

## SECOND AMENDED CONTRACT FOR SERVICE AGREEMENT

**THIS SECOND AMENDED CONTRACT FOR SERVICE AGREEMENT** (this “Agreement”) is made between:

- a) **Lewis County, WA**, through Eric Eisenberg, whose office is at 351 NW North St. Chehalis WA, 98532; Tel: (360) 740-1235 Eric.Eisenberg@lewiscountywa.gov (the “Client”); and
- b) **AMP Insights, LLC**, represented by David Pilz, Managing Director, whose mailing address is PO Box 1461, Bend, OR 97709, telephone contact at (503) 250-2936, and email contact at david@ampinsights.com (the “Contractor”).

**SUMMARY OF SECOND AMENDMENT:** The parties encountered a problem in attempting to complete the scope of work in the first amendment, described below: an interpretation by the Department of Ecology that, under the language of the grant program’s funding proviso, the water right on which the application was to be predicated was not eligible for funding. Rather than complete application as contemplated, the parties instead took steps to secure the continuation and reinterpretation of that funding into the next biennium and began to search in earnest for a different water right to support the application. These items supplanted the application work in the First Amendment; an extension and increase in the monetary amount is needed to continue the work of finding an additional water right and to complete the application.

**SUMMARY OF FIRST AMENDMENT:** The parties having completed preliminary study work, the scope of work is expanded to complete Tasks 1, 2, and 3 of the original solicitation—namely, completing and submitting a water banking pilot program application and coordinating with Ecology during the application process. The time for performance is extended and monetary amount increased to reflect the amended scope of work.

### **1 SERVICES TO BE PERFORMED**

- 1.1 Whereas the Client requires assistance with water bank assessment consulting services and the Contractor has demonstrated through an informal competitive process that it has the requisite experience, qualifications and interest to undertake the work on behalf of the Client, the Contractor agrees to fulfill the Scope of Work attached as Exhibit A to this Agreement.

### **2 TERM OF AGREEMENT AND TIME FOR PERFORMANCE**

- 2.1 This Agreement is entered into as of the date of the last party to sign this Agreement and shall be effective for a term commencing on **July 18, 2022** and shall continue in full force and effect until **June 30, 2023**, except as otherwise provided by this Agreement. The Contractor agrees to complete all activities specified in the scope of work by this date.

### **3 PAYMENT**

- 3.1 In consideration of Contractor's performance of these services, Client agrees to pay Contractor, upon invoice no more than monthly, for work in accordance with the Scope of Work. The total payment for work under this Agreement shall not exceed \$60,465.
- 3.2 Client will cover directly or reimburse allowable travel expenses for Contractor to participate in meetings, trips and work sessions up to a maximum of \$500. Allowable travel expenses include airfare, mileage for use of personal car at federal reimbursement rates, car rental and fuel, other miscellaneous travel, lodging, and per diem expenses.
- 3.3 Payment for time and travel will be made to the contractor in the form of a check or ACH transfer in US Dollars within 30 days receipt of the proper invoice.

- 3.4 No payment will be made by the Client to Contractor for materials or other inputs to work products.
- 3.5 The amount of payment is not subject to any adjustment or revision because of price or currency fluctuations, or the actual costs incurred by the Contractor in the performance of the agreement.

#### **4 INDEPENDENT CONTRACTOR**

- 4.1 The parties intend Contractor to be an independent contractor in the performance of these services. Contractor shall have the right to control and determine the method and means of performing the above services; Client shall not have the right to control or determine such method or means.
- 4.2 Contractor shall be responsible for the payment of all taxes, including Federal, State, and local taxes arising out of the activities in accordance with this Agreement, including by way of illustration but not limitation, Federal and State income tax, Social Security tax, Unemployment Insurance taxes and any other taxes or business license fees as required.
- 4.3 Nothing contained in this Agreement shall be construed to create a partnership, joint venture, agency, or employment relationship. Neither party shall be liable for the debts or obligations of the other. No employee of Contractor shall be deemed to be an employee of Client, and Client shall not have the right or power to hire or fire Contractor's employees.
- 4.4 Contractor shall maintain and provide all necessary insurance for its employees or subcontractors, including but not limited to unemployment and workers' compensation insurance and shall further comply with all laws, regulations and rules concerning the same.

#### **5 OTHER CLIENTS.**

- 5.1 Contractor retains the right to perform services for other clients. Contractor agrees not to enter contracts with other clients that pose a direct conflict of interest with Contractor's work with the Client. Contractor also agrees to provide written notice to Client before engaging in contracts with other clients on water rights, water transactions, and ecosystem service transactions.

#### **6 CONFIDENTIALITY; NON-DISCLOSURE**

- 6.1 In the course of carrying out the work assignment, Contractor may have access to information of a confidential nature to Client and its clients. Contractor agrees to keep such information in confidence, and when questions arise ask Client if such information is of a confidential nature or not so as to clarify its status.
- 6.2 Contractor may be asked by Client to participate in project development, where the nature and terms of the project under development would be at risk if business information is shared beyond Client and its contractors. In such cases, Contractor agrees not to disclose such business information, without the prior consent of Client.
- 6.3 The work performed under this contract is in service of a government function. Each Party will fulfill their independent obligations, separately, under the Washington Public Records Act (PRA), Chapter 42.56 of the Revised Code of Washington. In the event one Party fails to fulfill its obligations pursuant to this section and due in whole or in part to such failure a court of competent jurisdiction imposes a penalty upon the other Party for violation of the PRA, the failing Party shall indemnify the other for that penalty, as well as for all costs and attorney fees incurred by the other Party in the litigation giving rise to such a penalty. The obligations created by this section shall survive the termination of this Agreement.
- 6.4 Each Party shall maintain all books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect

costs of any nature expended in the performance of this Agreement. Both Parties shall retain such records for a period of ten (10) years following the date of final potential reimbursement for services provided under this Agreement. At Contractor's option, following any potential audit period applicable, Contractor may deliver all materials covered under this paragraph to Client for Client to retain—provided, that Contractor must nevertheless carry out any obligations required by the PRA despite its delivery of such materials to Client.

## **7 ASSISTANTS.**

7.1 Contractor, at Contractor's expense, may employ such assistants as Contractor deems appropriate to carry out this agreement. Contractor will be responsible for paying such assistants, as well as any expense attributable to such assistants, including income taxes, unemployment insurance, and social security taxes, and will maintain workers' compensation insurance for such employees.

## **8 EQUIPMENT AND SUPPLIES.**

8.1 Contractor, at Contractor's own expense, will provide all equipment, tools, and supplies necessary to perform the above services, and will be responsible for all other expenses required for the performance of those services, unless these are explicitly provided for in the individual Terms of Reference that are developed for specific tasks as the work progresses.

## **9 CONTRACTOR'S REPRESENTATIONS AND WARRANTIES**

9.1 Contractor shall comply with all applicable international, federal, state, and local laws, ordinances, regulations and rules pertaining to the matters arising under this Agreement and the performance thereof. By way of example but not limitation, Contractor shall comply with all applicable copyright and other intellectual property laws. Contractor understands that it may be subject to immediate termination under this Agreement and further be subject to penalties for breach of relevant statutory provisions.

9.2 Contractor further represents and warranties the additional matters included in Exhibit B, which are passed through to Contractor by virtue of American Rescue Plan Act funding being used for this project.

9.3 The representations and warranties herein made by Contractor shall survive termination of this Agreement.

## **10 TERMINATION**

10.1 This Agreement may be terminated for convenience by Client at any time with ten (10) days' prior written notice to Contractor.

10.2 Should this Agreement be terminated, Client's obligation to pay Contractor shall cease immediately as of the date of the notice of termination, and Contractor shall be entitled to request reimbursement for actual work performed or completed prior to the notice of termination.

10.3 Upon the termination of this Agreement, Contractor agrees to return to Client all of Client's property then in the possession of Contractor, within three (3) business days after termination.

## **11 NO ASSIGNMENT**

11.1 No right or interest arising under this Agreement shall be assigned by either party without the prior written consent of the other.

## **12 TAX LIABILITY**

12.1 Contractor shall exonerate, indemnify, and hold harmless Client from and against, and shall assume full responsibility for, payment of self-employment taxes, all federal, state and local taxes, or contributions imposed or required under unemployment insurance, workers'

compensation, social security, and income tax laws with respect to Contractor's services under this Agreement.

**13 GOVERNING LAW AND JURISDICTION**

13.1 This Agreement shall be governed by and construed under the laws of the State of Washington, and the Lewis County Superior Court shall have exclusive jurisdiction over disputes arising hereunder.

**14 INDEMNIFICATION AND INSURANCE**

14.1 Contractor hereby agrees to protect, defend, and indemnify Client and hold it harmless from and against any and all costs, injury, loss, claim, damage, liability, expense (including attorney fees), court costs, and demand of every kind or nature, in connection with and/or arising in any way out of Contractor's negligent performance of services pursuant to this Agreement, including (without limitation) any and all claims arising from contracts between Contractor and third parties made to effectuate the purpose of this Agreement.

14.2 Contractor agrees to maintain professional liability insurance in the amount of \$1 million per occurrence on a covered-period, as opposed to claims-made, basis throughout the period of this Agreement. Contractor need not maintain such insurance after the termination of this Agreement so long as the period covered by the insurance continues to encompass any work performed under this Agreement.

**15 ATTORNEY FEES**

15.1 If any legal action must be taken to enforce the terms of this Agreement, the prevailing party in such action shall be entitled, in addition to any other relief that may be granted, to recover from the other(s) a reasonable sum for attorney fees.

**16 BINDING ON SUCCESSORS**

16.1 This Agreement is intended to inure to the benefit of and bind all parties and their heirs, assigns, successor in interest, and legal representatives.

**17 SEVERABILITY**

17.1 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.

**18 WAIVER**

18.1 Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the party granting such a waiver.

**19 ENTIRE AGREEMENT**

19.1 This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the transaction and cannot be changed except by their written consent.

[Signatures appear on the following page.]

**EXECUTION**

This Agreement is hereby executed by Contractor and Client on the terms set forth above.

**Client:** Lewis County

**Contractor:** AMP Insights, LLC

**Name and Title:** Eric Eisenberg, Housing & Infrastructure Specialist

**Name and Title:** David Pilz, Managing Director

**Signature:**

**Signature:**

**Date:**

**Date:**

## EXHIBIT A – SECOND AMENDED SCOPE OF WORK

### Lewis County Water Bank Development Pre-Assessment Scope and Budget

#### Original Work

This contract will cover initial work under Tasks 1, 2 and 3 for AMP Insights to support Lewis County in initial assessment for water bank development and water right acquisition. Under Task 1, AMP will coordinate with County staff during an initial kick-off meeting in Lewis County to discuss work done to date, the purpose and objectives of a water bank in Lewis County, potential areas of interest for water right acquisition and water bank models generally. Under Task 2, AMP will review work completed to date on water right assessment in the watershed and work with the County to determine if there is an area of sufficient focus or a suite of water rights that could be targeted to seed an initial water bank. This will include some preliminary study of the water rights' viability for this purpose, short of the full due diligence required for purchase. Under Task 3, AMP will participate in pre-application with Ecology in advance of preparing a grant proposal in collaboration with Lewis County Staff. Once initial assessment work is complete, AMP will bring a second budget proposal to Lewis County for consideration which will include completing work under Tasks 1,2 and 3 as well as subsequent tasks. An estimated budget for pre-assessment work is included below with a total pre-assessment budget not to exceed \$23,260.

Professional Services (Hours)	Amanda Cronin	David Pilz	Andrew Purkey	Sarah Kruse	Alex Ehrens	Jamie Morin	Task Hours	Task Budget
<b>Rates</b>	170	170	185	180	105	300		
<b>Task 1: Project Management</b>							0	\$0
1a. Liaise with county staff to develop capacity and expertise for waterbanking work	16		12		8	12	48	
1b. Maintain sufficient records and fulfill grant reporting requirements							0	
<b>Task 2: Pre-App work</b>							0	\$0
2a. Consider potential water bank models	5		5		4	4	18	\$3,395
2b. Identify suitable water rights for acquisition in two or more basins	15		15		8	4	42	\$7,365
2c. Conduct due diligence on identified water rights							0	
2d. Negotiate contingent agreement or option to purchase							0	
<b>Task 3: Water Bank Grant App process</b>							0	\$0
3a. Participate in a pre-application meeting with Ecology	4		4			4	12	
3b. Prepare and submit application to Ecology							0	
3c. Interact with Ecology during application process							0	\$0
<b>Total Hours</b>	40	0	36	0	20	24	120	\$10,760
<b>Total Budget for Hours</b>	\$6,800	\$0	\$6,660	\$0	\$2,100	\$7,200	—	<b>\$22,760</b>
<b>Travel (Mileage to Chehalis)</b>								<b>\$500</b>
<b>Total Budget</b>								<b>\$23,260</b>

#### First Amendment: Additional Work within Original Solicitation

The additional work under this contract will focus on assisting Lewis County with a grant application to submit to the Department of Ecology for set-up of a water bank. Coordination with Lewis County is included under Task 1. Task 2 covers due diligence on two identified water rights in Lewis County and negotiation of letters of intent with potential sellers to sell Lewis County water rights to seed the County's future water bank. The pre-grant application meeting with Ecology is covered under Task 3 as well as preparation and submittal of the grant application to Ecology and interaction with the County and Ecology during the application process. Deliverables will include one or more letters of intent between the County and potential water right sellers to acquire water rights for the water bank, a virtual pre-application meeting with Ecology and a grant application in coordination with County staff. An estimated budget for grant application work is included on the next page with a total budget not to exceed \$21,240.



## **EXHIBIT B – CONTRACTOR REPRESENTATIONS AND CERTIFICATIONS**

### **COMPLIANCE WITH FEDERAL AND STATE LAWS**

Contractor certifies that it is not on the Federal Government’s list of suspended, ineligible, or debarred entities. In the event of placement on this list between the time of certification and the completion of this Agreement, Contractor will notify Client. Failure to do so may result in termination.

Contractor agrees to comply with all other applicable Federal statutes, regulations, and executive orders, and shall provide for compliance with the American Rescue Plan Act to include:

- Equal Employment Opportunity requirements;
- Davis Bacon Act (40 U.S.C. §§ 3141-3148);
- Anti-Kickback Act (40 U.S.C. § 3145);
- Contract Work Hours and Safety Standards (40 U.S.C. §§ 3701-3708);
- Rights to Inventions Made Under a Contract or Agreement (37 C.F.R. Part 401);
- Clean Air Act (42 U.S.C. §§ 7401-7671q) and Water Pollution Control Act (33 U.S.C. §§ 1251-1387);
- Debarment and Suspension (Executive Orders 12549 and 12689);
- Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 and 31 C.F.R. Part 21);
- Procurement of recovered materials (2 C.F.R. § 200.323) (pursuant to section 6002 of the EPA’s Solid Waste Disposal Act);
- Prohibition on certain telecommunications and video surveillance services or equipment (2 C.F.R. § 200.216); and
- Domestic preferences for procurements (2 C.F.R. § 200.322).

A special note on the Davis Bacon Act for avoidance of doubt: this professional services contract is not required to pay Davis Bacon or state prevailing wages. Therefore, Contractor may comply with the Davis Bacon Act without paying prevailing wages.

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Signature:

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Date:



**DEBARMENT CERTIFICATION FORM**

The Contractor certifies that, neither the Contractor firm nor any owner, partner, director, officer, or principal of the Contractor, nor any person in a position with management responsibility or responsibility for the administration of federal funds:

- (a) Is presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from covered transactions by any federal or state department/agency;
- (b) Has within a three-year period preceding this certification been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract (federal, state, or local); violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (b) above; or
- (d) Has within a three-year period preceding this certification had one or more public transactions or contracts (federal, state, or local) terminated for cause or default.
- (e) The contractor is "Actively" registered with SAMS (Service for Award Management), and has been assigned the following Unique Entity Identifier (UEI): \_\_\_\_\_. The Contractor further certifies that it shall not knowingly enter into any transaction with any subcontractor, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department/agency.

Name of Firm or Individual: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title

**NON-COLLUSION STATEMENT**

My signature certifies that the accompanying proposal is not the result of, or affected by, any unlawful act of collusion with another person or company engaged in the same line business or commerce.

I hereby certify that I am authorized to sign, personally or as a Representative for the Firm:

Name of Firm or Individual: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title

## **INSURANCE CERTIFICATION**

[Omitted as unnecessary; insurance is addressed in section 14.2 of the Agreement.]

## DISCLOSURE OF LOBBYING ACTIVITIES

Per 31 U.S.C. 1352, no funds from this Agreement may be used to pay any person for influencing or attempting to influence an officer or employee of any federal agency or Congress, or any Member of Congress or his or her employee, in connection with the awarding of, making, entering into, extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If Contractor pays someone *from funds not under this Agreement* to do any of the above activities, it must file the disclosure form below.

<b>Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change
<b>Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if Known:  <b>Congressional District, if known:</b>	<b>If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b>   <b>Congressional District, if known:</b>	
<b>Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, <i>if applicable</i> : _____	
<b>Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b>  \$ _____	
<b>10. a. Name and Address of Lobbying Registrant</b> <i>(if individual, last name, first name, MI):</i>	<b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
<b>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b>	<b>Signature:</b> _____  <b>Print Name:</b> _____  <b>Title:</b> _____  <b>Telephone No.:</b> _____ <b>Date:</b> _____	
<b>Federal Use Only</b>	<b>Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)</b>	