

CITY OF SNOQUALMIE
AGREEMENT FOR CONSULTANT SERVICES
Water Rights Assistance

THIS AGREEMENT made and entered into by and between the CITY OF SNOQUALMIE, a Washington municipal corporation (the "City"), and Aspect Consulting LLC, a Washington corporation ("Consultant") is dated this 1st day of April 2015.

Consultant Business: Aspect Consulting LLC

Consultant Address: 401 Second Avenue S, Suite 201
Seattle 98104

Consultant Phone: 206.812.4748

Contact Name: Carl Einberger

Contact e-mail: ceinberger@aspectconsulting.com

Federal Employee ID No.: 91-2149055

Authorized City Representative for this contract Daniel J. Marcinko, Parks and Public Works Department Director

WHEREAS, the City desires to obtain water rights assistance services;

WHEREAS, public convenience and necessity require the City to obtain the services of a consultant with expertise in the area of water rights and water resources in the State of Washington; and

WHEREAS, the City finds that Consultant is qualified to perform and is experienced in performing the required services; and

WHEREAS, the City desires to engage the Consultant to in assist the City with the regulatory process for transferring existing water rights and obtaining new water rights.

NOW, THEREFORE, the parties herein do mutually agree as follows:

1. Employment of Consultant.

A. The City retains the Consultant to provide the services described in "Exhibit A" (the "Work"). Any inconsistency between this Agreement and the Scope of Work shall be resolved in favor of this Agreement. The Consultant shall perform the Work according to the terms and conditions of this Agreement.

B. The City may revise the Work and the compensation only by a written Change Order signed by the authorized City representative that shall become a part of this Agreement.

C. Work shall commence when the City issues a notice to proceed and it shall be completed no later than December 31, 2016, unless the completion date is extended in writing by the City.

2. Compensation.

A. The total compensation to be paid to Consultant, including all services and expenses, shall not exceed \$ 59,167 as shown on Exhibit B, which shall be full compensation for the Work. Consultant shall notify the City when its requests for payment reach eighty-five percent of the total compensation.

B. The Consultant shall be paid in such amounts and in such manner as described in Exhibit B.

C. Consultant shall be reimbursed for Eligible Expenses actually incurred. "Eligible Expenses" means those types and amounts of expenses that are approved for reimbursement by the City in writing before the expense is incurred. If travel and/or overnight lodging is authorized, Consultant shall lodge within the corporate limits of City.

3. Request for Payment.

A. Not more than once every thirty days the Consultant shall file its request for payment, accompanied by evidence satisfactory to the City justifying the request for payment, including a report of Work accomplished and tasks completed, and an itemization of Eligible Expenses with copies of receipts and invoices.

B. All requests for payment should be sent to

City of Snoqualmie
Attn: Nancy Davidson, Operations Manager
38624 SE River Street
P.O. Box 987
Snoqualmie, WA 98065

4. Work Product.

A. The Consultant shall submit all reports and other documents specified in Exhibit A according to the schedule established in Exhibit A. If, after review by the City, the information is found to be unacceptable, Consultant, at its expense, shall expeditiously correct such unacceptable work. If Consultant fails to correct unacceptable work, the City may withhold from any payment due an amount that the City reasonably believes will equal the cost of correcting the work.

B. All reports, drawings, plans, specifications, and intangible property created in furtherance of the Work, and any intellectual property in such documents, are property of the City and may be used by the City for any purpose; provided that re-use without Consultant's permission shall be at the City's sole risk.

5. Substitution of Personnel.

A. The Consultant recognizes and agrees that if a change is made substituting or changing assigned key personnel, the Consultant shall be responsible for any and all costs associated with "Transfer of Knowledge and Information". The Transfer of Knowledge and Information shall be defined to include the labor hours spent reviewing project documentation, participating in meetings with Project personnel, and participating in site visits to familiarize oneself with the Project and project location(s). The City shall not pay for any time spent for the "Transfer of Knowledge and Information".

B. The Consultant shall provide sufficient advance notice of any intention to remove or reassign key personnel. The Consultant shall not remove or reassign the key personnel

assigned to this Project without written consent from the City. Exhibit C, Key Personnel, is a listing of key individuals for this work. Notice for the substitution of individuals and positions identified as Key Personnel shall include the following:

- An explanation of the reason for the reassignment or removal;
- The name of the person proposed to replace the individual; and
- Identification of the experience and qualifications of the individual proposed.

C. For individuals who are not identified as "Key Personnel" in Exhibit C, the Consultant shall provide documentation supporting the labor rate for the substituted personnel prior to submitting an invoice and the labor rate shall not exceed 110 percent of the originally assigned personnel's labor rate.

D. The Consultant shall remove from the Project any personnel or subconsultant if, after the matter has been thoroughly considered by the City and the Consultant, the City considers such removal necessary and in the best interests of the Project and so advises the Consultant in writing.

6. Termination of Contract. City may terminate this Agreement by sending a written notice of termination to Consultant ("Notice") that specifies a termination date ("Termination Date") at least fourteen (14) days after the date of the Notice. Upon receipt of the Notice, the Consultant shall acknowledge receipt to the City in writing and immediately commence to end the Work in a reasonable and orderly manner. Unless terminated for Consultant's material breach, the Consultant shall be paid or reimbursed for all hours worked and Eligible Expenses incurred up to the Termination date, less all payments previously made; provided that work performed after date of the Notice is reasonably necessary to terminate the Work in an orderly manner. The Notice may be sent by any method reasonably believed to provide Consultant actual notice in a timely manner

7. Assignment of Contract – Subcontractors. Consultant shall not assign this contract or sub-contract or assign any of the Work without the prior written consent of the City.

8. Indemnification.

A. To the extent provided by law and irrespective of any insurance required of the Consultant, the Consultant shall defend and indemnify the City from any and all Claims arising out of or in any way relating to this Agreement; provided, however, the requirements of this paragraph shall not apply to that portion of such Claim that reflects the percentage of negligence of the City compared to the total negligence of all persons, firms or corporations that resulted in the Claim.

B. Consultant agrees that the provisions of this paragraph 7 apply to any claim of injury or damage to the persons or property of consultant's employees. As to such claims and with respect to the City only, consultant waives any right of immunity, which it may have under industrial insurance (Title 51 RCW and any amendment thereof or substitution therefore). THIS WAIVER IS SPECIFICALLY NEGOTIATED BY THE PARTIES AND IS SOLELY FOR THE BENEFIT OF THE CITY AND CONSULTANT.

C. As used in this paragraph: (1) "City" includes the City's officers, employees, agents, and representatives; (2) "Consultant" includes employees, agents, representatives sub-consultants; and (3) "Claims" include, but is not limited to, any and all losses, claims,

causes of action, demands, expenses, attorney's fees and litigation expenses, suits, judgments, or damage arising from injury to persons or property.

D. Consultant shall ensure that each sub-consultant shall agree to defend and indemnify the City to the extent and on the same terms and conditions as the Consultant pursuant to this paragraph.

9. Insurance.

A. Consultant shall comply with the following conditions and procure and keep in force at all times during the term of this Agreement, at Consultant's expense, the following policies of insurance with companies authorized to do business in the State of Washington. The Consultant's insurance shall be rated by A. M. Best Company at least "A" or better with a numerical rating of no less than seven (7) and otherwise acceptable to the City.

1. Workers' Compensation Insurance as required by Washington law and Employer's Liability Insurance with limits not less than \$1,000,000 per occurrence. If the City authorizes sublet work, the Consultant shall require each sub-consultant to provide Workers' Compensation Insurance for its employees, unless the Consultant covers such employees.
2. Commercial General Liability Insurance on an occurrence basis in an amount not less than \$1,000,000 per occurrence and at least \$2,000,000 in the annual aggregate, including but not limited to: premises/operations (including off-site operations), blanket contractual liability and broad form property damage.
3. Business Automobile Liability Insurance in an amount not less than \$1,000,000 per occurrence, extending to any automobile. A statement certifying that no vehicle will be used in accomplishing this Agreement may be substituted for this insurance requirement.
4. Professional Errors and Omissions Insurance in an amount not less than \$1,000,000 per occurrence and \$1,000,000 in the annual aggregate. Coverage may be written on a claims made basis; provided that the retroactive date on the policy or any renewal policy shall be the effective date of this Agreement or prior, and that the extended reporting or discovery period shall not be less than 36 months following expiration of the policy. The City may waive the requirement for Professional Errors and Omissions Insurance whenever the Work does not warrant such coverage or the coverage is not available.
5. Each policy shall contain a provision that the policy shall not be canceled or materially changed without 30 days prior written notice to the City.

Upon written request by the City, the insurer will furnish, before or during performance of any Work, a copy of any policy cited above, certified to be a true and complete copy of the original.

B. Before the Consultant performs any Work, Consultant shall provide the City with a Certificate of Insurance acceptable to the City Attorney evidencing the above-required insurance and naming the City of Snoqualmie, its officers, employees and agents as Additional Insured on the Commercial General Liability Insurance policy and the Business Automobile Liability Insurance policy with respect to the operations performed and services provided

under this Agreement and that such insurance shall apply as primary insurance on behalf of such Additional Insured. Receipt by the City of any certificate showing less coverage than required is not a waiver of the Consultant's obligations to fulfill the requirements.

C. Consultant shall comply with the provisions of Title 51 of the Revised Code of Washington before commencing the performance of the Work. Consultant shall provide the City with evidence of Workers' Compensation Insurance (or evidence of qualified self-insurance) before any Work is commenced.

D. In case of the breach of any provision of this section, the City may provide and maintain at the expense of Consultant insurance in the name of the Consultant and deduct the cost of providing and maintaining such insurance from any sums due to Consultant under this Agreement, or the City may demand Consultant to promptly reimburse the City for such cost.

10. Independent Contractor. The Consultant is an independent Contractor responsible for complying with all obligations of an employer imposed under federal or state law. Personnel employed by Consultant shall not acquire any rights or status regarding the City.

11. Employment. The Consultant warrants that it did not employ or retain any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement or pay or agree to pay any such company or person any consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right either to terminate this Agreement without liability or to deduct from the Agreement price or consideration or to otherwise recover, the full amount of such consideration.

12. Audits and Inspections. The Consultant shall make available to the City during normal business hours and as the City deems necessary for audit and copying all of the Consultant's records and documents with respect to all matters covered by this Agreement.

13. City of Snoqualmie Business License. Consultant shall obtain a City of Snoqualmie business license before performing any Work.

14. Compliance with Federal, State and Local Laws. Consultant shall comply with and obey all federal, state and local laws, regulations, and ordinances applicable to the operation of its business and to its performance of the Work.

15. Waiver. Any waiver by the Consultant or the City of the breach of any provision of this Agreement by the other party will not operate, or be construed, as a waiver of any subsequent breach by either party or prevent either party from thereafter enforcing any such provisions.

16. Complete Agreement. This Agreement contains the complete and integrated understanding and agreement between the parties and supersedes any understanding, agreement or negotiation whether oral or written not set forth herein.

17. Modification of Agreement. This Agreement may be modified by a Change Order as provided in Paragraph 1, or by a writing that is signed by authorized representatives of the City and the Consultant.

18. Severability. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void, insofar as it is in conflict with said laws, the remainder of the Agreement shall remain in full force and effect.

19. Notices.

A. Notices to the City of Snoqualmie shall be sent to the following address:

City of Snoqualmie
Attn: Daniel J. Marcinko
38624 SE River Street
P.O. Box 987
Snoqualmie, WA 98065

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

Aspect Consulting LLC
Attn: Carl Einberger
401 Second Avenue S, Suite 201
Seattle, WA 98104

20. Venue. This Agreement shall be governed by the law of the State of Washington and venue for any lawsuit arising out of this Agreement shall be in King County.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF SNOQUALMIE,
WASHINGTON

By: 

Its: Mayor

Date: April 25, 2016

ASPECT CONSULTING LLC

By: 

Typed/Printed Name: Carl E. Einberger

Its: Associate Hydrogeologist

Date: 4/1/16

ATTEST:


Jodi Warren, City Clerk

Date: April 25, 2016

AB16-061

APPROVED AS TO FORM:



Bob C. Sterbank, City Attorney

Date: 5/3/2016

Exhibit A Scope of Work

Task 1 – Evaluate City’s Water Right Portfolio/Recommend Actions

The purpose of this task is to evaluate the City’s existing water rights portfolio and provide recommendations for water right asset preservation. Proposed work includes:

- Determine recommended course of action for claim wells.
- Address and clarify status of existing water rights; provide recommendations if action is warranted.
- Prepare a Technical Memorandum summarizing conclusions and recommendations.

The estimated total cost for Task 1 is \$7,672.

Task 2 – Review Potential Water Rights for Purchase

The purpose of this task is to evaluate other existing water rights for potential purchase by the City. Proposed work includes:

- Conduct a screening level analysis of water rights upstream from approximately Snoqualmie Falls to evaluate potential suitability for purchase.
- Rank water rights for potential follow up (low, medium, high priority)
- Conduct a detailed evaluation of water right extent and validity of any potentially-available high priority rights identified through the screening level analysis. This work consider and build upon previous Aspect work and other available evaluations.
- Provide recommendations on pursuing purchase of above potential target rights.
- Prepare a Technical Memorandum summarizing the water rights evaluation and recommendations for next steps.

The estimated total cost for Task 2 is \$10,392.

Task 3 – Support Processing of Existing City Water Right Application

The City has a water right application filed with Ecology with a priority date of March 16, 1995. The purpose of this task is to evaluate pathways to obtain approval by Ecology of this water right application. Proposed work includes:

- Develop an approach for additional permitting support for a new groundwater right, including potential modeling.
- Conduct a screening level analysis of potential mitigation options, identify low, medium and high priority mitigation options.
- Conduct detailed analysis of identified high priority mitigation options.
- Provide recommendations on the path forward with Ecology.
- Provide recommendations and next steps on preferred mitigation options.
- Prepare a Technical Memorandum summarizing work completed under this task and recommended next steps.

The estimated total cost for Task 3 is \$24,300, including \$4,500 in subconsultant expenses (Gray & Osborne).

Task 4 – Prepare Water Right Application(s)

Prepare a water right application for potential City use.

The estimated total cost for Task 4 is \$4,203.

Task 5 – Management Reserve/Meetings

This task is intended to provide funding for meetings with the City and stakeholders as requested by the City within the constraints of the approved budget. In addition, this task includes project management tasks, including progress reports, staff coordination, and invoicing. It is anticipated that meetings will occur with the City and others, including:

- The City's project management team
- The City Council and the Council's Parks and Public Works Committee
- Other water right holders.
- The Washington State Department of Ecology.

The estimated total cost for Task 5 is \$12,601, including \$480 in subconsultant expenses (Gray & Osborne).

Project Cost Summary and Schedule

The estimated total cost for the proposed work totals \$59,167. A detailed cost summary is provided in the attached Exhibit B.

Our proposed tentative schedule, pending an established contract authorization date, follows:

Proposed Deliverables and Schedule		
Task	Deliverable	Due Date
1	Technical Memorandum – City's Water Right Portfolio Evaluation and Recommendations	75 days after contract authorization
2	Water Right Application Preparation	60 days after staff authorization
3	Technical Memorandum – Third-Party Water Right Evaluation and Recommendations	90 days after contract authorization
4	Technical Memorandum – New Water Right Options and Recommendations	120 days after staff authorization
5	Meeting Notes/Minutes	Throughout the project

Exhibit B

Compensation

Exhibit B - City of Snoqualmie Water Rights Support Cost Estimate - Project Management Plan

Job Number: 150386
 Project Manager: C. Einberger
 Communications Charge: 4%

Date Authorized: Pending
 Budget:
 Target Completion Date:

Task	Work Element	Labor Budget Basis in Hours								Total Labor Budget	Other Direct Charges (ODC)	Subs	
		TJF	DRH	CME	PSB	SDM	JB						
		Principal	Sr. Associate	Associate	Associate	Project	Sr. Staff	Project Assistant	GIS/CAD				
		\$ 209	\$ 195	\$ 182	\$ 182	\$ 136	\$ 188	\$ 80	\$ 99				
		\$ 217.36	\$ 202.80	\$ 189.28	\$ 189.28	\$ 141.44	\$ 195.52	\$ 83.20	\$ 102.96				
1	Evaluate WR Portfolio/Recommend Actions	4	1	18			14	3	2	\$ 7,672			
2	Prepare New WR Application - Canyon Springs	3	1	8			8	2	1	\$ 4,203			
3	Review Potential WR for Purchase	5	1	16			26	2	8	\$ 10,392			
4	Support WR Processing - Pending Application	8	2	32	4	12	40	6	8	\$ 19,800		\$ 4,500	G&O
5	Management Reserve/Meetings	16	2	36	2			4	4	\$ 11,821	\$ 300	\$ 480	G&O
Total		36	7	110	6	12	88	17	23	\$ 53,887	\$ 300	\$ 4,980	

Task Budget Summary

Task #	Task Title	Labor	ODC	Subs	Total
1	Evaluate WR Portfolio/Recommend Actions	\$ 7,672			\$ 7,672
2	Prepare New WR Application - Canyon Springs	\$ 4,203			\$ 4,203
3	Review Potential WR for Purchase	\$ 10,392			\$ 10,392
4	Support WR Processing - Pending Application	\$ 19,800		\$ 4,500	\$ 24,300
5	Management Reserve/Meetings	\$ 11,821	\$ 300	\$ 480	\$ 12,601
Total Project Budget		\$ 53,887	\$ 300	\$ 4,980	\$ 59,167

Exhibit C
Key Personnel

Carl Einberger, Project Manager

Tim Flynn, Project Principal

Dan Haller, Water Rights

Seann McClure, Project Hydrogeologist

Aaron Pruitt, Project Hydrogeologist

Russell Porter, Water System Planning and Engineering - Gray & Osborne