

**KING COUNTY FLOOD CONTROL ZONE DISTRICT
CONTRACT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is entered into by and between the King County Flood Control District, a Washington municipal corporation (“District”), and CollinsWoerman, organized under the laws of the state of Washington, located and doing business at 710 Second Ave, Suite 1400, Seattle, WA 98104 (hereinafter the “Consultant”).

RECITALS:

WHEREAS, the District has determined the need to have certain services performed for the residents of King County, requiring specific expertise; and

WHEREAS, the District desires to have the Consultant perform such services pursuant to certain terms and conditions;

NOW THEREFORE, in consideration of the mutual benefits and conditions hereinafter contained, the parties hereto agree as follows:

AGREEMENT:

1. Scope and Schedule of Services to be Performed by Consultant.

The Consultant shall perform work as assigned by the District, 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 District, however, this Agreement does not obligate the District to assign any specific work or any work to the Consultant. 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.

2. Compensation and Method of Payment. The District shall pay the Consultant for services rendered according to the rates and methods set forth below. The Consultant shall request payment for work performed using the billing invoice form at Exhibit “B.”

TIME AND MATERIALS NOT TO EXCEED. Compensation for these services shall not exceed \$100,000 per year without written authorization and will be based on the list of billing rates and reimbursable expenses attached hereto as Exhibit “A.”

The Consultant shall complete and return to the District Exhibit “C,” federal tax Form W-9, prior to or along with the first billing invoice.

3. Payment.

A. The Consultant shall maintain time and expense records and provide them to the District monthly after services have been performed, along with monthly invoices in a format acceptable to the District for work performed to the date of the invoice.

B. All invoices shall be paid by District warrant within thirty (30) days of receipt of a proper invoice. If the District objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the Parties shall immediately make every effort to settle the disputed portion.

C. The Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by District 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. 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 Revised Code of Washington (RCW) 51.08.195, as required by law, 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 Title 51 RCW, Industrial Insurance.

E. If the services rendered do not meet the requirements of the Agreement, the Consultant will correct or modify the work to comply with the Agreement. The District may withhold payment for such work until the work meets the requirements of the Agreement. The District shall pay the Consultant for services rendered within ten (10) days after District voucher approval. However, if the District 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.

F. The District reserves the right to direct the Consultant's compensated services before reaching the maximum amount.

4. Duration of Agreement.

A. This Agreement shall be in full force and effect for a period commencing upon mutual execution of this Agreement, and ending October 31, 2024, unless sooner terminated under the provisions of this Agreement. The District reserves the right to offer up to two one-year extensions prior to the expiration of the Agreement to retain the Consultant's services.

B. Time is of the essence of this Agreement in each and all of its provisions in which performance is required. If delays beyond the Consultant's reasonable control occur, the Parties will negotiate in good faith to determine whether an extension is appropriate.

5. Standard of Care. The 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 the 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.

6. 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 District, shall be the property of the District 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 District are considered "public records" and are subject to disclosure by the District under the Public Records Act, Chapter 42.56 RCW ("the Act"). Consultant agrees to safeguard and preserve records in accordance with the Act. The District may be required, upon request, to disclose the Agreement, and the documents and records submitted to the District by Consultant, unless an exemption under the Public Records Act applies. If the District 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 District's public records officer at no cost to the District.

7. **Relationship of the Parties; 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 District 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 District. 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 District being interested only in the results obtained under this Agreement. None of the benefits provided by the District to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the District to the employees, agents, representatives, or sub-consultants of the Consultant. The District 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 District may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

8. Indemnification.

A. Consultant shall protect, defend, indemnify and hold harmless the District, its officers, officials, employees, agents and volunteers from any and all costs, claims, injuries, damages, suits, losses or liabilities of any nature, including attorneys' fees, arising out of or in connection with the negligent acts, errors or omissions of the Consultant, its officers, employees and agents in performing this Agreement.

B. 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 District, 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.

C. 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.

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

9. **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.

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 District shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the District.

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 Provisions.* The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability, and Commercial General Liability insurance:

- i. The Consultant's insurance coverage shall be primary insurance as respects the District. Any insurance, self-insurance or insurance pool coverage maintained by the District shall be in excess of the Consultant's insurance and shall not contribute with it.
- ii. The Consultant's insurance shall be endorsed to state that coverage shall not be canceled by either Party except after thirty (30) days prior written notice by mail has been given to the District.

D. *Verification of Coverage.* The Consultant shall furnish the District with original certificates for all policies and a copy of the amendatory endorsements, including but not necessarily limited to, the additional insured endorsement for Automobile Liability and Commercial General Liability, evidencing the insurance requirements of the Consultant before commencement of the work.

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

F. *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 District 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 District on demand, or at the sole discretion of the District, offset against funds due the Consultant from the District.

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

10. 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 other such records as may be deemed necessary by the District to ensure proper accounting of all funds contributed by the District to the performance of this Agreement.

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

11. District's Right to 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 District and shall be subject to the District'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 District 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 District.

12. 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.

13. Termination.

A. *Termination without cause.* This Agreement may be terminated by the District at any time for public convenience, for the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors.

B. *Termination with cause.* This Agreement may be terminated upon the default of the Consultant and the failure of the Consultant to cure such default within a reasonable time after receiving written notice of the default.

C. *Immediate Termination.* This Agreement may be terminated 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.

D. *Rights Upon Termination.*

i. With or Without Cause. Upon termination for any reason, all finished or unfinished documents, reports, or other material or work of the Consultant pursuant to this Agreement shall be submitted to the District, and the 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. The Consultant shall not be entitled to any reallocation of cost, profit or overhead. The Consultant shall not in any event be entitled to anticipated profit on work not performed because of such termination. The Consultant shall use its best efforts to minimize the compensation payable under this Agreement in the event of such termination. Upon termination, the District may take over the work and prosecute the same to completion, by contract or otherwise.

ii. Default. 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 District 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 District in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained, by the District by reason of such default.

E. *Suspension.* The District may suspend this Agreement, at its sole discretion. 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.

F. *Notice of Termination or Suspension.* If delivered to the Consultant in person, termination shall be effective immediately upon the Consultant's receipt of the District's written notice or such date as stated in the District's notice of termination, whichever is later. Notice of suspension shall be given to the Consultant in writing upon one week's advance notice to the Consultant. Such notice shall indicate the anticipated period of suspension. Notice may also be delivered to the Consultant at the address set forth in the "Notices" Section herein.

G. Nothing in this Subsection shall prevent the District from seeking any legal remedies it may otherwise have for the violation or nonperformance of any provisions of this Agreement.

14. Discrimination Prohibited.

A. 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.

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

15. 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.

16. Assignment and Subcontract. The Consultant shall not assign or subcontract any portion of the services contemplated by this Agreement without the written consent of the District. Any

assignment made without the prior approval of the District is void.

17. **Conflict of Interest.** The Consultant represents to the District 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 District.

18. **Confidentiality.** All information regarding the District 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.

19. **Non-appropriation of Funds.** If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the District 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 District in the event that the terms of the provisions are effectuated.

20. **Employment of State Retirees.** The District 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 District is required to elicit on a written form if any of the Contractor’s employees providing services to the District retired using the 2008 Early Retirement Factors (ERFs), or if the Contractor 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 District to significant liability for pension overpayments. As a result, before commencing work under this Agreement, Contractor shall determine whether any of its employees providing services to the District or any of the Contractor’s owners retired using the 2008 ERFs, and shall immediately notify the District and shall promptly complete the form provided by the District after this notification is made. This notification to DRS could impact the payment of retirement benefits to employees and owners of Contractor. Contractor shall indemnify, defend, and hold harmless the District 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 Contractor’s failure to comply with the terms of this provision. This provision shall survive termination of this Agreement.

21. **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 exhibits, then the terms and conditions of this Agreement shall prevail over the exhibits. Either party may request changes to the Agreement. Changes which are mutually agreed upon shall be incorporated by written amendments to this Agreement.

22. **Non-waiver of Breach.** The failure of either Party to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein contained in one or more instances, shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options, and the same shall be in full force and effect.

23. **Modification.** No waiver, alteration, modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the District

and the Consultant.

24. 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:

DISTRICT:

King County Flood Control District
 Russell Pethel
 Administrator/Clerk
 516 3rd Ave. Room 1200
 Seattle, WA 98104
 Email: russell.pethel@kingcounty.gov

CONSULTANT:

CollinsWoerman
 Steve Moddemeyer, Principal
 710 Second Ave, Suite 1400
 Seattle, WA 98104
 Email: smoddemeyer@collinswoerman.com

25. Applicable Law; Venue; Attorney's 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 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 attorney's fees and costs of suit, which shall be fixed by the judge hearing the case, and such fee shall be included in the judgment.

26. 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.

27. 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.

28. 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 District 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 District and the Consultant have executed this Agreement as of the dates listed below.

CONSULTANT:

KING COUNTY FLOOD CONTROL DISTRICT:

By: _____

By: _____

Reagan Dunn

Title: _____

Title: Chair

Date: _____

Date: _____

**EXHIBIT B
KING COUNTY FLOOD CONTROL DISTRICT BILLING INVOICE**

To: King County Flood Control District
Russell Pethel, Administrator/ Clerk of the Board
King County Courthouse
516 Third Avenue, Room 1200
Seattle, WA 98104

E-mail: russell.pethel@kingcounty.gov
Phone: 206-848-0278

Invoice Number: _____ Date of Invoice: _____

Consultant Mailing Address: _____ Telephone: _____

Contract Period: _____ Reporting Period: _____

Amount Requested this Invoice: _____

Attach itemized description of services provided.

Specific Program: _____

Authorized signature

For Department Use Only

BUDGET SUMMARY

Total Contract Amount: _____

Previous Payments: _____

Current Request: _____

Balance Remaining: _____

Approved for Payment by: _____

Date: _____

**EXHIBIT C
KING COUNTY FLOOD CONTROL DISTRICT**

Russell Pethell,
Administrator/Clerk of the Board
King County Courthouse
516 Third Avenue, Room 1200
Seattle, WA 98104

E-mail: russell.pethell@kingcounty.gov
Phone: 206-848-0278

TAX IDENTIFICATION NUMBER

In order for you to receive payment from the King County Flood Control Zone District ("District"), the consultant must have either a Tax Identification Number or a Social Security Number. The Internal Revenue Service Code requires a Form 1099 for payments to every person or organization other than a corporation for services performed in the course of trade or business. Further, the law requires the District to withhold 20% on reportable amounts paid to unincorporated persons who have not supplied us with their correct Tax Identification Number or Social Security Number.

Please complete the following information request form and return it to the District prior to or along with the submittal of the first billing invoice.

Please complete the following information request form and return it to the District prior to or along with the submittal of the first billing invoice.

Please check the appropriate category:

_____ Corporation _____ Partnership _____ Government Consultant
_____ Individual Proprietor _____ Other (explain)

EIN No.: _____ Social Security No.: _____

Print Name: _____

Title: _____

Business Name: _____

Business Address: _____

Business Phone: _____

Signature

Date