

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 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

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CITY

[Signature]

CONSULTANT

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 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 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
5411 23rd Street East
Fife, WA 98424

Al Tebaldi
David Evans and Associates, Inc.
3700 Pacific Highway East, Suite 311
Fife, WA 98424

DJ

CITY

Aut

CONSULTANT

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

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

Email: dzabell@cityoffife.org

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.

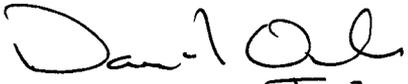
17. **Disputes.** Any action for claims arising out of or relating to this Agreement shall be governed by the laws of the State of Washington. Venue shall be in Pierce County Superior Court.

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: 12.06.2013

Name: Alan M. Tebaldi

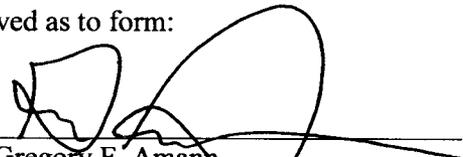
Attest:

Title: Associate

By: 
Carol Etgen
City Clerk

Date: 11/22/13

Approved as to form:

By: 
Gregory F. Amann
Assistant City Attorney


CITY


CONSULTANT



DAVID EVANS
AND ASSOCIATES INC.

**Scope of Services and Fee Proposal
Fife Pump Station #10 Lining
Construction Support Services
Exhibit A**

At the request of the City of Fife (CITY), David Evans and Associates, Inc. (DEA) is submitting this scope of services to provide limited field observation, pay estimate preparation and related services for the installation of a liner in sanitary sewer Pump Station #10. The following describes the services that DEA will perform for the CITY under this Scope of Services.

Introduction:

Tetra Tech will prepare bid documents and assist the CITY in procuring bids for the pump station lining. Tetra Tech and their inspectors will provide quality inspection and respond to design and technical issues throughout the contract. The CITY requests DEA to provide part time field observation to track Force Account work and new infrastructure construction and determine that adequate field documentation is conducted for payment of contract work in accordance with the contract documents. In addition, DEA will prepare monthly pay estimates for payment of completed work.

Scope of Services:

DEA will work directly for and on behalf of the CITY and will provide the CITY with construction observation services to document new construction and any Force Account work which is being performed, take questions from the Contractor and forward them to the CITY or to Tetra Tech, as appropriate, for response and prepare monthly pay estimates from field note records prepared by Tetra Tech's inspector. 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.

DEA will provide survey services to map approximately a 60'x60' area, prepare a legal description and exhibit for a permanent easement and prepare a legal description and exhibit for a temporary easement.

DEA's field inspector(s) will review the project site each day work is being done by the Contractor to observe the Contractor's work and progress and verify that the work does not need to be tracked as Force Account work. Field observations by DEA will not exceed three calendar months. Field observation will be full time for a period not to exceed three weeks while new infrastructure is being constructed and approximately two hours per day for the remainder of the three month period for the duration of the construction project. DEA will provide full time observation on days when Force Account work is underway, as directed by the CITY. Such additional observation will be considered extra work and will be billed at DEA's standard billing rates as shown in Exhibit B.

For this project DEA will:

- Act as liaison between the Contractor and the CITY on force account and payment issues;
- Refer appropriate matters to Tetra Tech's inspectors;
- Provide management and supervision of DEA's field observation staff;
- Maintain inspector's daily reports (IDRs) summarizing the DEA inspector's observations, discussions with Contractor personnel, discussions with CITY personnel, discussions with Tetra Tech personnel, contractor personnel and hours of work and other pertinent information and data regarding the construction as it relates to DEA's scope of work. IDR's will only be completed for the days that DEA is at the job site and will be limited to observations made while we are actually on site. A copy of DEA's IDRs will be kept on file at DEA's Fife office for City review.

Assumptions:

1. DEA will attend a pre-construction meeting for one-hour duration. The meeting will be organized and facilitated by Tetra Tech or the CITY.
2. The CITY and/or Tetra Tech will provide all contract documents as required for DEA's construction observation and preparation of pay estimates.
3. Construction of the sanitary sewer pump station liner and new infrastructure will take 90 calendar days.
4. New infrastructure, requiring full time observation, will take three calendar weeks during the 90 calendar days.
5. There will be no more than three (3) monthly pay estimates.
6. DEA will have unrestricted access to the project work area.
7. The Contractor will coordinate with DEA to ensure that no Force Account work is performed without DEA's knowledge.
8. Tetra Tech's inspector will prepare field note records of construction work items completed (including measurement of quantities) for processing of pay estimates.
9. Tetra Tech's inspector will prepare and maintain their own inspector's daily report of work they are inspecting and report directly to the CITY. Tetra Tech will provide a copy of their IDR to DEA for our records.
10. The contractor will provide the City and DEA force account backup information including labor rates, material invoices and equipment rates.

Exclusions and Conditions:

1. DEA will not attend weekly construction meetings.
2. DEA will not be responsible for construction zone safety, traffic control management or development of a traffic control plan.
3. DEA will not be responsible for the Contractor's, Tetra Tech's or the City's compliance with any regulations, laws, ordinances or funding requirements.
4. DEA will not be responsible for the Contractor's construction means, methods, techniques, sequences or procedures, or safety precautions and programs.
5. DEA will not track working days or prepare a Weekly Statement of Working Days.
6. DEA will not perform construction observations for compliance with the technical specifications, for completeness of the work or for compliance with industry standards on any coating removal, grout injection, surface sealing, surface preparation or recoating of any sanitary sewer infrastructure. All such observation shall be performed by Tetra Tech's inspectors.
7. DEA will not be responsible for the Contractor's failure to carry out the work in accordance with the contract documents. DEA will endeavor to identify and report to the CITY when work is not being adequately documented, but it is understood that DEA does not and cannot guarantee the performance of the Contractor or of Tetra Tech's inspectors.
8. DEA will advise the CITY of work that may be subject to extra payment outside of the normal contract bid items.
9. DEA shall have the authority to stop work that is not being properly documented for payment. DEA shall have authority to direct the Contractor to stop work when such stoppage may, in DEA's reasonable opinion, be necessary for the proper execution of the work or to protect the interests of the CITY.
10. DEA will not enter any confined spaces. Any work that requires entering a confined work space shall be performed by Tetra Tech or CITY personnel.
11. DEA will not review any material submittals, project schedules or respond to any RFI's.
12. Final acceptance of all work (temporary and permanent) and materials will be made by Tetra Tech and/or the CITY.

Fees:

Work for this proposal will be done on a time and expense basis based on 90 calendar days. 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:

Project management, mailing, invoicing, archiving, and similar costs	\$ 1,600.00
Survey – permanent & temporary easements	\$ 7,000.00
Review and comment on Division 1 specifications	\$ 2,400.00
Preparation of pay estimates	\$ 3,100.00
Field observation	<u>\$18,700.00</u>
TOTAL	\$32,800.00

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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)	\$ 253.00
Managing Professional Engineer (MGPE)	\$ 188.50
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