

**CITY OF FIFE PROFESSIONAL SERVICES AGREEMENT**

1. **Parties and Date.** THIS Agreement is made effective as of the 8<sup>th</sup> day of August 2013 by and between CITY OF FIFE, WASHINGTON ("City") and David Evans and Associates, Inc. ("Consultant").

2. **General Purpose and Intent.**

Provide a safety analysis of the 54<sup>th</sup> Avenue East Railroad Crossing and act as the railroad safety expert for the City of Fife.

3. **Services by Consultant.**

A. Consultant shall perform the services described in the Scope of Work attached hereto as Exhibit "A" (the "Scope of Work"). The services performed by the Consultant shall not exceed the Scope of Work without prior written authorization from the City.

B. The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to the Agreement.

4. **Schedule of Work.**

A. Consultant shall perform the services described in the Scope of Work in accordance with the schedule. If delays beyond Consultant's reasonable control occur, the parties will negotiate in good faith to determine whether an extension is appropriate.

B. Consultant is authorized to proceed with the services described in the Scope of Work upon receipt of a written Notice to Proceed.

5. **Compensation.**

LUMP SUM. Compensation for the services described in the Scope of Work shall be a Lump Sum of \$ \_\_\_\_\_.

TIME AND MATERIALS NOT TO EXCEED. Compensation for the services described in the Scope of Work shall not exceed \$7,500.00 without written authorization and will be based on the list of billing rates and reimbursable expenses attached hereto as Exhibit "B."

TIME AND MATERIALS. Compensation for the services described in the Scope of Work shall be on a time and material basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit "C."

OTHER. \_\_\_\_\_

6. **Coordination of Contract Documents.** This Agreement consists of this professional services agreement form and Exhibits "A" through "\_\_\_\_." If there is any inconsistency between this professional

  
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services agreement form and any of the Exhibits, the professional services agreement form shall take precedence.

**7. Payment.**

A. Consultant shall provide monthly invoices in the format acceptable to the City for work performed to the date of invoice. Consultant shall maintain time and expense records for reimbursable expenses and any work that is billed hourly under this Agreement and provide them to the City upon request.

B. All invoices shall be paid by City warrant within sixty (60) days of receipt of a proper invoice.

C. Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Copies shall be made available on request.

D. If the services rendered do not meet the requirements of the Agreement, Consultant will correct or modify the work to comply with the Agreement. City may withhold payment for such work until the work meets the requirements of the Agreement.

**8. Discrimination and Compliance with Laws.**

A. Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

B. Consultant shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.

C. Consultant shall obtain a City of Fife business license pursuant to the provisions of Chapter 5.01 FMC prior to receipt of written Notice to Proceed.

D. Violation of this Paragraph 8 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by City, in whole or in part, and may result in ineligibility for further work for City.

**9. Term and Termination of Agreement**

A. This Agreement may be terminated by the City at any time upon the default of the Consultant or upon public convenience, in which event all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City, and Consultant shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination, not to exceed the total compensation set forth herein. Consultant shall not be entitled to any reallocation of cost, profit or overhead. Consultant shall not in any event be entitled to anticipated profit on work not performed because of such termination. Consultant shall use its best efforts

  
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to minimize the compensation payable under this Agreement in the event of such termination. If the Agreement is terminated for default, the Consultant shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Consultant. The Consultant shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default.

B. The City may suspend this Agreement, at its sole discretion, upon one week's advance notice to Consultant. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to the Consultant's reasonable expenses, and shall be subject to verification. The Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

**10. Standard of Care.** Consultant represents and warrants that it has the requisite training, skill and experience necessary to provide the services under this agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant under this agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

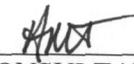
**11. Ownership of Work Product.**

A. All data materials, reports, memoranda, and other documents developed under this Agreement whether finished or not shall become the property of City, shall be forwarded to City at its request and may be used by City as it sees fit. Upon termination of this agreement pursuant to paragraph 9 above, all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City. City agrees that if it uses products prepared by Consultant for purposes other than those intended in this Agreement, it does so at its sole risk and it agrees to indemnify and hold Consultant harmless therefore.

B. Spatial data created by consultants for City of Fife via this contract should be delivered as either ESRI shapefiles or an ESRI file geodatabase. The data should be developed in (or projected to) StatePlane 1983, WA South (Projection), NAD83HPGN (Datum), US Survey Feet (units). These datasets should be delivered on CD/DVD, complete with any projection files, accessory tables relatable by a fixed unique identifier to the spatial data, and metadata using Federal Geographic Data Committe (FGDC) specifications. If the data is produced in AutoCad 2000 or later, the shapefile format is an export option and should be utilized and all other criteria still apply. The City of Fife retains ownership to such data layers produced using taxpayer dollars and controls any future dissemination or reuse of this data.

**12. Indemnification/Hold Harmless.** Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, 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

  
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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.

**13. Insurance.** The Consultant shall procure and maintain for the duration of this 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. 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.

A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

1. 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.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors 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.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. 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 Provisions

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

  
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Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor'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

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.

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.

**14. Assigning or Subcontracting.** Consultant shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld at the City's sole discretion.

**15. Independent Contractor.** Consultant is and shall be at all times during the term of this Agreement an independent contractor.

**16. Notice**

A. Any notice or communication required by this Agreement must be in writing, and may be given either personally, electronically with evidence of receipt, by express delivery service, or by registered or certified mail, return receipt requested. If given personally, by express delivery service, or by registered or certified mail, such notice or communication shall be deemed to have been given and received upon actual receipt. If delivery is made electronically, either by e-mail or facsimile transmission, a notice shall be deemed to have been given when delivered to the person to whom it is addressed, and there is electronic confirmation that it was received. Such notices or communications shall be given to the Parties at their addresses set forth below:

David K. Zabell  
City Manager

Al Tebaldi  
David Evans and Associates, Inc.

  
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5411 23<sup>rd</sup> Street East  
Fife, WA 98424

Phone: 253 922-2489  
Fax: 253 922-5355

Email: dzabell@cityoffife.org

3700 Pacific Highway East, Suite 311  
Fife, WA 98424

Phone: 253 250-0671  
Fax: 253 922-9781  
Email: amte@deainc.com

B. Either party may change its contact information by sending its new contact information to the other party in the same manner as is provided for sending the other party notice under the provisions of paragraph 16.A.

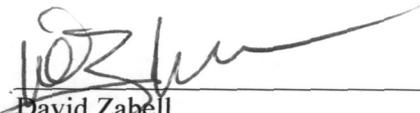
**17. Disputes.** Any action for claims arising out of or relating to this Agreement shall be governed by the laws of the State of Washington. Venue shall be in Pierce County Superior Court.

**18. Attorneys Fees.** In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorneys fees from the other party.

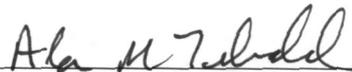
**19. Extent of Agreement/Modification.** This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.

CITY OF FIFE, WASHINGTON

CONSULTANT

By:   
David Zabell  
City Manager

David Evans and Associates, Inc.

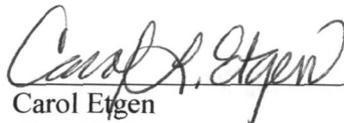
By: 

Date: 8/8/13

Name: Alan M. Tebaldi

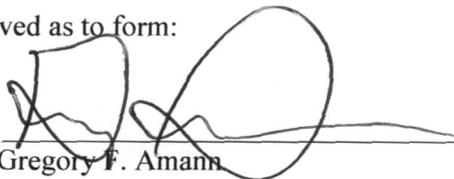
Attest:

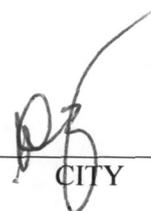
Title: Associate

By:   
Carol Etgen  
City Clerk

Date: 7/31/13

Approved as to form:

By:   
Gregory F. Amann  
Assistant City Attorney

  
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DAVID EVANS  
AND ASSOCIATES INC.

**Scope of Services and Fee Proposal  
54<sup>th</sup> Avenue Grade Crossing  
Crossing Safety Analysis  
Exhibit A**

At the request of the City of Fife (CITY), David Evans and Associates, Inc. (DEA) is submitting this scope of services to prepare a crossing safety analysis to assist in discussions with the Fife School District. The following describes the services that DEA will perform for the CITY under this Scope of Services.

**Introduction:**

The City of Fife would like to remove the fence erected in 54<sup>th</sup> Avenue East near the UPRR tracks. In order to move forward with that project the City needs to meet with the Fife School District to discuss crossing safety concerns. The concerns include crossing safety as well as derailment potential.

**Scope of Services:**

DEA will work directly for and on behalf of the CITY and will provide the CITY with analysis and supporting documentation regarding railroad safety as described in the following tasks. DEA will perform its services for the work described in this scope of services following the degree of care and skill ordinarily established by professional consultants and following the standards of the industry.

**Task 1 – Railroad safety literature research and summary**

For this task DEA will:

- Conduct a literature search of railroad safety studies and statistics related to crossing safety and derailment potential;
- Prepare a draft technical memorandum summarizing the research data;
- Meet with City staff to discuss the draft technical memorandum;
- Incorporate suggested City changes into a final technical memorandum.

**Task 2 – Prepare a safety analysis of the 54<sup>th</sup> Avenue railroad crossing**

For this task DEA will:

- Complete the FRA crossing safety worksheet for the 54<sup>th</sup> Avenue crossing;
- Prepare a roadway sight distance exhibit illustrating existing sight distance over the raised crossing;
- Meet with City staff to review the draft documents;
- Incorporate suggested City changes into final documents.

**Task 3 – Attend one School Board meeting with the City of Fife**

For this task DEA will:

- Attend one two hour meeting to discuss the literature research and safety analysis.

**Task 4 – Project Management/QC**

For this task DEA will:

- Provide project management, administration, and supervision for the project to coordinate, document, and progress the work in conformance with the scope, schedule and budget;
- Provide monthly invoices to the City;
- Provide QC review of deliverables.

**Assumptions:**

1. KPG will provide pedestrian and vehicular traffic volume forecasts necessary to complete the 54<sup>th</sup> Avenue crossing safety worksheet.
2. The CITY and/or KPG will provide emergency vehicle response data with and without the crossing.
3. Railroad safety literature will be readily available at no cost to DEA.
4. Literature research will take no more than four hours.
5. Kevin Jeffers is DEA's subject-matter expert on railroad issues.
6. City review comments will not require DEA to perform extensive rework or additional research.

**Fees:**

Work for this proposal will be done on a time and expense basis. Fees for other work that may be requested by the CITY will be done on a time and expense basis at DEA's normal hourly rates. An estimate is provided for each category of work. DEA reserves the right to shift funding as needed between the various tasks.

Estimated project costs are:

Task 1 – Railroad safety literature research and summary	\$3,000.00
Task 2 – Prepare a safety analysis of the 54 <sup>th</sup> Avenue railroad crossing	\$3,100.00
Task 3 – Attend one School Board meeting with the City of Fife	\$ 400.00
Task 4 – Project management/QC	<u>\$1,000.00</u>
TOTAL	\$7,500.00

**Schedule:**

Task 1 shall be completed by August 7, 2013. Task 2 shall be completed by August 16, 2013. The contract end date is December 31, 2013

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**EXHIBIT B**  
**STANDARD BILLING AND EXPENSE RATES**

**I. STANDARD EXPENSE RATES**

Expenses listed herein incurred by DEA in direct performance of the work shall be reimbursed on the following basis unless described elsewhere as an included cost:

Travel and Lodging (non-labor) .....	Cost plus 10%
Per Diem: .....	allowance of \$ 30.00/day
Vehicles:	
a. Cars .....	\$0.56.5/mile
b. Trucks .....	\$0.56.5/mile
Printing/Reproduction: (in-house):	
a. Photocopies .....	\$0.05/page
b. Paper Drawing/Plan Copies .....	\$3.00/sht
c. Vellum Drawing/Plan Copies .....	\$10.00/sht
d. Mylar Drawing/Plan Copies .....	\$50.00/sht
e. Poster Boards .....	\$3.50/sf
f. Color Plots .....	\$1.50/sf
Outside Services: .....	Cost plus 10%
Additional Insurance .....	Direct Cost
Equipment Rental .....	Cost plus 10%
Subconsultants .....	Cost plus 10%

**II. BILLING RATES**

**PROFESSIONAL CLASSIFICATION**

**RATE**

**ENGINEERING**

Principal in Charge (PICH)	\$ 251.00
Managing Professional Engineer (MGPE)	\$ 188.00
Professional Engineer (PFEN)	\$ 155.00
Design Engineer (DEEN)	\$ 110.00
Senior CADD Technician (SCAD)	\$ 97.00
CADD Technician (CADD)	\$ 80.00

**ENVIRONMENTAL**

Senior Scientist (SSCI)	\$ 185.00
Engineering Manager (ENGM)	\$ 185.00

**ADMINISTRATIVE**

Executive Administrator (EXAD)	\$ 95.00
Administrative Assistant (ADMA)	\$ 75.00
Senior Graphics Specialist (SGRP)	\$ 102.00

**SURVEYING**

Survey Manager (SVYM)	\$ 175.00
Project Surveyor (PSVR)	\$ 120.00
Sr. Prof. Land Surveyor (SPLS)	\$ 140.00
Prof. Land Surveyor (PLSU)	\$ 125.00
Survey Technician (SVTE)	\$ 100.00
2 Person Crew \$	170.00