

## AM NO. 11-057 (C8)

MEMO TO: City Council

FROM: John Marchione, Mayor

DATE: March 1, 2011

SUBJECT: **APPROVAL OF CONSULTANT AGREEMENTS FOR STORMWATER ENGINEERING SERVICES ON-CALL CONSULTANT SUPPORT**

### **I. RECOMMENDED ACTION:**

Approve two Consultant Agreements for Stormwater Engineering Services On-Call Consultant Support for a total not to exceed \$200,000 per contract over a period of two years, and authorize the Mayor to sign the agreements. The agreements are with Brown & Caldwell, Inc. and Osborne Consulting, Inc.

### **II. DEPARTMENT CONTACT PERSONS:**

Bill Campbell, Director of Public Works	425-556-2733
Ron Grant, Assistant Public Works Director/City Engineer	425-556-2742
Anisha Prasad, Stormwater Engineer	425-556-2722

### **III. DESCRIPTION:**

The City of Redmond's Natural Resources Division relies on consultants to provide stormwater engineering-related services for the Neighborhood Drainage Improvement Program, as well as other small or medium sized projects. Specific expertise in neighborhood drainage improvement/assessment is a unique specialization among engineers and engineering firms. This expertise is a critical element in the successful preparation and implementation of the neighborhood drainage improvement program plan. In addition, the consultants would support projects identified as part of the NPDES permit requirements. These projects have a mandate from the Washington State Department of Ecology to be completed within the 2011-2013 timeframe.

For the past two years, the City has maintained two on-call Stormwater consultant contracts with Brown & Caldwell, Inc. and Osborne Consulting, Inc. to provide these services. The use of an on-call agreement for stormwater engineering has proven effective because of the flexible nature of the work to be performed.

Both companies were selected in 2009 through a competitive process based on qualifications and experience. Brown & Caldwell, Inc. and Osborne Consulting, Inc. have both successfully completed projects on schedule and under budget for the past two years. They have also worked to develop a relationship with staff, which has allowed for efficient communication and timely delivery of projects.

Specific tasks to be performed by these consultants are expected to be:

- Stormwater engineering and analysis
- Hydrologic and Hydraulic Modeling and Analysis
- Stormwater conveyance and detention facilities design
- Water quality treatment, BMPs selection, and facilities design
- Erosion and sedimentation control studies
- Drainage needs assessment
- Geographic Information Systems/CAD Drafting
- Surveying and Mapping

Use of on-call consultant services expands the capability of City staff to provide engineering-related services to the community. The primary focus of the consultants will be to augment staff's efforts to advance projects to construction. The work will be conducted using "task orders" for specific scopes of work. Funds for specific task orders will be taken from the appropriate fund. The contract is purposefully written with a broad scope of work since project needs may vary and staff wants to retain maximum flexibility in responding to the needs of the community. Having two firms on-call will permit multiple projects to be addressed concurrently.

Staff recommends renewing the on-call modeling services contract with Brown & Caldwell, Inc. and Osborne Consulting, Inc. The risk manager and City attorney will review the Agreement prior to signature by the Mayor.

#### **IV. IMPACT:**

##### **A. Service/Delivery:**

The two engineering firms, Brown & Caldwell, Inc. and Osborne Consulting, Inc. will be used on an on-call basis to provide services in support of the City's work on Neighborhood Drainage Improvement Program and other projects that develop. This support allows staff to provide more timely and thorough review of proposed project sites, alternatives analysis, and to further project design towards construction.

B. Fiscal:

Staff anticipates a maximum of \$200,000 over the duration of the contract (two years) for the engineering services provided under the two contracts.

Funding:

Stormwater Capital Improvement Program

**V. ALTERNATIVES:**

The City Council may choose not to approve the consultant agreement. Given existing and anticipated demands on Natural Resources Engineering Section staff, this action could adversely impact the City's ability to advance projects on a timely basis.

**VI. TIME CONSTRAINTS:**

The proposed agreements will remain in force for two years from the date of approval.

**VII. LIST OF ATTACHMENTS:**

- A. Consultant Agreement (Brown & Caldwell, Inc.)
- B. Consultant Agreement (Osborne Consulting, Inc.)

\_\_\_\_\_/s/\_\_\_\_\_  
William J. Campbell, Director of Public Works

2/18/2011  
Date

Approved for Council Agenda \_\_\_\_\_/s/\_\_\_\_\_  
John Marchione, Mayor

2/22/2011  
Date

# CONSULTANT AGREEMENT

PROJECT TITLE STORMWATER ENGINEERING SERVICES ON-CALL SUPPORT	WORK DESCRIPTION STORMWATER ON-CALL ENGINEERING SERVICES TO SUPPORT NATURAL RESOURCES DIVISION'S NEIGHBORHOOD DRAINAGE IMPROVEMENT PROGRAM
PROJECT NO. VARIES	
REDMOND BUSINESS LICENSE NO.  RED00051755	CONSULTANT/ADDRESS/TELEPHONE  BROWN AND CALDWELL ONE CONVENTION PLACE 701 PIKE STREET, SUITE 1200 SEATTLE, WA 98101 206-624-0100
FEDERAL I.D. NO.  94-1446346	
MAXIMUM AMOUNT PAYABLE \$200,000 (over the duration of the 2-year contract)	COMPLETION DATE 03/03/13

## Index of Exhibits

- Exhibit "A" – Scope of Work
- Exhibit "B" – Payment (Negotiated Hourly Rate)
- Exhibit "C" – Consultant Fee Determination
- Exhibit "D" – Subcontracted Work/Fee Determination
- Exhibit "E" – Title VI Assurances

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, between the City of Redmond, Washington, hereinafter called the "CITY", and the above organization hereinafter called the "CONSULTANT".

## WITNESSETH THAT:

WHEREAS, the CITY desires to accomplish as-needed engineering services related to stormwater projects; and

WHEREAS, the CITY does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a consultant to provide the necessary services for the PROJECT; and

WHEREAS, the CONSULTANT represents that he/she is in compliance with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish consulting services to the CITY.

NOW THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

**I  
GENERAL DESCRIPTION OF WORK**

The work under this AGREEMENT shall consist of the above described work and services to accomplish the completed work as more fully set forth in Task Orders. The CONSULTANT shall furnish all services, labor and related equipment necessary to conduct and complete the work as designated in Task Orders issued pursuant to the terms and conditions set forth in this AGREEMENT.

**II  
SCOPE OF WORK**

The individual Scopes of Work and project level of effort shall be detailed in individual Task Orders, and by this reference made a part of this AGREEMENT.

**III  
GENERAL REQUIREMENTS**

All aspects of coordination of the work of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by the CITY. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the CITY. The CONSULTANT shall attend coordination, progress and presentation meetings with the CITY or such Federal, Community, State, City or County officials, groups or individuals as may be requested by the CITY. The CITY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation.

The CONSULTANT shall prepare a monthly progress report, in a form approved by the CITY, that will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated.

All reports, plans & specifications, and other data furnished to the CONSULTANT by the CITY shall be returned. All designs, drawings, specifications, documents, and other work products, including all electronic files, prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT and upon payment to Consultant shall become the property of the CITY. Reuse by the CITY or by others acting through or on behalf of the CITY of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

**IV  
TIME FOR BEGINNING AND COMPLETION**

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the CITY. All work under this AGREEMENT shall be completed by the date shown in the AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the CITY, in the event of a delay attributable to the CITY, or because of unavoidable delays beyond the control of the CONSULTANT.

## V PAYMENT PROVISIONS

The CONSULTANT shall be paid by the CITY for completed work and services rendered under this AGREEMENT in accordance with the Fee Schedule set forth in Exhibit "B" attached hereto, and by this reference made part of this AGREEMENT. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in Section II, "Scope of Work". The CONSULTANT shall conform with all applicable portions of 48 CFR 31.

## VI SUBCONTRACTING

The CITY permits subcontracts for those items of work as shown in Exhibit "D" attached hereto and by this reference made a part of this AGREEMENT.

Compensation for this subconsultant work shall be set forth in individual Task Orders.

The work of the subconsultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the CITY.

All reimbursable hourly rates and direct non-salary costs for the subconsultant shall be substantiated in the same manner as outlined in Section V. All subcontracts shall contain all applicable provisions of this AGREEMENT.

With respect to subconsultant payment, the CONSULTANT shall comply with all applicable sections of the Prompt Payment laws as set forth in RCW 39.04.250 and RCW 39.76.011.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the CITY. No permission for subcontracting shall create, between the CITY and subcontractor, any contract or any other relationship.

## VII EMPLOYMENT

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the CITY shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the CITY, and any and all claims that may or might arise under any Workmer's Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the CITY, except regularly retired employees, without written consent of the public employer of such person.

## **VIII NONDISCRIMINATION**

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest agrees to comply with the following laws and regulations:

Title VI of the Civil Rights Act of 1964  
(42 USC Chapter 21 Subchapter V Section 2000d through 2000d-4a)

Federal-aid Highway Act of 1973  
(23 USC Chapter 3 Section 324)

Rehabilitation Act of 1973  
(29 USC Chapter 16 Subchapter V Section 794)

Age Discrimination Act of 1975  
(42 USC Chapter 76 Section 6101 et. seq.)

Civil Rights Restoration Act of 1987  
(Public Law 100-259)

American with Disabilities Act of 1990  
(42 USC Chapter 126 section 12101 et. seq.)

49 CFR Part 21

23 CFR Part 200

RCW 49.60.180

In relation to Title VI of the Civil Rights Act of 1964, the CONSULTANT is bound by the provisions of Exhibit "E" attached hereto and by this reference made a part of this AGREEMENT, and shall include the attached Exhibit "E" in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

## **IX TERMINATION OF AGREEMENT**

The right is reserved by the CITY to terminate this AGREEMENT at any time upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the CITY other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged at the time of termination of the AGREEMENT plus any direct nonsalary costs incurred at the time of termination of the AGREEMENT.

No payment shall be made for any work completed after ten (10) days following receipt by the CONSULTANT of the Notice to Terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the CITY for any excess paid.

If the services of the CONSULTANT are terminated by the CITY for default on the part of the CONSULTANT, the above formula for payment shall not apply. In such an event, the amount to be paid shall be determined by the CITY with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the CITY at the time of termination; the cost to the CITY of employing another firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the CITY of the work performed at the time of termination.

Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth above.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT'S or it's employee's default or negligence, the termination shall be deemed to be a termination for the convenience of the CITY. In such an event, the CONSULTANT would be reimbursed for actual costs in accordance with the termination for other than default clauses listed previously.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or, dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of the AGREEMENT, if requested to do so by the CITY. The subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the CITY, if the CITY so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the CITY's concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the CITY shall not constitute a waiver by the CITY of any remedies of any type it may have against the CONSULTANT for any breach of the AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the CITY.



Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

## **X CHANGES OF WORK**

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors in breach of applicable standards of care appearing therein when required to do so by the CITY, without additional compensation thereof. Should the CITY find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the CITY. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

## **XI DISPUTES**

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the CITY shall be resolved by mediation or litigation as mutually agreed.

## **XII VENUE, APPLICABLE LAW AND PERSONAL JURISDICTION**

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in King County. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the law of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in King County.

## **XIII LEGAL RELATIONS**

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accord with the laws of the State of Washington.

The CONSULTANT shall indemnify and hold the CITY and their officers and employees harmless from and shall process and defend at its own expense all claims, demands or suits at law or equity arising in whole or in part from the CONSULTANT's negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the CITY against and hold harmless the CITY from claims, demands or suits based solely upon the conduct of the CITY, their agents, officers and employees and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT, its agents or employees and (b) the

CITY, their agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence, (2) the costs of defending such claims and suits, etc. shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents or employees.

The CONSULTANT's relation to the CITY shall be at all times as an independent contractor.

The CONSULTANT shall comply with all applicable sections of the applicable Ethics laws, including RCW 42.23, which is the Code of Ethics for regulating contract interest by municipal officers. The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees against the CITY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

Unless otherwise specified in the AGREEMENT, the CITY shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of an acceptable, supplemental agreement or task order, the CONSULTANT shall provide on-call assistance to the CITY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

### **Insurance Coverage**

- A. Worker's compensation and employer's liability insurance as required by the State of Washington.
- B. Commercial general liability and property damage insurance in an amount not less than one million dollars (\$1,000,000) per occurrence/two million dollars (\$2,000,000) aggregate for bodily injury, including death and property damage.
- C. Professional liability insurance in the amount of \$1,000,000 or more against claims arising from the performance of professional services under this contract.
- D. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar (\$1,000,000) combined single limit.

Excepting the Worker's Compensation and Professional Liability insurance secured by the CONSULTANT, the CITY will be named on all policies as an additional insured. The CONSULTANT shall furnish the CITY with verification of insurance and endorsements required by the AGREEMENT. The CITY reserves the right to require copies of all required insurance policies at any time, except for confidential or proprietary portions thereof.

The additional insured endorsement shall provide that to the extent of the CONSULTANT's negligence, the CONSULTANT's insurance shall be primary and non-contributing as to the CITY, and any other insurance maintained by the City shall be excess and not contributing insurance with respect to the CONSULTANT's insurance.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to the CITY.

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the CITY.

The CITY will pay no progress payments under Section V until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the CITY may take such other action as is available to them under other provisions of this AGREEMENT, or otherwise in law.

#### **XIV EXTRA WORK**

The CITY may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.

If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the CITY shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.

The CONSULTANT must submit its "request for equitable adjustment" (hereafter referred to as claim) under this clause within thirty (30) days from the date of receipt of the written order. However, if the CITY decides that the facts justify it, the CITY may receive and act upon a claim submitted before final payment of the AGREEMENT.

Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.

Notwithstanding the terms and conditions of the first two paragraphs above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

#### **XV ENDORSEMENT OF PLANS**

If applicable, the CONSULTANT shall place its endorsement on all plans, estimates or any other engineering data furnished by them.

#### **XVI COMPLETE AGREEMENT**

This document and referenced attachments contains all covenants, stipulations and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties

shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

**XVI  
EXECUTION AND ACCEPTANCE**

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting materials submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year first above written.

*CONSULTANT*

*CITY OF REDMOND*

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_  
John Marchione, Mayor

**Title:** \_\_\_\_\_

**ATTEST:** \_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

## EXHIBIT A

### SCOPE OF WORK

#### Stormwater Engineering Services

The scope of services being sought is Task Order based stormwater engineering services that would support the City of Redmond (City), Natural Resources Capital Improvement Program (CIP).

#### **Project Description:**

This project will be a non-exclusive continuing services contract to assist the City of Redmond (City) in working on Natural Resources Division Projects. The consultant will serve as a partner to the City in order to expand the capability of Redmond staff to provide engineering related stormwater services to the community.

Typical projects may include the following areas: stream/habitat protection or improvement, fisheries enhancement, stream bank stabilization or erosion repair, detention ponds, water quality treatment, structural upgrades and repairs, small neighborhood drainage projects, design and abandonment of infiltration systems, small and large Regional Stormwater Conveyance and Water Quality Facilities (Regional Stormwater Facilities).

#### **1. Task Order Administration**

There will be no specific limitation on the quantity, minimum and/or maximum value of individual task orders. Anisha Prasad or her designated representative will administer each task order from the Public Works Department of the City.

##### **A. Period of Performance and Contract Value**

The contract will be for a period of performance for two (2) years. The schedule and period of each task order agreement will be separately negotiated and defined.

The maximum value of this contract will not exceed Two Hundred thousand dollars (\$200,000) over the 2-year duration of the contract; however, there is no guarantee that the City will expend the entire value of this contract. Specifically, the City does not guarantee that the consultant will receive a specified volume of work, a specific total contract amount, or a specific task order value. The value of the contract could potentially be increased through supplemental agreements. The work will be conducted through task orders for specific pieces of work.

## **B. Consultant Resources and Time**

Specific work under this contract will be performed on a task order basis consisting of individually negotiated task orders. Each task order will provide a specific scope, budget, and schedule of the services required. The exact disciplines required and the amount of work for each discipline, have not been determined. The consultant should be capable of adding, deleting, or substituting disciplines/expertise as necessary to meet the needs of specific task orders. There is no guarantee that all disciplines or services will be utilized.

The consultant will be expected to respond to short notice requests for technical services to resolve urgent task orders. The consultant should be capable of performing urgent task order assignments while working on several other task orders simultaneously. Consultant task orders will be coordinated with on-going work being performed by the City.

## **C. Task Order Process**

1. For each individual task order, the project manager will issue a written or verbal “Task Order Request” to the consultant. The task request will describe the nature and extent of the project, its scope & preliminary schedule.
2. Within five (5) calendar days of the time frame specified in the “task order request”, the consultant will prepare a proposal that includes an applicable scope of work, schedule, and fees as well as identify key staff assignments and potential sub consultants.
3. The consultant and project manager will determine the detailed scope of work, project schedule, consultant fee, and other project management details.
4. The project manager will provide a final approval of the task order with a signed task order sheet
5. The consultant will be paid on the basis of approved monthly invoices. Task orders will be invoiced in a manner to allow costs to be identified by work performed under separate task orders.
6. The project Manager will issue a written task release when work on a specific task order is complete and final payment for that task is authorized.

## **II. Scope of Services**

The consultant will provide all labor, materials, equipment and supplies to perform professional engineering services on a task order basis for various task assignment projects. These tasks may include, but are not limited to the following:

- o Planning and design for small public works projects. Examples: small neighborhood drainage projects. Past task order fees for such design services have ranged from \$25,000 to about \$75,000.

- Provide computer-aided design (CAD) drafting support to City Staff on various small Neighborhood Stormwater Capital Improvement Projects. City's engineer to provide the design and to work with consultant's CAD technician to draft engineering drawings for the project.
- Planning level Studies to determine location, costs and feasibility of construction of small and large regional stormwater conveyance and water quality Facilities and if they can accommodate private and public developments upstream.
- Prepare planning level opinion of probable project costs for identified Capital Improvement Projects.
- Prepare engineered plans, specifications and bid documents
- Construction and project administration
- Other related Work Items
  - Creative problem solving and suggestions
  - Attendance and assistance at meetings
  - Coordination of work product with other service providers as needed.

All work performed by consultant related to support of City CIP projects shall meet the requirements of the following Standards and Codes:

**City of Redmond Standards and Codes:**

- Public Works Department's Stormwater Technical Notebook: Issue Number 5, effective January 1, 2007 (Stormwater Notebook). The Stormwater Notebook complements the 2005 Department of Ecology Stormwater Management Manual for Western Washington.
- City of Redmond Standard Specifications and Details
- Standard Plans for Road, Bridge and Municipal Construction, WSDOT/APWA, current edition

**EXHIBIT B**  
**PAYMENT**  
**(NEGOTIATED HOURLY RATE)**

The CONSULTANT shall be paid by the CITY for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform with all applicable portions of 48 CFR Part 31.

**1. Hourly Rates**

The CONSULTANT shall be paid by the CITY for work done, based upon the negotiated hourly rates shown in Exhibit "C" attached hereto and by this reference made part of the AGREEMENT. The rates listed shall be applicable for the first 12-month period and shall be subject to negotiation for the following 12-month period upon request of the CONSULTANT or the CITY. If negotiations are not conducted for the second or subsequent 12-month periods within 90 days after completion of the previous period, the rates listed in this AGREEMENT, or subsequent written authorization(s) from the CITY shall be utilized. The rates are inclusive of direct salaries, payroll additives, overhead, and fee. The CONSULTANT shall maintain support data to verify the hours billed on the AGREEMENT.

**2. Direct Non-Salary Costs**

Direct Non-Salary costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges, and fees of subconsultants. Air or train travel will only be reimbursed to economy class levels unless otherwise approved by the CITY. The CONSULTANT shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance with the CITY's Travel Rules and Procedures. However, air, train, and rental car costs shall be reimbursed in accordance with the 48 CFR Part 31.205-46 "Travel Costs". The billing for direct non-salary costs shall include an itemized listing of the charges directly identifiable with the PROJECT. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the CITY upon request. All above charges must be necessary for the services provided under this AGREEMENT.

**3. Contingencies**

If the CITY desires the CONSULTANT to perform additional work beyond that already defined in the AGREEMENT, the Agreement Administrator may authorize additional funds for this purpose. Such authorization(s) shall be in writing and shall not exceed the amount shown in Exhibit "C". Any changes requiring additional costs in excess of the contingencies shall be made in accordance with Section XIV, "Extra Work".

**4. Maximum Amount Payable**

The maximum amount payable by the CITY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The maximum amount payable is comprised of the total amount authorized and the contingencies. The maximum amount payable does



not include payment for extra work as stipulated in Section XIV, "Extra Work". No minimum amount payable is guaranteed under this AGREEMENT.

#### **5. Monthly Progress Payments**

Progress payments may be claimed on a monthly basis for all costs authorized in 1 and 2 above. The monthly invoices shall be supported by detailed statements for hours expended at the rates established in Exhibit "C", including names and classifications of all employees, and invoices for all direct nonsalary expenses. To provide a means of verifying the invoiced salary costs for the consultant's employees, the agency may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates, and present duties of those employees performing work on the project at the time of the interview.

#### **6. Final Payment**

Final payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the CITY after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, electronic data and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all claims for payment which the CONSULTANT may have against the CITY unless such claims are specifically reserved in writing and transmitted to the CITY by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the CITY may have against the CONSULTANT or to any remedies the CITY may pursue with respect to such claims.

The payment of any billing will not constitute agreements as to the appropriateness of any item and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the CITY within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT or any claims relating to the validity of a finding by the CITY of overpayment.

#### **7. Inspection of Cost Records**

The CONSULTANT and their subconsultants shall keep available for inspection by representatives of the CITY, for a period of three (3) years after final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim, or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three (3) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

**EXHIBIT C**

**CONSULTANT FEE DETERMINATION**

**PROJECT: STORMWATER ENGINEERING SERVICES ON-CALL SUPPORT**

**2011 NEGOTIATED HOURLY RATES:**

<b>Category Description</b>	<b>Minimum Hourly Rate</b>	<b>Maximum Hourly Rate</b>
Accountant I	64.30	79.68
Drafter	64.30	79.68
Office/Support Services IV	64.30	79.68
Accountant II	73.36	100.08
Project Analyst	73.36	100.08
Scientist I	73.36	100.08
Senior Drafter	73.36	100.08
Senior Illustrator	73.36	100.08
Word Processor IV	73.36	100.08
Engineer II	73.36	119.20
Geologist/Hydrogeologist II	82.31	119.20
Scientist II	82.31	119.20
Senior Project Analyst	82.31	119.20
Technical Writer	82.31	119.20
Engineer III	93.41	139.96
Senior Engineer	110.50	164.40
Senior Geologist/Hydrogeologist	110.50	164.40
Principal Engineer	124.69	193.39
Supervising Engineer	133.38	224.18
Managing Engineer	158.76	259.81
Managing Scientist	174.70	259.81

TOTAL = \$ 200,000

**REIMBURSABLES:**

Mileage = \$ 0.51/mile

**SUBCONSULTANT COSTS (See Exhibit D):** = \$ TBD Based on Task Order

**GRAND TOTAL NOT TO EXCEED:** = \$ 200,000

**EXHIBIT D**  
**SUBCONTRACTED WORK**

The CITY permits subcontracts for the following portions of the work of the AGREEMENT:

<u>SUBCONSULTANT</u>	<u>WORK DESCRIPTION</u>	<u>AMOUNT</u>
WH Pacific	Surveying	TBD

TOTAL = \$ \_\_\_\_\_

**EXHIBIT D-1**

**SUBCONSULTANT FEE DETERMINATION**

**PROJECT:** STORMWATER ENGINEERING SERVICES ON-CALL SUPPORT

**COMPANY NAME:** WHPacific, Inc.

**NEGOTIATED HOURLY RATES:**

<b>Category Description</b>	<b>Minimum Hourly Rate</b>	<b>Maximum Hourly Rate</b>
Principal	\$ 124.05	\$ 161.27
Sr. Professional	\$ 124.05	\$ 161.27
Professional	\$ 55.82	\$ 145.17
Construction Inspector	\$ 77.53	\$ 109.73
Designer	\$ 52.72	\$ 103.23
Drafter	\$ 31.01	\$ 61.29
Party Chief	\$ 49.62	\$ 112.98
Field Technician	\$ 31.01	\$ 67.79
Project Coordinator	\$ 46.52	\$ 77.38
Project Administrator	\$ 31.01	\$ 54.79

TOTAL = \$ TBD based on Task Order

**REIMBURSABLES:**

Mileage	0.55/mile
Postage/Courier	At Cost
Outside Vendor Costs	At Cost
Technology Charge	\$3/hour
Plots	\$3/hour
Copies	\$0.08/hour
Color Copies	\$0.8/hour
GPS Equipment	\$150/hour

**GRAND TOTAL:** = \$ TBD based on Task Order

## **EXHIBIT E**

### **TITLE VI ASSURANCES**

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

1. **COMPLIANCE WITH REGULATIONS:** The CONSULTANT shall comply with the Regulations relative to non-discrimination in the same manner as in federally assisted programs of the CITY, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of the AGREEMENT.
2. **NON-DISCRIMINATION:** The CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subconsultants, including procurement of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the AGREEMENT covers a program set forth in Appendix B of the Regulations.
3. **SOLICITATIONS FOR SUBCONSULTANTS, INCLUDING PROCUREMENTS OF MATERIALS AND EQUIPMENT:** In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this AGREEMENT and the Regulations relative to non-discrimination on the grounds of race, color, sex, or national origin.
4. **INFORMATION AND REPORTS:** The CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.
5. **SANCTIONS FOR NON-COMPLIANCE:** In the event of the CONSULTANT's non-compliance with the non-discrimination provisions of this AGREEMENT, the CITY shall impose such sanctions as it may determine to be appropriate, including, but not limited to:
  - Withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies, and/or;
  - Cancellation, termination or suspension of the AGREEMENT, in whole or in part.
6. **INCORPORATION OF PROVISIONS:** The CONSULTANT shall include the provisions of paragraphs (1) through (5) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance;

provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the CITY to enter into such litigation to protect the interests of the CITY.

# CONSULTANT AGREEMENT

<b>PROJECT TITLE</b> STORMWATER ENGINEERING SERVICES ON-CALL SUPPORT	<b>WORK DESCRIPTION</b> STORMWATER ON-CALL ENGINEERING SERVICES TO SUPPORT NATURAL RESOURCES DIVISION'S NEIGHBORHOOD DRAINAGE IMPROVEMENT PROGRAM
<b>PROJECT NO.</b> VARIES	
<b>REDMOND BUSINESS LICENSE NO.</b> RED00051744	<b>CONSULTANT/ADDRESS/TELEPHONE</b>  OSBORNE CONSULTING, INC. 1800 112th Avenue NE, Suite 220-E Bellevue, WA 98004 425-451-4009
<b>FEDERAL I.D. NO.</b>  20-1896054	
<b>MAXIMUM AMOUNT PAYABLE</b> \$200,000 (over the duration of the 2-year contract)	<b>COMPLETION DATE</b> 03/03/13

## Index of Exhibits

- Exhibit "A" – Scope of Work
- Exhibit "B" – Payment (Negotiated Hourly Rate)
- Exhibit "C" – Consultant Fee Determination
- Exhibit "D" – Subcontracted Work/Fee Determination
- Exhibit "E" – Title VI Assurances

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, between the City of Redmond, Washington, hereinafter called the "CITY", and the above organization hereinafter called the "CONSULTANT".

## WITNESSETH THAT:

WHEREAS, the CITY desires to accomplish the above referenced project; and

WHEREAS, the CITY does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a consultant to provide the necessary services for the PROJECT; and

WHEREAS, the CONSULTANT represents that he/she is in compliance with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish consulting services to the CITY.

NOW THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

**I  
GENERAL DESCRIPTION OF WORK**

The work under this AGREEMENT shall consist of the above described work and services as herein defined and necessary to accomplish the completed work for this PROJECT. The CONSULTANT shall furnish all services, labor and related equipment necessary to conduct and complete the work as designated elsewhere in this AGREEMENT.

**II  
SCOPE OF WORK**

The Scope of Work and project level of effort for this project is detailed in Exhibit "A" attached hereto, and by this reference made a part of this AGREEMENT.

**III  
GENERAL REQUIREMENTS**

All aspects of coordination of the work of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by the CITY. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the CITY. The CONSULTANT shall attend coordination, progress and presentation meetings with the CITY or such Federal, Community, State, City or County officials, groups or individuals as may be requested by the CITY. The CITY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation.

The CONSULTANT shall prepare a monthly progress report, in a form approved by the CITY, that will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated.

All reports, plans & specifications, and other data furnished to the CONSULTANT by the CITY shall be returned. All designs, drawings, specifications, documents, and other work products, including all electronic files, prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT and are property of the CITY. Reuse by the CITY or by others acting through or on behalf of the CITY of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

**IV  
TIME FOR BEGINNING AND COMPLETION**

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the CITY. All work under this AGREEMENT shall be completed by the date shown in the AGREEMENT under completion date.



The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the CITY, in the event of a delay attributable to the CITY, or because of unavoidable delays beyond the control of the CONSULTANT.

## V PAYMENT PROVISIONS

The CONSULTANT shall be paid by the CITY for completed work and services rendered under this AGREEMENT as provided in Exhibit "B" attached hereto, and by this reference made part of this AGREEMENT. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in Section II, "Scope of Work". The CONSULTANT shall conform with all applicable portions of 48 CFR 31.

## VI SUBCONTRACTING

The CITY permits subcontracts for those items of work as shown in Exhibit "D" attached hereto and by this reference made a part of this AGREEMENT.

Compensation for this subconsultant work shall be based on the cost factors shown in Exhibit "D".

The work of the subconsultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the CITY.

All reimbursable hourly rates and direct non-salary costs for the subconsultant shall be substantiated in the same manner as outlined in Section V. All subcontracts shall contain all applicable provisions of this AGREEMENT.

With respect to subconsultant payment, the CONSULTANT shall comply with all applicable sections of the Prompt Payment laws as set forth in RCW 39.04.250 and RCW 39.76.011.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the CITY. No permission for subcontracting shall create, between the CITY and subcontractor, any contract or any other relationship.

## VII EMPLOYMENT

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the CITY shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the CITY, and any and all claims that may or might arise under any Workmen's Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the CITY, except regularly retired employees, without written consent of the public employer of such person.

### **VIII NONDISCRIMINATION**

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest agrees to comply with the following laws and regulations:

Title VI of the Civil Rights Act of 1964  
(42 USC Chapter 21 Subchapter V Section 2000d through 2000d-4a)

Federal-aid Highway Act of 1973  
(23 USC Chapter 3 Section 324)

Rehabilitation Act of 1973  
(29 USC Chapter 16 Subchapter V Section 794)

Age Discrimination Act of 1975  
(42 USC Chapter 76 Section 6101 et. seq.)

Civil Rights Restoration Act of 1987  
(Public Law 100-259)

American with Disabilities Act of 1990  
(42 USC Chapter 126 section 12101 et. seq.)

49 CFR Part 21

23 CFR Part 200

RCW 49.60.180

In relation to Title VI of the Civil Rights Act of 1964, the CONSULTANT is bound by the provisions of Exhibit "E" attached hereto and by this reference made a part of this AGREEMENT, and shall include the attached Exhibit "E" in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

## **IX TERMINATION OF AGREEMENT**

The right is reserved by the CITY to terminate this AGREEMENT at any time upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the CITY other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged at the time of termination of the AGREEMENT plus any direct nonsalary costs incurred at the time of termination of the AGREEMENT.

No payment shall be made for any work completed after ten (10) days following receipt by the CONSULTANT of the Notice to Terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the CITY for any excess paid.

If the services of the CONSULTANT are terminated by the CITY for default on the part of the CONSULTANT, the above formula for payment shall not apply. In such an event, the amount to be paid shall be determined by the CITY with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the CITY at the time of termination; the cost to the CITY of employing another firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the CITY of the work performed at the time of termination.

Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth above.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT'S or it's employee's default or negligence, the termination shall be deemed to be a termination for the convenience of the CITY. In such an event, the CONSULTANT would be reimbursed for actual costs in accordance with the termination for other than default clauses listed previously.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or, dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of the AGREEMENT, if requested to do so by the CITY. The subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the CITY, if the CITY so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the CITY's concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the CITY shall not constitute a waiver by the CITY of any remedies of any type it may have against the CONSULTANT for any breach of the AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the CITY.

Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

## **X CHANGES OF WORK**

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein when required to do so by the CITY, without additional compensation thereof. Should the CITY find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the CITY. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

## **XI DISPUTES**

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the CITY shall be referred for determination to the Director of Public Works or City Engineer, whose decision in the matter shall be final and binding on the parties of this AGREEMENT; provided however, that if an action is brought challenging the Director of Public Works or City Engineer's decision, that decision shall be subject to de novo judicial review.

## **XII VENUE, APPLICABLE LAW AND PERSONAL JURISDICTION**

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in King County. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the law of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in King County.

## **XIII LEGAL RELATIONS**

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accord with the laws of the State of Washington.

The CONSULTANT shall indemnify and hold the CITY and their officers and employees harmless from and shall process and defend at its own expense all claims, demands or suits at law or equity arising in whole or in part from the CONSULTANT's negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the CITY against and hold harmless the CITY from claims, demands or suits based solely upon the conduct of the

CITY, their agents, officers and employees and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT's agents or employees and (b) the CITY, their agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence, (2) the costs to the CITY of defending such claims and suits, etc. shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents or employees.

The CONSULTANT's relation to the CITY shall be at all times as an independent contractor.

The CONSULTANT shall comply with all applicable sections of the applicable Ethics laws, including RCW 42.23, which is the Code of Ethics for regulating contract interest by municipal officers. The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees against the CITY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

Unless otherwise specified in the AGREEMENT, the CITY shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of an acceptable, supplemental agreement, the CONSULTANT shall provide on-call assistance to the CITY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

### **Insurance Coverage**

- A. Worker's compensation and employer's liability insurance as required by the State of Washington.
- B. Commercial general liability and property damage insurance in an amount not less than one million dollars (\$1,000,000) per occurrence/two million dollars (\$2,000,000) aggregate for bodily injury, including death and property damage.
- C. Professional liability insurance in the amount of \$1,000,000 or more against claims arising from the performance of professional services under this contract.
- D. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar (\$1,000,000) combined single limit.

Excepting the Worker's Compensation and Professional Liability insurance secured by the CONSULTANT, the CITY will be named on all policies as an additional insured. The CONSULTANT shall furnish the CITY with verification of insurance and endorsements required by the AGREEMENT. The CITY reserves the right to require complete, certified copies of all required insurance policies at any time.

The additional insured endorsement shall provide that to the extent of the CONSULTANT's negligence, the CONSULTANT's insurance shall be primary and non-contributing as to the CITY, and any other insurance maintained by the City shall be excess and not contributing insurance with respect to the CONSULTANT's insurance.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to the CITY.

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the CITY.

The CITY will pay no progress payments under Section V until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the CITY may take such other action as is available to them under other provisions of this AGREEMENT, or otherwise in law.

#### **XIV EXTRA WORK**

The CITY may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.

If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the CITY shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.

The CONSULTANT must submit its "request for equitable adjustment" (hereafter referred to as claim) under this clause within thirty (30) days from the date of receipt of the written order. However, if the CITY decides that the facts justify it, the CITY may receive and act upon a claim submitted before final payment of the AGREEMENT.

Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.

Notwithstanding the terms and conditions of the first two paragraphs above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

#### **XV ENDORSEMENT OF PLANS**

If applicable, the CONSULTANT shall place its endorsement on all plans, estimates or any other engineering data furnished by them.

**XVI  
COMPLETE AGREEMENT**

This document and referenced attachments contains all covenants, stipulations and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

**XVI  
EXECUTION AND ACCEPTANCE**

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting materials submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year first above written.

*CONSULTANT*

*CITY OF REDMOND*

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

John Marchione, Mayor

**Title:** \_\_\_\_\_

**ATTEST:** \_\_\_\_\_

City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

**EXHIBIT A**

**SCOPE OF WORK**

**Stormwater Engineering Services**

The scope of services being sought is Task Order based stormwater engineering services that would support the City of Redmond (City), Natural Resources Capital Improvement Program (CIP).

**Project Description:**

This project will be a non-exclusive continuing services contract to assist the City of Redmond (City) in working on Natural Resources Division Projects. The consultant will serve as a partner to the City in order to expand the capability of Redmond staff to provide engineering related stormwater services to the community.

Typical projects may include the following areas: stream/habitat protection or improvement, fisheries enhancement, stream bank stabilization or erosion repair, detention ponds, water quality treatment, structural upgrades and repairs, small neighborhood drainage projects, design and abandonment of infiltration systems, small and large Regional Stormwater Conveyance and Water Quality Facilities (Regional Stormwater Facilities).

**1. Task Order Administration**

There will be no specific limitation on the quantity, minimum and/or maximum value of individual task orders. Anisha Prasad or her designated representative will administer each task order from the Public Works Department of the City.

**A. Period of Performance and Contract Value**

The contract will be for a period of performance for two (2) years. The schedule and period of each task order agreement will be separately negotiated and defined.

The maximum value of this contract will not exceed Two Hundred thousand dollars (\$200,000) over the 2-year duration of the contract; however, there is no guarantee that the City will expend the entire value of this contract. Specifically, the City does not guarantee that the consultant will receive a specified volume of work, a specific total contract amount, or a specific task order value. The value of the contract could potentially be increased through supplemental agreements. The work will be conducted through task orders for specific pieces of work.



## **B. Consultant Resources and Time**

Specific work under this contract will be performed on a task order basis consisting of individually negotiated task orders. Each task order will provide a specific scope, budget, and schedule of the services required. The exact disciplines required and the amount of work for each discipline, have not been determined. The consultant should be capable of adding, deleting, or substituting disciplines/expertise as necessary to meet the needs of specific task orders. There is no guarantee that all disciplines or services will be utilized.

The consultant will be expected to respond to short notice requests for technical services to resolve urgent task orders. The consultant should be capable of performing urgent task order assignments while working on several other task orders simultaneously. Consultant task orders will be coordinated with on-going work being performed by the City.

## **C. Task Order Process**

1. For each individual task order, the project manager will issue a written or verbal “Task Order Request” to the consultant. The task request will describe the nature and extent of the project, its scope & preliminary schedule.
2. Within five (5) calendar days of the time frame specified in the “task order request”, the consultant will prepare a proposal that includes an applicable scope of work, schedule, and fees as well as identify key staff assignments and potential sub consultants.
3. The consultant and project manager will determine the detailed scope of work, project schedule, consultant fee, and other project management details.
4. The project manager will provide a final approval of the task order with a signed task order sheet
5. The consultant will be paid on the basis of approved monthly invoices. Task orders will be invoiced in a manner to allow costs to be identified by work performed under separate task orders.
6. The project Manager will issue a written task release when work on a specific task order is complete and final payment for that task is authorized.

## **II. Scope of Services**

The consultant will provide all labor, materials, equipment and supplies to perform professional engineering services on a task order basis for various task assignment projects. These tasks may include, but are not limited to the following:

- o Planning and design for small public works projects. Examples: small neighborhood drainage projects. Past task order fees for such design services have ranged from \$25,000 to about \$75,000.

- Provide computer-aided design (CAD) drafting support to City Staff on various small Neighborhood Stormwater Capital Improvement Projects. City's engineer to provide the design and to work with consultant's CAD technician to draft engineering drawings for the project.
- Planning level Studies to determine location, costs and feasibility of construction of small and large regional stormwater conveyance and water quality Facilities and if they can accommodate private and public developments upstream.
- Prepare planning level opinion of probable project costs for identified Capital Improvement Projects.
- Prepare engineered plans, specifications and bid documents
- Construction and project administration
- Other related Work Items
  - Creative problem solving and suggestions
  - Attendance and assistance at meetings
  - Coordination of work product with other service providers as needed.

All work performed by consultant related to support of City CIP projects shall meet the requirements of the following Standards and Codes:

**City of Redmond Standards and Codes:**

- Public Works Department's Stormwater Technical Notebook: Issue Number 5, effective January 1, 2007 (Stormwater Notebook). The Stormwater Notebook complements the 2005 Department of Ecology Stormwater Management Manual for Western Washington.
- City of Redmond Standard Specifications and Details
- Standard Plans for Road, Bridge and Municipal Construction, WSDOT/APWA, current edition

**EXHIBIT B**  
**PAYMENT**  
**(NEGOTIATED HOURLY RATE)**

The CONSULTANT shall be paid by the CITY for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform with all applicable portions of 48 CFR Part 31.

**1. Hourly Rates**

The CONSULTANT shall be paid by the CITY for work done, based upon the negotiated hourly rates shown in Exhibit "C" attached hereto and by this reference made part of the AGREEMENT. The rates listed shall be applicable for the first 12-month period and shall be subject to negotiation for the following 12-month period upon request of the CONSULTANT or the CITY. If negotiations are not conducted for the second or subsequent 12-month periods within 90 days after completion of the previous period, the rates listed in this AGREEMENT, or subsequent written authorization(s) from the CITY shall be utilized. The rates are inclusive of direct salaries, payroll additives, overhead, and fee. The CONSULTANT shall maintain support data to verify the hours billed on the AGREEMENT.

**2. Direct Non-Salary Costs**

Direct Non-Salary costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges, and fees of subconsultants. Air or train travel will only be reimbursed to economy class levels unless otherwise approved by the CITY. The CONSULTANT shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance with the CITY's Travel Rules and Procedures. However, air, train, and rental car costs shall be reimbursed in accordance with the 48 CFR Part 31.205-46 "Travel Costs". The billing for direct non-salary costs shall include an itemized listing of the charges directly identifiable with the PROJECT. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the CITY upon request. All above charges must be necessary for the services provided under this AGREEMENT.

**3. Contingencies**

If the CITY desires the CONSULTANT to perform additional work beyond that already defined in the AGREEMENT, the Agreement Administrator may authorize additional funds for this purpose. Such authorization(s) shall be in writing and shall not exceed the amount shown in Exhibit "C". Any changes requiring additional costs in excess of the contingencies shall be made in accordance with Section XIV, "Extra Work".

**4. Maximum Amount Payable**

The maximum amount payable by the CITY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The maximum amount payable is comprised of the total amount authorized and the contingencies. The maximum amount payable does not include payment for extra work as stipulated in Section XIV, "Extra Work". No minimum amount payable is guaranteed under this AGREEMENT.

**5. Monthly Progress Payments**

Progress payments may be claimed on a monthly basis for all costs authorized in 1 and 2 above. The monthly invoices shall be supported by detailed statements for hours expended at the rates established in Exhibit "C", including names and classifications of all employees, and invoices for all direct nonsalary expenses. To provide a means of verifying the invoiced salary costs for the consultant's employees, the agency may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates, and present duties of those employees performing work on the project at the time of the interview.

**6. Final Payment**

Final payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the CITY after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, electronic data and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all claims for payment which the CONSULTANT may have against the CITY unless such claims are specifically reserved in writing and transmitted to the CITY by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the CITY may have against the CONSULTANT or to any remedies the CITY may pursue with respect to such claims.

The payment of any billing will not constitute agreements as to the appropriateness of any item and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the CITY within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT or any claims relating to the validity of a finding by the CITY of overpayment.

**7. Inspection of Cost Records**

The CONSULTANT and their subconsultants shall keep available for inspection by representatives of the CITY, for a period of three (3) years after final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim, or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three (3) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

**EXHIBIT C**

**CONSULTANT FEE DETERMINATION**

**PROJECT:** STORMWATER ENGINEERING SERVICES ON-CALL SUPPORT

**NEGOTIATED HOURLY RATES:**

<u>Classification</u>	<u>Minimum Hourly Rate</u>	<u>Maximum Hourly Rate</u>
Principal Engineer	\$110	\$116
Engineer Tech/EIT	\$100	\$105
Technical Editor	\$85	\$90

TOTAL = \$ 200,000

**REIMBURSABLES:**

Mileage = \$0.55/mile

**SUBCONSULTANT COSTS (See Exhibit D):** = \$ NOT APPLICABLE

**GRAND TOTAL NOT TO EXCEED:** = \$ 200,000/over 2-years

**EXHIBIT D**

**SUBCONTRACTED WORK**

The CITY permits subcontracts for the following portions of the work of the AGREEMENT:

<u>SUBCONSULTANT</u>	<u>WORK DESCRIPTION</u>	<u>AMOUNT</u>
“CONSULTANT HAS NOT PROPOSED SUBCONSULTANTS FOR THIS ON-CALL AGREEMENT” “NOT APPLICABLE”		

TOTAL = \$ \_\_\_\_\_

**EXHIBIT E**

**TITLE VI ASSURANCES**

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

1. **COMPLIANCE WITH REGULATIONS:** The CONSULTANT shall comply with the Regulations relative to non-discrimination in the same manner as in federally assisted programs of the CITY, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of the AGREEMENT.
2. **NON-DISCRIMINATION:** The CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subconsultants, including procurement of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the AGREEMENT covers a program set forth in Appendix B of the Regulations.
3. **SOLICITATIONS FOR SUBCONSULTANTS, INCLUDING PROCUREMENTS OF MATERIALS AND EQUIPMENT:** In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this AGREEMENT and the Regulations relative to non-discrimination on the grounds of race, color, sex, or national origin.
4. **INFORMATION AND REPORTS:** The CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.
5. **SANCTIONS FOR NON-COMPLIANCE:** In the event of the CONSULTANT's non-compliance with the non-discrimination provisions of this AGREEMENT, the CITY shall impose such sanctions as it may determine to be appropriate, including, but not limited to:
  - Withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies, and/or;
  - Cancellation, termination or suspension of the AGREEMENT, in whole or in part.
6. **INCORPORATION OF PROVISIONS:** The CONSULTANT shall include the provisions of paragraphs (1) through (5) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the CITY to enter into such litigation to protect the interests of the CITY.