

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.
201803009

Originating Department:	Public Works
Division/Program: (i.e. Dept. Division and Program)	River and Flood/907525 – CFHMP
Contract or Grant Administrator:	Paula Harris
Contractor's / Agency Name:	Herrera Environmental Consultants

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: 3.08.100
 (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): 201803002

Is this contract the result of a RFP or Bid process? Contract
 Yes No If yes, RFP and Bid number(s): 17-77 Cost Center: 718003

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

If YES, indicate exclusion(s) below:

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

Contract Amount:(sum of original contract amount and any prior amendments):
 \$ 39,000
 This Amendment Amount:
 \$ _____
 Total Amended Amount:
 \$ 39,000

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, professional services, or other capital costs approved by council in a capital budget appropriation ordinance.
3. Bid or award is for supplies or equipment included approved in the budget.
4. 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: *The proposed Contract for Services with Herrera Environmental Consultants (Herrera) is to assist in updating and broadening the scope of the 1999 Lower Nooksack River Comprehensive Flood Hazard Management Plan (CFHMP). The updated plan will integrate reach-scale strategies for flood risk reduction with the needs of salmon and floodplain land uses and will provide a basis for the future Whatcom County Flood Control Zone District (WCFCZD) capital program as well as support an update to the WRIA1 Salmon Recovery Plan. Herrera will guide the planning process in close coordination with the Floodplain Integrated Planning (FLIP) Team, the FLIP Steering Committee, and Whatcom County staff.*

Term of Contract: Not to exceed Expiration Date: 12/31/2018

Contract Routing:	1. Prepared by: <u>Deb J. Stewart</u>	Date: <u>03/08/18</u>
	2. Attorney signoff: <u>Daniel J. Gibson</u>	Date: <u>03/15/18</u>
	3. AS Finance reviewed: <u>M Caldwell</u>	Date: <u>3/15/18</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: <u>✓</u>	Date: <u>3-16-18</u>
	6. Submitted to Exec.: <u>✓</u>	Date: <u>3-19-18</u>
	7. Council approved (if necessary): <u>✓</u>	Date: <u>3-22-18</u>

Contract for Services with Herrera Environmental Consultants
 Lower Nooksack River Floodplain Integrated Planning

CONTRACT FOR SERVICES
Lower Nooksack River Floodplain Integrated Planning

Herrera Environmental Consultants, hereinafter called Contractor, and Whatcom County Flood Control Zone District, hereinafter referred to as County, agree and contract as set forth in this Agreement, including:

- General Conditions, pp. 3 to 11,
Exhibit A (Scope of Work), pp. 12 to 13,
Exhibit B (Compensation), pp. 14 to 15,
Exhibit C (Certificate of Insurance).

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

The term of this Agreement shall commence on the ___ day of March, 2018, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of December, 2018.

The general purpose or objective of this Agreement is to: update and broaden the scope of the 1999 Lower Nooksack River Comprehensive Flood Hazard Management Plan (CFHMP), 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 \$39,000. 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 19th day of March, 2018.

CONTRACTOR:

Herrera Environmental Consultants

[Signature]
Theresa Wood, Vice-President

STATE OF WASHINGTON)
) ss.
COUNTY OF Snohomish

On this 16 day of March, 2018, before me personally appeared Theresa M Wood, to me known to be the Vice-President (title) of Herrera Environmental Consultants (Company) and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

[Signature]
NOTARY PUBLIC in and for the State of Washington, residing at Mukilteo WA. My commission expires 05/28/18.



WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT:

Recommended for Approval:

Jon Hutchings 3/19/18
Jon Hutchings, Public Works Director Date

Approved as to form:

Daniel L. Gibson 03/15/18
Daniel L. Gibson, Deputy Prosecuting Attorney Date

Approved:

Accepted for Whatcom County Flood Control Zone District:

By: Jack Louws
Jack Louws, Whatcom County Executive, acting for the Whatcom County Flood Control Zone District Board of Supervisors

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this 19th day of March, 2018, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

Tyler Schroeder Deputy
Suzanne M. Mildner
NOTARY PUBLIC in and for the State of Washington, residing at Bellevue My commission expires 12-31-18



CONTRACTOR INFORMATION:

Herrera Environmental Consultants
(Type in Name of Contractor/Firm)
Mark Ewbank, Vice-President
(Type in Name & Title of Signatory Authorized by Firm Bylaws, if applicable)
Address: 2200 Sixth Avenue, Suite 1100
Seattle, WA 98121
Mailing Address: 2200 Sixth Avenue, Suite 1100
Seattle, WA 98121
Contact Name: Mark Ewbank
Contact Phone: 206-787-8266
Contact FAX: 206-441-9108
Contact Email: mewbank@herrerainc.com

GENERAL CONDITIONS

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

0.1 Scope of Services:

The Contractor agrees to provide to the County services and any materials as set forth in the project narrative identified as Exhibit "A", during the agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

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: Not Applicable

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 and Other 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 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.

The Contractor shall comply with the Americans with Disabilities Act of 1990, Public Law 101-336, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

Series 30-39: Provisions Related to Administration of Agreement

30.1 Independent Contractor:

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

The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Contractor is not entitled to any benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to employees of the County. The Contractor represents that he/she/it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this contract to the

Internal Revenue Service, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

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

30.2 Assignment and Subcontracting:

The performance of all activities contemplated by this agreement shall be accomplished by the Contractor and the following approved sub-consultants: Watershed Science and Engineering, Wheeler Consulting Group, and Golder Associates. 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. Additionally, the Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this contract are carried forward to any subcontracts. The Contractor and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the County or as provided by law.

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/Copyright Provisions:

The work performed under this contract is being funded using funding from the U.S. Environmental Protection Agency through a sub-recipient agreement with the Washington Department of Fish and Wildlife (WDFW). Unless otherwise provided, 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 considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by WDFW. WDFW shall be considered the author of such materials. In the event the materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in materials, including all intellectual property rights, to WDFW effective from the moment of creation of such materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For materials that are delivered under the contract, but that incorporate pre-existing materials not produced under the contract, the Contractor hereby grants to the County and WDFW a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the County and WDFW.

The Contractor shall exert all reasonable effort to advise the County, at the time of delivery of materials furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this contract.

The County shall receive prompt written notice of each notice or claim of infringement received by the Contractor with respect to any data delivered under this contract. The County shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

In accordance with 40 CFR 31.34 for State, local and Indian Tribal governments or 40 CFR 30.36 for other recipients, the EPA has the right to reproduce, publish, use, and authorize others to use copyrighted works or other data developed under this contract for Federal purposes.

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/Safeguarding of Information:

The Contractor shall not use or disclose any information concerning the WDFW, or information that may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of the WDFW, or as may be required by law.

33.1 Right to Review/Records Maintenance:

The Contractor shall maintain books, records, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended in the performance of the services described herein. These records shall be subject to inspection, review or audit by personnel of the County, other personnel duly authorized by the County, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this contract will be retained for six years after expiration and the Office of the State Auditor, federal auditors, and any persons duly authorized by the County shall have full access and the right to examine any of these materials during this period.

Records and other documents, in any medium, furnished by one party to this contract to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

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. Contractor also agrees to notify the Administrative Officer in advance of any inspections, audits, or program review by any individual, agency, or governmental unit whose purpose is to review the services provided within the terms of this Agreement. If no advance notice is given to the Contractor, then the Contractor agrees to notify the Administrative Officer as soon as it is practical.

34.1 Proof of Insurance:

The Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the state and County should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the Contractor or Subcontractor, or agents of either, while performing under the terms of this contract.

The Contractor shall provide insurance coverage, which shall be maintained in full force and effect during the term of this contract, as follows:

1. Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence. Additionally, the Contractor is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.
2. Automobile Liability. In the event that services delivered pursuant to this contract involve the use of vehicles, either owned or unowned by the Contractor, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.
3. Marine Insurance. If the Contractor will be using a vessel or boat in the performance of this contract, the Contractor shall maintain a Commercial Marine Protection and Indemnity (P&I) Policy with P&I limit of not less than \$1,000,000 per occurrence and with a deductible not to exceed \$25,000 (to include diving operations if diving is a part of the contracted service for any liability which includes coverage for injury to the crew and passengers).
4. The insurance required shall be issued by an insurance company/ies authorized to do business within the state of Washington, and shall name the state of Washington, Whatcom County, Whatcom County Flood Control Zone District and their agents and employees as additional insureds under the insurance policy/ies. All policies shall be primary to any other valid and collectable insurance. Contractor shall instruct the insurers to give County thirty (30) calendar days advance notice of any insurance cancellation.

The Contractor shall submit to County within fifteen (15) calendar days of the contract effective date, a certificate of insurance or evidence of its status as a self-insured entity that outlines the coverage and limits defined in this section. The Contractor shall submit

renewal certificates as appropriate during the term of the contract; the failure of the County to enforce this term in no way reduces the Contractor's responsibilities under this section.

34.2 Industrial Insurance Coverage/Waiver:

The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, the County may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. The County may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the County under this contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

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

34.3 Defense & Indemnity Agreement:

The Contractor agrees to defend, indemnify and save harmless the State, agencies of the State, the County, and their appointed and elective officers and employees, from and against all loss or expense, including, but not limited to, judgments, settlements, attorneys' fees and costs by reason of any and all claims and demands upon the State, agencies of the State, the County, and their elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property, including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Contractor, its subcontractors, its successor or assigns, or its agents, servants, or employees, the State, agencies of the State, the County, and their appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the State, agencies of the State, the County, or their appointed or elected officials or employees. In case of damages caused by the concurrent negligence of Contractor, its subcontractors, its successors or assigns, or its agents, servants, or employees, and the State, agencies of the State, the County, their appointed or elected officers, employees or their agents, then this indemnification provision is enforceable only to the extent of the negligence of the Contractor, its agents, or its employees.

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

35.1 Non-Discrimination in Employment:

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

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

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

35.2 Non-Discrimination in Client Services:

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

36.1 Waiver of Noncompetition: Not Applicable

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.

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the County may, in its sole discretion, by written notice to the Contractor terminate this contract if it is found after due notice and examination by the County that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Contractor in the procurement of, or performance under this contract. In the event this contract is terminated as provided above, the County shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of the County provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the County makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract. EPA's conflict of interest (COI) policy is posted at <http://www.epa.gov/ogd/coi.htm>. The Contractor must notify the County of any potential conflicts of interest identified in EPA's COI Policy within 5 calendar days of the discovery of the potential COI.

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:

Paula Harris, River and Flood Manager
Whatcom County Public Works
322 N. Commercial Street, Bellingham, WA 98225

37.2 Notice:

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

38.1 Certification of Public Works Contractor's Status under State Law: Not Applicable

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

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

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

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

38.3 E-Verify: Not Applicable

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

40.1 Modifications/Amendments:

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 personnel authorized to bind each of the parties.

40.2 Contractor Commitments, Warranties and Representations: Not Applicable

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: Not Applicable

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.

Series 50-59: Special Provisions Related to Federal Funding

- 50.1 Access to Data:
In compliance with RCW 39.26.180, the Contractor shall provide access to data generated under this contract to WDFW, to County, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.
- 50.2 Buy American Act:
The Contractor shall comply with 41 USC 10a-10c (the "Buy American Act") by purchasing only American-made equipment and products with contract funds except articles, materials, and supplies — a) for use outside the United States; b) for which the cost would be unreasonable, as determined in accordance with federal regulations; c) for which WDFW determines that domestic preference would be inconsistent with the public interest; or d) that are not mined, produced, or manufactured in the United States in sufficient and reasonable available commercial quantities, of a satisfactory quality.
- 50.3 Central Contractor Registration and Data Universal Numbering System (DUNS):
Unless exempt under 2 CFR 25.110, the Contractor shall comply with 2 CFR 25 and be registered in the federal Central Contractor Registration (CCR) system; maintain an active CCR registration with current information at all times during the period of performance for this contract; and provide its DUNS number to the County.
- 50.4 Consultant Cap:
Contractor pay and pay to individual sub-contractors shall be limited to the maximum daily rate (excluding overhead) for a Level IV of the Executive Schedule, available at: <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>, to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed.
- 50.5 Disadvantaged Business Enterprise:
The Contractor agrees to comply with the requirements of the Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements, contained in 40 CFR, Part 33.
- 50.6 Drug-Free Workplace:
The Contractor shall comply with the Drug-Free Workplace Act of 1988, 41 USC 701-707, as amended. Compliance with the Drug-Free Workplace Act includes publishing a drug-free workplace statement and establishing a drug-free awareness program for Contractor employees; and taking actions concerning Contractor employees who are convicted of violating drug statutes in the workplace. The Contractor shall provide written notice of a conviction of a Contractor employee of a drug violation in the workplace to the County within seven (7) calendar days after the Contractor learns of the conviction.
- 50.7 Licensing, Accreditation and Registration:
The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this contract.
- 50.8 Light Refreshments and/or Meals:
The Contractor will obtain prior approval from the County for the use of contract funds for light refreshments and/or meals served at meetings, conferences, training workshops and outreach activities (events).
- 50.9 Minority, Women and Veteran-Owned Businesses:
The County encourages participation by minority and women-owned business enterprises certified by the Office of Minority and Women's Business Enterprises (OMWBE); and veteran-owned businesses certified by the Department of Veteran's Affairs (DVA). If any part of this contract is subcontracted to an OMWBE or DVA-certified firm the Contractor shall submit a statement of participation indicating what OMWBE or DVA certified firm was used and the dollar amount of their subcontracts.

Pursuant to 40 CFR, Section 33.301, the Contractor agrees to make good faith efforts whenever procuring construction, equipment, services and supplies funded through this contract, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained by the Contractor.

- 51.0 Recognition of EPA Funding:
The Contractor shall ensure that reports, documents, signage, videos, or other media, developed as part of projects funded by this contract contain the following statement: "This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement PC-01J22301 through the Washington Department of Fish and Wildlife. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency or the Washington Department of Fish and Wildlife, nor does mention of trade names or commercial products constitute endorsement or recommendation for use."
- 51.1 Recycled Products:
The Contractor agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this contract.
- 51.2 Restrictions on Lobbying:
The Contractor certifies that under the requirements of Lobbying Disclosure Act, 2 USC, Section 1601 et seq., no Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 51.3 Right of Inspection:
The Contractor shall provide right of access to its facilities to the County, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.
- 51.4 Site Security:
While on WDFW premises, the Contractor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire or other security policies or regulations.
- 51.5 Trafficking Victims Protection Act:
As described in 2 CFR Part 175 the County may terminate this contract, without penalty, if the Contractor is found to be in violation of the Trafficking Victims Protection Act of 2000.
- 51.6 Whistleblower Protection:
If this contract exceeds the federal simplified acquisition threshold of \$100,000 the contract and all employees working on the contract are subject to the whistleblower protections established at 41 USC 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013. If subject to this statute the Contractor shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 USC 4712. This section is applicable to all subcontractors and subawardees related to this contract that exceed the federal simplified acquisition threshold of \$100,000, and the Contractor shall include this section in all such subcontracts and/or subawards.
- 51.7 Geospatial Data Standards:
All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at www.fgdc.gov.

EXHIBIT "A"
(SCOPE OF WORK)

I. Background

The Whatcom County Flood Control Zone District is preparing a major update to its Comprehensive Flood Hazard Management Plan for the Lower Nooksack River, encompassing approximately 36 miles of the river from the confluence of the North and South forks near Deming to the river mouth in Bellingham Bay. The desired outcome is a new comprehensive integrated floodplain management document that explicitly addresses flood risk reduction, salmon habitat recovery, and floodplain agriculture and other land-uses.

Reach-scale floodplain management strategies and project concepts will be developed for actions that reduce flood risk, advance salmon habitat protection and restoration, and provide for restored habitat forming processes where possible, while sustaining adjacent floodplain land uses. The plan update will be a collaborative effort with affected governments and stakeholders representing these interests. Strategies and concepts identified may also support updates to the WRIA 1 Salmonid Recovery Plan.

A consultant team led by Herrera Environmental Consultants (Herrera) is assisting the County in this integration effort, including alternatives analyses, conceptual engineering design, and plan compilation. This scope of work describes initial services that Herrera will provide in the spring and summer of 2018 to begin coordinating with the Nooksack River Floodplain Integrated Planning Team (FLIP Team) and begin integrating work done under separate contracts specific to habitat assessment, geomorphic assessment, sedimentation, hydraulic analysis and floodplain mapping, and stakeholder outreach. .

II. Statement of Work

Herrera and its sub-consultant Watershed Science and Engineering (WSE) will perform the services described in the following tasks, and adjust the focus and level of effort as task work proceeds in coordination with County staff and the FLIP Steering Committee as may be needed to provide the most value in this start-up phase of the integration work.

Task 1 - Project Management

Herrera's project manager will coordinate with Whatcom County's project manager and other County staff involved in the floodplain planning effort to discuss progress of the work described in subsequent tasks in this scope of work, schedule meetings with selected organizations that may have useful data or other information, and define appropriate intersections with technical work being completed by the County's other consultant contract teams.

Deliverables:

- Monthly invoices and progress reports
- Notes from project management discussions
- Project schedule input

Task 2 – Background Information Review

Herrera will gather and review background information pertinent to its roles in the larger planning effort, focusing on identified capital project concepts, notes from past FLIP Team meetings and meetings conducted for the County's recently completed SWIF project, and sources of land use data that are not already gathered by the County's other technical consultants. Herrera will coordinate with Whatcom County on options for a centralized documentation storage platform (such as a Sharepoint site).

Task 2 Assumptions:

- Whatcom County and/or other FLIP Steering Committee members will provide contacts with the County's Planning & Development Services Department, Whatcom Conservation District, WSU Whatcom County Extension Service, Watershed Improvement Districts in the lower valley, Nooksack Indian Tribe, Lummi Nation, and Washington Department of Fish and Wildlife.
- This task will include coordination with other consultant teams working for the County to better understand their planned deliverables that involve spatial data.

Task 2 Deliverables:

- The findings of reviewing information in this task will be reflected in deliverables in subsequent tasks.

Task 3 – FLIP Team Steering Committee Coordination

Herrera's project manager will meet with the FLIP Steering Committee to strategize content to bring to subsequent FLIP Team meetings, discuss input provided by the FLIP Team to date, and define technical work that may need to be done by the Herrera team or other consultants working on the project to feed into future FLIP Team meetings.

Task 3 Assumptions:

- Two (2) two-hour meetings are anticipated. These will each be convened at County offices in Bellingham.
- Herrera's project manager will contribute to notes of the discussion, which the County's FLIP Team facilitation consultant, David Roberts, will have lead responsibility for preparing.

Task 3 Deliverables:

- Meeting notes content

Task 4 – FLIP Team Meetings

Herrera's project manager will attend two FLIP Team meetings in March and April 2018, both focused on geomorphology analyses and findings, to begin immersion into the FLIP Team process, and contribute an overview of pending integration work that the Herrera team will be doing.

Task 4 Deliverables:

- Brief presentation material for FLIP Team meeting.

Task 5 – Geodatabase Development for Agricultural and Other Land Uses within the Lower Nooksack River Floodplain

Agricultural uses are the primary land use in the Lower Nooksack River floodplains and are a major influence on developing the integrated floodplain management plan. There are other significant and important existing land uses, including tribal reservation and trust lands, historic and current salmon habitats, municipal lands, and transportation infrastructure. Future floodplain management actions must be compatible with these and potential future land uses. Future land use changes through acquisition, easements, and/or re-zoning may represent opportunities for more comprehensive integrated floodplain management projects.

Whatcom County has various data on land uses and ownership in the planning area; however, there are gaps in understanding all land uses in all river reaches encompassed in the lower river. This task is focused on understanding all floodplain land uses, ownership types, and corresponding needs, as the foundation for developing land use-specific objectives and strategies. To the extent not already done by the County or others, Herrera will compile available GIS data, including land parcels, land use and land cover, and ownership, into a land use geodatabase. This will provide a foundation for everyone involved in the ensuing planning effort.

Herrera will coordinate with, and meet in person with as may be necessary, the following: Whatcom County Planning & Development Services, the Whatcom Conservation District, WSU Whatcom County Extension Service, Watershed Improvement Districts in the lower valley, Lummi Nation, Nooksack Indian Tribe, municipalities within the floodplain, and WDFW. As datasets from these sources are gathered and reviewed, Herrera will coordinate with the FLIP Steering Committee via email and phone calls on defining attributes to be included in the geodatabase and desired formats file formats.

Task 5 Assumptions:

- Herrera staff will attend up to five in-person meetings with organizations contacted in this task
- Herrera won't create any new datasets in this task but will instead compile existing data.

Task 5 Deliverables:

- Draft geodatabase and cartographic output for discussion purposes with the FLIP Team steering committee – webmaps and other formats to be determined.

As consideration for the services provided pursuant to Exhibit A, Scope of Work, the County agrees to compensate the Contractor according to the hourly rates provided in the Rate Schedule provided below. Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed. Mileage is to be reimbursed at the 2018 IRS rate; lodging and per diem will be reimbursed at a rate not to exceed the GSA rate for the location at which services are provided. Reimbursement for air travel will be at coach rates. Other expenditures such as printing, postage and telephone charges shall be reimbursed at actual cost.

The 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. Costs of alcoholic beverages are not eligible for reimbursement. Compensation shall not exceed \$39,000. 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.

HERRERA ENVIRONMENTAL CONSULTANTS, INC.

2018 Billing Rates

3/12/2018

Name	Classification	Total Hourly Billing Rate
Ewbank, Mark	Vice President	240.57
Carrasquero, Jose	Vice President	237.85
Wood, Theresa	Vice President	226.12
Mostrenko, Ian	Engineer V	206.57
Avolio, Christina	Engineer IV	177.28
Scott, Brian	Engineer IV	175.47
Schmidt, Jennifer	GIS Analyst IV	156.91
Prescott, Todd	CAD Technician III	137.00
Svendsen, Alex	Scientist III	136.90
Marshall, Eric	CAD Technician III	130.88
Schaner, Neil	Engineer II	130.38
Wu, Valerie	Engineer II	109.80
Kayser, Gretchen	Engineer I	116.89
Geigel, Joseph	GIS Analyst I	90.68
Saavedra, Robin	Accounting Administrator III	108.31
Rudnick, Tracy	Accounting Administrator III	107.15



RECEIVED

MAR 19 2018

MEMORANDUM

JACK LOUWS
COUNTY EXECUTIVE

TO: The Honorable Jack Louws, Whatcom County Executive

THROUGH: Jon Hutchings, Public Works Director *JH*

FROM: Paula J. Harris, P.E., River and Flood Manager *AH*
Gary Stoyka, Natural Resources Manager *GS*

RE: Lower Nooksack River Floodplain Integrated Planning
Contract for Services with Herrera Environmental Consultants

DATE: March 19, 2018

Enclosed is one (1) original of a Contract for Services between Whatcom County Flood Control Zone District (WCFCZD) and Herrera Environmental Consultants (Herrera) for your review and signature.

▪ **Background and Purpose**

The Lower Nooksack River Comprehensive Flood Hazard Management Plan (CFHMP) was initiated after the large floods in 1989 and 1990 and was completed in 1999. The primary focus of the existing CFHMP is flood hazard reduction in the Lower Nooksack River floodplain. Several species of salmon have been listed for protection under the Endangered Species Act since the CFHMP was developed, and additional species of salmon and trout support important Treaty and non-Treaty fisheries. Agricultural land uses within the floodplain are affected by changes in hydrology and sedimentation impacting flood magnitude and timing, drainage and channel migration. The current CFHMP update process will focus on developing floodplain management strategies that integrate flood risk reduction with salmon habitat protection and restoration, while sustaining adjacent floodplain land uses. The process will be locally-driven, science-based and result in legally, financially and politically viable solutions that are permissible.

Several technical studies have already been contracted to support the floodplain integrated planning (FLIP) process. Herrera will help County staff to coordinate these technical analyses, perform alternatives analysis, provide engineering design support, and compile the final plan. This contract is for the first phase of the work; the contract will be amended in the future as needed to address the needs of the stakeholders and the FLIP planning process.

▪ **Funding Amount and Source**

The contract amount is up to \$39,000 for work performed during the spring and summer of 2018. The proposed contract will be funded using U.S. Environmental Protection Agency (USEPA) grant funds through the National Estuary Program (NEP). The FCZD has adequate budget authority for this expenditure. A cost share match is not required for this grant funding program.

Please contact Paula Harris at extension 6285 if you have any questions or concerns regarding the terms of this agreement.

Encl.