

**GENERAL AGREEMENT
FOR
ON-CALL SURVEYING AND ENGINEERING SERVICES**

This Agreement, made and entered into this _____ day of _____, 2018, by and between the City of Longview, Washington (Client), and Gibbs & Olson, Inc., Longview, Washington (Consultant). Client and Consultant may be referred to herein individually as "Party" and together as "Parties". The Agreement shall be from _____ through _____.

BACKGROUND

- A. The Client wishes to obtain surveying and engineering services as necessary on an on-call per authorization basis.
- B. The Consultant represents that it has the professional expertise needed to perform the surveying and engineering services that the Client may typically require.
- C. For each specific authorization, the Consultant shall perform all of the services, duties and obligations described on Exhibit A – Notice of Authorization attached hereto and incorporated herein by this reference. The terms herein shall be controlling and supersede any inconsistent terms in Exhibit A to this Agreement. The Consultant shall perform all of the identified Services in a good faith, professional, and diligent manner so as to cause the Project to be completed in an expeditious, reasonable, economical and workmanlike manner. All work shall be accomplished in accordance with terms and conditions within this Agreement.
- D. The parties are entering into this Agreement to completely set forth the terms and conditions upon which the Consultant is retained to provide the on call surveying and engineering services as may be requested by the Client.

THE PARTIES AGREE TO THE FOLLOWING GENERAL CONDITIONS THAT WILL BE APPLICABLE TO EACH INDIVIDUAL TASK OR PROJECT AUTHORIZATION EXECUTED UNDER THIS ON-CALL SURVEYING AND ENGINEERING SERVICES AGREEMENT.

A. RELATIONSHIP

For purposes of this Agreement, the Client shall be as identified on the first page of this Agreement, and the Consultant shall be Gibbs & Olson, Inc., Longview, Washington.

B. HEADINGS

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

C. STANDARD OF PRACTICE

Services performed by the Consultant under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession

currently practicing in the same locality and under similar conditions at the time the services are performed. No other representation, expressed or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document or otherwise.

D. MAINTENANCE OF PROFESSIONAL STANDARDS AND ETHICS

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

E. NO THIRD-PARTY BENEFICIARIES

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

F. ASSIGNMENT

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

G. INDEPENDENT CONSULTANT

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

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

H. INSURANCE

The Consultant shall obtain and keep in force during the terms of the Agreement, or as otherwise

required, the following insurance with companies approved by the State Insurance Commissioner pursuant to RCW 48.

1. Workers compensation and employer's liability insurance as required by the Washington State Department of Labor & Industries.
2. Comprehensive general liability and automotive liability insurance in an amount not less than a single limit \$1,000,000 for bodily injury, including death and property damage per occurrence for each type of liability insurance.
3. Professional liability insurance to cover negligent errors or omissions for which the Consultant becomes legally obligated to pay with a policy limit of not less than \$1,000,000.

Excepting the Worker's Compensation and professional liability insurance, the Client will be named on all policies as an additional insured. The Consultant shall furnish the Client with verification of insurance and endorsements required by this Agreement. The Client reserves the right to require complete, certified copies of all required insurance policies at any time.

With respect to the performance of this Agreement and as to claims against the County, its appointed and elected officers, agents and employees, the Consultant expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, as now or hereafter amended, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this Agreement extend to any claim brought by or on behalf of any employee of the Contractor. Along with the other provisions of this Agreement, this waiver is mutually negotiated by the parties to this Agreement.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The Consultant shall submit a verification of insurance as outlined above within 14 days of the execution of this Agreement to the Client.

The Consultant shall provide the Client and all Additional Insureds for this work with written notice of any policy cancellation, within two business days of Consultant's receipt of such notice.

Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the Client may, after giving five business days' notice to the Consultant to correct the breach, immediately terminate the Agreement or, at its discretion, procure or renew such insurance and pay all premiums in connection therewith, with any sums so expended to be repaid to the Client on demand, or at the sole discretion of the Client, offset against funds due the Consultant from the Client.

The Consultant's professional liability to the Client shall be limited to the amount payable under this Agreement, or \$1,000,000, whichever is greater. In no case shall the Consultant's professional liability to third parties be limited in any way.

I. INDEMNIFICATION

The Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors and employees (collectively, Client) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the

Consultant's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the Consultant is legally liable.

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

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

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

J. BILLING & PAYMENT

Specific task authorizations will each have a specific budget. It is possible that some task authorizations will be based on a lump sum fee, while others will have an estimated budget and be billed time and materials. Both of these conditions are discussed below and the appropriate clause J.1 or J.2 will apply to each task authorization as appropriate based on if the task will be performed for a lump sum fee or on a time and materials basis.

1. LUMP SUM FEE & INVOICES

- a. Lump Sum Fee: The Lump Sum Fee is only for the identified Scope of Work and was developed based on Consultants' past experience, information available to the Consultant at the time this Agreement was prepared, and the Consultant's understanding of the Client's project at the time this Agreement was prepared. The Consultant agrees not to exceed the Lump Sum Fee to complete the identified Scope of Work without the Client's prior authorization. If conditions change, unforeseen circumstances are encountered, work efforts are redirected, or the Client requests additional Work to be performed by the Consultant modification of this Agreement's Fee will be required.
- b. Invoices: The Consultant will submit invoices to Client on a monthly basis and a final bill upon completion of services. Payment is due upon receipt of the invoice and is past due Thirty (30) days after the invoice date. Client agrees that the invoice balance is correct unless Consultant is notified in writing within Fourteen (14) days of the invoice date. In the event of a disputed or contested billing, only that portion so contested will be withheld from payment, and the undisputed portion will be paid. The Client will exercise reasonableness in contesting any bill or portion thereof. No interest will accrue on any contested portion of the billing until it is mutually resolved.

A service charge of 12% per annum (1% per month) will be added on all unpaid balances over Sixty (60) days old. If the account becomes delinquent, Consultant will perform no further services on the project until the Client pays the outstanding balance plus applicable interest or, at the Consultant's sole discretion, until satisfactory written payment arrangements have been made between the Consultant and the Client.

2. TIME AND MATERIAL BUDGET ESTIMATE FOR SERVICES

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

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

a. Reimbursable Expenses

Expenses incurred in connection with project tasks such as reproduction costs will be invoiced at direct cost plus Ten (10%) percent. Mileage will be invoiced at the current IRS rate per mile.

b. Services by Others

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

c. Invoices

The Consultant will submit invoices to Client monthly and a final bill upon completion of services. Payment is due upon receipt of the invoice and is past due Thirty (30) days after the invoice date. Client agrees that the invoice balance is correct unless Consultant is notified in writing within Fourteen (14) days of the invoice date. In the event of a disputed or contested billing, only that portion so contested will be withheld from payment, and the undisputed portion will be paid. The Client will exercise reasonableness in contesting any bill or portion thereof. No interest will accrue on any contested portion of the billing until it is mutually resolved.

A service charge of 12% per annum (1% per month) will be added on all unpaid balances over Sixty (60) days old. If the account becomes delinquent, Consultant will perform no further services on the project until the Client pays the outstanding balance plus applicable interest or, at the Consultant's sole discretion, until satisfactory written payment arrangements have been made between the Consultant and the Client.

K. CHANGES IN THE AGREEMENT

If during the course of performance of this Agreement, the Client requests additional services to be performed, or if conditions or circumstances are discovered which were not contemplated by the Consultant at the commencement of this Agreement, then the Consultant shall notify the Client in writing of the additional services to be performed or the newly discovered conditions or circumstances. The Client and Consultant shall renegotiate in good faith, the budget, schedule and other applicable conditions of this Agreement. Unless otherwise agreed to, the Client and

Consultant shall have Thirty (30) days after the notice to reach agreement on the amended terms and conditions.

L. RIGHT OF ENTRY

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

M. OWNERSHIP OF DOCUMENTS

Language to be added prior to contract execution.

N. DISPUTES

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

O. TERMINATION

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

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

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

P. GOVERNING LAW

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

Q. SEVERABILITY

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

R. INTEGRATION

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

S. AGREEMENT DOCUMENTS

General Agreement for On-Call Surveying, Engineering, and Construction Services

Exhibit A – Specific Task or Project Authorization including Scope of Work, Schedule and Budget Estimate

Exhibit B – Consultant's, Current Rate Schedule

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

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

**EXHIBIT A
CITY OF LONGVIEW, WASHINGTON
AUTHORIZATION FOR SURVEYING OR ENGINEERING SERVICES**

NOTICE OF AUTHORIZATION NO. 2018-_____

Gibbs & Olson, Inc. (Consultant) is hereby authorized to perform Surveying or Engineering Services for the City of Longview, Washington (Client) as provided for in our General Agreement for On-Call Surveying and Engineering Services dated _____ and as more fully described herein:

Scope of Services:

Work authorized includes the following itemized task list:

- 1.
- 2.
- 3.

Schedule:

It is anticipated that work will begin on or about _____ and will be completed on or about _____.

Budget:

The budget for the above referenced work shall be set at \$_____. The Consultant agrees not to exceed this amount without the Client's prior authorization.

Authorized by:
City of Longview, Washington

Date

By:

Accepted: Gibbs & Olson, Inc.

Date

By: Richard A. Gushman, President

Exhibit B
GIBBS & OLSON, INC.
2018 Standard Rate Schedule

<i>Labor Category</i>	Hourly Rate
Principal	\$191
Project Manager	\$176
Engineer VI	\$155
Engineer V	\$144
Engineer IV	\$127
Engineer III	\$116
Engineer II	\$96
Engineer I	\$90
Design Technician III	\$102
Design Technician II	\$88
Sr. Land Surveyor	\$126
Land Surveyor	\$102
1 Man Survey Crew	\$102
2 Man Survey Crew	\$180
3 Man Survey Crew	\$250
Senior Technician III/Resident Project Representative III	\$94
Senior Technician II/Resident Project Representative II	\$88
Senior Technician I/Resident Project Representative I	\$77
Technician I	\$53
Environmental/Grant/Contract/Financial Specialist	\$105
Administrative Assistant	\$67
<i>Equipment Rates</i>	
Digital Level/Total Station	\$10
Robotic Total Station	\$20
GPS Equipment per unit	\$30
GPS/Sonar/Boat	\$95
14' Aluminum Boat w/ Outboard Motor	\$20
Rotohammer & Generator	\$15
Mileage @ Current IRS Rate	\$0.545
Expenses At Cost Plus	10%
Subconsultants	
(Geotech, Elect., Structural, Lab, Etc.) Invoice Plus	10%

Expert Witness Fees are 150% of listed rates above.

Rates subject to change January 1st of following year.