City of Poulsbo
Professional Services Agreement

Name of Services/On-Call Discipline/Etc.
Consultant Name

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into by and between the City of Poulsbo, Washington, hereinafter called the CITY, and_____ , hereinafter called the CONSULTANT. The CITY and the CONSULTANT are each a Party and may be collectively referred to as the Parties.

WHEREAS, the CITY desires to accomplish the above-referenced project; and

WHEREAS, the CITY does not have sufficient staff or expertise to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the project; and

WHEREAS, the CONSULTANT has represented to the CITY that the CONSULTANT is in compliance with the professional registration statutes of the State of Washington, if applicable, and has signified a willingness to furnish consulting services to the CITY, now, therefore,

IN CONSIDERATION OF the terms and conditions set forth below, or attached and incorporated and made a part hereof, the parties agree as follows:

1. Scope of Work - The City hereby retains the CONSULTANT to provide professional services as defined in this agreement and as necessary to accomplish the scope of work attached hereto as Exhibit A and incorporated herein by this reference as if set forth in full ("Services"). The CONSULTANT shall furnish all services, labor and related equipment necessary to conduct and complete the work, except as specifically noted otherwise in this agreement. All Services shall meet the approval of the Mayor and City Council, as appropriate.

2. Warranty – The CONSULTANT warrants that it has the requisite training, skill, and experience necessary to provide the Services and is appropriately accredited and licensed by applicable agencies and governmental entities. 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 any other work product prepared or performed pursuant to this Agreement on behalf of CONSULTANT. The CONSULTANT shall perform its work in accordance with the requirements of this Agreement and pursuant to the standards of professional care, skill, diligence, and competence as are normally exercised by other members and/or firms of the profession in good standing working under the same or similar conditions and circumstances and in similar communities as the Services provided by the CONSULTANT under this Agreement. The CONSULTANT shall be responsible for the professional standards, performance, and actions of all persons and firms performing work pursuant to this Agreement on behalf of the CONSULTANT. The CITY shall also have the right to deduct from payments to the CONSULTANT costs or damages incurred by the CITY, or which may be incurred by the CITY, as a result of the CONSULTANT'S failure to comply with the requirements of this Agreement or failure to meet the professional standard of care and skill, or both. The CITY'S approval of plans, drawings, designs, specifications, reports, and other products of the Services rendered hereunder shall not in any way relieve the CONSULTANT of responsibility for the technical adequacy or accuracy thereof. Neither the CITY'S review, approval, acceptance of, and/or payment for any 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.

3. Completion of Work - The CONSULTANT shall not begin any work under the terms of this agreement until authorized in writing by the CITY. The CONSULTANT shall provide 'on-call' services to the CITY for the duration of two (2) years from the date this agreement is executed. The CITY may extend the duration of this agreement by one (1) additional year at its discretion by providing notice to the CONSULTANT no less than thirty days prior to expiration of this agreement. The CONSULTANT shall complete individual task orders by the completion date described in each task order. A failure to complete the work by such date, except where such failure is due to circumstances beyond the control of the CONSULTANT, shall be deemed a breach of this agreement. The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but will be extended by the CITY, in the event of a delay attributable to the CITY, or because of unavoidable delays caused by circumstances beyond the control of the CONSULTANT. All such extensions shall be in writing and shall be executed by both parties.

4. Payment - The CONSULTANT shall be paid by the CITY for satisfactorily completed work and services satisfactorily rendered under this Agreement as provided in Exhibit B, attached hereto and incorporated herein by this reference as if set forth in full. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in the Scope of Work attached.

The CONSULTANT shall be entitled to invoice the CITY no more frequently than once per month during the course of the completion of the work and services by the CONSULTANT. Invoices shall detail the work performed or the services rendered, the time involved, and the amount to be paid. The CITY shall pay all such invoices within 30 days of submittal, unless the CITY gives notice that the invoice is in dispute. In no event shall the total of all invoices paid exceed the maximum amount payable as set forth above, if any, and the CONSULTANT agrees to perform all services contemplated by this Agreement for no more that the said maximum amount.

5. Changes in Work - The CONSULTANT shall make such changes and revisions in the complete work provided by this Agreement as may be necessary to correct errors made by the CONSULTANT and appearing therein when required to do so by the CITY. The CONSULTANT shall make such corrective changes and revisions without compensation from the CITY. Should the CITY find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the CITY. This work shall be considered as Extra Work and will be paid for as provided in Section 6.

6. Extra Work - The CITY may, at any time, by written order, make changes within the general scope of this Agreement in the services to be performed. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work or services under this Agreement, whether or not changed by the order, or otherwise affects any other terms or conditions of this Agreement, the CITY shall make an equitable adjustment in the (1) maximum amount payable, (2) delivery or completion schedule or both; and (3) other affected terms, and shall modify this Agreement accordingly.

7. Ownership of Work Product - Any and all documents, drawings, reports, and other work product produced by the CONSULTANT under this Agreement shall become the property of the CITY upon payment of the CONSULTANT'S fees and charges therefore. The CITY shall have the complete right to use and re-use such work product in any manner deemed appropriate by the CITY, provided, that use on any project other than that for which the work product is prepared shall be at the CITY'S risk unless such use is agreed to by the CONSULTANT. Any and all documents, drawings, reports, and other work

product produced by the CONSULTANT are to be submitted in an electronic and hard copy format. This Section 7 shall survive the expiration or termination of this Agreement.

8. Independent Contractor - The CONSULTANT is an independent contractor for the performance of services under this agreement. The CITY shall not be liable for, nor obligated to pay to the CONSULTANT, or any employee of the CONSULTANT, sick leave, vacation pay, overtime or any other benefit applicable to employees of the CITY, nor to pay or deduct any social security, income tax, or other tax from the payments made to the CONSULTANT which may arise as an incident of the CONSULTANT performing services for the CITY. The CITY shall not be obligated to pay industrial insurance for the services rendered by the CONSULTANT.

9. Indemnity - The CONSULTANT agrees to, and shall fully, hold harmless, indemnify and defend the CITY, its officers, officials, agents, and employees (collectively "Indemnified Parties") from and against any and all allegations, claims, losses, costs, expenses, or liability, for injuries, sickness or death of persons, including employees of the CONSULTANT, or damage to property, arising out of any willful misconduct or negligent act, error, or omission of the CONSULTANT, its officers, agents, sub consultants or employees, in connection with the services required by this agreement, provided, however, that (i) the CONSULTANT'S obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole willful misconduct or sole negligence of the CITY, its officers, agents or employees; and (ii) the CONSULTANT'S obligations to fully indemnify, defend and hold harmless for injuries, sickness, death or damage caused by or resulting from the concurrent negligence or willful misconduct of the CONSULTANT and the CITY, or of the CONSULTANT and a third party other than an officer, agent, sub consultant or employee of the CONSULT ANT, shall apply only to the extent of the negligence or willful misconduct of the CONSULTANT.

The CONSULTANT'S obligations under this Section 9 include, but are not limited to, all claims against any Indemnified Parties by an employee or former employee of the CONSULTANT or any of its subcontractors or agents. For this purpose, the CONSULTANT expressly waives, as respects the CITY and Indemnified Parties only, all immunity and limitation on liability under any Industrial Insurance Act, including Title 51 RCW, or other worker's compensation act, disability act, or other employee benefit act of any jurisdiction which would otherwise be applicable.

BY SIGNING THIS AGREEMENT, THE CITY AND CONSULTANT CERTIFY THE WAIVER OF IMMUNITY SPECIFIED BY THIS PROVISION WAS MUTUALLY NEGOTIATED.

The CONSULTANT'S obligations under this Section 9 shall survive expiration or termination of the Agreement.

10. Insurance – Prior to commencing the Services, the CONSULTANT shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, its agents, representatives, or employees.

10.1 No Limitation. CONSULTANT'S maintenance of insurance as required by the agreement shall not be construed to limit the liability of the CONSULTANT to the coverage provided by such insurance, or otherwise limit the CITY'S recourse to any remedy available at law or in equity.

10.2 Minimum Scope of Insurance. The CONSULTANT shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The CITY shall be named as an additional insured under the CONSULTANT'S Commercial General Liability insurance policy with respect to the work performed for the CITY.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. Professional Liability insurance appropriate to the CONSULTANT'S profession.

10.3 Minimum Amounts of Insurance. CONSULTANT shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than $1,000,000 each occurrence, $2,000,000 general aggregate.

3. Professional Liability insurance shall be written with limits no less than $1,000,000 per claim and $1,000,000 policy aggregate limit.

10.4 Other Insurance Provision. The CONSULTANT'S Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the CITY. Any Insurance, self-insurance, or insurance pool coverage maintained by the CITY shall be excess of the CONSULTANT'S insurance and shall not contribute with it.

10.5 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

10.6 Verification of Coverage. The CONSULTANT shall furnish the CITY 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.

10.7 Notice of Cancellation. The CONSULTANT shall provide the CITY with written notice of any policy cancellation, within two business days of their receipt of such notice.

10.8 Failure to Maintain Insurance. Failure on the part of the CONSULTANT to maintain the insurance as required shall constitute a material breach of contract, upon which the CITY may,

after giving five business days notice to the CONSULTANT to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the CITY on demand, or at the sole discretion of the CITY, offset against funds due the CONSULTANT from the CITY.

11. Records - 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 in the performance of this Agreement and other such records as may be deemed necessary by the City to ensure the performance of this Agreement.

11.1 These records shall be maintained for a period of seven (7) years after termination or expiration 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 City.

11.2 To the extent it is determined that records held by the Consultant identified in this Section 11 are subject to the Washington Public Records Act (RCW 42.56), the Consultant shall, upon request of the City, promptly deliver such records to the City for the purpose of responding to a public records request.

11.3 This section shall survive expiration or termination of this Agreement.

12. Notices - All notices required to be given by either party to the other under this Agreement shall be in writing and shall be given in person or by mail to the addresses set forth below. Notice by mail shall be deemed given as of the date deposited in the United States mail, postage prepaid.

13. Project Administrator - The Project Administrator shall be responsible for coordinating the work of the CONSULTANT, for providing any necessary information for and direction of the CONSULTANT'S work in order to ensure that it meets the requirements of this Agreement, and for reviewing, monitoring and approving the quality and quantity of such work. The CONSULTANT shall report to and take any necessary direction from the Project Administrator.

13. Disputes - Any dispute concerning questions of fact in connection with the work not disposed of by agreement between the CONSULTANT and the CITY shall be referred for determination to the CITY Department Head who administrates the department in which the Project Administrator works. The Department Head's decision in the matter shall be final and binding upon the parties to this agreement, provided, however, that if litigation is brought challenging the decision, that decision shall be subject to judicial review.

14. Termination - The CITY reserves the right to terminate this agreement at any time upon ten (10) days written notice to the CONSULTANT. Any such notice shall be given to the address specified below. In the event that this agreement is terminated by the CITY other than for fault on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for all services performed. No payment shall be made for any work completed after ten (10) days following receipt by the CONSULTANT of the notice to terminate. In the event that services of the CONSULTANT are terminated by the CITY for fault on part of the CONSULTANT, the amount to be paid shall be determined by the CITY with consideration given to the actual cost incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which would satisfactorily complete it to date of termination, whether that work is in a form or type which is usable to the CITY at the time of termination, the cost of the CITY of employing another firm to complete the work required, and the time which may be required to do so.

15. Non-Discrimination - The CONSULTANT agrees not to discriminate against any customer, employee or applicant for employment, subcontractor, supplier or material man, because of race, color, creed, religion, national origin, marital status, sex, age or handicap, except for a bona fide occupational qualification. The CONSULTANT understands that if it violates this provision, this agreement may be terminated by the CITY and that the CONSULTANT may be barred from performing any services for the CITY now or in the future.

16. Compliance and Governing Law - The CONSULTANT shall at all times comply with all applicable federal, state, and local laws, rules, ordinances, and regulations. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

17. Subcontracting or Assignment - The CONSULTANT may not assign or subcontract any portion of the services to be provided under this agreement without the express written consent of the CITY.

18. Non-Waiver - Payment for any part of the work or services by the CITY shall not constitute a waiver by the CITY of any remedies of any type it may have against the CONSULTANT for any breach of the agreement by the CONSULTANT or for failure of the CONSULTANT to perform work required of it under the Agreement by the CITY. Waiver of any right or entitlement under this Agreement by the CITY shall not constitute waiver of any other right or entitlement.

19. Litigation - In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the parties agree that such actions shall be initiated in the Superior Court of the State of Washington, in and for Kitsap County. The parties agree that all questions shall be resolved by application of Washington law and that parties to such actions shall have the right of appeal from such decisions of the Superior Court in accordance with the law of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, in and for Kitsap County. The substantially prevailing party in any such litigation shall be entitled to recover its costs, including reasonable attorney's fees, in addition to any other award.

20. Taxes - The CONSULTANT will be solely responsible for the payment of any and all applicable taxes related to the services provided under this Agreement and if such taxes are required to be passed through to the CITY by law, the same shall be duly itemized on any billings submitted to the CITY by the CONSULTANT.

21. City Business License - The CONSULTANT has obtained, or agrees to obtain a business license from the CITY prior to commencing to perform any services under this Agreement. The CONSULTANT will maintain the business license in good standing throughout the term of the Agreement.

22. Entire Agreement - This Agreement represents the entire integrated Agreement between the CITY and the CONSULTANT, superseding all prior negotiations, representations or agreements, written or oral. The terms of this Agreement also supersede any contrary provisions of any of the Exhibits attached hereto and where any conflict between the terms of this Agreement and the Exhibits exists, the terms of this Agreement control. This agreement may be modified, amended, or added to, only by written instrument properly signed by both parties hereto.

23. Authorized Signatures. By their signatures below, each party represents that they are fully authorized to sign for and on behalf of the named principal above.

24. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one agreement. The counterparts of this

Agreement may be executed and delivered by facsimile or other electronic means by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered as if the original had been received.

25. Effective Date. This Agreement is effective on the latest date this Agreement is executed by both parties.

IN WITNESS WHEREOF, the parties agree to be bound by the terms and conditions set forth above.

CONSULTANT: Company Name

By: _____ Addr:

Title:

CITY OF POULSBO:

_____ Addr: 200 NE Moe Street
Rebecca Erickson, Mayor Poulsbo, WA 98370

ATTEST/AUTHENTICATED:

_____
Rhiannon K. Fernandez, CMC, City Clerk

APPROVED AS TO FORM:

_____
Emily Romanenko, City Attorney