



## MEMORANDUM

To: Mayor McCarthy, Town Council  
From: Stan Berryman Public Works Director  
Date: March 12, 2014  
RE: City Engineering Services Contract

City staff publicly advertised for engineering firms to submit qualifications to perform city engineering services in February.

Three firms submitted qualifications by the deadline:

PACE Engineering, Kirkland, WA

Gray & Osborne, Inc. Arlington, WA

BHC Consultants, Seattle, WA

A selection panel consisting of Thomas Gill, Jeff Arango, and Stan Berryman interviewed the firms on February 26, 2014.

The panel selected PACE Engineering as the preferred firm to provide engineering services for the City of Langley.

Staff has negotiated a contract with PACE Engineering and it has been reviewed and approved by Jeff Lighthouse, City Engineer.

The contract is attached for your approval to have the Mayor execute.

## AGREEMENT FOR ENGINEERING SERVICES

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between THE CITY OF LANGLEY, Island County, Washington ("CITY") and PACE ENGINEERS, INC., a Washington corporation providing professional engineering services with offices at 11255 Kirkland Way, Suite 300, Kirkland, WA 98033 ("ENGINEER").

### RECITALS:

WHEREAS, public convenience and necessity require the services of a consulting engineer to assist the CITY to accomplish the planning, design, and construction of such CITY improvements; and

WHEREAS the CITY desires to engage the ENGINEER as the CITY's consulting Engineer; and

WHEREAS, ENGINEER desires to be retained by and to provide engineering services to the CITY;

NOW, THEREFORE, CITY and ENGINEER, based on the terms and conditions set forth herein, mutually agree as follows:

1. Retainer. CITY hereby retains ENGINEER to perform engineering work as requested for the planning, review, design, and construction of CITY improvements, to act on behalf of the CITY as the primary CITY consulting engineer on various projects and administration, and to perform such other services as requested by the CITY. Such engineering services are more specifically described on **EXHIBIT A** attached hereto and incorporated herein by this reference. All engineering services provided shall be done at the direction of the CITY'S Mayor or designee. To extent possible ENGINEER agrees to maintain continuity of staff on projects and to make assignments at the appropriate level of experience.

ENGINEER hereby agrees to provide engineering services to the CITY as set forth herein in a competent and professional manner, and to furnish or procure the use of incidental services, equipment, and facilities necessary for the completion of such engineering services. ENGINEER shall furnish competent and experienced personnel that provide continuity, the appropriate skill level, and who shall work under the supervision of a primary consulting engineer. CITY reserves the right to request replacement of project staff.

2. Scope of Services. ENGINEER shall act as a consulting engineer for the CITY on only such projects and work as the CITY shall specifically authorize and direct; provided, however, this Agreement is not intended to create a relationship in which CITY contracts exclusively with ENGINEER for such services or in which the ENGINEER serves the CITY as its sole client. CITY reserves the right to use the services of other engineering firms for specific projects at CITY's sole discretion. ENGINEER agrees not to perform private development

services for private parties on projects within the CITY if the performance of such services conflicts in any way with the ENGINEER's performance of engineering services for the CITY.

3. Compensation. Payment for the engineering services requested and authorized by CITY shall be made by CITY to the ENGINEER and shall be considered as full compensation for all services, personnel, materials, supplies, and equipment used in performing such services. Compensation for such engineering services and reimbursable expenses shall be as set forth on **EXHIBIT B** attached hereto and incorporated herein by this reference.

Engineer shall submit invoices in a form acceptable to CITY for engineering services to the CITY for approval and payment on a monthly basis. The invoices shall include detailed information regarding the services provided, including identification of employees providing the services, itemization of services performed, hours worked, hourly rate, and an itemization of direct expenses incurred on such engineering services for the CITY. CITY shall pay the invoice within sixty (60) days of receipt, except as to any disputed amounts. If payment is not made within sixty (60) days of receipt of an undisputed invoice amount, interest shall accrue and be paid in addition to the invoice amount at the rate of one percent (1%) per month from the sixty-first (61<sup>st</sup>) day to the date of payment. Interest shall be payable at the time the charges for engineering services are paid.

If any project covered by this Agreement is suspended or abandoned by CITY, the ENGINEER shall be paid for services performed to the date of abandonment based on the engineering time and reimbursable expenses incurred to the date of abandonment, except as to any disputed amount.

Each new task/job assignment will be assigned a new job number for tracking costs. General consulting services that are not assignable to a particular project will be billed on a general number.

4. Ownership of Documents. As a result of providing engineering services to the CITY, the ENGINEER will create certain instruments of professional service as a work for hire which will take the form of traditional project engineering documents such as hard copy drawings, designs, mylars, specifications, renderings of surveys, survey data, and like items; these may also take the form of computer-ready data sets such as CADD, word processing, electronic spreadsheets and/or databases; in addition, the ENGINEER's instruments of professional service may be represented in the form of computer programs, software, and related methodology, materials, and logic (all of the foregoing instruments of professional service collectively referred to as "Work Product"). Methodology, materials, software, logic, and systems developed under this Contract are the property of the CITY. Reuse of any Work Product by the CITY for other than a specific project or modification and use by the CITY of any of the Work Product without the ENGINEER's prior approval shall be at the CITY's sole risk.

The Engineer may hold on the CITY's behalf, original reproducible copies of all designs and as-builts drawings. Computer-ready data and/or copies shall be provided to the CITY. CITY agrees to pay for all costs of providing copies, including one original copy for

consultant's records. ENGINEER agrees to provide an index of documents being transferred to the CITY at termination of contract.

5. Assignment of Contract/Subcontractors. ENGINEER shall not assign this contract or assign or subcontract all or any portion of the work of any project without prior CITY approval.

6. Indemnification. ENGINEER agrees to indemnify, defend, and hold harmless the CITY, its elected officials, officers, employees, and agents against any damages, losses, expenses, judgments, or liabilities, including but not limited to reasonable attorney's fees and costs (collectively referred to as "Damages"), caused directly or indirectly by ENGINEER's negligent acts, errors, or omissions, but only for that portion of such Damages which reflect the percentage of negligence of the ENGINEER, and/or its employees, agents, and subcontractors compared to the total negligence of all persons, firms, or corporations which result in such Damages. For the purposes of this indemnification, ENGINEER specifically and expressly waives any immunity granted under the Washington Industrial Insurance Act, Title 51 RCW. This waiver has been mutually negotiated and agreed to by the parties. If a court of competent jurisdiction determines that this contract is subject to RCW 4.24.115, ENGINEER's obligation to defend, indemnify, and hold harmless the CITY, its officers, employees, agents, and volunteers shall be limited to the extent of the ENGINEER's negligence. The provisions of this section shall survive the expiration or termination of this Agreement.

7. Insurance.

(a) ENGINEER shall maintain and keep current workers' compensation insurance in compliance with State and Federal statutes.

(b) ENGINEER shall maintain commercial general liability and automobile liability insurance, such policy specifically naming the CITY and its elected officials, officers, employees, and agents as insureds, protecting the ENGINEER and the CITY against claims arising from bodily or personal injury or damage to property, including loss of use thereof, resulting from operations of ENGINEER and/or its employees, agents, and subcontractors or from the use of automobiles or the equipment of ENGINEER. The coverage limits of this insurance shall be not less than TWO MILLION DOLLARS (\$2,000,000.00).

(c) ENGINEER shall maintain a policy of professional liability insurance protecting it against claims arising out of the negligent acts, errors, or omissions of the ENGINEER with a coverage amount not less than ONE MILLION DOLLARS (\$1,000,000.00); provided, however, CITY may require ENGINEER to obtain additional professional liability insurance on a per project basis.

(d) The ENGINEER shall provide the CITY with proof of insurance satisfactory to CITY evidencing the above-referenced coverages. Approval of the insurance by the CITY shall not relieve or decrease the liability of the ENGINEER.

8. Litigation. This Agreement does not require either the ENGINEER or the CITY to prepare for or appear in litigation on behalf of the other, or as agent of the other, except as

hereinbefore set forth, and particularly under the defense provisions of Section 6, and except in consideration of additional reasonable compensation.

9. Termination of Agreement. This Agreement shall be for a ONE (1) year term, commencing on the date set forth above; provided, however, either party may terminate this Agreement at any time without cause upon ninety (90) days' written notice to the other party to that effect by certified mail, return receipt requested, to the other party's business office.

10. Standard of Care. ENGINEER warrants that its services shall be performed with the care, skill, and competence ordinarily exercised by members of the profession practicing under similar conditions at the same time and the same or similar locality.

11. Independent Contractor. ENGINEER is an independent contractor and not an employee of the CITY. ENGINEER shall be responsible in full for payment of its employees, including insurance and deductions. No personnel employed by ENGINEER shall acquire any rights or status regarding the CITY.

12. Special Services. Special services may be required in conjunction with services contemplated within this Agreement, which are outside the professional expertise of ENGINEER, such as soils investigations, test borings and analyses, reports and recommendations, groundwater analysis, wetland evaluation, environmental analyses, and laboratory testing. When, in the opinion of the CITY or ENGINEER, such expertise is required for a project, the ENGINEER shall so advise CITY. CITY may directly obtain such special professional expertise and pay the cost thereof or CITY, at its option, may direct ENGINEER to retain such special expertise and pay the cost thereof, subject to reimbursement by CITY plus twelve percent (12%) for administration, taxes, and insurances.

13. Nondiscrimination.

(a) ENGINEER agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

(b) ENGINEER shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

14. Taxes. The ENGINEER 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 ENGINEER.

15. Miscellaneous.

(a) Dispute Resolution. All claims, disputes, and other matters in controversy between CITY and ENGINEER arising out of or in any way related to this Agreement, will be submitted to mediation or another alternative dispute resolution procedure before, and as a

condition precedent to, judicial action or other remedies provided by law. The indemnification as set forth in Paragraph 6 herein shall also be effective in such mediation or other alternative dispute resolution procedure.

(b) Attorney Fees and Costs. In the event that any party commences or files any litigation against the other party relating to the performance, enforcement, or breach of this Agreement, the prevailing party in such action shall be entitled to all costs, including reasonable attorneys' fees and costs, and any such fees and costs incurred on appeal.

(c) Entire Agreement. This Agreement, and its attachments, contains the entire understanding between CITY and ENGINEER relating to professional engineering services. Any prior or contemporaneous agreement, promises, negotiations or representations not expressly set forth herein, are of no force or effect. Subsequent modifications or amendments to this Agreement shall be in writing and shall be signed by the parties to this Agreement. Services to be performed by ENGINEER for CITY that are outside the scope of services of this Agreement shall be performed pursuant to written agreements separately negotiated.

(d) Compliance with Law. ENGINEER shall comply with all applicable federal, state, and local laws in effect at the time of the performance of the engineering work under this Agreement.

(e) Law/Venue. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Washington. Any litigation arising out of or in connection with this Agreement shall be filed and conducted in King County Superior Court.

(f) Savings Clause. If any provision of this Agreement is declared invalid, illegal, or incapable of being enforced by any court of competent jurisdiction, all of the remaining provisions of this Agreement shall continue in full force and effect, and no provisions shall be deemed to depend upon any other provision unless so expressed herein.

ENGINEER

CITY:

PACE Engineers, Inc

CITY OF LANGLEY

By *Alan Miller, P.E.*

By \_\_\_\_\_

Its *Senior Principal Engineer*

Its \_\_\_\_\_

## EXHIBIT A

### CITY OF LANGLEY, WA

#### Scope of Services to be Provided by PACE Engineers, Inc.

##### General Engineering Services

General services provided to the CITY as anticipated are listed in this Agreement. The parties recognize that the required services are unique and will vary between projects. Parties recognize and agree that services, which are not listed in the Agreement may be required on various projects. The ENGINEER agrees to provide services requested by the CITY only if said services are within the technical competence of the ENGINEER. ENGINEER agrees to assist the CITY in acquiring those services that the ENGINEER declines to provide. All general services, and services on a project, including preparation of scope and budget analyses, will be authorized by the Mayor or designee by means of a work order.

The following list provides a general description of the type of services to be provided by ENGINEER.

- A. Preliminary Phase. Anticipated project-specific services to be performed by the Engineer in the preliminary phase for improvements include:
1. Preliminary investigation and drawing layout showing alternatives for environmental considerations and preparations of or furnishing data for Environmental Checklist, Environmental Impact Statements or Environmental Impact Assessments, and review of environmental documents prepared for projects by the City.
  2. Prepare applications and supporting documents for government grants or advances for public works projects, and attend meetings and hearings relating to the grants or advances.
  3. Prepare preliminary schematic designs and projections of probable cost estimates, for proposed LID's and public works projects.
  4. Attend and coordinate City and community meetings.
- B. Design Phase. Anticipated project-specific services to be performed by the Engineer in the design phase of the improvements include:
1. Preliminary investigations and layout drawings showing alternatives for design purposes.

2. Design, topographic and boundary surveys, and legal descriptions, if required.
3. The making of final designs stamped by the City Engineer.
4. Prepare drawings, specifications and contract documents for construction.
5. Prepare projections of probable quantities and costs including the Engineer's estimate.
6. Submit construction plans and specifications for approval by the various regulatory agencies and City and revisions.
7. Assist in securing bids, analysis of bids, recommendations for award, and execution of contract documents.
8. Assist the City in securing permits and approvals for construction.

C. During Construction. Anticipated project-specific services to be performed by the Engineer during construction include:

1. Daily part-time, or as-needed construction observers and/or resident engineers to observe contractor's work.
2. Support City personnel in construction observation as needed or requested by the City.
3. Construction staking and surveying.
4. Prepare change orders as required during the course of construction.
5. Provide the City with copies of the original plans which have been revised to conform with construction records.
6. Prepare progress payment and final payment for contractors.
7. Review shop and working drawings furnished by the contractors necessary for construction of the project.
8. Advise the City regarding acceptance of construction work.



- D. CITY Engineering and Support Services. Anticipated City engineering and support services to be provided include:
1. General planning support as assigned by the CITY and accepted by the ENGINEER.
  2. Attend staff meetings, regular Council meetings, special day or night meetings, and be available during normal working hours to support and advise CITY staff or other consultants. ENGINEER will attend one regular meeting each month.
  3. Assist in training CITY employees in good engineering practice and CITY use of computer programs provided by the ENGINEER.
  4. Prepare Engineering Reports and Comprehensive Plans, amendments, and updates for the CITY.
  5. Prepare applications and supporting documents for grants, loans, or other funding for public works projects.
  6. Assist in the preparation of petitions for annexation to the CITY.
  7. Prepare, update, and print maps and exhibits for the CITY.
  8. Provide Utility Information Systems, Geographic Information Systems, and other computer services as requested by the CITY and available to the ENGINEER at the CITY's cost.
  9. Review plans or documents prepared by others at the request of CITY.
  10. Develop, update, maintain, and analyze the City's Water and Sewer System hydraulic models.
  11. Prepare and check preliminary feasibility and preparation of parity certificates.
  12. Court preparation time and final assessment rolls.
  13. Investigations for financial and court appearances.
  14. Assist in preparing documents for and/or acquiring easements and rights-of-way.
  15. Engineering services in connection with developer extensions, including planning changes preliminary availability, payback calculation requests, in lieu of construction cost calculations, reviewing proposed construction plans and specifications, construction reviews, bills of sale, easements, legal descriptions, and recommendations regarding acceptance of projects.

16. Provide a weekly inspection of all ongoing projects within the CITY for compliance with grading, drainage, and TESC requirements.
- E. Developer Applications. The ENGINEER shall perform those tasks as set forth in the Developer Improvement Agreements as indicated for the City's Engineer to perform.
- F. Other Tasks. The ENGINEER shall perform other tasks not specifically defined in this Scope but specifically requested by the City Mayor or designee.
- G. Special Equipment. All uses of special equipment or services need to be pre-approved by City Mayor or designee.



**EXHIBIT B  
2014 MUNICIPAL (ENGINEER OF RECORD)  
HOURLY RATE SCHEDULE**

<u>DESCRIPTION</u>	<u>HOURLY RATE</u>
1. Office Tech I, Expediter I	\$ 45.00
2. Office Tech II, Expediter II	\$ 57.00
3. Jr. Instrument Person, Office Tech III, Intern	\$ 67.00
4. Instrument Person, GPS Assistant, Jr. Planner, Jr. CAD Drafter, Sr. Office Tech, Inspector	\$ 79.00
5. Jr. Engineer, Designer I, Party Chief, CAD Drafter I, GIS Tech, Inspector I, Project Administrator	\$ 89.00
6. Engineer I, Designer II, Planner I, Survey Tech I, CAD Drafter II, GIS Analyst I, Inspector II	\$ 99.00
7. Engineer II, Sr. Designer, Planner II, Sr. Party Chief, Survey Technician II, CAD Drafter III, GIS Analyst II, Inspector III	\$ 109.00
8. Sr. Engineer, Project Designer I, Sr. Planner, Project Surveyor, Sr. CAD Drafter, GIS Analyst III, Sr. Inspector	\$ 120.00
9. Project Engineer, Project Designer II, Project Planner, Sr. Project Surveyor, GIS IV, GIS/CAD Manager	\$ 130.00
10. Sr. Project Engineer, Structural Engineer, Sr. Project Designer, Sr. Project Planner, Survey Project Manager, Robotic/GPS & Operator	\$ 140.00
11. Project Manager, Principal Surveyor	\$ 150.00
12. Sr. Project Manager, Sr. Principal Surveyor, 3D Scanning & Operator	\$ 160.00
13. Principal Engineer, Principal Planner	\$ 170.00
14. Senior Principal	\$ 185.00

**REIMBURSABLES**

A. Sub-Consultants, Professional and Technical	Cost + 12%
B. Maps, reports, materials, permit fees, express delivery and messenger, pass-thru bills and similar items necessary for work in progress	Cost + 12%
C. Technology expenses associated with computers, software, electronic distance measuring devices, telephone, cell phone, photo copies, standard survey supplies and transportation and standard postage will be invoiced as a Technology Charge	N / A
D. Out-of-Town travel per diem and cost of commercial transportation	Cost + 10%
E. Transportation within 30 Mile Radius *	No Charge
Transportation beyond 30 Mile Radius – Automobile	\$ .60 per mile
* On job inspection mileage will be billed	\$ .60 per mile
F. Special Equipment/Software	
Special Software for Modeling/Analysis	\$ 10/hour
Large Format Blueprints and Reproduction – Bond	\$ .50/sq foot
Large Format Blueprints and Reproduction – Mylar	\$ 1.50/sq foot
Color Copies – In-house (8½ x 11)	\$ .25/page
G. Expert Witness	Rate x 1.5

Note: <sup>1</sup> All payment is due within 30 days from date of invoice. A monthly service charge of 2% will be added on all accounts older than 45 days.

<sup>2</sup> The foregoing schedule of charges is incorporated into the agreement for the services provided effective January 1, 2014. After December 31, 2014, invoices will reflect the schedule of charges in effect at that time.