior Court of the State of Washington in and for Whatcom County.

14. **Severability.** In the event any term or condition of this Agreement or application thereof to any person or circumstances 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.

15. **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.

16. **Website Posting.** Upon execution of this Agreement, the County shall post a copy of it on its website pursuant to the requirements of RCW 39.34.040.

IN WITNESS WHEREOF, the Parties have signed this Agreement this _____ day of _____, 20____.

EXECUTED, this the _ day of _____, 2019, for **WHATCOM COUNTY**

By _____
Jack Louws, County Executive

Approved as to form:



Christopher Quinn, Senior Civil Deputy Prosecuting Attorney



Jon Hutchings, Director of Public Works

EXECUTED, this the _____ day of _____, 2019, for the **CITY OF BELLINGHAM**:

Departmental Approval:

Mayor

Department Head

Attest:

Approved as to Form:

Finance Director

Office of the City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this _____ day of _____, 20____, 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: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this _____ day of _____, 20____, before me personally appeared, to me KELLI LINVILLE known to be the Mayor of CITY OF BELLINGHAM, 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": MAP OF PROGRAM AREA / ELIGIBLE PROPERTIES



EXHIBIT "B": HOMEOWNER INCENTIVE PROGRAM (HIP) GENERAL GUIDELINES AND REQUIREMENTS ("Guidelines").

The Homeowner Incentive Program (HIP) provides technical assistance and financial reimbursement to support the installation of water quality best management practices (BMPs) on private properties within the Lake Whatcom watershed. The HIP is operated as a function of the Lake Whatcom Management Program, and program administration is shared between the City of Bellingham and Whatcom County. The HIP is also available to non-residential property owners if the property meets program eligibility criteria.

The following general guidelines and requirements represent the agreed-to structure of the HIP. These guidelines set the expectations for HIP projects and are intended to ensure that resources are applied equitably by the City of Bellingham and Whatcom County (the "Parties") and their agents or subcontractors and that projects will be implemented consistently across jurisdictional boundaries.

1. Eligible Properties. Any project that qualifies for reimbursement must be located within the current and accepted boundaries of HIP. Specifically, properties must be located within the geographic areas that drain to Basin 1 or Basin 2 of the Lake Whatcom watershed, defined as those properties between Strawberry Point (to the southwest) and Dellesta Point (to the southeast) and extending north to the outlet of Lake Whatcom as shown in Exhibit A. Properties that drain to infrastructure that diverts runoff outside of the Lake Whatcom watershed are not eligible.
2. Tiered Assistance Levels. Funding and technical assistance resources must be directed appropriately to the properties identified as "High Priority" or "Low Priority" as defined and approved by the Parties. Specifically, "High Priority" lots are shoreline, creek-adjacent, and large lawn (as agreed to by the Parties). "High Priority" lots are eligible to participate in the HIP Target Program. "Low Priority" lots are all others within the eligible area described above and shown in Exhibit A. "Low Priority" lots are eligible to participate in the HIP Do-It-Yourself Native Landscaping Program.
3. Thresholds. Projects qualifying for HIP under the "High Priority" designation must improve at least 25% of the developed site area to qualify for HIP funding. The developed site area is equivalent to the total area of lawn, paved surfaces, roofs, and ineffective landscaping on the property. Forested areas do not count toward developed area. Forested areas are defined as those areas containing at least four inches of natural groundcover (e.g., mulch or duff) and at least 75% canopy coverage when viewed from an aerial photograph. Projects under the "Low-Priority" designation must achieve at least the lesser of 1,000 square feet of improved area or 25% of developed area to qualify for funding.
4. Project Types and Outcomes. Completed projects must meet HIP design and construction requirements and provide a public water quality protection benefit to qualify for HIP.
 - a. High-Priority Properties (Target Program).
 - i. Primary Best Management Practices (BMPs). Acceptable HIP projects must meet the improvement threshold by installing at least one of the following BMPs consistent with approved specifications and design requirements: i) native landscaping, ii) infiltration trench, iii) media filter drain (MFD) (upland or clean beach), iv) dispersion, v) Lake Whatcom Rain Garden, or vi) BMPs

therefore, a maintenance only agreement without an easement recorded with the Whatcom County Auditor's Office will be required for all participating City properties.

- b. Maintenance Agreements for County Properties. An Easement and Maintenance Agreement recorded with the Whatcom County Auditor's Office, or an equivalent mechanism that provides similar assurance of the perpetuation of the project benefits, as agreed to by the City, will be required for all High Priority/Target Program participants in Whatcom County jurisdiction. A maintenance only agreement without an easement will be required for the Low Priority/Do-It-Yourself Native Landscaping Program participants in Whatcom County jurisdiction.

8. Reimbursement Structure.

a. High-Priority Properties (Target Program).

- i. Amount. Work completed on these sites is eligible for a reimbursement rate of \$1.30 per square foot of area treated by HIP BMPs.
- ii. Eligible Items.
 - 1. Expenses that lead directly to a public water quality benefit may be reimbursed. Homeowners may claim reimbursement for materials, equipment, tools, delivery, haul away, and professional services (design and labor) provided by a HIP-certified professional. All items must be deemed necessary and justified for the purposes of project completion. Materials shall be deemed appropriate by referencing the approved HIP Standard Details and Specifications for the BMPs as approved by the Parties. Materials or services that do not meet these specifications may be ineligible.
 - 2. Design Fees for Cancelled Projects. If a homeowner decides to withdraw from HIP and cancel their project for any reason after design fees are incurred, 50% of design fees, up to maximum of \$500, will be reimbursed. Homeowners will be required to submit copies of design work completed (e.g., soil data, designs) with their reimbursement request.
- i. Non-Certified Professionals. Property owners may choose to hire a professional who has not been trained or certified through HIP. Those professional services are reimbursable for only 75% of the costs incurred and must meet the following criteria to be considered an eligible expense:
 - 1. The business or individual must be registered as a legal business in the State of Washington and must be found on the searchable online database provided by the State of Washington Department of Revenue.
 - 2. For projects occurring within the City of Bellingham, the business or individual must be registered with the City of Bellingham Finance Department and authorized to collect fee for service within city limits. Endorsements specific to Bellingham City must be found on the Department of Revenue's searchable online database.

b. Low-Priority Properties (Do-It-Yourself Native Landscaping Program).

- i. Amount. Work completed on these sites is eligible for a reimbursement equal to \$1.30 per square foot of area planted with HIP-approved native

landscaping, with a maximum of \$6,000 per property over the length of this program, for HIP-eligible materials only. Labor costs will not be reimbursed.

- ii. Eligible Items. Only expenses that lead directly to a public water quality benefit may be reimbursed. Homeowners may claim reimbursement for materials utilized to complete a HIP Native Landscaping project. All items must be deemed necessary and justified for the purposes project completion and maintenance. Materials shall be deemed appropriate by referencing the approved HIP Standard Details and Specifications for the Native Landscaping BMP as approved by the Parties. Materials that do not meet these specifications may be ineligible.
- c. Common to Both Types of Properties (Target and Do-It-Yourself Programs).
- i. Ineligible Items. Any expense that provides solely a private benefit to the property owner is not eligible for reimbursement. Any professional services provided for work that is not eligible must be broken out in invoices submitted for reimbursement or the entire invoice may be subject to rejection.
 - ii. Definitions regarding eligibility. Exemptions for materials or services not found on the approved list of reimbursable items will be construed narrowly and final declaration of eligibility will be mutually agreed to by the Parties. Unique situations may be considered on a case-by-case basis and additional reimbursable items may be approved in writing by a representative of each Party.
- d. Reimbursement Process. All reimbursed payments must be accompanied by proper documentation that allows the Parties to confirm that the project meets the goals and requirements of the HIP. Documentation shall include agreed-to reimbursement forms, copies of receipts or invoices, project data as needed to report performance and participation, notarized maintenance agreement, and easement when applicable.