

**SERVICES AGREEMENT
CITY OF SUMAS**

The CITY OF SUMAS, a municipal corporation of the State of Washington (hereinafter the "City"), with offices located at City Hall, 433 Cherry Street, Sumas, Washington 98295, and **Cowling & Co. LLC, DBA Widener & Associates** (hereinafter the "Contractor"), with offices located at 1902 120th Place SE, Suite 202, Everett, Washington 98208, in consideration of the mutual covenants herein, do hereby agree as follows:

I. PURPOSE: The purpose of this Agreement is for the continued provision of professional consulting services and assistance by the Contractor to the City with regard to FEMA emergency repair projects related to flood damage, including continued assistance to the City with the next phase of documentation for FEMA Public Assistance for DR-4635 Projects

II. TERM OF AGREEMENT/TIME OF PERFORMANCE: The time for performance of work by Contractor shall begin upon the City's execution of this Agreement and shall be completed on or before December 31, 2027. If the scope of the work set forth herein is not completed by Contractor on or before December 31, 2027, Contractor shall be deemed to have failed to substantially perform a material part of its obligations under this Agreement and the City shall have the rights set forth under sub-section **IX. A.** below related to default, unless such failure is due to any force majeure event or other factor beyond the reasonable control of the Contractor.

III. LIAISON: The City's officer responsible for this Agreement is its Public Works Director, Sunny Aulakh (or such other individual designated by the City's mayor) its Project Manager. The Contractor's responsible person is Jordan Widener.

IV. SCOPE OF WORK: The Contractor shall provide consulting and related services for FEMA emergency repair projects related to flood damage, including continued assistance to the City with the next phase of documentation for FEMA Public Assistance for DR-4635 Projects as set forth in the "**Scope of Work**" contained in "**Exhibit A**" attached hereto, including the performance of all Tasks as specified therein, and as otherwise set forth in this Agreement.

The Contractor shall undertake and perform all services and work as required under this Agreement and in a manner that meets those FEMA requirements necessary for reimbursement from FEMA to the City for the costs of said services and work. The Contractor shall further fully cooperate and assist the City in obtaining reimbursement from FEMA for the costs of said services and work and shall sign those documents and undertake those acts reasonably necessary for the City to obtain FEMA reimbursement.

V. PAYMENT:

A. Contractor shall be compensated for services performed on a time and expense basis at the current hourly rates set forth in “**Exhibit B**”, to the extent that compensation does not exceed the amount set forth in sub-section B.

B. The total compensation paid to Contractor for performance of the services called for in this Agreement, and set forth in section IV above, **shall not exceed \$102,881.28.**

C. The City agrees to pay the Contractor monthly based on invoices submitted no more frequently than once per month. The City will pay the Contractor within 30 days of receipt of invoice for all non-disputed work satisfactorily completed related to the invoice.

D. Contractor will be paid on the basis of invoices for work satisfactorily completed. Invoices shall be submitted to the Project Manager for approval prior to payment. No final payment shall be made until approved by the Project Manager.

VI. EXTRA WORK AND CHANGE ORDERS: Work in addition to, or different from, that provided for in the Scope of Work section, shall only be allowed by **prior authorization in writing**, as a modification to this Agreement. Such modifications shall be attached hereto and made a part hereof, and shall be approved in the same manner as this Agreement.

VII. LIABILITY AND INSURANCE: The Contractor agrees to defend the City, hold it harmless, and indemnify it as to all claims, suits, costs, fees and liability to the extent arising out of the negligent or intentional acts or work of the Contractor, its employees, subcontractors, or agents (including field work) pursuant to this Agreement, where such liability is incurred as a result of the negligent or intentional actions or omissions of such parties. Contractor will obtain and maintain in force at least the following minimum insurance coverages covering all activity under this Agreement, and as to which the City shall be named as additional insured:

A.	Workers Compensation	Statutory Amount
B.	Broad Form Comprehensive General Liability (per occurrence)	\$1,000,000
C.	Automobile Liability	\$ 500,000
D.	Professional Liability	\$1,000,000

Contractor specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW. Further, the indemnification obligation under this contract shall not be limited in any way by any limitation on benefits payable to or for any third party under the workers' compensation acts.

An insurance certificate showing the coverage required under this paragraph VII will be submitted to the City for approval upon commencement of the work and at least annually for a period of two (2) years following completion of services under this Agreement.

VIII. COMPLIANCE WITH LOCAL LAWS: The Contractor shall be duly licensed and shall comply with all applicable laws, ordinances, and codes of the State and local governments.

IX. TERMINATION:

A. Should either party hereto believe that the other has failed to substantially perform all or a material part of its obligations under the Agreement, it shall deliver written notice to that effect to the other, specifying the alleged default and giving the other party ten (10) days to cure such default. Thereafter, should the default not be remedied to the satisfaction of the non defaulting party, this Agreement may be terminated upon written notice (delivered by certified mail). In the event of termination under this subparagraph, the Contractor shall be paid an amount, in the discretion of the Project Manager, which takes into account actual costs incurred by the Contractor in performing the project work to the date of termination, the amount of work originally required which was satisfactorily completed to the date of termination, the cost to the City of completing the work itself or of employing another firm to complete it and the inconvenience and time which may be required to do so, along with any other factors which affect the value to the City of the project work which has been performed to the date of termination. In no event shall the Contractor receive an amount based on anticipated profit on unperformed services or other work.

B. The City shall have the right to terminate this Agreement at any time upon thirty (30) days written notice to the Contractor.

C. On the giving of notice of termination, Contractor shall immediately begin winding down its services in anticipation of the termination, and shall be prepared to deliver to the City all documents and other uncompleted work on the date of termination.

D. In the event that funding is withdrawn, reduced or limited in any way after the effective date of this Agreement due to City budgetary constraints, and prior to its normal completion, the City may summarily terminate the Agreement as to the funds withdrawn, reduced or limited notwithstanding any other termination provisions of this Agreement. If the level of funding withdrawn, reduced or limited is so great that the City deems that the continuation of the services covered by this Agreement is no longer in the best interest of the City, the City may summarily terminate this Agreement in whole notwithstanding any other termination provision of this Agreement. Termination under this Section shall be effective upon receipt of written notice thereof.

E. Termination of this Agreement shall not prevent the City from invoking those provisions herein necessary to protect or enforce its rights hereunder, which provisions shall survive termination.

X. ASSIGNMENT: Neither party shall assign or delegate any or all interests in this Agreement without first obtaining the written consent of the other party.

XI. VENUE STIPULATION: This Agreement has been and shall be considered as having been made and delivered within the State of Washington, and shall be governed by the laws of the State of Washington both as to interpretation and performance. Any action in law or equity, or judicial proceeding for the enforcement of this Agreement or any of the provisions contained therein, shall be instituted and maintained only in Whatcom County Superior Court, Bellingham, Washington.

XII. STATUS OF CONTRACTOR: Neither Contractor nor personnel employed by the Contractor shall acquire any rights or status in the City's employment, nor shall they be deemed employees or agents of the City for any purpose other than as specified herein. Contractor shall be deemed an independent contractor and shall be responsible in full for payment of its employees, including worker's compensation, insurance, payroll deductions, and all related costs. Further, Contractor represents that it is customarily in the business of providing the services described in this Agreement, has its own place of business, is eligible for and does file with the Internal Revenue Service a schedule of business expenses, has established or will timely establish an account with the State Department of Revenue and has received a unified business identifier number, and maintains a separate set of books and records for such business.

XIII. CONTRACTOR'S STUDIES, REPORTS AND WORK PRODUCT: All documents, maps and other materials of whatever kind prepared by the Contractor pursuant to this Agreement shall be deemed property of the City upon completion or termination of the Agreement. The Contractor may keep file copies of its work product but shall retain no other rights of ownership therein. Reuse beyond that contemplated by this Agreement or alteration of any materials without the Contractor's written participation will be at the City's sole risk.

XIV. MISCELLANEOUS PROVISIONS:

A. Each party acknowledges that such party has read this Agreement and understands its contents, that such party has had the opportunity to have this Agreement reviewed by an attorney of such party's choice, and that such party either has consulted with an attorney or voluntarily has chosen not to consult with an attorney before signing this Agreement.

B. No modification, termination or amendment of this Agreement may be made except by written agreement signed by all parties, except as provided herein.

C. No failure by any of the foregoing parties to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy for a breach thereof shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. Any party hereto, by notice, may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto. No waiver shall affect or alter this Agreement, and each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

D. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

E. The entire agreement between the parties hereto is contained in this Agreement and the exhibits hereto; and this Agreement supersedes all of their previous understandings and agreements, written and oral, with respect to this transaction. To the extent any of the terms or conditions set forth in any exhibit or attachment hereto, including attached Exhibit(s) "A" and "B", are inconsistent with any provision of this Agreement, the provisions of this Agreement will control.

F. Standard of Care: The Contractor will perform its services using the degree of care and skill ordinarily exercised by similar professionals performing similar services under similar circumstances.

EXECUTED, this the _____ day of _____ 2024, for the **CONTRACTOR:**

Name: _____
Title: _____

EXECUTED, this the _____ day of _____ 2024, for the **CITY OF SUMAS:**

Mayor

Attest:

Approved as to Form:

City Clerk

City Attorney