

INTERLOCAL AGREEMENT

CITY OF LYNDEN AND WHATCOM COUNTY HEALTH DEPARTMENT

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

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

As a PPA contractor, County Health will provide technical assistance site visits and pollutant prevention education to Small Quantity Generators (SQGs) of dangerous waste (like smaller businesses, organizations, and nonprofits). Technical assistance and education efforts are designed to reduce or eliminate hazardous waste and other pollutants at the source through best management practices that prevent spills and discharges to ground, air, and water (especially to industrial wastewater and stormwater).

WHEREAS, County Health is equipped to provide business inspections for pollution prevention assistance; and

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

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

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

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

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

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

performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

- XII. *Modifications:* This Agreement may be changed, modified, amended or waived only by written agreement executed by the Parties hereto. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.
- XIII. *Applicable Law:* In the performance of this Agreement, it is mutually understood and agreed upon by the Parties hereto that this Agreement shall be governed by the laws and regulations of the State of Washington and the federal government, both as to interpretation and performance. The venue of any action arising here from shall be in the Superior Court of the State of Washington in and for Whatcom County.
- XIV. *Severability:* In the event any term or condition of this Agreement or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement that can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this Agreement are declared severable.
- XV. *Entire Agreement:* This Agreement contains all the terms and conditions agreed upon by the Parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.
- XVI. *Counterparts:* This Agreement may be executed in multiple counterparts and each shall be deemed an original, but all of which together constitute a single instrument.
- XVII. *Effective Date:* This Agreement shall be in full force and effect on January 1, 2023.

IN WITNESS WHEREOF, the Parties have signed this Agreement this _____
day of _____ 2022.

WHATCOM COUNTY HEALTH DEPARTMENT

CITY OF LYNDEN

By: _____
Title: _____

By: _____
Title: _____

Approved as to form:

Approved as to form:

Whatcom County Health Dept. Attorney

City Attorney

WHATCOM COUNTY HEALTH DEPARTMENT

STATE OF WASHINGTON)
)ss.
COUNTY OF WHATCOM)

On this ____ day of _____, 2022, before me personally appeared _____ to me personally known to be the person described in and who executed the above instrument and who acknowledged to me the act of signing thereof.

NOTARY PUBLIC, in and for the
State of Washington, residing at:

My Commission Expires: _____

CITY OF LYNDEN

STATE OF WASHINGTON)
)ss.
COUNTY OF WHATCOM)

On this ____ day of _____, 2022, before me personally appeared Scott Korthuis to me personally known to be the person described in and who executed the above instrument and who acknowledged to me the act of signing thereof.

NOTARY PUBLIC, in and for the
State of Washington, residing at:

My Commission Expires: _____

Exhibit A
Scope of
Work

The tasks outlined below describe the services to be performed by County Health for the City pursuant to this Agreement.

With the full cooperation of the City, the County shall be responsible for the completion of business inspections as part of a mutually beneficial NPDES II source control program, including the provision of Permit services.

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

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

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

Task 1.0 - Source Control Program for Existing Development

This Agreement is intended to establish a partnership with County Health regarding completion of business inspections as part of the City's NPDES Phase II source control program ("program"), as provided per the terms of this Agreement. The City generated an inventory of publicly and privately owned institutional, commercial, and industrial sites, which have the potential to generate pollutants to the Municipal Separate Storm Sewer System (MS4). As a component of the program, County Health will conduct a portion of the inspections that constitute twenty percent (20%) of the City's total inventory annually. The portion of the inspections to be conducted by County Health will be set from between 30 and 35% of the City's required inspections each year that this Agreement is in effect.

Per the Permit, permittees (including the City) are not required to inspect one hundred percent (100%) of their inventory over a 5-year period, but permittees are

required to conduct inspections at a rate equal to one hundred percent (100%) of their inventory over a 5-year period of site visits equal to twenty percent (20%). The services involving source control inspection will include prescribing Best Management Practices (BMPs), as mandated by the Permit. The BMPs and the sources they address are provided in Ecology's most current version of the Stormwater Management Manual for Western Washington (SWMMWW). The City is and will continue to be solely and separately responsible and liable for updating its own site inventories and for separately and independently responding to and adequately addressing all referrals or demands for Permit enforcement, as received from the County and/or Ecology.

Task 1.1 Outreach

County Health, with City assistance, shall contribute to the creation of educational materials and methods that will be made available to publicly and privately owned institutional, commercial, and industrial sites, which have the potential to generate pollutants to the MS4 identified in the City's inventory, and to meet the conditions of the Permit. The essential goals include improving public knowledge of local stormwater issues, receiving public input, and working to build support for the source control program from business owners and the public.

Required Tasks and Deliverables:

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

Task 1.2-Site Inventory

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

Required Tasks and Deliverables:

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

Task 1.3-Annual Inspection Rate

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

Required Tasks and Deliverables:

County Health will document and make available, the total number of inspections conducted in the previous year no later than March 1 each year. The City shall respond to its Annual Report questions due March 31 each year.

Task 1.4-Inspection of All Credible Complaints

County Health will reasonably consult with the City regarding any credible Permit related complaint received by the County to allow the City to determine the best course of action to take concerning such complaints, including, but not limited to potential Permit enforcement actions by the City.

Required Tasks and Deliverables:

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

Task 1.5- Progressive Enforcement Actions

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

Required Tasks and Deliverables:

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

Task 1.6 - Maintenance of Records

County Health will reasonably maintain a database on each site visit conducted by County Health that will include general site information, date and time of inspection, contact information, any issues identified, appropriate BMPs prescribed, communications, and any other information deemed necessary by County staff. County Health will assure that the City will have access to such information.

Task 1.7- Ecology Referrals

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

Required Tasks and Deliverables:

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