

## CONTRACT FOR PROCUREMENT OF REMOTELY SENSED DATA (RFP 13-008)

### PART I: PARTIES

This contract is between the City and Borough of Juneau, Alaska, a municipal corporation in the State of Alaska, hereafter "City" or "CBJ," and Watershed Sciences, Inc., hereafter "WSI" or "Contractor", a corporation organized under the laws of the State of Oregon, and authorized to do business in the State of Alaska.

### PART II: CONTRACT ADMINISTRATION

All communications concerning this contract shall be directed as follows, any reliance on a communications with a person other than that listed below is at the party's own risk. Notices required under this contract must be in writing and personally delivered or sent to the address shown below, or by facsimile, and will be effective upon receipt.

**City & Borough of Juneau:**

Attn: Teri Camery, Project Manager and  
Senior Planner  
City and Borough of Juneau, Alaska  
155 South Seward Street  
Juneau, AK 99801  
Phone: 907-586-0755  
Fax: 907-586-3365

**Contractor:**

Attn: Russell Faux, Co-CEO, WSI  
Watershed Sciences, Inc.  
517 SW 2<sup>nd</sup> St., Ste. 400  
Corvallis, OR 97333  
Phone: (541) 752-1204  
Fax: (541) 752-3770

### PART III: CONTRACT DESCRIPTION

This contract is identified as Contract for Procurement of Remotely Sensed Data n (RFP 13-008). The following appendices are attached and are considered a part of this contract, as well as any exhibits or attachments incorporated by reference or attached to those appendices.

Appendix A: Scope of Work, Term, and Compensation

Appendix B: Standard Provisions

Appendix C: Insurance

If in conflict, the order of precedence shall be: this document, Appendix A, B, and then C.

### PART IV: CONTRACT EXECUTION

CBJ and Contractor agree and sign below. This contract is not effective until signed by the CBJ. Contractor represents that the person signing below on its behalf has the authority to do so and that it is a valid and binding contract enforceable in accordance with its terms.

**CBJ:**

Date: 4/12/13

By: Kimberly A. Kiefer

Kimberly A. Kiefer, City and  
Borough Manager

**Contractor:**

Date: 4/12/2013

By: Russell Faux

Russell Faux, Co-CEO, WSI

Content Approved by: Greg P. Chaney, Community Development Department  
Form Approved by: 4-12-13, Law Department  
Risk Management Review: Jim Allen 4/12/13, Risk Management

## **APPENDIX A: SCOPE OF WORK, TERM, AND COMPENSATION**

### **1. SCOPE OF WORK and DELIVERABLES**

The work and deliverables are described in the following documents which are attached to this contract. In the event of a conflict between the provisions of the attachments and this contract, the order of precedence shall be: this document, Attachment 3, Attachment 1 and then Attachment 2.

Attachment 1: RFP# 13-008, including all Addendums

Attachment 2: WSI's Response to RFP #13-008, dated February 8, 2013

Attachment 3: Negotiations Check List, dated 4/5/2013

### **2. TERM**

The effective date of this contract shall be the date it is signed by the CBJ, and it shall terminate on June 30, 2014, unless sooner terminated as provided for herein. All deliverables and reports must be delivered no later than June 30, 2014.

### **3. ACKNOWLEDGEMENT OF FUNDING SOURCE.**

The Contractor acknowledges that the project is funded by the U.S. Fish and Wildlife Service Coastal Impact Assistance Program (CIAP) and the deliverables may require an acknowledgement of the funding source. This contract is funded by CIAP through the Alaska Department of Commerce, Community and Economic Development as part of Grant # 10-CIAP-009, titled "Habitat Mapping and Analysis Project."

### **3. COMPENSATION AND TERMS OF PAYMENT**

a. Compensation. Total compensation to be paid Contractor shall not exceed \$334,000 (Three Hundred Thirty-Four Thousand Dollars and No Cents) and shall include all costs and expenses, including, but not limited to, costs for equipment mobilization, data acquisition, preparing deliverables and reports, and all related expenses. (See, Attachment 2, WSI's Response to RFP #13-008, Section 10.0 at p. 50; and Attachment 1 at Section 3.11, p. 15.)

b. Additional Terms of Payment. Compensation shall be made according to the following payment schedule, which takes into account the projected timeline for QC review and acceptance by the CBJ (4 weeks for pilot area; 6 weeks for final products), as outlined in the RFP (Attachment 1). Projected timelines are based on acquisition occurring by May 15, 2013. Invoices are expected to be paid within 30 days of receipt.

The fee schedule is based on a payment plan of 55% of total contract cost for each task at acquisition/20% at delivery/25% at final approval of products:

Project Milestone	Proposed Payment Schedule
Data Collection	55%
Delivery of Data	20%
Acceptance of Deliverables	25%

Project Milestone	Anticipated Timeframe (2013)	Percentage of Total Contract Amount for Task (%)	Invoice Total (\$)
LIDAR Acquisition	by May 15	55%	\$132,836
Orthoimagery Acquisition	by May 15	55%	\$50,793
Pilot Area Delivery (~5 sq miles)	by ~ July 15	--	--
LiDAR Data Delivery	≤ 3 months of Pilot Area Acceptance by CBJ (anticipated 4 weeks after WSI submits Pilot Data)	20%	\$48,304
Orthophoto Data Delivery	≤ 3 months of Pilot Area Acceptance by CBJ (anticipated 4 weeks after WSI submits Pilot Data)	20%	\$18,470
CBJ Acceptance of LIDAR	Within 6 weeks of Final Delivery to CBJ	25%	\$60,380
CBJ Acceptance of Orthophotos	Within 6 weeks of Final Delivery to CBJ	25%	\$23,088
<b>Total</b>			<b>\$333,871</b>

## **APPENDIX B: STANDARD PROVISIONS**

**CONTRACTUAL RELATIONSHIP.** The parties intended that an independent contractor relationship will be created by this contract. The CBJ is interested only in the results to be achieved as provided in this agreement. The conduct and control of the work will lie solely with the Contractor. Contractor is not considered to be an agent or employee of the CBJ for any purpose, and the employees of Contractor are not entitled to any benefits that CBJ provides for CBJ employees. CBJ does not agree to use the Contractor exclusively. Contractor does not agree to work for CBJ exclusively.

**PERSONNEL, EQUIPMENT AND SUPPLIES.** Except as provided in the Scope of Work, the Contractor represents that it has or will secure at its own expense all personnel, equipment, and supplies required in performing the work under this contract. All of the work required hereunder will be performed by the Contractor or under its supervision. None of the work covered by this contract shall be subcontracted except as provided in the Scope of Work.

**CONTRACTOR QUALIFICATIONS.** Contractor warrants that it is fully qualified to perform work of the type and complexity required, and is licensed under all applicable local, state, and federal laws to perform its obligations under this contract.

**INSURANCE REQUIREMENTS.** Contractor has secured and agrees to keep and maintain in full force and effect, at its own expense, the insurance approved by CBJ Risk Management as outlined in Appendix C. All insurance required under this contract shall name the CBJ as an additional insured, except with respect to any required Professional Liability or Worker's Compensation policies, and shall require that the insurance company give prior written notice consistent with the terms of the policy, to the CBJ's Risk Management Officer prior to any cancellation, non-renewal, or reduction in the amount of coverage. The Contractor's insurance shall be primary and any insurance maintained by the CBJ shall be non-contributory. If the Contractor maintains higher limits than shown below, the CBJ shall be entitled to coverage for the higher limits maintained by the Contractor. Each policy shall be endorsed to waive all rights of subrogation against the CBJ by reason of any payment made for claims under the above coverage, except Workers Compensation and Professional Liability.

***Deductibles and Self-Insured Retentions.*** Any deductibles and self insured retentions must be declared to and approved by the CBJ. The CBJ may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention.

***Claims Made Policies.*** If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be declared and must be before the date of the contract or the beginning of the contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least one (1) year after completion of the contract work.***

3. If coverage is canceled or non-renewed, and not replaced with another claims – made policy form with the Retroactive Date prior to the contract effective date, the Contractor must purchase “**extended reporting**” coverage for a minimum of one (1) after completion of the contract work.

**CHANGES.** The CBJ may, from time to time, require changes in the scope of services to be performed under this contract. Such changes, including any increase or decrease in the amount of the Contractor’s compensation, must be mutually agreed upon in writing before they will be regarded as part of this contract. No claim for additional services, not specifically provided in this contract, performed or furnished by the Contractor, will be allowed, nor may the Contractor do any work or furnish any material not covered by the contract unless the work or material is ordered in writing by the CBJ.

**NO ASSIGNMENT OR DELEGATION.** The Contractor may not assign or delegate any interest in this contract without the prior written consent of the CBJ. Contractor may assign its rights to any payment under this contract without the prior written consent of CBJ; however, notice of any such assignment or transfer shall be furnished promptly to CBJ by Contractor.

**TERMINATION FOR CONVENIENCE or BY MUTUAL CONSENT.** The CBJ may, by prior written, notice terminate this agreement at any time, in whole or in part, when it is in the best interest of the CBJ. In the event that this contract is terminated by the CBJ for convenience, as opposed to termination for cause, the CBJ is liable only for payment in accordance with this agreement for work accomplished prior to the effective date of the termination.\

Additionally, this contract may be terminated, in whole or in part, upon mutual, written consent by the parties.

**DEFAULT AND TERMINATION FOR CAUSE.** If Contractor fails to perform a material obligation under this contract, the CBJ may consider the Contractor to be in default (unless caused an event, circumstance, or act of a third party that is beyond Contractor’s reasonable control) and may assert a default claim by giving Contractor a written and detailed notice of default. The Contractor will have thirty (30) days after receipt of the notice of default to cure the default or, if the default is not curable within thirty (30) days, provide a written cure plan acceptable to the CBJ, which shall not be unreasonably withheld. Contractor will begin implementing the cure plan immediately after receipt of notice that the CBJ approves the plan. The CBJ’s payment obligations shall be held in abeyance until the default is cured.

If Contractor fails to cure the default, unless otherwise agreed in writing, the CBJ may terminate any unfulfilled portion of this Agreement. In the event of termination for default, the Parties may agree that the CBJ’s remedy be limited to recovering from Contractor all actual, reasonable costs incurred in securing the work described in Appendix A. The CBJ agrees to mitigate damages to the extent required by law, and to provide Contractor with detailed invoices substantiating the charges.

**INSPECTION AND RETENTION OF RECORDS.** The CBJ may inspect, in the manner and at reasonable times it considers appropriate, all of Contractor’s facilities, records and activities

having any relevance to this contract. Contractor shall retain financial and other records relating to the performance of this contract for a period of 6 years, or until the resolution of any audit findings, claims or litigation related to the contract.

**EQUAL EMPLOYMENT OPPORTUNITY.** The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, marital status, changes in marital status, pregnancy or parenthood. Contractor shall include these provisions in any agreement relating to the work performed under this agreement with contractors or subcontractors.

**CHOICE OF LAW; VENUE.** This contract shall be governed by the laws of the State of Alaska. Venue shall be in the State of Alaska, First Judicial District at Juneau.

**COMPLIANCE WITH LAWS AND REGULATIONS.** Contractor shall, in the performance of this contract and at Contractor's sole cost and expense, comply with all applicable requirements of federal, state, and local laws, ordinances and regulations now in force, including safety, environmental, immigration, and security enactments, or which may be subsequently enacted. Contractor also agrees to comply with all contract provisions pertaining to grant or other funding assistance, which the CBJ may choose to utilize. Contractor warrants that it has obtained and is in full compliance with all required licenses, permits, and registrations regulating the conduct of business within the State of Alaska and the CBJ, and shall maintain such compliance during the effective term of this agreement.

**PAYMENT OF TAXES and OBLIGATIONS TO CBJ.** As a condition of this contract, the Contractor shall pay all federal, state, and local taxes incurred by the Contractor and shall require their payment of any subcontractor or any other persons in the performance of this contract. Contractor shall not be delinquent in the payment of taxes, or any other obligation, to CBJ during the performance of this contract. Satisfactory performance of this paragraph is a condition precedent to payment by the CBJ under this contract.

**CONFLICT OF INTEREST.** Contractor warrants that no employee or officer of the CBJ has violated the conflict of interest provisions of CBJ code regarding this contract. Contractor also warrants that it has not solicited or received any prohibited action, favor or benefit from any employee or office of CBJ, and that it will not do so as a condition of this contract. If the Contractor learns of any such conflict of interest, the Contractor shall without delay inform the CBJ and Borough Attorney or CBJ's representative for this contract.

**INDEMNIFICATION.** The contractor agrees to defend, indemnify, and hold harmless CBJ, its employees, volunteers, consultants, and insurers, with respect to any action, claim, or lawsuit arising out of or related to the Contractor's performance of this contract, without limitation as to the amount of fees, and without limitation as to any damages, cost or expense resulting from settlement, judgment, or verdict, and includes the award of any attorneys fees even if in excess of Alaska Civil Rule 82. This indemnification agreement applies to the fullest extent permitted by law and is in full force and effect whenever and wherever any action, claim, or lawsuit is initiated, filed, or otherwise brought against CBJ relating to this contract. The obligations of Contractor arise immediately upon actual or constructive notice of any action, claim, or lawsuit.

CBJ shall notify Contractor in a timely manner of the need for indemnification, but such notice is not a condition precedent to Contractor's obligations and is waived where the Contractor has actual notice.

This contract does not create, between the Department of Commerce, Community and Economic Development or the State of Alaska and the contractor, any contract or relationship. The Department of Commerce, Community and Economic Development and the State of Alaska are not liable for damages or claims arising from Contractor's performance or activities under the terms of the contract.

**OWNERSHIP OF DOCUMENTS.** All designs, drawings, specifications, notes, artwork, and other work developed in the performance of this contract become the sole property of the CBJ and may be used by the CBJ for any other purpose without additional compensation to the Contractor. The Contractor agrees not to assert any rights and not to establish any claim under the design patent or copyright laws. The Contractor, for a period of three years after final payment under this contract, agrees to furnish and provide access to all retained materials at the request of the CBJ. Unless otherwise directed by the CBJ, the Contractor may retain copies of all the materials. Contractor acknowledges that all documents and work products are publicly shared with Alaska Department of Commerce, Community and Economic Development, Alaska Department of Natural Resources, and U.S. Fish and Wildlife Service.

**IDENTIFICATION OF DOCUMENTS.** All reports, maps, and other documents completed as a part of this contract, other than documents exclusively for internal use within the CBJ, shall carry a CBJ notation or logo as directed by the CBJ.

**APPLICABILITY OF ALASKA PUBLIC RECORDS ACT.** Contractor acknowledges and understands that the CBJ is subject to the Alaska Public Records Act (A.S. 40.25.120) and that all documents received, owned or controlled by the CBJ in relation to this Contract must be made available for the public to inspect upon request, unless an exception applies. Contractor may not promise confidentiality to any third-party on behalf of the CBJ, without first obtaining express written approval by the CBJ.

**ENTIRE AGREEMENT.** This Agreement, including all appendices and exhibits, constitutes the entire agreement of the Parties regarding the subject matter of the agreement and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter.

**SEVERABILITY.** If a court of competent jurisdiction renders any part of this agreement invalid or unenforceable, that part will be severed and the remainder of this agreement will continue in full force and effect.

**WAIVER.** Failure or delay by the CBJ to exercise a right or power under this agreement will not be a waiver of the right or power. For a waiver of a right or power to be effective, it must be in a writing signed by the CBJ. An effective waiver of a right or power will not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

## APPENDIX C: INSURANCE

**INSURANCE REQUIREMENTS.** The Consultant has provided certification of proper insurance coverage to the City and Borough of Juneau, attached as Attachment 4.

Consultant agrees to maintain insurance as follows at all times while this contract is in effect, including during any periods of renewal.

**Commercial General Liability Insurance.** The Contractor must maintain Commercial General Liability Insurance in an amount it deems reasonably sufficient to cover any suit that may be brought against the Consultant. This amount must be at least one million dollars (\$1,000,000.00) per occurrence, and two million dollars (\$2,000,000.00) aggregate. **The CBJ will be named as additional insured on this policy for work performed for the CBJ.**

**Workers Compensation Insurance.** The Contractor must maintain Workers Compensation Insurance to protect the Contractor from any claims or damages for any personal injury or death which may arise from services performed under this contract. This requirement applies to the Contractor's firm, the Contractor's subcontractors and assignees, and anyone directly or indirectly employed to perform work under this contract. The Contractor must notify the City as well as the State Division of Workers Compensation immediately when changes in the Contractor's business operation affect the Contractor's insurance status. Statutory limits apply to Workers Compensation Insurance. The policy must include employer's liability coverage of one hundred thousand dollars (\$100,000.00) per injury and illness, and five hundred thousand dollars (\$500,000.00) policy limits. **The policy shall be endorsed to waive subrogation rights against the CBJ.**

**Comprehensive Automobile Liability Insurance.** The coverage shall include all owned, hired, and non-owned vehicles to a one million dollar (\$1,000,000.00) combined single limit coverage. The policy shall contain a MCS 90 Endorsement. **CBJ will be named as additional insured on this policy for work performed for the CBJ.**

**Professional Liability Insurance.** The consultant must maintain Professional Liability insurance in an amount not less than two hundred and fifty thousand dollars (\$250,000) aggregate to protect the CBJ from any claims or damages for any error, omission, or negligent act of the Consultant, the Consultant's firm, employees, or sub-consultants, which results in a financial loss to the CBJ.

**Aviation Liability Insurance.** If either owned or chartered, hired, or leased Aircraft (fixed wing or helicopter) are to be used to do the work required by the contract, Aviation liability for owned/non-owned aircraft is required at liability limits of one million dollars (\$1,000,000) per incident.