

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.
202408025

Originating Department:	Public Works
Division/Program: <i>(i.e. Dept. Division and Program)</i>	Natural Resources – Climate Action (907010)
Contract or Grant Administrator:	Chris Elder
Contractor's / Agency Name:	Herrera Environmental Consultants, Inc.

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): 202401027

Is this contract the result of a RFP or Bid process? Contract
 Yes No If yes, RFP and Bid number(s): MRSC Roster selection Cost Center: 156400

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. Goods and services provided due to an emergency
 - Contract work is for less than \$100,000. Contract for Commercial off the shelf items (COTS).
 - Contract work is for less than 120 days. Work related subcontract less than \$25,000.
 - Interlocal Agreement (between Governments). Public Works - Local Agency/Federally Funded FHWA.

Contract Amount:(sum of original contract amount and any prior amendments):
 \$ 215,000
 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 contract with Herrera will support development of a Phase 2 vulnerability assessment for Whatcom County marine and Nooksack riverine shorelines upstream to Deming (including the Everson Overflow) under projected climate change scenarios and development of shoreline management solutions.

Term of Contract: Sept 11, 2024 Expiration Date: June 30, 2025

- Contract Routing:
- | | |
|---|------------------------|
| 1. Prepared by: <u>Chris Elder</u> | Date: <u>7/24/2024</u> |
| 2. Attorney signoff: <u>Christopher Quinn</u> | Date: <u>7/24/2024</u> |
| 3. AS Finance reviewed: <u>bbennett</u> | Date: <u>8/14/2024</u> |
| 4. IT reviewed (if IT related): _____ | Date: _____ |
| 5. Contractor signed: _____ | Date: _____ |
| 6. Executive contract review: <u>DocuSigned by: [Signature]</u> | Date: <u>9/18/2024</u> |
| 7. Council approved (if necessary): <u>AB2024-552</u> | Date: <u>9/10/2024</u> |
| 8. Executive signed: <u>Satpal Sidhu</u> | Date: <u>9/18/2024</u> |
| 9. Original to Council: _____ | Date: _____ |

**WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT**

**Elizabeth Kosa
Director**



NATURAL RESOURCES

322 N. Commercial, 2nd Floor
Bellingham, WA 98225
Telephone: (360) 778-6230
FAX: (360) 778-6231
www.whatcomcounty.us

MEMORANDUM

TO: The Honorable Whatcom County Council
The Honorable Satpal Singh Sidhu, Whatcom County Executive

THROUGH: Elizabeth Kosa, Public Works Director *LBF*

FROM: Gary Stoyka, Natural Resources Manager *[Signature]*
Chris Elder, Senior Planner

DATE: July 23, 2024

RE: Contract for Phase 2 Climate Vulnerability Assessment and Shoreline Management Solutions

Please find attached for your review a copy of the Phase 2 Climate Vulnerability Assessment and Shoreline Management Solutions contract with Herrera Environmental Consultants. The authorized agreement will be signed electronically through DocuSign.

Requested Action

Public Works respectfully requests that the County Council review and authorize the County Executive to sign this agreement.

Background and Purpose

Climate change continues to challenge governments to respond and adapt to changing conditions. Through proactive assessment and collaborative planning, Whatcom County and its partners hope to understand future impacts along marine and riverine shorelines to support resilient communities and ecosystems. Whatcom County received \$250,000 in funding from the Washington State Department of Ecology's Shorelands Shoreline Planning Competitive Grant program and the attached contract with Herrera will be funded entirely through this grant. This contract with Herrera will support development of a Phase 2 vulnerability assessment for Whatcom County marine and Nooksack riverine shorelines upstream to Deming (including the Everson Overflow) under projected climate change scenarios and development of shoreline management solutions.

The attached contract with Herrera Environmental Consultants will execute this Phase 2 climate vulnerability assessment and adaptation and resilience planning project for Whatcom County marine and Nooksack riverine shorelines. Whatcom County and its partners will use the assessment to inform and support development of needed improvements to shoreline and land use codes and initiate adaptation planning efforts for impacted communities.

A separate interlocal agreement with Western Washington University will support development of refined bluff erosion models under different sea level rise scenarios will be submitted as a separate item.

Funding Amount and Source

This contract will provide \$215,000 to support development of a Phase 2 Climate Vulnerability Assessment and development of shoreline management solutions. This agreement is fully funded through Washington State Department of Ecology's Shorelands Shoreline Planning Competitive Grant (Whatcom County Contract #202401027). Budget authority for this contract is provided in the supplemented 2024 Climate Action budget.

Please contact Chris Elder at extension 6225, if you have any questions or concerns regarding the terms of this agreement.

Encl.
Contract

Whatcom County Contract No.
202408025

CONTRACT FOR SERVICES
Between Whatcom County and Herrera Environmental Consultants, Inc.

Herrera Environmental Consultants, Inc., 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 13,
- Exhibit A (Scope of Work), pp. 14 to 22,
- Exhibit B (Compensation), pp. 23 to 25,
- 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 11 day of September, 2024, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 30 day of June, 2025.

The general purpose or objective of this Agreement is to: complete a climate vulnerability assessment for current and future floodplains and develop shoreline management solutions, 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 \$215,000. 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 ____ day of 9/18/2024, 20 ____.

Each signatory below to this Contract warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and to bind the party thereto.

CONTRACTOR:

Herrera Environmental Consultants, Inc.

Signed by:
Mark Ewbank 9/12/2024
E5657A7049ED438...
Mark Ewbank, Vice President

CONTRACTOR INFORMATION:

Herrera Environmental Consultants, Inc.

Mark Ewbank, Vice President

1329 North State Street, Suite 200
Bellingham, WA 98225
(360) 398-5075

WHATCOM COUNTY:

Recommended for Approval:

Elizabeth Kosa 9/13/2024
870E242DD76C408...
Elizabeth Kosa, Department Director Date

Approved as to form:

Kellen Koistra 9/18/2024
650265C0D9584C9...
Christopher Quinn, Chief Civil Prosecuting Attorney Date

Approved:

Accepted for Whatcom County:

DocuSigned by:
Satpal Sidhu 9/18/2024
By: 1192C7C18B664E3
Satpal Singh Sidhu, Whatcom County Executive

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.

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:

In providing services under this Contract, the Contractor is an independent contractor, and neither it nor its officers, agents, or employees are employees of the County for any purpose. The Contractor shall be responsible for all federal and/or state tax, industrial insurance, and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a County employee under state or local law.

The County assumes no responsibility for the payment of any compensation, wages, benefits, or taxes, by, or on behalf of the Contractor, its employees, and/or others by reason of this Contract.

The Contractor shall protect, indemnify, defend, and save harmless the County, its officers, agents, and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (1) the Contractor's failure to pay any such compensation, wages, benefits, or taxes, and/or (2) the supplying to the Contractor of work, services, materials, or supplies by Contractor employees or other suppliers in connection with or support of the performance of this Contract.

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 and Public Records Act:

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. If the Contractor creates any copyrightable materials or invents any patentable property, the Contractor may copyright or patent the same, but the County retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover, or otherwise use the materials or property and to authorize other governments to use the same for state or local governmental purposes. Contractor further agrees to make research, notes, and other work products produced in the performance of this Agreement available to the County upon request.

Ownership. Any and all data, writings, programs, public records, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor's subcontractors or consultants for delivery to the County under this Contract shall be the sole and absolute property of the County. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the County at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Contract but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not "work made for hire" within the terms of this Agreement.

Public Records Act. This Contract and all records associated with this Contract shall be available for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County at no cost to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

The Contractor shall be liable to the requester for any and all fees, costs, penalties or damages imposed or alleged as a result of the Contractor's failure to provide adequate or timely records.

This provision and the obligations it establishes shall remain in effect after the expiration of this contract.

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 Insurance

The Contractor shall, at its own expense, obtain and continuously maintain the following insurance coverage for the duration of this contract, which shall include insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, subcontractors or employees. All insurers providing such insurance shall have an A.M. Best Rating of not less than A- (or otherwise be acceptable to the County) and be licensed to do business in the State of Washington and admitted by the Washington State Insurance Commissioner. Coverage limits shall be the minimum limits identified in this Contract or the coverage limits provided or available under the policies maintained by the Contractor without regard to this Contract, whichever are greater.

1. Commercial General Liability

Property Damage	\$500,000.00, per occurrence
General Liability & bodily injury	\$1,000,000.00, per occurrence
Annual Aggregate	\$2,000,000.00

At least as broad as ISO form CG 00 01 or the equivalent, which coverage shall include personal injury, bodily injury and property damage for Premises Operations, Products and Completed Operations, Personal/Advertising Injury, Contractual Liability, Independent Contractor Liability, medical payments and Stop Gap/Employer's Liability. Coverage shall not exclude or contain sub-limits less than the minimum limits required, unless approved in writing by the County.

2. Professional Liability

Professional Liability - \$1,000,000 per occurrence

- a. Obtain professional liability insurance covering the negligent acts, errors, or omissions of the professional in connection with the performance of services to the County. If any insurance policy or the professional liability insurance is written on a claims made form, its retroactive date, and that of all subsequent renewals, shall be no later than the effective date of this Contract. The policy shall state that coverage is claims made, and state the retroactive date. Claims-made form coverage shall be maintained by the Contractor for a minimum of 36 months following the Completion Date or earlier termination of this Contract, and the Contractor shall annually provide the Contracting Agency with proof of renewal. If renewal of the claims made form of coverage becomes unavailable, or economically prohibitive, the Contractor shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the Contracting Agency to assure financial responsibility for liability for services performed.

3. Business Automobile Liability

\$1,000,000.00	Minimum, per occurrence
\$2,000,000.00	Minimum, Annual Aggregate

Contractor shall provide auto liability coverage for owned, non-owned and hired autos using ISO Business Auto Coverage form CA 00 01 or the exact equivalent with a limit of no less than \$1,000,000 per accident. If Contractor owns no vehicles this requirement may be met through a non-owned auto Endorsement to the CGL policy.

4. Additional Insurance Requirements and Provisions

- a. All insurance policies shall provide coverage on an occurrence basis.
- b. Additional Insureds. Whatcom County, its departments, elected and appointed officials, employees, agents and volunteers shall be included as additional insureds on Contractor's and Contractor's subcontractors' insurance policies by way of endorsement for the full available limits of insurance required in this contract or maintained by the Contractor and subcontractor, whichever is greater.
- c. Primary and Non-contributory Insurance. Contractor shall provide primary insurance coverage and the County's insurance shall be non-contributory. Any insurance, self-insured retention, deductible, risk retention or insurance pooling maintained or participated in by the County shall be excess and non-contributory to Contractor's insurance.
- d. Waiver of Subrogation. The insurance policy shall provide a waiver of subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the Contractor enter into such a waiver of subrogation on a pre-loss basis.
- e. Review of and Revision of Policy Provisions. Upon request, the Contractor shall provide a full and complete certified copy of all requested insurance policies to the County. The County reserves the right, but not the obligation, to revise any insurance requirement, including but not limited to limits, coverages and endorsements, or to reject any insurance policies which fail to meet the requirements of this Contract. Additionally, the County reserves the right, but not the obligation, to review and reject any proposed insurer providing coverage based upon the insurer's financial condition or licensing status in Washington.
- f. Verification of Coverage/Certificates and Endorsements. The Contractor shall furnish the County with a certificate of insurance and endorsements required by this contract. The certificates and endorsements for each policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. The certificate and endorsements for each insurance policy are to be on forms approved by the County prior to commencement of activities associated with the contract. The certificate and endorsements, and renewals thereof, shall be attached hereto as Exhibit "C". If Exhibit C is not attached, the Contractor must submit the certificate and endorsements required in this contract to the County prior to the commencement of any work on the contracted project. A certificate alone is insufficient proof of the required insurance; endorsements must be included with the certificate. The certificate of insurance must reflect the insurance required in this contract, including appropriate limits, insurance coverage dates, per occurrence, and in the description of operations, include the County project, Whatcom County, its departments, officials, employees, agents and volunteers as additional insureds, primary, non-contributory, and waiver of subrogation.
- g. The County must be notified immediately in writing of any cancellation of the policy, exhaustion of aggregate limits, notice of intent not to renew insurance coverage, expiration of policy or change in insurer carrier. Contractor shall always provide the County with a current copy of the certificate and endorsements throughout the duration of the contract.
- h. No Limitation on Liability. The insurance maintained under this Contract shall not in any manner limit the liability or qualify the liabilities or obligations of the Contractor to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or equity.
- i. Payment Conditioned on Insurance and Failure to Maintain Insurance. Compensation and/or payments due to the Contractor under this Contract are expressly conditioned upon the Contractor's compliance with all insurance requirements. Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract. Payment to the Contractor may be suspended in the event of non-compliance, upon which the County may, after giving five business days'

notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the County on demand or offset against funds due the Contractor. Upon receipt of evidence of Contractor's compliance, payments not otherwise subject to withholding or set-off will be released to the Contractor.

- j. Workers' Compensation. The Contractor shall maintain Workers' Compensation coverage as required under the Washington State Industrial Insurance Act, RCW Title 51, for all Contractors' employees, agents and volunteers eligible for such coverage under the Industrial Insurance Act.
- k. Failure of the Contractor to take out and/or maintain required insurance shall not relieve the Contractor or subcontractors from any liability under the contract, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification. The County does not waive any insurance requirements even in the event the certificate or endorsements provided by the Contractor were insufficient or inadequate proof of coverage but not objected to by the County. The County's failure to confirm adequate proof of insurance requirements does not constitute a waiver of the Contractor's insurance requirements under this Contract.
- l. Availability of Contractor Limits. If the Contractor maintains higher insurance limits than the minimums shown above, the County shall be insured for the full available limits, including Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate furnished to the County evidences limits of liability lower than those maintained by the Contractor.
- m. Insurance for Subcontractors. If the Contractor subcontracts (if permitted in the contract) any portion of this Contract, the Contractor shall include all subcontractors as insureds under its policies or shall require separate certificates of insurance and policy endorsements from each subcontractor. Insurance coverages by subcontractors must comply with the insurance requirements of the Contractor in this contract and shall be subject to all of the requirements stated herein, including naming the County as additional insured.
- n. The Contractor agrees Contractor's insurance obligation shall survive the completion or termination of this Contract for a minimum period of three years.

34.3 Defense & Indemnity Agreement. To the fullest extent permitted by law, the Contractor agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees, and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease, or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which: 1) are caused in whole or in part by any error, act or omission, negligent or otherwise, of the Contractor, its employees, agents or volunteers or Contractor's subcontractors and their employees, agents or volunteers; or 2) directly or indirectly arise out of or occur in connection with performance of this Contract or 3) are based upon the Contractor's or its subcontractors' use of, presence upon, or proximity to the property of the County. This indemnification obligation of the Contractor shall not apply in the limited circumstance where the claim, damage, loss, or expense is caused by the sole negligence of the County.

Should a court of competent jurisdiction determine that this contract is subject to RCW 4.24.115, then in the event of concurrent negligence of the Contractor, its subcontractors, employees or agents, and the County, its employees or agents, this indemnification obligation of the Contractor shall be valid and enforceable only to the extent of the negligence of the Contractor, its subcontractors, employees, and agents. This indemnification obligation of the Contractor shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Contractor hereby expressly waives any immunity afforded by such acts.

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 Contract is for the benefit of the parties only and this Contract shall create no rights in any third party. The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses, or expenses, and such participation shall not constitute a waiver of Contractor's indemnity obligations under this Agreement.

In the event the Contractor enters into subcontracts to the extent allowed under this Contract, the Contractor's subcontractors shall indemnify the County on a basis equal to or exceeding Contractor's indemnity obligations to the County. The Contractor shall pay all attorney's fees and expenses incurred by the County in establishing and enforcing the County's rights under this indemnification provision, whether or not suit was instituted.

The Contractor agrees all Contractor's indemnity obligations shall survive the completion, expiration or termination of this Agreement. The foregoing indemnification obligations of the Contractor are a material inducement to County to enter into this Agreement and are reflected in the Contractor's compensation.

By signing this contract, the Contractor acknowledges that it has freely negotiated and agreed to the indemnification requirements to defend, indemnify and hold harmless the County from all claims and suits including those brought against the County by the Contractor's own employees, arising from this contract.

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 (including gender identity), 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 (including gender identity), age, marital status, disability, political affiliation, 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 (including gender identity), 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 (including gender identity), disability, or veteran status; or deny an individual or business any service or benefits under this Agreement unless otherwise allowed by applicable law; 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 unless otherwise allowed by applicable law; or deny an individual or business an opportunity to participate in any program provided by this Agreement unless otherwise allowed by applicable law.

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:

Chris Elder, Senior Planner, 322 N. Commercial Street, 2nd Floor, Bellingham, WA 98225

37.2 Notice:

Any notices or communications required or permitted to be given by this Contract must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party as follows:

Herrera Environmental Consultants, Inc.
1329 North State Street, Suite 200
Bellingham, WA 98225
ATTN: Rachel Johnson
(360) 398-5075
RJohnson@herrerainc.com

Whatcom County
322 N. Commercial Street
2nd Floor
Bellingham, WA 98220
ATTN: Chris Elder
(360)778-6225
celder@co.whatcom.wa.us

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A party may, for purposes of this Agreement, change his, her or its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other party pursuant to this Section.

37.3 If agreed by the parties, this Contract may be executed by Email transmission and PDF signature and Email transmission and PDF signature shall constitute an original for all purposes.

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

If applicable, 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:

If applicable, 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. If applicable, Contractor represents and warrants 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

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 concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to, any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

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, temporary restraining order, or other provisional remedy to preserve the status quo or prevent irreparable harm, 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 Contract 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 Contract 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 but shall not have the power to award punitive damages. Each Party shall pay all their own costs, attorney fees and expenses of arbitration and the parties shall share equally in the Arbitrator's fees and costs. 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.

Any arbitration proceeding commenced to enforce or interpret this Contract shall be brought within six years after the initial occurrence giving rise to the claim, dispute, or issue for which arbitration is commenced, regardless of the date of discovery or whether the claim, dispute, or issue was continuing in nature. Claims, disputes, or issues arising more than six years prior to a written request or demand for arbitration issued under this Contract are not subject to arbitration.

- e. The parties may agree in writing signed by both parties that a claim or dispute may be brought in Whatcom County Superior Court rather than mediation or arbitration.

Unless otherwise specified herein, this Contract 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)

Whatcom County Climate Vulnerability Assessment and Shoreline Management Solutions

Herrera Environmental Consultants will complete Phase 2 of a climate vulnerability assessment and adaptation and resilience planning project for Whatcom County marine and Nooksack riverine shorelines upstream to Deming, including the Everson Overflow, under projected climate change scenarios. Whatcom County and its partners will use the assessment to inform and support development of needed improvements to shoreline and land use codes and initiate adaptation planning efforts for impacted communities.

Herrera will lead a team of firms including Cascadia Consulting Group for assistance with community engagement, adaptation and resilience planning, and revisions to the Whatcom County Comprehensive Plan, MAKERS for assistance with recommended shoreline management policy and code revisions, and Northwest Hydraulic Consultants for assistance with riverine flood vulnerability analysis. This team is collectively called “Consultant” hereafter.

This scope of work includes a discussion of the activities, assumptions, deliverables, and a schedule associated with the following tasks.

- Task 1.0 – Complete Marine and Riverine Vulnerability Assessments 13
- Task 2.0 – Adaptation Planning for Frontline Communities 16
- Task 3.0 – Analyze Shoreline Management Plan, Comprehensive Plan and Land Use Code 18
- Task 4.0 – Final Report, County Council Review and Action 19
- Schedule..... 21
- Budget..... **Error!**

Bookmark not defined.

Task 1.0 – Complete Marine and Riverine Vulnerability Assessments

The goal of this task is to complete a comprehensive vulnerability assessment for the entire marine shoreline including bluffs as well as a comprehensive vulnerability assessment of current and future riverine floodplains, all with partner engagement. This task will inform the Project Team about which areas are most vulnerable to inundation, erosion, and marine and shoreline change based on previously selected sea level rise and compound flood scenarios. Projected future riverine flood scenarios will be reviewed and confirmed with the Project Team, in coordination with the Nooksack River Floodplain Integrated Planning (FLIP) process.

Task 1.1 – Project Management

Herrera’s project manager will be responsible for ongoing administration of the project, including preparing invoices and progress reports, as well as coordination of work efforts with the designated client point of contact and all subconsultants. Herrera’s project manager will have phone and e-mail contact with Whatcom County and subconsultants on an as-needed basis. Rachel Johnson is Herrera’s project manager assignment for this project. Chris Elder is Whatcom County’s project representative for this project. They will set up a standing virtual meeting every other week.

Task 1.2 - Project Kick-Off Workshop & Initial Outreach Materials

As a first step, Consultant will assist Whatcom County in hosting one, up to two-hour, hybrid project kick-off workshop in Whatcom County to introduce the County’s Project Team to the work that lies ahead in Phase 2 and the lead people they will be coordinating with on the Consultant team. The project kick-off workshop will be an opportunity to make key initial decisions and gain momentum for Phase 2 of the project. Throughout the project, seven meetings/workshops will be held with the Project Team. The following outcomes are sought from the kick-off workshop:

- Introduce the Project Team and Consultant team and outline the goals and timeline of the project.
- Learn from the County's Project Team regarding current challenges with assets being impacted by inundation from sea level rise, riverine flooding, coastal bluff erosion, and rising groundwater. Use this feedback to determine the most appropriate assets to include in the assessment, and which of them are expected to be the most sensitive to increasing flooding and bluff recession in the future.
- Define the assets to focus on for the assessment, for coastal shoreline and riverine vulnerability areas, based on geospatial data availability and the priorities of the County's Project Team.
- Discuss relevant communication tools for use by the County and its Project Team partners throughout the project.

Assumptions

- This workshop is Meeting #1 out of 7 with the County Project Team.
- Whatcom County will provide the physical meeting space for workshops and host remote meetings as needed.
- Consultant team will have up to five in-person attendees
- Additional Consultant team members may join virtually to support.
- There will be one round of high-level workshop notes distributed that include attendees, decisions made, and action items.
- Whatcom County will host and provide access to necessary GIS data and provide a license to the County's ArcGIS account to allow for development of StoryMaps and other geospatial products for the project.

Deliverables

- Workshop agenda.
- High-level notes with attendees, decisions, and action items from the Project Team workshop.
- Updated project StoryMap content for Whatcom County to post online.

Task 1.3 – QAPP Support

The grant funding for this project requires preparation of a Quality Assurance Project Plan (QAPP) that describes information sources used for this project, information produced during the project, and processes applied that verify data accuracy. Whatcom County will lead preparation of the QAPP. Consultant will provide technical detail as needed. Whatcom County will lead coordination with the Washington State Department of Ecology for review and finalization of the QAPP.

Assumptions

- Whatcom County will lead preparation, coordination, and finalization of the QAPP.

Deliverables

- QAPP text inserts in Microsoft Word format.
- Supporting figures/maps in Adobe .pdf electronic file format.

Task 1.4 - Marine & Riverine Flooding Exposure Assessment

The goal of this task is to create a comprehensive inventory of assets, natural and built systems, and populations exposed to coastal and riverine flooding and erosion hazards under selected climate scenarios, and compile and develop GIS data and GIS maps to inventory and illustrate projected exposures. Future sea level rise projections will align with those scenarios selected by the County's Project Team in Phase 1. Riverine flood hazards accounted for in this task will be based on a combination of the USGS CoSMoS model results in the coastal flooding and inundation areas, the USGS Lower Nooksack model of riverine flooding that extends upstream to approximately Ferndale, and a riverine (fluvial) HEC-RAS 2D hydraulic model for study areas upstream of the USGS Lower Nooksack model boundary that has been developed by the Consultant for Whatcom County for the Nooksack FLIP project. The coastal flood event magnitudes and changes in sea levels evaluated with CoSMoS, the flood magnitudes evaluated with the USGS Lower Nooksack model, and the FLIP riverine model will include the present-day 100-year recurrence flood event and will be used to estimate potential future flooding in flood events scaled by factor of 1.2x and 1.75x the present-day 100-year flood, consistent with UW Climate Impacts Group projections modeling.

The topographic data input to the riverine model from Deming to approximately Ferndale and inclusive of the Everson Overflow will be refined upstream of Everson to more accurately reflect overbank flooding potential that could route Nooksack floodwaters north toward the city of Sumas via the Sumas River using the latest available topobathymetric LiDAR data provided by the County. The combination of simulated Nooksack River overflow and Sumas River basin runoff, for which a hydrologic model has been developed for the FLIP project, will be used for this riverine flood flow path.

Coastal bluff recession data that links wave exposure with projected future bluff erosion is in the process of being developed by a Western Washington University student and USGS. According to USGS, these data should be ready for review in October of 2024. When complete, these data will be incorporated into the vulnerability assessment by the Consultant. The Consultant will overlay assets (roads, structures, and ecosystems) across the mapped bluff recession hazard areas and will be attributed with the appropriate scenarios in which they are exposed.

Riverine erosion potential, including avulsion potential, will draw upon ongoing Nooksack FLIP project analyses of potential river bank erosion which are based primarily on recent Whatcom County channel migration zone mapping.

Assumptions

- No additional Project Team meeting necessary for hydraulic modeling work review.
- Whatcom County GIS will host geospatial data for scenario exposure areas and assets and environmental systems experiencing exposure under selected scenarios, and including 200' beyond to represent a possible future SMP jurisdiction.
- One meeting of the County's Project Team will occur coincident with this task work, at which the Consultant will present the methods of analysis and draft results of the exposure assessment.

Deliverables

- Agenda for County Project Team Meeting #2.
- High-level notes with attendees, decisions, and action items from the Project Team meeting.
- Interactive, internal GIS webmap for County Project Team with coastal and riverine exposure, including bluff erosion.

Task 1.5 - Analyze Sensitivity and Adaptive Capacity of Vulnerable Assets, Systems, and Populations

The Consultant will conduct analysis of the sensitivity and vulnerability of specific assets, systems, and populations to increasing flooding or bluff recession and their corresponding adaptive capacity, consistent with the approach used in Phase 1. The sensitivity and vulnerability considerations will be based upon input from the County Project Team paired with Consultant's experience from other projects.

The Consultant will prepare a draft memorandum documenting the methods and results of this subtask work to enable the County Project Team to comment in writing on the work to be done. The memo content, and how comments on it were incorporated in ongoing task work will be folded into the final project reporting in Task 4.

Assumptions

- There will be one round of high-level notes distributed from a Project Team meeting that include attendees, decisions, and action items.
- One meeting of the County's Project Team will occur coincident with this task work, at which the Consultant will present the methods of analysis and draft results of the vulnerability assessment.
- County and Project Team will have at least 2 weeks to review and provide comments on draft marine and riverine vulnerability assessment.

Deliverables

- Agenda for County Project Team Meeting #3.
- High-level notes with attendees, decisions, and action items from the Project Team meeting.
- Draft marine and riverine vulnerability assessment, incorporating results from the Phase 1 project (Word and PDF).
- Final marine and riverine vulnerability assessment (Word and PDF).

- Interactive, internal GIS webmap for County Project Team with coastal and riverine vulnerability.
- Geospatial data layers for assets, environmental systems, and vulnerabilities.

Task 2.0 – Adaptation Planning for Frontline Communities

The goal of this task is to complete an informed adaptation planning process for all climate impact zones covered under this project and to develop a pilot adaptation plan for one frontline community. The adaptation strategies for all climate impact zones along the marine and riverine shorelines and floodplains will inform future projects and adaptation actions in a frontline community.

Task 2.1 – Project Management

Ongoing administration of the project includes preparing invoices and progress reports, as well as coordination of work efforts with the designated client point of contact and all subconsultants. The Herrera project manager and County project manager will set up a standing virtual meeting every other week.

Task 2.2 - Develop Adaptation Planning Strategies and Recommendations for Frontline Communities

This subtask will begin with a high-level assessment of anticipated feasibility of various adaptation options given the local land use, infrastructure, topography, ecological conditions, and population characteristics in frontline communities vulnerable to coastal and riverine flooding. Implementing "accommodate" and "retreat" approaches identified in the Phase 1 report involves significant land use considerations, as does allowing adequate space for "protect" actions. Adaptation strategies will be a central topic in meetings with the County's Project Team. The experience and intuition of the County's Project Team will be leveraged to develop strategies that are anticipated to be necessary and implementable in frontline Whatcom County communities to preserve life and ensure resilient communities. For communities facing increasing riverine flooding vulnerability, we will draw upon strategies emerging in the Nooksack FLIP work, other Puget Sound jurisdictions, and other impacted communities around the nation and the world.

Consultant will compile and develop a relative rank of draft adaptation strategy options for all climate impact zones within the project area in order of anticipated effectiveness, timeframe of implementation feasibility (e.g., short-, medium- and long-term), and cost. Consultant will prepare a draft memorandum documenting the information sources to define adaptation options, the results of the ranking process, and planning-level cost estimates for County Project Team review.

Assumptions

- Whatcom County will provide input on the proposed options and ranking scheme before Consultant does the detailed work of this subtask.
- There will be one round of high-level notes distributed from a Project Team meeting that include attendees, decisions, and action items.
- One meeting of the County's Project Team will occur coincident with this task work to discuss the adaptation strategies.
- Interim memo will be developed for this task and any edits or revisions will be incorporated into ensuing tasks and the final report in Task 4.

Deliverables

- Agenda for County Project Team Meeting #4.
- High-level notes with attendees, decisions, and action items from the Project Team meeting.
- Interim memo on adaptation strategies for marine and riverine shorelines for all climate impact zones for County Project Team review (Word and PDF).

Task 2.3 - Community Engagement on Adaptation Planning Strategies

The Consultant will assist Whatcom County in engaging with frontline communities prioritizing equity and inclusion, recognizing that without direct engagement of frontline communities, adaptation measures may exacerbate structural inequities. Consultant will collaborate with the County and its Project Team partners to engage frontline communities using language and methods that promote widespread understanding. At the project outset, the Consultant will develop a high-level engagement strategy to educate

and obtain input from frontline communities at key points in the adaptation planning process and review/discuss it with the Project Team. This strategy will include:

- Demographic assessment of Whatcom County's frontline communities using data collected for Whatcom County's current Comprehensive Plan (climate element) update work and a recent Whatcom County heat and wildfire smoke vulnerability assessment
- Tailored engagement tactics, such as:
 - Accessibly-worded presentation materials, including factsheets on potential adaptation strategies.
 - A calendar of community events for County staff, Consultant, and Project Team partners to engage diverse audiences.
 - Community meeting and online focus group to gather input on adaptation and resilience priorities.
- Feedback integration protocol to ensure accountability to frontline communities.

Consultant will document and summarize the community engagement efforts in the project report prepared in Task 4. It will include elements such as:

- Who we engaged via a demographics or affiliation summary of participants
- How we engaged frontline community groups and key activities we employed during the community meeting(s)
- How we integrated community participants' perspectives and priorities into a final adaptation plan.

Assumptions

- Consultant will assist Whatcom County in hosting (1) community meeting in-person and (1) online focus group with frontline community groups/residents to gather input on the adaptation planning process and to seek feedback on adaptation sensitivity and capacity, and preferred strategies.
- Written materials for community engagement do not need to be translated into non-English languages.

Deliverables

- Presentation materials.
- Community meeting summary notes.

Task 2.4 – Pilot Adaptation Plan

Consultant will prepare a pilot adaptation plan for one frontline community within a future flood and/or inundation hazard zone. As part of this pilot process, Consultant will coordinate with Project Team members to get the input of key community leaders and organizations so that the frontline community is able to co-design their adaptation and resilience strategy. The pilot adaptation plan will likely include the following elements:

- Tailored climate risk maps for the community that highlight vulnerable community assets and systems
- Adaptation priorities and strategies that focus on the highest priorities for the frontline community to build resilience to future erosion, flooding and inundation hazards
- Potential impacts and costs to the community and opportunities to leverage state and federal funding to reduce financial and logistical burdens to the community
- Monitoring and adaptive management considerations that allow the pilot frontline community to continue tracking the effectiveness of their adaptation plan and identify trigger points when additional adaptive management and plan updates are required.

Assumptions

- There will be one round of high-level notes distributed from a Project Team meeting that include attendees, decisions, and action items.
- The frontline community for which a pilot adaptation plan is prepared will be selected by the County's Project Team.
- Consultant will invite frontline community leaders to participate in an in-person community meeting and online focus group to discuss specific issues of concern for them while preparing the draft adaptation plan.
- One meeting of the County's Project Team will occur coincident with this task work to discuss findings from the community outreach and the pilot adaptation plan.

Deliverables

- Agenda for County Project Team Meeting #5.
- High-level notes with attendees, decisions, and action items from the Project Team meeting.
- Draft pilot adaptation plan for County Project Team review – Microsoft Word and Adobe .pdf electronic file formats.
- Final pilot adaptation plan – Microsoft Word and Adobe .pdf electronic file formats.

Task 3.0 – Analyze Shoreline Management Plan, Comprehensive Plan and Land Use Code

The goal of this task is to reduce future potential impacts to life, property, and systems, and to reduce associated costs due to impacts of climate change, sea level rise, coastal bluff erosion, riverine erosion, and flooding by reviewing land use policies and County codes applicable within the project area, as identified in the vulnerability assessments and associated documents, and in discussion with Project Team members. This task will include a land use policy code review for consistency with projected climate impacts and development of a prioritized list of recommendations to propose code amendments and policy changes consistent with previous project tasks.

Task 3.1 – Project Management

Ongoing administration of the project includes preparing invoices and progress reports, as well as coordination of work efforts with the designated client point of contact and all subconsultants. The Herrera project manager and County project manager will set up a standing virtual meeting every other week.

Task 3.2 – Plan, Regulation, and Code Review

The Consultant will conduct a review of County land use regulations including the Shoreline Master Program (SMP) (WCC Title 23), Zoning (Title 20), Land Division (Title 21), Environment (Title 16), Flood Damage Prevention (Title 17), and other related code sections for consistency and compatibility with projected climate impacts including sea level rise, coastal flooding, coastal bluff erosion, and riverine erosion and flooding. The review will also consider best available science and adopted plans in other jurisdictions in the Pacific Northwest and around the nation. This review will use the results from Phase 1, the vulnerability assessment results from Task 1, and initial community input obtained in Task 2.

Task 3.3 - Comprehensive Plan Integration

Consultant will coordinate with parallel efforts to update the County's Comprehensive Plan, including land use and zoning maps, to identify potential climate risk adaptation barriers, conflicts, opportunities, and coordination needs. Consultant will identify areas where current land use, housing action, and growth strategies may overlap with flooding and coastal bluff erosion vulnerability, with a key focus on policies and regulations supporting farmers and rural landowners. Consultant will identify conflicts and coordination needs with the County's planning efforts, requiring robust coordination with County staff and input from Project Team partners. Consultant will coordinate with other County consultants working on the Comprehensive Plan Update and especially development of the Climate Element to recommend and confirm consistency with project recommendations. This will ensure that recommendations for revisions to the Comprehensive Plan address housing, economic development, environment, regional infrastructure needs, transportation, and public safety.

Assumptions

- Concurrent work under a separate contract for the Climate Element of the Comprehensive Plan will take care of definitive text edits corresponding to Consultant recommendations.

Deliverables

- Recommended high-level text edits to Comprehensive Plan sections except for the Climate Element – tracked edits in Microsoft Word file(s)

Task 3.4 – Code Amendment and Shoreline Management Policy Change Recommendations

The Consultant will hone recommendations for changes to the SMP, and future update considerations for the County code, and zoning boundaries. For the SMP, Consultant will provide definitive text edits for recommended revisions. For zoning boundary considerations, the Consultant will prepare maps showing vulnerability to natural hazards under projected climate scenarios overlain on the existing zoning boundary and potential options to modify the boundary. The Project Team will review and confirm any recommendations to modify zoning boundaries. Consultant will define sections of the Whatcom County Code that should be revised to provide improved climate resilience and adaptation. These recommendations will include but not be limited to potential land use and zoning change considerations and opportunities for programmatic solutions (e.g., Transfer of Development Rights). These recommendations will identify future steps to be taken subsequent to this project to finalize and adopt land use and zoning code revisions.

Given this project's scope across a very large geographic area encompassing dense urban development, farmlands, and rural residential development, diverse land use recommendations are likely. Some of the recommendations are therefore expected to translate into subsequent work beyond the scope of this project. The Consultant will work with County Staff in the early stages of Task 3 to identify areas of focus within the County Code that are most relevant to this effort.

Assumptions

- All land use, code, and zoning boundary updates recommended by this planning effort will be considerations for future updates, and may be high-level based on budget available in this contract. Consultants will work collaboratively with County Staff to hone these efforts, so that recommendations may be as detailed as is feasible.
- If needed, County staff will make County legal advisors available to meet with consultants and/or review draft recommendations and flag key considerations for meeting legal requirements in future implementation steps.
- The County will make all relevant code sections available in Word format.
- Proposed draft revisions to the SMP, recommendations for future updates to County code sections, and future considerations for zoning boundary adjustments will be submitted for County review in electronic file form (Microsoft Word files with tracked edits and accompanying maps as Adobe .pdf files).
- The County will refine the suggested text edits in the SMP and recommendations for future County code sections updates, and provide direction to the Consultant regarding any requested changes to the zoning boundary mapping that support recommendations.
- One meeting with the County's Project Team will occur during the course of the work in this subtask to discuss code amendments and policy change recommendations.

Deliverables

- Agenda for County Project Team Meeting #6.
- High-level notes with attendees, decisions, and action items from the Project Team meeting.
- Draft prioritized list of recommendations for code revisions and policy change considerations, including edits to SMP and high-level suggestions for future code updates and relevant maps.
- Final prioritized list of recommendations for code revisions and policy change considerations, including edits to SMP and high-level suggestions for future code language and relevant maps.

Task 4.0 – Final Report, County Council Review and Action

The project final deliverable will include a Whatcom Climate Vulnerability and Shoreline Management Solutions Report and presentation material. In addition, the Consultant will prepare materials for and present findings, conclusions, and recommendations at a County Council Meeting.

Task 4.1 – Project Management

Ongoing administration of the project includes preparing invoices and progress reports, as well as coordination of work efforts with the designated client point of contact and all subconsultants. The Herrera project manager and County project manager will set up a standing virtual meeting every other week.

Contract for Services

Herrera – Climate Vulnerability Assessment and Shoreline Management Solutions

Page 19

Task 4.2 – Final Report and GIS Deliverables

Consultant will prepare a concise report documenting the following:

- composition of the County's Project Team members and a summary of the input they provided
- details of the methods and results of technical analysis completed in Task 1
- a summary of community engagement efforts and results
- the pilot adaptation plan for a frontline coastal community prepared in Task 2.3 and adaptation strategies that could be applied to other areas vulnerable to erosion, flooding and inundation
- recommendations for policy and code changes developed in Task 3

A draft of the report will be submitted to the County and Project Team members for review and comment, and Consultant will address comments in producing the final report. Consultant will provide content to add to the project story map that was created for Phase 1 of the project, which Whatcom County will incorporate into the story map.

GIS datasets developed in preceding tasks will be referenced in the report and submitted to the County separately.

Assumptions

- The draft report will include content from memos produced in preceding tasks and refined based on comments received from the County's Project Team.
- County Project Team will review the draft report within two weeks of receiving the draft, and the County will provide one set of consolidated comments to the Consultant, resolving any conflicting comments.
- Whatcom County will provide access to necessary GIS files, access, and editing permissions to revise a StoryMap for the project building on Phase I work products and content produced by the Consultant for the Nooksack FLIP project to date.
- One Project Team meeting will be convened during the course of the work on this task to discuss final deliverables and wrap up.

Deliverables

- Agenda for County Project Team Meeting #7.
- High-level notes with attendees, decisions, and action items from the Project Team meeting.
- Draft project report – Microsoft Word and Adobe .pdf electronic file formats.
- Final project report – Microsoft Word and Adobe .pdf electronic file formats.
- Final geospatial data layers, compiled and created during the project, including approved metadata.
- Final StoryMap with updated content from project.

Task 4.3 – County Council Presentation

Consultant will assist the County's project manager in presenting the project work and conclusions at a County Council meeting. Consultant will prepare draft presentation content in Microsoft PowerPoint format for review by the County's project manager and finalize the presentation content to address comments in it.

Assumptions

- Up to four Consultant team members will attend a Council meeting for the project presentation and to answer Council questions. Attendance will be remote unless the Council meeting aligns with the Community presentation.

Deliverables

- Draft and final Microsoft PowerPoint presentation slides.

Task 4.4 – Community Presentation

The Consultant will assist Whatcom County’s project manager in presenting the results of this project to a broader community.

Assumptions

- Consultant will assist in one community meeting.
- Presentation will be the same as given to County Council.
- Up to four Consultant team members to join in-person for presentation.
- Comments on draft PowerPoint will be consolidated and received within two weeks.
- Whatcom County will provide the meeting space for in-person presentations.

Deliverables

- Draft PowerPoint for Community Presentation.
- Final PowerPoint for Community Presentation.

Schedule

Schedule.	
Task	Timeline
Task 1 - Complete Marine and Riverine Vulnerability Assessments	
Task 1.1 – Project Management	September 2024 – February 2025
Task 1.2 – Project Kick-Off Workshop & Initial Outreach Materials	September 2024
Task 1.3 – QAPP Support	September - October 2024
Task 1.4 - Marine & Riverine Flooding Exposure Assessment	September – November 2024
Task 1.5 - Analyze Sensitivity and Adaptive Capacity of Vulnerable Assets, Systems, and Populations	November 2024 – February 2025
Task 2 - Adaptation Planning for Frontline Communities	
Task 2.1 – Project Management	January 2025 – April 2025
Task 2.2 - Develop Adaptation Planning Strategies and Recommendations for Frontline Communities	January 2025 – March 2025
Task 2.3 - Community Engagement on Adaptation Planning Strategies	February – March 2025
Task 2.4 – Pilot Adaptation Plan	March – April 2025
Task 3 - Analyze Shoreline Management Plan, Comprehensive Plan & Land Use Code	
Task 3.1 – Project Management	September 2024 – April 2025
Task 3.2 – Plan, Regulation, and Code Review	September – December 2024
Task 3.3 – Code Amendment and Policy Change Recommendations	January – April 2025
Task 3.4 –Comprehensive Plan Integration	February – April 2025
Task 4 - Final Report, County Council Review and Action	
Task 4.1 – Project Management	April – June 2025
Task 4.2 – Final Report	April – May 2025
Task 4.3 – County Council Presentation	June 2025
Task 4.4 – Community Presentation	June 2025

EXHIBIT "B"
(COMPENSATION)

As consideration for the services provided pursuant to Exhibit A. Scope of Work, the County agrees to compensate the Contractor according to the rate table below. Other reasonable expenses incurred in the course of performing duties herein shall be reimbursed. Mileage at IRS rate, lodging and per diem at a rate not to exceed the GSA rate for location services provided.

Contractor will invoice monthly. Invoices will include hours worked by employee by day together with tasks accomplished. Requests for reimbursement of expenses must be accompanied by copies of paid invoices itemizing costs incurred. Compensation shall not exceed \$215,000. Any work performed prior to the effective date of this contract or continuing after the completion date of the same unless otherwise agreed upon in writing, will be at the contractor’s expense.

Estimated Budget by Task	
Task	Budget
Task 1 - Complete Marine and Riverine Vulnerability Assessments	\$103,000
Task 2 - Adaptation Planning for Frontline Communities	\$42,000
Task 3 - Analyze Shoreline Management Plan, Comprehensive Plan & Land Use Code	\$35,000
Task 4 - Final Report, County Council Review and Action	\$35,000
Total	\$215,000

Rate Table

Herrera	
Position	Hourly Rate
Accounting Administrator I, II, III, IV	\$195.03
Accounting Administrator V	\$204.53
Accounting Administrator VI	\$256.13
Administrative Coordinator II, III	\$129.15
Administrative Coordinator IV	\$142.09
CAD Technician II	\$152.42
CAD Technician III, IV	\$172.25
Engineer I	\$147.50
Engineer II	\$172.08
Engineer III	\$199.95
Engineer IV	\$233.22
Engineer V	\$285.33
Engineer VI	\$302.87
Engineer VII	\$331.06
Engineer VIII	\$358.26
Engineering/Environmental Technician	\$113.08
Engineering Intern	\$80.80
GIS Analyst I	\$107.51
GIS Analyst II	\$131.77
GIS Analyst III	\$153.40

GIS Analyst IV	\$188.47
GIS Analyst V	\$215.84
GIS Analyst VI	\$279.10
Landscape Designer I	\$132.75
Landscape Designer II, Senior Graphic Designer	\$152.42
Landscape Architect III	\$166.51
Landscape Architect IV	\$190.77
Landscape Architect V	\$204.86
Landscape Architect VI	\$220.60
Planner I	\$126.20
Planner II	\$156.02
Planner III	\$193.06
Planner IV	\$223.55
Planner V	\$234.03
Planner VI	\$281.24
Planner VII	\$307.13
Planner VIII	\$334.66
Project Accountant I, II	\$124.23
Project Accountant III	\$147.83
Project Accountant IV	\$170.45
Scientist I	\$132.75
Scientist II	\$149.47
Scientist III	\$180.28
Scientist IV	\$236.82
Scientist V	\$270.09
Scientist VI	\$303.03
Scientist VII	\$334.66
Northwest Hydraulic Consultants Inc.	
Position	Hourly Rate
Principal	\$287.29
Sr Project Engineer / Scientist	\$267.87
Sr Engineer / Scientist 1	\$219.81
Sr Engineer / Scientist 2	\$192.29
Engineer / Scientist 1	\$169.53
Engineer / Scientist 2	\$148.75
Jr Engineer / Scientist	\$132.46
Sr Engineer Technician	\$159.60
Jr Engineering Technician	\$96.94
Lab Technician	\$102.05
GIS Analyst 2	\$118.58
GIS Analyst 1	\$158.41
Engineering Technician	\$119.05
Sr Lab Technician	\$130.96
Contract Administrator	\$178.58

Senior Technical Editor	\$161.84
Technical Editor	\$128.58
Office Administrator	\$100.41
MAKERS	
Position	Hourly Rate
Partner	\$240
Associate 2 – Landscape Architect	\$165
Planner	\$120
Cascadia Consulting Group	
Position	Hourly Rate
Director I	\$235
Senior Associate III	\$210
Senior Associate I	\$190
Associate	\$150

EXHIBIT "C"
(CERTIFICATE OF INSURANCE)