
**INDEPENDENT CONSULTANT ON-CALL CONTRACT
FOR
PROFESSIONAL SERVICES**

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| Contract # | |
| Consultant Name/Company: Tierra Right of Way Services, Ltd. | City of Sequim Department: Public Works Project Contact: Matt Klontz |
| Authorized Contact/ Representative/Agent: Leslie Findlay | Authorized Official: David Garlington |
| Address: 8685 Martin Way E., Ste 203 Lacey, Washington 98516 | Phone: (360) 683-4908 Email: mklontz@sequimwa.gov |
| Phone: 1(800) 887-0847 Email: lfindlay@tierra-row.com | |

THIS CONTRACT is made and entered into on the Effective Date below by and between the City of Sequim, a Municipal Corporation of the State of Washington ("City"), and Tierra Right of Way Services, Ltd., ("Consultant"), and collectively the "Parties".

RECITALS

WHEREAS, Consultant submitted qualifications through or in response to *[check one]*

☒ City's Request for Qualifications advertisement for on-call services

☐ MRSC Rosters.org, a service of which City is a member

WHEREAS, Consultant's qualifications were evaluated by the City using a competitive selection process and Consultant is deemed highly qualified to render the desired services; and

WHEREAS, City desires to engage Consultant to render on a task order basis the services briefly described below, and more specifically described in Appendix A – General Scope of Services (attached and incorporated by reference):

Briefly identify type of Services, e.g., transportation engineering, surveying, etc., and other details of project(s)

On-call right-of-way acquisition services in accordance with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act.

WHEREAS, the City will define scope of work assignments and negotiate labor hours on a task order basis for a period up to two years from the date of this Contract; and

WHEREAS, the City at its discretion may extend this Contract provided the maximum amount payable has not exceeded the Award Amount of FIFTY THOUSAND DOLLARS AND NO CENTS (\$50,000.00); and

WHEREAS, Consultant agrees to render the Services set forth in this Contract, including Appendix A and any other Contract Documents attached and incorporated by reference ("the Services"); and

WHEREAS, Consultant agrees to render the Services using the negotiated hourly rates identified Appendix B (attached and incorporated by reference); and

WHEREAS, the maximum amount payable under this Contract will not exceed the Award Amount; and

WHEREAS, Consultant is not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency and must remain in good standing for the duration of this Contract;

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises expressed in this Contract and with the intention to be bound hereby, the Parties mutually agree as follows:

PART I

FUNDAMENTAL TERMS

Article 1. Engagement of Consultant

The City agrees to engage Consultant to perform the Services and Consultant agrees to perform those Services in accordance with the terms and conditions of this Contract.

Article 2. Scope of Services

In compliance with all terms and conditions of this Contract, Consultant will perform all work necessary to complete the Services in a manner satisfactory to the City. Consultant's Services will be directed by the City through task order agreements as described in Appendix C (attached and incorporated by reference).

Article 3. Term and Time of Performance

The initial term of this Contract commences on the Effective Date below and will extend for a period not to exceed two years. The City may extend this Contract at its sole discretion if the cumulative total amount paid for all task order assignments issued under this Contract does not exceed the maximum amount payable under this Contract.

Article 4. Payment and Limitation of Cost

The City will compensate Consultant for the Services, as defined in Appendix C, up to but not exceeding the maximum amount payable under this Contract, in accordance with the following schedule:

Invoices for work performed in accordance with Appendix B, Hourly Rate of Pay by Task.

To receive payments, Consultant must submit an invoice, detailing with specificity, the Services performed for each task and associated sub-task. Invoices must include without limitation, personnel, labor hours, hourly rate, the amount invoiced to date, and such other documentation as may be necessary or requested by the City to demonstrate that appropriate progress has been made toward completing the Services. The invoice must also include sub-consultant invoices to the same level of detail as required for Consultant. Reimbursable travel expenses will be reimbursed at the current per diem rates for the year established by the Washington State Office of Financial Management. Reimbursable expenses must be supported by receipts. A log identifying beginning of trip and end of trip odometer readings must be provided for mileage reimbursement.

Article 5. Attachments

The provisions set forth in Part II, General Provisions, and the attached Appendices are by incorporated into this Contract by reference, as are any other Contract Documents that are specifically incorporated by reference ("Contract Documents").

Article 6. Notices.

Unless otherwise provided, any notices required to be given under the Contract must be in writing with copies as directed and personally delivered, or delivered by United States mail, prepaid, certified, return receipt requested, or by reputable document delivery service that provides a receipt showing date and time of delivery. Notices personally delivered or delivered by a mail document delivery service are effective upon receipt. Any notice given by mail is deemed to have been given when deposited in the United States mail certified and postage prepaid, addressed to the Party to be served as follows:

To CITY: City of Sequim
 Attn: City Clerk
 152 West Cedar Street
 Sequim WA 98382
 (360) 681-3428



With separate copy addressed to the City Attorney.

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| To CONSULTANT: | Leslie Findlay, SR/WA, R/W-RAC Right of Way Operations Manager, Pacific Northwest Tierra Right of Way Services, Ltd. 8685 Martin Way E., #203 Lacey, WA 98516 360-870-0190 mobile 1(800) 887-0847 main |
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This provision is not intended to apply to informal communications, which are commonly conducted by email.

IN WITNESS WHEREOF, persons executing this Contract warrant and represent that they are authorized to do the same on behalf of the Parties and are authorized to bind those Parties to the terms and conditions of this Contract.

The Effective Date of this Contract is the _____ day of _____, 20__.

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| CONSULTANT  Signature Printed Name: Mack Dickerson Title: Vice President  Darin Hittle CEO | CITY OF SEQUIM _____ Charles P. Bush, City Manager APPROVED AS TO FORM: _____ Kristina Nelson-Gross, City Attorney ATTEST: _____ Charisse Deschenes, Acting City Clerk |
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PART II

GENERAL PROVISIONS

SECTION ONE: SERVICES OF CONSULTANT

1.1 Scope of Services. In compliance with all terms and conditions of this Contract, Consultant will perform on a task order basis all work necessary to complete the Services in a manner satisfactory to the City.

1.2 Changes and Additions to Scope of Services. The City has the right at any time during the performance of the Services, without invalidating this Contract, to order extra services beyond that specified in the task order Scope of Services or make changes by altering, adding to, or deducting from said services. No payment for extra services caused by a change in scope or complexity of work will be made, unless and until the City authorizes such extra services and associated price in writing. The City's written approval must set forth the changes of work, time extension for preparation, and fee adjustment to be paid to Consultant.

1.3 Specifications. All specifications, manuals, or standards, attached to this Contract or incorporated by reference, are deemed to be the version in effect as of the date of this Contract and are binding as to the work performance in this Contract. Any changes must be by written amendment to this Contract and are subject to City approval.

1.4 Standard of Performance. Consultant represents and warrants that Consultant has the experience and licenses in good standing necessary to undertake the Services. In light of such status and experience, Consultant covenants that Consultant will follow customary good professional standards as found in the Puget Sound region in performing the Services in a manner reasonably satisfactory to the City. Consultant must ensure that all work, including by Consultant's employees, if any, is performed to the standards set forth in this Contract and in compliance with appropriate governmental agencies and applicable laws, ordinances, codes and regulations of the federal, state, and local governments in effect at the time such Services are performed.

Aside from any other provision, Consultant agrees to perform all work to the City's satisfaction within the time specified. If the City reasonably determines that the work is not satisfactory, the City has the right to take appropriate action, including but not limited to: (i) meeting with Consultant to review the quality of the work and resolve matters of concern; (ii) requiring Consultant to repeat unsatisfactory work at no additional charge until it is satisfactory; (iii) suspending the delivery of work to Consultant for an indefinite time; (iv) withholding payment; and (v) terminating this Contract.

1.5 Licenses, Permits, Fees and Assessments. Consultant must obtain at Consultant's sole cost and expense all licenses, permits, and approvals that may be required by law to perform the

Services. Consultant has the sole obligation to pay any fees, assessments, and taxes, plus applicable penalties and interest, that may be imposed by law and arise from or are necessary for Consultant's performance of the Services. Consultant must further indemnify, defend, and hold harmless the City against any such fees, assessments, taxes, penalties, or interest levied, assessed, or imposed against the City.

1.6 Personnel. Consultant represents that it employs, or will employ, at Consultant's own expense, personnel required to perform the Services. All Services will be performed by Consultant and all personnel engaged in the work must be fully qualified and be authorized or permitted under state and local law to perform such services. This Contract contemplates the personal services of Consultant and Consultant's employees, and it is recognized by the Parties that a substantial inducement to City for entering into this Contract was, and is, the professional reputation and competence of Consultant and Consultant's employees.

1.7 Prohibition against Subcontracting or Assignment. Consultant must not contract with any other entity to perform the Services in whole or in part without the City's express written approval or as already identified in Appendix A, except for minor incidental services including, but not limited to, couriers and reprographics services. In addition, the Contract or any interest cannot be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the City's prior written approval. If there is any unapproved transfer, the City may void the Contract at the City's sole option and absolute discretion.

1.8 Wage Rate Requirements. Consultant and any subconsultants will pay all employees performing the Services a salary or wage at least equal to the prevailing salary or wage established for such work as set forth in the applicable wage determinations and wage standards. Travel and expenses will be reimbursed at the current per diem rates for the year established by the Washington State Office of Financial Management.

SECTION TWO: INSURANCE AND INDEMNIFICATION

2.1 Insurance. Without limiting Consultant's indemnification obligations, Consultant must procure and maintain, at its sole cost and for the duration of this Contract, insurance coverage as provided below. Such insurance must provide coverage for all claims for personal injuries or property damages that may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, employees, and/or subconsultants. If the existing policies do not meet these Insurance Coverage requirements, Consultant agrees to amend, supplement or endorse the policies to do so.

2.1.1 Insurance Coverage Required. Consultant must obtain and maintain without interruption insurance of the types required below and must name the City as an additional insured in a form acceptable to the City Attorney. The insurance, its scope of coverage and limits must not be construed to limit the Consultant's liability to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

Upon request, the Consultant must forward a full and certified copy of the insurance policy(s) to the City within five business days of the City's request.

The Consultant's required insurance must be of the types and coverage described below [*check all that apply; strike out if not required*]:

☒ *Automobile Liability* insurance covering all owned, non-owned, hired and leased vehicles. Coverage must be at least as broad as Insurance Services Office (ISO) form CA 00 01. If necessary, the policy will be endorsed to provide contractual liability coverage. The minimum combined single limit for bodily injury and property damage must be \$1,000,000 per accident.

☒ *Commercial General Liability* insurance must be written on a form at least as broad as ISO occurrence form CG 00 01 and cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The City must be named as an insured under Consultant's Commercial General Liability insurance policy with respect to the work performed for City using ISO additional endorsement CG 20 10 01 and CG 20 37 10 01 or substitute endorsements providing equivalent coverage. The minimum limits must be no less than \$1,000,000 for each occurrence, \$2,000,000 general aggregate, and a \$2,000,000 products-completed operations aggregate limit.

☐ *Excess or Umbrella Liability* insurance must have limits of not less than \$5,000,000 per occurrence and annual aggregate. The Excess or Umbrella Liability requirement and limits may be satisfied instead through the Consultant's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits. Excess or Umbrella Liability insurance is excess over and at least as broad in coverage as the Consultant's Commercial General Liability and Automobile Liability insurance. The Excess or Umbrella insurance coverage will drop down when underlying policy aggregate limits are exhausted.

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

☒ *Errors & Omissions* insurance in the amount of \$1,000,000.00 per incident.

☐ City has agreed to waive insurance requirements due to the nature of the work contemplated under this Contract.

Original, signed insurance certificates and endorsements must be sent via email from Consultant's insurance broker/agent to the City. Additional Insured Endorsements must be provided along with the Certificate of Insurance. Consultant's Automobile Liability and Commercial General Liability insurance policies must contain or be endorsed to contain that they are primary and non-contributory insurance with respect to the City. A statement on an insurance certificate will not be accepted in lieu of the actual endorsement. Any insurance, self-insurance, or self-insured pool coverage maintained by the City is excess of the Consultant's

insurance and does not contribute with it. The insurance policies must contain a “cross liability” provision.

If the Consultant maintains higher insurance limits than the minimums shown above, the City must be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Consultant, regardless of whether such limits are greater than those required by this Contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Consultant. Providing coverage in these stated minimum limits does not relieve Consultant from liability in excess of these limits.

The Consultant must provide the City with written notice of any policy cancellation within two business days of receipt of such notice. Consultant’s failure to maintain the required insurance constitutes a material breach of this Contract. If there is such a breach, the City may, after giving five business days’ notice to the Consultant to correct the breach, immediately terminate this Contract; alternatively, at its discretion the City may obtain or renew such insurance and pay the premiums due. Any money spent in this circumstance must be repaid to the City on demand, or at the City’s sole discretion, offset against funds due to the Consultant.

The City project title or description must be included in the “Description of Operations” box on the certificate.

Certificate Holder: City of Sequim, Washington

2.2 Endorsements. Insurance policies are not in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

2.2.1 Additional Insured. The insurance coverage required by Section 2.1, except for Professional Liability Insurance and Worker’s Compensation Insurance, must contain the following provisions or be endorsed to provide the following:

The City, its elected officials, officers, employees, volunteers, boards, agents, and representatives are additional insureds with regard to liability and defense of suits or claims arising out of the performance of the contract.

Additional Insured Endorsements must be provided along with the Certificate of Insurance. Additional Insured Endorsements must not (i) exclude “contractual liability”; (ii) restrict coverage to the “sole” liability of the Consultant; (iii) exclude “third-party-over-actions”; or (iv) contain any other exclusions contrary to this Contract.

2.2.2 Waiver of Subrogation. The insurance policy or policies required by Section 2.1, except Workers’ Compensation, must be endorsed as follows: “Insurer waives all rights of subrogation against the indemnified Parties.”

2.2.3 Deductibles in Excess of \$50,000/Self-Insured Retentions. Any deductible in excess of \$50,000 and/or Self-Insured Retentions must be approved by the City in writing.

2.2.4 Acceptable Insurance. Each policy must be from a company with current A.M. Best's rating of A VII or higher and authorized to do business in the State of Washington, or otherwise allowed to place insurance through surplus lines brokers under applicable provisions of the Washington Insurance Code or any federal law. Any other rating must be approved by the City in writing.

2.2.5 Subconsultant Insurance. Consultant must require subconsultants to maintain the same types and limits of coverage in compliance with this Contract, including naming the City as an additional insured to the subconsultant's policies. Consultant must also get the Additional Insured Endorsement from the Subconsultant to meet the requirements of this Section. Upon request, Consultant must provide evidence of such insurance and all endorsements.

2.3 Other Insurance. Any other insurance policies as may be required in the Contract Documents are incorporated by reference into this Contract.

2.4 Contractual Liability. The coverage provided applies to the obligations assumed by the Consultant under the indemnity provisions of this Contract.

2.5 Claims-Made Policies - Tail Coverage. If coverage is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance must coincide or precede the effective date of the initial Contract with the City and continuous coverage must be maintained or an extended reporting period must be exercised for a period of at least three (3) years from termination or expiration of this Contract. Upon expiration or termination of coverage of required insurance, Consultant must procure and submit to City evidence of "tail" (extended reporting period) coverage or an extended reporting coverage period endorsement for the period of at least three (3) years from the time that all work under this Contract is completed. If renewal of the claims-made form of coverage becomes unavailable or economically prohibitive, the Consultant must purchase tail coverage or execute another form of guarantee acceptable to the City to assure financial responsibility for liability for services performed pursuant to this Contract.

2.6 Failure to Maintain Coverage. In addition to being a material breach as specified in Section 2.1, Consultant agrees to suspend and cease all Services when the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. The City has the right to withhold any payment due until Consultant has fully complied with the Contract's insurance provisions. If the Consultant's operations are suspended for failure to maintain required insurance coverage, the Consultant is not entitled to an extension of time to complete the Services because of lost production.

2.7 Indemnification. To the greatest extent allowed by law, Consultant must indemnify, defend, and hold the City and the City's personnel (including its Council, commissions,

committees, boards, officers, and employees) harmless from and against any and all actions, suits, claims, demands, judgments, attorneys' fees, costs, damages to persons or property, losses, penalties, obligations, expenses or liabilities ("claims" or "liabilities") that may be asserted or claimed by any person or entity arising from or in connection with Consultant, its employees, agents, or representatives' willful misconduct or negligent acts, errors, or omissions in performing the Services provided under the Contract.

2.7.1 Consultant must defend any action or actions filed in connection with any such claims or liabilities, and pay all reasonable costs and expenses, including attorneys' fees incurred in connection with all claims and liabilities.

2.7.2 Consultant must promptly pay any judgment rendered against the City or any City personnel for any such claims or liabilities.

2.7.3 It is further specifically and expressly understood that this indemnification 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. [initials of Consultant MD and Authorized Official]

2.7.4 If a court of competent jurisdiction determines that Consultant's services are covered under RCW 4.24.115, Consultant's obligation to defend, indemnify, and hold harmless is only to the extent of Consultant's negligence.

SECTION THREE: LEGAL RELATIONS AND RESPONSIBILITIES

3.1 Independent Consultant. It is expressly understood that when performing the Services under this Contract, Consultant is an "independent Consultant" under applicable law and is not a City agent or employee. The City is not and must not become or be deemed to be Consultant's partner, joint venturer, or member of any joint enterprise with Consultant. Consultant must not at any time or in any manner represent that it or any of its agents or employees are City agents or employees. The Consultant has and retains the right to exercise full control and supervision of the Services, and full control over the employment, direction, compensation and discharge of all persons assisting Consultant in performing the required Services. Consultant is solely responsible and holds the City harmless for all matters relating to paying Consultant's employees, including compliance with Social Security withholdings and all other regulations governing such matters, including overtime. Consultant and Consultant's employees are not, at any time or in any way, entitled to any City sick leave, vacation, retirement or other fringe benefits. Nothing in this Contract may be construed as to giving Consultant or any of its employees or subconsultants a property right to any position or continued employment after termination of this Contract.

3.2 Non-Discrimination and Equal Employment Opportunity. During its performance under this Contract, Consultant agrees as follows:

3.2.1 Equal Employment Opportunity. In connection with its performance under this Contract, Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, marital status, sexual orientation, AIDS or AIDS-related symptoms (including HIV positive findings), physical disability, mental disability, mental condition, family care leave, ancestry or national origin. Actions encompassed by this prohibition include, without limitation, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship.

3.2.2 Sanctions for Noncompliance. If Consultant fails to comply with the nondiscrimination provisions of this Contract, Consultant agrees that the City is authorized to impose such sanctions or penalties as the City may determine to be appropriate. Such sanctions or penalties may include but is not limited to (1) withholding payments to Consultant until Consultant complies with all applicable requirements and obligations, and/or (2) cancellation, termination or suspension of the Contract, in whole or in part.

3.3 Proprietary Information. Consultant has no proprietary rights in any reports, tests or other documents produced in whole or in part under this Contract. All proprietary information developed specifically for the City by Consultant in connection with or resulting from this Contract, including but not limited to inventions, discoveries, improvements, copyrights, patents, tests, reports, textual material or software programs are the City's sole and exclusive property; such City property is confidential and must not be made available to any person or entity without the City's prior written approval. This provision does not include Consultant's underlying materials, software, or know-how. Consultant agrees that the compensation to be paid pursuant to this Contract includes adequate and sufficient compensation for any proprietary information developed in connection with or resulting from Consultant's Services under this Contract. Consultant further understands and agrees that it must make full disclosure of all proprietary information developed in performance of Services under this Contract to the City. Consultant further understands and agrees that Consultant will do all things necessary and proper to perfect and maintain City ownership of such proprietary information.

3.4 Use of Patented Materials. Consultant assumes all costs arising from the use of patented or copyrighted materials, including but not limited to equipment, devices, processes, and software programs, used or incorporated in Consultant's performance of Services under this Contract. Consultant indemnifies, defends, and saves the City harmless from and against any and all suits, actions or proceedings of every nature for or on account of the use of any patented or copyrighted materials.

3.5 Retention of Funds. Consultant authorizes the City to deduct any disputed payments or any payments necessary to compensate the City for any losses, costs, liabilities or damages suffered by the City, and all amounts for which the City may be liable to third parties, by reason of Consultant's negligent acts, errors, or omissions, or willful misconduct in performing or failing to perform its obligations under this Contract from any amount payable to Consultant. The City in its sole and absolute discretion may withhold from any payment due to Consultant arising from this Contract or otherwise, without liability for interest, an amount sufficient to

cover such claim or any lien. The City's failure to exercise such right to deduct or withhold is not a waiver of Consultant's obligation to pay the City any sums Consultant owes the City.

3.6 Termination for Convenience of the City. The City may terminate this Contract at any time by giving Consultant written notice of such termination. In that event, all finished or unfinished documents and other materials become, at the City's option, the City's property. If the City terminates this Contract as provided herein, then Consultant will be paid an amount that is equal to the percentage of total compensation of the Services actually performed compared to the total Services covered by this Contract, minus previously made payments.

3.7 Termination of Contract for Cause. In addition to the City's rights under Section 3.6, the City may give Consultant written notice of its intent to terminate this Contract in whole or in part, subject to the provisions of paragraph 3.7.2, in either of the following circumstances: (1) if Consultant fails to perform the Services within the time(s) specified, including any extensions; or (2) if Consultant fails to start performance of the Services or fails to make adequate progress in accordance with the terms of this Contract. If Consultant does not correct such failure within a period of ten (10) calendar days (or such longer period as the City may authorize in writing) after receipt of notice from the City specifying such failure, then this Contract is terminated.

3.7.1 If the City terminates this Contract in whole or in part as provided in this section, the City may procure services similar to those described in this Contract at such terms and in such manner as it may determine appropriate.

3.7.2 Except for subconsultants' default, the Consultant will not be liable for any excess costs if the failure to perform this Contract arises out of causes beyond the Consultant's control and through no fault or negligence of Consultant as set forth in Section 3.13.1.

3.7.3 Upon receipt of the City's notice of termination, Consultant must immediately stop its Services, unless otherwise directed by the City in writing, and deliver all data, drawings, reports, estimates, summaries and such other information and materials as may have been accumulated by Consultant in the performance of this Contract, whether completed or in process to the City. Upon termination, Consultant will be paid the value of the Services performed, minus previously made payments.

3.8 Waiver. No delay or omission in the exercise of any right or remedy by a non-defaulting Party on any default impairs such right or remedy and may not be construed as a waiver. Receiving consent or approval of any act requiring approval from the other Party does not waive approval requirements for any subsequent act. Any default waiver must be in writing from the waiving Party.

3.9 Governing Law - Legal Actions. This Contract must be interpreted in accordance with the statutes and laws of the State of Washington, the City of Sequim and any other government agency applicable to the subject of this Contract and the performance hereunder. City does not waive any right to a jury trial. However, the parties agree to attempt to mediate in good faith before any litigation is commenced. Legal actions concerning any dispute, claim or matter

arising out of or in relation to this Contract must be instituted or maintained in any court with competent jurisdiction in Clallam County, Washington, and Consultant agrees to submit to the personal jurisdiction of the court. If any third-party claims related to the performance of this Contract are asserted against either Party, then the Party claimed against will receive reasonable assistance from the other if there is no basis for claims or suits against the assisting Party.

3.10 Rights and Remedies are Cumulative. The Parties' rights and remedies are cumulative and in addition to any other rights and remedies available at law or in equity. Exercising one right or remedy by either Party does not preclude that Party's right to exercise of any future right or remedy.

3.11 Attorneys' Fees. In any action between the Parties regarding any term or provision of this Contract or in connection with the performance of the Services, the Party prevailing in the final judgment is entitled to have and recover its reasonable costs and expenses, including, but not limited to, reasonable attorneys' fees, expert witness fees, and court costs from the other Party, in addition to any other relief that may be granted. If either Party is required to initiate or defend litigation with a third party because of the other Party's violation of any term or provision of this Contract, then the Party so litigating is entitled to its reasonable attorneys' fees and costs from the other Party to this Contract.

3.12 Non-liability of City Officers and Employees. No City officer, official, employee, agent, representative, or volunteer is personally liable to Consultant, or any successor in interest, for any default or breach or for any amount that may become due to Consultant or its successor through this Contract.

3.13 Extension of Time for Delay.

3.13.1 If Services are delayed at any time because of a City-ordered suspension, any City action or inaction, or neglect by the City without contributory fault or neglect on the Consultant's part, or if the Services are delayed at any time by reason of strikes, acts of god, the public enemy, fire, floods, epidemics, quarantine restrictions, freight embargoes, abnormal force, or for any other unforeseen cause beyond the Consultant's control and without the fault or negligence, or for any other reason in the Consultant's opinion is proper justification, then the Consultant is entitled to an extension of time equivalent to the time actually lost by such delay.

3.13.2 The Consultant must file a written request with the City for extension of time within ten (10) calendar days after the beginning of such delay. Failure to so make the request constitutes a waiver, except that only one claim is necessary for a continuing cause of delay. The City will ascertain the facts and the extent of delay, and if in the City's judgment such delay is justified, extend the time for performing the Services for the period equal to the delay. The City's determination must be in writing and is final and conclusive upon the Parties to this Contract.

3.13.3 A request for or granting an extension of time does not constitute a basis for any claim against the City for additional compensation. Unless the Consultant files a request for

additional compensation at the time of filing a request for an extension of time, any additional compensation request is waived.

3.14 Interests of City Members and Others. To the extent prohibited by applicable law, no City officer, member, employee, official, or anyone who exercises any review or approval functions or responsibilities in the undertaking or carrying out of the Services, may (1) participate in any decision relating to this Contract that, directly or indirectly, affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she has any interest; or (2) have any interest, direct or indirect, in this Contract or its proceeds during his or her tenure or for one year thereafter.

3.15 Interest of Independent Consultant. Consultant covenants that it has, at the time of execution of this Contract, no interest that would conflict in any manner or degree or be inconsistent with the performance of Services performed pursuant to this Contract. Consultant further covenants that it will not acquire any direct or indirect future interest in the performance of the Services and that no person having any such interest will be employed by Consultant or its subcontractors.

3.16 Warranty against Collusion. Consultant warrants that it has not directly or indirectly engaged in any form of collusion or outside agreements in securing this Contract. If there is a breach or violation of this warranty, the City has the right to immediately annul this Contract without any liability and to prohibit Consultant from future City work.

3.17 Survival of Certain Provisions. The terms of this Contract, including all attachments, that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Contract, survive the Contract and will continue to be enforceable. Without limiting the generality of this provision, the Consultant's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters or actions begun within that period.

3.18 Spoilation – Notice of Potential Claims. Consultant must promptly notify City of all potential claims that arise or result from this Contract. Consultant must also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety. Consultant also grants City the opportunity to review and inspect the evidence, including the scene of an accident.

SECTION 4: MISCELLANEOUS PROVISIONS

4.1 Records and Audits. Consultant and all subconsultants must maintain complete and accurate records with respect to the Services performed (including but not limited to the identity of the person doing the work, a description by date and person of the work performed, and the amount of time expended on such work) and costs incurred under this Contract. Consultant must also maintain records supporting its cost proposals used and relied on to enter into this Contract. Consultants must maintain records to show actual time and allowable costs with respect to each

task set forth in the Appendix A – General Scope of Services and other Contract Documents incorporated by reference into this Contract. All such records must be clearly identifiable and maintained on a generally accepted accounting basis. Consultant must submit to the City such progress reports and final reports in the manner and time set forth in Appendix C and other Contract Documents incorporated by reference into this Contract. The final report and Consultant's work product become the City's property. All records required to be maintained by Consultant and all subconsultants must be kept for six (6) years.

4.2 Access to Records. The City will have access, upon reasonable notice, to the Consultant's books and records related to Consultant's performance of this Contract if any audit is required. The Consultant must allow inspection of all work data, documents, proceedings and activities related to the Contract and Consultant's performance, for a period of one (1) year from termination of this Contract. Consultant and all subconsultants must provide the City access to all records relating to this Contract upon the City's request as needed to satisfy any State Auditor requirement.

4.3 Ownership of Records. All drawings, original documents, methodological explanations, computer programs, designs and reports and other materials prepared by Consultant in performance of this Contract (i) are the City's property and must be delivered at no cost to the City upon the City's request or upon the termination of this Contract, and (ii) are confidential and must not be made available to any individual or entity without the City's prior written approval. Any additional copies are the City's responsibility.

4.4 Severability. Each provision of this Contract is severable from the whole. If any provision is found by a court of competent jurisdiction to be contrary to law, then the remainder of this Contract continues in full force unless such provision is central to performance of Services under this Contract. In such case, this Contract will terminate, and the Parties will be compensated in accordance with Section 3.6 or as otherwise agreed upon by the Parties.

4.5 Authority. The person(s) executing this Contract warrant that entering into this Contract does not violate any provision of any other agreement to which that Party is bound.

4.6 Construction and Amendment. The terms of this Contract are to be construed in accordance with the meaning of the language used and not construed for or against either Party due to authorship or any other rule of construction that might otherwise apply. Paragraph and section headings are for convenience or reference only and do not limit or extend the meaning of any provision. This Contract may only be modified or amended by the Parties' mutual written consent.

4.7 Extent of Contract. This Contract, together with all its Appendices and any Contract Documents incorporated by reference, represents the entire integrated Contract between the Parties. This Contract supersedes all prior negotiations, representations, or agreements, written and oral, and none will be used to interpret this Contract.

4.8 Special Provisions. Any additional or supplemental provisions, modifications, or alterations of these General Provisions must be in writing and incorporated by reference in this Contract. Special Provisions may be included in a section designated “Part III - Special Provisions”.

4.9 Precedence. In the event of any discrepancy between Part I (“Fundamental Terms”) and Part II (“General Provisions”), Part II takes precedence and prevails over Part I. Part III, if any, takes precedence and prevails over Part I and Part II.

4.10 Compliance with Laws. Consultant warrants and represents to City that it will comply with all applicable statutes, standards, rules, and regulations required by federal, state, and local agencies, including compliance with Labor & Industries, and Washington State Public Records Act requirements as may be applicable.

###

For signatures see final page of Part I of this Contract.

CONSULTANT INFORMATION FORM

Consultant/Firm Name: Tierra Right of Way Services, Ltd.

Address for Notices:

444 NE Ravenna Blvd., Suite #103
Seattle WA 98115

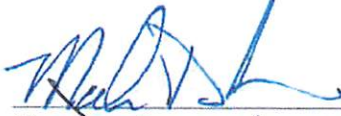



Main Contact: Leslie Findlay, Right of Way Operations Manager, Pacific Northwest

Contact Numbers:

Telephone: 360-870-0190 (mobile)

Email Address: lfindlay@tierra-row.com

1. Consultant's Authorized Signatory(ies):

| | | |
|--|---|---|
|  |  |  |
| Signature | Print Name | Title |
|  | Darin Hittle | Vice President CEO |

2. Signature Authorization is Provided in Accordance with:

☐ Proposer's Bylaws/Operating Contract Section
☐ Board Resolution
☒ Corporate or Business and Professional Code**

☐ copy attached
☐ copy attached

** If Consultant is a corporation, two (2) authorized signatories will be required on all documents submitted, unless specified in the organization's Bylaws or corporate resolution.

IMPORTANT NOTE: If the signature authorization status of any individual changes during the term of the contract, it is the Consultant's responsibility to contact the City of Sequim regarding the change and to complete and submit a new Signature Authorization Form. Incorrect information in the file may delay the processing of any of the documents submitted.

APPENDIX A

GENERAL SCOPE OF SERVICES

Each item of work under this Contract will be provided by task assignment. Each task assignment will be individually negotiated with Consultant. The amount established for each assignment will be the maximum amount payable for that assignment unless modified in writing by the City. The City is not obligated to assign any specific number of tasks to Consultant, and the City's and Consultant's obligation(s) are limited to tasks assigned in writing.

The City will issue written task assignments by providing a formal Task Assignment Document similar in format to the example included in the attached Appendix C.

An assignment becomes effective when a formal Task Assignment Document is signed by the Consultant and the City, except that emergency actions requiring a 24-hour or less response can be issued by oral authorization. Such oral authorization must be followed up with a formal Task Assignment Document within four working days, and any billing rates agreed to orally (for individuals, sub-consultants, or organizations whose rates were not previously established in the Contract) are provisional and subject to negotiation and acceptance by the City.

Task assignments may include, but are not limited to, to the following types acquisition services in accordance with Federal, State, and local laws, including the Uniform Act, WSDOT LAGs & ROW manual, and Chapter 8.26 RCW work:

- Researching Right-of-Way and obtaining Title Reports,
- Preparing Project Funding Estimates,
- Coordinating Appraisals and Appraisal Reviews,
- Preparing Administrative Offer Summaries,
- Negotiating Property Acquisition,
- Managing Relocations,
- Project and Subconsultant Management, and
- Other tasks as may be assigned.

APPENDIX B**HOURLY RATES OF PAY BY TASK**

| | <u>Direct Rate</u> | <u>124.47%</u> | <u>30.00%</u> | <u>Billing Rate</u> |
|---------------------------|--------------------|----------------|---------------|---------------------|
| Division Manager | \$ 62.69 | \$ 78.03 | \$ 18.81 | \$ 159.53 |
| ROW Division Manager | \$ 52.88 | \$ 65.82 | \$ 15.86 | \$ 134.56 |
| Project Manager | \$ 43.26 | \$ 53.85 | \$ 12.98 | \$ 110.08 |
| Project Manager | \$ 39.85 | \$ 49.60 | \$ 11.96 | \$ 101.41 |
| Senior Right of Way Agent | \$ 40.00 | \$ 49.79 | \$ 12.00 | \$ 101.79 |
| Senior Right of Way Agent | \$ 38.50 | \$ 47.92 | \$ 11.55 | \$ 97.97 |
| Senior Right of Way Agent | \$ 34.00 | \$ 42.32 | \$ 10.20 | \$ 86.52 |
| Right of Way Agent | \$ 27.00 | \$ 33.61 | \$ 8.10 | \$ 68.71 |
| Administrative Assistant | \$ 19.50 | \$ 24.27 | \$ 5.85 | \$ 49.62 |
| Editor | \$ 31.00 | \$ 38.59 | \$ 9.30 | \$ 78.89 |
| Right of Way Technician | \$ 25.00 | \$ 31.12 | \$ 7.50 | \$ 63.62 |

APPENDIX C**SAMPLE TASK ASSIGNMENT DOCUMENT**

All terms and provisions of the Independent Consultant On-call Contract (Executed ____, 20 __) are in full force for this Task Assignment.

Project Location:

Project Name:

Project No:

Maximum Amount Payable:

Task Assignment End Date:

| | |
|--|--------------------|
| Master On-call Contract Max. Amount Payable | \$50,000.00 |
| Previous Task Order(s) Amount Authorized | \$0.00 |
| Amount this Task Order | \$0.00 |
| Estimated Remaining Balance | \$0.00 |

Project Understanding:

This task order is for _.

Scope of Work:

The following tasks are to be performed:

Agency Project Manager: _____ Date: _____

Consultant Signature: _____ Date: _____

Agency Approving Authority: _____ Date: _____

ADDENDUM 1

This is an Addendum to the Independent Consultant On-Call Contract For Professional Services between the City of Sequim, Washington (Client) and Tierra Right of Way Services, Ltd. (Tierra) The parties hereby agree to the these additional terms and conditions and hereby incorporate these terms into the Professional Services Contract referenced above.

1. Regardless of the language in any contract between Tierra and a Client, Client acknowledges and agrees that the referral of an acquisition for condemnation proceedings to complete an acquisition assignment with an unwilling property owner is not the type of legal or cause of action that the contract between Tierra and Client intends indemnity protection from.

Agreed:

Tierra Right of Way Services, Ltd.

City of Sequim, Washington

By: 

By: _____

Title: Vice President

Title: _____

Date: 10/10/2019

Date: _____



CERTIFICATE OF LIABILITY INSURANCE

Item 10, Attachment 2 DATE (MM/DD/YYYY)

9/25/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| | | | |
|-------------------------------|--|---|--------------------------------------|
| PRODUCER | | CONTACT NAME: Robin Strauss | |
| RSC Insurance Brokerage, Inc. | | PHONE (A/C, No, Ext): (212) 669-5400 | FAX (A/C, No): (212) 669-5417 |
| 420 Lexington Avenue | | E-MAIL ADDRESS: rstrauss@risk-strategies.com | |
| New York NY 10170 | | INSURER(S) AFFORDING COVERAGE | |
| | | INSURER A: Hanover Insurance Group | |
| | | INSURER B: Allmerica Financial Benefit Ins | |
| | | INSURER C: Evanston Insurance Co | |
| | | INSURER D: | |
| | | INSURER E: | |
| | | INSURER F: | |

COVERAGES **CERTIFICATE NUMBER:** CL1991631205 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|--|-----------|----------|---|-------------------------|-------------------------|---|
| A | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: | X | | ZHN921985009 | 7/31/2019 | 7/25/2020 | EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 |
| A | AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS | | | AHND94379500 | 7/31/2019 | 6/14/2020 | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ |
| A | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$ | | | UHN912179809 | 7/31/2019 | 7/25/2020 | EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 |
| B | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below | Y/N | N/A | WMND17358503 | 7/31/2019 | 7/25/2020 | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000 |
| C | Professional-Claims Made-Retro Date-5/11/1998, | | | MKLV7PL0003781 7/31/19 for \$1M x/o \$2M | 7/31/2019 | 7/25/2020 | Each Occurrence/Aggregate 3,000,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The City, its elected officials, officers, employees, volunteers, boards, agents, and representatives are included as additional insureds as required by written contract under the General Liability coverage with regards to liability and defense of suits or claims arising out of the performance of the contract per policy terms, conditions and exclusions.

CERTIFICATE HOLDER

City of Sequim
152 West Cedar St
Sequim, WA 98382

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Michael Christian/LZF

M B Christian

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