

**WHATCOM COUNTY CONTRACT  
INFORMATION SHEET**

Whatcom County Contract No. \_\_\_\_\_

Originating Department:	Public Works
Division/Program: <i>(i.e. Dept. Division and Program)</i>	Stormwater-907620 & 950510
Contract or Grant Administrator:	Cathy Craver
Contractor's / Agency Name:	Brown & Caldwell
Is this a New Contract?    If not, is this an Amendment or Renewal to an Existing Contract?    Yes <input type="radio"/> No <input checked="" type="radio"/> Yes <input checked="" type="radio"/> No <input type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval?    Yes <input checked="" type="radio"/> No <input type="radio"/> 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 <input type="radio"/> No <input checked="" type="radio"/> If yes, grantor agency contract number(s): _____ CFDA#: _____	
Is this contract grant funded? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, Whatcom County grant contract number(s): _____	
Is this contract the result of a RFP or Bid process?    Contract Yes <input checked="" type="radio"/> No <input type="radio"/> If yes, RFP and Bid number(s): RFQ-19-01    Cost Center: 123 (\$130k); 10860 (\$63,013)	
Is this agreement excluded from E-Verify?    No <input type="radio"/> Yes <input checked="" type="radio"/> If no, include Attachment D Contractor Declaration form.	
If YES, indicate exclusion(s) below: <input checked="" type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). <input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Work related subcontract less than \$25,000. <input type="checkbox"/> Interlocal Agreement (between Governments). <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments): \$ 193,013 This Amendment Amount: \$ _____ Total Amended Amount: \$ _____	Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when</b> : 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: Complete Phase I of the Lake Whatcom Total Maximum Daily Load (TMDL) Reassessment. This includes the Quality Assurance Project Plan (QAPP) for the CE-QUAL W2 Lake Response Model, and the Phosphorus Load Reduction Estimation as part of the Whatcom County's Lake Whatcom TMDL requirements.	
Term of Contract:	Expiration Date: 12/31/2020

Contract Routing:	1. Prepared by: <u>Cathy Craver</u>	Date: <u>01/21/20</u>
	2. Attorney signoff: <u>Christopher Quinn</u>	Date: <u>1/21/2020</u>
	3. AS Finance reviewed: <u>bbennett</u>	Date: <u>01/27/20</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: _____

**CONTRACT FOR SERVICES AGREEMENT**  
**Lake Whatcom Total Maximum Daily Load (TMDL) Reassessment-Phase 1**

Brown & Caldwell, hereinafter called **Contractor**, and Whatcom County, hereinafter referred to as **County**, agree and contract as set forth in this Agreement, including:

- General Conditions, pp. 1 to 9,
- Exhibit A (Scope of Work), pp. 10 to 14,
- Exhibit B (Compensation), pp. 15 to 15,
- Exhibit C (Certificate of Insurance).

Copies of these items are attached hereto and incorporated herein by this reference as if fully set forth herein.

The term of this Agreement shall commence on the 11th day of February, 20 2020, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of December, 20 20.

The general purpose or objective of this Agreement is to: complete Phase I of the Lake Whatcom Total Maximum Daily Load (TMDL) Reassessment, as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.

The maximum consideration for the initial term of this agreement or for any renewal term shall not exceed \$ 193,013. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

Contractor acknowledges and by signing this contract agrees that the Indemnification provisions set forth in Paragraphs 11.1, 21.1, 30.1, 31.2, 32.1, 34.2, and 34.3, if included, are totally and fully part of this contract and have been mutually negotiated by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement this 28<sup>th</sup> day of January, 20 20.

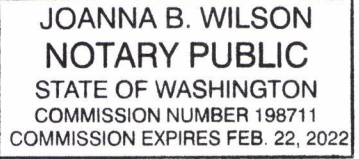
**CONTRACTOR:**

Brown & Caldwell  
*Michael Milne*  
Mike Milne, Vice President

STATE OF WASHINGTON                     )  
  ) ss.  
COUNTY OF King                     )

On this 28<sup>th</sup> day of January, 2020, before me personally appeared Michael Milne to me known to be the Vice President of Brown and Caldwell and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

*Joanna B. Wilson*  
NOTARY PUBLIC in and for the State of Washington, residing at  
Seattle, WA. My commission expires 2/22/2022.



WHATCOM COUNTY:

Recommended for Approval:

[Signature] 1/29/20  
Jon Hutchings, Public Works Director Date

Approved as to form:

[Signature] 1/30/2020  
Christopher Quinn, Senior Deputy Prosecuting Attorney-Civil Division Date

Approved:

Accepted for Whatcom County:

By: \_\_\_\_\_  
Satpal Singh Sidhu, Whatcom County Executive

STATE OF WASHINGTON )  
) ss  
COUNTY OF WHATCOM )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_, before me personally appeared Satpal Singh Sidhu, to me known to be the Executive of Whatcom County, 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 \_\_\_\_\_.

CONTRACTOR INFORMATION:

Brown and Caldwell  
[Signature]  
Mike Milne, Vice President

Address:  
701 Pike Street, Suite 1200  
Seattle, WA 98101

Contact Name: Mike Milne  
Contact Phone: 206-749-2284  
Contact FAX: 206-749-2200  
Contact Email: mmilne@brwncald.com

## GENERAL CONDITIONS

### ***Series 00-09: Provisions Related to Scope and Nature of Services***

- 0.1 Scope of Services:  
The Contractor agrees to provide to the County services and any materials as set forth in the project narrative identified as Exhibit "A", during the agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.
- 0.2 Standard of Care  
Subject to the express provisions of the agreed scope of work as to the degree of care, amount of time and expenses to be incurred, and subject to any other limitations contained in this Agreement, Consultant shall perform its Services as agent of Whatcom County in accordance with generally accepted standards and practices customarily utilized by competent engineering firms in effect at the time Consultant's Services are rendered. Consultant does not expressly or impliedly warrant or guarantee its Services.

### ***Series 10-19: Provisions Related to Term and Termination***

- 10.1 Term:  
Services provided by Contractor prior to or after the term of this contract shall be performed at the expense of Contractor and are not compensable under this contract unless both parties hereto agree to such provision in writing. The term of this Agreement may be extended by mutual agreement of the parties; provided, however, that the Agreement is in writing and signed by both parties.
- 10.2 Extension:  
The duration of this Agreement may be extended by mutual written consent of the parties, for a period of up to one year, and for a total of no longer than three years.
- 11.1 Termination for Default:  
If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. mail, first class postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. Termination shall be effective upon Contractor's receipt of the written notice, or within three (3) days of the mailing of the notice, whichever occurs first. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.
- 11.2 Termination for Reduction in Funding:  
In the event that funding from State, Federal or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement, and prior to its normal completion, the County may summarily terminate this Agreement as to the funds withdrawn, reduced, or limited, notwithstanding any other termination provisions of this Agreement. If the level of funding withdrawn, reduced or limited is so great that the County deems that the continuation of the programs covered by this Agreement is no longer in the best interest of the County, the County may summarily terminate this Agreement in whole, notwithstanding any other termination provisions of this Agreement. Termination under this section shall be effective upon receipt of written notice as specified herein, or within three days of the mailing of the notice, whichever occurs first.
- 11.3 Termination for Public Convenience:  
The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion, that such termination is in the interests of the County. Whenever the Agreement is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this

Agreement by the County at any time during the term, whether for default or convenience, shall not constitute breach of contract by the County.

**Series 20-29: Provisions Related to Consideration and Payments**

20.1 Accounting and Payment for Contractor Services:

Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "B." Where Exhibit "B" requires payments by the County, payment shall be based upon written claims supported, unless otherwise provided in Exhibit "B," by documentation of units of work actually performed and amounts earned, including, where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested, so as to comply with municipal auditing requirements.

Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for the County or his designee (hereinafter referred to as the "Administrative Officer") the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than monthly, in accordance with the County's customary procedures, pursuant to the fee schedule set forth in Exhibit "B."

21.1 Taxes:

The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

22.1 Withholding Payment:

In the event the County's Administrative Officer determines that the Contractor has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to Contractor the amount determined by the County as necessary to cure the default, until the Administrative Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to termination or damages, provided that the County promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than 10 days after it determines to withhold amounts otherwise due. A determination of the Administrative Officer set forth in a notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Agreement. The County may act in accordance with any determination of the Administrative Officer which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount so paid or incurred from amounts due or to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the County under this clause.

23.1 Labor Standards:

The Contractor agrees to comply with all applicable state and federal requirements, including but not limited to those pertaining to payment of wages and working conditions, in accordance with RCW 39.12.040, the Prevailing Wage Act; the Americans with Disabilities Act of 1990; the Davis-Bacon Act; and the Contract Work Hours and Safety Standards Act providing for weekly payment of prevailing wages, minimum overtime pay, and providing that no laborer or mechanic shall be required to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to health and safety as determined by regulations promulgated by the Federal Secretary of Labor and the State of Washington.

**Series 30-39: Provisions Related to Administration of Agreement**

30.1 Independent Contractor:

The Contractor's services shall be furnished by the Contractor as an independent contractor, and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent contractor.

The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Contractor is not entitled to any benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to employees of the County. The Contractor represents that he/she/it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this contract to the Internal Revenue Service, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

30.2 Assignment and Subcontracting:

The performance of all activities contemplated by this agreement shall be accomplished by the Contractor. No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the County.

30.3 No Guarantee of Employment:

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

31.1 Ownership of Items Produced:

All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with performance of this Agreement, shall be the sole and absolute property of the County after payment to Contractor.

31.2 Patent/Copyright Infringement:

Contractor will defend and indemnify the County from any claimed action, cause or demand brought against the County, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:

A. The Contractor shall be notified promptly in writing by the County of any notice of such claim.

B. Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County.

32.1 Confidentiality:

The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the County or an order entered by a court after having acquired jurisdiction over the County. Contractor shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Contractor shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees and costs resulting from Contractor's breach of this provision.

33.1 Right to Review:

This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor's Office. Such review may occur with or without notice and may include, but

is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for three (3) years after contract termination, and shall make them available for such review, within Whatcom County, State of Washington, upon request. Contractor also agrees to notify the Administrative Officer in advance of any inspections, audits, or program review by any individual, agency, or governmental unit whose purpose is to review the services provided within the terms of this Agreement. If no advance notice is given to the Contractor, then the Contractor agrees to notify the Administrative Officer as soon as it is practical.

34.1 Proof of Insurance:

The Contractor shall carry for the duration of this Agreement insurance with the following minimums:

- 1) Commercial General Liability coverage--
  - a) Property Damage - \$500,000.00 per occurrence
  - b) General Liability & Bodily injury- \$1,000,000.00 per occurrence

A Certificate of insurance, that also identifies the County as an additional insured, is attached hereto as Exhibit "C". For that insurance, the Contractor's policy shall be considered as primary and shall waive all rights of subrogation. The County insurance shall not serve as a source of contribution.

- 2) Professional Liability - \$1,000,000 per claim:

If the professional liability insurance is a claims made policy, and if the Contractor discontinues coverage either during the term of this contract or within three years of completion, the Contractor agrees to purchase tail coverage for a minimum of three years from the completion date of this contract or any amendment to this contract.

34.2 Industrial Insurance Waiver:

With respect to the performance of this agreement and as to claims against the County, its officers, agents and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this agreement extend to any claim brought by or on behalf of any employee of the Contractor. This waiver is mutually negotiated by the parties to this agreement.

34.3 Defense & Indemnity Agreement:

The Contractor agrees to defend, indemnify and save harmless the County, its appointed and elective officers and employees, from and against all loss or expense, including, but not limited to, judgments, settlements, attorneys' fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property, to the extent of the negligence of the Contractor, its agents, or its employees.

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein. The parties specifically agree that this agreement is for the benefit of the parties only and this agreement shall create no rights in any third party.

35.1 Non-Discrimination in Employment:

The County's policy is to provide equal opportunity in all terms, conditions and privileges of employment for all qualified applicants and employees without regard to race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status. The Contractor shall comply with all laws prohibiting discrimination against any employee or applicant for employment on the grounds of race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status, except where such constitutes a bona fide occupational qualification.

Furthermore, in those cases in which the Contractor is governed by such laws, the Contractor shall take affirmative action to insure that applicants are employed, and treated during employment, without regard to their race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status, except where such constitutes a bona fide occupational qualification. Such action shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations, rate of pay or other forms of compensation benefits, selection for training including apprenticeship, and participation in recreational and educational activities. In all solicitations or advertisements for employees placed by them or on their behalf, the Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

The foregoing provisions shall also be binding upon any subcontractor, provided that the foregoing provision shall not apply to contracts or subcontractors for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

35.2 Non-Discrimination in Client Services:

The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status; or deny an individual or business any service or benefits under this Agreement; or subject an individual or business to segregation or separate treatment in any manner related to his/her/its receipt any service or services or other benefits provided under this Agreement; or deny an individual or business an opportunity to participate in any program provided by this Agreement.

36.1 Waiver of Noncompetition:

Contractor irrevocably waives any existing rights which it may have, by contract or otherwise, to require another person or corporation to refrain from submitting a proposal to or performing work or providing supplies to the County, and contractor further promises that it will not in the future, directly or indirectly, induce or solicit any person or corporation to refrain from submitting a bid or proposal to or from performing work or providing supplies to the County.

36.2 Conflict of Interest:

If at any time prior to commencement of, or during the term of this Agreement, Contractor or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the County's interest, then Contractor shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County to make an informed judgment as to whether or not the County's interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Contractor to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination.

37.1 Administration of Contract:

This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. The Contractor also agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals.

The County hereby appoints, and the Contractor hereby accepts, the Whatcom County Executive, and his or her designee, as the County's representative, hereinafter referred to as the Administrative Officer, for the purposes of administering the provisions of this Agreement, including the County's right to receive and act on all reports and documents, and any auditing performed by the County related to this Agreement. The Administrative Officer for purposes of this agreement is:

Cathy Craver  
Senior Planner  
322 N. Commercial St., Suite 224  
Bellingham, WA 98225Insert here

37.2 Notice:

Except as set forth elsewhere in the Agreement, for all purposes under this Agreement except service of process, notice shall be given by the Contractor to the County's Administrative Officer under this Agreement. Notice to the Contractor for all purposes under this Agreement shall be given to the address provided by the Contractor herein above in the "Contractor Information" section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

38.1 Certification of Public Works Contractor's Status under State Law:

Contractor certifies that it has fully met the responsibility criteria required of public works contractors under RCW 39.04.350 (1), which include: (a) having a certificate of registration in compliance with RCW 18.27; (b) having a current state unified business identifier number; (c) if applicable, having industrial insurance coverage for its employees working in Washington as required in Title 51 RCW, an employment security department number as required in Title 50 RCW, and a state excise tax registration number as required in Title 82 RCW; and (d) not being disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).



38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:

The Contractor further certifies, by executing this contract, that neither it nor its principles is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or Agency.

The Contractor also agrees that it shall not knowingly enter into any lower tier covered transactions (a transaction between the Contractor and any other person) with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, and the Contractor agrees to include this clause titled "Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" without modification, in all lower tier covered transactions and in all solicitations for lower tier transactions.

The "Excluded Parties List System in the System for Award Management (SAM) website is available to research this information at WWW.SAM.GOV. Contractor shall immediately notify Whatcom County if, during the term of this Contract, Contractor becomes debarred.

38.3 E-Verify:

The E-Verify contractor program for Whatcom County applies to contracts of \$100,000 or more and sub contracts for \$25,000 or more if the primary contract is for \$100,000 or more. Contractor represents that it will, for at least the duration of this contract, register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work for Whatcom County. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor/Seller agrees to maintain records of such compliance and, upon request of the County, to provide a copy of each such verification to the County. Contractor/Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Washington. Contractor/Seller understands and agrees that any breach of these warranties may subject Contractor/Seller to the following: (a) termination of this Agreement and ineligibility for any Whatcom County contract for up to three (3) years, with notice of such cancellation/termination being made public. In the event of such termination/cancellation, Contractor/Seller would also be liable for any additional costs incurred by the County due to contract cancellation or loss of license or permit." Contractor will review and enroll in the E-Verify program through this website: [www.uscis.gov](http://www.uscis.gov)

***Series 40-49: Provisions Related to Interpretation of Agreement and Resolution of Disputes***

40.1 Modifications:

Either party may request changes in the Agreement. Any and all agreed modifications, to be valid and binding upon either party, shall be in writing and signed by both of the parties.

40.2 Contractor Commitments, Warranties and Representations:

Any written commitment received from the Contractor incorporated into this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph.

41.1 Severability:

If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

41.2 Waiver:

Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto. The failure of the County to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.

- 42.1 Disputes:
- a. General:  
Differences between the Contractor and the County, arising under and by virtue of the Contract Documents, shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Administrative Officer shall be final and conclusive.
- b. Notice of Potential Claims:  
The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.
- c. Detailed Claim:  
The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.
- d. Arbitration:  
Other than claims for injunctive relief brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Agreement or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable American Arbitration Association (AAA) rules in effect on the date hereof, as modified by this Agreement. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Agreement shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, including expenses, costs and attorney fees to the prevailing party and pre-award interest, but shall not have the power to award punitive damages. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

Unless otherwise specified herein, this Agreement shall be governed by the laws of Whatcom County and the State of Washington.

- 43.1 Venue and Choice of Law:  
In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.
- 44.1 Survival:  
The provisions of paragraphs 11.1, 11.2, 11.3, 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.
- 45.1 Entire Agreement:  
This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

EXHIBIT A  
(SCOPE OF WORK)

**LAKE WHATCOM TMDL REASSESSMENT**

**BACKGROUND**

The Washington State Department of Ecology (Ecology) published the revised Lake Whatcom Total Phosphorus and Bacteria TMDLs Volume 2: Water Quality Improvement Report and Implementation Strategy report in 2016. Ecology's 2016 report prescribes an adaptive management/continuous improvement approach that includes refining the watershed and lake models based on new data and using them to recalculate the phosphorus loading (P-loading) capacity of the lake. Ecology may use the new modeling results to revise the wasteload and load allocations for the TMDL.

Whatcom County (County) is covered by the Western Washington Phase II Municipal Stormwater Permit. Appendix 2 of the Permit requires the County to develop a Quality Assurance Project Plan (QAPP) to guide the modeling needed for the TMDL Reassessment. The draft QAPP must be submitted to Ecology by 3/31/20. Ecology will review and may require changes to the draft QAPP.

Appendix 2 requires that the County recalculate the lake loading capacity and submit the results to Ecology by 3/31/2024. However, Ecology would welcome an earlier submittal. To fulfill this requirement, the County intends to update the existing lake model and apply it to a range of management scenarios. Depending on the results, the County might recommend specific revisions to the TMDL. The County also has the option of using the model for related purposes such as predicting how changes in P-loading will affect various uses of Lake Whatcom.

In November 2019, the County issued a Request for Proposals to assist with the Lake Whatcom TMDL Reassessment. The County selected the Brown and Caldwell (BC) team, which consists of staff from BC and Scott Wells and Associates.

To align with the Permit deadlines and County budget cycle, the County would like to conduct the project in two phases. **Phase 1** will be completed in 2020 and involve:

- Data compilation and review
- Preparation of a QAPP to guide the Lake Whatcom TMDL reassessment
- Development of phosphorus load reduction estimates to document the County's progress toward the TMDL target

**Phase 2** will begin in 2021. The scope of Phase 2 may vary depending on the results of Phase 1. Based on our current understanding, the scope of Phase 2 could include:

- Recalibration of the Lake Whatcom water quality model
- Scenario modeling and interpretation (including preparation of a reassessment report)
- Stakeholder and public outreach support

- Ongoing technical assistance related to the TMDL

BC prepared this Scope of Work (SOW) based on the approach outlined in our proposal and subsequent discussions with County staff. The SOW for Phase 2 should be regarded as tentative and subject to change based on the results of Phase 1.

## **SCOPE OF WORK—PHASE 1**

### **TASK 1.1 PROCESS PLANNING AND COORDINATION**

BC will schedule a project kick-off meeting to discuss project goals, approach, and schedule with the County. We will discuss the overall goals of the project with respect to modeling, regulatory outcomes, and stakeholder interactions. BC will lead a discussion of early steps such as QAPP development and data compilation. The BC PM will hold brief monthly teleconferences with the County PM. This task also includes routine project management (budget and schedule tracking, invoicing) and communications.

#### Deliverables

- E-mailed meeting agendas and summaries
- Monthly invoices and progress reports

#### Assumptions for Cost Estimate

- PM calls will be held once per month
- Phase 1 will end December 31, 2020

### **TASK 1.2 DATA COMPILATION AND REVIEW**

The BC team will compile, review, and format the information necessary to update and recalibrate the CE-QUAL-W2 model: This will include three general categories of information:

- Outputs of the HFAM model for observed conditions and scenarios
- Other data inputs necessary to execute the lake model
- Data for calibration of the lake model

BC will coordinate with the City of Bellingham (City) and Hydrocomp (the City's HFAM consultant) to compile and evaluate the HFAM flow and water quality output that will serve as input for CE-QUAL-W2. To that end, BC will review the HFAM information compiled under the 12/30/19 Letter of Agreement (LOA) and discuss in a conference call with County, City, and Hydrocomp.

Assuming that Hydrocomp will send BC a copy of its written response to RESPEC's comments on the HFAM model for the Lake Whatcom watershed, BC will review the document and contact Hydrocomp with any questions. BC will also review the information provided by Hydrocomp regarding the HFAM watershed scenarios and the assumptions on which they are based and contact Hydrocomp with any questions.

The HFAM model simulates phosphorus (P) and total suspended solids (TSS) loads in the tributaries, but doesn't simulate other parameters needed for the CE-QUAL-W2 lake response model, such as nitrogen species and organic matter. Ecology's original TMDL study developed

time series for these water quality parameters by regression with inflow. BC will review the previous regression equations to determine if and how they should be updated for this TMDL reassessment. If it is determined that the regressions should be updated, BC will then obtain the necessary datasets, update the regressions, and apply them to calculate the necessary lake model inputs.

The BC team will compile and review data for other lake model inputs including meteorological data, water surface elevations, water supply intake/withdrawal rates, and lake outflow rates.

Calibration data to be compiled includes water quality sampling results and field parameter profiles for each monitoring station. The modeling team will coordinate with the Institute for Watershed Studies at Western Washington University (WWU) to compile and evaluate the monitoring datasets. Our understanding of data availability will be used to confirm the appropriate time period for recalibration and scenario simulation. Results of the data compilation step will be documented in a tabular summary with notes on the source, time period, quality, completeness, and data gaps (if any).

#### Deliverables:

- Compiled datasets
- Tabular data summary

#### Assumptions for Cost Estimate

- The City or Hydrocomp will provide a copy of Hydrocomp's report addressing RESPEC's comments on the HFAM model of the Lake Whatcom watershed
- The HFAM model output as provided by Hydrocomp is acceptable for use with the lake model as provided by Hydrocomp; this scope does not include a review of the HFAM model nor addressing Ecology comments on HFAM.
- The City and Hydrocomp will provide any other relevant data that they may have, such as meteorological data, water surface elevations, water supply intake/withdrawal rates, and lake outflow rates
- WWU will provide the monitoring data they have collected for Lake Whatcom

### **TASK 1.3 QUALITY ASSURANCE PROJECT PLAN (QAPP)**

BC team members will participate in two conference calls with Ecology to discuss their comments on the QAPP outline/modeling approach we developed under the LOA.

The BC team will then prepare a preliminary draft QAPP for the lake model recalibration and application. The purposes of the QAPP will be both to guide the project team on quality procedures and obtain buy-in on the modeling approach from Ecology. The QAPP will follow the format of Ecology-approved QAPPs on other Washington state TMDL projects, such as those for Clarks Creek (BC 2019), Soos Creek, and the French Creek/Pilchuck River. Relevant content of previously-approved QAPPs will also be used if appropriate; however, the modeling approach will be tailored for Lake Whatcom and the local watershed. The QAPP will include the following content:

- Project goals, history, and previous modeling/modeling efforts

- Quality objectives for data to be used for model input/calibration
- The process for data review and the basis for making decisions on data usability
- Models to be applied and associated information such as time step, modules, calibration period, and calibration approach
- The approach for model quality assessment, including both qualitative and quantitative calibration targets, and the process for making decisions on model result usability
- A summary of the intended approach for applying the model to derive wasteload and load allocations

The BC team will submit the preliminary draft QAPP to the County for review and revise the QAPP in response to County comments. The County will then submit the draft QAPP to Ecology by 3/31/2020. BC and the County will review Ecology's comments on the draft QAPP. The BC team will participate in a conference call to discuss the comments and potential responses and assign responsibilities for addressing each comment. If deemed necessary by the County PM, we may also meet with Ecology to discuss their comments and potential QAPP revisions to address them. BC will revise the QAPP accordingly. If Ecology has comments on the revised QAPP, BC will participate in up to two conference calls to discuss the comments and prepare a final version of the QAPP.

#### Deliverables

- Preliminary, draft, revised, and final QAPP in electronic format.

#### Assumptions for Cost Estimate

- Four members of the BC team will participate in two, one-hour conference calls with Ecology to discuss and refine the QAPP outline.
- BC will prepare preliminary, draft, revised, and final versions of the QAPP.
- The QAPP will be up to 40 pages (excluding appendices).
- The County will provide one consolidated set of comments on the preliminary draft in tracked changes.
- Four members of the BC team will participate in a two-hour conference call with County staff to discuss comments on the preliminary draft QAPP.
- Four BC team members will participate in up to two hours of conference calls to discuss Ecology's comments and potential responses.
- BC will prepare a draft comment response letter. The County will review and edit the letter as appropriate before sending it to Ecology.

### **TASK 1.4 PHOSPHORUS LOAD REDUCTION ESTIMATION**

The County has installed more than 20 stormwater treatment facilities in the Lake Whatcom watershed to reduce phosphorus concentrations in stormwater runoff. The County also performs street sweeping to reduce phosphorus loads to the lake. The Phase II permit requires the County to annually report estimates of phosphorus removal to track compliance with the TMDL.

BC will estimate phosphorus load reductions by County stormwater treatment/infiltration facilities and street sweeping in the Lake Whatcom watershed. BC will summarize the results in a spreadsheet suitable for submission to Ecology as part of the Phase II Permit

annual report due March 31, 2021. Developing P-reduction estimates for County stormwater treatment/infiltration facilities will involve the general steps outlined below.

1. Obtain GIS files delineating the tributary area for each County stormwater treatment/infiltration facility.
2. Ask the City/Hydrocomp to provide average annual, sub-basin specific areal phosphorus loading rates based on the HFAM results for the entire simulation period (1998-2016).
3. Review BMP monitoring results for existing City and County stormwater facilities in the watershed, and literature on the phosphorus removal rates/efficiencies of the BMP types of interest.
4. Review the County's current inspection and maintenance program for County stormwater treatment/infiltration facilities.
5. Develop a draft P-load reduction estimation method based on the information compiled for Steps 1-4, the as-built drawings and facility design data provided by the County, and Ecology TAPE approval for each facility type.
6. If any of the County facilities are located downstream of another treatment facility, develop a method for adjusting the treatment efficiency of the downstream facility.
7. Discuss the draft method with the County and refine as needed.
8. Apply the method to develop estimates of average annual P removal for each of the 22 County facilities.

BC will estimate P removal by street sweeping based on the mass of street waste mass removed, using a method similar to that used for the City of Puyallup's TMDL retrofit plan. The P load reduction estimates for County facilities and sweeping will be summarized in a spreadsheet. The spreadsheet will include a column to document the inspection and maintenance status of each facility. The spreadsheet will form the ledger for documenting TMDL compliance in the County's annual report for the Phase II Permit.

#### Deliverables:

- Brief outline of proposed evaluation methods
- Draft and revised memorandum describing evaluation methods and results
- Draft and revised P load ledger for submission with annual report due to Ecology by March 31, 2021

#### Assumptions for Cost Estimate:

- County will provide design reports including WWHM or other continuous flow model (or at minimum, the peak 15-min offline water quality flow rate) used in design for each stormwater facility.
- The City will ask Hydrocomp to provide average annual areal P loading rates for each sub-basin containing a County stormwater facility.
- County will provide inspection and maintenance records for County stormwater treatment facilities in the watershed.
- The County and City will provide available monitoring results for local stormwater treatment facilities.
- The County will provide the following information on its street sweeping program:
  - Sweeper type(s)
  - Routes (GIS) and frequencies for regenerative air or vacuum sweeping in the watershed.
  - Mass of street waste removed from the watershed each year

**EXHIBIT B  
(COMPENSATION)**

Phase	Task	Phase Description	PM	PA	Model	7/18/2020	Senior Eng.	Account	Acc't	TE	WP	MM	Graph	Total Labor Hours	Travel	Total OODs	Sub	Total Sub Cost	Total Sub Cost plus Sub Markup	Total Expense	Total Cost			
<b>Phase 1 (2020)</b>																								
<b>1.1 Process Coordination and Planning</b>																								
		Kick-off meeting												117			1760	1760	1804	1804	27770			
		Bi-monthly conference calls												12			440	440	451	451	3,206			
		Team management/supervision												12			1,320	1,320	1,353	1,353	4,047			
		Invoicing and progress reporting												63			-	-	-	-	15,177			
		x												30			-	-	-	-	5,340			
														242			7820	7820	7,811	7,811	57,887			
<b>1.2 Data Compilation and Review</b>																								
		Conf. call with Hydrocomp, City, & County												4			873	873	873	873	873			
		Review HFAM report addressing RESPEC comments												6			1,580	1,580	1,580	1,580	1,580			
		Review draft HFAM output												4			1,070	1,070	1,070	1,070	2,751			
		Review HFAM TMDL scenarios and assumptions												6			1,580	1,580	1,580	1,580	1,580			
		Review creek regressions for unmonitored parameters												56			11,972	11,972	11,972	11,972	11,972			
		Complete and review other lake model input data (WLU, met, WSE, etc.)												162			32,128	32,128	32,128	32,128	37,439			
		Conf. call with Hydrocomp, City, & County												4			873	873	873	873	1,632			
<b>1.3 GAP Preparation</b>																								
		Follow up conf. call with Ecology (2)												8			1,746	1,746	1,746	1,746	43,508			
		Preliminary draft GAP for County and City review												73			14,239	14,239	14,239	14,239	2,197			
		Conf. call to discuss comments												8			1,746	1,746	1,746	1,746	2,197			
		Draft GAP for submission to Ecology by March 31												41			8,327	8,327	8,327	8,327	8,655			
		Review Ecology comments & discuss potential responses with County & City												18			4,002	4,002	4,002	4,002	4,761			
		Conf. call w/ Ecology to discuss comments												4			873	873	873	873	5,404			
		Revise GAP & submit to Ecology with comment response letter												23			4,645	4,645	4,645	4,645	5,404			
		Conf. call w/ Ecology (if they have additional comments)												4			873	873	873	873	1,252			
		Prepare and submit final GAP (if necessary)												18			3,662	3,662	3,662	3,662	4,441			
<b>1.4 Phosphorus Load Reduction Estimation</b>																								
		Complete and review County stormwater facility data (as built & GIS)												15			3,047	3,047	3,047	3,047	3,147			
		Obtain and review HFAM areal P loading estimates from City/Hydrocomp												14			2,932	2,932	2,932	2,932	2,932			
		Obtain and review County & City stormwater BMP monitoring results												12			2,816	2,816	2,816	2,816	2,816			
		Review County stormwater facility inspection and maint. records												8			1,771	1,771	1,771	1,771	2,192			
		Review County street sweeping records												11			2,192	2,192	2,192	2,192	2,192			
		Develop draft outline of P-load reduction estimation methods												24			5,238	5,238	5,238	5,238	5,238			
		Conf. call with Ecology to discuss												6			1,408	1,408	1,408	1,408	1,408			
		Develop draft P-load reduction estimates for County facilities												56			11,040	11,040	11,040	11,040	11,040			
		Develop P-load reduction estimate for sweeping												16			3,492	3,492	3,492	3,492	3,492			
		Draft memo (with P-load reduction ledger)												72			14,056	14,056	14,056	14,056	14,056			
		Conf. call with County to discuss												6			1,408	1,408	1,408	1,408	1,408			
		Revised memo												34			6,722	6,722	6,722	6,722	6,722			
		Contingency												24			5,632	5,632	5,632	5,632	5,632			
<b>PHASE 1 TOTAL</b>																								
			195	20	146	175	285	6	22	22	3			854			177,989	100	100	14,560	14,560	14,924	15,024	193,013

Contract amounts shall not exceed the total budget referenced (above). As consideration for services provided in Exhibit A, Scope of Work, the County agrees to compensate the contractor according to the hourly rates provided in the project budget (Exhibit B). 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 shall not exceed the GSA rate for the location where services are provided. Other expenditures such as printing, postage, and telephone charges shall be reimbursed at actual cost plus 10%. Expense reimbursement requests must be accompanied by copies of paid invoices. 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.