

CITY OF FIFE PROFESSIONAL SERVICES AGREEMENT

1. **Parties and Date.** THIS Agreement is made effective as of the 20th day of December 2012, by and between CITY OF FIFE, WASHINGTON ("City") and the Watershed Company ("Consultant").

2. **General Purpose and Intent.**

Peer review of stream restoration and habitat enhancement plan for a development proposal involving Wapato Creek.

3. **Services by Consultant.**

A. Consultant shall perform the services described in the Scope of Work attached hereto as Exhibit "A" (the "Scope of Work"). The services performed by the Consultant shall not exceed the Scope of Work without prior written authorization from the City.

B. The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to the Agreement.

4. **Schedule of Work.**

A. Consultant shall complete the services described in the Scope of Work within 120 days of receipt of the Notice to Proceed. If delays beyond Consultant's reasonable control occur, the parties will negotiate in good faith to determine whether an extension is appropriate. It is recognized that the timeframe within which the services will be complete depends, in part, on the applicant whose work is being reviewed by the Consultant.

B. Consultant is authorized to proceed with the services described in the Scope of Work upon receipt of a written Notice to Proceed.

5. **Compensation.** Compensation for the services described in the Scope of Work shall not exceed \$3,975 (See Exhibit "A").

6. **Payment.**

A. After completion of the Scope of Work Consultant shall provide an invoice to the City in a format acceptable to the City.

B. The invoice will be paid by City warrant within sixty (60) days of receipt.

C. Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Copies shall be made available on request.

D. If the services rendered do not meet the requirements of the Agreement, Consultant will correct or modify the work to comply with the Agreement. City may withhold payment for such work until the work meets the requirements of the Agreement.

7. Discrimination and Compliance with Laws.

A. Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

B. Consultant shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

C. Consultant shall obtain a City of Fife business license pursuant to the provisions of Chapter 5.01 FMC prior to receipt of written Notice to Proceed.

D. Violation of this Paragraph 7 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by City, in whole or in part, and may result in ineligibility for further work for City.

8. Term and Termination of Agreement

A. This Agreement may be terminated by the City at any time upon the default of the Consultant or upon public convenience, in which event all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City, and Consultant shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination, not to exceed the total compensation set forth herein. Consultant shall not be entitled to any reallocation of cost, profit or overhead. Consultant shall not in any event be entitled to anticipated profit on work not performed because of such termination. Consultant shall use its best efforts to minimize the compensation payable under this Agreement in the event of such termination. If the Agreement is terminated for default, the Consultant shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Consultant. The Consultant shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default.

B. The City may suspend this Agreement, at its sole discretion, upon one week's advance notice to Consultant. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to the Consultant's reasonable expenses, and shall be subject to verification. The Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

9. Standard of Care. Consultant represents and warrants that it has the requisite training, skill and experience necessary to provide the services under this agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant under this


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agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

10. Ownership of Work Product.

A. All data materials, reports, memoranda, and other documents developed under this Agreement whether finished or not shall become the property of City, shall be forwarded to City at its request and may be used by City as it sees fit. Upon termination of this agreement pursuant to paragraph 9 above, all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City. City agrees that if it uses products prepared by Consultant for purposes other than those intended in this Agreement, it does so at its sole risk and it agrees to indemnify and hold Consultant harmless therefore.

B. Spatial data created by consultants for City of Fife via this contract should be delivered as either ESRI shapefiles or an ESRI file geodatabase. The data should be developed in (or projected to) StatePlane 1983, WA South (Projection), NAD83HPGN (Datum), US Survey Feet (units). These datasets should be delivered on CD/DVD, complete with any projection files, accessory tables relatable by a fixed unique identifier to the spatial data, and metadata using Federal Geographic Data Committee (FGDC) specifications. If the data is produced in AutoCad 2000 or later, the shapefile format is an export option and should be utilized and all other criteria still apply. The City of Fife retains ownership to such data layers produced using taxpayer dollars and controls any future dissemination or reuse of this data.

11. Indemnification/Hold Harmless. Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

12. Insurance. The Consultant shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees. Consultant's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:



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1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. Other Insurance Provisions

The Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage

Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

F. Notice of Cancellation



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The Consultant shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.

G. Failure to Maintain Insurance

Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to the Consultant to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.

13. Assigning or Subcontracting. Consultant shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld at the City's sole discretion.

14. Independent Contractor. Consultant is and shall be at all times during the term of this Agreement an independent contractor.

15. Notice

A. Any notice or communication required by this Agreement must be in writing, and may be given either personally, electronically with evidence of receipt, by express delivery service, or by registered or certified mail, return receipt requested. If given personally, by express delivery service, or by registered or certified mail, such notice or communication shall be deemed to have been given and received upon actual receipt. If delivery is made electronically, either by e-mail or facsimile transmission, a notice shall be deemed to have been given when delivered to the person to whom it is addressed, and there is electronic confirmation that it was received. Such notices or communications shall be given to the Parties at their addresses set forth below:

David K. Zabell
City Manager
5411 23rd Street East
Fife, WA 98424

Phone: 253 922-2489
Fax: 253 922-5355

Email: dzabell@cityoffife.org

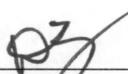
The Watershed Company
Attn: Hugh Mortensen, PWS
750 Sixth Street South
Kirkland, WA 98033

Phone: 425 822-5242

Email: Hmortensen@watershedco.com

B. Either party may change its contact information by sending its new contact information to the other party in the same manner as is provided for sending the other party notice under the provisions of paragraph 15.A.

16. Disputes. Any action for claims arising out of or relating to this Agreement shall be governed by the laws of the State of Washington. Venue shall be in Pierce County Superior Court.



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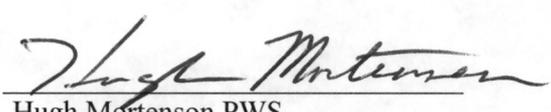
17. **Attorneys Fees.** In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorneys fees from the other party.

18. **Extent of Agreement/Modification.** This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.

CITY OF FIFE, WASHINGTON

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By: 
David Zabell
City Manager

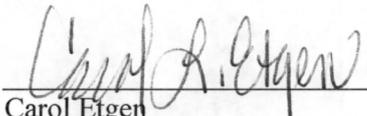
By: 
Hugh Mortenson PWS
The Watershed Company

Date: 12/20/2012

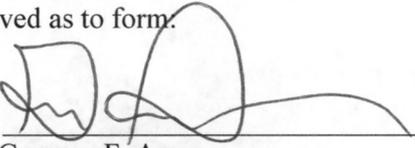
Title: Principal

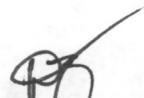
Attest:

Date: 1/2/2013

By: 
Carol Etgen
City Clerk

Approved as to form:

By: 
Gregory F. Amann
Assistant City Attorney


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EXHIBIT A

SCOPE OF WORK

BACKGROUND

Work shall generally consist of peer review of applicant's habitat and stream restoration plan for an industrial development proposal on 35 acres of land located on five contiguous parcels. Three of the parcels are currently vacant (although the property has and continues to be used for agricultural purposes) and two each hold a single family residence.

Approximately 1,700 lineal feet of Wapato Creek passes through the subject property. There are several wetlands adjacent to the stream channel and is a designated floodplain within the stream channel banks. The City's Critical Areas Ordinance provides the director with certain discretion in the evaluation of restoration and enhancement plans, including the determination of appropriate stream buffer widths. The primary purpose of the third party review is to offer comment on whether the applicant's approach is consistent with city codes, can generally meet requirements of other regulatory agencies and leads to the appropriate restoration of the Creek.

Work shall generally be performed in two steps, although the work in Step 2 shall be dependent upon the applicant's desire to move forward following Step 1.

STEP 1

"Step 1" is review of a broad level five page (5) conceptual plan to determine considerations and provide direction on the ultimate preparation of a habitat assessment and stream restoration plan sufficient to meet city codes.

The CONSULTANT shall conduct the following work:

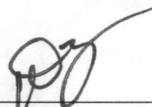
1. Electronic communication and coordination with the City of Fife Community Development Department as necessary over the course of the proposed Step 1 work.
2. Review proposed conceptual buffer reduction plan prepared by Soundview Consultants.
3. Review background information including City of Fife critical areas regulations in the zoning code and other relevant project information furnished by the City of Fife.
4. Prepare a letter-style report commenting on the appropriateness of the proposed restoration plan and providing direction on the preparation of a permit-level restoration plan (Step 2). Also included would be preliminary comments on necessary considerations to meet requirements of state and federal regulatory agencies.

STEP 2

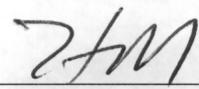
"Step 2" is review of a permit level habitat assessment and stream restoration plan prepared by the applicant. Step 2 is dependent upon the applicant's desire to move forward with the proposal.

The CONSULTANT shall conduct the following work:

1. Electronic communication and coordination with the City of Fife Community Development Department as necessary over the course of the proposed work.



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2. Prepare a letter-style report commenting on additional changes needed to ensure the plan is appropriate for the site and also meets the requirements of the Fife Municipal Code and state and federal regulatory agencies.

This step assumes two review letters; one on the initial draft, and then a second review letter on the revised document.

COSTS

The cost to complete the Step 1 review work is estimated at: \$1,195

The cost to complete the Step 2 review work is estimated at: \$2,500

TOTAL NOT TO EXCEED: \$3,695

NOTE: Costs for step 1 and step 2 may vary, so long as the total not to exceed amount does not exceed the "TOTAL NOT TO EXCEED amount".

OPTIONAL ADDITIONAL SERVICE (If requested by the City)

\$280 for an in person meeting in Fife.

TOTAL NOT TO EXCEED WITH OPTIONAL SERVICE: \$3,975



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