

CONTRACT FOR PROFESSIONAL SERVICES

This Agreement is entered into by and between Pacific County, Washington, a municipal corporation (“County”), and Sound Municipal Consultants, (“Consultant”) whose principal office is located at 906 Wood Avenue, Sumner, WA 98390. County and Consultant are at times referred to collectively herein as the (“Parties”).

WHEREAS, the County has determined the need to have certain services performed for its citizens but does not have the manpower or expertise to perform such services, and

WHEREAS, the County desires to have the Consultant perform such services pursuant to certain terms and conditions,

NOW THEREFORE, in consideration of the mutual benefits and conditions hereinafter contained, the parties hereto agree as follows:

1. Scope and Schedule of Services to be Performed by Consultant. The Consultant shall perform those services described in Exhibit “A” of this Agreement. In performing such services, the Consultant shall at all times comply with all Federal, State, and local laws and regulations applicable to the performance of such services. The Consultant shall perform the services diligently and completely and in accordance with professional standards of conduct and performance. The Consultant shall request and obtain prior written approval from the County if the scope or schedule is to be modified in any way.

2. Compensation and Method of Payment. The County shall pay Consultant according to the rates set forth in Exhibit “B”.

The Consultant shall complete and return to the County Exhibit “C,” federal tax Form W-9, prior to or along with the first billing invoice. The County shall pay the Consultant for services rendered within ten (10) days after County Council voucher approval.

3. Duration of Agreement. This Agreement shall be in full force and effect for a period commencing November 1, 2017 and ending October 31, 2018 with an option to renew annually at the County’s discretion, unless sooner terminated under the provisions of this Agreement. Time is of the essence of this agreement in each and all of its provisions in which performance is required.

4. Ownership and Use of Documents. Any records, files, documents, drawings, specifications, data or information, regardless of form or format, and all other materials produced by the Consultant in connection with the services provided to the County, shall be the property of the County, whether the project for which they were created is executed or not.

5. Independent Consultant. The Consultant and the County agree that the Consultant is an independent Consultant with respect to the services provided pursuant to this Agreement. The Consultant will be solely responsible for its acts and for the acts of its agents, employees, subconsultants or representatives during the performance of this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties. Neither Consultant nor any employee of Consultant shall be entitled to any benefits accorded County employees by virtue of the services provided under this Agreement. The County shall not be responsible for withholding or otherwise deducting federal income tax or social security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to the Consultant, or any employee of the Consultant.

6. Indemnification.

A. Each of the Parties, shall protect, defend, indemnify, and save harmless the other Party, its officers, officials, employees, agents and volunteers, while acting within the scope of their employment as such, from any and all costs, claims, injuries, damages, suits, losses or liabilities of any nature, including attorney's fees, arising out of or in any way resulting from, that Party's own acts, errors or omissions which may arise in connection with its performance under this Agreement.

B. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the County, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence.

C. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

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

7. Insurance

A. Without limiting Consultant's indemnification of County, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to 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.

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.

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 maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance as required by the State of Washington.

B. Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of Washington, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the County's Risk Manager.

C. Waiver of subrogation. All insurance coverage maintained or procured pursuant to this Contract shall be endorsed to waive subrogation against the 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 the County, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

D. Other Insurance Provision. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability, and Commercial General Liability insurance:

1. The Consultant must name the County as an additional insured. The Consultant agrees that its liability insurance shall be primary and non-contributory to the County's and that the Consultant's liability insurance policy shall so state.

2. The Consultant's insurance shall be endorsed to state that coverage shall not be canceled by either party except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the County.

E. Verification of Coverage. The Consultant shall furnish the County with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to, the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

8. Record Keeping and Reporting.

A. The Consultant shall maintain accounts and records, including personnel, property, financial and programmatic records which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed pursuant to this Agreement. The Consultant shall also maintain other such records as may be deemed necessary by the County to ensure proper accounting of all funds contributed by the County to the performance of this Agreement.

B. The foregoing records shall be maintained for a period of seven (7) years after the termination of this Agreement unless permission to destroy them is granted by the Office of the Archivist in accordance with RCW Chapter 40.14 and by the County.

9. Audits and Inspections. The records and documents with respect to all matters covered by this Agreement shall be subject at all times to inspection, review or audit by the County during the performance of this Agreement.

10. Termination. This Agreement may at any time be terminated by the County giving to the Consultant thirty (30) days written notice of the County's intention to terminate the same. Failure to provide services or products on schedule may result in contract termination. If the Consultant's insurance coverage is canceled for any reason, the County shall have the right to terminate this Agreement.

A. The County reserves the right to terminate or suspend this Agreement at any time, with or without cause, upon thirty (30) days prior written notice. In the event of termination or suspension, all finished or unfinished documents, data, studies, worksheets, models, reports or other materials prepared by the Consultant pursuant to this Agreement shall promptly be submitted to the County.

B. In the event this Agreement is terminated or suspended, the Consultant shall be entitled to payment for all services performed and reimbursable expenses incurred to the date of termination.

C. This Agreement may be canceled immediately if the Consultant's insurance coverage is canceled for any reason, or if the Consultant is unable to perform the services called for by this Agreement.

D. The Consultant reserves the right to terminate this Agreement with not less than thirty (30) days written notice, or in the event that outstanding invoices are not paid within sixty (60) days.

E. This provision shall not prevent the County from seeking any legal remedies it may otherwise have for the violation or nonperformance of any provisions of this Agreement.

11. Discrimination Prohibited. The Consultant shall not discriminate against any employee, applicant for employment, or any person seeking the services of the Consultant under this Agreement, on the basis of race, color, religion, creed, sex, sexual orientation, age, national origin, marital status, presence of any sensory, mental or physical disability, or other circumstance prohibited by federal, State or local law or ordinance, except for a bona fide occupational qualification.

12. Assignment and Subcontract. The Consultant shall not assign or subcontract any portion of the services contemplated by this Agreement without the written consent of the County. Consultant has written consent to use Phil Olbrechts and its other subcontractors at the rates specified in this agreement to assist in the preparation and proofing of decisions. Phil Olbrechts may conduct hearings at the request and/or consent of the County.

13. Conflict of Interest. The Consultant represents to the County that it has no conflict of interest in performing any of the services set forth in Exhibit "A." In the event that the Consultant is asked to perform services for a project with which it may have a conflict, Consultant will immediately disclose such conflict to the County.

14. Confidentiality. All information regarding the County obtained by the Consultant in performance of this Agreement shall be considered confidential. Breach of confidentiality by the Consultant shall be grounds for immediate termination.

15. Non-appropriation of Funds. If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the County will so notify the Consultant and shall not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. This Agreement will terminate upon the completion of all remaining services for which funds are allocated. No penalty or expense shall accrue to the County in the event that the sufficient fund are not appropriated.

16. Entire Agreement. This Agreement contains the entire agreement between the parties, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind either of the parties. If there is a conflict between the terms and conditions of this Agreement and the attached exhibits, then the terms and conditions of this Agreement shall prevail over the exhibits. Either party may request changes to the Agreement. Changes which are mutually agreed upon shall be incorporated by written amendments to this Agreement.

17. Notices.

Notices to Pacific County shall be sent to the following address:

County Clerk
Pacific County
300 Memorial Drive
South Bend, Washington 98586

Notices to the Consultant shall be sent to the following address:

Sound Municipal Consultants
906 Wood Avenue
Sumner, WA 98390
Phone No.: 253.709.6044

18. Applicable Law; Venue; Attorney's Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be exclusively in Pacific County, Washington. The prevailing party in any such action shall be entitled to its attorney's fees and costs of suit, which shall be fixed by the judge hearing the case, and such fee shall be included in the judgment.

19. Severability. If a court of competent jurisdiction holds any part, term or provision of this Contract 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 Contract did not contain the particular provision held to be invalid.

If any provision of this Contract 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 Contract so that the original intent and purpose of the Contract no longer exists, the COUNTY may, in its sole discretion, terminate this Contract.

20. Public Records Act. The Public Records Act, RCW 42.56, requires the County to release copies of certain documents to the public upon request. Bids and associated documents submitted to the Count may be subject to a public records request. If the Bidder in good faith believes that any of these documents contain trade secrets or other confidential information that are exempt from public disclosure, the Bidder shall notify the County with the submission of the document. The County will also independently make a good faith review of documents subject to a public records request for statutory exemptions. If there is a request for a document submitted by the Bidder that the County believes contains potentially exempt material, the County will notify the Bidder before its release. However, by submitting any bid, the Bidder agrees to hold the County harmless and that the County is not liable for improper or illegal release of confidential information if the Bidder did not notify the County of the confidential nature of the information prior to its release or if the release is conducted in accordance with the Public Records Act. The Bidder agrees to hold harmless and to indemnify to the fullest extent of the law the County from third-party claims (such as from a subcontractor or others) for improper or illegal release of exempt information pursuant to a public records request for documents supplied by a bidder.

CONSULTANT:

By: _____
Title: Principal
Date: 10/24/16

PACIFIC COUNTY:

By: _____
Title: _____
Date: _____

Exhibit A

Scope of Work

Consultant shall provide County with hearing examiner services as set forth in the Pacific County adopted ordinances or Municipal Code. Without limiting the foregoing, Consultant shall also perform the following:

- A. Consultant shall perform all duties in a manner consistent with accepted practices for municipal examiner services and shall conform with all required ethical standards.
- B. Consultant shall interpret, review and implement the County's land use regulations, policies, plans, and the pertinent and appropriate provisions of the Pacific County adopted ordinances or Municipal Code.
- C. Consultant shall provide his/her own transportation for all Services, including to and from public hearings and to and from any sites to be visited. Consultant shall visit sites as necessary to render informed and accurate decisions.
- D. Hearing dates and times will be arranged with the Consultant on an as needed basis, recognizing there will be times when Consultant cannot serve because of illness, vacation, conflict of interest, or similar reasons.
- E. Consultant shall provide County with all decisions via electronic .pdf signed copy. Final decisions shall be provided within ten working days of the conclusion of a hearing unless the Applicant, Appellant, or County and the examiner agree otherwise.
- F. Development Code review as requested by County.

County shall provide the following related to performance of the Services:

- A. A hearing room and facilities, including recording equipment and sound system, along with a clerk or equivalent for each hearing.
- B. Copying, distribution and record keeping services as required by County regulation and state law.
- C. A current copy of relevant County plans, policies, codes, maps, data, regulations, standards, and guidance documents, including current amendments thereto, in hard or electronic form.
- D. A hearing packet containing the County's staff report and exhibits, which may include but is not limited to pertinent applications, maps, site plans, applicant submittals, SEPA information, analyses, and departmental staff reports.
- E. County will provide notices of hearings and other actions as required by County regulations and state law, and will schedule all hearings and other events. County will notify Consultant of upcoming schedules and will check with Consultant as appropriate to such activities.

Exhibit B
Compensation

Emily Terrell: \$130 per hour.

Phil Olbrechts: \$160 per hour.

Subcontract attorneys pre-approved by the client: \$150 per hour.

Contract decision writers and legal interns: Up to \$65 per hour.

Hearings to be billed at a minimum of one hour.

Billing to be done in 1/10 hour increments.

Travel time at \$60/hour, at 2 hours each way for hearings held in north Pacific County and 3 hours each way for hearings held in south Pacific County. No mileage.

EXHIBIT C

Nondiscrimination Agreement.

During the performance of this contract, the contractor/consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. Compliance with Regulations

The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of United States Department of Transportation (USDOT), Title 49, Code of Federal Regulations, part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination

The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations, either by competitive bidding or negotiations, made by the contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.

4. Information and Reports

The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the contracting agency or the appropriate federal agency to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to WSDOT or the USDOT as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance

In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the contracting agency shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to:

- Withholding of payments to the contractor under the contract until the contractor complies, and/or;
- Cancellation, termination, or suspension of the contract, in whole or in part

6. Incorporation of Provisions

The contractor shall include the provisions of paragraphs (1) through (5) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontractor or procurement as the contracting agency or USDOT may direct as a means of enforcing such provisions, including sanctions for noncompliance.

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such directions, the contractor may request WSDOT enter into such litigation to protect the interests of the State and, in addition, the contractor may request the USDOT enter into such litigation to protect the interests of the United States.