



## **INFORMATIONAL MEMORANDUM**

TO: **Planning and Community Development Committee**

FROM: **Nora Gierloff, AICP, Community Development Director**

BY: **Nancy Eklund, AICP, Long Range Planning Supervisor**

CC: **Mayor Thomas McLeod**

DATE: **July 14, 2025**

SUBJECT: **Contract with Facet NW for Environmental Services**

### **ISSUE**

The Council is being asked to approve a contract with Facet NW for project-related and on-call environmental services.

### **BACKGROUND**

The City has identified the need for specialized scientific and natural resources expertise to complete planning and regulatory projects necessary to protect the City's critical areas and natural environment. Two tasks have been identified for Facet assistance:

- **Task 1:** Environmental services to fulfill the scope of work, as described in the Commerce and Ecology grant agreement received by the City. This work includes an update of the City's Critical Areas Ordinance (the deadline for submittal for the CAO update is 12/31/25, per the Growth Management Act (GMA)). In addition, Facet's expertise is needed to provide guidance in the acquisition and implementation of enhanced Geographic Information System (GIS) data pilot project that will enable greater analysis of Tukwila's tree canopy and natural resources, with the intent of identifying opportunities for greater protection of these resources.

Task 1 work is revenue-backed and fully funded through a grant from the Washington Departments of Commerce and Ecology.

- **Task 2** - This task provides for peer review of critical area studies submitted by applicants, including wetland delineations, habitat assessments, and mitigation plans, to ensure consistency with the Tukwila Municipal Code and best available science. It also includes consultant support for the Critical Area Designation permit, including initial site reconnaissance, preparation of a reconnaissance report, and development of a cost estimate for any additional study or delineation work requested by the applicant.

Task 2 work is revenue-backed and fully funded through permit fees collected from applicants.

### **DISCUSSION**

This contract will enable the City to secure the scientific and environmental expertise needed to best address the City's compliance with GMA and align with numerous City Goals focused on the protection of Tukwila's natural environment and community health and safety.

**FINANCIAL IMPACT**

Both Task 1 and Task 2 listed in the Facet Scope of Work are revenue-backed through grant funds or permit fees, respectively.

**RECOMMENDATION**

The project is related to the Grant agreement with the Washington Departments of Commerce and Ecology. Due to the very short period within which the City needs to complete its update of the Critical Areas Ordinance and the lengthy timeline required by the Washington Departments and Commerce and Ecology to process the grant that provides funding for creation of the CAO, Staff recommends that the City use an expedited review process to approve this consultant contract, as follows:

- **PCD on July 14, 2025** – Committee recommends that the project and contract be forwarded to the Council for approval.
- **Regular Meeting, City Council, July 21, 2025** - Staff recommends that based on the scope of work the Council authorize the Mayor to sign the contract when it is received. This would occur once the Commerce and Ecology grant scope has been finalized and integrated into the Facet NW contract.

**ATTACHMENTS**

- Facet Contract – DRAFT
- Exhibit A On-Call Scope of Work - DRAFT
- Exhibit B Grant Scope of Work – *to be provided with final Grant agreement*



**PROFESSIONAL SERVICES AGREEMENT**

*(Includes consultants, architects, engineers, accountants, and other professional services)*

**THIS AGREEMENT** is entered into between the City of Tukwila, Washington, hereinafter referred to as "the City", and FACET NW Inc., hereinafter referred to as "the Consultant", in consideration of the mutual benefits, terms, and conditions hereinafter specified.

1. **Project Designation.** The Consultant is retained by the City to perform two services: first, on-call services ("Services") as described in Exhibit A and services as described in Exhibit B, in connection with the project titled Critical Area Ordinance development.
2. **Scope of Services.** The Consultant agrees to perform the services, identified on Exhibit "A" and Exhibit "B" attached hereto, including the provision of all labor, materials, equipment and supplies.
3. **Duration of Agreement; Time for Performance.** This Agreement shall be in full force and effect for a period commencing upon execution and ending December 31, 2028, unless sooner terminated under the provisions hereinafter specified. Work under this Agreement shall commence upon written notice by the City to the Consultant to proceed. The Consultant shall perform all services and provide all work product required pursuant to this Agreement no later than December 31, 2028, unless an extension of such time is granted in writing by the City.
4. **Payment.** The Consultant shall be paid by the City for completed work and for services rendered under this Agreement as follows:
  - A. Payment for the work provided by the Consultant shall be made as provided on Exhibit "A" attached hereto, provided that the total amount of payment to the Consultant shall not exceed \$75,000.00 without express written modification of the Agreement signed by the City.

Payment for the work provided by the Consultant shall be made as provided on Exhibit "B" attached hereto, provided that the total amount of payment to the Consultant shall not exceed the grant amount of \$XXX,XXX.XX without express written modification of the Agreement signed by the City.
  - B. The Consultant may submit vouchers to the City once per month during the progress of the work for partial payment for that portion of the project completed to date. Such vouchers will be checked by the City and, upon approval thereof, payment shall be made to the Consultant in the amount approved.
  - C. Final payment of any balance due the Consultant of the total contract price earned will be made promptly upon its ascertainment and verification by the City after the completion of the work under this Agreement and its acceptance by the City.
  - D. Payment as provided in this section shall be full compensation for work performed, services rendered, and for all materials, supplies, equipment and incidentals necessary to complete the work.
  - E. The Consultant's records and accounts pertaining to this Agreement are to be kept available for inspection by representatives of the City and the state of Washington for a period of three (3) years after final payments. Copies shall be made available upon request.

5. **Ownership and Use of Documents.** All documents, drawings, specifications and other materials produced by the Consultant in connection with the services rendered under this Agreement shall be the property of the City whether the project for which they are made is executed or not. The Consultant shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information, reference and use in connection with the Consultant's endeavors. The Consultant shall not be responsible for any use of the said documents, drawings, specifications or other materials by the City on any project other than the project specified in this Agreement.
6. **Compliance with Laws.** The Consultant shall, in performing the services contemplated by this Agreement, faithfully observe and comply with all federal, state, and local laws, ordinances and regulations, applicable to the services rendered under this Agreement.
7. **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, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability 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.

8. **Insurance.** The Consultant 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 Consultant, its agents, representatives, or employees. 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 City's recourse to any remedy available at law or in equity.

A. **Minimum Amounts and Scope of Insurance.** Consultant shall obtain insurance of the types and with the limits described below:

1. **Automobile Liability** insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident. Automobile Liability insurance shall cover all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. **Commercial General Liability** insurance with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO endorsement form CG 20 26.
3. **Workers' Compensation** coverage as required by the Industrial Insurance laws of the State of Washington.

4. Professional Liability with limits no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit. Professional Liability insurance shall be appropriate to the Consultant's profession.
- B. **Public Entity Full Availability of Contractor Limits.** If the Contractor maintains higher insurance limits than the minimums shown above, the Public Entity shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this Contract or whether any certificate of insurance furnished to the Public Entity evidences limits of liability lower than those maintained by the Contractor.
- C. **Other Insurance Provision.** The Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance with respect to the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not be contributed or combined with it.
- D. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- E. **Verification of Coverage.** Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Contractor before commencement of the work. Upon request by the City, the Consultant shall furnish certified copies of all required insurance policies, including endorsements, required in this Agreement and evidence of all subcontractors' coverage.
- F. **Notice of Cancellation.** The Consultant shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.
- G. **Failure to Maintain Insurance.** Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to the Consultant to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.
9. **Independent Contractor.** The Consultant and the City agree that the Consultant is an independent contractor with respect to the services provided pursuant to this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither the Consultant nor any employee of the Consultant shall be entitled to any benefits accorded City employees by virtue of the services provided under this Agreement. 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 program, otherwise assuming the duties of an employer with respect to the Consultant, or any employee of the Consultant.
10. **Covenant Against Contingent Fees.** The Consultant warrants that he has not employed or retained any company or person, other than a bonafide employee working solely for the Consultant, to solicit or secure this contract, and that he has not paid or agreed to pay any company or person, other than a bonafide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the City shall have the right to annul this contract without liability, or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

11. **Discrimination Prohibited.** Contractor, with regard to the work performed by it under this Agreement, will not discriminate on the grounds of race, religion, creed, color, national origin, age, veteran status, sex, sexual orientation, gender identity, marital status, political affiliation, the presence of any disability, or any other protected class status under state or federal law, in the selection and retention of employees or procurement of materials or supplies.
12. **Assignment.** The Consultant shall not sublet or assign any of the services covered by this Agreement without the express written consent of the City.
13. **Non-Waiver.** Waiver by the City of any provision of this Agreement or any time limitation provided for in this Agreement shall not constitute a waiver of any other provision.
14. **Termination.**
  - A. The City reserves the right to terminate this Agreement at any time by giving ten (10) days written notice to the Consultant.
  - B. In the event of the death of a member, partner or officer of the Consultant, or any of its supervisory personnel assigned to the project, the surviving members of the Consultant hereby agree to complete the work under the terms of this Agreement, if requested to do so by the City. This section shall not be a bar to renegotiations of this Agreement between surviving members of the Consultant and the City, if the City so chooses.
15. **Applicable Law; Venue; Attorney's Fees.** This Agreement shall be subject to, and the Consultant shall at all times comply with, all applicable federal, state and local laws, regulations, and rules, including the provisions of the City of Tukwila Municipal Code and ordinances of the City of Tukwila. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be properly laid in King County, Washington. The prevailing party in any such action shall be entitled to its attorney's fees and costs of suit. Venue for any action arising from or related to this Agreement shall be exclusively in King County Superior Court.
16. **Severability and Survival.** If any term, condition or provision of this Agreement is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of this Agreement, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Agreement, shall survive termination of this Agreement.
17. **Notices.** Notices to the City of Tukwila shall be sent to the following address:

City Clerk  
City of Tukwila  
6200 Southcenter Boulevard  
Tukwila, WA 98188

Notices to Consultant shall be sent to the following address:

Dan Nickel  
9706 4th Ave NE, Suite 300  
Seattle, WA 98115T:
18. **Entire Agreement; Modification.** This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the City and the Consultant and supersedes all prior negotiations, representations, or agreements written or oral. No amendment or modification of this Agreement shall be of any force or effect unless it is in writing and signed by the parties.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

CITY OF TUKWILA

CONSULTANT:

\_\_\_\_\_  
Thomas McLeod, Mayor

By: \_\_\_\_\_

Printed Name: Dan Nickel

ATTEST/AUTHENTICATED:

Title: Executive Vice President, Principal of Planning

\_\_\_\_\_  
Andy Youn, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Office of the City Attorney

***Contract to include Current Employee Rate Sheet and Task Request form***

## EXHIBIT A

### ON-CALL SCOPE OF SERVICES

The Consultant shall provide services to the City of Tukwila on an as-needed basis related to assessment of environmentally critical areas (ECA's), including but not limited to, peer review of ECA reports produced by third parties. The City shall authorize in writing the specifications and the scope of review to be completed by the Consultant. The Consultant will provide a cost estimate or bid based on that scope for approval.

In addition, this task includes consultant support for the Critical Area Designation permit, including initial site reconnaissance, preparation of a reconnaissance report, and development of a cost estimate for any additional study or delineation work requested by the applicant. All work beyond the reconnaissance report will be billed to and directly paid by the permit applicant.

The Consultant shall perform tasks including, but not limited to, these subjects:

- Critical area studies on a parcel(s) basis for development proposals (single or clustered), including mitigation, maintenance, and monitoring plans
- General review of project impacts for ECA code compliance per TMC, WAC and RCW
- Wetland delineations, classification, and rating
- Watercourse delineation and typing
- Arborist reports, tree retention plans, tree risk assessments and other arboriculture services as requested

Additionally, the Consultant may perform additional tasks, or may subcontract tasks including, but not limited to, these subjects:

- Technical information reports (TIR per KC Surface Water Manual)
- General riverbank analyses
- Hydrologic and Hydraulic studies/modeling
- Phase I site analysis (MTCA)

Services and deliverables may include, but are not limited to:

- Site analysis
- Development plans review
- Reporting
- Verifying the correctness or adequacy of work similar to that described above that has been prepared by a consultant hired by a permit applicant i.e., perform "Third Party" review.
- Representing the City at hearings related to review of a proposal, if needed.
- Assisting the City in reviewing projects with impacts ECA's and associated buffers under the State Environmental Policy Act (SEPA), EIS, etc.
- Assisting the City in determining costs associated with proposed rehabilitation, enhancement, or mitigation work.



- Assisting the City in interpreting and implementing ECA regulations, as necessary.
- Coordinating with staff, and other Qualified Professionals re ECA compliance.

# TASK ORDER TEMPLATE

Project Name: \_\_\_\_\_ Permit Number: \_\_\_\_\_

Project Location: \_\_\_\_\_ Date: \_\_\_\_\_

Task Order	Project Manager Hours	Project Scientist Hours	Other Consultant _____	
Total Hours				
Summary	Hours	Rate		Total
Project Manager				
Project Scientist				
Other Consultant:				
	Total Labor			
TOTAL ESTIMATED COST, NOT TO EXCEED				

Authorized by DCD Director: \_\_\_\_\_