

ATTACHMENT 3 – DRAFT AGREEMENT

AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES FOR W1810 164TH ST SW TRANSMISSION MAIN CONNECTION

THIS AGREEMENT, made and entered into by and between Alderwood Water and Wastewater District, Snohomish County, Washington, hereinafter referred to as "District", and ("_____"), a corporation with a place of business at _____, _____, Washington, 98____ ("Consultant"), collectively referred to as "Parties", shall be effective upon the authorized signatures of both Parties to this Agreement ("Effective Date").

WHEREAS, the District, a special purpose municipal corporation, provides water and sewer service to its constituents; and

WHEREAS, the District desires to retain the Consultant to perform certain professional services, including construction management, inspection, and related engineering services necessary during construction of the W1810 164th St SW Transmission Main Connection Project ("Project"); and

WHEREAS, the District solicited for professional services as required by RCW 39.80; and

WHEREAS, the Consultant represents it has available and offers to provide qualified personnel and facilities necessary to accomplish such services required for the Project within the required time.

The Parties enter into this Agreement. The term Agreement and Contract shall be used interchangeably and refer to this Agreement.

SECTION 1: PERIOD OF PERFORMANCE

- 1.1 All required work and services specified in the terms and conditions of this Agreement shall be completed on the ___ day of _____, 20__ unless extended or terminated earlier by the District pursuant to the terms and conditions of this Agreement.
- 1.2 Time is a material consideration in the performance by the Consultant under this Agreement. The Consultant shall complete its work and services within the Project schedule, including any established milestones and task completion dates, and the Period of Performance, set forth in the Scope of Work. The completion dates for tasks may be modified by a written directive; however, the Period of Performance for the Agreement may only be modified through an amendment. No completion dates shall be extended because of any unwarranted delays attributable to the Consultant. Completion dates may be extended in the event of a delay caused by the District which results in a delay in the performance of an affected task, or because of unavoidable delay caused by any governmental action or other conditions beyond the control of the Consultant, which could not be reasonably anticipated and which results in a delay in the performance of an affected task.
- 1.3 Time Extensions. The Total Price, Period of Performance and task budgets shall not be increased because of any unwarranted delays or costs attributable to the Consultant. In the event of a delay not attributable to the Consultant which (1) delay could not be reasonably anticipated and (2) results in an increase in costs to perform the work, the

District may, through the execution of an amendment, increase the Total Price, Period of Performance and/or task budget.

SECTION 2: ADMINISTRATION AND SUPERVISION

- 2.1 **DISTRICT.** An employee of the District, hereinafter called the "Project Manager," who shall be designated in writing by the District, shall perform day-to-day management of this Contract. Unless otherwise indicated in writing by the General Manager or its designee, the Project Manager will issue notices to proceed, approve all requests for payment, authorize termination or modification of tasks, and approve in writing changes to the task budgets outlined in the Cost Summary, Exhibit B attached hereto and incorporated by reference, provided the changes do not impact the Total Price, Period of Performance, and the Fixed Professional Fee. The Project Manager will also be responsible for determining when the Consultant has satisfactorily performed all work and for ensuring that the Consultant complies with all provisions of this Agreement.
- 2.2 **CONSULTANT.** The Consultant represents that it has, or will obtain, all personnel necessary to perform the services required under this Agreement and that such personnel shall be qualified, experienced and licensed as may be necessary or required by laws and regulations to perform such services. All services required under this Agreement shall be performed by the Consultant, its employees, or by subconsultants whose selection has been authorized by the District; provided, that the District's authorization shall not relieve the Consultant or its subconsultants from any duties or obligations under this Agreement or at law to perform in a satisfactory and competent manner. All contractual duties, requirements and obligations that the Consultant owes to the District shall also be owed to the District by the Consultant's subconsultants retained to perform the work pursuant to this Agreement. The term "Consultant" shall refer to _____ and all of its subconsultants.
- A. **Authorized Subconsultants.** The Contract shall identify in the Cost Summary, Exhibit B, the subconsultants who are authorized to perform work under this Contract.
- B. **Process for Adding or Removing Subconsultants.** If during the term of this Contract, the Consultant wishes to add or remove a subconsultant, the Consultant shall provide the Project Manager with a written request identifying the proposed change. The written request shall include the following information:
1. Identity of the subconsultant and the work to be performed;
 2. Resumes and documentation outlining the subconsultant's experience;
 3. If the subconsultant is to perform work of the consultant or another subconsultant already identified in Exhibit B, an explanation of why the work is going to be transferred to a new subconsultant.
- C. **District Approval of Subconsultants.** The District has sole discretion in approving or rejecting proposed subconsultants. Each subcontract shall be available for review and the cost summary subject to review by the Project Manager prior to the subconsultant proceeding with the work. Before any subconsultant not already identified in the Contract can perform any work under this Contract, the District shall provide written authorization to the Consultant.
- D. **Substitution of Personnel.** The Consultant recognizes and agrees that if a change is made substituting or changing assigned key personnel, the Consultant shall be responsible for any and all costs associated with "Transfer of Knowledge and Information". The Transfer of Knowledge and Information shall be defined to include the labor hours spent reviewing project documentation, participating in

meetings with Project personnel, and participating in site visits to familiarize oneself with the Project and project location(s). The District shall not pay for any time spent for the "Transfer of Knowledge and Information".

1. The Consultant shall provide sufficient advance notice of any intention to remove or reassign key personnel. The Consultant shall not remove or reassign the key personnel assigned to this Project without written consent from the District. Exhibit F, Key Personnel, is a listing of key individuals for this work. Notice for the substitution of individuals and positions identified as Key Personnel shall include the following:
 - a. An explanation of the reason for the reassignment or removal;
 - b. The name of the person proposed to replace the individual; and
 - c. Identification of the experience and qualifications of the individual proposed.
2. For individuals who are not identified as "Key Personnel" in Exhibit F, the Consultant shall provide documentation supporting the labor rate for the substituted personnel prior to submitting an invoice and the labor rate shall not exceed 110 percent of the originally assigned personnel's labor rate.
3. District Request Removal Personnel. The Consultant shall remove from the Project any personnel or subconsultant if, after the matter has been thoroughly considered by the District and the Consultant, the District considers such removal necessary and in the best interests of the Project and so advises the Consultant in writing.

SECTION 3: SCOPE OF WORK

- 3.1 The District hereby retains the Consultant upon the terms and conditions contained herein to perform certain work and services on the Project. The work and services for the Project to be performed by the Consultant are set forth in Exhibit A, Scope of Work, attached hereto, and incorporated herein by this reference. The general Project Schedule is set forth in Exhibit C, attached hereto and incorporated herein by reference.
- 3.2 The District shall make available to the Consultant, without cost, copies of as-built plans, drawings, survey notes, studies, soil reports, maintenance and performance records, and other relevant data, and property descriptions of various District facilities related to the Project, which are readily available, and on file at the District. These documents are available solely as additional information to the Consultant and do not relieve the Consultant of its duties and obligations under this Agreement nor constitute any representation or warranty by the District as to conditions or other matters related to the Project.
- 3.3 It shall be the responsibility of the Consultant to gather and become familiar with all site information including existing improvements.

SECTION 4: CHANGES IN WORK

- 4.1 Any direction from the District to perform work that results in an increase or decrease in scope, changes to the Total Price or Period of Performance, or changes impacting the Scope and Budget for the project shall be made only by an amendment prior to the work being performed. A member of the Board of Commissioners for the District is the only authorized District representative who may sign amendments.
- 4.2 In the event the Consultant identifies something that may impact the scope of work, Project Schedule and/or cost, Consultant shall inform the Project Manager within five (5)

business days of the event and possible impacts to scope, schedule and cost. If appropriate, the parties shall execute an amendment.

- 4.3 The District may, at any time, by written amendment direct the Consultant to make additions within the general scope of the services or work to be performed under this Agreement, delete portions of the Project, or revise portions of the work. Any changes within the general scope of work, which result in an increase or decrease in time of performance or cost, shall only be made by amendment.

SECTION 5: RESPONSIBILITY OF THE CONSULTANT

5.1 Standard of Care

- A. The Consultant shall be responsible for the professional quality, technical adequacy and accuracy, timely completion and coordination of all plans, designs, drawings, specifications, reports and other services prepared or performed pursuant to this Agreement. The Consultant shall perform its work to conform to generally accepted professional standards applicable to the types of services and work provided hereunder. The Consultant shall be responsible for the professional standards, performance and actions of all persons and firms performing work pursuant to this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or specific breaches of a contractual obligation in such plans, designs, drawings, specifications, reports and other services.
- B. The District's approval of plans, drawings, designs, specifications, reports and other products of the professional services rendered hereunder shall not in any way relieve the Consultant of responsibility for the technical adequacy or accuracy thereof. Neither the District's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- C. The Consultant shall be knowledgeable and familiar with the District's Construction General Conditions and any District provided Division 0 (which includes General and Supplemental conditions and Bidding Provisions) and Division 1 (General Construction Requirements). Any technical specifications drafted by the Consultant shall be consistent with these Divisions and such technical specifications should not create any ambiguity or conflict with these Divisions.
- D. Consistent with generally accepted professional standards, the Consultant shall promptly bring to the District's attention any concerns that the Consultant has regarding the design, or any finding, conclusions, or final decisions made by the District. The Consultant shall, at the District's request, provide the District with a written evaluation of its concerns, along with proposed solutions to any identified problems.

5.2 Maintenance of Project Documentation

- A. Upon written request by the Project Manager, the Consultant shall provide the District with access to all documents and correspondence, including e-mail communications, memoranda, and all other written materials prepared or used in performance of work on this Project.
- B. The Consultant is cautioned that information and documentation submitted to the District may become a public record in accordance with the Revised Code of Washington and may not be exempt from disclosure under the Washington State Public Disclosure Act.

- C. The Consultant acknowledges that unauthorized disclosure of information or documentation concerning this Project may cause substantial economic loss or harm to the District. Except as otherwise required by Court Order or subpoena, the Consultant shall not without prior written authorization by the Project Manager allow the release, dissemination, distribution, sharing, or otherwise publication or disclosure of information or documentation obtained, discovered, shared or produced pursuant to this Agreement.

SECTION 6: DELIVERABLES

- 6.1 The Consultant shall provide deliverables during construction of the Project as outlined in Exhibit A.

SECTION 7: COMMENCEMENT AND MONTHLY REPORTS

- 7.1 Notice to Proceed. After execution of this Agreement by the District and the Consultant, the District will issue a written notice to proceed on the Project or specific tasks thereof. Such notices to proceed will be provided for specific tasks identified as necessary to produce specified work products and shall set forth the date of commencement of the work, a description of the work to be performed, the schedule for the work authorized, and the budgets for such tasks. Upon receipt of a notice to proceed, the Consultant shall promptly commence work.
- 7.2 Monthly Reports. Unless otherwise stated in the Scope of Work, not later than the 10th day of each calendar month during the performance of the Project, the Consultant shall submit to the Project Manager, a monthly report, in a format approved by the Project Manager, sufficient to show the activities completed and the Project progress as measured against the Project Schedule and Exhibit B, Cost Summary. At a minimum the monthly report shall identify work completed, costs incurred, budget status (budget vs. estimated balance to complete), amendments, project schedule, any variance between planned vs. actual project performance, all issues that may result in completion of any task beyond the established schedule or task budget, and all issues that may result in an increase in Total Price.

SECTION 8: COMPENSATION

- 8.1 Subject to the provisions set forth in this Agreement, the District will pay the Consultant for authorized and satisfactorily completed work and services rendered under this Agreement. No more than monthly progress payments shall be full compensation for work performed and services rendered, for all supervision, labor, supplies, materials, equipment or use thereof, taxes, and for all other necessary incidentals, but in no case shall the total progress payment exceed the Total Price as defined herein, without the prior written authorization of the District through a contract amendment. The amount to be paid to the Consultant shall be computed as hereinafter set forth; provided, that such payment shall not exceed a maximum amount of _____ **DOLLARS** (_____) ("Total Price"). In the event the Consultant incurs costs in excess of the Total Price, the Consultant shall pay such excess from its own funds and the District shall not be required to pay any part of such excess and the Consultant shall have no claim against the District on account thereof.
- 8.2 Compensation for work and services shall be on a cost plus fixed fee basis but not to exceed the Total Price. Compensation and the Total Price shall be the sum of Direct Labor Costs, Indirect Costs, a Fixed Professional Fee, and Other Direct Costs as described and defined below. Costs to be paid are identified in the Cost Summary, which is attached hereto as Exhibit B and incorporated herein by this reference, and comprise the following:

- A. **Direct Labor Costs.** Direct Labor Costs shall be the total number of allowable hours worked on the Project by each individual multiplied by the Labor Rate identified in the Costs Summary (Exhibit B) for such individual.
1. A Labor Rate shall not exceed \$65.00 per hour, except in exceptional and rare circumstances when the District, in its sole discretion, agrees to pay over \$65.00 per hour.
 2. The District shall only pay the Labor Rate and shall not pay any premium associated with overtime.
 3. The parties agree to the Labor Rates as set forth in Exhibit B, which rates shall be used during the entire term of this Agreement, including all amendments; provided however, Labor Rates may be subject to reasonable adjustments but only in accordance with paragraph 8.4 below.
- B. **Indirect Costs.** Indirect Costs shall be calculated as follows:
1. Indirect Costs shall be the Overhead Rate identified in the Cost Summary (Exhibit B) multiplied by the Direct Labor Rates for every allowable hour worked on the Project and billed by the individual.
 2. The Consultant agrees to the Overhead Rates as set forth in Exhibit B, which rates shall be used during the term of this Agreement, including all amendments.
- C. **Fixed Professional Fee (Profit).** The District shall pay a Professional Fee which shall be calculated as set forth below.
1. The Professional Fee shall be _____%, or otherwise represented as a multiplier of _____, of the total of the Direct Labor Costs plus the Indirect Costs, as identified in the Cost Summary (Exhibit B).
 2. The Consultant acknowledges and agrees that the Fixed Professional Fee is only due and payable for Project work for which the District has given notice to proceed and which the Consultant has satisfactorily completed. The Fixed Professional Fee will not be paid for any tasks in the Scope of Work and Cost Summary that the District does not authorize the Consultant to perform. The District is entitled to a deductive amendment for any unperformed tasks.
 3. The Consultant acknowledges and agrees that the amount of the Fixed Professional Fee may be adjusted by the District to:
 - a. Reduce the Fixed Professional Fee associated with Scope of Work that was not authorized, or was not performed by the Consultant;
 - b. Reduce the Fixed Professional Fee associated with deletions in the Scope of Work;
 - c. Increase the Fixed Professional Fee for additional work included in the Scope of Work through an amendment.
 4. The Fixed Professional Fee shall be paid as follows:
 - a. The Fixed Professional Fee will be paid monthly in proportion to the Project work satisfactorily completed. The proportion of work completed shall be determined by earned value of the deliverables satisfactorily completed. The Cost Summary shall identify the deliverables for payment of the Fixed Professional Fee.
 - b. A payment for an individual month shall include that portion of the Fixed Professional Fee allocable to the Project work satisfactorily completed during said month and not previously paid; and
 - c. Any portion of the Fixed Professional Fee not previously paid in the monthly payments shall be included in the final payment provided that the

Consultant satisfactorily completed the entire scope of work subject to the limitations set forth above

- d. The Consultant acknowledges and agrees that the Fixed Professional Fee does not and shall not include any profit or other markup on subconsulting costs or Other Direct Costs.

D. **Other Direct Costs.** Other Direct Costs ("ODC") are those costs which can be specifically identified with the Contract objectives, are required for performance of the Contract, are approved in advance in writing by the Project Manager, are inclusive of subconsultant costs, and are actually incurred. Allowable ODC's are as included in Exhibit E to this Contract. Markup on ODC's shall be billed at ____ percent.

8.3 Unallowable Costs. The District shall not pay for any costs or direct charges associated with or relating to the following activities:

- A. Any resubmission, changes to or adjustments in the invoices, and fixing improper invoices and the preparation and submission of monthly invoices if this cost is not included in the Consultant's overhead.
- B. Preparation of, discussion and/or negotiation of a request for adjustments in any Labor Rate, Overhead Rate and/or Labor Escalation percentage; and
- C. Changing or reassigning personnel or subconsultants, including but not limited to preparing requests concerning Transfer of Knowledge for Key Personnel.
- D. Preparation of any documentation related to, discussion of, or negotiation of equitable adjustment, disputes, claims or Section 15, Disputes and Remedies.
- E. Meals, except when in Travel Status.

8.4 Limitations on Changes to Labor Rates.

- A. Any changes to Labor Rates shall have no impact on the Total Price.
- B. Overhead Rates.
 1. The Overhead Rates are identified in the Cost Summary, Exhibit B. The Overhead Rates shall not be subject to modification.
- C. Labor Rates
 1. The Consultant agrees that all Labor Rates identified in this Agreement (Exhibit B) shall be effective for the entire Contract duration, including all amendments; provided however, Labor Rates may be increased at the sole discretion of the District on an annual basis.
 2. A Labor Rate shall not exceed \$65.00 per hour except in exceptional and rare circumstances when the District, in its sole discretion, agrees to a Labor Rate over \$65.00.
 3. Labor rate increases must be based on actual and verifiable increases in labor costs.
 4. Should the Consultant seek an adjustment in Labor Rate(s), Consultant must notify the District in writing of its request to modify the existing labor rate. Consultant shall submit only one request per year that must include all individual rate increase requests. This request shall include the amount of the increase in the rate for each rate increase.

8.5 Approval of Increases by District. Adjustments in Labor Rates, and the amount of any rate increase require the approval of the Project Manager. The Consultant shall provide additional information as requested by the District. The District shall review the Consultant's request for a rate increase and respond in writing to the request within sixty (60) calendar days of receipt of such request.

- 8.6 Effective Period. Any change to Labor Rates shall not be effective until the date the Project Manager approves in writing the increase in rates. Labor rates shall not be retroactive. Only services performed after the date the Labor Rate is effective shall be billed at the new Labor Rate. The written approval is considered a part of the Contract documents and shall be incorporated into the Contract in the next amendment.
- 8.7 Invoice Process. The Consultant shall submit to the Project Manager an invoice for payment for Project work completed to the end of the previous month. Such invoices shall be for work performed subsequent to that work covered by all previously submitted invoices and shall be computed pursuant to the rates and limitations set forth hereinabove.
- A. Invoices shall detail the work by task, hours and employee name and level for which payment is being requested; include copies of all invoices from authorized subconsultants for which payment is being requested; and shall itemize, and include copies of, receipts and invoices for the Other Direct Costs.
 - B. At no time shall the total cumulative amounts paid for Project work exceed the total which would be due upon the completion of all Project work multiplied by the percentage of the required work satisfactorily completed, as determined by the District.
 - C. In the event of a disputed invoice, the District shall pay the undisputed amounts and withhold from payment the disputed portion of the invoice.
- 8.8 Prompt Payment of Subconsultants. Within ten (10) business days of receipt of a progress payment from the District that includes dollars for work performed by subconsultants, Consultant shall pay such subconsultants out of such amounts as are paid by the District, for all work satisfactorily completed by the subconsultant.
- 8.9 Final Payment. Final payment of any balance earned by and payment to the Consultant for Project work will be made within sixty (60) calendar days after all of the following:
- A. Satisfactory completion of all work required by this Agreement;
 - B. Receipt by the District of the plans, studies, surveys, photographs, maps, calculations, notes, reports and all other documents and/or deliverables which are required to be prepared and submitted by the Consultant under this Agreement;
 - C. Delivery of all equipment/materials purchased specifically for the Project where the District has reimbursed the Consultant for such costs;
 - D. Receipt by the District of a fully executed final statement of amounts Invoiced by and paid to each subconsultant under this Agreement; and,
 - E. Execution and delivery by the Consultant of a release of all claims against the District arising under or by virtue of this Agreement, other than such claims, if any, as may be specifically exempted by the Consultant from the operation of the release in stated amounts to be set forth therein.
- 8.10 No payment, whether monthly or final, to the Consultant for any Project work shall constitute a waiver or release by the District of any claims, right or remedy it may have against the Consultant under this Agreement or by law; nor shall such payment constitute a waiver, remission or discharge by the District of any failure or fault of the Consultant to satisfactorily perform the Project work as required under this Agreement.

SECTION 9: TERMINATION OF AGREEMENT

9.1 Termination for Default

- A. The District may terminate this Agreement, in whole or in part, in writing if the Consultant substantially fails to fulfill any or all of its material obligations under this Agreement through no fault of the District.
- B. If the District terminates all or part of this Contract for default, the District shall determine the amount of work satisfactorily performed to the date of termination and the amount owing to the Consultant using the criteria set forth below; provided, that (a) no amount shall be allowed for anticipated profit on unperformed services or other work and (b) any payment due to the Consultant at the time of termination may be adjusted to the extent of any additional costs the District incurs because of the Consultant's default. In such event, the District shall consider the actual costs incurred by the Consultant in performing the Project work to the date of termination, the amount of work originally required which was satisfactorily completed to the date of termination, whether that work is in a form or of a type which is usable and suitable to the District at the date of termination, the cost to the District of completing the work itself or of employing another firm to complete it and the inconvenience and time which may be required to do so, and other factors which affect the value to the District of the Project work performed to the date of termination. Under no circumstances shall payments made under this provision exceed the Total Price set forth in this Agreement. This provision shall not preclude the District from filing claims and/or commencing litigation to secure compensation for damages incurred beyond that covered by withheld payments.
- C. Upon receipt of a termination notice the Consultant shall at no additional cost to the District:
 1. Promptly discontinue all services affected (unless the notice directs otherwise);
 2. Terminate all subcontracts to the extent they relate to the work terminated; and
 3. No later than thirty (30) calendar days after receipt of termination, promptly deliver or otherwise make available to the District all data, drawings, electronic drawing files, specifications, calculations, reports, estimates, summaries, Official Project Documentation and other Project documentation, such other information and materials as the Consultant or subconsultants may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for the Project where the District has paid the Consultant for such items.

9.2 Termination for Convenience.

1. The District may terminate this Agreement, in whole or in part, for the convenience of the District. The District shall terminate by delivery to the Consultant a Notice of Termination specifying the extent of the termination and the effective date.
2. If the District terminates this Contract for convenience, the District shall pay the Consultant only for the following items:
 - a. An amount for Direct Labor Costs and Indirect Costs in accordance with the Contract and Exhibit B for services satisfactorily performed to the date of termination;
 - b. Actual and reasonable Other Direct Costs incurred before the termination; and
 - c. Actual and reasonable termination settlement costs the Consultant reasonably incurs relating to commitments which had become firm before the termination, unless the District determines to assume said commitments. Reasonable termination settlement costs include settlement

costs for subconsultants and actual reasonable accounting and clerical costs related to preparing Termination Settlement Proposal.

3. Upon receipt of a termination notice the Consultant shall at no additional cost to the District:
 - a. Promptly discontinue all services affected (unless the notice directs otherwise);
 - b. Terminate all subcontracts to the extent they relate to the work terminated;
 - c. No later than thirty (30) calendar days after receipt of termination, promptly deliver or otherwise make available to the District all data, drawings, specifications, calculations, reports, estimates, summaries, Official Project Documentation, other Project documentation, and such other information and materials as the Consultant may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for the Project where the District has reimbursed the Consultant for such costs;
 - d. Take any action necessary, or that the District may direct, for the protection and preservation of property related to this Agreement that is in the possession of the Consultant and in which the District has or may acquire an interest.

SECTION 10: OWNERSHIP AND USE OF DOCUMENTS

- 10.1 Reports, studies, drawings, specifications, calculations or other information developed under the terms of this Agreement shall become the property of the District after full payment to Consultant for their preparation. Any reuse of drawings/plans, specifications and/or calculations for another project without written verification or adaptation by Consultant will be at the District's sole risk and without liability or legal exposure to Consultant. District shall defend, indemnify and hold Consultant harmless from all claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting therefore. The District further acknowledges that it may receive certain materials from Consultant by way of electronic file and agrees that should it modify such materials in connection with their subsequent use, that Consultant shall bear no responsibility for the contents thereof.

SECTION 11: THIRD-PARTY CLAIMS AND DISPUTES

- 11.1 At the District's request, Consultant will assist the District in review and evaluation claims and disputes, preparing information for the District's legal counsel, providing services as witness in litigation or arbitration to which the District is a party and providing other services in connection with actual or potential claims or disputes arising out of the work, regardless of whether or not Consultant is named in such legal action. The parties shall cooperate to agree on the compensation for such services. If Consultant is determined to be responsible for the claim, dispute or litigation due to its negligence or breach of the contract herein, it shall remit back to the District the amounts paid under this section to the extent of such negligence or breach.

SECTION 12: AUDIT AND ACCESS TO RECORDS

- 12.1 The Consultant, including its subconsultants, shall maintain books, records, documents, and other evidence directly pertinent to performance of the work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied. The District, or any of its duly authorized representatives, shall, for the purpose

of audit and examination, have access to and be permitted to inspect such books, records, documents, and other evidence for inspection, audit and copying for a period of six years after completion of the Project. The District shall also have access to such books, overhead data, records and documents during the performance of Project work if deemed necessary by the District to verify work performed and Invoices, to assist in negotiations for amendments to the Agreement or modifications to tasks, and to resolve claims and disputes.

- 12.2 Audits conducted under this Section shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).

SECTION 13: LEGAL RELATIONS

- 13.1 The Consultant shall comply, and shall ensure its subconsultants comply, with all the terms of this Agreement and the District resolutions, and federal, state and local laws, regulations and ordinances applicable to the work and services to be performed under this Agreement.
- 13.2 In performing work and services hereunder, the Consultant and its subconsultants, employees, agents and representatives shall be acting as independent contractors and shall not be deemed or construed to be employees or agents of the District in any manner whatsoever. The Consultant shall not hold itself out as, nor claim to be, an officer or employee of the District by reason hereof and will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the District. The Consultant shall be solely responsible for any claims/costs and/or losses arising from the Consultant's failure to pay wages, compensation, benefits or taxes and/or pay for services, supplies and/or materials provided by Consultant employees, agents and representatives, including subconsultants, and will protect, defend, indemnify and hold the District harmless there from.
- 13.3 To the maximum extent permitted by law, the Consultant agrees to indemnify and save harmless the District, its officers, agents and employees, from and against any and all suits, claims, actions, losses, costs, reasonable attorney fees and expenses, penalties, judgments, settlements and damages of whatsoever kind or nature arising out of, in connection with, or incident to errors or omissions in the performance of contractual obligations, and/or the negligent performance of work or services provided by or on behalf of the Consultant, except to the extent caused by the negligence of the District. The Consultant's Indemnity obligation includes an obligation to (a) satisfy any judgment or other final decision of a court or other tribunal; (b) pay any reasonable settlement negotiated by the District with respect to claims that are within the scope of the indemnity obligation; and (c) pay all claims against the District by an employee or former employee of the Consultant or its subconsultants, and for this purpose, by mutual negotiation, the Consultant expressly waives, as respects the District only, all immunity and limitation on liability under any industrial insurance act, including Title 51 RCW, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim, The Consultant further agrees to defend all claims against the District and its officers, agents, and employees which, if proven, could result in liability of the District, its officers, agents, or employees for loss or damage caused by any such errors, omissions, or negligent work or services performed by the Consultant. The Consultant's obligation to defend shall include timely payment of all reasonable attorney fees, costs and expenses incurred in the defense of such claims. In the event of litigation between the parties to

enforce the rights under this paragraph, reasonable attorney fees and expenses shall be allowed to the prevailing party.

- 13.4 The District's rights and remedies in this Agreement are in addition to any other rights and remedies provided by law.
- 13.5 The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Agreement.

SECTION 14: INSURANCE

- 14.1 Prior to execution of the Agreement, the Consultant shall file with the District certificates of insurance and endorsements from the insurer(s) certifying to the coverage of all insurance required herein. All evidences of insurance must be certified by a properly authorized officer, agent, general agent or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, the expiration date, and provides that the District receives notice at least thirty (30) calendar days prior to the effective date of any policy limit or cancellation of required coverages. The Consultant shall notify the District at least thirty (30) calendar days prior to the effective date of any cancellation or reduction in coverage in the policy. The Consultant shall maintain during the entire Contract period and for seven years thereafter, insurance coverage at least as broad as the limits and coverage outlined in this Agreement. Documentation of coverage shall be provided on each insurance renewal date. The Consultant shall, upon demand of the District, make available to the District at Consultant's local office all such policies of insurance and the receipts of payment of premiums thereon. Failure to provide such policies of insurance within a time acceptable to the District shall entitle the District to suspend or terminate the Consultant's work hereunder. Suspension or termination of this Agreement shall not relieve the Consultant from its insurance obligation hereunder.
- 14.2 The Consultant shall obtain and maintain at a minimum the limits of insurance set forth below. By requiring such minimum insurance, the District shall not be deemed or construed to have assessed the risks that may be applicable to the Consultant under this Agreement. The Consultant shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.
- 14.3 Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, errors and omissions when required, is acceptable on a "claims made" form.
- 14.4 If coverage is approved and purchased on a "claims made" basis, the Consultant shall continue coverage either through (1) policy renewals for not less than seven years from the date of completion of the work which is the subject of this Agreement or (2) the purchase of an extended discovery period for not less than seven years from the date of completion of the work which is the subject of this Agreement, if such extended coverage is available.
- 14.5 If, in order to meet the requirements of this Section, the Consultant must rely on the insurance to be provided by one or more subconsultant, then such subconsultant(s) shall be required to meet all of the requirements herein applicable to the insurance they are providing, and shall include District and Consultant as additional insureds on all liability policies except Professional Liability/Errors & Omissions and Workers Compensation. The District will not make any payments on work performed by subconsultants until all insurance documentation from such subconsultants have been received and accepted by the District.

- 14.6 Provided the affected insurance policies permit the following waiver, without voiding coverage, Consultant and District waive all rights against each other to subrogation for damages covered by property insurance.
- 14.7 The Consultant shall maintain limits no less than, for:
- A. **General Liability.** \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$1,000,000 aggregate limit. Coverage shall be at least as broad as Insurance Services Office form number (CG 00 01) covering **COMMERCIAL GENERAL LIABILITY**.
 - B. **Professional Liability Errors and Omissions.** \$2,000,000 per claim and in the aggregate.
 - C. **Automobile Liability.** \$1,000,000 combined single limit per accident for bodily injury and property damage. Coverage shall be at least as broad as Insurance Services Office form number (CA 00 01) covering **BUSINESS AUTO COVERAGE**, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9.
 - D. **Workers' Compensation. Statutory requirements of the State of residency.** Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.
 - E. **Employer's Liability or "Stop Gap".** Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy.
- 14.8 Any deductibles or self-insured retentions must be declared to, and approved by, the District. The deductible and/or self-insured retention of the policies shall not limit or apply to the Consultant's liability to the District and shall be the sole responsibility of the Consultant.
- 14.9 The insurance policies required in this Agreement are to contain, or be endorsed to contain the following provisions:
- A. Liability Policies except Professional Liability & Errors and Omissions and Workers Compensation:
 - 1. The District, its officers, officials, employees and agents are to be covered as additional insured as respects liability arising out of activities performed by or on behalf of the Consultant in connection with this Agreement. Such additional insured status shall include Products-Completed Operations.
 - 2. To the extent of the Consultant's negligence, the Consultant's insurance coverage shall be primary insurance as respects the District, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the District, its officers, officials, employees or agents shall not contribute with the Consultant's insurance or benefit the Consultant in any way.
 - 3. The Consultant's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
 - 4. The Consultant's Protection and Indemnity (to include Jones Act) policy shall waive rights of subrogation against the District.

14.10 If at any time of the foregoing policies shall fail to meet the minimum standards above, the Consultant shall, upon notice to that effect from the District, promptly obtain a new policy, and shall submit the same to the District, with the appropriate certificates and endorsements, for approval.

SECTION 15: DISPUTES AND REMEDIES

- 15.1 Choice of Law. This Agreement and all provisions hereof shall be interpreted in accordance with the laws of the State of Washington in effect on the Effective Date.
- 15.2 General Manager Review. All claims, counter-claims, disputes and other matters in question between the District and the Consultant arising out of or relating to this Agreement or the breach of it shall be referred to the General Manager or a designee for determination, together with all facts, data, contentions and so forth which relate thereto. The General Manager shall make a determination within thirty (30) calendar days of such referral.
- 15.3 Alternate Dispute Resolution. Should the claim, counter-claims, or disputes not be resolved, prior to initiating litigation and subsequent to the General Manager's decision, the parties shall attempt to resolve the matter through some mutually agreeable form of Alternate Dispute Resolution (ADR).
- 15.4 Exhaustion of Administrative Remedies. Referral to and determination by, the General Manager or a designee and ADR shall be a condition precedent to the commencement of a civil action to adjudicate such dispute.
- 15.5 Jurisdiction & Venue. Subject to these provisions herein, the Superior Court of Snohomish County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement and the laws of the state of Washington shall apply.

SECTION 16: NOTICE

16.1 Any notice required to be given under the terms of this Agreement shall be in writing and directed to the party at the address set forth below. Notice shall be considered issued and effective upon receipt thereof by the addressee-party. Facsimile notice shall be considered effective with proof of confirmation that the addressee has received the facsimile. Such proof would be a confirmation sheet evidencing such receipt at the fax number listed below.

Attn: _____ Fax No.: _____	Alderwood Water & Wastewater District Attn: _____ 3626 - 156th Street S.W. Lynnwood, WA 98037-2399 Fax No.: _____
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SECTION 17: ENTIRETY, AMENDMENT AND EXECUTION OF AGREEMENT

- 17.1 This Agreement merges and supersedes all prior negotiations, representations and agreements between the Parties relating to the subject matter hereof and constitutes the entire agreement between the Parties.
- 17.2 The Contract documents included in the Agreement are identified below. Any inconsistency or conflict between the Contract documents shall be resolved by giving precedence in the following descending order of importance:

- A. Agreement for Professional Services for _____, as modified by the latest amendment;
- B. Exhibit A, Scope of Work, as modified by the latest amendment;
- C. Exhibit B, Cost Summary, as modified by the latest amendment;
- D. Exhibit C, Project Schedule, as modified by the latest amendment;
- E. Exhibit D, Insurance
- F. Exhibit E, Allowable ODC's;
- G. Exhibit F, Key Personnel List;
- H. Other

17.3 This Agreement shall be executed in two (2) counterpart copies, any of which shall be considered for all purposes as the original.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective authorized officers or representatives as of the day and year written below.

Alderwood Water & Wastewater District

Consultant

By: _____

By: _____

Title:

Title:

Dated: _____

Dated: _____

