



PACIFIC COUNTY COURTHOUSE
NATIONAL HISTORIC SITE

COUNTY OF PACIFIC

Department of Public Works

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AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES

THIS AGREEMENT made and entered into by and between **PACIFIC COUNTY**, hereinafter referred to as “**COUNTY**” and Sargent Engineers, Inc., located at 320 Ronlee Ln NW, Olympia WA 98502, hereinafter referred to as “**CONSULTANT**.”

In consideration of the covenant and conditions of this Agreement, the parties hereby agree as follows:

1. SCOPE OF WORK

See Exhibit A, which is attached hereto and by this reference made a part of this Agreement. Work requested by the COUNTY shall be issued in writing. The request by the COUNTY should include the following information, which may be furnished in coordination with the COUNTY:

1. Task Order title (project name)
2. Technical approach to the task (if necessary)
3. Specific deliverables
4. Schedule with milestones and deliverables
5. Cost/hour estimate
6. Due date of work

All of the above items may be brief, but will be sufficiently detailed to understand the work being authorized and the amount it will cost. Written Task Orders (see Exhibit E) and Notice to Proceed may be issued as e-mail documents.

2. TERM.

The CONSULTANT shall not begin any work under this Agreement until an authorized Task Order is approved in writing by the COUNTY. This Agreement shall expire on April 24, 2024 with an option to extend for up to two additional years by mutual agreement.

3. COMPENSATION

This Agreement does not guarantee any amount of work for the CONSULTANT. Task Orders will be developed as determined by the COUNTY and provided for in this Agreement.

The CONSULTANT shall be paid by the COUNTY for completed services rendered under each approved individual Task Order. 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 submit an itemized bill to the COUNTY prior to payment consistent with the itemized invoice list in Exhibit D. Payments due to the CONSULTANT under this Agreement are expressly conditioned upon the CONSULTANT's strict compliance with all insurance requirements under this Agreement. Payment to the CONSULTANT shall be suspended in the event of non-compliance. Upon receipt of evidence of full compliance, payments not otherwise subject to withholding or set-off will be released to the CONSULTANT.

The CONSULTANT shall be paid by the COUNTY based upon the negotiated cost for each individual approved Task Order. This amount will be a "not to exceed" figure based on the Fee Schedule outlined in Exhibit B for work performed under this Agreement. Exhibit B is attached hereto and by this reference made part of this Agreement. Compensation shall include all approved consultant expenses including, but not limited to, overhead, profit, and direct non-salary costs and shall not exceed that amount shown on each approved individual Task Order for services under this Agreement.

The COUNTY agrees to pay the CONSULTANT in accordance with the fee schedule outlined in Exhibit B for work performed under this Agreement. Exhibit B is attached hereto and by this reference made a part of this Agreement. Compensation to be paid to the CONSULTANT for authorized work in succeeding years will be contingent upon availability of funds. For the years 2024-2026, as necessary, any modifications to the fee schedule (Exhibit B) must be submitted to the COUNTY by the CONSULTANT by the Agreement renewal date or the fee schedule will remain unchanged.] The CONSULTANT will not undertake any work or otherwise financially obligate the COUNTY in excess of said not-to-exceed amount without a duly executed Addendum issued by the COUNTY.

The CONSULTANT shall be paid by the COUNTY for direct non-salary cost, per attached Exhibit C, at the actual cost to the CONSULTANT. An additional mark-up of up to 30% will be allowed to cover the Business & Occupancy tax and other taxes/fees that the CONSULTANT would incur in association with these direct, non-salary costs. Exhibit C is attached hereto and by this reference made a part of this Agreement. These charges may include, but are not limited to the following items: outside reproduction fees, courier fees, subconsultant fees, and materials and supplies. The billing for non-salary cost, directly identifiable with the project, shall be submitted as an itemized listing of charges supported by copies of the original bills, invoices, expense accounts and miscellaneous supporting data retained by the CONSULTANT. Copies of the original supporting documents shall be supplied to the COUNTY upon request. All charges must be reasonable and necessary for the services provided under the Agreement.

In the event services are required beyond those specified in the Scope of Work, and not included in the compensation listed in this Agreement, a written Agreement modification shall be negotiated and approved by the COUNTY prior to any effort being expended on such services.

4. SUBCONSULTANTS.

The COUNTY permits the use of subconsultants for those items of work necessary for the completion of Task Orders. The CONSULTANT shall not subcontract with subconsultants for the performance of any work under this AGREEMENT without prior written permission of the COUNTY. No permission for subconsulting shall create, between the COUNTY and subconsultant, any contract or any other relationship.

5. RESPONSIBILITY OF CONSULTANT.

The CONSULTANT shall be responsible for the professional quality, technical accuracy, timely completion and the coordination of all studies, analysis, designs, drawings, specifications, reports and other services performed by the CONSULTANT under this Agreement. The CONSULTANT shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in its plans, designs, drawings, specifications, reports and other services required. The CONSULTANT shall perform its services to conform to generally-accepted professional engineering standards practiced by members of the same profession currently practicing under similar circumstances and the requirements of the COUNTY.

6. INDEMNIFICATION/HOLD HARMLESS.

Indemnification by Consultant. To the fullest extent permitted by law, the CONSULTANT agrees to indemnify, defend and hold the COUNTY and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property, including the loss of use resulting therefrom. The indemnity includes but is not limited to: 1) liability arising in whole or in part by any action or omission, negligent or otherwise, of the CONSULTANT, its employees, agents or volunteers or CONSULTANT's subcontractors and their employees, agents or volunteers; or 2) liability directly or indirectly arising out of, resulting from, or in connection with performance of this Agreement; or 3) liability based upon the CONSULTANT'S or its subcontractors' use of, presence upon or proximity to the property of the COUNTY. This indemnification obligation of the CONSULTANT shall not apply in the limited circumstance where the claim, damage, loss or expense is caused by the sole negligence of the COUNTY. This indemnification obligation of the CONSULTANT shall not be limited in any way by the Washington State Industrial Insurance Action RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the CONSULTANT hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the CONSULTANT are a material inducement to COUNTY to

enter into the Agreement, are reflected in the CONSULTANT's compensation, and have been mutually negotiated by the parties.

Participation County – No Waiver. The COUNTY reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of CONSULTANT's indemnity obligations under the Agreement.

Survival of Consultant's Indemnity Obligations. The CONSULTANT agrees all CONSULTANT's indemnity obligations shall survive the completion, expiration or termination of this Agreement.

7. INDEPENDENT CONSULTANT/ASSIGNMENT.

The parties agree and understand that the CONSULTANT is an independent CONSULTANT and not the agent or employee of the COUNTY and that no liability shall attach to the COUNTY by reason of entering into this Agreement except as otherwise provided herein. The parties agree that this Agreement may not be assigned in whole or in part without the written consent of the COUNTY.

8. INSURANCE.

Without limiting the CONSULTANT'S indemnification of COUNTY, and prior to commencement of this Agreement, CONSULTANT shall obtain, provide and maintain during the term of this Agreement, policies or insurance of the type and amounts described below and, in a form, satisfactory to the COUNTY.

General Liability Insurance. CONSULTANT shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability.

Professional Liability (Errors & Omissions) Insurance. CONSULTANT shall maintain professional liability insurance that covers the services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement and CONSULTANT agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this Agreement.

Workers' Compensation Insurance. CONSULTANT shall, at its own expense, maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

CONSULTANT shall submit to COUNTY, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of COUNTY, its officers, agents, employees and volunteers.

Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against COUNTY, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow CONSULTANT or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CONSULTANT hereby waives its own right of recovery against COUNTY, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

Automobile Liability Insurance. CONSULTANT shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the CONSULTANT arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

The CONSULTANT shall provide the COUNTY with properly executed certificate of insurance and provide a policy endorsement naming the COUNTY as an additional insured.

CONSULTANT agrees that its liability insurance shall be primary and non-contributory to the COUNTY's and that CONSULTANT's liability insurance policy shall so state.

9. RESOLUTION OF DISPUTES AND GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. If either party files suit to enforce this Agreement, parties agree that the prevailing party in any such action shall be entitled to collection costs, reasonable attorney's fees, and costs of suit.

Disputes. Differences between the CONSULTANT and the COUNTY, arising under and by virtue of this Agreement, shall be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due CONSULTANT shall be decided by the COUNTY'S Agreement representative or designee. All rulings, orders, instructions and decisions of the COUNTY'S Agreement representative shall be final and conclusive, subject to their right to seek judicial relief pursuant to **Choice of Law, Jurisdiction and Venue.**

Choice of Law, Jurisdiction and Venue. This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party hereto that this Agreement shall be governed by the laws of the State of Washington, both as to its interpretation and performance.

Any action at law, suit in equity, or judicial proceeding arising out of this Agreement shall be instituted and maintained only in any of the courts of competent jurisdiction in Pacific County, Washington.

Severability. If a court of competent jurisdiction holds any part, term or provision of this Agreement to be illegal, or invalid in whole or in part, the validity of the remaining provisions

shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

Should the COUNTY determine that the severed portions substantially alter this Agreement so that the original intent and purpose of the Agreement no longer exists, the COUNTY may, in its sole discretion, terminate this Agreement

10. NONDISCRIMINATION.

The CONSULTANT may not discriminate regarding any services or activities to which this Agreement may apply directly or through contractual, hiring, or other arrangements on the grounds of race, color, creed, religion, national origin, sex, sexual orientation, age, or where there is the presence of any sensory, mental or physical handicap.

11. OWNERSHIP OF RECORDS AND DOCUMENTS.

Any and all data, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the CONSULTANT or the CONSULTANT's subconsultants for delivery to the COUNTY under this Agreement shall be the sole and absolute property of the COUNTY. Such property shall constitute "work made for hire" as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the COUNTY at the time of its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the CONSULTANT uses to perform this Agreement but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the COUNTY is owned by the CONSULTANT and is not "work made for hire" within the terms of this Agreement.

12. PUBLIC RECORDS ACT.

This Agreement and all public records associated with this Agreement shall be available from the COUNTY for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the CONSULTANT are needed for the COUNTY to respond to a request under the Act, as determined by the COUNTY, the CONSULTANT agrees to make them promptly available to the COUNTY. If the CONSULTANT considers any portion of any record provided to the COUNTY under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the CONSULTANT shall clearly identify any specific information that it claims to be confidential or proprietary. If the COUNTY receives a request under the Act to inspect or copy the information so identified by the CONSULTANT and the COUNTY determines that release of the information is required by the Act or otherwise appropriate, the

COUNTY's sole obligations shall be to notify the CONSULTANT (a) of the request and (b) of the date that such information will be released to the requester unless the CONSULTANT obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the CONSULTANT fails to timely obtain a court order enjoining disclosure, the COUNTY will release the requested information on the date specified.

The COUNTY has, and by this section assumes, no obligation on behalf of the CONSULTANT to claim any exemption from disclosure under the Act. The COUNTY shall not be liable to the CONSULTANT for releasing records not clearly identified by the CONSULTANT as confidential or proprietary. The COUNTY shall not be liable to the CONSULTANT for any records that the COUNTY releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

CONSULTANT agrees to indemnify and, to the greatest extent legally possible, to hold harmless the COUNTY in any action by a third party due to the negligence, recklessness or intentional actions by the CONSULTANT relating to its performance of this Agreement. This includes any lawsuit filed by a third party for the COUNTY's allegedly improper release of confidential or proprietary information pursuant to a public records request.

13. TERMINATION OF AGREEMENT.

This Agreement may be terminated by either party upon thirty (30) days written notice to the other party, and based upon any cause or without cause. In the event of termination due to the fault of other(s) than the CONSULTANT, the CONSULTANT shall be paid by the COUNTY for services performed to the date of termination.

Upon receipt of a termination notice under the above paragraph, the CONSULTANT shall (1) promptly discontinue all services affected as directed by the written notice, and (2) deliver to the COUNTY all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as the CONSULTANT may have accumulated, prepared or obtained in performing this Agreement, whether completed or in process.

ATTEST

BOARD OF COUNTY COMMISSIONERS
PACIFIC COUNTY, WASHINGTON

Amanda Bennett, Clerk of the Board

Lisa Olsen, Chair

APPROVED AS TO FORM:

Jerry Doyle, Vice Chair

Prosecuting Attorney, WBA# Date

David Tobin, Commissioner

EXHIBIT A

SCOPE OF WORK

The selected firm will provide structural engineering services for various Pierce County Facility Management

Projects. The quantity and duration of projects will depend on the County's requirements and needs for these

services. The scope of services for this RFQ includes, but is not limited to:

- Condition Assessments and Evaluation Reports of existing structures, bridges and walls.
- Cost estimates and schedules during various stages of project development.
- Peer and constructability review of design and bid document review and analysis.
- Feasibility Studies, Development Planning, Marketing Analysis, Evaluation and Assessments.
- Any other related structural engineering services as required by Pacific County

EXHIBIT B
FEE SCHEDULE

EXHIBIT C
DIRECT NON-SALARY REIMBURSABLE EXPENSES

- Outside Reproduction Fees
- Courier Fees
- Subconsultant Fees
- Materials and Supplies
- Mileage at the current approved IRS or WSDOT rate, whichever is higher.

It is understood that all reimbursements are at cost. Any mark-up to cover Business & Occupancy taxes or other associated taxes or fees that the CONSULTANT may incur will be negotiated and shall not exceed 10%.

Subcontracts: The CONSULTANT, at the COUNTY'S request shall enter into subcontracts with other consultants, such as appraisers and/or environmental consultants, etc. If approved, the COUNTY shall reimburse the CONSULTANT for the actual cost of the subcontracts plus a markup, if warranted, to cover the CONSULTANT'S additional taxes or fees as described above, associated with the Subcontract.

EXHIBIT D

CONSULTANT INVOICES

CONSULTANT invoices should contain the following information:

- On CONSULTANT letterhead, to include mailing address and phone #.
- Reference the task order #
- Include the status of each task. This should include items completed, percent completed during the billing period and completion along with funding status.
- Internal invoice number and/or sequential numeric number (i.e.: progress payment # 10).
- Invoice date.
- Period of time invoice covers.
- COUNTY'S project manager listed.
- The hour(s) per person broken down by task(s) (attach timesheets, spreadsheet detailing timesheets, or some other form of proof) along with type of work done (i.e.: design, right-of-way, or construction).
- Hourly costs per person (per Exhibit B)
- Direct non-salary (i.e.: mileage, reproduction fees (i.e.: printing, copying), communication fees (i.e.: telephone), supplies, computer charges, subconsultants), indirect non-salary (overhead). These costs are to be broken down and backup information is to be attached to invoice. Project managers are to inform CONSULTANT as to what is required for break down information and if backup information is to be attached. Break out the same for subconsultant charges.
- Previous and remaining base Agreement amounts left in each task and total Agreement – total authorized amount (bottom line figure). Add amendments to this base Agreement amount for total authorized amount.
- Percentage of work completed to date compared to total amount of work (if required by the project manager).
- Invoices for previous year are due by January 10th.
- Consultant's UBI or tax ID #

EXHIBIT E
WRITTEN TASK ORDERS

On-Call Agreement for Professional Services

TASK ORDER ##

This Task Order pertains to the On-Call Agreement by and between PACIFIC COUNTY (“COUNTY”), and **CONSULTANT FIRM NAME** (“CONSULTANT”), dated **On-Call Agreement Execution Date** (“the Agreement”). Task Order **##** is generally described as:

1. **Sub-task 1.**
2. **Sub-task 2.**
3. **Sub-task 3, etc.**

Consultant shall perform services on the project described below as provided herein and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it pertains to the project described below.

TASK ORDER NUMBER: **##**
PROJECT NAME: **Project Name**

Budget: \$ **Amount - numbers**

Scope: See attached.

This Task Order is executed this _____ day of _____, **YEAR**.

CONSULTANT FIRM NAME

Approved: _____ Date: _____

PACIFIC COUNTY

Approved: _____ Date: _____