

**CONTRACT FOR SERVICES  
BETWEEN  
STATE OF WASHINGTON  
WASHINGTON HOP COMMISSION  
AND  
2<sup>ND</sup> SIGHT BIOSCIENCE**

This Contract is made and entered into by and between the State of Washington, Washington Hop Commission, on behalf of the U.S. Hop Industry Plant Protection Committee (USHIPPC), hereinafter referred to as the "AGENCY", and the below named firm, hereinafter referred to as "CONTRACTOR,"

2<sup>nd</sup> Sight Bioscience  
Kevin R. Oldenburg, PhD  
823 Crestline St.  
Spokane, WA 99202  
509-381-2112  
Kevin.Oldenburg@2ndsightbio.com  
Washington State UBI No. 603-423-726  
Federal ID No. 47-1468387

**PURPOSE**

This project seeks to provide grant monies to CONTRACTOR with the desired outcome of developing and building a fully automated hop stringing machine capable of operating under commercial hop production conditions.

**SCOPE OF WORK**

- A. The CONTRACTOR will provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:
1. During 2019 CONTRACTOR will gather specifications from at least 3 large growers to define field and crop variables with the goal of designing a machine that automatically attaches biodegradable cord to guy wires in a hop field and automatically anchors that cord to the ground at the hop plant's base as a guide for plant growth.
  2. Using the information gathered, CONTRACTOR will produce engineering drawings for the machine and will set a target selling price for the automation.
- B. Exhibit A contains the General Terms and Conditions governing work to be performed under this contract, the nature of the working relationship between the AGENCY and the CONTRACTOR, and specific obligations of both parties.
- C. The CONTRACTOR shall periodically issue updates and project status reports, including a project update on September 30, 2019, which shall be used for consideration in approving Year 2 funding, and a project status report on December 31, 2019. All written reports required under this contract must be delivered to Ann George, the Contract Manager, in accordance with the schedule above.
- D. Upon completion of the contract, CONTRACTOR retains all rights to its work, including, but not limited to, drawings, data, drafts, quotes, vendor lists, electronic files, the prototype and the machine itself. AGENCY agrees that this contract is a grant to aid in the development of the machine only and that it has no property rights to either the physical property produced or to the intellectual property produced as a result of this project.

**PERIOD OF PERFORMANCE**

Subject to other contract provisions, the period of performance under this contract will be from March 1, 2019 through December 31, 2019, with an option to extend in one-year increments for up to two additional years.

**DES FILING REQUIREMENT**

The provisions of Chapter 39.26 RCW require the agency to file this sole source contract with the Department of Enterprise Services (DES) for approval. The effective date of this contract is upon DES approval of the contract, the tenth (10<sup>th</sup>) working day after it is filed with DES, or as agreed between the parties, whichever is later.

**COMPENSATION AND PAYMENT:**

AGENCY shall pay an amount not to exceed Twenty-Six Thousand Dollars (\$26,000.00) as compensation for CONTRACTOR's 2019 performance of the work described in this agreement. CONTRACTOR'S compensation for services rendered shall be based on the following terms:

- For the period March through June 2019: \$13,000.00 Due 6/30/19*
  - *For the accomplishment of the Scope of Work outlined in A.1.*
  
- For the period July through December 2019: \$13,000.00 Due 12/31/19*
  - *For the accomplishment of the Scope of Work outlined in A.2.*

**BILLING PROCEDURES**

AGENCY will pay CONTRACTOR upon receipt of properly completed invoices, which shall be submitted to its Contract Manager on a semi-annual basis as described above. Invoices shall describe and document to the AGENCY'S satisfaction a description of the work performed, the progress of the project, and fees. Should the submitted invoices not meet the AGENCY'S satisfaction, the AGENCY will provide written information regarding the deficiencies and allow the CONTRACTOR to cure said deficiencies and resubmit its invoices.

Payment shall be considered timely if made by the AGENCY within thirty (15) days after receipt of properly completed invoices, but contract payments may not be made before the end of each quarter. Payment shall be sent to the address designated by the CONTRACTOR.

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the AGENCY.

**CONTRACT MANAGEMENT**

The Contract Manager for each of the parties shall be the contact person for all communications and billings regarding the performance of this Contract.

Contract Manager for CONTRACTOR is:	Contract Manager for AGENCY is:
2 <sup>nd</sup> Sight Bioscience  Kevin R. Oldenburg, PhD  823 Crestline St. Spokane, WA 99202  509-381-2112  <a href="mailto:Kevin.Oldenburg@2ndsightbio.com">Kevin.Oldenburg@2ndsightbio.com</a>	Ann George Washington Hop Commission P.O. Box 2885 Yakima, WA 98907 Phone: (509) 453-4749 Fax: (509) 457-8651 E-mail: <a href="mailto:ageorge@wahops.org">ageorge@wahops.org</a>

## **INSURANCE**

The CONTRACTOR shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the CONTRACTOR or subcontractor, or agents of either, while performing under the terms of this contract.

The CONTRACTOR shall provide insurance coverage which shall be maintained in full force and effect during the term of this Contract, as follows:

1. **Commercial General Liability Insurance Policy** - Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence. Additionally, the CONTRACTOR is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.
2. **Automobile Liability**. If services delivered pursuant to this contract involve the use of vehicles, either owned or unowned by the CONTRACTOR, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage
3. The insurance required shall be issued by an insurance company/ies authorized to do business within the State of Washington and shall name the State of Washington, its agents and employees as additional insureds under the insurance policy/ies. All policies shall be primary to any other valid and collectable insurance. CONTRACTOR shall instruct the insurers to give AGENCY 30 days advance notice of any insurance cancellation.

CONTRACTOR shall submit to AGENCY within 15 days of the contract effective date, a certificate of insurance which outlines the coverage and limits defined in the *Insurance* section. CONTRACTOR shall submit renewal certificates as appropriate during the term of the contract.

## **ASSURANCES**

AGENCY and the CONTRACTOR agree that all activity pursuant to this Contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

## **ORDER OF PRECEDENCE**

Each of the Exhibits listed below is by this reference hereby incorporated into this contract. In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable Federal and State of Washington statutes and regulations
- Special Terms and Conditions as contained in this basic contract instrument
- Exhibit A – General Terms and Conditions
- Any otherwritten provision, term or material incorporated herein by reference or otherwise incorporated

## **ENTIRE AGREEMENT**

This contract including referenced exhibits represents all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind any of the parties hereto.

## **CONFORMANCE**

If any provision of this contract violates any statute or rule of law of the State of Washington, it is considered modified to conform to that statute or rule of law.

**APPROVAL**

This contract shall be subject to the written approval of the AGENCY'S authorized representative and DES and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

THIS CONTRACT, consisting of 4 pages and 1 attachment, is executed by the persons signing below who warrant that they have the authority to execute the contract.

2<sup>nd</sup> SIGHT BIOSCIENCE, INC.

WASHINGTON HOP COMMISSION

\_\_\_\_\_  
Signature Kevin R. Oldenburg

\_\_\_\_\_  
Signature Ann E. George

\_\_\_\_\_  
President  
Date

\_\_\_\_\_  
Administrator  
Date

## GENERAL TERMS AND CONDITIONS

DEFINITIONS -- As used throughout this contract, the following terms shall have the meaning set forth below:

- A. "Agency" shall mean the Washington Hop Commission, of the state of Washington, any division, section, office, unit or other entity of the Agency, or any of the officers or other officials lawfully representing that Agency.
- B. "Agent" shall mean the Administrator, Washington Hop Commission, and/or the delegate authorized in writing to act on the Administrator's behalf.
- C. "Contractor" shall mean that firm, provider, organization, individual or other entity performing service(s) under this contract and shall include all employees of the Contractor.
- D. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this contract under a separate contract with the Contractor. The terms "Subcontractor" and "Subcontractors" means Subcontractor(s) in any tier.

ACCESS TO DATA -- In compliance with chapter 39.26 RCW, the Contractor shall provide access to data in its digital form generated under this contract to AGENCY, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

ADVANCE PAYMENTS PROHIBITED -- The AGENCY shall make no payments in advance of or in anticipation of goods or services to be provided under this contract.

AMENDMENTS -- This contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35 -- The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

ASSIGNMENT -- The work to be provided under this contract, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

ATTORNEYS' FEES -- In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorneys fees and costs.

CONFIDENTIALITY / SAFEGUARDING OF INFORMATION -- The Contractor shall not use or disclose any information concerning the Agency, or information which may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of the Agency, or as may be required by law.

CONFLICT OF INTEREST -- Notwithstanding any determination by the Executive Ethics Board or other tribunal, the Agency may, in its sole discretion, by written notice to the Contractor terminate this contract if it is found after due notice and examination by the Agent that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Contractor in the procurement of, or services under this contract.

In the event this contract is terminated as provided above, the Agency shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of the Agency provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Agent makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

COVENANT AGAINST CONTINGENT FEES -- The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business. The Agency shall have the right, in the event of breach of this clause by the Contractor, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

DISPUTES – Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved, either party may request a dispute hearing with American Arbitration Association. Disputes shall be resolved as quickly as possible.

1. The request for a dispute hearing must:
  - be in writing;
  - state the disputed issue(s);
  - state the relative positions of the parties;
  - state the Contractor's name, address, and contract number; and
  - be mailed to the Agent and the other party's (respondent's) Contract Manager within 3 working days after the parties agree that they cannot resolve the dispute.
2. The respondent shall send a written answer to the requester's statement to both the agent and the requester within 5 working days.
3. The Agent shall review the written statements and reply in writing to both parties within 10 working days. The Agent may extend this period if necessary by notifying the parties.
4. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Agency and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective contract responsibilities that are not affected by the dispute. Both parties agree to exercise good faith in the dispute resolution and to settle disputes prior to using the dispute resolution panel whenever possible.

GOVERNING LAW -- This contract shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be either in the Superior Court for Thurston County or the Superior Court for Spokane County.

INDEMNIFICATION – To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the State of Washington, the Agency, and all officials, agents and employees of the State, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. Contractor's obligation to indemnify, defend and hold harmless includes any claim by Contractor's agents, employees, representatives, or any subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the contract. Contractor shall be required to indemnify, defend and hold harmless the State only to the extent claim is caused in whole or in part by negligent acts or omissions of Contractor.

Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

INDEPENDENT CAPACITY OF THE CONTRACTOR -- The parties intend that an independent contractor relationship will be created by this contract. The Contractor and his or her employees or agents performing under this contract are not employees or agents of the Agency. The Contractor will not hold himself/herself out as or claim to be an officer or employee of the Agency or of the State of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with the Contractor.

INDUSTRIAL INSURANCE COVERAGE – The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. Prior to performing work under this contract, the Contractor shall provide or purchase industrial insurance coverage for the Contractor's employees, as may be required of an

“employer” as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this contract. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, the Agency may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. The Agency may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the Agency under this contract, and transmit the deducted amount to the Department of Labor and Industries, Division of Insurance Services. This provision does not waive any of L&I’s rights to collect from the Contractor.

Industrial insurance coverage through the Department of Labor & Industries is optional for sole proprietors, partners, corporate officers and others, per RCW 51.12.020.

LICENSING, ACCREDITATION AND REGISTRATION -- The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this contract.

LIMITATION OF AUTHORITY – Only the Agent or Agent’s delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the Agent.

NONCOMPLIANCE WITH NONDISCRIMINATION LAWS -- In the event of the Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the Agency. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

NONDISCRIMINATION -- During the performance of this contract, the Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies.

PRIVACY -- Personal information collected, used or acquired in connection with this contract shall be used solely for the purposes of this contract. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as provided by law. Contractor agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

The Agency reserves the right to monitor, audit, or investigate the use of personal information collected, used or acquired by the contractor through this contract. The monitoring, auditing or investigating may include but is not limited to “salting” by the Agency. Contractor shall certify return or destruction of all personal information upon expiration of this contract. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The Contractor agrees to indemnify and hold harmless the Agency for any damages related to the Contractor's unauthorized use of personal information.

For purposes of this provision, personal information includes, but is not limited to, information identifiable to an individual that relates to a natural person’s health, finances, education, business, use or receipt of governmental services, or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and other identifying numbers.

PUBLICITY -- The Contractor agrees to submit to the Agency all advertising and publicity matters relating to this Contract which, in the Agency’s judgment, Agency’s name can be implied or is specifically mentioned. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of the Agency.

RECORDS MAINTENANCE -- The Contractor shall maintain complete financial records relating to this contract and the services rendered including all books, records, documents, magnetic media, receipts, invoices and other evidence relating to this contract 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 contract. Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records including materials generated under the contract, shall be subject at all reasonable times to inspection, review, or audit by the Agency, the Office of the State Auditor, and federal and state officials so authorized by law, rule, regulation, or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

REGISTRATION WITH DEPARTMENT OF REVENUE -- The Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

RIGHT OF INSPECTION -- The Contractor shall provide right of access to its facilities to the Agency, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times with three (3) days written notice, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

SAVINGS -- In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the Agency may terminate the contract under the "Termination for Convenience" clause, without the ten day notice requirement, subject to renegotiation at the Agency's discretion under those new funding limitations and conditions.

SEVERABILITY -- The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

SITE SECURITY -- While on Agency premises, Contractor, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security regulations.

SUBCONTRACTING -- Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the Agency.

TAXES -- All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

TERMINATION FOR CAUSE -- In the event the Agency determines the Contractor has failed to comply with the conditions of this contract in a timely manner, the Agency has the right to suspend or terminate this Contract. This Agency shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within ten (10) days, the contract may be terminated. The Agency reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by the Agency to terminate the contract.

The termination shall be deemed to be a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default, or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of the Agency provided in this contract are not exclusive and are in addition to any other rights and remedies provided by law.

TERMINATION FOR CONVENIENCE -- Except as otherwise provided in this contract, the Agency may, by 10 days written notice, beginning on the second day after the mailing, terminate this contract, in whole or in part. If this contract is so terminated, the Agency shall be liable only for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination.

TERMINATION PROCEDURES -- The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The Agency shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the Agency, and the amount agreed upon by the Contractor and the Agency for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that the Agency accepts, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Agency shall determine the extent of the

Agency's liability. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The Agency may withhold from any amounts due the Contractor such sum as the Agency determines to be necessary to protect the Agency against potential loss or liability.

The rights and remedies of the Agency provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Agent, the Contractor shall:

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated for which it will bill the Agency;
3. Assign to the Agency, in the manner, at the times, and to the extent directed by the Agent, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Agency has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agency to the extent Agency may require, which approval or ratification shall be final for all the purposes of this clause;
6. Complete performance of such part of the work as shall not have been terminated by the Agency; and
7. Take such action as may be necessary, or as the Agency may direct, for the protection and preservation of the property related to this contract that is in the Contractor's possession and in which the Agency has or may acquire an interest.

#### TREATMENT OF ASSETS

- A. Title to all property furnished by the Agency shall remain in the Agency. Title to all property furnished by the Contractor shall remain in the Contractor.
- B. Any property of the Agency furnished to the Contractor shall, unless otherwise provided herein or approved by the Agency, be used only for the performance of this contract.
- C. The Contractor shall be responsible for any loss or damage to Agency's property that results from the Contractor's negligence or that results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
- D. If any Agency property is lost, destroyed or damaged, the Contractor shall immediately notify the Agency and shall take all reasonable steps to protect the property from further damage.
- E. The Contractor shall surrender to the Agency all property of the Agency prior to settlement upon completion, termination or cancellation of this contract.
- F. All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

WAIVER -- Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this contract unless stated to be such in writing and signed by the Agency.