

CONTRACT FOR INDEPENDENT CONTRACTOR SERVICES
BETWEEN THE CITY OF LONGVIEW
and
PLAN IT GEO
CONTRACTOR

THIS CONTRACT is made and entered into by and between the City of Longview, a Washington Municipality ("City"), and Plan It Geo ("Contractor").

WHEREAS, the City deems it advisable to engage the services of the Contractor, and it appears that such services can be performed more economically under a contract; and

WHEREAS, the Contractor has signified a desire to provide services as set forth in the response to the City's Request for Proposal;

NOW THEREFORE, in consideration of the premises and of their mutual and dependent agreements, the parties hereto agree as set forth in the following terms and conditions, the Request for Proposal Tree Inventory including all applicable addendums and amendments, and Contractor's response thereto, all of which are incorporated herein by reference and made a part hereof.

1. PROFESSIONAL STANDARDS. The Contractor shall provide the services set forth herein in a manner consistent with standards in the trade, profession, or industry; and shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.

2. EMPLOYMENT OF CITY EMPLOYEES. The Contractor shall not engage the services of any person or persons now employed by the City, including any department, commission or board thereof, to provide services relating to this Contract.

3. NONDISCRIMINATION. In connection with the performance of work under this Contract, the Contractor shall not discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability or national origin.

4. CONTRACT TERM. This Contract shall be effective on March 8, 2018, and ending December 31, 2018, unless sooner terminated by either party as specified in this Contract. The tree inventory and database delivery shall be completed by June 30, 2018. Contractor may request one 30-day extension for delivery of the database. Such request must be in writing and delivered to City by June 1, 2018. Approval or denial shall be at the sole discretion of the City.

5. NOTICE. Unless otherwise specified, termination shall not be effective until 30 calendar days after a party has served written notice of default, or without cause upon the other party. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above.

6. CONSIDERATION. The parties agree that Contractor will provide the services at a cost not to exceed \$89,500 for the term of the contract. This amount includes Contractor's initial bid of \$68,000 and an allowance of \$21,500 for additional services not to exceed \$21,500.

7. INCORPORATED DOCUMENTS – SCOPE OF WORK. The parties agree that the scope of work shall be specifically described in attachment. This Contract incorporates the following attachment:

ATTACHMENT A: Contractor's RFP Response - Description of Services

8. ASSENT. The parties agree that the terms and conditions listed on incorporated attachment of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified.

9. TIMELINESS OF BILLING SUBMISSIONS AND COMPENSATION. The parties agree that timeliness of billing is of the essence to the contract and recognize that the City is on a fiscal year that ends every December 31st. Invoicing for all work shall be monthly and for the percent of total project completed during that time.

10. INSPECTION & AUDIT.

A. Books and Records

Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the City, or the State or United States Government in the event that they provide any funding, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all City ordinances, and state and federal regulations and statutes.

B. Inspection & Audit

Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found during business hours, with or without notice by the City or its authorized agent (and State or Legislative Auditor when applicable), and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives.

C. Period of Retention

All books, records, reports, and statements relevant to this Contract must be retained a minimum three (3) years, and for five (5) years if any federal funds are used pursuant to the Contract. The retention period runs from the date of payment for the relevant goods or services by the City, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

11. CONTRACT TERMINATION.

A. Termination Without Cause.

Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon thirty (30) days written notice by mutual consent of both parties, or unilaterally by either party without cause.

B. Termination for Non-Appropriation.

The continuation of this Contract beyond the fiscal year is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the Longview City Council

and/or federal sources. The City may terminate this Contract, and Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the City Department/Agency's funding from City and/or federal sources is not appropriated or is withdrawn, limited, or impaired in either a City, State or federal fiscal year.

C. Cause Termination for Default or Breach.

A default or breach may be declared with or without termination. This Contract may be terminated by either party upon written notice of default or breach to the other party.

1. Time to Correct.

Termination upon a declared default or breach may be exercised only after service of formal written notice, and the subsequent failure of the defaulting party within fifteen (15) calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

D. Winding Up Affairs Upon Termination.

In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:

1. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
2. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the City;
3. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the City;
4. Contractor shall preserve, protect and promptly deliver into City possession all property of the City.

12. REMEDIES.

Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation actual damages.

13. LIMITED LIABILITY.

The City will not waive and intends to assert available liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any City breach shall never exceed the amount of funds appropriated and authorized for payment under this Contract, but not yet paid to Contractor, for the fiscal year budget in existence at the time of the breach. Damages for any Contractor breach shall not exceed one hundred and fifty percent (150%) of the contract maximum "not to exceed" value. Contractor's tort liability shall not be limited.

14. FORCE MAJEURE.

Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military

authority, act of public enemy, accidents, fires, explosions, or acts of God, including without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

15. INDEMNIFICATION & HOLD HARMLESS.

To the fullest extent permitted by law Contractor shall indemnify, hold harmless and defend, not excluding the City's right to participate, the City from and against all liability, claims, actions, damages, losses, and expenses.

16. INDEPENDENT CONTRACTOR.

Contractor is associated with the City only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the City whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party.

17. INSURANCE.

Unless expressly waived in writing by the City, Contractor, as an independent contractor, must carry policies of insurance and pay all taxes and fees incident hereunto. Contractor shall provide, when required by state law, for all workers' compensation coverage for its employees. Policies shall meet the terms and conditions as specified in the RFP.

18. COMPLIANCE WITH LEGAL OBLIGATIONS.

Contractor shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law or ordinance. Real property and personal property taxes are the responsibility of Contractor. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract.

19. WAIVER OF BREACH.

Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

20. SEVERABILITY.

If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

21. ASSIGNMENT/DELEGATION.

To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to

payment by City, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations nor duties under this Contract without the prior written consent of the City.

22. CITY OWNERSHIP OF PROPRIETARY INFORMATION.

Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under the Contract), or any other documents or drawings, prepared or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the City and all such materials shall be delivered into City possession by Contractor upon completion, termination, or cancellation of this Contract. Notwithstanding the foregoing, the City shall have no proprietary interest in any materials licensed for use by the City that are subject to patent, trademark or copyright protection.

23. PUBLIC RECORDS.

Information or documents received from Contractor may be open to public inspection and copying. The City has a legal obligation to disclose such information unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a trade secret or confidential proprietary information, provided that Contractor thereby agrees to indemnify and defend the City for honoring such a designation. The failure to so label any document that is released by the City shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

24. CONFIDENTIALITY.

Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise required by this Contract.

25. LOBBYING.

The parties agree where expressly prohibited by law or ordinance, no funding associated with this contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

- A. Any federal, state, county or local agency, legislature, commission, counsel or board;
- B. Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official; or
- C. Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.

26. PROPER AUTHORITY.

The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Any services performed by Contractor before this Contract is effective, or after it ceases to be effective, or beyond its maximum authorized consideration, shall be performed at the sole risk of Contractor.

27. GOVERNING LAW; JURISDICTION.

This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Washington and the ordinances of the City of Longview, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction.

28. ENTIRE CONTRACT AND MODIFICATION.

This Contract and its integrated attachment(s) constitute the entire agreement of the parties and as such are intended to be the complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Headings are for convenience only and shall not be construed as material. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed and approved by the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

Plan It Geo

Ian S. Hanou Owner and Director of Business Development

CITY OF LONGVIEW

ATTEST:

By: _____
Kurt Sacha, City Manager

By: _____
Kaylee Cody, City Clerk

Agreed to this _____ day of February, 2018

APPROVED AS TO FORM

By: _____
City Attorney