

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.

202210015

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|--|---|
| Originating Department: | Public Works |
| Division/Program: (i.e. Dept. Division and Program) | Design/Construction (905600) |
| Contract or Grant Administrator: | Josh Cihak |
| Contractor's / Agency Name: | Squalicum Mountain Ecological Restoration Inc. |
| Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="radio"/> No <input checked="" type="radio"/> Yes <input checked="" type="radio"/> No <input type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____ | |
| Does contract require Council Approval? Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____ Already approved? Council Approved Date: <u>9/13/22</u> (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100) | |
| Is this a grant agreement? If yes, grantor agency contract number(s): _____ CFDA#: _____ Yes <input type="radio"/> No <input checked="" type="radio"/> | |
| Is this contract grant funded? If yes, Whatcom County grant contract number(s): _____ Yes <input type="radio"/> No <input checked="" type="radio"/> | |
| Is this contract the result of a RFP or Bid process? Contract _____ Cost Center: <u>10862</u> Yes <input checked="" type="radio"/> No <input type="radio"/> If yes, RFP and Bid number(s): <u>MRSC Electronic Bid</u> | |
| Is this agreement excluded from E-Verify? No <input type="radio"/> Yes <input checked="" type="radio"/> If no, include Attachment D Contractor Declaration form. | |
| If YES, indicate exclusion(s) below: <input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Goods and services provided due to an emergency <input checked="" type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). <input checked="" type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Work related subcontract less than \$25,000. <input type="checkbox"/> Interlocal Agreement (between Governments). <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA. | |
| Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>64,617.00</u> This Amendment Amount: \$ _____ Total Amended Amount: \$ _____ Summary of Scope: | 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. |
| This contract provides for watering and weeding services of the planting areas established during the Birch Bay Dr & Pedestrian Facility Contract. This contract will use local road funds in cost center 10862 for monitoring and plant maintenance. | |
| Term of Contract: | Expiration Date: Until Completed |

| | | |
|-------------------|---|-------------------------|
| Contract Routing: | 1. Prepared by: <u>L. Cummings</u> | Date: <u>10/12/2022</u> |
| | 2. Attorney signoff: <u>Christopher Quinn</u> | Date: <u>10/19/2022</u> |
| | 3. AS Finance reviewed: <u>bbennett</u> | Date: <u>10/14/2022</u> |
| | 4. IT reviewed (if IT related): _____ | Date: _____ |
| | 5. Contractor signed: _____ | Date: <u>9-28-22</u> |
| | 6. Submitted to Exec.: _____ | Date: <u>10-20-22</u> |
| | 7. Council approved (if necessary): _____ | Date: _____ |
| | 8. Executive signed: _____ | Date: <u>10-21-22</u> |
| | 9. Original to Council: _____ | Date: <u>10-25-22</u> |

COUNTY ORIGINAL

WHATCOM COUNTY
CONTRACT NO.
202210015

CONTRACT

BIRCH BAY - 2022 PLANTING MAINTENANCE

This Contract, made and entered into this 21st day of October, 20 22
by and between Whatcom County, Washington, a municipal Corporation and a Charter County
in the State of Washington, hereinafter called the "County" and SQUALicum MTN Ecological
hereinafter called the "Contractor." RESTORATION

WITNESSETH:

That in consideration of the terms and conditions contained herein and attached and made a part of this Contract, the parties hereto covenant and agree as follows:

1. The Contractor shall do all of the work and furnish all of the labor, materials, tools and equipment for the construction of the improvements and shall perform any changes in the work, all in full compliance with the contract documents entitled "BIRCH BAY - 2022 PLANTING MAINTENANCE" "Bid Proposal," "Specifications and Conditions," "Contract Forms," and the "Plans and Details" section contained in said contract documents are hereby referred to and by reference made a part hereof.
2. The County hereby promises and agrees with the Contractor to employ, and does employ the Contractor to furnish the labor, materials, tools and equipment, and to do and cause to be done the above-described work, and to complete and finish the same in accordance with the said contract documents and the terms and conditions herein contained, and hereby contracts to pay for the same, according to the said documents, including the schedule of estimated quantities, and unit and lump sum prices in the Bid Proposal, the approximate sum of \$ 64,617.00 the total amount of bid, subject to the actual quantity of work performed, at the time and in the manner and upon the conditions provided for in this contract.
3. The Contractor for himself, and for his agents, successors, assigns, subcontractors and/or employees, does hereby agree to the full performance of all the covenants herein contained upon the part of the Contractor.
4. The County hereby appoints and the Contractor hereby accepts the Whatcom County Engineer, as the County's representative for the purpose of administering the provisions of this Contract, including the County's right to receive and act on all reports and documents related to this Contract, to request and receive additional information from the Contractor, to assess the general performance of the Contractor under this Contract, to determine if the contracted services are being performed in accordance with Federal, State or local laws, and to administer any other right granted to the County under this Contract. The County expressly reserves the right to terminate this Contract as provided in the contract documents, and also expressly the reserves the right to commence civil action for the enforcement of this contract.

5. This Contract contains terms and conditions agreed upon by the parties. The parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Contract.
6. The Contractor agrees to comply with all applicable Federal, State, County or municipal standards for the licensing, certification, operation of facilities and programs, and accreditation and licensing of individuals.
7. The Contractor shall not assign or subcontract any portion of the work provided for under the terms of this Contract without obtaining prior written approval of the County Engineer. All terms and conditions of this Contract shall apply to any approved subcontract or assignment related to this Contract.
8. The parties intend that an independent Contractor-County relationship will be created by this Contract. The County is interested only in the results to be achieved, and the implementation of the work will lie solely with the Contractor. No agent, employee, servant, or representative of the Contractor shall be deemed to be an employee, agent, servant, or representative of the County for any purpose. Employees of the Contractor are not entitled to any of the benefits the County provides for County employees. The Contractor will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors, or otherwise during the performance of this Contract. In the performance of the work herein contemplated, the Contractor is an independent Contractor with regard to the performance of the details of the work; however, the components of and the results of the work contemplated herein must meet the approval of the County Engineer and shall be subject to the County Engineer's general rights of inspection and review to secure the satisfactory completion thereof.
9. The Contractor agrees and covenants to indemnify, defend, and save harmless, the County and those persons who were, now are, or shall be duly elected or appointed officials or employees thereof, hereinafter referred to as the "County" against and from any loss, damage, costs, charge, expense, liability, claims, demands or judgments, of whatsoever kind or nature, whether to persons or to property, arising wholly or partially out of any act, action, neglect, omission, or default on the part of the Contractor, his agents, successors, assignees, subcontractors and/or employees, except only such injury or damage as shall have been caused by or resulted from the sole negligence of the County. In case any suit or cause of action shall be brought against the County on account of any act, action, neglect, omission, or default on the part of the Contractor, his agents, successors, assignees, subcontractors and/or employees the Contractor hereby agrees and covenants to assume the defense thereof and to pay any and all costs, charges, attorney's fees and other expenses and any and all judgments that may be incurred or obtained against the County.
 - a. In the event the County is required to institute legal action and/or participate in the legal action to enforce this Indemnification and Hold Harmless Clause, the Contractor agrees to pay the County's legal fees, costs and disbursements incurred in establishing the right to indemnification.

b. If the claim, suit, or action for injuries, death, or damages as provided for in the preceding paragraphs of this specification is caused by or results from the concurrent negligence of (a) the indemnitee or the indemnitee's agents or employees and (b) the indemnitor or the indemnitor's agents for employees the indemnity provisions provided for in the preceding paragraphs of this specification shall be valid and enforceable only to the extent of the indemnitor's negligence.

10. This Contract has been and shall be construed as having been made and delivered within the State of Washington, and it is mutually understood and agreed by each party hereto that this Contract shall be governed by the laws of the State of Washington, both as to interpretation and performance. Any action in law, suit and equity or judicial proceedings for the enforcement of this contract, or any provisions thereof, shall be instituted and maintained in the courts of competent jurisdiction located in Whatcom County, Washington.
11. The failure of the County to insist upon strict performance of any of the covenants and agreements of this Contract 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 obligation, or any other covenants or agreements, but the same shall be and remain in full force and effect.
12. It is understood and agreed by the parties hereto that if any part of this agreement is determined to be illegal, the validity of the remaining portions shall be construed as if the agreement did not contain the particular illegal part.
13. No change or addition to this Contract shall be valid or binding upon either party unless such change or addition shall be in writing, executed by both parties.

Executed by Whatcom County this 21st day of October, 20 22

By: Satpal Singh Sidhu
Satpal Singh Sidhu
Whatcom County Executive

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

On this 21st day of October, 20 22, before me personally appeared Satpal Singh Sidhu, to me personally known to be the Executive of Whatcom County described in and who executed the above instrument and who acknowledged to me the act of signing thereof.

Suzanne M. Mildner
Notary Public, in and for the
State of Washington, residing at:
Bellingham



My commission expires: 12-31-22

Approved as to form: Christopher Quinn
Senior Civil Deputy Prosecuting Attorney 10.19.22
By/c

CONTRACT BOND

BD 7901103880

BIRCH BAY - 2022 PLANTING MAINTENANCE

KNOW ALL MEN BY THESE PRESENTS, that Squalicum Mountain Ecological Restoration, Inc. :

as PRINCIPAL, and Nationwide Mutual Insurance Company
a corporation duly authorized to do a general Surety business in the State of
Washington, as SURETY, are jointly and severally held and bound unto the COUNTY
OF WHATCOM, OBLIGEE herein, in the sum of: Sixty-Four Thousand Six Hundred Seventeen and no/100

(\$ 64,617.00), lawful money of the United States, for the payment of which we
bind our heirs, administrators, executors, successors, and assigns, jointly and severally,
firmly by these presents.

WHEREAS, the PRINCIPAL has executed and entered into a certain Contract, with the
OBLIGEE, dated _____ in the Contract described, which Contract is
hereto annexed.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

If the PRINCIPAL shall well and truly perform and fulfill all and every obligation of the
covenants, conditions, stipulations, and agreements in the Contract mentioned to be
performed and fulfilled; and shall promptly make payment to all persons supplying him with
labor, equipment and materials in the prosecution of the work provided for in the Contract;
and shall keep the OBLIGEE harmless and indemnified from and against all and every
claim, demand, judgment, lien, cost and fee of every description incurred in suits or
otherwise against the OBLIGEE, growing out of or incurred in, the prosecution of the work
according to the terms of the Contract; and shall repay to the OBLIGEE all sums of money
which the OBLIGEE may pay to other persons on account of work and labor done or
materials furnished on or for the Contract; and if the PRINCIPAL shall in all respects,
faithfully perform said Contract, then this obligation shall be void; otherwise, the same shall
remain in full force and virtue.

It is, however, mutually understood between the parties hereto, that in no event shall the
SURETY be liable for a greater sum than the penalty of this bond.

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each one of which shall be deemed an original. This 4th day of October, 20²²

WITNESS AS TO PRINCIPAL

Squalicum Mountain Ecological Restoration, Inc.

(SEAL)

Principal

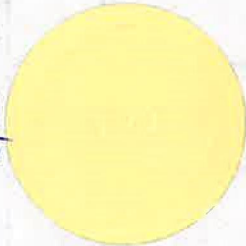
By: _____

Nationwide Mutual Insurance Company

Surety

By: _____

Attorney-in-Fact Taryn Schram Von Haupt



The Attorney-In-Fact (Resident Agent) who executes this bond on behalf of the Surety, must attach a copy of his power of attorney as evidence of his authority.

Power of Attorney

KNOW ALL MEN BY THESE PRESENTS THAT:

Nationwide Mutual Insurance Company, an Ohio corporation

hereinafter referred to severally as the "Company" and collectively as "the Companies" does hereby make, constitute and appoint:

Taryn Schram Von Haupt

each in their individual capacity, its true and lawful attorney-in-fact, with full power and authority to sign, seal, and execute on its behalf any and all bonds and undertakings, and other obligatory instruments of similar nature, in penalties not exceeding the sum of

Seventy Thousand and no/100 -- Dollars (\$70,000.00)

and to bind the Company thereby, as fully and to the same extent as if such instruments were signed by the duly authorized officers of the Company; and all acts of said Attorney pursuant to the authority given are hereby ratified and confirmed.

This power of attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the board of directors of the Company:

"RESOLVED, that the president, or any vice president be, and each hereby is, authorized and empowered to appoint attorneys-in-fact of the Company, and to authorize them to execute and deliver on behalf of the Company any and all bonds, forms, applications, memorandums, undertakings, recognizances, transfers, contracts of indemnity, policies, contracts guaranteeing the fidelity of persons holding positions of public or private trust, and other writings obligatory in nature that the business of the Company may require; and to modify or revoke, with or without cause, any such appointment or authority; provided, however, that the authority granted hereby shall in no way limit the authority of other duly authorized agents to sign and countersign any of said documents on behalf of the Company."

"RESOLVED FURTHER, that such attorneys-in-fact shall have full power and authority to execute and deliver any and all such documents and to bind the Company subject to the terms and limitations of the power of attorney issued to them, and to affix the seal of the Company thereto; provided, however, that said seal shall not be necessary for the validity of any such documents."

This power of attorney is signed and sealed under and by the following bylaws duly adopted by the board of directors of the Company.

Execution of Instruments. Any vice president, any assistant secretary or any assistant treasurer shall have the power and authority to sign or attest all approved documents, instruments, contracts, or other papers in connection with the operation of the business of the company in addition to the chairman of the board, the chief executive officer, president, treasurer or secretary; provided, however, the signature of any of them may be printed, engraved, or stamped on any approved document, contract, instrument, or other papers of the Company.

IN WITNESS WHEREOF, the Company has caused this instrument to be sealed and duly attested by the signature of its officer the 20th day of August, 2021.

[Handwritten Signature]

Antonio C. Albanese, Vice President of Nationwide Mutual Insurance Company

ACKNOWLEDGMENT

STATE OF NEW YORK COUNTY OF NEW YORK: ss

On this 20th day of August, 2021, before me came the above-named officer for the Company aforesaid, to me personally known to be the officer described in and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn, deposes and says, that he is the officer of the Company aforesaid, that the seal affixed hereto is the corporate seal of said Company, and the said corporate seal and his signature were duly affixed and subscribed to said instrument by the authority and direction of said Company.



Stephanie Rubino McArthur
Notary Public, State of New York
No. 02MC6270117
Qualified in New York County
Commission Expires October 19, 2024

[Handwritten Signature: Stephanie Rubino McArthur]

Notary Public
My Commission Expires
October 19, 2024

CERTIFICATE

I, Laura B. Guy, Assistant Secretary of the Company, do hereby certify that the foregoing is a full, true and correct copy of the original power of attorney issued by the Company; that the resolution included therein is a true and correct transcript from the minutes of the meetings of the boards of directors and the same has not been revoked or amended in any manner; that said Antonio C. Albanese was on the date of the execution of the foregoing power of attorney the duly elected officer of the Company, and the corporate seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority of said board of directors; and the foregoing power of attorney is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto subscribed my name as Assistant Secretary, and affixed the corporate seal of said Company this 4th day of October, 2022.

[Handwritten Signature: Laura B. Guy]

Assistant Secretary

RETAINAGE INVESTMENT OPTION

BIRCH BAY--
2022 PLANTING MAINTENANCE

CONTRACTOR:

Pursuant to R.C.W. 60.28.010, as amended, you may choose how your retainage under this contract will be held and invested. Please complete and sign this form indicating your preference. If you fail to do so, the County will hold your retainage as described in "Current Expense" option 1 below.

- 1. **Current Expense:** The County will retain your money in its Current Expense Fund Account until sixty (60) days following final acceptance of the improvement or work as completed. You will not receive interest earned on this money.
- 2. **Interest Bearing Account:** The County will deposit retainage checks in an interest-bearing account in a bank, mutual savings bank, or savings and loan association, not subject to withdrawal until after the final acceptance of the improvement or work as completed or until agreed to by both parties. Interest on the account will be paid to you.
- 3. **Escrow/Investments:** The County will place the retainage checks in escrow with a bank or trust company until thirty days following the final acceptance of the improvement or work as completed. When the moneys reserved are to be placed in escrow, the County will issue a check representing the sum of the moneys reserved payable to the bank or trust company and you jointly. This check will be converted into bonds and securities chosen by you and approved by the County and these bonds and securities will be held in escrow. Interest on these bonds and securities will be paid to you as interest accrues. If this option is chosen, the bidder shall complete the Escrow Agreement form on the following pages.
- 4. **Retainage Bond:** The Bidder shall post a retainage bond equal to 5% of the total bid price on this. If this option is chosen, the Bidder shall complete the Retainage Bond form supplied in this document.

Retainage is normally released 45-60 days after final acceptance of work by the County, or following receipt of Washington State Departments of **Labor and Industries / Revenue / Employment Security**, whichever takes longer.



(Contractor's signature)



(Title)

Jon Hutchings
Director



James P. Karcher, P. E.
County Engineer
322 N. Commercial Street, Ste 301
Bellingham, WA 98225-4042
Phone: (360) 778-6200
Fax: (360) 778-6201

RECEIVED

OCT 20 2022

Memorandum

To: The Honorable Satpal Sidhu, Whatcom County Executive
Through: Jon Hutchings, Director
From: James P. Karcher, P.E., County Engineer *JPK*
Josh L. Cihak, P.E., Engineering Manager *JL*

WHATCOM COUNTY
EXECUTIVE'S OFFICE

Date: October 19, 2022
Re: Birch Bay Drive & Pedestrian Facility; CRP No. 907001
Birch Bay – 2022 Planting Maintenance
Construction Contracts for Signature

Enclosed for your review and signature are two (2) originals of the above referenced contract between Whatcom County and Squalicum Mountain Ecological Restoration Inc. in the amount of **\$64,617.00**

Requested Action

Public Works respectfully requests that the County Executive execute the two (2) attached original contracts. Please sign and/or date where indicated.

Background and Purpose

This contract was awarded through the request for quotes process and Quotes for the project were opened at 4:00 p.m. on Friday, August 19, 2022. A total of one (1) quote was received, **Squalicum Mountain Ecological Restoration Inc.** having the lowest responsible quote in the amount of \$64,617.00. The resulting contract will provide Whatcom County with watering and weeding services in 2022 to maintain the plant mitigation component of the Birch Bay Drive and Pedestrian Facility; CRP No. 907001.

Funding Amount and Source

The plant mitigation component of the Birch Bay Drive and Pedestrian Facility project is a long-term permit condition. Compliance and mandatory annual maintenance costs are compulsory for this project due to permitting requirements. Whatcom County will be using local road funds, transferred in from an existing approved budget source with capacity, for 2022 maintenance costs. An ASR will be written up for budget years 2023-2024, with annual costs for the planting maintenance expected to be approximately \$150,000. The 4-month cost proposed for the contract award approval is **\$64,617.00**.

Please contact Josh Cihak at extension 6277 if you have any questions or concerns regarding this contract.