



April 26, 2018

Mr. Kelly Rasmussen,
Director of Public Works
City of Kalama
PO Box 1007
Kalama, WA 98625

RE: Agreement for Engineering Services – City of Kalama – Lower Cloverdale Booster Pump Station Replacement Project

Dear Mr. Rasmussen:

Gibbs & Olson appreciates the opportunity to provide the City of Kalama with engineering services for the above referenced water system improvements project. This Letter Agreement together with attached Exhibits A, B and C comprise our proposed agreement for engineering services related to this project.

AGREEMENT

RELATIONSHIP

For the purposes of this contract, the Client shall be the City of Kalama, Washington and the Engineer shall be Gibbs & Olson, Inc., Longview, Washington.

SCOPE OF WORK

The Engineer's Scope of Work for the design and bid phases of this project is presented in Exhibit A - Scope of Work.

SCHEDULE

The preliminary schedule for this project is presented below. The schedule shows starting work on May 4, 2018. Any delay to the starting date will result in a day for day adjustment to the listed schedule milestones.

Authorization to Proceed	May 3, 2018
Field survey, Geotech & Prepare 60% Drawings	May 3 – July 6, 2018
Client Review of 60% Drawings	July 9 – July 23, 2018
Permit Pre-Application with Cowlitz County	July 30 – August 3, 2018
Prepare 90% Drawings & Contract Documents	July 24 – August 31, 2018
Submit Permit Applications to Cowlitz County	September 4 – September 7, 2018
Client Review of 90% Documents	September 4 – September 14, 2018
Submit 90% Drawings & Contract Documents to DOH	September 17 – September 21, 2018
Prepare 100% Drawings & Contract Documents	September 17 – October 12, 2018
Submit 100% Drawings & Contract Documents to DOH	October 15 – October 19, 2018
Receive DOH Approval of Design Documents	Mid-January 2019

Mr. Kelly Rasmussen,
Director Public Works
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Bid Advertisement & Award
Construction

January - February 2019
March 2019 - August 2019

BUDGET


Engineer proposes a total budget for the identified design phase and bid phase scope of work be set at \$114,000. The proposed budget is presented in detail in Exhibit B - Budget. Engineer agrees not to exceed the budget amount in completing the identified Scope of Work without Client's prior authorization. Engineer will submit monthly progress billings for payment per Exhibit C, Item I. A progress report will also accompany each invoice which will include a brief description of work completed during each billing period.

GENERAL CONDITIONS

General Conditions for this Agreement are presented in Exhibit C - General Conditions.

We propose that this letter together with attached Exhibits A, B and C be our Agreement for this project. If you have any questions or would like to discuss this further, please feel free to give me a call. If however, it is agreeable, we would appreciate receiving a signed and dated copy for our file and we will begin work upon authorization from you to proceed.

Sincerely,
GIBBS & OLSON, INC.

By: 
Richard A. Gushman, President

ACCEPTED AND AUTHORIZED THIS

_____ DAY OF _____ 2018

CITY OF KALAMA, WASHINGTON

By: _____
Adam Smee, City Administrator

Attachments
Exhibit A - Scope of Work
Exhibit B - Budget
Exhibit C - General Conditions

**EXHIBIT A
SCOPE OF WORK
CITY OF KALAMA
LOWER CLOVERDALE BOOSTER PUMP STATION REPLACEMENT PROJECT**

PROJECT DESCRIPTION

Engineer will provide design and bid phase engineering services to Client for design of a new water booster pump station facility on City owned property (Cowlitz County Parcel No. WC2801012) to replace the existing Lower Cloverdale Booster Pump Station as summarized below:

The new booster pump station facility will consist of a 60' x 30' wood pole building with a reinforced concrete floor, metal siding and metal roofing. Wall height at the eaves will be 14' and the building will consist of four 15-foot wide bays. One bay will be insulated, sheet rocked and painted and will house a skid mounted package booster pump station with two pumps. This bay will have lights, receptacles, heat and possibly ventilation. This bay will have an interior wall to separate it from the three unfinished bays and will have an interior and an exterior man door. The three un-finished bays will be for equipment/vehicle storage and will have lighting, receptacles and provisions for future heating. All four bays will have a 12'x12' panel type overhead door. The facility is not considered an essential facility in regard to seismic design requirements. The building will have exterior lighting on the north side of the building. The site will be graveled on the north and west sides of the building and a gravel road will be constructed off of Cloverdale Road into the site to allow vehicles to access the facility. The site will be fenced with a gate at the facility and a chain gate inset off of Cloverdale Road. Three phase electrical power will be extended to the site from the Cowlitz PUD's electrical system along Cloverdale Road. Stormwater facilities will be provided for the new site facilities as required to meet Cowlitz County stormwater requirements.

The package pump station will have a nominal capacity of 60 gallons per minute (gpm) at approximately 260 pounds per square inch (psi). New 6-inch C900 PVC suction and discharge piping will be constructed from the existing 4-inch water piping in Cloverdale Road to the new pump station in the new pole building. A propane powered standby generator with fuel tank and sound attenuated sound enclosure will be incorporated into the facility design. The generator may be included as an additive alternate in the construction bid proposal based on how final engineer's opinion of probable construction costs matches up with the Client's project budget.

INFORMATION TO BE PROVIDED TO ENGINEER BY CLIENT

To assist in a timely and thorough preparation of the drawings and contract documents, the Client shall provide the following items and services to the Engineer as available:

1. As-constructed drawings and specifications of the existing pump station and the water pipeline near the new pump station location.
2. Current City of Kalama Construction Standards.
3. Timely response to questions and review of drawings and contract documents.
4. Pothole of utilities as needed.

ASSUMPTIONS

The following assumptions have been made by the Engineer in developing this Scope of Work:

1. The new pump station facility is not considered an essential facility in regard to seismic design requirements.
2. Engineer assumes that no additional property, easements or right-of-way is required for construction of the new pump station facility.
3. New pipelines and conduit will be constructed utilizing open-cut construction methods.
4. The project will be designed per Client standards.
5. The pump station design will need to be reviewed and approved by the Washington Department of Health (DOH), however, a project report is not required to be prepared or submitted to DOH because the project is included in the City's Water System Plan.
6. Minimum traffic control plan requirements for construction as identified by Cowlitz County will be incorporated into the construction contract documents.
7. A SEPA checklist, a County right-of-way permit, a County building permit, a County fill and grade permit, and County approval of the stormwater design is required for this project.
8. The project is located within 200-feet of the creek to the north, however, the Cowlitz County EPIC information indicates the site is not subject to shoreline jurisdiction, therefore a shoreline permit is not required.
9. The package booster pump station will have integral control panel and controls requiring only single point power connection and possibly wiring to field sensors. All programming of the package booster pump station will be by the pump station manufacturer.
10. If it is necessary to access the site for the geotechnical field exploration work through the adjacent property to the west, the Client will obtain a right-of-entry for the Engineer and its subconsultants.
11. Geotechnical boring soil cuttings will be allowed to remain on site.
12. Soil and groundwater within the project limits are not contaminated.
13. No testing or screening for soil or groundwater contaminants will be performed.
14. Borings will be backfilled with bentonite chips or bentonite grout, in accordance with Washington Department of Ecology regulations.
15. Field work will be performed between 7AM and 7PM.

DESIGN PHASE ENGINEERING SERVICES

Task 1 - Project Administration, Management & Meetings

Engineer shall provide project administration and project management consisting of the following:

- a) General project administration.
- b) Coordination and management of subconsultants.
- c) Monthly narrative progress reports during project as requested.

Task 2 - Gather and review background data:

If available, Engineer will gather and review as constructed drawings of the existing booster pump station, the existing water line near where the new pump station supply and discharge pipelines will be connected to the existing pipeline and any geotechnical investigation work that may be available. The Client will provide copies of these documents.

Task 3 - Topographic Survey

Engineer will call for utility locates in the public right-of-way within the project limits. The Engineer will also call for a private utility locate to be performed within the City owned parcel prior to performing the field survey work due to the geotechnical field exploration that will be performed on the site under Task 4.

Up to three survey benchmarks will be set at key locations within the project limits. These benchmarks will provide survey control for construction surveying and staking.

Horizontal datum will be NAD83/91 or NAD 83/2011 as appropriate for the site.

Vertical datum will be NAVD88.

Task 4 - Geotechnical Investigation

A geotechnical investigation will be performed to obtain information required for the pole building foundation/concrete floor design and to determine if stormwater can be infiltrated onsite. The Engineer will subcontract with a geotechnical subconsultant.

The geotechnical investigation will include the following:

- Obtaining existing and available past geotechnical investigations near the project site, if possible.
- Conducting a site reconnaissance of the project site to identify planned exploration locations.
- Conducting an exploration program advancing two borings to a depth of 15 feet below grade with a trailer mounted solid stem auger. If auger refusal is encountered before reaching the planned borehole depth, drilling will be terminated. The solid stem auger will advance a 4-inch hole. Disturbed Standard Penetration Test (SPT) samples will be obtained at 2.5-foot intervals.
- If groundwater is encountered, the depth to the water level will be measured in the borehole; after completion, holes will be backfilled according to State regulations.
- The samples obtained will be visually characterized and selected samples will be tested in the laboratory for moisture content and other appropriate tests, and probe or auger logs developed.
- The data collected and recommendations related to trench excavation and backfill, building subgrade preparation, and building settlement potential will be summarized in a Geotechnical Report.

The geotechnical report which will be provided in draft form for the Client's review. The Client's review comments will be addressed and a final report will be provided.

Task 5 – Stormwater Report

A stormwater technical information report (TIR) and associated modeling will be prepared for the project based on the Client's final site layout in accordance with Cowlitz County requirements. The stormwater report will be submitted to Cowlitz County for review and approval. It is anticipated that 2-3 iterations of site layout and preliminary stormwater modeling may be required to determine the optimized final stormwater layout.

Task 6 – Prepare 60% Drawings:

Work under this task includes:

- a) Utilizing the field survey to prepare an existing conditions base map and new facility drawings.
- b) Prepare 60% Design Drawings and an opinion of construction cost: Engineer will prepare drawings for the project in AutoCAD Civil3D 2018 format and will incorporate Cowlitz County, Engineer and Client engineering standards as appropriate.

It is anticipated that the design drawings will consist of up to 15 sheets consisting of the following:

Cover sheet – 1 drawing

Index, notes, abbreviations & legend sheet – 1 drawing

Existing conditions sheet – 1 drawing

Site grading & drainage sheet – 1 drawing

Supply & discharge pipeline plan and profile sheet 1 - drawing

Building plan, elevations & sections - 2 drawings

Booster pump station plan, elevation & sections – 1 drawing

Demolition plan for existing booster pump station – 1 drawing

Details for stormwater, water piping, roadway, building and miscellaneous – 2 drawings

Electrical legend & abbreviations & one-line diagram – 1 drawing

Electrical site plan – 1 drawing

Electrical floor plan of building including pump station bay – 1 drawing

Electrical details & schedules – 1 drawing

- c) Quality Control (QC) project review meetings with the Client and Engineer review team are scheduled for one (1) time during preparation of the 60% drawings.
- d) Engineer will perform in-house QC review of the design documents near the 60% completion stage to ensure the documents are consistent in presentation of the design information.
- e) One set of the 60% drawings in electronic pdf format will be submitted to the Client for review and comment. Client comments will be incorporated into the 90% documents as appropriate.
- f) Engineer will coordinate with Cowlitz PUD to determine how to get electrical power extended into the project site.

- g) Engineer will discuss electric power quality issues with Cowlitz PUD, research alternatives to reduce the impacts of “dirty” power and will review these with the Client to determine how to design the booster pump station power supply to have the least risk of “dirty” power adversely impacting pump station operations.
- h) Engineer will prepare an opinion of probable construction costs for review by the Client.

Task 7 – Prepare 90% Drawings and Specifications:

Work under this task includes:

- a) Prepare 90% Design Drawings, contract documents and opinion of construction cost: Engineer will continue to prepare drawings for the project, building on the 60% documents. The Engineer’s opinion of construction cost will be reviewed and updated as appropriate.
- b) Engineer will prepare construction contract documents including technical specifications for the project.

It is anticipated the construction contract documents will consist of EJCDC up front documents consisting of Invitation to Bid, Instructions to Bidders, Bid Package, General and Supplementary Conditions, and Washington State Prevailing Wage Rates. The technical specifications will consist of applicable CSI technical specifications.

- c) Quality Control (QC) project review meetings with the Client and Engineer review team are scheduled for one (1) time during preparation of the 90% drawings and specifications.
- d) Engineer will perform an in-house QC review of the design drawings near the 90% completion stage to ensure the documents are consistent in presentation of the design information.
- e) One set of the 90% drawings and contract documents in electronic pdf format will be submitted to the Client for review and comment. Client comments will be incorporated into the 100% documents as appropriate.
- f) The 90% complete plans and contract documents will be submitted to DOH for review and comment.

Task 8 – Prepare 100% Drawings and Construction Contract Documents:

Work under this task includes:

- a) Prepare 100% Design Drawings and contract documents: Engineer will build on the 90% documents to complete the 100% drawings and construction contract documents. The Engineer’s opinion of construction cost will be reviewed, updated as appropriate and finalized.
- b) Engineer will perform an in-house QC review of the design drawings near the 100% completion stage to ensure the documents are consistent in presentation of the design information.

- c) The 100% design drawings and construction contract documents will be submitted to DOH for final approval.
- d) The DOH approved 100% design drawings and construction contract documents, ready for bid advertisement, will be provided in pdf format to the Client for review and comment. The documents will be suitable both for electronic distribution to prospective bidders and for reproduction.

Task 9 – Prepare Permit Applications:

The project is located in unincorporated Cowlitz County. The Engineer will prepare the following permit applications for the Client to submit to Cowlitz County:

- SEPA Checklist
- Cowlitz County Fill & Grade, Right-of-Way, Building and Stormwater Permits

The Engineer will schedule a pre-application meeting with the County Building & Planning Department and Client staff. The 60% design drawings will be utilized for the pre-application meeting.

The Engineer's architectural consultant will provide structural calculations for the pole building design that will be submitted to the County as part of the building permit application.

BID PHASE ENGINEERING SERVICES

Task 10 – Bid Phase Engineering Services:

Engineer will perform the following work under this task:

- a) Assist Client in advertising the project for construction bids.
- b) Receive questions from prospective bidders and prepare appropriate responses.
- c) Attend pre-bid conference.
- d) Issue an addendum, if required, to identify, clarify, amend or expand the Bidding Documents.
- e) Attend bid opening.
- f) Review the bids received, verify low bidder's state licensing, check references for low bidder, and prepare a letter to Client consisting of the bid tabulation and the Engineer's recommendation regarding award of a construction contract.
- g) Responses to bidder questions, the addendum, and the Engineer's letter of recommendation of award will be provided to the Client in pdf format.

CONSTRUCTION MANAGEMENT PHASE ENGINEERING SERVICES

Construction management phase engineering services are not included in this Scope of Work. The intent of the Client and the Engineer is to amend this Agreement to incorporate construction management phase engineering services into this Agreement by amendment at the conclusion of the project's design phase.



EXHIBIT B - BUDGET
 City of Kalama
 Lower Cloverdale Booster Pump Station Replacement Project
 April 26, 2018

	Principal	Engr. VI	Engr. V	Engr. III	Engr. II	Engr. I	Tech II	SR Land Surveyor	2 Man Survey Crew	Word Processor	Geotech. Subcon.	Architect. Subcon.	Electrical Subcon.	Total Budget
Design and Bid Phase Engineering Services														
Task 1	6	16	4	0	0	4	0	0	0	2	\$0	\$0	\$0	\$4,696
Task 2	0	2	0	0	0	2	0	0	0	0	\$0	\$0	\$0	\$490
Task 3	0	2	0	0	0	0	2	6	8	0	\$500	\$0	\$0	\$3,422
Task 4	1	4	0	0	0	2	0	0	0	2	\$18,300	\$0	\$0	\$19,425
Task 5	1	2	6	20	0	24	16	0	0	4	\$0	\$0	\$0	\$7,521
Task 6	1	16	4	4	24	48	72	0	0	2	\$0	\$5,000	\$10,500	\$33,355
Task 7	2	16	4	4	20	48	40	0	0	4	\$0	\$2,500	\$4,300	\$21,160
Task 8	1	8	2	2	16	16	20	0	0	2	\$0	\$1,800	\$2,700	\$11,591
Task 9	2	6	2	2	2	10	10	0	0	0	\$0	\$1,000	\$0	\$4,804
Task 10	2	12	2	2	2	12	0	0	0	2	0	500	1000	\$5,768
Subtotal of Labor Costs														
														\$117,232
														\$218
														\$150
														\$1,400
Miscellaneous Project Expenses														
														\$18,500
TOTAL DESIGN AND BID PHASE ENGINEERING BUDGET														
	16	84	24	34	64	166	160	6	8	18	\$18,800	\$10,800	\$18,500	\$114,000
2018 RATES														
	\$191	\$155	\$144	\$116	\$96	\$90	\$88	\$126	\$210	\$67				

**EXHIBIT C
GENERAL CONDITIONS**

A. HEADINGS

Headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants, and conditions of this Agreement.

B. STANDARD OF PRACTICE

Services performed by the Engineer under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality and under similar conditions at the time the services are performed. No other representation, expressed or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document or otherwise.

C. MAINTENANCE OF PROFESSIONAL STANDARDS AND ETHICS

The Client recognizes that the Engineer's services in all cases must be rendered in accordance with prevailing professional standards and ethics, as well as certain laws or regulations that apply specifically to the Engineer. If a situation emerges that causes the Engineer to believe compliance with the Client's wishes could result in the Engineer violating an applicable provision or aspect of professional standards or ethics, laws or regulations, the Engineer shall so advise the Client, and the Client and the Engineer shall immediately enter into discussions to arrive at a mutually satisfactory solution. Failing achievement of a solution, either party may terminate this Agreement in accordance with termination provisions stated herein.

D. NO THIRD-PARTY BENEFICIARIES

Engineer's services are intended for the Client's sole use and benefit and solely for the Client's use on this Project and shall not create any third-party rights. Except as agreed in writing, Engineer's services and work products shall not be used by or relied upon by any other person or entity.

E. ASSIGNMENT

The Engineer shall not assign this Agreement in whole or in part nor subcontract any portion of the work to be performed hereunder, except that the Engineer may use the services of persons and entities not in his or her employ, when it is appropriate and customary to do so. Such persons and entities include, but are not necessarily limited to, specialized consultants, and testing laboratories. The Engineer's use of others for additional services shall not be unreasonably restricted by the Client provided the Engineer notifies the Client in advance.

F. INDEPENDENT CONSULTANT

The Engineer is an independent consultant. The Engineer and Engineer's employees or agents performing work under this Agreement are not employees or agents of the Client. The Engineer will not hold itself out as nor claim to be an officer or employee of the Client. The Engineer will not make any claim of right, privilege, or benefit which would accrue to an employee of Client under law. The Client shall neither be liable for nor obligated to pay sick leave, vacation pay, or any other benefit of employment, nor to pay any social security or other payroll taxes as due. Industrial or any other insurance which is purchased for the benefit of the Engineer shall not be deemed to convert this Agreement to an employment contract.

It is recognized that the Engineer may or will be performing professional services during the term for other parties and that the Client is not the exclusive user of the Engineer's services; provided, however, that the performance of other professional services shall not conflict with or interfere with the Engineer's ability to perform the services to be performed under this Agreement.

G. INSURANCE

1. The Engineer maintains: 1) worker's compensation and employer's liability insurance of a form and in an amount as required by state law; 2) comprehensive general liability and automotive liability insurance; and 3) professional liability insurance to cover negligent errors or omissions for which the Engineer becomes legally obligated to pay. Certificates of Insurance (COI) shall be provided to the Client upon request. The Client will be named as an additional insured if required on the comprehensive general liability and automotive liability insurance policies.

2. Client agrees to require Engineer and any Subconsultants, subcontractors or third parties utilized by Engineer to be named as additional insureds for all insurance policies related to this Project carried by contractors, subcontractors and suppliers on which Client has been or will be named as an additional insured.

H. INDEMNIFICATION

The Engineer agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors and employees (collectively, Client) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Engineer's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the Engineer is legally liable.

The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Engineer, its officers, directors, employees and subconsultants (collectively, Engineer) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Client's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the Client is legally liable.

Neither the Client nor the Engineer shall be obligated to indemnify or defend the other party in any manner whatsoever for the other party's own negligence.

The provisions of this section shall survive the expiration or termination of this Agreement.

I. BILLING AND PAYMENT

1. BUDGET FOR SERVICES

The budget estimate included in this proposal is only for those services identified within the attached scope of work. The budget and proposed scope of work are based on information currently available to the Engineer. If conditions change, unforeseen circumstances are encountered, or work efforts are redirected, the budget estimate may require modification. Similarly, if the work efforts are completed quicker than the time estimated or direct expenses are less than estimated, the Engineer will bill the Client only for the time or expense encountered.

Monthly billings will be submitted on a time and materials basis but will not exceed the estimated budget for the identified Scope of Work without the Client's prior authorization. For projects that extend beyond the calendar year in which the Agreement is executed was executed, the Engineer's billing rates are subject to adjustment each January.

2. REIMBURSABLE EXPENSES

Expenses incurred in connection with project tasks such as out-of-town subsistence, long distance telephone, reproduction costs and similar, will be invoiced at direct cost plus Ten (10%) percent. Mileage will be invoiced at the current IRS rate per mile.

3. SERVICES BY OTHERS

If this project requires the specialized services of consultants and other technical companies, then such services will be utilized only with the Client's written approval, with the cost of such services included at the invoice cost plus Ten (10%) percent.

4. INVOICES. The Engineer will submit invoices to Client on a monthly basis and a final bill upon completion of services. Payment is due upon receipt of the invoice and is past due Thirty (30) days after the invoice date. Client agrees that the invoice balance is correct unless Engineer is notified in writing within Fourteen (14) days of the invoice date. In the event of a disputed or contested billing, only that portion so contested will be withheld from payment, and the undisputed portion will be paid. The Client will exercise reasonableness in contesting any bill or portion thereof. No interest will accrue on any contested portion of the billing until it is mutually resolved. A service charge of 12% per annum (1% per month) will be added on all unpaid balances over Sixty (60) days old. If the account becomes delinquent, Engineer will perform no further services on the project until the Client pays the outstanding balance plus applicable interest or, at the Engineer's sole discretion, until satisfactory written payment arrangements have been made between the Engineer and the Client.

J. CHANGES IN THE AGREEMENT

If during the course of performance of this Agreement, the Client requests additional services to be performed, or if conditions or circumstances are discovered which were not contemplated by the Engineer at the commencement of this Agreement, then the Engineer shall notify the Client in writing of the additional services to be performed or the newly discovered conditions or circumstances. The Client and Engineer shall renegotiate in good faith, the budget, schedule and other applicable conditions of this Agreement. Unless otherwise agreed to, the Client and Engineer shall have Thirty (30) days after the notice to reach agreement on the amended terms and conditions.

K. RIGHT OF ENTRY

The Client shall provide for right of entry to the project site. Such right of entry shall be for the Engineer and others, and necessary equipment in order for the Engineer to fulfill the scope of services indicated in this Agreement. While the Engineer will take all reasonable precautions to minimize damage to the property, the Client understands that in the normal course of work some damage may occur, the correction of which is not part of this Agreement.

L. OPINION OF CONSTRUCTION COST

The Engineer shall submit to the Client an opinion of the probable cost required to construct work recommended, designed, or specified by the Engineer. The Engineer is not a construction cost estimator or construction contractor, nor should the Engineer's rendering an opinion of probable construction costs be considered equivalent to the nature and extent of service a construction cost estimator or construction contractor would provide. The Engineer's opinion will be based solely upon his or her own experience with construction. This requires the Engineer to make a number of assumptions as to actual conditions that will be encountered on site; the specific decisions of other design professionals engaged; the means and methods of construction the contractor will employ; the cost and extent of labor, equipment and materials the contractor will employ; contractor's techniques in determining prices and market conditions at the time, and other factors over which the Engineer has no control. Given the assumptions which must be made, the Engineer cannot guarantee the accuracy of his or her opinion of cost, and, in recognition of that fact, the Client waives any claim against the Engineer relative to the accuracy of the Engineer's opinion of probable construction cost.

M. OWNERSHIP OF DOCUMENTS

All reports, field data, field notes, test data, calculations, Drawings, specifications, cost opinions, quantity estimates, electronic files, and other documents (Document) prepared by the Engineer are instruments of service and the Engineer retains an ownership and property interest (including the copyright, if applicable, and the right of reuse) in such Documents, whether or not the Project is completed. Upon payment in full to Engineer, Engineer grants Client a license to use the Documents on the project and extensions of the project, subject to the following limitations: 1) Client may make and retain copies of Documents for information, reference and submittal to regulatory agencies; 2) Client acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer; 3) any reuse or modification of the Documents by any party other than Engineer is at Client's sole risk and without any liability whatsoever to Engineer; and 4) Client shall defend, indemnify and hold harmless Engineer from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use of Documents other than completion of the specific Project for which they were prepared.

N. DISPUTES

In the event of a dispute arising under this Agreement and if the dispute cannot be settled through direct discussions, the parties agree to first attempt to settle the dispute by non-binding mediation before recourse to a judicial forum. If the dispute is settled by litigation, the substantially prevailing party shall be awarded its reasonable costs incurred, including staff time at current billing rates, court costs, expert witness fees, attorney's fees upon trial, or appeal, collection or lien fees, late payment charges and interest, and other claim related expenses. Venue for any litigation shall be the Superior Court of the County in which the project is located.

O. TERMINATION

The Client may terminate this Agreement by giving the Engineer Thirty (30) days written notice. The Client or the Engineer may terminate this Agreement for reasons identified elsewhere in the Agreement or for other reasons which may arise.

Either party may terminate this Agreement if either party fails substantially to perform through no fault of the other and does not commence correction of such nonperformance within Five (5) workdays of written notice and diligently complete the correction thereafter. If corrective action is not taken within Five (5) workdays, termination will become effective Fourteen (14) calendar days after receipt of the termination notice.

Irrespective of which party shall affect termination or the cause therefore, or if the Client suspends work on the project for more than three (3) months, the Client shall within Thirty (30) calendar days of termination or suspension remunerate the Engineer for services rendered and costs incurred, in accordance with the Engineer's prevailing fee schedule and expense reimbursement policy. Services shall include those rendered up to the time of termination or suspension, as well as those associated with termination or suspension itself, such as demobilizing, modifying schedules, reassigning personnel, and so on. Costs shall include those incurred up to the time of termination or suspension, as well as those associated with termination or suspension and post-termination or suspension activities.

P. GOVERNING LAW

Unless otherwise provided in an addendum, the laws of the state in which the project takes place will govern the validity of this Agreement, its interpretation and performance, and remedies for contract breach or any other claims related to the Agreement. Venue for any litigation shall be the Superior Court in which the project is located.

Q. SEVERABILITY

The Client and the Engineer have entered into this Agreement of their own free will, to communicate to one another mutual understandings and responsibilities. Any element of this Agreement later held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force. However, the Client and the Engineer will in good faith attempt to replace an invalid or unenforceable provision with one that is valid and enforceable, and which comes as close as possible to expressing or achieving the intent of the original provision.

R. INTEGRATION

This Agreement, including attachments incorporated herein by reference, comprises a final and complete repository of understandings between the Client and the Engineer. It supersedes all prior or contemporaneous communications, representations, or agreements, whether oral or written, relating to the subject matter of this Agreement. Each party has advised the other to read this document thoroughly before accepting it to help assure it accurately conveys meanings and intents. Acceptance of this Agreement as provided for signifies that each party has read the document thoroughly and has had any questions or concerns completely explained by independent counsel and is satisfied. The Client and the Engineer agree that modifications to this Agreement shall not be binding unless made in writing and signed by an authorized representative of each party.

S. SERVICES FOR GEOTECHNICAL SUBCONSULTANT

The following special Conditions of Employment shall also apply to this geotechnical subcontract.

1. Client recognizes that subsurface conditions may vary from those encountered at the location where borings, surveys or explorations are made by the Engineer and that the data, interpretations and recommendations of the Engineer are based solely on the information available to it. The Engineer will be responsible for those data, interpretations and recommendations but shall not be responsible for the interpretation by others of the information developed.
2. Hazardous materials may exist at a site where there is no reason to believe they could or should be present. Client agrees that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a re-negotiation of the scope of work or termination of services. Client agrees to compensate for the additional cost of working to protect employees and the public's health and safety. In addition, Client waives any claim against Engineer and Engineer's geotechnical subconsultant, and agrees to defend, indemnify, and save Engineer and Engineer's geotechnical subconsultant harmless from any claim or liability for injury or loss arising from discovery of unanticipated hazardous materials or suspected hazardous materials. Client also agrees to compensate Engineer and Engineer's geotechnical subconsultant for any time spent and expenses incurred by Engineer and Engineer's geotechnical subconsultant in defense of any such claim.
3. Owner recognizes that it is impossible to know the exact composition of a site's subsurface even after employing the most comprehensive exploratory program reasonably possible. As a result, there is a risk that sampling may result in contamination of certain subsurface areas, as when a probe or boring device moves through a contaminated area, linking it to an aquifer or other hydrous body not previously contaminated and capable of spreading hazardous

materials offsite. Because nothing can be done to prevent such an occurrence, and because such sampling is a necessary aspect of the work which will be performed for Client's benefit, Client waives any resulting claim against Engineer and agrees to defend, indemnify, and save Engineer harmless from any claim or liability for injury or loss which may arise as a result of cross-contamination caused by sampling. Client further agrees to fairly compensate Engineer as outlined herein for any time spent or expenses incurred by Engineer and Engineer's geotechnical subconsultant in defense of any such claim.

4. In the prosecution of the work, Engineer will take reasonable precautions to avoid damage or injury to subterranean structures and utilities. The Client agrees to hold Engineer harmless for any damages to subterranean structures and utilities which are not called to Engineer's attention and correctly shown on the drawings furnished.
5. All samples of soil and rock will be discarded Thirty (30) days after submission of the report or completion of work, unless Client advises otherwise. Further storage or transfer of samples can be made at Client's expense upon written request. Any and all samples of soil, rock, and water obtained from the project that are contaminated by hazardous substances shall remain property of the Client, and the Client shall be responsible for proper transportation and disposal of same with appropriate licensed parties.
6. Any groundwater monitoring piezometers installed in borings as part of the geotechnical scope of work shall be installed and removed by Engineer in accordance with all applicable Washington State Department of Ecology rules and regulations unless the removal of such piezometers is specified to be performed by the construction contractor in the construction contract documents.

T. AGREEMENT DOCUMENTS

Letter Agreement signed by Client and Engineer
Exhibit A - Scope of Work
Exhibit B - Budget Estimate
Exhibit C - General Conditions

Each individual executing this Agreement on behalf of the Client and the Engineer represents and warrants that such individuals are duly authorized to execute and deliver this Agreement on behalf of the Client or the Engineer.

The exchange of copies of this Agreement and of signature pages by facsimile transmission (whether directly from one facsimile device to another by means of a dial-up connection or whether mediated by the worldwide web), by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by a combination of such means, shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of an original Agreement for all purposes. Signatures of the parties transmitted by facsimile or by electronic mail in .pdf form shall be deemed to be their original signatures for all purposes.

U. LIMITATION OF LIABILITY

The Engineer shall not be liable for loss or damage occasioned by delays beyond Engineer's control, or for loss of earnings, loss of use or other incidental or consequential damages suffered by Client or others, however caused. Engineer's liability hereunder, whether in tort or in contract, for any cause of action, inclusive of legal costs, shall be limited to 100% of the fee earned by Engineer under this Agreement.