

ON-CALL PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MEDINA AND TRANSPO GROUP

THIS ON-CALL PROFESSIONAL SERVICES AGREEMENT (this “**Agreement**”) is entered into by and between the City of Medina, Washington, a municipal corporation (the “**City**”) and Transpo Group, a corporation organized under the laws of the State of Washington, located and doing business in Kirkland, WA (hereinafter, the “**Consultant**”). The City and the Consultant are sometimes referred to individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS:

WHEREAS, the City desires to have certain work performed; and

WHEREAS, the City has selected the Consultant to perform such services pursuant to certain terms and conditions as set forth herein; and

NOW, THEREFORE, in consideration of the mutual benefits and conditions set forth below, the Parties agree as follows:

AGREEMENT:

1. Scope of Services to be Performed by Consultant.

The Consultant shall perform the work as assigned by the City, which may include the services described in **Exhibit A** of this Agreement, which is attached hereto and incorporated herein by this reference as if set forth in full. Additional work may be assigned by the City, however, this Agreement does not obligate the City to assign any specific work or any work to the Consultant. Any changes to the scope of services provided hereunder shall be in writing and signed by both parties. In performing the services, the Consultant shall comply with all federal, state, and local laws and regulations applicable to the services. The Consultant shall perform the services diligently and completely and in accordance with professional standards of conduct and performance.

The City shall pay the Consultant for services rendered according to the rates set forth in **Exhibit B**. The Consultant shall submit to the City a voucher or invoice for services rendered. The City shall pay the Consultant for services rendered within ten (10) days after City Council voucher approval. However, if the City objects to all or any portion of an invoice, it shall notify Consultant and reserves the option to only pay that portion of the invoice not in dispute. In that event, the Parties will immediately make every effort to settle the disputed portion. No payment shall be made for any service rendered by the Consultant except for services identified and set forth in this Agreement.

2. Duration of Agreement. This Agreement shall be in full force and effect for a period commencing on the date the last Party executes this Agreement for a period of three (3) years with an option to extend one (1) year, unless sooner terminated under the provisions of this Agreement or extended by mutual agreement of the Parties. Time is of the essence of this Agreement in each and all of its provisions in which performance is required.

3. Ownership and Use of Documents.

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

B. *Records preservation.* Consultant understands that this Agreement is with a government agency and thus all records created or used in the course of Consultant's work for the City are considered "public records" and may be subject to disclosure by the City under the Public Records Act, Chapter 42.56 RCW ("the Act"). Consultant agrees to safeguard and preserve records in accordance with the Act. The City may be required, upon request, to disclose the Agreement, and the documents and records submitted to the City by Consultant, unless an exemption under the Public Records Act applies. If the City receives a public records request and asks Consultant to search its files for responsive records, Consultant agrees to make a prompt and thorough search through its files for responsive records and to promptly turn over any responsive records to the City's public records officer at no cost to the City.

4. Independent Consultant. The Parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the Consultant. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to the Consultant, or any employee of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives, and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

5. Indemnification. Consultant shall defend, indemnify, and hold the City, its officers, officials, employees, agents, and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorneys' fees brought against the City, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW

4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence.

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

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

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

A. *Minimum Scope of Insurance.* Consultant shall obtain insurance of the types described below:

- i. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
- ii. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent Consultants and personal injury and advertising injury. The City shall be named as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
- iii. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- iv. Professional Liability insurance appropriate to the Consultant's profession.

B. *Minimum Amounts of Insurance.* Consultant shall maintain the following insurance limits:

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

- ii. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
- iii. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

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

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

E. *Verification of Coverage.* The Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work. At the City's discretion, the verification described above may be attached to this Agreement as **Exhibit C**.

F. *Notice of Cancellation.* The Consultant shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.

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

H. *No Limitation.* Consultant's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

7. Record Keeping and Reporting.

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

funds contributed by the City to the performance of this Agreement.

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

8. City's Right of Inspection and Audit.

A. Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

B. The records and documents with respect to all matters covered by this Agreement shall be subject at all times to inspection, review or audit by the City during the performance of this Agreement. All work products, data, studies, worksheets, models, reports, and other materials in support of the performance of the service, work products, or outcomes fulfilling the contractual obligations are the products of the City.

9. Consultant to Maintain Records to Support Independent Contractor Status. On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors including, but not limited to the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to the Revised Code of Washington (RCW) Section 51.08.195, as required to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the Parties which is subject to RCW Title 51, Industrial Insurance.

10. Work Performed at the Consultant's Risk. The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

11. Termination.

A. The City reserves the right to terminate or suspend this Agreement at any

time, with or without cause, upon seven (7) days' prior written notice. In the event of termination or suspension, all finished or unfinished documents, data, studies, worksheets, models, reports, or other materials prepared by the Consultant pursuant to this Agreement shall promptly be submitted to the City.

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

C. This Agreement may be canceled by the City immediately if the Consultant's insurance coverage is canceled for any reason, or if the Consultant is unable to perform the services called for by this Agreement, or if the key professionals providing the services are no longer able to provide services to the City under this Agreement, or if Consultant fails to comply with any other provisions of this Agreement, and the Consultant fails to correct such noncompliance within five (5) business days' of written notice from the City to correct such breach.

D. The Consultant reserves the right to terminate this Agreement with not less than fourteen (14) days written notice, or in the event that outstanding invoices are not paid by the City within sixty (60) days.

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

12. Force Majeure. Notwithstanding anything to the contrary in this Agreement, any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, acts of war, terrorist acts, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, governmental laws, regulations or restrictions, civil commotions, Casualty, actual or threatened public health emergency (including, without limitation, epidemic, pandemic, famine, disease, plague, quarantine, and other significant public health risk), governmental edicts, actions, declarations or quarantines by a governmental entity or health organization, breaches in cybersecurity, and other causes beyond the reasonable control of the Party obligated to perform, regardless of whether such other causes are (i) foreseeable or unforeseeable or (ii) related to the specifically enumerated events in this paragraph (collectively, a "**Force Majeure**"), shall excuse the performance of such Party for a period equal to any such prevention, delay or stoppage. To the extent this Agreement specifies a time period for performance of an obligation of either Party, that time period shall be extended by the period of any delay in such Party's performance caused by a Force Majeure. Provided, however, that the current COVID-19 pandemic shall not be considered a Force Majeure unless constraints on a Party's performance that result from the pandemic become substantially more onerous after the effective date of this Agreement. In order to claim Force Majeure, the Party claiming must provide notice to the other Party within fourteen (14) days of the event which constitutes Force Majeure, or such claim shall be waived for any period in which notice was due.

13. Discrimination Prohibited. The Consultant shall not discriminate against any

employee, applicant for employment, or any person seeking the services of the Consultant under this Agreement, on the basis of race, color, religion, creed, sex, sexual orientation, age, national origin, marital status, presence of any sensory, mental or physical disability, or other circumstance prohibited by federal, State or local law or ordinance, except for a bona fide occupational qualification.

14. Assignment and Subcontract. The Consultant shall not assign or subcontract any portion of the services contemplated by this Agreement without the prior written consent of the City. The City reserves the right to reject, without cause, any such assignment. Any assignment made without the prior approval of the City is void.

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

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

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

18. Employment of State Retirees. The City is a “DRS-covered employer” which is an organization that employs one or more members of any retirement system administered by the Washington State Department of Retirement Systems (DRS). Pursuant to RCW 41.50.139(1) and WAC 415-02-325(1), the City is required to elicit on a written form if any of the Consultant’s employees providing services to the City retired using the 2008 Early Retirement Factors (ERFs), or if the Consultant is owned by an individual who retired using the 2008 ERFs, and whether the nature of the service and compensation would result in a retirement benefit being suspended. Failure to make this determination exposes the City to significant liability for pension overpayments. As a result, before commencing work under this Agreement, Consultant shall determine whether any of its employees providing services to the City or any of the Consultant’s owners retired using the 2008 ERFs, and shall immediately notify the City and shall promptly complete the form provided by the City after this notification is made. This notification to DRS could impact the payment of retirement benefits to employees and owners of Consultant. Consultant shall indemnify, defend, and hold harmless the City from any and all claims, damages, or other liability, including attorneys’ fees and costs, relating to a claim by DRS of a pension overpayment caused by or resulting from Consultant’s failure to comply with the terms of this provision. This provision shall survive termination of this Agreement.

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

20. Notices. All notices or other communications required or permitted under this Agreement shall be in writing and shall be (a) personally delivered, in which case the notice or communication shall be deemed given on the date of receipt at the office of the addressee; (b) sent by registered or certified mail, postage prepaid, return receipt requested, in which case the notice or communication shall be deemed given three (3) business days after the date of deposit in the United States mail; or (c) sent by overnight delivery using a nationally recognized overnight courier service, in which case the notice or communication shall be deemed given one business day after the date of deposit with such courier. In addition, all notices shall also be emailed, however, email does not substitute for an official notice. Notices shall be sent to the following addresses:

Notices to the City of Medina shall be sent to the following address:

Ryan Osada
Public Works Director
PO Box 144
Medina, Washington 98039
rosada@medina-wa.gov
425-233-6439

With a copy to the City Clerk at the same address.

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

Transpo Group
12131 113th Ave NE #203
Kirkland, WA 98034
jon.pascal@transpogroup.com
425.896.5230

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

22. Compliance with Laws. The Consultant agrees to comply with all federal, state, and

municipal laws, rules, and regulations that are now effective or in the future become applicable to Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of those operations.

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

24. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Agreement.

25. Severability. Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part with a valid and enforceable provision that comes as close as reasonably possible to expressing the intent of the stricken provision.

IN WITNESS WHEREOF, the City and the Consultant have executed this Agreement as of the dates listed below.

CITY OF MEDINA

TRANSPO GROUP

Jeff Swanson
City Manager

Name: _____

Title: _____

Date: _____

Date: _____

ATTEST

Dawn Nations
City Clerk

APPROVED AS TO FORM

Jennifer S. Robertson, City Attorney

Professional Services Agreement

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Updated Template (IBDR) - August 2024

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EXHIBIT A

Scope of Services:

The firm works under the general direction of the Public Works Director and additional specific assignments. The firm may be asked to provide services including, but not limited to:

- Engineering / Surveying
- Traffic impact studies and analysis
- Traffic signal warrant studies and design
- Intersection capacity analysis
- Roadway safety assessments
- Parking studies
- Traffic calming analysis and recommendations
- Preparation of plans, specifications, and estimates (PS&E) for traffic-related projects
- Grant support and funding applications related to transportation
- Public meeting presentations and technical assistance

EXHIBIT B
Rates of Service
See attached

Transpo Billing Rate Range Schedule

Rates are effective June 28, 2025 through June 26, 2026

Category	Billing Rate Range	
	Min	Max
Engineer/Planner/Analyst/Principal/Director - Level 7	\$260	\$355
Engineer/Planner/Analyst/Assoc Prin/Proj Adm - Level 6	\$230	\$280
Engineer/Planner/Analyst/Tech/Proj Adm - Level 5	\$200	\$250
Engineer/Planner/Analyst/Tech/Proj Adm - Level 4	\$155	\$210
Engineer/Planner/Analyst/Tech/Proj Adm - Level 3	\$135	\$180
Engineer/Planner/Analyst/Tech/Proj Adm - Level 2	\$125	\$160
Engineer/Planner/Analyst/Tech/Proj Adm/Intern - Level 1	\$50	\$150