


CITY OF MARYSVILLE AGENDA BILL
EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: June 24, 2019

AGENDA ITEM:	
Novation Agreement with WSP for the First Street Bypass project	
PREPARED BY:	DIRECTOR APPROVAL:
Jeff Laycock, City Engineer	
DEPARTMENT:	
Engineering	
ATTACHMENTS:	
Novation Agreement	
BUDGET CODE:	AMOUNT:
30500030.563000, R0901	N/A
SUMMARY:	

BergerABAM, the consultant performing design and construction management services for the First Street Bypass, was recently acquired by WSP USA effective April 26, 2019. The attached novation agreement would formally document and change the name of the consultant within the professional service agreement from BergerABAM to WSP USA.

<p>RECOMMENDED ACTION: Staff recommends that Council authorize the Mayor to sign and execute the novation agreement with WSP USA.</p>

NOVATION AGREEMENT

BergerABAM Inc. (Transferor), a corporation duly organized and existing under the laws of the State of Washington with its principal office in Federal Way, WA; WSP USA Inc. (Transferee), a corporation duly organized and existing under the laws of the State of New York with its principal office in New York, NY; and the City of Marysville (Client) enter into this Agreement as of April 26, 2019.

(a) The parties agree to the following facts:

(1) Client has entered into certain contracts with the Transferor, namely: Contract R0901 – First Street Bypass. The term “the Contract,” as used in this Agreement, means the above contracts and purchase orders and all other contracts and purchase orders, including all modifications, made between Client and the Transferor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if Client or the Transferor has any remaining rights, duties, or obligations under these contracts and purchase orders). Included in the term “the Contract” are also all modifications made under the terms and conditions of this Contract and purchase orders between Client and the Transferee, on or after the effective date of this Agreement.

(2) As of April 26, 2019, the Transferor has transferred to the Transferee all the assets of the Transferor by virtue of the merger between the Transferor and the Transferee.

(3) The Transferee has acquired all the assets of the Transferor by virtue of the above transfer.

(4) The Transferee has assumed all obligations and liabilities of the Transferor under the Contract by virtue of the above transfer.

(5) The Transferee is in a position to fully perform all obligations that may exist under the Contract.

(6) It is consistent with Client’s interest to recognize the Transferee as the successor party to the Contract.

(7) Evidence of the above transfer has been filed with Client.

(b) In consideration of these facts, the parties agree that by this Agreement—

(1) The Transferor confirms the transfer to the Transferee, and waives any claims and rights against Client that it now has or may have in the future in connection with the Contract.

(2) The Transferee agrees to be bound by and to perform each Contract in accordance with the conditions contained in the Contract. The Transferee also assumes all obligations and liabilities of, and all claims against, the Transferor under the Contract as if the Transferee were the original party to the Contract.

(3) The Transferee ratifies all previous actions taken by the Transferor with respect to the Contract, with the same force and effect as if the action had been taken by the Transferee.

(4) Client recognizes the Transferee as the Transferor's successor in interest in and to the Contract. The Transferee by this Agreement becomes entitled to all rights, titles, and interests of the Transferor in and to the Contract as if the Transferee were the original party to the Contract. Following the effective date of this Agreement, the term "Consultant," as used in the Contract, shall refer to the Transferee.

(5) Except as expressly provided in this Agreement, nothing in it shall be construed as a waiver of any rights of Client against the Transferor.

(6) All payments and reimbursements previously made by Client to the Transferor, and all other previous actions taken by Client under the Contract, shall be considered to have discharged those parts of Client's obligations under the Contract. All payments and reimbursements made by Client after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to the Transferee, and shall constitute a complete discharge of Client's obligations under the Contract, to the extent of the amounts paid or reimbursed.

(7) The Transferor and the Transferee agree that Client is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer or this Agreement, other than those that Client in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the Contract.

(8) The Transferor guarantees payment of all liabilities and the performance of all obligations that the Transferee —

(i) Assumes under this Agreement; or

(ii) May undertake in the future should these Contracts be modified under their terms and conditions. The Transferor waives notice of, and consents to, any such future modifications.

(9) The Contract shall remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement as of the day and year first above written.

CITY OF MARYSVILLE (CLIENT)

By _____

Title _____

BERGERABAM INC. (TRANSFEROR)



By _____ M. Lee Marsh _____

Title _____ President _____

WSP USA INC. (TRANSFeree)



By _____ M. Lee Marsh _____

Title _____ Area Manager and Senior Vice President _____

(See attached Delegation of Authority)

Marsh, Lee

From: Kelly, Gregory <Greg.Kelly@wsp.com>
Sent: Tuesday, April 23, 2019 3:57 PM
To: Marsh, Lee
Cc: Anita Macaluso; Jassey, Hillary
Subject: Merger

Delegation of Authority

External

Lee,

The merger of BergerABAM Inc., into WSP USA Inc. will occur on April 26th and we will need to sign novation agreements after the merger.

I hereby grant delegation of authority to you for the execution of all Novation Agreements, Assignment Agreements and all other necessary documents that may arise due to the merger of BergerABAM Inc., into WSP USA Inc.

Thank you

Greg

Gregory A Kelly, P.E.
President and CEO, USA
WSP USA
Phone: + 1 212 465 5447
Mobile: + 1 917 733 5956

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