



CONTRACT 10-012-TRN-004
Between
THE CITY OF ANACORTES
AND
HERRIGSTAD ENGINEERING & SURVEYING

This Agreement, hereinafter referred to as "Agreement", made and entered into between the City of Anacortes, hereinafter referred to as the "City", and Herrigstad Engineering & Surveying hereinafter referred to as the "Contractor";

WHEREAS, the City requires engineering services of the Contractor;

NOW, THEREFORE, in consideration of mutual benefits accruing, it is agreed by and between the parties hereto as follows:

Scope of Work. Under this Agreement, the Contractor shall provide the personnel and equipment necessary to provide a detailed topography survey of washout locations along the length of Guemes Channel Rail Road from the east end of the current terminus of the trail near the northeast corner of the Vintage Investments 9-Lot Short Plat and the West end of Luvrics Marina. The final deliverable under this contract shall include:

- Topography elevations of each washout location
- Each washout location shall be staked and numbered
- Compute fill volume required to elevate each washout to 8.3 feet with the Datum of MLLW
- Provide cross sections at all major washouts
- Provide typical path cross sectional detail

The work shall be performed under the direction of the City's Project Manager, Rob Hoxie who may be reached at (360) 661-3758.

2. **Price.** The work performed under this Agreement shall be performed on a time-and-materials (T&M) basis not-to-exceed **Five Thousand Dollars (\$5,000.00)**. Payment terms are set forth in Clause 4 Payment Terms.

3. **Period of Performance.** The period of performance is from inception through February 28, 2013.

4. **Payment Terms.**

Payment for services shall be made according to the following rates:

<u>Labor Category</u>	<u>Billing Rate</u>
Professional Engineer/Survey Consultation	\$110/Hour
Field Surveying	\$160/Hour

The Contractor shall submit invoices for payment no more frequently than monthly and allow 30 calendar days from receipt of the invoice for payment.

5. **Subcontracts.** The Contractor shall give notice reasonably in advance of placing any subcontract; preferably the Contractor shall identify subcontracts before subcontracted work begins. "Subcontract" means any contract entered into by a subcontractor to furnish supplies or services for performance of the prime Contractor or a subcontractor. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

The following information shall be included (i) a description of the supplies or services to be subcontracted, (ii) identification of the type of subcontract to be used (iii) identification of the proposed subcontractor, (iv) proposed subcontract price.

Unless consent or approval specifically provides otherwise, consent by the City shall not constitute a determination –

- (1) of the acceptability of any subcontract terms or conditions;
- (2) Of the allowability of any cost under this contract,; or
- (3) To relieve the Contractor of any responsibility for performing this Contract.

The Contractor shall give immediate written notice, reference Clause 27 Notices, of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the City.

6. **Invoicing**. Each invoice shall include:

All invoices shall include a cover page that states: Company Name, Invoice Date, Due Date (30 days), Invoice Number, Invoice Period, Project Manager Name, City of Anacortes Project Number, City of Anacortes Project Manager, Original Agreement Price, Amendment Price and Current Agreement Price. Invoices shall include actual hours worked by Period, by Labor Category.

The City shall notify the Contractor within fifteen (15) calendar days from receipt of invoice if there are any objections or disputes with the invoice. The Contractor shall then resubmit a new invoice less the disputed amount and payment shall be made within 30 calendar days. Any disputed amounts may be submitted under the Disputes clause contained herein.

7. **Ownership and Use of Documents**. All finished and unfinished documents and material prepared by the Contractor with funds paid by the City pursuant to the terms of this Agreement shall become the property of the City and shall be forwarded to the City upon its request. Documents and materials shall include but not be limited to plans, specifications, reports, electronic and non-electronic data, and other design documents prepared by the Contractor. Pursuant to RCW 42.56.70, all information and documents produced under this Agreement may be subject to public disclosure.

8. **Defense and Indemnity Agreement**. The Contractor shall defend, indemnify and hold the City, its appointed and elective officers, officials, employees and volunteers harmless from any and all claims, injuries including death at any time resulting there from, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Contractor 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 4.42.115, 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 Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor'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 Clause shall survive the expiration or termination of this Agreement.

9. **General and Professional Liability Insurance.** The Consultant shall secure and maintain in full force and effect during performance of any on-site work pursuant to this Agreement a policy of comprehensive general liability insurance providing coverage of at least \$1,000,000 per occurrence and \$2,000,000 aggregate for personal injury; \$1,000,000 per occurrence and aggregate for property damage; and professional liability insurance in the amount of \$1,000,000. The City shall be named as an additional insured on the General Liability Policy and shall include a provision prohibiting cancellation of said policy, except upon thirty (30) days written notice to the City. Certificates of coverage shall be delivered to the City within fifteen (15) days of execution of this Agreement. Certificates of coverage shall be obtained in accordance with this provision by Consultant's subcontractors, first-tier and lower tier, who may contemplate working on City premise.

A. Minimum scope of insurance that shall be maintained by the Contractor is as follows:

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.

Commercial General Liability insurance shall be written on ISO occurrence from 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 Contractor's Commercial General Liability insurance policy with respect to the work performed for the City.

Worker's Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

Professional Liability insurance shall be appropriate to the Contractor's profession.

B. The Contractor shall maintain insurance limits no lower than the minimum limits listed below:

Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence and \$2,000,000 general aggregate.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial Liability insurance:

1. The Contractor's insurance coverage shall be primary insurance as respect to 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.
2. The Contractor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

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**

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

10. **Registered or Licensed Contractor.** The City is prohibited by RCW 39.06.010 from executing an Agreement with a Contractor who is not registered or licensed as required by the laws of the state. In addition, the City will require persons doing business with the City to possess a business license.

11. **Inspection.** The Project Manager shall have power to reject instruments of services which fail to comply with the requirements of this Agreement, but in case of dispute the Contractor may appeal to the City's Public Works Director, whose decision shall be final. The Contractor shall comply with any and all orders and instructions given by the representative of the particular Department administering the Agreement in accordance with the terms of the Agreement. Nothing herein contained shall be taken to relieve the Contractor of his/her obligations or responsibilities under the Agreement. However, the Contractor shall be responsible for its own methods and conduct during the period of performance.

12. **Warranty.** The Contractor warrants that Professional Services provided under this Agreement will be performed in a workmanlike manner consistent with industry standards reasonably applicable to the performance of such services. The City's remedy shall be the re-performance of the Service or an equitable adjustment in the monies paid for the Professional Services, at the City's discretion.

13. **Discrimination Prohibited.** Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, national origin or physical handicap.

14. **Contractor is an Independent Contractor.** The parties intend that an independent Contractor relationship will be created by this Agreement. No agent, employee or representative of the Contractor shall be deemed to be an agent, employee or representative of the City for any purpose. Contractor shall be solely responsible for all acts of its agents, employees, representatives and subcontractors during the performance of this Agreement.

15. **The City's Right to Terminate Agreement.**

A. Termination for Default

If the Contractor defaults by failing to perform any of the obligations of the Agreement or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the City may, by depositing written notice to the Contractor in the U.S. mail, postage prepaid, terminate the Agreement, and at the City's option, obtain performance of the work elsewhere. If the Agreement is terminated for default, the Contractor 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 Contractor. The Contractor 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. If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of

termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

B. Termination for Public Convenience

The City may terminate the Agreement in whole or in part whenever the City determines, in its sole discretion that such termination is in the best interests of the City. Whenever the Agreement is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit Agreement prices for completed items of work. An equitable adjustment in the Agreement price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the City at any time during the term, whether for default or convenience, shall not constitute a breach of Agreement by the City.

16. Changes/Additional Work. The City may engage Contractor to perform services in addition to those listed in this Agreement, and Contractor will be entitled to additional compensation for authorized additional services or materials. The City shall not be liable for additional compensation until and unless any and all additional work and compensation is approved in advance in writing and signed by both parties to this Agreement. If conditions are encountered which are not anticipated in the Scope of Services, the City understands that a revision to the Scope of Services and fees may be required. Provided, however, that nothing in this paragraph shall be interpreted to obligate the Contractor to render or the City to pay for services rendered in excess of the Scope of Services unless or until a modification to this Agreement is approved in writing by both parties.

17. Non-waiver. Waiver by the City of any provision of this Agreement or any time limitation provided for in this Agreement shall not constitute a waiver of any other provision.

18. Non-assignable. The services to be provided by the Contractor shall not be assigned or subcontracted without the express written consent of the City.

19. Covenant Against Contingent Fees. The Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award of making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or, in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

20. Disputes

A. General

Differences between the Contractor and the City, arising under and by virtue of this Agreement shall be brought to the attention of the City at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. The provisions of this Clause shall survive the expiration or termination of this Agreement.

B. Notice of Potential Claims

The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Contracting Agent or the City, or (2) the happening of any event or occurrence, unless the Contractor has given the City a written Notice of Potential Claim within 10 days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the City. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete

daily records of the Work performed, labor and all costs and additional time claimed to be additional.

C. Detailed Claim

The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within 30 days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the City, the Contractor has given the City a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

D. Dispute Resolution

In the event of a dispute between the City and the Contractor arising of this Agreement, or any obligation hereunder the dispute shall first be referred to the representatives designated by the City and the Contractor to have oversight over the administration of this Agreement. Said representatives shall meet within thirty (30) calendar days of receipt of detailed claim, and the parties shall make a good faith effort to achieve a resolution of the dispute.

In the event the parties are unable to resolve the dispute under the procedure set forth above, then the parties hereby agree that the matter shall be referred to mediation. The parties shall mutually agree upon a mediator to assist them in resolving their differences. Any expenses incidental to mediation shall be borne equally by the parties.

If either party is dissatisfied with the outcome of the mediation, that party may then pursue any available judicial remedies.

21. **Force Majeure.** Definition: Except for payment of sums due, neither party shall be liable to the other or deemed in default under this Agreement if and to the extent that such party's performance of this Agreement is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences. Notification: If either party is delayed by force majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion shall be extended by Agreement modification for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Agreement. Rights Reserved: The City reserves the right to cancel the Agreement and/or purchase materials, equipment or services from the best available source during the time of force majeure, and Contractor shall have no recourse against the City.

22. **Compliance with Laws.** The Contractor in the performance of this Agreement shall comply with all applicable Federal, State or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in the Agreement to assure quality of services.

The Contractor specifically agrees to pay any applicable business and occupation (B&O) taxes, which may be due on account of this Agreement.

23. **Venue and Choice of Law.** In the event that any litigation should arise concerning the services under this Agreement, interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the Courts of the State of Washington in and for the County of Skagit. This Agreement shall be governed by the law of the State of Washington.

24. **Severability.** If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

25. **Survival of Contract Termination.** The articles relating to Indemnification, Data Rights, Proprietary Information, Governing Law, and Venue and Choice of Law shall survive completion of the services, payment in full of the compensation and termination of this Agreement.

26. **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Washington. Any action brought under the Agreement or relating to the Project shall be brought in the Superior Court of the State of Washington in Skagit County Washington.

27. **Notices.** Notices to the City of Anacortes shall be sent to the following address:

City of Anacortes
Attention: Denise Van Wyck
denisev@cityofanacortes.org
904 6th Street
PO BOX 547
Anacortes, WA 98221

Notices to the Contractor shall be sent to the following address:

Herrigstad Engineering & Surveying
Dale Herrigstad P.E., P.L.S.
4320 Whistle Lake Road
Anacortes, WA 98221
(360) 299-8804


Receipt of any notice shall be deemed effective three days after deposit of written notice in the U.S. mails, with proper postage and properly addressed.

The parties acknowledge that there has been an opportunity to negotiate the terms and conditions of this Agreement and agree to be bound accordingly;

CITY OF ANACORTES

HERRIGSTAD ENGINEERING & SURVEYING

By 
H. Dean Maxwell, Mayor

By 
Title PRESIDENT

Date 2/1/13

Date FEB 4, 2013