

**WHATCOM COUNTY CONTRACT  
INFORMATION SHEET**

Whatcom County Contract No.

**201905009**

Originating Department:	Public Works
Division/Program: <i>(i.e. Dept. Division and Program)</i>	Stormwater-907620
Contract or Grant Administrator:	Cathy Craver
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 <input type="radio"/> No <input checked="" type="radio"/>	
Yes <input checked="" type="radio"/> No <input type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval? Yes <input checked="" type="radio"/> No <input type="radio"/> If No, include WCC: _____	
Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)	
Is this a grant agreement? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, grantor agency contract number(s): _____ CFDA#: _____	
Is this contract grant funded? Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, Whatcom County grant contract number(s): _____	
Is this contract the result of a RFP or Bid process? Yes <input checked="" type="radio"/> No <input type="radio"/> If yes, RFP and Bid number(s): RFQ-1801 Contract Cost Center: 50%-123212, 50%-10860	
Is this agreement excluded from E-Verify? No <input checked="" type="radio"/> Yes <input 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 checked="" type="checkbox"/> Contract work is for less than \$100,000.	
<input type="checkbox"/> Contract work is for less than 120 days.	
<input type="checkbox"/> Interlocal Agreement (between Governments).	
<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).	
<input type="checkbox"/> Work related subcontract less than \$25,000.	
<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.	
Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>99,821.00</u>	Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b>
This Amendment Amount: \$ _____	1. Exercising an option contained in a contract previously approved by the council.
Total Amended Amount: \$ _____	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.
Summary of Scope:	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.
Complete a comprehensive Bioinfiltration Swale Evaluation in the Geneva neighborhood of the Lake Whatcom watershed	
Term of Contract:	Expiration Date: 12/31/2020

Contract Routing:	1. Prepared by: <u>Cathy Craver</u>	Date: <u>4/29/19</u>
	2. Attorney signoff: <u>Christopher Quinn</u>	Date: <u>4/30/2019</u>
	3. AS Finance reviewed: <u>bbennett</u>	Date: <u>5/03/19</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: <u>Theresa M. Wood</u> ✓	Date: <u>5/6/19</u>
	6. Submitted to Exec.: _____	Date: <u>5-10-19</u>
	7. Council approved (if necessary): _____	Date: <u>5.21.19</u>
	8. Executive signed: _____	Date: <u>5.22.19</u>
	9. Original to Council: _____	Date: <u>5-30-19</u>

CONTRACT FOR SERVICES AGREEMENT  
Comprehensive Bioinfiltration Swale Evaluation

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

- General Conditions, pp. 1 to 9,
- Exhibit A (Scope of Work), pp. 10 to 15,
- Exhibit B (Compensation), pp. 16 to 16,
- 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 1st day of May, 20 19, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31st day of December, 20 20.

The general purpose or objective of this Agreement is to: complete a comprehensive Bioinfiltration Swale Evaluation in the Geneva neighborhood of the Lake Whatcom watershed, 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 \$ 99,821.00. 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 22<sup>nd</sup> day of May, 20 19.

CONTRACTOR:

Herrera Environmental Consultants

*for* [Signature]  
John Lenth, Water Practice Director

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Shenandoah )

On this 6 day of May, 20 19, before me personally appeared Theresa Alford *Vice President* to me known to be the Principal Scientist of Herrera Environmental Consultants 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 [Address]. My commission expires 05/28/2022.





## 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:

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

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

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

30.2 Assignment and Subcontracting:

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

30.3 No Guarantee of Employment:

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

31.1 Ownership of Items Produced:

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

31.2 Patent/Copyright Infringement:

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

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

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

32.1 Confidentiality:

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

33.1 Right to Review:

This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor's Office. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for three (3) years after contract termination, and shall make them available for such review, within Whatcom County, State of Washington, upon request. Contractor also agrees to notify the Administrative Officer in advance of any inspections, audits, or program review by any individual, agency, or governmental unit whose purpose is to review the services provided within the terms of this Agreement. If no advance notice is given to the Contractor, then the Contractor agrees to notify the Administrative Officer as soon as it is practical.

34.1

Proof of Insurance:

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

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

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

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

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

34.2

Industrial Insurance Waiver:

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

34.3

Defense & Indemnity Agreement:

The Contractor agrees to defend, indemnify and save harmless the County, its appointed and elective officers and employees, from and against all loss or expense, including, but not limited to, judgments, settlements, attorneys' fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property, 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 County, its 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 County or its 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 County, its 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 County by reason of entering into this contract, except as expressly provided herein. The parties specifically agree that this agreement is for the benefit of the parties only and this agreement shall create no rights in any third party.

35.1

Non-Discrimination in Employment:

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

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

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

- 35.2 Non-Discrimination in Client Services:  
The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status; or deny an individual or business any service or benefits under this Agreement; or subject an individual or business to segregation or separate treatment in any manner related to his/her/its receipt any service or services or other benefits provided under this Agreement; or deny an individual or business an opportunity to participate in any program provided by this Agreement.
- 36.1 Waiver of Noncompetition:  
Contractor irrevocably waives any existing rights which it may have, by contract or otherwise, to require another person or corporation to refrain from submitting a proposal to or performing work or providing supplies to the County, and contractor further promises that it will not in the future, directly or indirectly, induce or solicit any person or corporation to refrain from submitting a bid or proposal to or from performing work or providing supplies to the County.
- 36.2 Conflict of Interest:  
If at any time prior to commencement of, or during the term of this Agreement, Contractor or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the County's interest, then Contractor shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County to make an informed judgment as to whether or not the County's interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Contractor to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination.
- 37.1 Administration of Contract:  
This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. The Contractor also agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals.
- The County hereby appoints, and the Contractor hereby accepts, the Whatcom County Executive, and his or her designee, as the County's representative, hereinafter referred to as the Administrative Officer, for the purposes of administering the provisions of this Agreement, including the County's right to receive and act on all reports and documents, and any auditing performed by the County related to this Agreement. The Administrative Officer for purposes of this agreement is:
- Cathy Craver  
Senior Planner  
322 N. Commercial St., Suite 224  
Bellingham, WA 98225Insert here
- 37.2 Notice:  
Except as set forth elsewhere in the Agreement, for all purposes under this Agreement except service of process, notice shall be given by the Contractor to the County's Administrative Officer under this Agreement. Notice to the Contractor for all purposes under this Agreement shall be given to the address provided by the Contractor herein above in the "Contractor Information" section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.
- 38.1 Certification of Public Works Contractor's Status under State Law:  
Contractor certifies that it has fully met the responsibility criteria required of public works contractors under RCW 39.04.350 (1), which include: (a) having a certificate of registration in compliance with RCW 18.27; (b) having a current state unified business identifier number; (c) if applicable, having industrial insurance coverage for its employees working in Washington as required in Title 51 RCW, an employment security department number as required in Title 50 RCW, and a state excise tax registration number as required in Title 82 RCW; and (d) not being disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).
- 38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:  
The Contractor further certifies, by executing this contract, that neither it nor its principles is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or Agency.



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

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

38.3

E-Verify:

The E-Verify contractor program for Whatcom County applies to contracts of \$100,000 or more and sub contracts for \$25,000 or more if the primary contract is for \$100,000 or more. Contractor represents 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](http://www.uscis.gov)

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

40.1

Modifications:

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

40.2

Contractor Commitments, Warranties and Representations:

Any written commitment received from the Contractor 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 brought by a party hereto (which may be brought either in court or pursuant to this arbitration provision), and consistent with the provisions hereinabove, any claim, dispute or controversy between the parties under, arising out of, or related to this Agreement or otherwise, including issues of specific performance, shall be determined by arbitration in Bellingham, Washington, under the applicable American Arbitration Association (AAA) rules in effect on the date hereof, as modified by this Agreement. There shall be one arbitrator selected by the parties within ten (10) days of the arbitration demand, or if not, by the AAA or any other group having similar credentials. Any issue about whether a claim is covered by this Agreement shall be determined by the arbitrator. The arbitrator shall apply substantive law and may award injunctive relief, equitable relief (including specific performance), or any other remedy available from a judge, including expenses, costs and attorney fees to the prevailing party and pre-award interest, but shall not have the power to award punitive damages. The decision of the arbitrator shall be final and binding and an order confirming the award or judgment upon the award may be entered in any court having jurisdiction. The parties agree that the decision of the arbitrator shall be the sole and exclusive remedy between them regarding any dispute presented or pled before the arbitrator. At the request of either party made not later than forty-five (45) days after the arbitration demand, the parties agree to submit the dispute to nonbinding mediation, which shall not delay the arbitration hearing date; provided, that either party may decline to mediate and proceed with arbitration.

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

43.1 Venue and Choice of Law:

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

44.1 Survival:

The provisions of paragraphs 11.1, 11.2, 11.3, 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

45.1 Entire Agreement:

This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.



# SCOPE OF WORK

## EXHIBIT "A" (SCOPE OF WORK)

# COMPREHENSIVE BIOINFILTRATION SWALE EVALUATION

On January 24, 2019, Whatcom County (County) notified Herrera Environmental Consultants (Herrera) of being selected for the project and requested that a scope of work and cost estimate be prepared to evaluate specific swales in the Geneva neighborhood of the Lake Whatcom watershed. Herrera will begin by evaluating the tributary basins and condition of the subject facilities, then perform an assessment and make recommendations to improve the performance of the facilities. This scope of work was developed based on a scoping meeting with County staff on February 14, 2019 and then refined.

This scope of work includes a discussion of the activities, assumptions, deliverables, and a schedule associated with this project:

<u>Task 1.0 –</u>	<u>Project Management</u> .....	11
<u>Task 2.0 –</u>	<u>Existing Conditions Assessment</u> .....	12
<u>Task 3.0 –</u>	<u>Testing, Monitoring &amp; Additional Analysis</u> .....	14
<u>Task 4.0 –</u>	<u>Facility Performance improvement options</u> .....	15

## Project Assumptions

- Outreach and communication with adjacent land owners and other stakeholders will be led by the County with support from Herrera as requested.
- The following map shows the stormwater facilities (swales, conveyance piping, flow splitters & filter vaults) included in this analysis.



## TASK 1.0 – PROJECT MANAGEMENT

Herrera will be responsible for ongoing contract administration of this project, including preparing invoices and progress reports, as well as coordination of all work efforts with the designated client point of contact. Progress reports and/or invoices will include hours by position breakdown and percent spent (or completed) by task. Herrera's project manager (Chris Webb) will have phone and email contact with the County project manager (Cathy Craver).

### Deliverables

- Monthly invoices.
- Monthly progress reports.

## **TASK 2.0 – EXISTING CONDITIONS ASSESSMENT**

Herrera will review the existing conditions of the swales and their tributary basins, the original design and as-built documents, and any GIS data provided by the County. Then Herrera will delineate the tributary areas for each facility under review, model the stormwater flows tributary to the subject facilities, assess their condition, and deliver a memo summarizing the work under this task that includes any differences between the results and previous assumptions from existing documents

### **Assumptions**

- There will be one deliverable for all work in Task 2 (Existing Conditions Technical Memo)

## **Task 2.1 – Facility Design Review & Basin Delineation**

Herrera will review the design documents for the subject facilities and then delineate the tributary areas in GIS using LiDAR contours and County provided GIS stormwater conveyance network. Then Herrera will ground truth and finalize the tributary basin delineations and produce tributary basin maps and tables of land cover for each facility.

### **Assumptions**

- County will provide the design documents for the subject facilities and GIS data for the project areas.

## **Task 2.2 – Hydrologic Modeling**

Herrera will perform hydrologic modeling for the subject facilities based on the basin delineations prepared to determine the expected flow regime for each facility.

### **Assumptions**

- Modelling will be performed in either WWHM or MGS Flood

## **Task 2.3 – Facility Condition and Functionality Assessment**

Herrera will attend a ½ day site walk with county staff (engineering, maintenance) to review the condition of the facilities, identify potential sources of degradation (e.g. excessive sediment inputs), note significant changes between the as-built condition and design, and to gather institutional knowledge about the facilities from County staff. Herrera may perform targeted media sampling and infiltration testing (Core samples, sediment depth, or cursory infiltration tests) as part of its condition assessment after the site walk. Herrera may conduct additional condition assessments as needed after the initial site walk.

### **Assumptions**

- County maintenance staff with historic and institutional knowledge about the swales will attend the facility inspection & site walk

## **Task 2.4 – Existing Conditions Technical Memo & Workplan**

Herrera will analyze the existing conditions information collected, identify data gaps, and discuss findings with the County. Then Herrera will prepare a technical memo summarizing all the information collected and analysis performed in Task 2. The memo will include a specific workplan for tasks 3 & 4 based on the results of the analysis and discussions with the County.

The anticipated scope of this memo is:

1. Summary of system designs
  - a. Describe the existing conditions of the facilities vs. the design plans (i.e. ponding depths, by-pass piping, and other changes since construction)
  - b. The anticipated phosphorus loading for impervious, lawn, and forested surfaces derived from the Lake Whatcom TMDL, by others.
  - c. Original expected performance per the original design reports provided by the County and a review of the guidance in the 2005 Stormwater Management manual for Western Washington.
  - d. Current understanding of performance of these systems based on assumed performance per 2014 and/or 2005 Stormwater Management manual for Western Washington and recent additional design guidance
2. Facility tributary area tabulations of land cover, soils & slopes in each basin
3. Modelling results and key assumption including assumed infiltration rates.
4. Preliminary findings & recommendations
5. Proposed work plan for Tasks 3 & 4

## **Assumptions**

- The content of the memo may vary from the anticipated scope described above based on the results of the earlier work on this task and discussions with the County.

## **Deliverables**

- Existing Conditions Technical Memorandum

# **TASK 3.0 – TESTING, MONITORING & ADDITIONAL ANALYSIS**

Based on the results of the existing conditions assessment Herrera will perform additional analysis which may include flow monitoring, limited water quality sampling, additional media testing, additional hydrologic and hydraulic modelling, assessment of groundwater conditions, hydrologic model calibration, or development of conceptual designs to improve the performance of the facilities.

All work under this task will be summarized in a testing, monitoring, and additional analysis technical memorandum.

## **Assumptions**

- Specific subtasks will be developed in concert with the County staff prior to beginning work under the Testing, Monitoring, and Additional Analysis Task .
- Given the size of the study area as well as the number and diversity of swale installations, flow and water quality monitoring, media testing, and groundwater assessments will be limited to a few strategic locations.
- All monitoring efforts will be at the basic screening level and provide data adequate to assist with qualitative assessments and prioritized interventions; however, best professional judgement will be necessary to bridge data gaps for final recommendations.
- The hours per person in the attached budget template are intended to describe the anticipated level of effort but it is understood that the hours and costs shown in this task may be reallocated to perform the tasks requested by the County.

## **Deliverables**

- Testing, Monitoring, and Additional Analysis Technical Memorandum

## **TASK 4.0 – FACILITY PERFORMANCE IMPROVEMENT OPTIONS**

Herrera will synthesize the data collected and analyses performed as part of this project into a tiered set of recommendations to improve the performance of the subject facilities. These recommendations may include operational changes, maintenance needs, and conceptual designs for capital construction projects. The goal for the recommendations is to prioritize interventions for the subject facilities to improve water quality function targeted at Phosphorus removal.

It is anticipated that the recommendations will be organized into three performance tiers:

- Tier 1 –Basic functionality
- Tier 2 - Improved performance
- Tier 3 - Full compliance with TMDL targets for removal of Phosphorus

### **Assumptions**

- The analysis will present the recommendations in terms of the cost of the intervention vs. the phosphorus removal performance. These results may be qualitative or quantitative depending on the nature and extent of work necessary under Task 3.
- The specific subtasks to be performed under this Facility Performance Improvement Options Task will be developed in concert with the County staff prior to undertaking the work for this task.
- The hours per person in the attached budget template are intended to describe the anticipated level of effort but it is understood that the hours and costs shown in this task may be reallocated to perform the tasks requested by the County .

### **Deliverables**

- Technical memo of recommendations to improve the performance of the subject facilities



Herrera Environmental Consultants  
**EXHIBIT "B"**  
 (COMPENSATION)  
 Cost Estimate for Comprehensive Bioswale Evaluation Project  
 Herrera Proposal or Project No. P18-06973-000

Project Name: Comprehensive Bioswale Evaluation Project Number of Tasks: 4			Task 1.0 Project Management		Task 2.0 Existing Conditions Assessment		Task 3.0 Testing, Monitoring & Additional Analysis		Task 4.0 Facility Performance Options		TOTAL	
<b>COST SUMMARY</b>												
Labor			\$5,691		\$32,108		\$26,699		\$28,665		\$92,163	
Travel and per diem			\$0		\$29		\$29		\$0		\$58	
Other direct costs (ODCs)			\$0		\$0		\$2,600		\$0		\$2,600	
Analytical laboratory			\$0		\$0		\$5,000		\$0		\$5,000	
<b>GRAND TOTAL</b>			<b>\$5,691</b>		<b>\$32,137</b>		<b>\$33,328</b>		<b>\$28,665</b>		<b>\$99,821</b>	
<b>COST ITEMIZATION</b>												
<b>Labor</b>												
<b>Personnel</b>												
			(2019 rates)									
			Rate/Hour		Hours		Cost		Hours		Cost	
Lenth, John			Scientist VI		0		\$0		4		\$1,027	
Aheam, Dylan			Scientist V		0		\$0		2		\$513	
Webb, Chris			Engineer V		0		\$0		4		\$963	
Hinman, Curtis			Scientist V		20		\$4,789		32		\$7,663	
Schmidt, Jennifer			GIS Analyst V		0		\$0		12		\$2,874	
Mitchell, Colleen			Engineer IV		0		\$0		16		\$3,167	
Schauer, Neil			Engineer II		0		\$0		8		\$1,350	
Geigel, Joseph			GIS Analyst II		0		\$0		0		\$0	
Mullen, Meghan			Engineer I		0		\$0		15		\$2,693	
Rapoza, Danielle			Scientist I		0		\$0		8		\$1,182	
Rudnick, Tracy			Accounting Administrator III		8		\$902		0		\$0	
Jackovich, Pam			Administrative Coordinator IV		0		\$0		6		\$702	
<b>SUBTOTAL LABOR (Burdened Labor)</b>					<b>28</b>		<b>\$6,691</b>		<b>204</b>		<b>\$32,108</b>	
<b>TRAVEL AND PER DIEM COSTS</b>												
			Unit Cost		Units		Cost		Units		Cost	
Auto Use			Mile \$0.58		0		\$0.00		30		\$29.00	
<b>SUBTOTAL TRAVEL AND PER DIEM</b>					<b>0</b>		<b>\$0</b>		<b>30</b>		<b>\$29</b>	
<b>OTHER DIRECT COSTS (ODCs)</b>												
			Unit Cost		Units		Cost		Units		Cost	
<b>Field Equipment and Supplies</b>												
Confined space tripod & winch			Day \$75		0		\$0.00		4		\$300.00	
Flow meter/data logger (Flo-tote 3)			Day \$50		0		\$0.00		30		\$1,500.00	
Gas detector (Verix MX4)			Day \$75		0		\$0.00		4		\$300.00	
Miscellaneous field supplies (lump sum)			\$500		0		\$0.00		1		\$500.00	
<b>SUBTOTAL ODCs</b>					<b>0</b>		<b>\$0</b>		<b>39</b>		<b>\$2,600</b>	
<b>ANALYTICAL LABORATORY COSTS</b>												
			Unit Cost		Units		Cost		Units		Cost	
Allowance for Analytical Laboratory			\$5,000		0		\$0.00		1		\$5,000.00	
<b>SUBTOTAL LABORATORY</b>					<b>0</b>		<b>\$0</b>		<b>1</b>		<b>\$5,000</b>	

**Budget Narrative**

Contract amounts shall not exceed the total budget referenced above. As consideration for services provided in Exhibit A, Scope of Work, the County agrees to compensate the contractor according to the hourly rates provided in the project budget (Exhibit B). Other reasonable expenses incurred in the course of performing the duties herein shall be reimbursed, including mileage at the current IRS rate. Lodging and per diem shall not exceed the GSA rate for the location where services are provided. Other expenditures such as printing, postage, and telephone charges shall be reimbursed at actual cost plus 10%. Expense reimbursement requests must be accompanied by copies of paid invoices. Any work performed prior to the effective date or continuing after the completion date of the contract, unless otherwise agreed upon in writing, will be at the contractor's expense.

Contract for Services Agreement  
 Herrera Environmental Consultants



WHATCOM COUNTY  
PUBLIC WORKS DEPARTMENT

Jon Hutchings  
Director



STORMWATER/NPDES  
322 N. Commercial, Suite 224  
Bellingham, WA 98225  
Main: (360) 778-6210  
FAX: (360) 778-6201  
[www.whatcomcounty.us](http://www.whatcomcounty.us)

RECEIVED

MAY 10 2019

JACK LOUWS  
COUNTY EXECUTIVE

**TO:** The Honorable Jack Louws, County Executive  
The Honorable Members of the Whatcom County Council

**THROUGH:** Jon Hutchings, Public Works Director *JH*

**FROM:** Kraig Olason, Stormwater Program Manager *KO*  
Cathy Craver, Senior Planner *CC*

**DATE:** May 7, 2019

**RE:** Contract for Services with Herrera Environmental Consultants for a Comprehensive Bioinfiltration Swale Evaluation of the Geneva Retrofits

---

**REQUESTED ACTION**

Please find attached for your review and approval two (2) originals of a contract for services between Herrera Environmental Consultants (Herrera) and Whatcom County for a Comprehensive Bioinfiltration Swale Evaluation of the Geneva Retrofits.

**BACKGROUND AND PURPOSE**

The Geneva Retrofits are a series of bioinfiltration swales installed beginning in 2007 to treat phosphorus from existing development in the Geneva neighborhood within the Lake Whatcom watershed. As part of the Lake Whatcom Total Maximum Daily Load (TMDL), Whatcom County will work with Herrera to assess the current function and effectiveness of these facilities. The contract provides for swale evaluations and development of recommendations for near-term and long-term improvements to maximize their function. Herrera was chosen through a competitive selection process (RFQ-18-01).

**FUNDING AMOUNT AND SOURCE**

This contract in the amount of \$99,821 will be funded through the Stormwater (123212) and NPDES (10860) budgets.

Please contact Cathy Craver at extension 6299, if you have any questions or concerns regarding the terms of this agreement.

Encl.