

**CITY OF STEVENSON
PROFESSIONAL SERVICES CONTRACT – ENVIRONMENTAL SERVICES UTILITIES EXEMPTION**

This contract is between the **City of Stevenson**, hereafter called City, and **Berger ABAM**, hereafter called Contractor. City’s Contract Administrator for this contract is City Administrator Nick Hogan.

Effective Date and Duration

This contract shall become effective on the date at which every party has signed this contract. This contract shall expire, unless otherwise terminated or extended on December 31, 2017.

Statement of Work

- (a) The statement of work and Special Terms and Conditions (if any) are contained in Exhibit A attached hereto and by this reference made a part hereof.
- (b) The completion schedule for the work is identified in Exhibit B.

Consideration

- (a) City agrees to pay Contractor a sum not to exceed \$7,886.00 for accomplishment of the work, including any allowable expenses.
- (b) Interim payments shall be made to Contractor according to the schedule identified in Exhibit B.

Travel and other expenses

Reimbursement of travel and other expenses is allowed only in accordance with City travel policy effective at the time of contract execution except as further defined in Exhibit B.

Amendments

Terms and conditions of this contract are listed on page two. The terms of this contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written instrument signed by both parties.

CONTRACTOR DATA, CERTIFICATION, AND SIGNATURE

Name: Berger ABAM, Inc.
Federal Tax ID Number: 91-1422812

Address: 700 NE Multnomah Street, Suite 500
Portland, OR 97232

Citizenship: Non resident alien Yes No

Business Designation (Check one):

<input type="checkbox"/>	Individual	<input type="checkbox"/>	Sole Proprietorship
<input type="checkbox"/>	Partnership	<input type="checkbox"/>	Estate/Trust
<input checked="" type="checkbox"/>	Corporation	<input type="checkbox"/>	Public Service Corporation
<input type="checkbox"/>	Governmental/Nonprofit		

Payment information will be reported to the IRS under the name and taxpayer ID number provided above. Information must be provided prior to contract approval. Information not matching IRS records could subject Contractor to 31 percent backup withholding.

I, the undersigned: agree to perform work outlined in this contract in accordance to the terms and conditions (listed on the front and backside and made part of this contract by reference) and the statement of work made part of this contract by reference hereby certify under penalty of perjury that I/my business am not/is not in violation of any Washington tax laws; and hereby certify I am an independent contractor. As noted in No. 21 of the Standard Contract Provisions, where required for Federal funding, Contractor certifications and signatures apply to Exhibits C and D.

Approved by the Contractor: _____
Signature Date

Approved by the City: _____
Frank Cox, Mayor Date

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 provide 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

This exhibit includes a description of the Project Understanding and Scope of Work complete with assumptions and deliverables.

PROJECT UNDERSTANDING

BergerABAM understands that the City public works department experiences emergency and usual and customary repair, operation, and maintenance of existing utilities within the City. These projects often occur within critical areas, as defined by Stevenson Municipal Code (SMC) 18.13 – Critical Areas and Natural Resource Lands, and may be exempt per SMC 18.13.025 – Exemptions. Utility work exemptions are allowed provided a written determination of exemption is issued by the City and that they are otherwise consistent with the provisions of this section of code and other local, state, and federal laws and regulations. This written determination of exemption issued by the City can cause delays in routine repairs or the need for after-the-fact written determinations of exemptions in the case of emergency repairs. The City is requesting assistance from BergerABAM to develop and request a programmatic utility exemption memorandum of agreement that would alleviate the need for a written determination of each and every utility exemption request.

SCOPE OF WORK

Task 1.0: Utility Exemption Memoranda of Agreement

BergerABAM will develop a “Utilities Exemption” under SMC 18.13.025.A.11, including development of best management practices (BMPs) for the public works department to use as per section A.11(c), which states:

That all persons, utility providers, public agencies, or homeowners’ associations file memoranda of agreement with the City specifying best management practices to be used in situations of emergency and usual and customary repair, operation, and maintenance.

According to SMC 18.13.025.A.11, utilities and works eligible for this exemption include existing belowground or aboveground public utilities and improvements, such as streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, navigational aids, utility lines, domestic water systems, storm and sanitary sewer systems, open space, and parks and recreational facilities. Under this phase, we will work with the City to develop a comprehensive program of maintenance and repair needs expected for the City.

BergerABAM will also work with the City to develop a list of BMPs and design standard details in coordination with the City’s construction standards details and the Regional Road Maintenance ESA Program Guidelines details. The resulting programmatic memorandum of agreement would include an array of potential repair needs and the construction approach,

details, and list of BMPs that can be used to avoid and minimize potential affects to critical areas.

This task will also include coordinating with the City Planning department, finalizing the project document, and submitting the request for a memorandum of agreement. BergerABAM will conduct one pre-submittal meeting with the City Planning Department to present the exempt utility project activities, BMPs, and programmatic approach. Based on the pre-submittal meeting, BergerABAM will finalize the memorandum of agreement request.

Assumptions

- City Planning department will accept the proposed utility exemption and issue a memorandum of agreement.
- Memorandum of agreement is limited to City critical areas regulations (SMC 18.13) and does not apply to other City, state, and/or federal regulations.
- Task includes time for two BergerABAM staff to attend one 2-hour meeting with City Planning staff to review memorandum of agreement request and up to 12-hours of coordination time with Planning staff.

Excluded tasks and costs

- Proposed work does not include mapping of critical areas within the City's jurisdiction.
- Memorandum of agreement will not apply to utility activities that require in-water work, as state and federal authorizations for this work will also be required.

Deliverables

- Draft and final memorandum of agreement request; submitted in electronic PDF format

CHANGED CONDITIONS

Should conditions of the work change so as to materially affect the level of effort or the time required, then equitable adjustments to fee and schedule shall be made. BergerABAM will notify Client when a changed condition becomes apparent. Failure of Client to provide a timely and equitable adjustment is cause for termination by BergerABAM.

In the event that government jurisdictions, at any level, legislate new taxes or administratively interpret existing regulations such that additional taxes apply to this work, this shall be cause for an equitable adjustment of the contract fee in recognition of the increased taxation.

**EXHIBIT B
PAYMENTS & SCHEDULES**

This Exhibit includes a description of the Fee, Schedule, and Billings.

FEE

The following professional fees, including an estimated \$110.00 in expenses, will be billed as incurred and will not exceed **\$7,886.00** without written authorization:

Task 1.0:	\$7,776.00
Expenses:	<u>110.00</u>
Total:	\$7,886.00

COMPLETION SCHEDULE

All work products and deliverables will be provided by Contractor to City by September 30th, 2017.

BILLINGS

Lump-sum jobs are billed according to agreed-upon milestones, on a percent-of-completion basis. Time and expense jobs are invoiced in accordance with the labor and other costs incurred in performing the work. Personnel are billed at a rate that includes labor overhead and an allowance for profit. Project-related expenses are billed at cost or use rate plus 10 percent (10%).

PAYMENT SCHEDULE

Invoices are submitted monthly for services performed during the prior month and are due upon receipt. If Client fails to make any payment due BergerABAM for services and expenses within thirty (30) days after receipt of BergerABAM's statement therefore, the amounts due shall bear interest, at the prevailing legal rate from said thirtieth day. In addition, BergerABAM may, after giving seven (7) days written notice to Client, suspend services under this Agreement until BergerABAM has been paid in full all amounts due for services, expenses, and charges. Attorneys' fees and other costs incurred in collecting a delinquent amount will also be charged. Late or nonpayment of fees is cause for immediate termination by BergerABAM.