

**SULTAN CITY COUNCIL  
AGENDA ITEM COVER SHEET**

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DATE: April 24, 2008

ITEM #: C - 7

SUBJECT: Award Contract for Web Engineering, Ltd.; as  
Engineering Consultant for Civil Engineering Services  
for Sultan Basin Road widening and improvements.

CONTACT PERSON: Jon Stack

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**ISSUE:**

Authorize the Mayor to sign a contract not to exceed \$15,000.00 with Web Engineering for Civil Engineering Services for the Sultan Basin Road widening and improvement project.

**SUMMARY:**

Approve a contract for Web Engineering, Ltd., to provide Civil Engineering Services as specified per contract agreement; to prepare plans and specifications for widening and improvements of Sultan Basin Rd. Project will include water system improvements, widening of the shoulder, paving and installation of sidewalk, removal and replacement of guard rail on west side of Sultan Basin Road.

**BACKGROUND:**

This project was bid last year and bids were over the available funds for the proposed job. The re-bid reuses the information generated so the same engineer is proposed to provide the design services in accordance with RCW 39.80.

Sultan Basin Road intersects with entrance to Timber Ridge Estates and road improvements are required/necessary to match the existing shoulder and sidewalk. Web Engineering was chosen because they had performed the field surveys and the City had already paid for that information.

Web Engineering submitted a proposal in the amount of \$14,600.00 for engineering services for Sultan Basin Road shoulder widening, sidewalk and watermain with PRV installation. The funding source for these improvements will come from Impact Fee Funds and REET (Real Estate Excise Tax) Funds, as approved in the 2008 Capital Budget.

**FISCAL IMPACT:**

The contract is not to exceed \$15,000.00 and will be paid be paid from Impact Fees and REET Funds. This project is budgeted in the City's 2008 Capital Budget. There is \$25,000.00 in the budget appropriated for engineering and design.

**ALTERNATIVES:**

1. Authorize Mayor to approve a contract with Web Engineering.
2. Do not authorize the Mayor to approve contract with Web Engineering.
3. Do not authorize a contract *and* direct Staff to areas of concern.

**RECOMMENDED ACTION:**

**I MOVE TO AUTHORIZE THE MAYOR TO APPROVE A CIVIL ENGINEERING CONTRACT WITH WEB ENGINEERING FOR THE SULTAN BASIN ROAD WIDENING AND IMPROVEMENT PROJECT.**

**ATTACHMENTS:**

A- Contract

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**COUNCIL ACTION:**

**DATE:**



# CITY OF SULTAN ON-CALL CONSULTANT AGREEMENT

<b>PROJECT TITLE</b>  "Sultan Basin Road Shoulder Widening, Sidewalk and Watermain with PRV Installation"	<b>SERVICES DESCRIPTION</b> CONSULTANT to provide the following services: Civil Engineering Services as needed to prepare plans and specifications for widening of Sultan Basin Road. Project will include water system improvements, widening of the shoulder of Sultan Basin Road, paving and installation of sidewalk, extension of a fence along side of sidewalk, removal and replacement of guard rail on west side of Sultan Basin Road. City Engineer will complete contract documents and bidding forms encapsulating the consultant's products in accordance with project requirements, including advertisement for public bids. The City reserves the right to add additional minor services during the life of this contract.
<b>CONSULTANT</b> WEB Engineering, Ltd.	<b>CONSULTANT ADDRESS</b> 149 West Kellogg Road Bellingham, WA 98226
<b>FEDERAL I.D. NO.</b> 98-0457476	Telephone: 360-671-7002 FAX: 360-671-7081
<b>MAXIMUM AMOUNT PAYABLE</b> \$14,600	<b>COMPLETION DATE</b> 180 calendar days after notice to proceed

THIS AGREEMENT, made and entered into this \_\_\_\_\_, day of \_\_\_\_\_, 2008, between the City of Sultan, Washington, hereinafter called "SULTAN" and WEB Engineering, Ltd., hereinafter called "CONSULTANT".

### WITNESSETH THAT:

WHEREAS, SULTAN desires to accomplish street widening improvement projects on Sultan Basin Road, including water main with a PRV station; and

WHEREAS, SULTAN does not have sufficient staff to meet the required time commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the PROJECT; and

WHEREAS, CONSULTANT represents that he/she is in compliance with the Washington State Statutes relating to professional registration, if applicable and has signified a willingness to furnish consulting services to SULTAN.

NOW THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein or attached and incorporated and made a part hereof, the parties hereto agree as follows:

**I**  
**GENERAL DESCRIPTION OF SERVICES**

The services under this AGREEMENT shall consist of engineering services as described in attached Exhibit A. The CONSULTANT shall furnish all services, labor and related equipment necessary to conduct and complete the services as described.

**II**  
**SCOPE OF SERVICES**

The Scope of Services and project level of effort for on-call services will be described and detailed in an Exhibit "A" which will be attached hereto and by this reference made a part of this AGREEMENT.

**III**  
**GENERAL REQUIREMENTS**

All aspects of coordination of the services of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by SULTAN. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through SULTAN.

The CONSULTANT shall attend coordination, progress and presentation meetings with SULTAN or such Federal, Community, State SULTAN or County officials, groups or individuals as may be requested by SULTAN. SULTAN will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. If requested, the CONSULTANT shall prepare a monthly progress report in a form approved by SULTAN that will outline in written and graphical form the various phases and the order of performance of the services in sufficient detail so that the progress of the services can easily be evaluated.

All reports, plans and specifications and other data furnished to the CONSULTANT by SULTAN shall be returned. All designs, drawings, specifications, documents and other

services products prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT and are property of SULTAN. Reuse by SULTAN or by others acting through or on behalf of SULTAN of any such instruments of service not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

#### **IV TIME FOR BEGINNING AND COMPLETION**

The CONSULTANT shall not begin any services under the terms of this AGREEMENT until authorized in writing by SULTAN. All services under this AGREEMENT shall be completed by the date that may be shown in EXHIBIT "A".

#### **V PAYMENT**

The CONSULTANT shall be paid by SULTAN for completed services and services rendered under this AGREEMENT as provided in Exhibit "A" attached hereto and by this reference made part of this AGREEMENT. Such payment shall be full compensation for services performed or services rendered and for all labor, materials, supplies, equipment and incidentals necessary to complete the services specified in the "Scope of Services".

#### **VI SUBCONTRACTING**

SULTAN permits subcontracts for those items of services as may be shown in Exhibit "A" to this AGREEMENT.

The services of the sub-consultant shall not exceed its maximum amount payable unless a prior written approval has been issued by SULTAN.

The CONSULTANT shall not sub-contract for the performance of any services under this AGREEMENT without prior written permission of SULTAN. No permission for sub-contracting shall create between SULTAN and sub-contractor any contract or any other relationship.

#### **VII EMPLOYMENT**

The CONSULTANT warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the CONSULTANT, to solicit

or secure this contract and that it has not paid or agreed to pay any company or person other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, SULTAN shall have the right to annul this AGREEMENT without liability or in its discretion to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any services or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of SULTAN and any and all claims that may or might arise under any Workmen's Compensation Act on behalf of said employees or other persons while so engaged and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the services or services provided to be rendered herein shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage on a full or part time basis or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of SULTAN, except regularly retired employees, without written consent of the public employer of such person.

## **VIII NON-DISCRIMINATION**

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, religion, national origin, marital status, sex, age or handicap except for a bona fide occupational qualification with regard to but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or terminations, rates of pay or other forms of compensation selection for training or rendering of services. The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by SULTAN and further that the CONSULTANT shall be barred from performing any services for SULTAN now or in the future unless a showing is made satisfactory to SULTAN that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- A. **COMPLIANCE WITH REGULATIONS:** The CONSULTANT shall comply with the Regulations relative to non-discrimination in the same manner as in Federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of the AGREEMENT. The CONSULTANT shall comply with the Americans with Disabilities Act of 1992, as amended.
- B. **NON-DISCRIMINATION:** The CONSULTANT, with regard to the services performed by it during the AGREEMENT, shall not discriminate on the grounds of race, creed, color, religion, sex, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of sub, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix II of the Regulations.
- C. **SOLICITATIONS FOR SUB-CONSULTANTS, INCLUDING PROCUREMENTS OF MATERIALS AND EQUIPMENT:** In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for services to be performed under a subcontract, including procurements of materials or leases of equipment, each potential sub consultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this AGREEMENT and the Regulations relative to nondiscrimination on the grounds of race, creed, color, religion, sex, age, marital status, national origin and handicap.
- D. **INFORMATION AND REPORTS:** The CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by SULTAN to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to SULTAN and shall set forth what efforts it has made to obtain the information.
- E. **SANCTIONS FOR NONCOMPLIANCE:** In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this AGREEMENT, SULTAN shall impose such sanctions as it may determine to be appropriate, including but not limited to:
1. Withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies and/or
  2. Cancellation, termination or suspension of the AGREEMENT, in whole or part.

- F. **INCORPORATION OF PROVISIONS:** The CONSULTANT shall include the provisions of paragraphs (A) through (G) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any sub consultant or procurement as SULTAN may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however that in the event a CONSULTANT becomes involved in or is threatened with litigation with a sub consultant or supplier as a result of such direction, the CONSULTANT may request SULTAN to enter into such litigation to protect the interests of SULTAN.
- G. **UNFAIR EMPLOYMENT PRACTICES:** The CONSULTANT shall comply with RCW 49.60.189.

## **IX TERMINATION OF AGREEMENT**

The right is reserved by SULTAN to terminate this AGREEMENT at any time upon ten days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by SULTAN other than for fault on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged at the time of termination of the AGREEMENT plus any direct non-salary costs incurred at the time of termination of the AGREEMENT.

No payment shall be made for any services completed after ten days following receipt by the CONSULTANT of the Notice to Terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due, computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse SULTAN for any excess paid.

If SULTAN terminates the services of the CONSULTANT for default on the part of the CONSULTANT, the above formula for payment shall not apply. In such an event, the amount to be paid shall be determined by SULTAN with consideration given to the actual costs incurred by the CONSULTANT in performing the services to the date of termination, the amount of services originally required which was satisfactorily completed to date of termination, whether that service is in a form or a type which is usable to SULTAN at the time of termination; the cost to SULTAN of employing another firm to complete the services required and the time which may be required to do so and other factors which affect the value to SULTAN of the services performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount, which would have been made using the formula set forth in the previous paragraph.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without it or its employee's fault or negligence, the termination shall be deemed to be a termination for the convenience of SULTAN in accordance with the provision of the AGREEMENT.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or dissolution of the partnership, termination of the corporation or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the services under the terms of the AGREEMENT, if requested to do so by SULTAN. The subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and SULTAN, if SULTAN so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with SULTAN's concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the services by SULTAN shall not constitute a waiver by SULTAN of any remedies of any type it may have against the CONSULTANT for any breach of the AGREEMENT by the CONSULTANT or for failure of the CONSULTANT to perform services required of it by SULTAN. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

## **X CHANGES OF SERVICES**

The CONSULTANT shall make such changes and revisions in the complete services of this AGREEMENT as necessary to correct errors appearing therein when required to do so by SULTAN, without additional compensation thereof. Should SULTAN find it desirable for its own purposes to have previously satisfactorily completed services or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by SULTAN. These services shall be considered as Extra Services and will be paid for as herein provided under Section XIV.

## **XI DISPUTES**

Any dispute concerning questions of fact in connection with the services not disposed of by AGREEMENT between the CONSULTANT and SULTAN shall be referred for determination to the SULTAN City Engineer, whose decision in the matter shall be final and binding on the parties of this AGREEMENT, provided however, that if an action is brought challenging the SULTAN City Engineer's decision, that decision shall be subject to de novo judicial review.

## **XII VENUE, APPLICABLE LAW AND PERSONAL JURISDICTION**

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior Court of the State of Washington, situated in Snohomish County. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the law of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, situated in Snohomish County.

## **XIII LEGAL RELATIONS AND INSURANCE**

The CONSULTANT shall comply with all Federal, State and local laws and ordinances applicable to the service to be done under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accord with the laws of Washington.

The CONSULTANT shall indemnify and hold SULTAN and their officers and employees harmless from the CONSULTANT's negligence under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify SULTAN against and hold harmless SULTAN from claims, demands or suits based upon the conduct of SULTAN, their agents, officers and employees and provided further that if they are caused by the concurrent negligence of (a) the CONSULTANT's or employees and (b) SULTAN, their officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence, (2) the costs to SULTAN of defending such claims and suits, etc. shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's employees.

The CONSULTANT's relation to the SULTAN shall be at all times as an independent contractor.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees against SULTAN and, solely for the purpose of this indemnification, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW. The CONSULTANT recognizes that this waiver was specifically entered into pursuant to the provisions of RCW 4.25.115 and was the subject of mutual negotiation.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48.

### **Insurance Coverage**

- A. Worker's compensation and employer's liability insurance as required by the State of Washington.
- B. Regular liability and property damage insurance in an amount not less than a single limit of one million and 00/100 Dollars (\$1,000,000.00) for bodily injury including death and property damage per occurrence.
- C. Professional liability insurance in the amount of \$1,000,000 against claims arising out of services provided for in this contract.

Excepting the Worker's Compensation insurance and any professional liability insurance secured by the CONSULTANT, SULTAN will be named on all certificates of insurance as an additional insured. The CONSULTANT shall furnish SULTAN with verification of insurance and endorsements required by this AGREEMENT. SULTAN reserves the right to require complete certified copies of all required insurance policies at any time.

All insurance shall be obtained from insurance companies authorized to do business in the State of Washington. The CONSULTANT shall submit a certificate of insurance as outlined above within 14 days of the execution of this AGREEMENT to SULTAN.

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to SULTAN.

SULTAN will pay no progress payments under Section V until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and SULTAN may take such other action as is available to them under other provisions of this AGREEMENT or otherwise in law.

#### **XIV EXTRA SERVICES**

SULTAN may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.

If any such change causes an increase or decrease in the estimated cost of or the time required for, performance of any part of the services under this AGREEMENT, whether or not changed by the order or otherwise affects any other terms and conditions of the AGREEMENT, SULTAN shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.

The CONSULTANT must submit its "request for equitable adjustment" (hereafter referred to as claim) under this clause within 30 days form the date of receipt of the written order. However, if SULTAN decides that the facts justify it, SULTAN may receive and act upon a claim submitted before final payment of the AGREEMENT.

Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.

Notwithstanding the terms and conditions of the first two paragraphs above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

#### **XV ENDORSEMENT OF PLANS**

The CONSULTANT shall place its endorsement on all final engineering products.

#### **XVI COMPLETE AGREEMENT**

This document and referenced attachments contains all covenants, stipulations and provisions agreed upon by the parties. No agent or representative of either party has authority to make and the parties shall not be bound by or be liable for any statement, representation, promise or agreement not set forth herein. No changes, amendments or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

**XVI  
EXECUTION AND ACCEPTANCE**

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants and agreements contained in the proposal and the supporting materials submitted by the CONSULTANT and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year first above written.

**CONSULTANT**  
WEB Engineering, Ltd.

**CITY OF SULTAN**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**ATTEST:**

\_\_\_\_\_  
Sultan Clerk

**APPROVES AS TO FORM:**

\_\_\_\_\_  
City of Sultan Attorney

# Exhibit A

## **WEB ENGINEERING LTD.** *consulting civil engineers*

April 11, 2008

Mr. Jon Stack, PE – City Engineer  
PO Box 1199  
319 Main Street  
Sultan, WA 98294-1199

**Re: Proposal for Professional Civil Engineering Services  
Road and Utility Improvements, Sultan Basin Road  
Sultan, Washington**

Dear Mr. Stack,

WEB Engineering Ltd (WEB) is pleased to submit this scope of work and cost proposal for providing civil engineering design services associated with the referenced road and utility improvement project proposed in Sultan, Washington.

### **INTRODUCTION**

Based on our recent meeting to review project design issues, our familiarity with this area, and our experience with numerous projects we have successfully completed similar to this, we understand the following regarding the proposed project:

1. WEB previously prepared a civil design plan set (dated July 2007) for approximately 500 LF of road and utility improvements along Sultan Basin Rd just north of the SR-2 intersection.
2. We understand that the City wants to modify the current retaining wall design proposal to utilize a reinforced mechanically stabilized earth (MSE) wall as an alternate to the soldier pile wall design.
3. We understand that the project geotechnical engineer has completed a report outlining design parameters and recommendation for a "Hilfiker" MSE retaining wall. The recommendations outlined in this report will serve as the basis for preparing detailed retaining wall plan, profile, and section view exhibits accordingly.
4. We understand that the City would also like an alternate MSE retaining wall design ("Stonetera Wall System") prepared for the purpose of bid alternate pricing.
5. The MSE wall reinforcing geo-grid setback excavation and installation will necessitate re-alignment design for existing and proposed utilities in the roadway prism.
6. We understand that the Snohomish County PUD intends to relocate or eliminate one of the existing transmission line utility poles within the project limits. WEB shall coordinate and modify civil design accordingly.

### **PROPOSED SCOPE OF SERVICES**

The proposed scope of services for this project includes the following:

1. Conduct a scoping meeting with the Client to establish project schedule, review value engineering issues, and finalize scope of work to be performed.
2. Provide project management, including correspondence, meetings, report review, billing review, etc.

149 West Kellogg Road, Bellingham, WA 98226

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