

**INSTRUCTIONS TO
CITY OF LYNNWOOD
ON-CALL / PROGRAM
AGREEMENT FOR PROFESSIONAL SERVICES
(CONSULTANT AGREEMENT)**

This agreement is to be used for On-Call/Program Architectural and Engineering Consultant Contracts with Non-Federal funding.

Any revisions to this agreement need to be approved by the following:

- 1. City's Risk Manager (City Clerk)**
- 2. City Attorney**
- 3. Public Works Director**

Note, the most common change requested by a Consultant is to the Insurance Requirements. These need only to be approved by the City's Risk Manager.

When completing pay special attention to the following:

- Section 2.2 Contract Expiration**
- Section 3.1 Compensation method**
- Section 14.1 City Contact**
- Schedule A Scope of Work**
- Schedule B Consultant Fee Determination**

**Updated by Peggy Simpson on 6/06/2012
Further updated by David Mach on 5/27/2015
Further updated by Erin Duleba on 3/21/2018 and on 7/23/2019
Further updated by Sadia Faiza on 10/9/2019
Further updated by Amie Hanson on 1/17/2023
Further updated by Michael Whaley June 2023**

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CITY OF LYNNWOOD

[PROJECT NAME]
CONTRACT NUMBER [contract #]
AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement, dated as of _____, is entered into by and between the City of Lynnwood (“Lynnwood”) and _____ (“Consultant”).

Consultant Business:
Consultant Contact Name:
Consultant Address:
Consultant Phone:
Consultant Fax:
Consultant E-mail:
Consultant FID #:

Section 1. The Services.

- 1.1 Consultant shall perform the services described in the attached Schedule A which is incorporated herein by this reference.
- 1.2 Except as otherwise specifically provided in this Agreement, Consultant shall furnish the following, all as the same may be required to perform the services described in paragraph 1.1 in accordance with this Agreement; personnel, labor and supervision; technical, professional and other services. All such services, property and other items furnished or required to be furnished, together with all other obligations performed or required to be performed, by Consultant under this Agreement are sometime collectively referred to in this Agreement as the “Services.”
- 1.3 All provisions of this Agreement are intended to be complementary, and any Services required by one and not mentioned in another shall be performed, to the same extent as though required by all. Details of the Services necessary to carry out the intent of this Agreement, but that are not expressly required, shall be performed or furnished by Consultant as part of the Services, without any increase in the compensation otherwise payable under this Agreement.

Section 2. Schedule.

- 2.1 Consultant shall commence, prosecute and complete such Services as outlined in each Formal Task Assignment in accordance with Schedule A.
- 2.2 This Agreement expires _____ (_) years from the date signed by Lynnwood unless agreed to in writing by the Consultant and Lynnwood.

Section 3. Compensation.

- 3.1 As full compensation for satisfactory performance of the Services, Lynnwood shall pay the Consultant as individually negotiated for each Formal Task Assignment. The total compensation for all Task Assignments issued under this agreement shall not exceed \$ _00,000.00 (_ hundred thousand dollars and zero cents).

The Consultant shall be paid by Lynnwood for work done, based upon the negotiated hourly rates shown in Schedule B attached hereto and by reference made part of this Agreement. Negotiated Hourly rates are all inclusive and include direct labor costs, overhead costs and profit.

- 3.2 Consultant shall submit each calendar month, Consultant's invoice for the compensation payable under this Agreement for the Services performed during the preceding period. Each of Consultant's invoices shall set forth a detailed description of the Services performed during the applicable month, the number of hours spent and personnel performing such Services and any reimbursable costs and expenses incurred in connection with such Services. Consultant agrees to be contacted for verification.
- 3.3 Lynnwood shall pay each of Consultant's invoices within thirty (30) days after Lynnwood's receipt and verification thereof.

Section 4. Performance by Consultant.

- 4.1 Consultant shall not (by contract, operation of law or otherwise) delegate or subcontract performance of any Services to any other person or entity without the prior written consent of Lynnwood. Any such delegation or subcontracting without Lynnwood's prior written consent shall be voidable at Lynnwood's option.

No delegation or subcontracting of performance of any of the Services, with or without Lynnwood's prior written consent, shall relieve Consultant of its responsibility to perform the services in accordance with this Agreement. Consultant shall be fully responsible for the performance, acts and omissions of Consultant's employees, Consultant's subcontractors and any other person for whom the consultant is legally liable (collectively, the "Support").

- 4.2 Consultant shall at all times be an independent contractor and not an agent or representative of Lynnwood with regard to performance of the Services. Consultant shall not represent that it is, or hold itself out as, an agent or representative of Lynnwood. In no event shall Consultant be authorized to enter into any agreement or undertaking for or on behalf of Lynnwood.
- 4.3 Consultant shall perform the Services in a timely manner and in accordance with the standards of the profession. At the time of performance, Consultant shall be properly licensed, equipped, organized, and financed to perform the Services in accordance with this Agreement. Subject to compliance with the requirements of this Agreement, Consultant shall perform the Services in accordance with its own methods.

- 4.4 Consultant shall take all reasonable precautions to protect against any bodily injury (including death) or property damage that may occur in connection with the Services.

Section 5. Compliance with Laws.

- 5.1 Consultant shall comply with all applicable laws, ordinances, rules, regulations, orders, licenses, permits, and other requirements, now in effect, of any governmental authority (including, but not limited to, such requirements as may be imposed upon Lynnwood and applicable to the Services). Consultant shall furnish such documents as may be required to effect or evidence such compliance. All laws, ordinances, rules, orders required to be incorporated in agreements of this character are incorporated in this Agreement by this reference.

Section 6. Inspection: Examination of Records.

- 6.1 The Services shall, at all times, be subject to inspection by and with the approval of Lynnwood, but the making of (or failure or delay in making) such inspection or approval shall not relieve Consultant of responsibility for performance of the Services in accordance with this Agreement, notwithstanding Lynnwood's knowledge of defective or noncomplying performance, its substantiality or the ease of its discovery. Consultant shall provide Lynnwood sufficient, safe, and proper facilities and equipment for such inspection and free access to such facilities.
- 6.2 Consultant shall promptly furnish Lynnwood with such information related to the Service as may be requested by Lynnwood. Until the expiration of three (3) years after final payment of the compensation payable under this Agreement, Consultant shall provide Lynnwood access to (and Lynnwood shall have the right to examine, audit and copy) all of Consultant's books, documents, papers and records which are related to the Services or this Agreement.

Section 7. Property and Confidential Information.

- 7.1 All documents, data, drawings, specifications, software applications and other products or materials produced by the Consultant in connection with this Agreement shall be the property of Lynnwood whether the project for which they are made is executed or not. All such documents, products and materials shall be forwarded to Lynnwood at its request and may be used by Lynnwood as it sees fit. The Consultant shall preserve the confidentiality of all Lynnwood documents and data accessed for use in Consultant's work product.
- 7.2 Consultant shall not, without the prior written consent of Lynnwood, disclose to third parties any information received in connection with the Services unless:
- a. the information is known to Consultant prior to receiving the same directly or indirectly in connection with the Services;
 - b. the information is in the public domain at the time of disclosure by Consultant; or
 - c. the information is received by Consultant from a third party who does not have an obligation to keep the same confidential.

Section 8. Release, Indemnities, and Hold Harmless.

- 8.1 Except as otherwise provided in this paragraph, the Consultant hereby agrees to defend, indemnify, and hold harmless the City from any and all Claims to the extent arising out of, in connection with, or incident to any negligent acts, errors, omissions, or intentional misconduct by Consultant (or its employees, agents, representatives or subcontractors/subconsultants) relating to this Agreement. The Consultant is obligated to defend and indemnify the City pursuant to this paragraph whether a Claim is asserted directly against the City or whether it is asserted indirectly against the City, e.g., a Claim is asserted against someone else who then seeks contribution or indemnity from the City. The Consultant's duty to defend, indemnify, and hold harmless pursuant to this paragraph is not in any way limited to, or by the extent of, insurance obtained by, obtainable by, or required of the Consultant. The Consultant shall not indemnify or defend the City for Claims caused solely by the negligence of the City. If (1) RCW 4.24.115 applies to a particular Claim, and (2) the bodily injury or damage to property for which the Consultant is to indemnify and defend the City is caused by or results from the concurrent negligence of (a) the Consultant, its employees, subcontractors/subconsultants or agents and (b) the City, then the Consultant's duty to indemnify or defend the City shall be valid and enforceable only to the extent allowed by RCW 4.24.115. Solely and expressly for the purpose of its duties to indemnify, defend, and hold harmless the City, the Consultant specifically waives any immunity it may have under the State Industrial Insurance Law, Title 51 RCW. The Consultant recognizes that this waiver of immunity under Title 51 RCW was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. As used in this paragraph: (1) "City" includes the City's officers, employees, agents, and representatives and (2) "Claims" include, but is not limited to, any and all losses, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damage, irrespective of the type of relief sought or demanded, such as money or injunctive relief, and irrespective of whether the damage alleged is bodily injury, damage to property, economic loss, general damages, special damages, or punitive damages. If, and to the extent, Consultant employs or engages subconsultants or subcontractors, then Consultant shall ensure that each such subconsultant and subcontractor (and subsequent tiers of subconsultants and subcontractors) shall expressly agree to defend, indemnify, and hold harmless the City to the extent and on the same terms and conditions as the Consultant pursuant to this paragraph.
- 8.2 Consultant releases and shall defend, indemnify and hold harmless the City from and against all claims, cost, liabilities, damages, expenses (including, but not limited to reasonable attorneys' fees), and royalties based upon any actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or other intellectual property right by any Services. Further, if any Services infringe or misappropriate any patent, copyright, trade secret, trademark, or other intellectual property right, Consultant shall either:
- a. procure for Lynnwood the right to use such Services; or
 - b. modify such Services so that they no longer infringe or misappropriate any such right.
- 8.3 No employee of Consultant shall have individual liability to Lynnwood

Section 9. Workers' Compensation and Insurance.

- 9.1 With respect to all persons performing the Services, Consultant shall secure and maintain in effect at all times during performance of the Services Worker's Compensation and Employer's Liability Coverage: coverage or insurance in accordance with the applicable laws related to worker's compensation, and employer's liability insurance with limits no less than \$1,000,000 including \$1,000,000 for bodily injury by Accident, each accident; and \$1,000,000 bodily injury by disease, each employee; and \$1,000,000 bodily injury, policy limit (including but not limited to, the Washington Industrial Insurance Act and the laws of the state in which any such person was hired), regardless of whether such coverage or insurance is mandatory or merely elective under the law. In case of subcontracted work, the Consultant shall require each subcontractor to provide Worker's Compensation insurance for their employees unless the Consultant covers such employees.

The Consultant shall furnish to Lynnwood such assurance and evidence of such coverage or insurance (such as copies of insurance policies and Certificates of Compliance issued by the Washington State Department of Labor and Industries) as Lynnwood may request.

- 9.2 Consultant's Liability & Property Damage Insurance:
- a. The Consultant shall procure and maintain during the life of this Contract and during performance of Work, Professional Liability (Errors and Omissions Insurance) Commercial General Liability, and Automobile Liability Insurance, to protect Lynnwood and Consultant against all claims, damages, losses and expenses arising out or resulting from performance of Work, with insurance companies or through sources approved by the State Insurance Commissioner pursuant to RCW Chapter 48 or issued as a surplus line by a Washington Surplus Lines Broker. Lynnwood may require higher limits if Lynnwood believes it is in the best interest of the public. The cost of any additional increase shall be borne by Lynnwood.
 - b. Lynnwood shall be Additional Insured on a Primary Basis for the General Liability coverage without limitation, and shall include others if required by the Contract documents.
 - c. Certificate of Insurance and a copy of Additional Insured Endorsement for the primary policy of Commercial General Liability insurance, shall be filed with Lynnwood after award. This Certificate is subject to approval by Lynnwood. Failure of the Consultant to comply with the requirements regarding insurance shall be considered material breach and be cause of termination of the Contract and of all obligations regarding same.
 - d. A Certificate of Insurance as evidence of Professional Liability Insurance shall be filed with Lynnwood after award but before start of contract. This Certificate is subject to approval by Lynnwood. Failure of the Consultant to fully comply with the requirements regarding insurance shall be material breach of contract and be cause for immediate termination of Contract and all obligations regarding same. The Consultant shall maintain full coverage for claims made for at least three years following completion of work.

- e. The Consultant shall not begin Work until all required insurance has been obtained and until such insurance has been approved by Lynnwood, nor shall the Consultant allow any subcontractor to commence work on its subcontract until the same insurance requirements have been complied with by such subcontractor. Said insurance shall provide coverage to the Consultant, any subcontractor performing work provided by this Contract, and Lynnwood. The coverage so provided shall protect against claims for personal injuries, including accidental death, as well as claims for property damages which may arise from any act or omission of the Consultant or the subcontract, or by anyone directly or indirectly involved or employed by either of them.
- f. Approval of the insurance by Lynnwood shall not relieve or decrease the liability of the Consultant for any damages arising from Consultant's performance of the Work.
- g. Insurance shall provide, at a minimum, the types of insurance coverage, limits and endorsements stated below and shall be included in all applicable policies and on the Certificate of Insurance. The Commercial General Liability and Commercial Automobile Liability coverage below shall protect the Consultant and Lynnwood from claims for damages of bodily injury, including death resulting therefrom, as well as claims for property damage, which may arise from operations under this Contract, whether such operation be by itself or by any subcontractor or by anyone directly employed by either of them, it being understood that it is Consultant's obligation to enforce the requirements of this section in respect to any subcontractor employed for this project:
 - i. Commercial General Liability insurance using Insurance Services Office form CG0001 or the equivalent. City of Lynnwood shall be included as an Additional Insured for both ongoing and completed operations using Insurance Services Office forms CG2010 and CG2037 or the equivalent. A blanket additional insured endorsement that provides the equivalent of the above forms is acceptable. Limits shall not be less than \$1,000,000 each occurrence and \$2,000,000 aggregate.
 - ii. Commercial Automobile Liability using Insurance Services Office form CA0001 or the equivalent providing coverage for all owned (if any), non-owned and hired automobiles. Limit shall not be less than \$1,000,000 each accident.
 - iii. Statutory Workers Compensation and Employers Liability with a limit not less than \$1,000,000 each person and \$1,000,000 aggregate.
 - iv. Umbrella or Excess Liability providing coverage in excess of underlying Commercial General Liability, Commercial Automobile Liability and Employer's Liability with limits not less than \$2,000,000 each occurrence and \$2,000,000 aggregate.
 - v. Professional Liability or Errors and Omissions Liability with a limit of not less than \$1,000,000 each claim and \$1,000,000 aggregate. If provided on a Claims Made basis, coverage shall be maintained for at least three years following the termination of this agreement. Coverage can be provided by policy renewals or by obtaining an Extended Reporting Period endorsement.

- h. Nothing contained in these insurance requirements is to be construed as limiting the extent of Consultant's responsibility for payment of damages resulting from operations under this Contract.
- i. The coverage provided by the General Liability and the Automobile Liability is primary to any insurance maintained by Lynnwood.
- j. The inclusion of more than one insured under this policy shall not affect the rights of any insured as respects to any claims, suit or judgment made or brought by or for any other Insured or by or for any employee of any other Insured. This policy shall protect each Insured in the same manner as though a separate policy had been issued to each, except that nothing herein shall operate to increase the company's liability beyond the amount or amounts for which the company would have been liable had only one Insured been named.
- k. Such insurance shall be maintained as required above, and any additional coverages and limits as Lynnwood may from time to time specify to protect the City of Lynnwood, its successors and assigns from any claims, losses harm, costs, liabilities, damages, and expenses (including but not limited to reasonable attorney's fees) that may arise out of any property damage, bodily injury (including death) or professional liability related to the Work performed.
- l. The Consultant shall provide Lynnwood with notice in writing of any proposed or actual cancellation, reduction in coverage, or other change to any policy of insurance required by Section 9.2 of this Agreement, as soon as the Consultant becomes aware of the proposed or actual reduction in coverage or other change, but no later than two days after learning of the reduction in coverage or other change.
- m. Failure to comply with provisions contained herein shall not waive the responsibility of the Consultant to provide the required protection.
- n. The Certificate of Insurance must include the following in the description:
 - Contract Title:
 - Contract Number:
 - Lynnwood Project Manager:
 - Buyer Name:

9.3 All policies of insurance required under this Agreement shall:

- a. be placed with such insurers and under such forms of policies as may be acceptable to Lynnwood. Such insurers must have a rating from A.M. Best Company of A(-) VII or higher;
- b. with the exception of workers' compensation, employer's liability and professional liability insurance, apply severally and not collectively to each insured against whom any claim is made or suit is brought, except that the inclusion of more than one insured shall not operate to increase the insurance company's limits of liability as set forth in the insurance policy;

Section 10. Changes

- 10.1 Lynnwood may, at any time by written notice thereof to Consultant, make changes in the Services within the general scope of this Agreement (including, but not limited to, additions to or deletions from any Services, suspension of performance and location of performance).
- 10.2 If any change under paragraph 10.1 causes an increase or decrease in the cost of the time required for performance of the Services an equitable adjustment in the compensation and schedules under this Agreement shall be made to reflect such increase or decrease, and this Agreement shall be modified in writing accordingly. Such equitable adjustment shall constitute full compensation to Consultant for such change. If any change under paragraph 10.1 results in a decrease in the Services to be performed, Consultant shall not be entitled to anticipated profit on Services not performed and the loss of anticipated profit shall not reduce the decrease in compensation under this Agreement resulting from such exchange. Further, Consultant shall not be entitled to any reallocation of cost, profit, or overhead.
- 10.3 Notwithstanding any dispute or delay in arriving at a mutually acceptable equitable adjustment under paragraph 10.2, Consultant shall immediately proceed with performance of the Services as changed pursuant to paragraph 10.1. If Consultant intends to assert a claim for equitable adjustment under paragraph 10.2, Consultant must, within sixty (60) days after Consultant's receipt of any notice under paragraph 10.1 that does not set forth an acceptable adjustment, submit to Lynnwood a written statement of the basis and nature of the adjustment claimed. Consultant shall not be entitled to any adjustment unless such written statement is submitted by Consultant to Lynnwood within the applicable period.

Section 11. Termination.

- 11.1 Lynnwood may, by written notice thereof to Consultant, terminate this Agreement as to all or any portion of the Services not then performed, whether or not Consultant is in breach or default. Upon receipt of any such notice of termination, Consultant shall, except as otherwise directed by Lynnwood, immediately stop performance of the Services to the extent specified in such notice. Consultant shall have the same termination rights as Lynnwood in Section 11.
- 11.2 In the event of termination pursuant to paragraph 11.1, an equitable adjustment shall be made in the compensation payable to Consultant under this Agreement, provided that such compensation as so adjusted shall in no event exceed a percentage of the total compensation otherwise payable under this Agreement equal to the percentage of the Services satisfactorily completed at the time of termination. Further, Consultant shall not be entitled to any reallocation of cost, profit or overhead. Consultant shall not in any event be entitled to anticipated profit on Services not performed on account of such termination. Consultant shall use its best efforts to minimize the compensation payable under this Agreement in the event of such termination.
- 11.3 If Lynnwood purports to terminate or cancel all or any part of this Agreement for Consultant's breach or default when Consultant is not in breach or default which would permit such termination or cancellation, such termination or cancellation shall be deemed

to have been a termination by Lynnwood pursuant to paragraph 11.1 and the rights of the parties shall be determined accordingly.

Section 12. Conflict of Interest.

- 12.1 The Consultant confirms that Consultant does not have a business interest or close family relationship with any Lynnwood officer or employee who was, is, or will be involved in the Consultant selection, negotiation, drafting, signing, administration or evaluation of the Consultant's performance. In addition, the Consultant confirms adherence to Lynnwood policy regarding conflict of interest, Lynnwood Ethics Code, and the Revised Code of Washington.
- 12.2 Businesses must not offer, nor Lynnwood employees accept, gifts, gratuities, loans, trips, favors, special discounts, Work, or anything of economic value in conjunction with Lynnwood business practices. It is also unlawful for anyone to offer another, to influence or cause him or her to refrain from submitting a bid. Consultants and Lynnwood employees must strictly adhere to the statutes and ordinances for ethics in contracting and purchasing, including Lynnwood Ethics Code, RCW 42.23 (Code of Ethics for Municipal Officers) and RCW 42.52 (Ethics in Public Service). This is applicable to any business practice, whether a contract condition, bid practice, or at any activity related to Lynnwood business.

Section 13. Nondiscrimination.

- 13.1 In all hiring or employment made possible or resulting from this Agreement, there shall be no unlawful discrimination against any employee or applicant for employment because of sex, age, race, color, religion, creed, national origin, marital status or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification. This requirement shall apply to but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. No person shall be denied or subjected to discrimination in receipt of the benefit of any Work or activities made possible by or resulting from this Contract on the grounds of sex, race, color, creed, national origin, age except minimum age and retirement provisions, marital status, or in the presence of any sensory, mental or physical handicap.
- 13.2 The Consultant shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) and amendments as applicable in performing its obligations under this Contract. In particular, if the Consultant is providing Work, programs or activities to Lynnwood employees or members of the public as part of this Contract, the Consultant shall not deny participation or the benefits of such Work, programs or activities to people with disabilities because of such disability. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.
- 13.3 The City of Lynnwood in accordance with Section 504 of the Rehabilitation Act (Section 504) and the Americans with Disabilities Act (ADA), commits to nondiscrimination on the basis of disability, in all of its programs and activities.

The City of Lynnwood, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

Section 14. Miscellaneous.

- 14.1 Notice. Except as otherwise noted, any notice, request, designation, direction, statement or other communication under this Agreement shall be in writing and shall be delivered in person or mailed, properly addressed and stamped with the required postage, to the attention of:
City of Lynnwood
19100 - 44th Avenue West
Lynnwood, WA 98036
Attn: _____, Project Manager
- 14.2 Assignment. Consultant shall not (by contract, operation of law or otherwise) assign this Agreement or any right or interest in this Agreement without the prior written consent of Lynnwood. For the purposes of the foregoing, any transfer of a controlling interest in Consultant (e.g., by a transfer of Securities or otherwise) shall be deemed an assignment of this Agreement. Any assignment without Lynnwood's prior written consent shall be voidable at Lynnwood's option. No such assignment, with or without Lynnwood's prior written consent, shall relieve Consultant from its responsibilities to perform the Services in accordance with this Agreement. Subject to the foregoing restriction on assignment by Consultant, this Agreement shall be fully binding upon, and be enforceable by the successors, assigns, and legal representatives of the respective parties to this Agreement.
- 14.3 Survival. The obligation of Consultant under Sections 6, 7, 8, 11, and 14, and all provisions of this Agreement which may reasonably be interpreted or construed as surviving the completion, termination, or cancellation of this Agreement, shall survive the completion, termination, or cancellation of this Agreement.
- 14.4 Remedies. The rights and remedies of Lynnwood or the Consultant set forth in any provision of this Agreement are in addition to and do not in any way limit any other rights or remedies afforded to Lynnwood or the Consultant by any other provision of this Agreement or by law.
- 14.5 Entire Agreement. This Agreement sets forth the entire agreement of the parties, and supersedes any and all prior agreements, with respect to the Services. No amendment or modification of any provision of this Agreement (other than changes pursuant to Section 10) shall be valid unless set forth in a written amendment to this Agreement signed by both parties.
- 14.6 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted. The headings of sections of

this Agreement are for convenience or reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections.

- 14.7 Jurisdiction and Venue. Consultant shall not commence or prosecute any suit, proceeding, or claim to enforce the provisions of this Agreement, to recover damages for breach of or default in this Agreement, or otherwise arising under or by reason of this Agreement, other than in the courts of the State of Washington or the District Court of the United States, Western Division, State of Washington. Consultant hereby irrevocably consents to the jurisdiction of the courts of the State of Washington with venue laid in Snohomish County and of the District Court of the United States, Western Division, State of Washington.
- 14.8 Governing Law. This Agreement shall be interpreted, construed, and enforced in all respects in accordance with the laws of the State of Washington.
- 14.9 Attorneys' Fees. If any suit or other action is instituted in connection with any controversy arising under this Agreement, the prevailing party shall be entitled to recover all of its costs and expenses including such sum as the court may judge reasonable for attorneys' fees, including fees upon appeal of any judgment or ruling.

CITY OF LYNNWOOD:

Christine Frizzell, Mayor

Dated: _____

CONSULTANT:

Printed Name: _____

Title: _____

Dated: _____

SCHEDULE A
Scope of Services
(Task Order Agreement)

Each item of work under this Agreement will be provided by task assignment. Each assignment will be individually negotiated with the Consultant. The amount established for each assignment will be the maximum amount payable for that assignment unless modified in writing by Lynnwood. Lynnwood is not obligated to assign any specific number of tasks to the Consultant, and Lynnwood's and the Consultant's obligations hereunder are limited to tasks assigned in writing.

Task assignments made by Lynnwood shall be issued in writing by a Formal Task Assignment Document similar in format to page 2 of this schedule. Task assignments using Federal Funding will require a full Local Agency Standard Consultant Agreement as outlined in the Washington State Department of Transportation Local Agency Guidelines.

An assignment shall become effective when a Formal Task Assignment Document is signed by the Consultant and Lynnwood, except that emergency actions requiring a 24-hour or less response can be handled by an oral authorization. Such oral authorizations shall be followed up with a Formal Task Assignment Document within four working days, and any billing rates agreed to orally (for individuals, subconsultants, or organizations whose rates were not previously established in the Agreement) shall be provisional and subject to final negotiation and acceptance by Lynnwood.

SAMPLE

Formal Task Assignment Document

Task Number _____

The general provisions and clauses of the Engineering Services agreement [contract #] dated _____ between the City of Lynnwood (“Lynnwood”) and _____ (“Consultant”) shall be in full force and effect for this Task Assignment.

Location of Project: _____

Project Title: _____

Maximum Amount Payable: _____

Completion Date: _____

Description of Work:

(Note provide description of work here and attach Scope-of-work and fee proposal.)

Authorization Date: _____

Consultant Signature: _____ Date: _____

Lynnwood Project Manager Signature: _____ Date: _____

SCHEDULE B
CONSULTANT FEE DETERMINATION

Provide your negotiated hourly rates here. Negotiated hourly rates are all inclusive and include direct labor costs, overhead costs and profit. These standard rates will be used on all task orders. Note you may provide escalated wage rates for the multiple years of the contract.