

Approved by City Council: \_\_\_\_\_  
Date \_\_\_\_\_

## STANDARD CONTRACT PROVISIONS FOR PERSONAL SERVICES (NON-PERS MEMBERS)

### 1. Retirement System Status

Contractor is not a contributing member of the Public Employees' Retirement System and is responsible for any federal or state taxes applicable to any compensation or payments paid to contractor under this contract. Contractor is not eligible for any benefits from these contract payments of federal Social Security, unemployment insurance, or workers compensation except as a self-employed individual.

### 2. Effective Date and Duration

The passage of the contract expiration date (as recorded on reverse side) shall not extinguish, prejudice or limit either party's right to enforce this contract with respect to any default or defect in performance that has not been cured.

### 3. Government Employment Status

If this payment is to be charged against federal funds, Contractor certifies it is not currently employed by the federal government.

### 4. Subcontractors and Assignment

Contractor shall not enter into any subcontractors for any other work scheduled under this contract without prior written consent of the City. Subcontractors exceeding \$20,000 in cost shall contain all required provisions of the prime contract.

### 5. Dual Payment

Contractor shall not be compensated for work performed under this contract by any other municipality of the State of Washington.

### 6. Funds Available and Authorized

City certifies at the time of contract execution that sufficient funds are available and authorized for expenditure to finance costs of this contract within the City's appropriation or limitation.

### 7. Termination

- (a) This contract may be terminated by mutual consent of both parties, or by the City upon 30 days' notice in writing and delivered by certified mail or in person.
- (b) City may terminate this contract effective upon delivery of written notice to the Contractor, or at such later date as may be established by the City, under any of the following conditions:
  - (i) If City funding from federal, state or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quality of services. The contract may be modified to accommodate a reduction in funds.
  - (ii) If federal or state regulations or guidelines are modified, changes or interpreted in such way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.
  - (iii) If any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this contract is for any reason denied, revoked or no renewed. Any such termination of this contract under subparagraphs 7(a) or 7(b) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.
- (c) The City may terminate the whole or any part of this agreement by written notice of default (including breach of contract) to the Contractor.
  - (i) If the Contractor fails to provide services called for by this contract within the time specified herein or any extension thereof, or
  - (ii) If the Contractor fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms, and after receipt of written notice from the City, fails to correct such failures within 10 days or such other period as the City may authorize.

The rights and remedies of the City provided in the above clause related to defaults (including breach of contract) by the Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

### 8. Access to Records

City, the Secretary of State's Office of the State of Washington, the federal government, and their duly authorized representatives shall have access to the books, documents, papers and records of the Contractor directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcripts of the period of three (3) years after final payment. Copies of applicable records shall be made available upon request. Payment for cost of copies is reimbursable by City.

### 9. State Tort Claims Act

Contractor is not an officer, employee or agent of the State or City as those terms are used in RCW 4.96.020.

### 10. Compliance with Applicable Law

Contractor shall comply with all federal, state and local laws and ordinances applicable to the work under this contract.

### 11. Indemnification

- (a) Indemnity-Claims for Other than Professional Liability  
Contractor shall defend, save and hold harmless the City, their officers, agents and employees from all claims, suites or actions of whatsoever nature, including international acts resulting from or arising out of the Contractor or its subcontractors, agents or employees under this agreement. The Contractor waives, with respect to the City, its immunity under industrial insurance, Title 51 RCW. This waiver has been mutually negotiated by the parties. This indemnification shall survive the expiration or termination of this Agreement.
- (b) Indemnity-Claims for Professional Liability  
Contractor shall hold harmless the City, their officers, agents and employees, from all liabilities, damages and expense to the extent caused by Contractor's negligent performance or its subcontractors and subconsultants, agents or employees in performance of professional services under this agreement.

### 12. Insurance

- (a) Liability Insurance. Contractor shall maintain occurrence form commercial general liability and automobile liability insurance for the protection of the contractor, the City, its commissioners, employees, and agents. Coverage shall include personal injury, bodily injury, including death, and broad form property damage, including loss of use of property, occurring in the course of or in any way related to Contractor's operations, in an amount not less than \$1,000,000.00 combined single limit per occurrence. Such insurance shall name the City as an additional insured with a coverage endorsement at least as broad as ISO CG 20 10 10 01.
- (b) Workers' Compensation Coverage. Contractor certifies that Contractor has qualified for State of Washington Workers' Compensation coverage for all Contractor's employees who are subject to Washington's Workers' Compensation statute, either as a carrier-insured employer as provided by RCW Chapter 51 or as a self-insured employer.
- (c) Certificates. Within 10 calendar days after full execution of this contract, Contractor shall furnish the City with certificates evidencing the date, amount, and type of insurance required by this contract. All policies shall provide for not less than thirty (30) days' written notice to the City before they may be canceled.
- (d) Primary Coverage. The coverage provided by insurance required under this contract shall be primary, and shall not seek contribution from any insurance or self-insurance carried by the City.

### 13. Ownership of Work Product

All work products of the Contractor which result from this contract are the exclusive property of the City contingent upon payment of fees and reimbursable expenses due and owing Contractor in accordance with this Agreement.

### 14. Nondiscrimination

Contractor agrees to comply with all applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990 (Pub L No. 101-336) including Title II of that Act, and all regulations and administrative rules established pursuant to that law.

### 15. Successors in Interest

The provisions of this contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

### 16. Execution and Counterparts

This contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

### 17. Force Majeure

Neither party shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, acts of God and war which is beyond such party's reasonable control. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance or its obligations under the contract.

### 18. Severability

The parties agree that if any terms or provisions of this contract is declared by the court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular terms or provisions held to be invalid.

### 19. Errors

The contractor shall perform such additional work as may be necessary to correct errors in the work required under this contract without undue delays and without additional cost.

### 20. Waiver

The failure of the City to enforce any provisions of the contract shall not constitute a waiver by the City of that or any other provision.

### 21. Other Requirements

When federal funds are involved in this contract, Contractor Debarment and Non-Collusion certifications and signatures apply to Exhibit C and D.

### 22. Governing Law

The provisions of this contract shall be construed in accordance with the provisions of the laws of the State of Washington. Any action or suit involving any question arising under this contract must be brought in the appropriate court of the state of Washington, Skamania County.

### 23. Attorney Fees

The prevailing party shall be entitled to reasonable attorney fees at trial and on appeal in an action brought with respect to this contract. For purposes of this Agreement, a party "prevails" if it recovers 75 percent or more of what it sought in such proceeding, or if it successfully defends against 75 percent or more of what was claimed against it. If neither percentage is met, the Parties bear their own respective attorney's fees, expert fees and court costs. In addition, provided that the prevailing Party has not rejected a bona fide written settlement offer from the other Party in an amount greater than the amount of the judgment or award received, in which case the prevailing Party shall be entitled to no reimbursement for its costs and expenses.

### 24. Merger Clause

THIS CONTRACT AND ATTACHED EXHIBITS CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THE CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE IF MADE, SHALL BE EFFECTIVE ONLY IN SPECIFIC INSTANCES AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. CONTRACTOR, BY THE SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS CONTRACT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

## Exhibit A – Scope of Work

27 November 2018

Mr. Eric Hansen, Public Works Director  
City of Stevenson  
7121 East Loop Road  
P.O. Box 371  
Stevenson, WA 98648-00371

Subject: Proposal to Provide Professional Environmental Services

Dear Eric:

Thank you for the opportunity to submit the following proposal to provide professional environmental services to conduct monitoring activities for the Stevenson Multi-Purpose Trail (the project) located near the intersection of SW Rock Creek Drive and State Route 14 (SR 14) in Stevenson, Washington.

### **PROJECT UNDERSTANDING**

BergerABAM understands that construction of the project directly impacted a Category IV wetland and required compensatory mitigation. On 17 May 2013, a final mitigation plan was prepared by The Resource Company, Inc. that prescribed 1,239 square feet of wetland creation and 862 square feet of wetland enhancement. The mitigation site is located in the northeast corner of the intersection of SW Rock Creek Drive and SR 14 and was constructed in 2015.

Federal (U.S. Army Corps of Engineers [USACE]), state (Washington Department of Ecology [Ecology]), and City wetland permits issued for the project require that the mitigation site be monitored in years 1, 2, 3, 5, 7, and 10 following construction to evaluate whether the mitigation is successful. The City has requested that BergerABAM complete the 2018 (Year 3) monitoring and reporting requirements in accordance with the final mitigation plan.

### **SCOPE OF WORK**

To assist the City in fulfilling its permit obligations, BergerABAM will conduct the following scope for work to complete the monitoring and reporting requirements in accordance with the 2013 Final Mitigation Plan.

#### **Task 1.0: Monitoring Report**

To prepare the monitoring report, BergerABAM will conduct the following tasks.

- Complete one 4-hour site visit, including drive time, during fall/winter 2018.
- Evaluate the plant communities throughout the mitigation area based on the mitigation plan requirement of three trees and six shrubs per 1,000 square feet.

- Record percent survival of planted vegetation, percent cover of desirable native vegetation, and percent cover of invasive species.
- Assess the site's general hydrology descriptively and qualitatively through visual observations.
- Take ground-level photographs from representative photographic monitoring points and label the photographs for inclusion in the permanent monitoring record.
- Evaluate the data collected during the site visit.
- Prepare a draft monitoring report for City review in accordance with the 2008 USACE Mitigation Monitoring Report format that includes
  - A narrative that provides a project overview, monitoring requirements and performance standards, summary data, and conclusions.
  - A discussion of the status of the wetland mitigation site with respect to hydrology, establishment of desirable native vegetation, and control of invasive species.
  - An evaluation of information obtained in the field as compared to the performance standards established in the 2013 Final Wetland Mitigation Plan.
  - Recommendations for ongoing management of the site.
  - Up to four graphics, including photo sheets.

#### *Assumptions*

- BergerABAM did not prepare and is not responsible for the success or failure of the original mitigation and planting plan nor the first two years of mitigation monitoring.
- No hydrology wells are required to assess the site's general hydrology.
- City will conduct one round of review and comment on the draft report, and City comments will be minor in extent.
- The City will submit the final report to permitting agencies.
- No delineation of the wetland creation area is required at this time. If a delineation is required, a separate scope and fee will be provided.

#### *Deliverables*

- Draft monitoring report (electronic copy for review)
- Final monitoring report (electronic copies for submittal, hard copies upon request)

#### **FEE**

The following professional fees, including an estimated \$60.00 in expenses, will be billed as incurred and will not exceed **\$4,957.00** without written authorization:

Task 1.0:	\$4,897.00
Expenses:	<u>60.00</u>
<b>Total:</b>	<b>\$4,957.00</b>

Mr. Eric Hansen  
27 November 2018  
Page 3

**CLOSING**

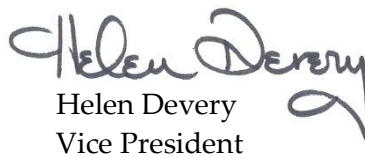
If you wish to accept this proposal, please provide us with a contract. We will consider the signed contract date as our notice to proceed. This proposal is valid for 30 days.

We thank you for the opportunity to provide this proposal and we look forward to working with you. If you have questions, please call me at 360/823-6100.

Sincerely,



Dustin Day  
Natural Resources Project Manager



Helen Devery  
Vice President

DDD: llt