

**CITY OF MARYSVILLE
PROFESSIONAL SERVICES AGREEMENT**

Project Name: LID #71 – 156th St Overcrossing

THIS AGREEMENT, is made and entered into in duplicate this ____ day of December, 2013 by and between the CITY OF MARYSVILLE, a Washington municipal corporation, hereinafter referred to as the “CITY” and Ogden Murphy Wallace, PLLC, hereinafter referred to as the “SERVICE PROVIDER”.

WITNESSETH:

WHEREAS, the CITY desires to have certain services and/or tasks performed as set forth below requiring specialized skills and other supportive capabilities; and

WHEREAS, the SERVICE PROVIDER represents that the SERVICE PROVIDER is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, where required, to perform the services and/or tasks set forth in this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, the parties hereto agree as follows

1. **SCOPE OF SERVICES**

The SERVICE PROVIDER shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance of hearing examiner services or final assessment roll hearing for Marysville LID 71 known as the 1056th Street Overcrossing, hereafter referred to as the “Project”.

2. **TERM**

The Project shall begin upon full execution of this Agreement and shall be completed no later than February 28, 2014, unless sooner terminated according to the provisions herein. The CITY will only reimburse services rendered within this time frame.

3. **COMPENSATION AND METHOD OF PAYMENT**

A. Payments for services provided hereunder shall be made following the performance of such services, unless otherwise permitted by law and approved in writing by the CITY. Hearing examiner services shall be billed on an hourly basis at the rate of \$ _____ per hour.

B. No payment shall be made for any service rendered by the SERVICE PROVIDER except for services identified and set forth in this Agreement.

C. The SERVICE PROVIDER shall submit to the City Clerk/Finance Director an invoice for services rendered following completion of services. The CITY shall initiate

authorization for payment after receipt of said approved invoice and shall make payment to the SERVICE PROVIDER within approximately thirty (30) days thereafter.

4. **REPORTS AND INSPECTIONS**

A. The SERVICE PROVIDER at such times and in such forms as the CITY may require, shall furnish to the CITY such statements, records, reports, data, and information as the CITY may request pertaining to matters covered by this Agreement. All of the reports, information, data, and other related materials, prepared or assembled by the SERVICE PROVIDER under this Agreement and any information relating to personal, medical and financial data will be treated as confidential only as allowed by Washington State laws regarding disclosure of public information, Chapter 42.56, R.C.W.

B. The SERVICE PROVIDER shall at any time during normal business hours and as often as the CITY or State Examiner may deem necessary, make available for examination all of its records and data with respect to all matters covered, directly or indirectly, by this Agreement and shall permit the CITY or its designated authorized representative to audit and inspect other data relating to all matters covered by this Agreement. The CITY shall receive a copy of all audit reports made by the agency or firm as to the SERVICE PROVIDER'S activities. The CITY may, at its discretion, conduct an audit, at its expense, using its own or outside auditors, of the SERVICE PROVIDER'S activities which related, directly or indirectly, to the Agreement.

5. **INDEPENDENT CONTEACTOR RELATIONSHIP**

A. The parties intend that an independent contractor relationship will be created by this Agreement. The City is interested primarily in the results to be achieved; subject to paragraphs herein, the implementation or services will lie solely with the discretion of the SERVICE PROVIDER. No agent, employee, servant or representative of the SERVICE PROVIDER shall be deemed to be an employee, servant or representative of the CITY for any purpose, and the employees of the SERVICE PROVIDER are not entitled to any of the benefits the CITY provides for its employees except as otherwise expressly provided herein. The SERVICE PROVIDER, an independent contractor, will be solely and entirely responsible for its act and for the acts of its agent, employees, servant, subcontractors or representatives during the performance of this Agreement.

B. In the performance of the services herein contemplated the SERVICE PROVIDER is an independent contractor with the authority to control and direct the performance of the details of the work.

6. **HOLD HARMLESS AND INDEMNIFICATION**

A. The SERVICE PROVIDER shall indemnify and hold the CITY and its agents, employees, and/or officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, loss, damages, or costs, of whatsoever kind or nature, brought against the CITY arising out of, or in connection with, or incident to, the execution of this Agreement and/or the SERVICE PROVIDER'S performance of failure to perform any aspect of this Agreement; provided, however that if such claims are caused by or result from the concurrent negligence of the CITY, its agents, employees, and/or

officers, this indemnity provisions shall be valid and enforceable only to the extent of the negligence of the SERVICE PROVIDER; and provided further, that nothing herein shall require the SERVICE PROVIDER to hold harmless or defend the CITY, tis agents, employees, and/or officers for damages or loss caused by the CITY’s sole negligence. The SERVICE PROVIDER expressly agrees that the indemnification provided herein constitutes the contractor’s waiver of immunity under Title 51 R.C.W., for the purposes of this Agreement. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

B. No liability shall attach to the CITY by reason of entering into this Agreement except as expressly provided herein.

7. **INSURANCE**

The SERVICE PROVIDER shall procure and maintain for the duration of the 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 SERVICE PROVIDER, their agents, representative, employees or subcontractors. SERVICE PROVIDER’s maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the CITY’S recourse to any remedy available at law or in equity. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

The SERVICE PROVIDER shall provide a Certificate of Insurance and **additional insured endorsement page(s)** evidencing:

A. Automobile Liability insurance with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage on all owned, non-owned, hired and leased vehicles. If necessary, the policy shall be endorsed to provide contractual liability coverage.

B. Commercial General Liability insurance written on an ISO occurrence basis form CG 00 01 and shall cover liability arising from premises, operations, property damage, independent contractors and personal injury and advertising injury, with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate.

C. Worker’s Compensation coverage as required by the Industrial Insurance laws of the State of Washington

D. Professional Liability insurance, including “errors and omissions” with limits no less than \$1,000,000 on a claims-made annual aggregate.

Payment of deductible/self-insured retention shall be sole responsibility of SERVICE PROVIDER.

The CITY, its officers, agents and elected officials shall be named as an additional insured on the insurance policy, as respects work-performed by or on behalf of the SERVICE PROVIDER and **a copy of the endorsement nam**ing the CITY as additional insured shall be

attached to the Certificate of Insurance and **provided to the CITY before the contract is finalized**. A copy of the certificate and endorsement shall be provided to the CITY prior to commencement of the work. The CITY reserves the right to request certified copies of any required insurance policies.

The SERVICE PROVIDER'S insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability. The SERVICE PROVIDER's insurance shall be primary insurance with respect to the CITY and the CITY shall be given thirty (30) days prior written notice of any cancellation, suspension or material change in coverage

8. **TREATMENT OF ASSETS**

Title to all property furnished by the CITY shall remain in the name of the CITY and the CITY shall be the owner of the work product and other documents, if any, prepared by the SERVICE PROVIDER pursuant to this Agreement including but not limited to:

- a. The work product of the hearing examiner.
- b. All digital files including spreadsheets, word processed documents, graphics, etc.
- c. All map and engineering drawing files, etc. including their digital form.
- d. Unabridged rights to reproduction and distribution.
- e. Any restrictive covenants added to the work product shall be considered breach of contract

9. **PRODUCT STANDARDS**

The CITY shall have the right to require delivery of services and products in a format compatible with CITY standards.

- a. Map and drawing digital files.
- b. Word processing text and documents.
- c. Graphics files
- d. Document size and shape.

10. **COMPLIANCE WITH LAWS**

A. The SERVICE PROVIDER, as an independent contractor in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, and is solely responsible for the payment of taxes applicable to the services performed under this Agreement, including regulations for licensing, certification and operation or facilities, maintenance of insurance and records, programs and accreditation, licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services. The CITY shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance or unemployment compensation programs or otherwise assuming the duties of an employer with respect to Service provider or any employee of the independent contractor.

B. The SERVICE PROVIDER specifically agrees to obtain a City of Marysville Business License and pay any applicable business and occupation (B & O) taxes which may be due as a result of the Business License and this Agreement. The Service Provider shall obtain a City of Marysville business license prior to beginning work on the contract.

11. **NONDISCRIMINATION**

A. Nondiscrimination in Employment. In the performance of this Agreement, the SERVICE PROVIDER will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, age, sexual orientation, religion, veteran's status, or the presence of any sensory, mental or physical handicap or any other bases prohibited by applicable Federal, State, or local law; provided that the prohibition against discrimination in employment is because of the particular work involved. The SERVICE PROVIDER shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.

B. Nondiscrimination in Services. The SERVICE PROVIDER will not discriminate against any recipient of any services, or benefits provided for in this Agreement on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental, or physical handicap.

C. If any assignment and/or subcontracting has been authorized by CITY, said assignment or subcontract shall include appropriate safeguards against discrimination. The SERVICE PROVIDER shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

12. **ASSIGNMENT/SUBCONTRACTING**

A. The SERVICE PROVIDER shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the CITY, and its further agreed that said consent must be sought in writing by the SERVICE PROVIDER not less than thirty (30) days prior to the date of any proposed assignment. The CITY reserves the right to reject without cause any such assignment.

B Any work or services assigned hereunder shall be subject to each provision of this Agreement and proper bidding procedures where applicable as set forth in local, State and/or Federal statutes, ordinances and guidelines.

C. Any technical/professional service subcontract not listed in this Agreement, must have express advance approval by the CITY.

13. **CHANGES**

Either party may request changes to the scope of services and performance to be provided hereunder, however, no change or addition to this agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both parties. Such amendments shall be attached to and made a part of this Agreement.

14. **MAINTENANCE AND INSPECTION OF RECORDS**

A. The SERVICE PROVIDER shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable time to inspection, review, or audit, by the CITY, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

B. The SERVICE PROVIDER shall retain all books, records, documents and other material relevant to this Agreement, for six (6) years after its expiration. The Service Provider agrees that the CITY or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

15. **POLITICAL ACTIVITY PROHIBITED**

None of the funds, materials, property or services provided directly or indirectly under the Agreement shall be used for any partisan politician activity, or to further the election or defeat of any candidate for public office.

16. **PROHIBITED INTEREST**

No member, officer, or employee of the CITY shall have any interest, direct or indirect, in this agreement or the proceeds thereof.

17. **OTHER PROVISIONS**

The following additional terms shall apply.

A. SERVICE PROVIDER and the CITY agree that attorney Wayne Tanaka will serve as hearing examiner and by entry into this Agreement, Marysville City Council hereby appoints Wayne Tanaka as hearing examiner for the final assessment roll hearing for Marysville LID No. 71.

B. The CITY insists on the highest level of professional ethics from its contracted services providers, and desires to contract only with service providers that will be committed to advancing and protecting the CITY'S interests. To the best knowledge of SERVICE PROVIDER there are no professional conflicts with the CITY. SERVICE PROVIDER further warrants that to the best knowledge of SERVICE PROVIDER none of its agents or employees is now retained by, providing services for, or otherwise assisting in any manner any person or entity engaged in litigation against the CITY; provided that such services or assistance is specifically in support of such litigation against the CITY. SERVICE PROVIDER warrants that throughout the duration of this Agreement, and for a period of two (2) years following the expiration or termination of this Agreement, no employee of SERVICE PROVIDER will be retained by, provide services for, or otherwise assist any person or entity that is engaged in litigation with the CITY; provided that such services or assistance is specifically in support of such litigation against the CITY. For the purposes of this section, the term "litigation with the CITY" shall mean any judicial lawsuit, administrative proceeding, arbitration, mediation or other contested matter in which a party is advocating a position contract or otherwise adverse to that of the CITY, specifically including

but not limited to any challenge to or appeal of a land use, building code or other decision. This provision shall survive the expiration or termination of this Agreement.

18. **TERMINATION**

A. Termination for Convenience. The CITY may terminate this Agreement, in whole or in part at any time, by at least thirty (30) days written notice to SERVICE PROVIDER.

The SERVICE PROVIDER shall be paid his costs, including contract close-out costs, and profit on work satisfactorily performed, up to the time of termination. The SERVICE PROVIDER shall promptly submit a termination claim to the CITY. If the SERVICE PROVIDER has any property in his possession belonging to the CITY, the SERVICE PROVIDER will account for the same, and dispose of it in a manner direct by the CITY.

B. Termination for Cause. If the SERVICE PROVIDER fails to perform in the manner called for in this Agreement, or if the SERVICE PROVIDER fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within five (5) days written notice thereof, the CITY may terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the SERVICE PROVIDER setting forth the manner in which the SERVICE PROVIDER is in default. The SERVICE PROVIDER will only be paid for services performed in accordance with the manner of performance set forth in this Agreement.

19. **NOTICE**

Notice provided for in this Agreement shall be sent by certified mail to the addresses designated for the parties on the last page of this Agreement.

20. **ATTORNEY'S FEES AND COSTS**

If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.

21. **JURISDICTION AND VENUE**

A. This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance.

B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof, shall be instituted and maintained only in any of the courts of competent jurisdiction in Snohomish County, Washington.

22. **SEVERABILITY**

A. If, for any reason, any part, term or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions

shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

B. If it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith, and shall be deemed modified to conform to such statutory provisions.

23. **ENTIRE AGREEMENT**

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions state herein shall constitute material breach of contract and cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of any other of the provisions of this Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

CITY: City of Marysville
1049 State Avenue
Marysville, WA 98270

SERVICE PROVIDER:
OGDEN MURPHY WALLACE, PLLC
c/o Wayne Tanaka
901 Fifth Avenue, Suite 3500
Seattle, WA 98164

By: _____
John Nehring, Mayor

By: _____
Wayne Tanaka

ATTEST:

Sandy Langdon, City Clerk

APPROVED AS TO FORM:

Grant K. Weed, City Attorney