

[Advertisement for Bellingham Herald]

**LAKE WHATCOM WATER AND SEWER DISTRICT
LAKE WHATCOM ON-SITE SEWAGE SYSTEM IMPACT ASSESSMENT
REQUEST FOR PROPOSALS**

Lake Whatcom Water and Sewer District, in partnership with Whatcom County and the City of Bellingham, is requesting proposals from qualified consultants to assess the impact of on-site sewage (septic) systems in the Lake Whatcom watershed on water quality of the lake. Professional services include collection and analysis of water samples from multiple locations during multiple sample events during the 2019-2020 winter, and providing an assessment of the monitoring findings in a report. The District intends to select the most qualified firm or team of firms for the project. Proposal submittal requirements and project information are available from WCR Plan Center, 2215 Midway Lane, Suite 208, Bellingham, WA 98226, (360) 738-0370 or request access to the project by contacting WCR by e-mail at info@wcrinc.com.

Responses shall be delivered by 1:00 pm, December 2, 2019 to Attn: Justin Clary, Lake Whatcom Water and Sewer District, 1220 Lakeway Drive, Bellingham, WA 98229. Questions should be directed to Justin Clary at 360-734-9224 or justin.clary@lwwsd.org.

Any firm failing to submit information in accordance with the procedures set forth in the Request for Proposals may not be considered responsive and may therefore be subject to disqualification by the District.

**LAKE WHATCOM WATER AND SEWER DISTRICT
LAKE WHATCOM ON-SITE SEWAGE SYSTEM IMPACT ASSESSMENT
REQUEST FOR PROPOSALS**

I. INTRODUCTION

A. The Lake Whatcom Water and Sewer District (District), in partnership with Whatcom County and the City of Bellingham, is seeking proposals from qualified consulting firms (Consultant) to assess the impact of on-site sewage systems (OSSs; also known as septic systems) in the Lake Whatcom watershed on water quality of the lake. This Request for Proposals (RFP) outlines the information necessary to understand the consultant selection process and the required documentation a Consultant must submit. After reviewing this RFP, any firm that determines it has the necessary expertise and experience to successfully perform the required services may submit its Proposal, addressing the items set forth herein. A general overview of the selection process is as follows:

1. Consultants shall deliver the Proposal to the District no later than **1:00 p.m. on December 2, 2019**, after which time they will be reviewed and evaluated. The Proposal shall be delivered to:

**Lake Whatcom Water and Sewer District
1220 Lakeway Drive
Bellingham, WA 98229
Attn: Justin Clary, General Manager**

2. The District may, at its option, contact a Consultant and ask clarifying questions concerning the Consultant's Proposal.
3. At the District's option, the District may conduct interviews with Consultants qualifying as finalists.

B. The purpose of this RFP is to obtain a qualified consultant team to provide personal services in the collection and analysis of water samples and field data from multiple locations during multiple sample events during the 2019-2020 winter, and to provide a professional assessment of the monitoring findings in a report. The District intends to select the most qualified firm or team of firms for the project.

C. It is anticipated that Consultant services-related fieldwork will be conducted during multiple storm events during the 2019-2020 winter, with data analysis that culminates in a findings report, prepared by July 31, 2020.

II. PROJECT BACKGROUND

The Lake Whatcom watershed is located in Whatcom County in the northwest corner of Washington State. Lake Whatcom is the drinking water source for approximately 100,000 people, provides recreational opportunities for residents and visitors, and habitat for a variety of fish and animals.

Public awareness regarding deteriorating water quality in the 1980's led to a partnership between

Whatcom County, the City of Bellingham, and the District for cooperative watershed management under the Lake Whatcom Management Program. In 2016, the United States Environmental Protection Agency (USEPA) approved a Total Maximum Daily Load (TMDL) for phosphorus in the lake and fecal coliform bacteria in eleven lake tributaries. Efforts are underway to protect lake water quality, reduce the amount of phosphorus entering the lake system, and reduce fecal bacteria levels in tributaries entering the lake.

In 2016, the District contracted with Herrera Environmental Services (Herrera) to conduct a study examining potential impacts of OSSs on lake water quality along Northshore Drive. Herrera evaluated a number of parameters at open water, lakeshore, and discharge sites along OSS serviced and undeveloped shoreline areas. The primary parameters analyzed included fecal bacteria, optical brighteners, phosphorus, and bacteroidetes DNA biomarkers for human waste. Elevated levels of optical brighteners and bacteroidetes biomarkers were observed at some sites.

Following the study, the Whatcom County Health Department contacted landowners with OSSs within the study area to conduct evaluations of systems. A total of 97 OSSs were located within the study area, 68 landowners responded and systems were inspected, three failures were found and repaired, and maintenance needs were identified at one site. Eight landowners refused inspections and 17 landowners did not respond. One identified failure was upstream of a sampling site with moderately elevated fecal bacteria and optical brighteners. However, human bacteroidetes biomarkers were not detected or detected at low levels at this site.

Based upon feedback on the initial study from Lake Whatcom Management Program partners, this follow up study will incorporate shoreline areas with sewer service, provide consistent sample sites with equal representation of shoreline types, and further consider the results in relation to TMDL goals for the lake.

Lake water quality data and associated reports, including the 2017 Herrera report, are available on the Lake Whatcom Management Program website:

<http://www.lakewhatcom.whatcomcounty.org/resources>.

III. PROJECT GOALS AND OBJECTIVES

The purpose of this study is to follow up on the initial study, expand the study area to include shoreline areas serviced by sewer, and characterize fecal bacteria and phosphorus input to the lake from OSS and sewer serviced shorelines. The following goals and objectives provide guidance for the follow up study.

Goals:

- To determine if OSSs on parcels in shoreline areas are impacting lake water quality through fecal bacteria or phosphorus loading during wet season storm events.
- To determine if there is a difference in fecal bacteria and phosphorus levels in shoreline areas serviced by OSSs versus sewer systems during storm events.
- If impacts are detected, determine the extent of those impacts relative to TMDL requirements and public health.

Objectives:

- Characterize fecal bacteria, phosphorus, and bacteriodes DNA concentrations at shoreline sites during critical conditions for OSS leaching and sewer inflow and infiltration (wet season storm events).
- Compare fecal bacteria, phosphorus, and bacteriodes DNA concentrations between OSS, sewer, and undeveloped shorelines during critical conditions.
- Compare fecal bacteria concentrations to state water quality standards.
- Compare phosphorus concentrations to Lake Whatcom TMDL goals.
- Determine next steps for evaluating OSS impacts to surface water drainages and/or groundwater, if deemed necessary from the study results.

The anticipated scope of work is provided in Attachment A.

General anticipated schedule:

- RFP Advertisement – November 18, 2019
- Final Day Questions will be Accepted – November 26, 2019
- Proposal Due – December 2, 2019
- Proposal Evaluation – December 2 – December 6, 2019
- Consultant Interviews (if necessary – December 11, 2019
- Award – December 11, 2019
- Contract Execution – December 26, 2019
- Conduct fieldwork – December 2019 – March 2020
- Complete Plan – July 2020

IV. PROCUREMENT PROCESS

A. General Information

1. Compliance with Legal Requirements.

- a. The procurement of these consultant services will be in accordance with applicable District, federal, state and local laws, regulations and procedures. The District reserves the right to reject any and all proposals received. Any Consultant failing to submit information in accordance with the procedures set forth herein may not be considered responsive and may therefore be subject to disqualification by the District.
- b. In accordance with the provisions of this RFP, the District will evaluate all proposals received found to be in compliance with this RFP. The final selection, if any, will be that Consultant which, in the opinion of the District, best meets the requirements set forth in the RFP and is determined to be the most highly qualified for the services requested.

2. Costs Borne by Consultants. All costs incurred in the preparation of a proposal and participation in this RFP and negotiation process shall be borne by the proposing firms.

3. Public Disclosure. Once in the District's possession, proposals shall become property of the District and considered public documents under applicable Washington State laws. All documentation that is provided to the District may be subject to disclosure in accordance with Washington State public disclosure laws.

B. Protests

1. Time to File a Protest.

- a. Any prospective Consultant may file a protest challenging the requirements identified in the RFP provided such protest is received no later than ten (10) calendar days prior to the date established for responding to this solicitation.
- b. A financially interested Consultant may file a protest based on evaluation of proposals provided such protest is received no later than five (5) calendar days after the protesting party knows or should have known of the facts and circumstances upon which the protest is based.
- c. In no event shall a protest be considered if all proposals are rejected or after execution of this contract.

2. Form of Protest. A protest shall be in writing and addressed to: Lake Whatcom Water & Sewer District, 1220 Lakeway Drive, Bellingham, WA 98229, Attention: General Manager. The protest shall include the following:

- a. The name, address and telephone number of the party protesting or their representative;
- b. The RFP number and contract title under which the protest is submitted;
- c. A detailed description of the specific grounds for protest and any supporting documentation; and
- d. The specific ruling or relief requested.

3. Determination of Protest. Upon receipt of a timely written protest, the District General Manager shall investigate the protest and shall prior to execution of the contract respond in writing to the protest. The District General Manager's decision shall be considered the final action by the District.

4. Compliance with Protest Process. Failure to comply with these protest procedures will render a protest untimely and inadequate and may result in rejection thereof by the District.

5. Exhaustion of Administrative Remedies: As a mandatory condition precedent to initiating a lawsuit against the District, a prospective Consultant or a Consultant shall comply with the Protest Procedures defined herein.

6. Venue: By responding to this RFP and for the convenience of the parties, the prospective Proposer or a Proposer acknowledges and agrees that a lawsuit or action related to or arising out of this procurement shall be brought in the Superior Court of Whatcom County, Washington.

C. Schedule

1. Anticipated Schedule. The selection process is anticipated to proceed as outlined below and is subject to change:

<u>Date</u>	<u>Selection Process</u>
November 18, 2019	RFP Advertisement
December 2, 2019	Proposals Due
December 11, 2019	Recommendation to Board
December 26, 2019	Contract Execution

2. Notification. The District will notify appropriate firms of changes in the RFP and Notice of Selection.
3. Addenda. In the event it becomes necessary to revise any part of the RFP, addenda will be provided to all firms still under consideration at the time the addendum is issued. If any firm has reason to doubt whether the District is aware of the firm's interest, it is the responsibility of the firm to notify the District to be sure that addenda are received. Mail or call such notice to Justin Clary, 360-734-9224, Lake Whatcom Water and Sewer District, 1220 Lakeway Drive, Bellingham, WA 98229.

D. Negotiations

1. At the completion of the selection process, the selected Consultant will enter into contract negotiations with the District. Negotiation of a contract will be in conformance with applicable federal, state and local laws, regulations and procedures. The negotiated cost and pricing data, once agreed to by the District and the Consultant, shall form the basis for a billing/payment provision.
2. At the beginning of negotiations the selected Consultant and District shall establish a Negotiation Schedule. Negotiations shall begin with the Scope of Work (SOW) identified in the Qualifications Statement and the Work Plan/Level of Effort (LOE) submitted by the selected Consultant.
3. If the District and selected Consultant cannot come to terms on LOE and SOW after three (3) revisions to the SOW and LOE, the District may discontinue negotiations and go to next highest ranked Consultant. Failure to reach agreement after three (3) revisions demonstrates an inability to reach agreement within a reasonable timeframe.
4. If the District and selected Consultant cannot come to terms on cost and pricing data after three (3) revisions, the District may discontinue negotiations and go to the next highest ranked Consultant. Failure to reach an agreement after three (3) revisions demonstrates an inability to reach agreement within a reasonable timeframe.

E. Contract Terms and Conditions

1. A copy of the sample agreement for personal services is included as Attachment B.
2. By submitting a proposal, the Consultant represents that it has carefully read the terms and conditions of the RFP and agrees to be bound by them.

F. Cost and Pricing Data

1. The selected Consultant shall provide the following information within five (5) business days after Notice of Selection has been received. Failure to provide such information in a timely manner may result in the District discontinuing negotiations with the selected Proposer and starting negotiations with the next highest ranked Proposer.
 - a. Direct Salaries. Selected consultant and its subconsultants shall submit the following information:
 - (1) List of employees anticipated to be utilized in the Project, in alphabetical order (last name first), with job classification, rate of pay, and salary review date.
 - b. Overhead Rates. Selected Consultant and its subconsultants shall provide the following information:
 - (1) Provide current audited overhead schedule, audit report, and cost detail by general ledger account.
 - (2) Provide a listing of all personnel who will perform work on this Project whose salaries, in full or in part, are included in overhead for the current and previous year. For each person identify his or her title, classification, position in company and salary rate.
 - c. Billing Rates. Submit only for certain qualifying small firms.
 - (1) Small firms that do not have an accounting system in place, that identifies direct and indirect costs separately, generally use billing rates. Fully burdened billing rates, which include labor, overhead costs and profit are allowed on a case-by-case basis for those firms that typically use this method for billing purposes.
 - d. Other Direct Cost(s).
 - (1) Identify all Other Direct Cost(s) (ODC) for this project and the rationale used as a basis for this cost.
 - (2) For each ODC, provide the unit prices and/or rates with supporting rationale, historical data and estimating methodology used to validate these rates.
 - (3) Failure to identify ODC results in a presumption that there are no ODC.
 - e. Profit. Selected consultant and its subconsultants shall provide the following:
 - (1) Proposed profit;
 - (2) Rationale and justification for the proposed profit rate.
 - f. Markup on Subconsultant Costs and ODC. Selected consultant and its subconsultants shall provide the following:
 - (1) Proposed markup on subconsultant costs and ODC;
 - (2) Rationale and justification for the proposed markups.

V. INSURANCE REQUIREMENTS

- A. Prior to execution of the Agreement, the Selected Consultant shall file with the District certificates of insurance and endorsements from the insurer(s) certifying to the coverage of all insurance required in accordance with the District's standard agreement. All evidences of insurance must be certified by a properly authorized officer, agent, general agent or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, the expiration date, and provides that the District receives notice at least thirty (30) calendar days prior to the effective date of any policy limit or cancellation of required coverages. The Consultant shall notify the District at least thirty (30) calendar days prior to the effective date of any cancellation or reduction in coverage in the policy. The Consultant shall maintain during the entire Contract period, insurance coverage at least as broad as the limits and coverage outlined in the District's standard agreement. The Consultant shall, upon demand of the District, make available to the District at Consultant's local office in all such policies of insurance and the receipts of payment of premiums thereon. Failure to provide such policies of insurance within a time acceptable to the District shall entitle the District to suspend or terminate the Consultant's work hereunder. Suspension or termination of the Consultant Agreement shall not relieve the Consultant from its insurance obligation hereunder.
- B. The Consultant shall obtain and maintain at a minimum the limits of insurance set forth in the Consultant Agreement. By requiring such minimum insurance, the District shall not be deemed or construed to have assessed the risks that may be applicable to the Consultant under the Agreement. The Consultant shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.
- C. Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, errors and omissions when required, is acceptable on a "claims made" form.
- D. If coverage is approved and purchased on a "claims made" basis, the Consultant shall continue coverage either through (1) policy renewals for not less than three years from the date of completion of the work which is the subject of this Agreement or (2) the purchase of an extended discovery period for not less than three years from the date of completion of the work which is the subject of this Agreement, if such extended coverage is available.
- E. If, in order to meet the insurance requirements the Consultant must rely on the insurance to be provided by one or more subconsultant, then such subconsultant(s) shall be required to meet all of the requirements herein applicable to the insurance they are providing, and shall include District and Consultant as additional insureds on all liability policies except Professional Liability/Errors & Omissions and Workers Compensation. The District will not make any payments on work performed by subconsultants until all insurance documentation from such subconsultants have been received and accepted by the District.
- F. Provided the affected insurance policies permit the following waiver, without voiding coverage, Consultant and District waive all rights against each other to subrogation for damages covered by property insurance.

VI. EVALUATION AND SELECTION CRITERIA

- A. All Proposals will be evaluated by a Consultant Selection Panel ("Panel"), which will be responsible for ranking of the Submittals. The Panel will be comprised of representatives of the District, Whatcom County, and City of Bellingham. The criteria outlined below will be used in evaluating the Proposals and determining the most qualified Consultant. A total of 100 points (excluding a potential interview) has been assigned to the Evaluation Criteria. The maximum points possible will follow each criterion listed. The points indicate relative weight or importance given to each criterion.
- B. The District may determine that the ranking is close and an interview with the top ranked firms is necessary. Interviews will have a maximum of 50 points. The number of Consultants to participate in interviews, if any, will be determined by the District based on the recommendation of the Panel. The District may choose to use different criteria for the interview, in which case the finalists will be so notified in writing. The interview process may or may not include a Consultant presentation and the Consultants will not be given questions to prepare for in advance of the interview.
- C. Following the review of the submittals and the interviews (if conducted) the evaluators will use the points to score each Submittal. Each evaluator will put the scores in rank order, with the highest scored Consultant first, the second-highest scored Consultant second, etc. This ranking will then be totaled. From the ranking, the District intends to recommend the most qualified Consultant to the Board of Commissioners for approval to begin negotiations.

VII. DOCUMENTATION

- A. The prime Consultant shall submit eight (8) bound copies and one electronic copy (PDF file) on CD (not to exceed 20MB) of the proposal.
- B. Consultants are discouraged from submitting lengthy proposals. The District requests that proposals be concise and clearly written containing only essential information. Proposals should be 20 pages or less, including cover letter, cost estimate, and any resumes.
 - Submittals should be minimum of 11-point font.
 - Sheets with double sided printing will be counted as two pages.
 - Sketches, maps and charts printed on 11-inch x 17-inch paper count as one page.

The Proposal shall consist of the following parts:

1. Letter of Interest. The Letter of Interest shall contain the following information:
 - RFP Title: **Lake Whatcom On-site Sewage System Impact Assessment**;
 - Consultant's name, mailing address, contact person, telephone and fax numbers;
 - UBI and federal tax ID numbers; and
 - Stipulation that Consultant accepts all terms of the RFP, especially the terms and conditions of the attached sample contract (Attachment B).
2. Proposal. The submittal shall include Consultant's:

- General statement of the understanding of the scope of services.
 - Project Team including proposed subconsultants.
 - The Project Team’s experience with water quality monitoring and assessment.
 - Experience specific to Lake Whatcom and/or assessing phosphorus and fecal coliform impacts in lakes of the Pacific Northwest.
 - Approach to managing and completing similar projects.
 - Approach to communicating with the District and its partners.
 - Approach to ensure cost efficient execution and quality control.
3. Cost Estimate. The submittal shall include Consultant’s:
- Completed cost estimate provided as Attachment C, and signed by an authorized representative of the Consultant.

The proposal shall be presented in a clear, comprehensive and concise manner and shall be submitted in a complete package by the prime Consultant.

VIII. EVALUATION CRITERIA AND SUBMITTAL INFORMATION

A. Experience and Technical Competence - 40 Points

The Panel will evaluate the experience and technical competence of the Consultant's Key Personnel to complete the project. Emphasis will be placed on recent experience and expertise in performing the required services on projects with a scope of work similar in size and complexity to this Project.

B. Work Plan - 20 points

The Panel will evaluate the proposed Work Plan to determine the Consultant’s understanding of the scope of work, allocation of skilled personnel to specified tasks, appropriate utilization of subconsultants, and overall project approach.

1. The Work Plan is an opportunity for the Consultant to demonstrate its understanding of scope and propose ideas for the Project.
2. Be certain to identify any proposed changes to the scope by adding or subtracting tasks.

C. Record of Past Performance & References - 20 Points

1. The Panel will evaluate the project team's record of performance and references on previous and/or ongoing projects with consideration given to quality of work, ability to meet schedules and budgets, cooperation, responsiveness, performance on other projects and other managerial considerations.
2. The Panel will evaluate the project examples provided with respect to Key Personnel’s experience with similar projects and the amount of involvement they had with the project examples. The project examples provided should demonstrate Key Personnel’s experience

in providing services similar in scope to this Project.

D. Cost - 20 Points

1. The lowest responsible, responsive proposal will receive the maximum point total (20 points). All higher bids will receive a score calculated as a percentage of the maximum points relative to the difference between that bid and the low bid. For example, if the low bid is \$8 and the subject bid is \$10, that proposal would receive 16 points (20 points x $\$8/\10).

E. Interviews - 50 Points (if conducted)

1. The Panel may or may not conduct interviews. If the Panel determines that interviews are necessary, the Panel will conduct interviews with the short-listed Consultants (finalists).
2. Consultants will be notified in writing of the request and provided the date, place, and time of the interview. The interview process may or may not include a Consultant presentation and the Consultants will not be given questions to prepare for in advance of the interview. The District may choose to use different criteria for the interview, in which case the finalists will be so notified in writing.
3. Failure to participate in the interview process shall result in a Consultant's disqualification from further consideration.

ATTACHMENT A

LAKE WHATCOM WATER AND SEWER DISTRICT PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is made on _____, **2019**, between LAKE WHATCOM WATER AND SEWER DISTRICT ("District"), a Washington municipal corporation and _____ ("Consultant"),

In consideration of the mutual benefit derived by the parties and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree and covenant as follows:

1. PROJECT

Consultant shall perform all services and furnish all labor, tools, materials, and equipment for the District's project known as **Lake Whatcom On-Site Sewage System Impact Assessment (District Project #A1919)** ("Project") in accordance with and as more fully described in **Attachment A – Scope of Work**. No additional services shall be performed or deemed authorized without the written prior authorization from the District

2. PROJECT COST

The District shall pay Consultant for actual services rendered per **Attachment B - Rates and Charges** not to exceed an amount of _____ (\$_____.____) ("Project Cost"). The Rates and Charges include all costs associated with the Project, including, but not limited to labor, materials, overhead, administrative, and permit and regulatory costs, unless otherwise agreed to by the parties in writing. Prior written approval from the District is required for any services not included in the Scope of Work (Attachment A). Consultant shall have no right or claim for payment for services provided which are not included in the Scope of Work (Attachment A) even if said services were performed in good faith. Any services performed in violation of this paragraph shall be at the sole cost and expense of Consultant.

3. AGREEMENT TERM/PERIOD OF PERFORMANCE

Consultant shall commence work under this Agreement upon receipt of notice to proceed from the District. The Scope of Work must be completed no later than **July 31, 2020** unless extended or terminated earlier by the District pursuant to the terms and conditions of this Agreement.

4. PAYMENT TERMS

The Project Cost shall be payable in the following manner: On or before the 26th day of each month, Consultant shall submit a detailed monthly invoice for all services provided describing in reasonable and understandable detail the services invoiced, the progress of the Scope of Work, and the requested payment amount. The District shall issue a warrant for payment of approved services contained in the invoice within thirty (30) days after approval.

5. CHANGE IN THE SCOPE OF WORK

Change in the Scope of Work, Project Cost, or Term shall require execution of a written amendment signed by the Consultant and District. The District may at any time order additions, deletions, revisions, or other written changes in the Scope of Work. The Consultant will prepare and submit a

proposal to the District for consideration that details changes to the Scope of Work, Project Cost or Term, at the request of the District.

6. STANDARD OF CARE

The Consultant shall be responsible for the professional quality, technical adequacy and accuracy, timely completion and coordination of all tests, reports and other services prepared or performed pursuant to this Agreement. The Consultant shall perform its work to conform to generally accepted professional standards applicable to the types of services and work provided hereunder. The Consultant shall be responsible for the professional standards, performance and actions of all persons and firms performing work pursuant to this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or specific breaches of a contractual obligation in such tests, reports and other services. The District's approval of plans, drawings and specifications shall not relieve Consultant of responsibility for the adequacy or accuracy thereof. Consultant shall remain liable for damages and costs incurred by the District arising from Consultant's errors, omissions or negligent performance of services furnished under this Agreement.

7. INDEMNIFICATION

Consultant and subcontractors of Consultant agree to defend, indemnify, and hold harmless the District, its commissioners, officers, managers, employees, engineers, agents, and volunteers from and against any and all demands, claims, losses, injuries, damages, liabilities, suits, judgment, reasonable attorneys' fees and costs, and other expenses of any kind on account of, relating to, or arising out of Consultant's performance of the Scope of Work under this Agreement, except to the extent such injuries or damages are caused by the negligence of the District. For the purposes of this indemnification, Consultant specifically and expressly waives any immunity granted under the Washington Industrial Insurance Act, Title 51 RCW. This waiver has been mutually negotiated and agreed to by the parties. If a court of competent jurisdiction determines that this agreement is subject to RCW 4.24.115, Consultant's obligation to defend, indemnify, and hold harmless the District, its officers, employees, agents and volunteers shall be limited to the extent of the District's negligence. Consultant shall include this indemnification obligation for the benefit of the District as a subcontractor requirement in any subcontractor agreement which includes performance of services under this Agreement; provided that, Consultant shall remain wholly responsible to the District for performance of the indemnification obligation set forth herein. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

8. INSURANCE

Consultant shall obtain, and keep in force during the term of this Contract, insurance policies as follows:

- a. **Commercial General Liability.** Limits no less than \$1,000,000.00 combined single limit per occurrence and \$2,000,000.00 aggregate for personal injury, bodily injury and property damage. Coverage shall be as broad as Insurance Services Office form number (CG 00 01) covering Commercial General Liability.
- b. **Automobile Liability Insurance.** Limits no less than \$1,000,000.00 combined single limit per accident for bodily injury and property damage. Coverage shall be as broad as Insurance Services Office form number (CA 00 01) covering Business Auto Coverage, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9.

- c. **Workers' Compensation.** Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal Law.
- d. **Professional Liability.** Professional Liability coverage may be required at the option of the District, in an amount of not less than \$1,000,000 per claim and in the aggregate. Insurance shall have a retroactive date before the commencement of the Term and coverage shall remain in effect for the Term of this Agreement plus three years.
- e. The insurance policies shall specifically name the District, its elected or appointed officials, officers, employees, and volunteers as insureds with regard to damages and defense of claims arising from (1) activities performed by or on behalf of the Consultant; or (2) products and completed operations of the Consultant; or (3) premises owned, leased, or used by the Consultant.
- f. The insurance policies (1) shall state that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; (2) shall be primary insurance with regard to the District; and (3) shall state that the District will be given at least 45 days' prior written notice of any cancellation, suspension or material change in coverage.
- g. Before commencing work and services, Consultant shall provide to the District a Certificate of Insurance evidencing the required insurance accompanied by endorsements as are necessary to comply with the requirements of this section. The District reserves the right to request and receive a certified copy of all required insurance policies.
- h. Any payment of deductible or self-insured retention shall be the sole responsibility of Consultant.

9. COMPLIANCE WITH CODES AND REGULATIONS

Consultant is expected to comply with all applicable statutes in performing the Scope of Work, including, but not limited to all state and local laws, regulations, codes and standards that are applicable at the time Consultant performs the services.

10. PERMITS, TAXES, TEMPORARY FUNCTIONS

Consultant shall secure and pay for all permits, fees and licenses necessary for the performance of this Agreement. Consultant shall pay any and all federal, state and municipal taxes, including sales taxes, if any, for which Consultant may be liable in carrying out this Agreement.

11. TERMINATION

This Agreement may be terminated by the District for cause when the District deems continuation to be detrimental to its interests or for failure of the Consultant to adequately perform the services specified in the Agreement. The District may terminate this Agreement for cause by sending a written notice to Consultant that specifies a termination date at least seven (7) days after the date of notice. This Agreement may also be terminated by the District without cause by sending written notice to Consultant that specifies a termination date at least thirty (30) days after the date of notice. Unless terminated for Consultant's material breach, Contractor shall be paid or reimbursed for all hours worked up to the termination date, less all payments previously made; provided that the work

performed after the date of notice must be only that which is reasonably necessary to terminate the work in a professional manner, unless otherwise agreed.

12. GENERAL PROVISIONS

- a. **Notices.** Any notice or demand desired or required to be given under this Agreement shall be in writing and deemed given when personally delivered, sent by facsimile machine, or deposited in the United States Mail (or with an express courier), postage prepaid, sent certified or registered mail, and addressed to the parties as set forth below or to such other address as either party shall have previously designated by such a notice:

District:

Attn: General Manager
Lake Whatcom Water and Sewer District
1220 Lakeway Drive
Bellingham, WA 98229

Phone: (360) 734-9224
Fax: (360) 738-8250

Consultant:

Attn: _____

Phone: _____
Fax: _____

- b. **Records and other Tangibles.** Until the expiration of six years after the term of this Agreement, Consultant agrees to maintain accurate records of providing the services specified by the Agreement and to deliver such records to the District as requested by the District.
- c. **Ownership of Work.** The District has ownership rights to the plans, specifications, and other products prepared for the Project by the Consultant. Consultant shall not be responsible for changes made in the plans, specifications or other products by anyone other than the Consultant. Consultant shall have free right to retain, copy and use any tangible materials or information produced but only for its own internal purposes. Use of documents or other materials prepared under this Agreement for promotional purposes shall require the District's prior consent.
- d. **Disclosure.** All information developed by Consultant and all information made available to the Consultant by the District, and all analyses or opinions reached by the Consultant shall be confidential and shall not be disclosed by Consultant without the written consent of the District, unless said information is made publicly available by the District or the City of Bellingham.
- e. **Non Discrimination.** During the term of this Agreement, the Consultant agrees that no person shall, on the grounds of race, creed, color, national origin, sex, marital status, age, religion, or on the presence of any sensory, mental or physical disability, be discriminated against by the Consultant.
- f. **Relationship of the Parties.** Nothing contained herein or any document executed in connection herewith, shall be construed to create an employer-employee relationship or joint venture relationship between the District and Consultant, its employees or subcontractors. The Consultant is an independent contractor. The Consultant is responsible for its acts or omissions and acts or omissions of its agents, employees, servants, subcontractors, or otherwise during the performance of this Agreement.

- g. **Entire Agreement.** This Agreement and its attachments contain the entire understanding between the District and Consultant relating to the Project which is the subject of this Agreement. Subsequent modification or amendment of this Agreement shall be in writing and signed by the parties to this Agreement.
- h. **Waiver.** Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement.
- i. **Assignment.** The Consultant shall not assign, or transfer any interest in this Agreement in whole or in part to any individual, firm or corporation without the prior written consent of the District. Subject to the provisions of the preceding sentence, this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Consultant. This Agreement is made only for the benefit of the District and the Consultant and successors in interest and no third party or person shall have any rights hereunder whether by agency or as a third party beneficiary.
- j. **Severability.** If any term, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, the remainder of this Agreement shall remain in effect.
- k. **Dispute Resolution.** If any dispute, controversy, or claim (collectively “dispute”) arises out of this Agreement, the parties agree to first try to settle the dispute in non-binding mediation with the assistance of a recognized professional mediation service. The parties shall each designate a representative with full settlement authority who will participate in the mediation. The parties shall bear all expenses associated with the mediation equally, except for attorneys' fees. Any dispute subject to, but not resolved by, mediation shall be subject to a private arbitration which, unless the parties mutually agree otherwise, shall be held in accordance with RCW 7.04A.
- l. **Jurisdiction/Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Any suit to enforce or relating to this Agreement, including the enforcement of any arbitration award, shall be brought in Whatcom County Superior Court, Whatcom County, Washington.
- m. **Attorneys' Fees.** In the event that any party commences litigation against the other party relating to the performance, enforcement or breach of this Agreement, the prevailing party in such action shall be entitled to all costs, including attorneys' fees, expert witness fees and costs and any such fees or costs incurred on appeal.
- n. **Counterparts.** This Agreement may be executed in counterparts and each shall be deemed an original, but all of which together shall constitute a single instrument.

In Witness Whereof, the parties enter into this Agreement, mutually agree on above terms, are authorized to execute this Agreement and the parties have executed this Agreement on the day and year indicated.

(“CONSULTANT”)

(Signature)

(Printed Name and Title)

Dated: _____

Approved as to form:

Robert Carmichael
Attorney for Lake Whatcom Water & Sewer District

Dated: _____

Lake Whatcom Water and Sewer District
 (“DISTRICT”)

Justin Clary, General Manager

Dated: _____

ATTACHMENT A – SCOPE OF WORK

SAMPLE

ATTACHMENT B – RATES AND CHARGES

SAMPLE

ATTACHMENT B

Scope of Work Phase 2—Lake Whatcom On-Site Sewage System Impact Assessment

This scope of work includes the elements of the project that should be included in the consultant's proposal. Consultant cost proposals should be based upon the cost to perform the work described herein. Final scope and fee will be negotiated following consultant selection, allowing for consideration and possible incorporation of the consultant's professional recommendation(s) to enhance the approach described below.

Study Area and Design:

This study will include Lake Whatcom shoreline areas with on-site sewage system (OSS), sewer, and no development. An equal number of sites (five each) representing comparable distances along 1) OSS-serviced shoreline, 2) sewer-serviced shoreline, and 3) undeveloped shoreline will be selected to develop a fixed network of sites for the study. Consider sites along 1) original study area, 2) north shore shoreline, representative sewered sites should be collected in areas represented by moderate development with efforts made to select sites not directly impacted by creek discharge and 3) Hertz Trail.

Building from the initial study, storm events during the wet season will be targeted for this study. Both OSS and sewer system functions are most stressed during storm events. For OSS, wet season conditions leading to soil saturation and high water tables can stress a system. Storm events during this period represent the most critical conditions for potential OSS failure. Sewer systems can be similarly stress during large rain events due to stormwater inflow and infiltration.

Site Location Determination

- Option 1: Site locations will be identified using representing approximately equal segments along the designated shoreline area.
- Option 2: Following techniques used in the first study, a field fluorometer will be used along the lakeshore to determine locations for sampling sites. Sites identified during the first sampling run will continue to be sampled during subsequent sampling run as a fixed network of sites.
- Option 3: Combination of the two above options.
- Option 4: Other consultant proposed option.

Opportunities to scale the number of sites and samples:

- Number of sampling events/storm sampling criteria:
 - In order to be consistent with the initial study, a minimum of three storm events will be sampled. Four or more sampling events to capture variability between rain events will be scoped during final contract negotiation if there is adequate budget.
 - Storm events can be difficult to predict, sometime resulting in false starts. If the team chooses to sample more rain events, incorporation of smaller storms in the sampling criteria may be allowed to ensure that the targeted number of storms during three month period can be captured.
 - The first study used storm criteria of 0.5 inches/24 hours for three storms. If the final budget allows for monitoring more than three storms, criteria will be adjusted to 0.25 inches/24 hours with a goal of capturing at least 3 storms with 0.5 inches/24 hours or greater.
- Number of sample sites/types of sample sites:
 - The primary goal of this study is to determine potential impact on Lake Whatcom water quality. With this goal in mind, lakeshore sites near surface water outfalls will be first

tier priority sites for this study. Caution should be exercised to not sample sites directly impacted by a perennial stream with a bacterial TMDL. A minimum of five lakeshore sample locations for each type of sewer system (OSS and sewer) and control site (undeveloped). This number may be scaled up, as budget allows, however should remain consistent between lakeshore types. As in the previous study, site selection for the developed sites should target areas where optical brighteners are detected at greater than approximately 50 percent above background as measured at the lake control site.

- Optional (not to be included in cost proposal). Upstream sites (surface water drainages above lake shore properties) would provide more information about where fecal bacteria, optical brighteners, bacteroidetes biomarkers, and phosphorus are originating from in the watershed. Pollutants carried from these upstream sites would likely be less diluted than water at outfalls and lake sites due to volume of water. Based upon the goals of this study, these would be second tier priority sites and may be better suited to follow up work if deemed necessary and within available budget.
- Optional (not to be included in cost proposal). Open water lake sites would provide negative control sites. The undeveloped lakeshore sites would also serve as negative controls and could provide baseline levels for optical brighteners. These open water sites would be third tier priority sites, should budget allow.
- Optional (not to be included in cost proposal). As described above, additional sites may be sampled each run (beyond the fixed network) if field fluorometer readings for optical brighteners exceed established thresholds during the sample run.

Sampling Methods:

- In situ: YSI ProDSS (or equivalent) for temperature, dissolved oxygen, pH, conductivity and turbidity; and Cyclops fluorometer (or equivalent) for optical brighteners
- Grab samples for laboratory analysis: fecal coliform, E.coli, phosphorus, and bacteroidetes human biomarkers

Quality Control:

- For fecal coliform bacteria and phosphorus, include field duplicates for 10% of samples, lab duplicates for 10% of samples, and one field blank per sampling run

Task 1: Project Development and Management

The consultant will be responsible for understanding the goals and objectives of the study, gathering background information, and developing a sampling plan that outlines the study area and design, sampling techniques and parameters, quality control measures, laboratory analysis, and data analysis. The consultant will prepare for and attend a project kick-off meeting in the Bellingham area. Whatcom County and/or the Lake Whatcom Water and Sewer District will provide information to allow for assessment of parcel locations, and site sewer categorization. Monthly progress reports will provide updates on activities, successes, and challenges.

Deliverables:

- Sampling Plan (building upon Quality Assurance Project Plan (QAPP) developed for initial study)
- Monthly Progress Reports and Invoices

Task 2: Data Collection and Analysis

This study will include Lake Whatcom shoreline areas with OSS, sewer, and no development. Building from the initial study, storm events during the wet season should be targeted for this study.

The consultant will be responsible for forecasting storms, collecting and recording field data, collecting water samples for laboratory analysis, and compiling and analyzing data. At a minimum three sampling runs should be included in this study during January through March 2020. Each survey event will be conducted in one day during daylight hours during or immediately following storm events representing the defined event criteria. Each sample event will be conducted by a minimum of two consultant staff members using a hand-carried inflatable motor raft, or equivalent. All watercraft must be permitted and inspected to demonstrate compliance with the Lake Whatcom Aquatic Invasive Species Prevention Program. Use of a fluorometer to assist in reconnaissance survey and identifying site locations is recommended (similar to initial study). A Cyclops fluorimeter (Cyclops 7 probe with the DataBank display/logger, stainless steel sensor, and 5-meter cable) is available for the consultant's use related to this study. Each location will be logged using a consultant-provided GPS unit. The consultant is encouraged to conduct laboratory analysis for bacteria and nutrients at local laboratories.

Deliverables:

- Field Sheets and Lab Reports
- Excel Workbook with all Raw Data

Task 3: Reporting and Presentation

The consultant will review and validate all field and laboratory data according to quality control measures in the monitoring plan. A draft report will be prepared for the Project Team and Lake Whatcom Data Team with a two week period for review and feedback. A final report will be prepared addressing comments received. The consultant will provide a presentation highlighting study methods, results, and findings following completion of the final revision to the report.

Deliverables:

- Excel Workbook with all Raw Data and Qualifiers
- Draft Report Summarizing Study Methods, Results, and Discussion
- Final Report
- Presentation of Study

ATTACHMENT C

Cost Estimate Phase 2—Lake Whatcom On-Site Sewage System Impact Assessment

In compliance with the scope of work defined in the Request for Proposals, the following cost estimate is submitted:

Task	Consultant			Subconsultant	Total
	Hours	Labor	Direct		
1. Project Development and Management		\$	\$	\$	\$
2. Data Collection and Analysis		\$	\$	\$	\$
3. Reporting and Presentation		\$	\$	\$	\$
Total Estimated Cost					\$

I certify that I am authorized to represent _____ and that the above cost estimate has been prepared under my direction.

Signature

Date

Name (printed)

Title

Company