

AGREEMENT FOR PROFESSIONAL SERVICES

Project No. _____

This AGREEMENT made and entered into this _____ day of _____, 2019 by and between City of Camas, (hereinafter "OWNER"), and Carollo Engineers, Inc., (hereinafter "ENGINEER").

WITNESSETH:

WHEREAS, the OWNER and the ENGINEER wish to enter into an Agreement (hereinafter "Agreement") for the furnishing of Engineering Services in connection with

City of Camas General Sewer Plan

(hereinafter "Project"), and

WHEREAS, ENGINEER is qualified and prepared to perform the necessary professional services in connection with the Project.

NOW THEREFORE, in consideration of the mutual promises and covenants of the parties hereto, it is agreed as follows:

SECTION 1 - PROFESSIONAL SERVICES

- 1.1 ENGINEER shall provide professional engineering services in all phases of the Project to which this Agreement applies. The services furnished by the ENGINEER will be defined by Task Orders which will set forth the Engineer's Services, Time of Performance, and Payment.
- 1.2 It is intended that each Task Order, after execution by both parties shall become a supplement to and a part of this Agreement.

SECTION 2 - PAYMENT TO ENGINEER

- 2.1 As consideration for providing the services referred to in Section 1, the OWNER shall pay ENGINEER on the basis to be established in the Task Order for Services.

- 2.2 The ENGINEER is not responsible for damage or delay in performance caused by events beyond the control of ENGINEER. In the event ENGINEER's services are suspended, delayed or interrupted for the convenience of the OWNER or delays occur beyond the control of ENGINEER, an equitable adjustment in ENGINEER's time of performance and cost of ENGINEER's personnel and subcontractors shall be made.
- 2.3 OWNER reserves the right to direct revision of ENGINEER's services as may be necessary. When ENGINEER is directed to make revisions under this section of the agreement, ENGINEER shall advise OWNER of the probable costs involved in completing engineering services and the time of performance for such completion. Extra services also include those that are required for defense of claims, in which

event ENGINEER shall bill OWNER on an hourly basis together with cost of material.

- 2.4 In the event OWNER and ENGINEER cannot agree on equitable compensation for services rendered in making revisions, then, at OWNER's option, ENGINEER shall either continue performance under the revised Agreement and an equitable adjustment in ENGINEER's time of performance and cost of ENGINEER's personnel shall be made at completion of the revised work or ENGINEER shall not be obligated to continue performance under this Agreement.

- 2.5 If ENGINEER's work products require revisions prior to construction bidding due to ENGINEER's errors or omissions, the exclusive remedy will be limited to revisions made by ENGINEER without compensation.

- 2.6 The ENGINEER shall bill the OWNER monthly indicating the services performed and the cost of such services.

OWNER agrees to pay invoices within 45 days of their date. Payments not received by ENGINEER within 45 days shall be considered delinquent and subject to a finance charge of 1 percent per month for each month unpaid after the date of invoice. ENGINEER may suspend services should an invoice remain delinquent for 75 days from date of invoice.

- 2.7 All notices shall be made in writing and may be given by personal delivery or by mail. Notices sent by mail shall be addressed to the designated responsible person or office:

TO OWNER:

Sam Adams / City of Camas
1620 SE 8th Ave
Camas, WA 9860
360.817.1563
sadams@cityofcamas.us

TO ENGINEER:

Lara Kammereck / Carollo Engineers, Inc.
1218 3rd Ave, Suite 1600
Seattle, WA 98101
206.684.6532
lkammereck@carollo.com

and when so addressed, shall be deemed given upon deposit in the United States Mail, postage prepaid. In all other instances, notices and invoices shall be deemed given at the time of actual delivery.

All payments are to be mailed to:

Carollo Engineers, Inc.
P.O. Box 30835
Salt Lake City, UT 84130-0835

unless otherwise informed on the face of the invoice.

SECTION 3 - MISCELLANEOUS

- 3.1 The OWNER shall furnish the ENGINEER available studies, reports and other data pertinent to ENGINEER's services; obtain or authorize ENGINEER to obtain or provide additional reports and data as required; furnish to ENGINEER services of others required for the performance of ENGINEER's services hereunder, and ENGINEER shall be entitled to use and rely upon all such information and services provided by OWNER or others in

performing ENGINEER's services under this Agreement.

- 3.2 The OWNER shall arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services hereunder.
- 3.3 Documents, including drawings and specifications, prepared by ENGINEER pursuant to this Agreement are not intended or represented to be suitable for reuse by OWNER or others for this Project or on any other project. Any reuse of completed documents or use of partially completed documents without written verification or concurrence by ENGINEER for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER; and OWNER shall indemnify and hold harmless ENGINEER from all claims, damages, losses and expenses, including attorney's fees arising out of or resulting therefrom.
- 3.4 The ENGINEER maintains, at its own expense, Worker's Compensation and Employers Liability, Comprehensive General Liability, Automobile Liability and Professional Liability policies with limits at or above that which is reasonably required of other engineering firms and will, upon request, furnish insurance certificates to OWNER.

SECTION 4 - LEGAL RELATIONS

- 4.1 The ENGINEER shall be responsible for professional negligence, which is failure to exercise skill and ability as ordinarily required of engineers under the same or similar circumstances. The ENGINEER shall not be responsible for warranties, guarantees, fitness for a particular purpose, breach of fiduciary duty, loss of anticipated profits or for economic, incidental, or consequential damages and shall only indemnify for failure to perform in accordance with the generally accepted engineering and consulting standards. Additionally, ENGINEER shall not be responsible for acts and decisions of third parties, including governmental agencies, other than ENGINEER's subconsultants, that impact project completion and/or success.
- 4.2 OWNER and ENGINEER shall each defend, indemnify and hold harmless the other and their respective principals, directors, officers and employees from and against claims, loss, liability, suits and damages, including attorney's fees, caused in whole or in part by either party's negligent acts, errors or omissions, willful misconduct or OWNER's lawful responsibility respectively or, anyone directly or indirectly employed by either of them or anyone for whose acts they may be liable regardless of whether or not such claim, loss, liability or damage is caused in part by a party indemnified hereunder.

In the event that both OWNER's and ENGINEER's wrongful act or lawful responsibility is the proximate cause of any liability or damages, then in such event, each party shall be liable for a portion of the damages and claim costs resulting therefrom equal to such party's comparative share of the total negligence or lawful responsibility for such damages and claim costs. Notwithstanding the foregoing, a party's defense obligation hereunder shall be limited to reimbursement of the other party's reasonable defense costs which are judicially determined to have been incurred as a result of the first party's negligence.
- 4.3 Hazardous materials or asbestos may exist at a site where there is no reason to believe they could or should be present. The ENGINEER and OWNER agree that the discovery of unanticipated hazardous materials or asbestos constitutes a changed condition mandating a renegotiation of ENGINEER's services.

4.4 The ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over Contractor's methods of determining prices, or other competitive bidding or market conditions, practices or bidding strategies. Cost estimates are based on ENGINEER's opinion based on experience and judgment. ENGINEER cannot and does not guarantee that proposals, bids or actual Project construction costs will not vary from cost estimates prepared by ENGINEER.

4.5 If the project involves construction of any kind, the parties agree that OWNER and ENGINEER shall be indemnified to the fullest extent permitted by law for all claims, damages, losses and expense including attorney's fees arising out of or resulting from Contractor's performance of work including injury to any worker on the job site except for the sole negligence of OWNER or ENGINEER. Both OWNER and ENGINEER shall be named as additional primary insured(s) by Contractor's General Liability and Builders All Risk insurance policies without offset and all Construction Documents and insurance certificates shall include wording acceptable to the parties herein with reference to such provisions.

4.6 ENGINEER shall not be responsible for the means, methods, techniques, sequences, or procedures of construction selected by contractors or the safety precautions and programs incident to the work of contractors and will not be responsible for Contractor's failure to carry out work in accordance with the Contract Documents.

4.7 The services to be performed by ENGINEER are intended solely for the benefit of the OWNER. No person or entity not a signatory to this Agreement shall be entitled to rely on the ENGINEER's performance of its services hereunder, and no right to assert a claim against the ENGINEER by assignment of indemnity rights or otherwise shall accrue to a third

party as a result of this Agreement or the performance of the ENGINEER's services hereunder.

4.8 The ENGINEER's instruments of service hereunder are the printed hard copy drawings and specifications issued for the Project, whereas electronic media, including CADD files, are tools for their preparation. As a convenience to the OWNER, the ENGINEER shall furnish to the OWNER both printed hard copies and electronic media. In the event of a conflict in their content, the printed hard copies shall take precedence over the electronic media.

Because data stored in electronic media form can be altered, inadvertently, it is agreed that the OWNER shall hold ENGINEER harmless from liability arising out of changes or modifications to ENGINEER's data in electronic media form in the OWNER's possession or released to others by the OWNER.

SECTION 5 - TERMINATION OF AGREEMENT

~~SECTION 5 -~~ This Agreement is terminated with or without cause, in either event, OWNER shall provide:

- a. not less than five (5) working days' written notice of intent to terminate, and
- b. an opportunity for good faith consultation prior to termination.

SECTION 6 - DISPUTE RESOLUTION

6.1 Disputes arising during the course of this Agreement shall be promptly addressed at completion of construction when professional services, **together with construction evaluation** can be reasonably and fully assessed. **The parties shall use best efforts to reach final resolution of disputes through meetings and negotiations required to resolve the**

dispute before any other forms of dispute resolution.

SECTION 7 - ENTIRE AGREEMENT

7.1 This Agreement, including attachments incorporated herein by reference, represents the entire Agreement and understanding between the parties and any negotiations, proposals or oral agreements are intended to be integrated herein and to be superseded by this written

Agreement. Any supplement or amendment to this Agreement to be effective shall be in writing and signed by the OWNER and ENGINEER.

SECTION 8 - GOVERNING LAW

8.1 This Agreement is to be governed by and construed in accordance with the laws of the State of Washington.

IN WITNESS WHEREOF, duly authorized representatives of the parties have signed in confirmation of this Agreement, with effective date the day and year first above written.

CITY OF CAMAS

CAROLLO ENGINEERS, INC.

By: _____

By: _____

Lara R. Kammereck
Vice President
PE # 34428

By: _____

By: _____

Brian R. Matson
Senior Vice President
PE# 43443

**Addition to Carollo Engineers, Inc.,
Agreement for Professional Services**

In the event of any conflict between the provisions of this Addition and Agreement, then the terms as set forth within this Additional shall control.

Insurance. Consultant shall obtain insurance of types and amounts described below:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000.00 per accident 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.
2. Commercial General Liability insurance in the amount of no less than \$1,000,000.00 for each occurrence and \$2,000,000.00 general aggregate and a \$2,000,000.00 products-completed operation aggregate limit shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent consultants, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract.
3. Professional Liability insurance appropriate to the consultant's profession in the amount of no less than \$1,000,000.00 per claim and \$1,000,000.00 policy aggregate limit.
4. Workers' Compensation coverage as required by Industrial Insurance laws of the State of Washington.

Indemnification. The 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, to the extent arising out of or in connection with Consultant's negligence in the performance of this Agreement.

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 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.

Debarment. The Consultant shall certify that they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any State or Federal department or agency.

The Consultant shall not propose or contract with any person or entity that is currently debarred, suspended, and ineligible consultants and grantees.

Discrimination. As provided by Title VI of the Civil Rights Act of 1964, and the Civil Rights Restoration Act of 1987, the consultant, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, religion, sex or national origin in the selection and retention of sub-consultants, including procurement of materials and leases of equipment.

It is further provided that no liability shall attach to the City of Camas by reason of entering into this agreement, except as provided herein.