

RESOLUTION NO. 1881

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE FOREST PARK, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN A PROFESSIONAL SERVICES CONTRACT AGREEMENT WITH THE WATERSHED COMPANY FOR COMPLETE LYON CREEK FLOOD MITIGATION PROJECT MONITORING

WHEREAS, the Lyon Creek Flood Mitigation project was subject to environmental permit conditions requiring long-term post-construction monitoring of the project's wetland mitigation areas to ensure their conformance with specific performance standards; and

WHEREAS, the permit-required monitoring period concluded on December 31, 2021, at which point some performance standards remained unmet, which prevents the City from closing the permits as required; and

WHEREAS, the Department of Public Works (DPW) requires professional services support to complete additional permitting, design, construction management, and monitoring work necessary to reestablish compliance with the permits and complete the closeout process; and

WHEREAS, The Watershed Company ("Consultant") has provided post-construction monitoring support services for this project since 2017 and is qualified and best-suited to efficiently perform the required additional professional services; and

WHEREAS, DPW staff have received and reviewed the Consultant's proposal to provide the required professional services dated October 24, 2022 and find its scope of services and fees to be appropriate per the required work;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Lake Forest Park, as follows:

Section 1. AUTHORIZATION TO RENEW AGREEMENT. The City Council of the City of Lake Forest Park authorizes the Mayor to sign the contract agreement with The Watershed Company, included herewith as Attachment 1.

Section 2. CORRECTIONS. The City Clerk is authorized to make necessary corrections to this resolution including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any references thereto.

PASSED BY A MAJORITY VOTE of the members of the Lake Forest Park City Council this 8th day of December, 2022.

APPROVED:



Jeff Johnson
Mayor

ATTEST/AUTHENTICATED:



Matthew McLean
City Clerk

FILED WITH THE CITY CLERK: December 2, 2022
PASSED BY THE CITY COUNCIL: December 8, 2022
RESOLUTION NO.: 1881

**CITY OF LAKE FOREST PARK
PROFESSIONAL SERVICES AGREEMENT
Agreement Title: Lyon Creek Flood Mitigation Project – Monitoring
and Agency Coordination**

THIS AGREEMENT made and entered into by and between the **CITY OF LAKE FOREST PARK**, a Washington municipal corporation (the "City"), and The Watershed Company (the "Consultant"), is dated this _____ day of _____ 20_____.

Consultant Business: The Watershed Company

Consultant Address: 750 Sixth Street South, Kirkland, WA 98033

Consultant Phone: 425-822-5242

Consultant Fax: 425-827-8136

Contact Name Kenny Booth

Consultant e-mail: KBooth@watershedco.com

Federal Employee ID No.: 91-1364393

Authorized City Representative for Andrew Silvia
this contract:

WHEREAS, the City requires professional support services to complete permitting, landscape design, construction management, and post-construction monitoring services necessary to establish compliance with environmental permits issued for the City's Lyon Creek Flood Mitigation Project, and thereafter to properly close these permits; and

WHEREAS, the City has selected the Consultant to perform the required services;

NOW, THEREFORE, the parties herein do mutually agree as follows:

1. Employment of Consultant. The City retains the Consultant to provide the services described in Exhibit A incorporated herein, for the "Lyon Creek Flood Mitigation Project – Monitoring and Agency Coordination" project ("collectively "Scope of Work" or the "Work"). Any inconsistency between this Agreement and the Scope of Work shall be resolved in favor of this Agreement. The Consultant shall perform the Work according to the terms and conditions of this Agreement.

The City may revise the Work and the compensation only by a written Change Order signed by the authorized representatives of the parties that shall become a part of this Agreement.

The project manager(s) of the Work shall be Schaun Valdonis. The project manager(s) shall not be replaced without the prior written consent of the City.

Exhibit A Work shall commence when the City issues a notice to proceed and it shall be completed no later than December 31, 2023, unless the completion date is extended in writing by the City. Notwithstanding the foregoing, Consultant shall not be responsible for any delay or failure to meet deliverable deadlines if such delay or failure was caused in whole or in part by a delay or failure of the City.

2. Compensation.

A. The total compensation to be paid to Consultant for the Work in Exhibit A, including all services and expenses, shall not exceed thirty-nine thousand, four hundred, twelve Dollars (\$39,412.00) as shown on Exhibit B, which shall be full compensation for the Exhibit A Work. Consultant shall invoice the City monthly on the basis of the portion of the Work completed each month by the Consultant and sub-consultants.

B. Consultant shall be paid in such amounts and in such manner as described in Exhibit B.

C. Consultant shall be reimbursed for Eligible Expenses actually incurred that are approved for reimbursement by the City in writing before the expense is incurred. If overnight lodging is authorized, Consultant shall lodge within the corporate limits of City.

3. Request for Payment.

A. Not more than once every thirty days the Consultant shall send electronically to the City's Accounting Supervisor, ap@cityofflp.gov, its request for payment of Exhibit A Work, accompanied by evidence satisfactory to the City justifying the request for payment, including a report of Work accomplished and tasks completed, and an itemization of Eligible Expenses with copies of receipts and invoices.

4. Work Product. The Consultant shall submit all reports and other documents specified in Exhibit A according to the schedule established in Exhibit A. If, after review by the City, the information is found to be unacceptable, Consultant, at its expense, shall expeditiously correct such unacceptable work. If Consultant fails to correct unacceptable work, the City may withhold from any payment due an amount that the City reasonably believes will equal the cost of correcting the work.

All reports, drawings, plans, specifications, and intangible property created in furtherance of the Work, and any intellectual property in such documents, are property of the City and may be used by the City for any purpose; provided that re-use without Consultant's permission shall be at the City's sole risk.

5. Termination of Contract. City may terminate this Agreement by sending a written notice of termination to Consultant ("Notice") that specifies a termination date ("Termination Date") at least fourteen (14) days after the date of the Notice. Upon receipt of the Notice, the Consultant shall acknowledge receipt to the City in writing and immediately commence to end the Work in a reasonable and orderly manner. Unless terminated for Consultant's material breach, the Consultant shall be paid or reimbursed for all hours worked and Eligible Expenses incurred up to the Termination date, less all payments previously made; provided that work performed after date of the Notice is reasonably necessary to terminate the Work in an orderly manner. The Notice may be sent by any method reasonably believed to provide Consultant actual notice in a timely manner.

6. Assignment of Contract – Subcontractors. Consultant shall not assign this contract or sub-contract or assign any of the Work without the prior written consent of the City.

7. Indemnification. To the extent provided by law and irrespective of any insurance required of the Consultant, the Consultant shall defend and indemnify the City from any and all Claims arising out of or in any way relating to this Agreement; provided, however, the requirements of this paragraph shall not apply to that portion of such Claim that reflects the percentage of negligence of the City compared to the total negligence of all persons, firms or corporations that resulted in the Claim.

Consultant agrees that the provisions of this paragraph 7 apply to any claim of injury or damage to the persons or property of consultant's employees. As to such claims and with respect to the City only, consultant waives any right of immunity, which it may have under industrial insurance (Title 51 RCW and any amendment thereof or substitution therefore). THIS WAIVER IS SPECIFICALLY NEGOTIATED BY THE PARTIES AND IS SOLELY FOR THE BENEFIT OF THE CITY AND CONSULTANT.

As used in this paragraph: (1) "City" includes the City's officers, employees, agents, and representatives; (2) "Consultant" includes employees, agents, representatives sub-consultants; and (3) "Claims" include, but is not limited to, any and all losses, claims, causes of action, demands, expenses, attorney's fees and litigation expenses, suits, judgments, or damage arising from injury to persons or property.

Consultant shall ensure that each sub-consultant shall agree to defend and indemnify the City to the extent and on the same terms and conditions as the Consultant pursuant to this paragraph.

8. Insurance.

A. Consultant shall comply with the following conditions and procure and keep in force at all times during the term of this Agreement, at Consultant's expense, the following policies of insurance with companies authorized to do business in the State of Washington. The Consultant's insurance shall be rated by A. M. Best Company at least "A" or better with a numerical rating of no less than seven (7) and otherwise acceptable to the City.

1. Workers' Compensation Insurance as required by Washington law and Employer's Liability Insurance with limits not less than \$1,000,000 per occurrence. If the City authorizes sublet work, the Consultant shall require each sub-consultant to provide Workers' Compensation Insurance for its employees, unless the Consultant covers such employees.

2. Commercial General Liability Insurance on an occurrence basis in an amount not less than \$1,000,000 per occurrence and at least \$2,000,000 in the annual aggregate, including but not limited to: premises/operations (including off-site operations), blanket contractual liability and broad form property damage.

3. Business Automobile Liability Insurance in an amount not less than \$1,000,000 per occurrence, extending to any automobile. A statement certifying that no vehicle will be used in accomplishing this Agreement may be substituted for this insurance requirement.

4. Professional Errors and Omissions Insurance in an amount not less than \$1,000,000 per occurrence and \$1,000,000 in the annual aggregate. Coverage may be written on a claims made basis; provided that the retroactive date on the policy or any renewal policy shall be the effective date of this Agreement or prior, and that the extended reporting or discovery period shall not be less than 36 months following expiration of the policy. The City may waive the requirement for Professional Errors and Omissions Insurance whenever the Work does not warrant such coverage or the coverage is not available.

5. Each policy shall contain a provision that the policy shall not be canceled or materially changed without 30 days prior written notice to the City.

Upon written request to the City, the insurer will furnish, before or during performance of any Work, a copy of any policy cited above, certified to be a true and complete copy of the original.

B. Before the Consultant performs any Work, Consultant shall provide the City with a Certificate of Insurance acceptable to the City Attorney evidencing the above-required insurance and naming the City of Lake Forest Park, its officers, employees and agents as Additional Insured on the Commercial General Liability Insurance policy and the Business Automobile Liability Insurance policy with respect to the operations performed and services provided under this Agreement and that such insurance shall apply as primary insurance on behalf of such Additional Insured. Receipt by the City of any certificate showing less coverage than required is not a waiver of the Consultant's obligations to fulfill the requirements.

C. Consultant shall comply with the provisions of Title 51 of the Revised Code of Washington before commencing the performance of the Work. Consultant shall provide the City with evidence of Workers' Compensation Insurance (or evidence of qualified self-insurance) before any Work is commenced.

D. In case of the breach of any provision of this section, the City may provide and maintain at the expense of Consultant insurance in the name of the Consultant and deduct the cost of providing and maintaining such insurance from any sums due to Consultant under this Agreement, or the City may demand Consultant to promptly reimburse the City for such cost.

9. Independent Contractor. The Consultant is an independent Contractor responsible for complying with all obligations of an employer imposed under federal or state law. Personnel employed by Consultant shall not acquire any rights or status regarding the City.

10. Employment. The Consultant warrants that it did not employ or retain any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement or pay or agree to pay any such company or person any consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right either to terminate this Agreement without liability or to deduct from the Agreement price or consideration or to otherwise recover, the full amount of such consideration.

11. Audits and Inspections. The Consultant shall make available to the City during normal business hours and as the City deems necessary for audit and copying all of the Consultant's records and documents with respect to all matters covered by this Agreement.

12. City of Lake Forest Park Business License. Consultant shall obtain a City of Lake Forest Park business license before performing any Work.

13. Compliance with Federal, State and Local Laws. Consultant shall comply with and obey all federal, state and local laws, regulations, and ordinances applicable to the operation of its business and to its performance of the Work.

14. Waiver. Any waiver by the Consultant or the City of the breach of any provision of this Agreement by the other party will not operate, or be construed, as a waiver of any subsequent breach by either party or prevent either party from thereafter enforcing any such provisions.

15. Complete Agreement. This Agreement contains the complete and integrated understanding and agreement between the parties and supersedes any understanding, agreement or negotiation whether oral or written not set forth herein.

16. Modification of Agreement. This Agreement may be modified by a Change Order as provided in Section 1, or by a writing that is signed by authorized representatives of the City and the Consultant.

17. Severability. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void, insofar as it is in conflict with said laws, the remainder of the Agreement shall remain in full force and effect.

18. Notices.

A. Notices to the City of Lake Forest Park shall be sent to the following address:

City of Lake Forest Park
Attn: Andrew Silvia, Senior Project Manager
Department of Public Works
17425 Ballinger Way NE
Lake Forest Park, WA 98155

B. Notices to the Consultant shall be sent to the following address:

The Watershed Company
Attn: Kenny Booth
750 Sixth Street South
Kirkland, WA 98033

19. Venue. This Agreement shall be governed by the law of the State of Washington and venue for any lawsuit arising out of this Agreement shall be in King County.

20. Counterpart Signatures. This Agreement may be executed in one or more counterparts, including by facsimile, scanned or electronic signatures, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the last date signed below.

	CONSULTANT:
CITY OF LAKE FOREST PARK WASHINGTON	The Watershed Company
By: _____ Jeff Johnson, Mayor	By: _____ Typed/Printed Name:
_____ Date	_____ Signature
	_____ Title
	_____ Date
ATTEST:	
_____ Matthew McLean, City Clerk	
Date: _____	

APPROVED AS TO FORM:	
Kim Adams Pratt, City Attorney	
Date: _____	

EXHIBIT A

October 24, 2022

Andrew Silvia
Senior Project Manager
City of Lake Forest Park
asilvia@ci.lake-forest-park.wa.us

Re: Lyon Creek Flood Mitigation Project – Monitoring and Agency Coordination Scope and Fee

TWC Reference Number: 110715.1

Task 1. Agency Coordination:

Prior to producing any documents for the reestablishment of the mitigation site, we will assist in the coordination between the City of Lake Forest Park (City) and all agencies with jurisdiction to oversee permit conditions. These include The U.S. Corps of Engineers, Washington Department of Ecology, and Lake Forest Park Department of Planning & Building Development. The purpose of such coordination will be to determine if these agencies will sign off on the completion of certain portions of the mitigation area, discuss alternative mitigation strategies, and find solutions to the requirement for mitigation in areas where the City no longer has right of entry for such work (such as the LFP Town center). This phase assumes up to 42 hours of consulting time for such tasks including coordination, meetings, and communication via phone or email. Upon completion of this task, the scope and project limits for producing contract documents will be confirmed.

Task 2. Contract Documentation:

With the input from our agency coordination phase, we will move forward with the creation of contract documents to restore the existing Lyon Creek Flood Mitigation site and put it back on track to meet performance standards. We will provide plan drawings, in-plan specifications, and cost estimates that are bid-ready. The documents will be designed to meet the goals and objectives of the City and agency requirements. We anticipate plan drawings will not be used for permit submittals but will be used for construction purposes only. Plans will include a site preparation plan and planting plan with relevant details. We do not exclude the possibility that

existing plan documentation may continue to be relevant in some mitigation site areas. Proposed planting and invasive plant removal have been documented in the most recent Fall Monitoring report for the site in 2021. If Lake Forest Park completes a standard template for unit-price contract documents prior to the start of this task then bid items will be adjusted accordingly to match these requirements.

Deliverables for Task 2:

- We anticipate the delivery of one set of final landscape drawings that will occur at the following milestones: 90% check set, 100% bid set, and final construction set. City comments on the 90% set will be incorporated into 100% bid set. City comments on the 100% bid set will be incorporated into the final set. We assume any revisions to the plans based on the cost estimate will be discussed using the 90% check set.
- At each milestone submittal, landscape plans will feature specifications (either on plan drawings or as a separate document depending on agency coordination phase) and a cost estimate.
- Plans will be drafted in AutoCAD and provided in PDF format. We assume no new survey or base drawings will be required.

If desired, we can provide additional progress sets and/or revisions on a time and material basis.

Task 3. Construction Administration Assistance:

We will provide construction administration assistance to the City to verify implementation of the contract documents. We will work with the City to coordinate tasks including (but not limited to): attendance at site meetings with contractors, verification of infill areas, review of materials, and reporting. This phase includes up to 40 hours of consulting time for such tasks including coordination, meetings, and communication via phone or email. If desired, we can provide additional assistance on a time and material basis.

Task 4. Annual Performance Monitoring and Reporting:

We will conduct annual monitoring and reporting for two additional years. These efforts will consist of the following tasks.

- a. Conduct annual spring maintenance inspection for two years to assess growing conditions and identify maintenance tasks for the upcoming growing season. A brief report will be provided to document site conditions and maintenance recommendations.

- b. Conduct annual late-season site monitoring inspection: each summer or fall for two years, we will visit the site to estimate plant survival, native plant cover, stem density, invasive weed cover and other items as detailed in the approved mitigation plan.
- c. Provide annual monitoring report: After the late-season monitoring inspection, we will compile an annual monitoring report that summarizes site visit findings, spring maintenance tasks, progress towards performance standards and recommendations for site maintenance and repair for the upcoming dormant season. The annual report will be prepared according Corps of Engineers requirements.

Proposal Assumptions:

- 1. *The above-described deliverables will be provided in PDF format. If hardcopies or large format plotting is requested copies will be billed at standard in-house rates beyond the quoted price above. Electronic copies of the project specific site plan may be requested upon acceptance of our standard disclaimer. Proprietary design and construction details are not a part of this project deliverable.*
- 2. *Irrigation will be specified as a bidder-designed system. We will not prepare an irrigation plan under this proposal; however, we may advise on irrigation performance and expectations.*
- 3. *Record as-built drawings are not included in this proposal.*
- 4. *Estimates are provided with the acknowledgement that The Watershed Company has no control over costs of labor, materials, competitive bidding environments and procedures, unknown field conditions, financial and/or market conditions or other factors affecting the cost of the construction, all of which are beyond Watershed's control and are unavoidably in a state of change. Watershed cannot and does not make any warranty, promise, or representation, either express or implied that proposals or bids will not vary substantially from probable cost estimates.*
- 5. *This proposal assumes there would be no major scope difference between the monitoring report recommendations and what is proposed in the contract documents described in this proposal.*
- 6. *No work outside of this contract will be undertaken without prior notification to the client.*
- 7. *The growing season is defined by the USACE standard.*
- 8. *For monitoring services in Task 4, distribution of monitoring reports to jurisdictional agencies is not included. All communication with Corps, Ecology and other jurisdictional agencies will handled by the contractor or property owner.*

EXHIBIT B

			Hugh Mortensen, PWS	Sam Payne	April Mulcahy	Marina French, PLA	Total Cost
Task	Subtask	Description	\$210	\$130	\$135	\$160	\$39,412.00
		Enter initials to complete	HM	SP	AAM	MF	
1		Agency Coordination					
1	1.1	Coordinate and meet with agencies	12.00	12.00			\$4,080
1	1.2	Communication and project management	2.00	12.00	4.00		\$2,520
		Subtotal					\$ 6,600.00
2		Plans and Specs					
2	2.1	90 P/S/E	1.00	4.00	30.00	8.00	\$6,060
2	2.2	100 P/S/E	1.00	1.00	12.00	2.00	\$2,280
2	2.3	Final P/S/E	1.00	1.00	4.00	1.00	\$1,040
		Subtotal					\$ 9,380.00
3		Landscaping Administration					
3	3.1	Maintenance oversight				40.00	\$6,400
		Subtotal					\$ 6,400.00
4		Monitoring					
4	4.1	Year 6 Spring Monitoring Visit and Report	1.00	12.00			\$1,770
4	4.2	Year 6 Fall Monitoring Visit and Report	4.00	32.00	12.00		\$6,620
4	4.3	Year 7 Spring Monitoring Visit and Report	1.00	12.00			\$1,770
4	4.4	Year 7 Fall Monitoring Visit and Report	4.00	32.00	12.00		\$6,620
		Subtotal					\$ 16,780.00
E		Expense					
E		Mileage, GPS, other costs (see next tab)					
		Subtotal					\$ 252.00

TOTAL \$39,412.00

Expenses		Units	Resource	Rate per unit	Total
e	FISH		Electrofishing Equipment Fee	\$ 100.00	\$ -
e	TRIM		Trimble Geo XH - GPS Equipment Fee	\$ 190.00	\$ -
e	PANA		Panasonic FZ-G1	\$ 130.00	\$ -
e	MILE	400.0	Auto Mileage	\$ 0.63	\$ 252.00
e	LDMS		Location Data Mapping Device	\$ 20.00	\$ -
e	COPY		Color Printing	\$ 1.00	\$ -
e	Misc		Miscellaneous	\$ -	\$ -
				subtotal	\$ 252.00