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City Council Committee Meeting Agenda

Public Works / Parks Committee

This meeting will be conducted in person at *City Of Stanwood Public Works Wastewater Treatment Plant located at 26729 98th DR NW, Stanwood WA 98292*

December 2, 2024, 5:30 PM

1. Tax Increment Financing

2. TIB Grant Agreements

- 80th Street Overlay
- Twin City Mile Mainstreet Project

3. Cedarhome Drive Water Project

- Discussion on scope and fee

4. SR532 and 72nd Intersection Improvements

- Contract Overview with Kimley Horn.
- Discussion on scope and fee



**CITY OF STANWOOD
PUBLIC WORKS COMMITTEE
AGENDA STAFF REPORT**

DATE: December 2, 2024

SUBJECT: Overview of Tax Increment Financing

FROM: David A. Hammond, Finance Director

Tax Increment Financing Overview

Tax increment financing (TIF) is a financing tool that local governments in Washington State – defined as cities, towns, counties, port districts, or any combination thereof – can use to fund public infrastructure in targeted areas to encourage private development and investment ([chapter 39.114 RCW](#)).

A local government wishing to utilize TIF will designate an "increment area" surrounding the site of the public improvements. The property tax portion of increases in assessed value of properties within the increment area is allocated towards paying for the public improvement costs.

Allocation of Property Taxes

Regular property tax levies are generally limited to an annual maximum growth rate of one percent plus new construction (see [RCW 84.55.005-.0101](#)).

With TIF, each property within an increment area has a "base value" that is fixed at the time the tax increment area takes effect. Each local taxing district (city, county, fire district, etc.) continues to receive revenues calculated on this base value.

However, any *future* increases in the assessed value of the property (the "increment value") are taxed at the levy rates for *all* taxing districts (with limited exceptions) in the increment area, referred to as the "tax allocation rate." This portion of the property tax is received by the local government which created the increment area to pay for the public improvements.

The increment area takes effect on June 1, but the tax allocation revenues will not be collected until the *following* calendar year. (In Washington's property tax system, a property's value is assessed one year – the "assessment year" – but the taxes based on that assessment are not collected until the following year – the "tax year.")

The tax allocation rate includes all "regular property taxes" as defined in [RCW 39.114.010\(8\)](#) and [RCW 84.04.140](#), including those that are subject to the \$5.90 aggregate limitation in [RCW 84.52.043](#) and/or the constitutional 1% aggregate limit codified at [RCW 84.52.050](#), with just a few exceptions. The only property tax levies that are *excluded* from TIF are:

- The state school levy;
- Regular property taxes levied by port districts or public utility districts to the extent necessary to repay general obligation bonds; and
- Excess levies, including school district excess levies, excess operations and maintenance levies for any taxing district, and any excess levies for the repayment of general obligation bonds.

For more details on the property tax calculations, see the examples at the bottom of this page.

Clarifications:

- TIF revenues are *not* subject to the 101% levy lid limit and may increase more than 1% in any given year.
- Voted *regular* levies such as a levy lid lift ([RCW 84.55.050](#)), emergency medical services levy ([RCW 84.52.069](#)), or affordable housing levy ([RCW 84.52.105](#)) are subject to the limits in [RCW 84.52.043](#) and, as a result, *are* included in the calculation of the tax allocation rate.

Authorized Public Improvement Costs

The tax allocation revenues may be used to pay for a wide variety of "public improvement costs," as defined in [RCW 39.114.010\(6\)](#) and (7). The TIF ordinance must identify the specific public improvements to be financed, as well as whether the local government intends to issue bonds or other obligations payable in whole or in part from the TIF revenues.

The local government must make a finding that:

- The proposed public improvements are expected to encourage private development and increase assessed valuations within the increment area;
- The private development would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future without the proposed public improvements;
- The expected assessed value within the increment area *without* the proposed public improvements would be less than the expected assessed value *with* the public improvements; and
- The anticipated private development within the increment area is allowed under the permitting jurisdiction's zoning and development standards.

The public improvements may be located inside or outside the tax increment area, but they must be necessary for the ensuing private development within the increment area. The public improvements may be undertaken and coordinated with other programs undertaken by the local government or other taxing districts, and they may be funded in part from revenue sources other than tax allocation revenues.

Public improvement costs also include various administrative costs, including costs that may have been incurred before the adoption of the TIF ordinance, as well as expenses incurred by the county assessor and county treasurer (and reimbursed by the local government) for revaluing the properties and apportioning the property taxes. Public improvement costs also include funding for mitigation to impacted taxing districts as allowed under the TIF statutes.

After the ordinance is adopted, the local government may not add any additional public improvements to the project unless it is necessary to assure the originally approved improvements can be constructed or operated.

Examples of TIF Property Tax Calculations

The following tables provide a simplistic example of tax allocation for a tax increment area. You can also refer to the [DOR Special Notice Regarding Tax Increment Financing](#).

The first table shows hypothetical property tax levy rates per \$1,000 assessed value (AV) for all taxing districts in the increment area. To calculate the “tax allocation rate,” add up all of the levy rates *except* the state school levy, local excess levies, and levies for port districts or public utility districts specifically to make payments for general obligation bonds.

Taxing District/Levy Type	Levy Rate per \$1,000 AV
City regular levy	\$0.88
County current expense levy	\$0.95
Conservation futures regular levy	\$0.04
Flood district regular levy	\$0.10
Fire district regular levy	\$1.50
Fire district excess levy	\$1.49
Port regular levy (not for G.O. debt)	\$0.17
Library district regular levy	\$0.44
Local school regular levy	\$2.50
Local school excess levy	\$2.16
State school levy	\$2.93
TOTAL PROPERTY TAX RATE	\$13.16
Minus fire excess levy	-\$1.49
Minus local school excess levy	-\$2.16
Minus state school levy	-\$2.93
TAX ALLOCATION RATE	\$6.58

Important: For simplicity's sake, the local levy rates and the tax allocation rate in our examples will stay the same each year. However, in reality the levy rates for each taxing district may go up or down each year based on changes in assessed valuation, the 101% levy lid limit, voter-approved levy lid lifts, and other factors. As a result, the tax allocation rate will also change every year.

2022 (Increment Area Created)

In the following example, a city created a tax increment area before June 1, 2022. The increment area becomes effective on June 1, 2022 following the adoption of the ordinance. However, tax allocation revenues will not be collected until 2023. (In Washington's property tax system, a property's value is assessed one year – the "assessment year" – but the taxes based on that assessment are not collected until the following year – the "tax year.")

Parcels A, B, and C are located outside the tax increment area, while Parcels D, E, and F (**in bold**) are located inside the increment area. For Parcels D-F, the January 1, 2021 assessed value (for collection in 2022) becomes the "base value" that will be used to calculate the increment value and levy amounts in future years.

Property	"Base Value" (2021 AV for 2022 Levy)	City Regular Levy Rate	New Construction	Increment Value	Tax Allocation Rate	City Regular Levy Revenues	Tax Allocation Revenues
Parcel A	\$100,000,000	\$0.88	--	--	--	\$88,000	--
Parcel B	\$125,000,000	\$0.88	--	--	--	\$110,000	--
Parcel C	\$110,000,000	\$0.88	--	--	--	\$96,800	--
Parcel D	\$6,000,000	\$0.88	--	--	--	\$5,280	--
Parcel E	\$5,700,000	\$0.88	--	--	--	\$5,016	--
Parcel F	\$6,500,000	\$0.88	--	--	--	\$5,720	--

2023

In this example, 2023 is the first year that tax increment revenues will be collected. Property values have increased on all properties compared to the base value, and none of the increases are due to new construction. The increase in the assessed valuation for Parcels D-F (inside the increment area) becomes the "increment value," which is multiplied by the tax allocation rate to generate the tax allocation revenues that will go to the city that created the increment area.

The value of Parcels D-F will increase for purposes of computing the state school levy and local excess/bond levies, but it will remain the same as the previous year for the purposes of computing all other property tax levies.

For instance, the value of Parcel D is calculated as follows:

- \$6,090,000 for the state school levy and local fire/school excess levies.
- \$6,000,000 (the "base value") for all other levies, *including the city's regular levy*.
- \$90,000 (the assessed value minus the base value) for the tax increment value.

Property	2022 AV for 2023 Levy	City Regular Levy Rate	New Construction	Increment Value	Tax Allocation Rate	City Regular Levy Revenues	Tax Allocation Revenues
Parcel A	\$101,500,000	\$0.88	--	--	--	\$89,320	--
Parcel B	\$127,000,000	\$0.88	--	--	--	\$111,760	--
Parcel C	\$111,650,000	\$0.88	--	--	--	\$98,252	--
Parcel D	\$6,090,000	\$0.88	--	\$90,000	\$6.58	\$5,280	\$592
Parcel E	\$5,780,000	\$0.88	--	\$80,000	\$6.58	\$5,016	\$526
Parcel F	\$6,600,000	\$0.88	--	\$100,000	\$6.58	\$5,720	\$658

2024

In the second year of the TIF, property values again went up, and the increase in value for Parcels D and F was due to new construction. The value of new construction as well as the increase in assessed value is added to the increment value of those properties.

In this example, the value of Parcel D is calculated as follows:

- \$97,000,000 for the state school levy and local fire/school excess levies.
- \$6,000,000 (the "base value") for all other levies, including the city's regular levy.
- \$91,000,000 (the assessed value and new construction minus the "base value") for the tax increment value.

Property	2023 AV for 2024 Levy	City Regular Levy Rate	New Construction	Increment Value	Tax Allocation Rate	City Regular Levy Revenues	Tax Allocation Revenues
Parcel A	\$103,000,000	\$0.88	--	--	--	\$90,640	--
Parcel B	\$129,000,000	\$0.88	--	--	--	\$113,520	--
Parcel C	\$113,500,000	\$0.88	--	--	--	\$99,880	--
Parcel D	\$97,000,000	\$0.88	\$90,910,000	\$91,000,000	\$6.58	\$5,280	\$598,780
Parcel E	\$5,870,000	\$0.88	--	\$170,000	\$6.58	\$5,016	\$1,119
Parcel F	\$107,000,000	\$0.88	\$100,400,000	\$100,500,000	\$6.58	\$5,720	\$661,290

City of Stanwood
3-P-823(010)-1
80th Avenue NW Overlay
279th PI NW to 284th St NW

STATE OF WASHINGTON
 TRANSPORTATION IMPROVEMENT BOARD
 AND
 City of Stanwood
 AGREEMENT

THIS GRANT AGREEMENT (hereinafter "Agreement") for the 80th Avenue NW Overlay, 279th PI NW to 284th St NW (hereinafter "Project") is entered into by the WASHINGTON STATE TRANSPORTATION IMPROVEMENT BOARD (hereinafter "TIB") and City of Stanwood, a political subdivision of the State of Washington (hereinafter "RECIPIENT").

1.0 PURPOSE

For the project specified above, TIB shall pay 83.1330 percent of approved eligible project costs up to the amount of \$222,710, pursuant to terms contained in the RECIPIENT'S Grant Application, supporting documentation, chapter 47.26 RCW and/or chapter 47.04 RCW, title 479 WAC, and the terms and conditions listed below.

2.0 SCOPE AND BUDGET

The Project Scope and Budget are initially described in RECIPIENT's Grant Application and incorporated by reference into this Agreement. Scope and Budget will be further developed and refined, but not substantially altered during the Design, Bid Authorization and Construction Phases. Any material alterations to the original Project Scope or Budget as initially described in the Grant Application must be authorized by TIB in advance by written amendment.

3.0 PROJECT DOCUMENTATION

TIB requires RECIPIENT to make reasonable progress and submit timely Project documentation as applicable throughout the Project. Upon RECIPIENT's submission of each Project document to TIB, the terms contained in the document will be incorporated by reference into the Agreement. Required documents include, but are not limited to the following:

- a) Project Funding Status Form
- b) Bid Authorization Form with plans and engineers estimate
- c) Award Updated Cost Estimate
- d) Bid Tabulations
- e) Contract Completion Updated Cost Estimate with final summary of quantities
- f) Project Accounting History

4.0 BILLING AND PAYMENT

The local agency shall submit progress billings as project costs are incurred to enable TIB to maintain accurate budgeting and fund management. Payment requests may be submitted as

often as the RECIPIENT deems necessary, but shall be submitted at least quarterly if billable amounts are greater than \$50,000. If progress billings are not submitted, large payments may be delayed or scheduled in a payment plan.

5.0 TERM OF AGREEMENT

This Agreement shall be effective upon execution by TIB and shall continue through closeout of the grant or until terminated as provided herein, but shall not exceed 10 years unless amended by the Parties.

6.0 AMENDMENTS

This Agreement may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.

7.0 ASSIGNMENT

The RECIPIENT shall not assign or transfer its rights, benefits, or obligations under this Agreement without the prior written consent of TIB. The RECIPIENT is deemed to consent to assignment of this Agreement by TIB to a successor entity. Such consent shall not constitute a waiver of the RECIPIENT's other rights under this Agreement.

8.0 GOVERNANCE & VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington and venue of any action brought hereunder shall be in the Superior Court for Thurston County.

9.0 DEFAULT AND TERMINATION

9.1 NON-COMPLIANCE

- a) In the event TIB determines, in its sole discretion, the RECIPIENT has failed to comply with the terms and conditions of this Agreement, TIB shall notify the RECIPIENT, in writing, of the non-compliance.
- b) In response to the notice, RECIPIENT shall provide a written response within 10 business days of receipt of TIB's notice of non-compliance, which should include either a detailed plan to correct the non-compliance, a request to amend the Project, or a denial accompanied by supporting details.
- c) TIB will provide 30 days for RECIPIENT to make reasonable progress toward compliance pursuant to its plan to correct or implement its amendment to the Project.
- d) Should RECIPIENT dispute non-compliance, TIB will investigate the dispute and may withhold further payments or prohibit the RECIPIENT from incurring additional reimbursable costs during the investigation.

9.2 DEFAULT

RECIPIENT may be considered in default if TIB determines, in its sole discretion, that:

- a) RECIPIENT is not making reasonable progress toward correction and compliance.
- b) TIB denies the RECIPIENT's request to amend the Project.
- c) After investigation TIB confirms RECIPIENT'S non-compliance.

TIB reserves the right to order RECIPIENT to immediately stop work on the Project and TIB may stop Project payments until the requested corrections have been made or the Agreement has been terminated.

9.3 TERMINATION

- a) In the event of default by the RECIPIENT as determined pursuant to Section 9.2, TIB shall serve RECIPIENT with a written notice of termination of this Agreement, which shall be served in person, by email or by certified letter. Upon service of notice of termination, the RECIPIENT shall immediately stop work and/or take such action as may be directed by TIB.
- b) In the event of default and/or termination by either PARTY, the RECIPIENT may be liable for damages as authorized by law including, but not limited to, repayment of grant funds.
- c) The rights and remedies of TIB provided in the AGREEMENT are not exclusive and are in addition to any other rights and remedies provided by law.

9.4 TERMINATION FOR NECESSITY

TIB may, with ten (10) days written notice, terminate this Agreement, in whole or in part, because funds are no longer available for the purpose of meeting TIB's obligations. If this Agreement is so terminated, TIB shall be liable only for payment required under this Agreement for performance rendered or costs incurred prior to the effective date of termination.

10.0 USE OF TIB GRANT FUNDS

TIB grant funds come from Motor Vehicle Fuel Tax revenue and other revenue sources. Any use of these funds for anything other than highway or roadway system improvements is prohibited and shall subject the RECIPIENT to the terms, conditions and remedies set forth in Section 9. If Right of Way is purchased using TIB funds, and some or all of the Right of Way is subsequently sold, proceeds from the sale must be deposited into the RECIPIENT's motor vehicle fund and used for a motor vehicle purpose.

11.0 INCREASE OR DECREASE IN TIB GRANT FUNDS

At Bid Award and Contract Completion, RECIPIENT may request an increase in the maximum payable TIB funds for the specific project. Requests must be made in writing and will be considered by TIB and awarded at the sole discretion of TIB. All increase requests must be made pursuant to WAC 479-05-202 and/or WAC 479-01-060 and/or WAC 479-10-575. If an increase is denied, the recipient shall be liable for all costs incurred in excess of the maximum amount payable by TIB. In the event that final costs related to the specific project are less than the initial grant award, TIB funds will be decreased and/or refunded to TIB in a manner that maintains the intended ratio between TIB funds and total project costs, as described in Section 1.0 of this Agreement.

12.0 INDEPENDENT CAPACITY

The RECIPIENT shall be deemed an independent contractor for all purposes and the employees of the RECIPIENT or any of its contractors, subcontractors, and employees thereof shall not in any manner be deemed employees of TIB.

13.0 INDEMNIFICATION AND HOLD HARMLESS

The PARTIES agree to the following:

Each of the PARTIES, shall protect, defend, indemnify, and save harmless the other PARTY, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgment, and/or awards of damages, arising out of, or in any way resulting from, that PARTY's own negligent acts or omissions which may arise in connection with its performance under this Agreement. No PARTY will be required to indemnify, defend, or save harmless the other PARTY if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the other PARTY. Where such claims, suits, or actions result from the concurrent negligence of the PARTIES, the indemnity provisions provided herein shall be valid and enforceable only to the extent of a PARTY's own negligence. Each of the PARTIES agrees that its obligations under this subparagraph extend to any claim, demand and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the PARTIES, by mutual negotiation, hereby waives, with respect to the other PARTY only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provision of Title 51 RCW. In any action to enforce the provisions of the Section, the prevailing PARTY shall be entitled to recover its reasonable attorney's fees and costs incurred from the other PARTY. The obligations of this Section shall survive termination of this Agreement.

14.0 DISPUTE RESOLUTION

- a) The PARTIES shall make good faith efforts to quickly and collaboratively resolve any dispute arising under or in connection with this AGREEMENT. The dispute resolution process outlined in this Section applies to disputes arising under or in connection with the terms of this AGREEMENT.
- b) Informal Resolution. The PARTIES shall use their best efforts to resolve disputes promptly and at the lowest organizational level.
- c) In the event that the PARTIES are unable to resolve the dispute, the PARTIES shall submit the matter to non-binding mediation facilitated by a mutually agreed upon mediator. The PARTIES shall share equally in the cost of the mediator.
- d) Each PARTY agrees to compromise to the fullest extent possible in resolving the dispute in order to avoid delays or additional incurred cost to the Project.
- e) The PARTIES agree that they shall have no right to seek relief in a court of law until and unless the Dispute Resolution process has been exhausted.

15.0 ENTIRE AGREEMENT

This Agreement, together with the RECIPIENT'S Grant Application, the provisions of chapter 47.26 Revised Code of Washington and/or 47.04 Revised Code of Washington, the provisions of title 479 Washington Administrative Code, and TIB Policies, constitutes the entire agreement between the PARTIES and supersedes all previous written or oral agreements between the PARTIES.

16.0 RECORDS MAINTENANCE

The RECIPIENT shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. RECIPIENT shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Agreement shall be subject at all reasonable times to inspection, review or audit by TIB personnel duly authorized by TIB, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

Approved as to Form
Attorney General

By:

Signature on file

Guy Bowman
Assistant Attorney General

Lead Agency

Transportation Improvement Board

Chief Executive Officer

Date

Executive Director

Date

Print Name

Print Name

City of Stanwood
C-P-823(001)-1
Twin City Mile Mainstreet Improvements
84th Ave NW to 88th Ave NW

STATE OF WASHINGTON
TRANSPORTATION IMPROVEMENT BOARD
AND
City of Stanwood
AGREEMENT

THIS GRANT AGREEMENT (hereinafter "Agreement") for the Twin City Mile Mainstreet Improvements, 84th Ave NW to 88th Ave NW (hereinafter "Project") is entered into by the WASHINGTON STATE TRANSPORTATION IMPROVEMENT BOARD (hereinafter "TIB") and City of Stanwood, a political subdivision of the State of Washington (hereinafter "RECIPIENT").

1.0 PURPOSE

For the project specified above, TIB shall pay 85.0000 percent of approved eligible project costs up to the amount of \$817,483, pursuant to terms contained in the RECIPIENT'S Grant Application, supporting documentation, chapter 47.26 RCW and/or chapter 47.04 RCW, title 479 WAC, and the terms and conditions listed below.

2.0 SCOPE AND BUDGET

The Project Scope and Budget are initially described in RECIPIENT's Grant Application and incorporated by reference into this Agreement. Scope and Budget will be further developed and refined, but not substantially altered during the Design, Bid Authorization and Construction Phases. Any material alterations to the original Project Scope or Budget as initially described in the Grant Application must be authorized by TIB in advance by written amendment.

3.0 PROJECT DOCUMENTATION

TIB requires RECIPIENT to make reasonable progress and submit timely Project documentation as applicable throughout the Project. Upon RECIPIENT's submission of each Project document to TIB, the terms contained in the document will be incorporated by reference into the Agreement. Required documents include, but are not limited to the following:

- a) Project Funding Status Form
- b) Bid Authorization Form with plans and engineers estimate
- c) Award Updated Cost Estimate
- d) Bid Tabulations
- e) Contract Completion Updated Cost Estimate with final summary of quantities
- f) Project Accounting History

4.0 BILLING AND PAYMENT

The local agency shall submit progress billings as project costs are incurred to enable TIB to maintain accurate budgeting and fund management. Payment requests may be submitted as

often as the RECIPIENT deems necessary, but shall be submitted at least quarterly if billable amounts are greater than \$50,000. If progress billings are not submitted, large payments may be delayed or scheduled in a payment plan.

5.0 TERM OF AGREEMENT

This Agreement shall be effective upon execution by TIB and shall continue through closeout of the grant or until terminated as provided herein, but shall not exceed 10 years unless amended by the Parties.

6.0 AMENDMENTS

This Agreement may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.

7.0 ASSIGNMENT

The RECIPIENT shall not assign or transfer its rights, benefits, or obligations under this Agreement without the prior written consent of TIB. The RECIPIENT is deemed to consent to assignment of this Agreement by TIB to a successor entity. Such consent shall not constitute a waiver of the RECIPIENT's other rights under this Agreement.

8.0 GOVERNANCE & VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington and venue of any action brought hereunder shall be in the Superior Court for Thurston County.

9.0 DEFAULT AND TERMINATION

9.1 NON-COMPLIANCE

- a) In the event TIB determines, in its sole discretion, the RECIPIENT has failed to comply with the terms and conditions of this Agreement, TIB shall notify the RECIPIENT, in writing, of the non-compliance.
- b) In response to the notice, RECIPIENT shall provide a written response within 10 business days of receipt of TIB's notice of non-compliance, which should include either a detailed plan to correct the non-compliance, a request to amend the Project, or a denial accompanied by supporting details.
- c) TIB will provide 30 days for RECIPIENT to make reasonable progress toward compliance pursuant to its plan to correct or implement its amendment to the Project.
- d) Should RECIPIENT dispute non-compliance, TIB will investigate the dispute and may withhold further payments or prohibit the RECIPIENT from incurring additional reimbursable costs during the investigation.

9.2 DEFAULT

RECIPIENT may be considered in default if TIB determines, in its sole discretion, that:

- a) RECIPIENT is not making reasonable progress toward correction and compliance.
- b) TIB denies the RECIPIENT's request to amend the Project.
- c) After investigation TIB confirms RECIPIENT'S non-compliance.

TIB reserves the right to order RECIPIENT to immediately stop work on the Project and TIB may stop Project payments until the requested corrections have been made or the Agreement has been terminated.

9.3 TERMINATION

- a) In the event of default by the RECIPIENT as determined pursuant to Section 9.2, TIB shall serve RECIPIENT with a written notice of termination of this Agreement, which shall be served in person, by email or by certified letter. Upon service of notice of termination, the RECIPIENT shall immediately stop work and/or take such action as may be directed by TIB.
- b) In the event of default and/or termination by either PARTY, the RECIPIENT may be liable for damages as authorized by law including, but not limited to, repayment of grant funds.
- c) The rights and remedies of TIB provided in the AGREEMENT are not exclusive and are in addition to any other rights and remedies provided by law.

9.4 TERMINATION FOR NECESSITY

TIB may, with ten (10) days written notice, terminate this Agreement, in whole or in part, because funds are no longer available for the purpose of meeting TIB's obligations. If this Agreement is so terminated, TIB shall be liable only for payment required under this Agreement for performance rendered or costs incurred prior to the effective date of termination.

10.0 USE OF TIB GRANT FUNDS

TIB grant funds come from Motor Vehicle Fuel Tax revenue and other revenue sources. Any use of these funds for anything other than highway or roadway system improvements is prohibited and shall subject the RECIPIENT to the terms, conditions and remedies set forth in Section 9. If Right of Way is purchased using TIB funds, and some or all of the Right of Way is subsequently sold, proceeds from the sale must be deposited into the RECIPIENT's motor vehicle fund and used for a motor vehicle purpose.

11.0 INCREASE OR DECREASE IN TIB GRANT FUNDS

At Bid Award and Contract Completion, RECIPIENT may request an increase in the maximum payable TIB funds for the specific project. Requests must be made in writing and will be considered by TIB and awarded at the sole discretion of TIB. All increase requests must be made pursuant to WAC 479-05-202 and/or WAC 479-01-060 and/or WAC 479-10-575. If an increase is denied, the recipient shall be liable for all costs incurred in excess of the maximum amount payable by TIB. In the event that final costs related to the specific project are less than the initial grant award, TIB funds will be decreased and/or refunded to TIB in a manner that maintains the intended ratio between TIB funds and total project costs, as described in Section 1.0 of this Agreement.

12.0 INDEPENDENT CAPACITY

The RECIPIENT shall be deemed an independent contractor for all purposes and the employees of the RECIPIENT or any of its contractors, subcontractors, and employees thereof shall not in any manner be deemed employees of TIB.

13.0 INDEMNIFICATION AND HOLD HARMLESS

The PARTIES agree to the following:

Each of the PARTIES, shall protect, defend, indemnify, and save harmless the other PARTY, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgment, and/or awards of damages, arising out of, or in any way resulting from, that PARTY's own negligent acts or omissions which may arise in connection with its performance under this Agreement. No PARTY will be required to indemnify, defend, or save harmless the other PARTY if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the other PARTY. Where such claims, suits, or actions result from the concurrent negligence of the PARTIES, the indemnity provisions provided herein shall be valid and enforceable only to the extent of a PARTY's own negligence. Each of the PARTIES agrees that its obligations under this subparagraph extend to any claim, demand and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the PARTIES, by mutual negotiation, hereby waives, with respect to the other PARTY only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provision of Title 51 RCW. In any action to enforce the provisions of the Section, the prevailing PARTY shall be entitled to recover its reasonable attorney's fees and costs incurred from the other PARTY. The obligations of this Section shall survive termination of this Agreement.

14.0 DISPUTE RESOLUTION

- a) The PARTIES shall make good faith efforts to quickly and collaboratively resolve any dispute arising under or in connection with this AGREEMENT. The dispute resolution process outlined in this Section applies to disputes arising under or in connection with the terms of this AGREEMENT.
- b) Informal Resolution. The PARTIES shall use their best efforts to resolve disputes promptly and at the lowest organizational level.
- c) In the event that the PARTIES are unable to resolve the dispute, the PARTIES shall submit the matter to non-binding mediation facilitated by a mutually agreed upon mediator. The PARTIES shall share equally in the cost of the mediator.
- d) Each PARTY agrees to compromise to the fullest extent possible in resolving the dispute in order to avoid delays or additional incurred cost to the Project.
- e) The PARTIES agree that they shall have no right to seek relief in a court of law until and unless the Dispute Resolution process has been exhausted.

15.0 ENTIRE AGREEMENT

This Agreement, together with the RECIPIENT'S Grant Application, the provisions of chapter 47.26 Revised Code of Washington and/or 47.04 Revised Code of Washington, the provisions of title 479 Washington Administrative Code, and TIB Policies, constitutes the entire agreement between the PARTIES and supersedes all previous written or oral agreements between the PARTIES.

16.0 RECORDS MAINTENANCE

The RECIPIENT shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. RECIPIENT shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Agreement shall be subject at all reasonable times to inspection, review or audit by TIB personnel duly authorized by TIB, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

Approved as to Form
Attorney General

By:

Signature on file

Guy Bowman
Assistant Attorney General

Lead Agency

Transportation Improvement Board

Chief Executive Officer

Date

Executive Director

Date

Print Name

Print Name

CITY OF STANWOOD

CEDARHOME DRIVE AND PARK DRIVE WATER MAIN REPLACEMENT

SCOPE OF WORK

Based upon our understanding of the project requirements and discussions with you we have developed the following scope of services:

PROJECT UNDERSTANDING

Atwell, LLC ("Atwell") will provide engineering services for the Cedarhome Drive and Park Drive Water Main Replacement ("Project") generally consisting of water improvements for the replacement of approximately $\pm$ 3,250 LF of the existing 2-inch galvanized and 6-inch steel water main with 8-inch PVC water main along Cedarhome Drive from Pioneer Highway to 276th St NW and Park Drive loop to 276th PI NW. This will include valves, fittings, fire hydrants, water services, and water main connections where necessary.

TASK 001: PROJECT MANAGEMENT AND COORDINATION:

This task is for general coordination and meetings on the project, including coordination with the City, internal plan review/discussion meetings, and in-house quality assurance. Atwell will prepare monthly invoices for work performed during the previous month. Included with the invoices will be pertinent backup materials and progress reports of the project to date. Quality Assurance/Quality Control reviews will be completed at each submittal stage.

Deliverables: *Monthly Invoices, Progress Reports*

TASK 002: SURVEY SERVICES:

Atwell will prepare base mapping for the overlay areas specified in the Project Description above and shown in the map below. AutoCAD drawings will be prepared at a scale of 1"=20'. Services will include the following:

- Control survey in NAD 83/11 Horizontal Datum, with all elevations derived from and checked to NAVD '88 Vertical Datum.
- Retrieve, interpret, and include existing as-builts as available from local agencies and purveyors.
- Establish rights-of-way and roadway centerlines within above-described area as available from recorded plats and public records further compared to the Snohomish County Parcel GIS lines.
- Interpret and delineate existing easements within unopened right-of-way section described above.
- Set additional benchmarks at least 1 per 500' of route mapping.
- Depict hard and soft surfaces on individual layers per accepted APWA standards.
- Show and dimension located topographic features and contours at 1' intervals along subject area.
- Show and label all control points with elevations and point numbers.
- Show known utilities by surface evidence, utility pre-painting, or as-built location.

Deliverables: *AutoCAD 2022 drawing file with point database and dtm files*

Assumptions: *The City will provide all necessary right of entry into private property and notice to landowners along the route of mapping activity.*



TASK 003: UNDERGROUND UTILITY LOCATING SERVICES:

Applied Professional Services, Inc (APS) will provide utility locating services for the project. Services under this task is included in the attached scope from APS.

TASK 004: 30% DESIGN:

Based on the survey prepared under Task 002, Atwell will complete the 30% Design stage for the project. The services under this task will include:

- Initial site visit.
- Kickoff meeting with City staff.
- Prepare 30% Design Plan Sheets for the proposed improvements including:
 - Sheets at 22"x34" with roughly an 18"x28" drawing area.
 - Drawing scale at 1"=20' horizontal and 1"=5' vertical scale.
 - Cover Sheet, General Notes, Sheet Index, Temporary Erosion and Sedimentation Control (TESC) notes and details as necessary.
 - Proposed improvements shown in plan per City standards.
 - Preliminary details shown, referencing City standard details and developing specialized details as necessary.
- Prepare a 30% Engineer's Estimate of probable construction costs.
- Prepare a design memo discussing design assumptions, questions, and recommendations.

Deliverables: 30% Design Plans (PDF).

30% Design Engineer's Estimate (PDF).

Design memo accompanying the submittal that outlines assumptions, questions, and recommendations (PDF).

TASK 005: 60% DESIGN:

This task is intended to address City of Stanwood comments from the 30% Design stage. Based on City review comments from the 30% Design stage, Atwell will proceed to producing the 60% (Bid Documents), including:

- Review meeting and project walk-through with the City's Engineering and Operations staff after receiving 30% Design submittal comments.
- Incorporate the City's 30% comments into the contract documents.
- Advance the 30% Design plans to the 60% Design level including:
 - Preliminary water connection details.
- Prepare 60% Specifications including:
 - Preliminary Special Provisions using City-provided standard specifications when available and including measurements and payments in WSDOT format.
- Prepare a 60% Engineer's Estimate of probable construction costs.
- Prepare a design memo discussing design assumptions, questions, and recommendations.
- Additional site visit if necessary.

Deliverables: 60% Design Plans (PDF).

60% Design Specifications (PDF).

60% Design Engineer's Estimate (PDF).

Design memo accompanying the submittal that outlines assumptions, questions, and recommendations (PDF).

TASK 006: 90% DESIGN:

This task is intended to address City of Stanwood comments from the 60% Design stage. Based on City review comments from the 60% stage, Atwell will proceed to producing the 90% Design (Bid Documents), including:

- Review meeting and project walk-through with the City's Engineering and Operations staff after receiving 60% Design submittal comments.
- Incorporate the City's 60% comments into the contract documents.
- Advance the 60% Design plans to the 90% Design level including:
 - Proposed improvements shown in profile.
 - Water connection details.
- Prepare 90% Specifications including:
 - All Proposal and Contract forms.
 - Special Provisions using City-provided standard specifications when available and including measurements and payments in WSDOT format.
- Prepare a 90% Engineer's Estimate of probable construction costs.
- Prepare a design memo discussing design assumptions, questions, and recommendations.
- Up to 1 additional site visit to verify quantities and field conditions.
- Internal constructability review and QA/QC.

Deliverables: 90% Design Plans (PDF).

90% Design Specifications (PDF).

90% Design Engineer's Estimate (PDF).

Design memo accompanying the submittal that outlines assumptions, questions, and recommendations (PDF).

TASK 007: FINAL DESIGN:

This task is intended to address City of Stanwood comments from the 90% Design stage. Based on City review comments from the 90% Design stage, Atwell will proceed to producing the Final Design (Bid Documents), including:

- Final Design virtual review meeting with City staff to discuss review comments.
- Incorporating the City's Final Design comments into the contract documents.
- Final Plans, Specifications, and Estimate developed to the bid-ready stage.

Deliverables: Final Plans (PDF).

Final Specifications (PDF).

Final Engineer's Estimate (PDF).

TASK 008: UNASSIGNED SERVICES RESERVE

This task provides for unanticipated design services deemed to be necessary during the course of the Project that are not specifically identified in the scope of work tasks defined above. Any additional work or funds under this item are not to be used unless explicitly authorized by the City.

CLARIFICATIONS

PROJECT UNDERSTANDINGS AND ASSUMPTIONS:

In preparing the proposal, we have assumed the following:

1. Scope and fees outlined above are based on the Project Understanding included with this proposal as well as the following information (any changes to these documents may result in changes to the fees):
 - a. Correspondence prior to the effective date of this Agreement.
2. The following items are not anticipated to be necessary and are not included in this proposal:
 - a. Structural, Environmental, Geotechnical, or Transportation Engineering Services.
 - b. Sanitary sewer main replacement/improvements.
 - c. Gas main relocation coordination.
 - d. Power relocation coordination (Client to coordinate).
 - e. Other dry utility relocation coordination.
 - f. Wall or rockery design above 4ft.
 - g. Traffic control plan design (Contractor to provide).
 - h. Flow control design.
 - i. Capacity analysis of existing stormwater conveyance system.
 - j. Environmental documentation/permits beyond what is included in the scope above.
 - k. Construction Administration, Staking, or Inspection Services (a separate fee proposal can be provided upon request).
 - l. Potholing (Client to provide).
 - m. Pole Holding design, plans, engineering (Client to coordinate).
3. Water meter, roof downspout, and side sewer sizing to be performed by others.
4. Standard Client review times will be 2-weeks, unless shown otherwise in a project schedule submitted to the Client.
5. Atwell will not pay any Agency fees on behalf of the Client. This includes any fees associated with permits and easements.
6. This scope of work anticipates a single construction package. If the project becomes split into separate packages, an additional fee estimate can be provided for those packages after the first complete construction documents.
7. The fees stated above do not include reimbursable expenses such as large format copies (larger than legal size), mileage, and plots. These will appear under a separate task called **EXPENSES**.
8. Time and expense items are based on Atwell's current hourly rates.
9. These fees stated above are valid if accepted within 30 days of the date of the proposal.
10. Atwell reserves the right to adjust fees per current market conditions for tasks not started within a year of contract execution.
11. Atwell reserves the right to move funds between approved Tasks 001 – 002, 004 – 007 as necessary based on approved scope of work provided the overall budget of Tasks 001 – 002, 004 – 007 is not exceeded. Client Project Manager will be notified if funds are shifted.
12. Project stops/starts and significant changes to the Project Schedule may result in changes to the fees provided above and a separate fee proposal will be provided.
13. Client revisions requested after the work is completed will be billed at an hourly rate under a new task called Client Requested Revisions. A fee estimate can be provided to the Client prior to proceeding with the revisions.
14. If the Client requests Atwell's assistance in complying with any public records request, including without limitation providing copies of documents and communications, Client will pay Atwell's hourly fees and costs incurred in providing such assistance at then-current rates. Such fees and costs will be billed as a separate task and will be in addition to the maximum or total fees and costs stated in the agreement to which this scope of work is attached.

INFORMATION TO BE PROVIDED BY THE CLIENT:

In preparing the proposal, it is understood the following be provided by the Client:

1. Obtaining any offsite easements or right-of-entry including permanent easements (if required) will be the responsibility of the Client.

Project Overview Map





City of Stanwood

Cedarhome Drive and Park Drive Water Main Replacement

Job Number: 24007397 Prepared By: John Pham, EIT
Date: 11/29/2025 Checked By: Brett Justinen, PE

Task #	Base Tasks	Project Manager	Project Engineer	Engineer	Designer	Crew Chief	Total Hours	Total Fee	Fee Type
		\$240/hr Hours	\$212/hr Hours	\$195/hr Hours	\$212/hr Hours	\$146/hr Hours			
001	Project Management and Coordination	72	28				100	\$23,220	Not to Exceed
002	Survey Services	2	6		20	100	128	\$20,590	Not to Exceed
003	Underground Utility Locating Services							\$6,620	Fixed Fee
004	30% Design	8	26	44	60		138	\$28,730	Not to Exceed
005	60% Design	14	46	64	48		172	\$35,770	Not to Exceed
006	90% Design	9	32	38	32		111	\$23,140	Not to Exceed
007	Final Design	7	14	28	20		69	\$14,350	Not to Exceed
008	Management Reserve							\$10,000	Not to Exceed
	Expenses							\$1,000	Not to Exceed
	Total Hours	112	152	174	180	100	718		
	Atwell Personnel	\$26,880	\$32,224	\$33,930	\$38,160	\$14,600		\$163,420	

001 Project Management and Coordination		Project Manager	Project Engineer	Engineer	Designer	Total Hours		
Item #	Description	\$240/hr	\$212/hr	\$195/hr	\$212/hr			
		Hours	Hours	Hours	Hours			
1	Monthly Invoices/Progress Reports	8				8		
2	General Project Coordination	40				40		
3	QA/QC	12	28			40		
4	Meetings	12				12		
Total Hours		72	28	0	0	100		
Total Fee		\$17,280	\$5,936	\$0	\$0			\$23,220

002 Survey Services		Project Manager	Project Engineer	Designer	Crew Chief	Total Hours	Total
Item #	Description	\$240/hr	\$212/hr	\$212/hr	\$146/hr		
1	Survey & Base Mapping	2	6	20	100		
Total Hours		2	6	20	100	128	
Total Fee		\$480	\$1,272	\$4,240	\$14,600		\$20,590

003 Underground Utility Locating Services		Project Manager	Project Engineer	Total Cost (APS)	Atwell Markup 15%	Total Hours	Total
Item #	Description	\$240/hr	\$212/hr				
1	Utility Location Services			\$5,175	\$776.25		
2	Subconsultant Coordination	1	2	-	-	3	
Total Hours		1	2	-	-	3	
Total Fee		\$240	\$424	\$5,175	\$776		\$6,620

004 30% Design		Project Manager	Project Engineer	Engineer	Designer	Total Hours		
Item #	Description	\$240/hr	\$212/hr	\$195/hr	\$212/hr			
		Hours	Hours	Hours	Hours			
1	Kick-Off Meeting, Initial Site Visit	2	2	8		12		
2	Sheet Setup		2	4	24	30		
3	30% Plans	2	12	16	36	66		
4	30% Estimate	2	6	16		24		
5	Design Memo	2	4			6		
Total Hours		8	26	44	60	138		
Total Fee		\$1,920	\$5,512	\$8,580	\$12,720		\$28,730	

005 60% Design		Project Manager	Project Engineer	Engineer	Designer	Total Hours		
Item #	Description	\$240/hr	\$212/hr	\$195/hr	\$212/hr			
		Hours	Hours	Hours	Hours			
1	60% Walkthrough	6	8			14		
2	60% Plans	2	12	16	48	78		
3	60% Estimate	2	6	16		24		
4	60% Specifications	2	8	24		34		
5	Design Memo	2	4			6		
6	Site Visit		8	8		16		
Total Hours		14	46	64	48	172		
Total Fee		\$3,360	\$9,752	\$12,480	\$10,176		\$35,770	

006 90% Design		Project Manager	Project Engineer	Engineer	Designer	Total Hours	
Item #	Description	\$240/hr	\$212/hr	\$195/hr	\$212/hr		
		Hours	Hours	Hours	Hours		
1	Review Meeting	2	4			6	
2	90% Plans	2	8	12	32	54	
3	90% Estimate	1	4	8		13	
4	90% Specifications	2	6	12		20	
5	Design Memo	2	4			6	
6	Site Visit		6	6		12	
Total Hours		9	32	38	32	111	
Total Fee		\$2,160	\$6,784	\$7,410	\$6,784		\$23,140

007 Final Design		Project Manager	Project Engineer	Engineer	Designer	Total Hours	
Item #	Description	\$240/hr	\$212/hr	\$195/hr	\$212/hr		
		Hours	Hours	Hours	Hours		
1	Review Meeting	1	2			3	
2	Final Plans	2	6	10	20	38	
3	Final Estimate	2	2	6		10	
4	Final Specifications	2	4	12		18	
Total Hours		7	14	28	20	69	
Total Fee		\$1,680	\$2,968	\$5,460	\$4,240		\$14,350

008 Management Reserve					Total Cost	Total
Item #	Description					
1	Unassigned Services Reserve				\$10,000.00	
Total Fee					\$10,000.00	\$10,000



Applied Professional Services, Inc.

43530 SE North Bend Way
North Bend, WA 98045

“Solutions that exceed expectations”

Date	Project Address/Job Number:	Services Performed For:
10/17/2024	Near 8415 Cedarhome Dr, Stanwood, WA 98292	Atwell
		Evan Bovard
	Design Survey Locating	ebovard@atwell.com

Scope of Work

- A. APS, Inc. will employ all industry and best practices to designate and mark the known conductible and/or non-conductible utilities within the project boundaries.
- B. APS, Inc. will sweep the area, after the known utilities have been marked, to attempt to identify any unknown or abandoned utilities.
- C. The project boundaries are defined by civil drawings or maps provided by the Client.
- D. **Conductible Utility Locating** refers to conductible (*metallic*) utilities only.
- E. **Non-Conductible Utility Locating** refers to non-conductible (*non-metal*) utilities only. This is generally for sewer & storm facilities only, or sewer & storm video inspection.
- F. **GPR Utility Locating** refers to Ground Penetrating Radar, used to find non-metallic utilities such as concrete, PVC, or polyethylene water mains, USTs, and other anomalies.

Cost Estimate

LABOR DESCRIPTION	HOURS	RATE	AMOUNT
CONDUCTIBLE	45	\$115.00	\$5,175.00
		Labor Est. Total	\$5,175.00

Invoicing

Net 30 days on all billing unless specified otherwise under a separate contract or negotiation.

Disclaimer

APS, Inc, and or its employees cannot guarantee that all conductible and/or non-conductible utilities within the project boundaries can or will be found.

Project Estimate

NOT TO EXCEED WITHOUT WRITTEN CLIENT APPROVAL:

This hourly / not to exceed project estimate is based on the estimated number of hours it will take to perform the Scope of Work. If the project requires additional time or costs to complete the Scope of work, then written approval to exceed the original cost estimate is required.

Atwell

By _____

Name _____

Title _____

ACKNOWLEDGEMENT AND ACCEPTANCE OF TERMS AND CONDITIONS FOR SERVICES

"Client" acknowledges that the Proposal prepared by Applied Professional Services, Inc. ("APS"), along with the Terms and Conditions ("**Terms**") below comprise the entire agreement between the Client and APS (collectively "**Agreement**"), and supersedes all prior or contemporaneous written and oral understandings, agreements, negotiations, representations, warranties, and communications.

GENERAL TERMS AND CONDITIONS

RELATIONSHIP OF THE PARTIES: The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

SERVICES: APS shall provide services to the Client for the project ("Project"), as defined in the Proposal and the Agreement, or as requested by the Client by an agreed Order (the "Services") in accordance with these Terms.

PROJECT SCHEDULE: APS shall use reasonable efforts to meet the Project schedule dates specified in the Proposal. These dates shall be estimates only.

CLIENT'S RESPONSIBILITIES: Client shall provide/performance the following in a timely manner so as not to delay the Services:

- Provide accurate information about the location and survey of the site where services are to be provided.
- Cooperate with APS in all matters relating to the Services.
- Secure legal rights to and provide access to the Project site property and authorize APS staff to access the site for activities necessary for the performance of the Services.
- Respond promptly to any APS request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for APS to perform Services in accordance with the requirements of this Agreement.
- Provide materials, data, or information that APS may request that is reasonably necessary to carry out the Services in a timely manner and ensure that such materials, data, or information provided are complete and accurate in all material respects.
- Comply with all applicable laws in relation to the Services before the date on which the Services are to start, including required licenses, permits, and consents to allow APS to perform Services.
- Give prompt consideration and action to all communications, reports and other documents relating to the Services furnished by APS and inform APS in writing of decisions in reasonable time so as not to delay the Services.

CLIENT'S ACTS OR OMISSIONS: If APS's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Client or its agents, subcontractors, consultants or employees, APS shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Client, in each case, to the extent arising directly or indirectly from such prevention or delay.

COMPENSATION AND PAYMENT: In consideration of the provision of the Services by APS under this Agreement, Compensation will be made as follows:

- **Payment:** Invoices for APS's Services shall be submitted on a monthly basis and are payable within thirty (30) days after the invoice date. In the event that the Client disputes any portion of an invoice, client shall notify APS - of such disputed items within ten (10) days of invoice date. Retainers/deposits shall be credited on the final invoice. Interest will accrue on accounts overdue by 30 days at the lesser of 1.5 percent per month (18 percent per annum) or the maximum legal rate of interest allowable.

- Failure to make any payment when due is a material breach of this Agreement. In the event any invoice has not been paid in full within ninety (90) days of the invoice date, APS shall have the right to immediately suspend all or any portion of the Services hereunder indefinitely, pending payment in full of such invoice(s).
- **Taxes:** Client shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Client hereunder.
- **Compensation:** Client shall pay the agreed upon rates or amounts set forth in the Proposal. If the agreement extends across multiple years, the compensation paid to APS may be adjusted due to market conditions, underlying labor costs, overhead and pricing influences.

CHANGE ORDERS: If either party wishes to change the scope or performance of the Services, it shall submit details in writing of the requested change in a timely manner to the other party. APS shall, within a reasonable time after such request, provide a written estimate to Client of:

- the likely time required to implement the change
- any necessary variations to the compensation and other charges for the Services arising from the change
- the likely effect of the change on the Services
- any other impact the change might have on the performance of this Agreement

Promptly after receipt of the written estimate, the parties shall negotiate in good faith and agree in writing on the terms of such change (a "Change Order"). Neither party shall be bound by any Change Order unless mutually agreed upon in writing.

APS may charge for the time it spends assessing and documenting a request for a Change Order on a time and materials basis in accordance with the Proposal.

DOCUMENTS: Unless otherwise agreed to by the parties in writing, all of the documents prepared by or on behalf of APS in connection with the Services (herein called the "Documents") will be considered Instruments of Service and will become the property of Client upon full and final payment of the Compensation. Any copyright of the Documents shall be retained by APS. APS grants to Client a non-exclusive right and license to use, disclose and reproduce the Documents solely for the purpose of the Project.

DATA AND DOCUMENT RETENTION: APS will retain all data and Documents in accordance with its Data Retention Policy, unless otherwise agreed upon in writing.

LIMITATION OF USE: Client shall not amend, alter or revise, reuse, permit the use of, disclose or reproduce any of the Documents for the completion of another project or work, without first obtaining the written consent of APS, and all reproductions shall include notice of this restriction.

APS shall have no responsibility for any loss or damage suffered by Client or others resulting from any unauthorized use or modification of the Documents, errors in transmission of the Documents, changes to the Documents by others. The Documents may be relied upon by Client for design and construction work undertaken by other parties with respect to the Project provided such parties

TERMS AND CONDITIONS

Applied Professional Services, Inc.



verify the accuracy and completeness of the Documents to their satisfaction. The Client agrees to defend, indemnify and hold APS harmless from and against all claims, demands, losses, damages, liability and costs associated therewith.

In the event any of APS's work product documents are modified in any respect, without involvement and oversight of APS, Client agrees that any modification is at the Client's sole risk.

In the event that Client is in default of its obligations under this Agreement, APS may terminate Client's right and license to use, disclose and reproduce the Documents upon providing written notice to Client. Client shall return to APS all Documents and that no residual copies of any part of any Documents are to be retained by the Client or other parties.

STANDARD OF CARE: The standard of care for all Services performed under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. APS makes no warranties or guarantees under this Agreement in connection with the Services. APS makes no warranty whatsoever with respect to the services, including any warranty of merchantability, warranty of fitness for a particular purpose, warranty of title, or warranty against infringement of intellectual property rights of a third party; whether express or implied by law, course of dealing, course of performance, usage of trade, or otherwise.

CONFIDENTIALITY: Both parties shall use reasonable efforts to keep confidential all data and information which is marked confidential and furnished by the respective parties under this Agreement. Confidentiality obligations shall not apply if such data or information is within the public domain, was known to the Client or APS at the time of disclosure, or was rightfully obtained by Client or APS on a non-confidential basis from a third party.

PERSONAL INFORMATION: Unless otherwise agreed to by the parties in writing, Client shall only collect and use individually identifiable information from or about APS employees if such collection and use is required. Client shall collect and use all Personal Information in accordance with applicable federal, state or personal information protection legislation.

NON-SOLICITATION OF EMPLOYEES: Neither party shall knowingly solicit, recruit, hire or otherwise employ or retain the employees of the other party during the Term of this Agreement and for one (1) year following the termination or expiration of this Agreement without the prior written consent of the other party. However, neither party shall be restricted from soliciting or recruiting generally in the media, or from hiring, without prior written consent, the other party's employees who answer any advertisement or otherwise voluntarily applies for hire without having been personally solicited.

For a breach of Non-Solicitation, an amount equal to twice the base annual salary of the recruited employee at the time of their departure shall be paid by the hiring party to the other party.

INDEMNIFICATION: To the fullest extent permitted by law, APS shall indemnify and hold harmless Client from and against any and all damages, liabilities, costs and expenses, including but not limited to reimbursement of reasonable attorney's fees arising out of damages or injuries to persons or property to the proportionate extent caused by the negligence, gross negligence or willful misconduct of APS or anyone acting under its direction or control or on its behalf in the course of its performance under this Agreement; provided that APS's aforesaid indemnity and hold harmless obligation shall not be applicable to any liability based upon the willful misconduct or negligence of Client or upon use of or reliance on information supplied by Client or on behalf of Client to APS in preparation of any report, study or other written document.

Client shall indemnify and hold harmless APS from and against any and all damages, liabilities, costs and expenses, including but not limited to reimbursement of reasonable attorney fees arising out of (i) damages or injuries to persons or property caused by the negligence, gross negligence or willful misconduct by Client or anyone acting under its direction or control or on its behalf in connection with this Agreement and (ii) claims, actions or demands for environmental liability arising from, or in relation to, any condition, not caused by the negligence of APS or anyone acting under its authority; provided

that Client's aforesaid indemnity and hold harmless obligation shall not be applicable to any liability based upon the willful misconduct or negligence of APS.

The duty to indemnify does not include the duty to pay for or to provide an up-front defense against unproven claims or allegations.

Where any claim results from the joint negligence, gross negligence, or willful misconduct, by Client and APS, the amount of such damage for which Client or APS is liable shall equal the proportionate part that the amount of such claim attributable to indemnitor's negligence, gross negligence, willful misconduct, bears to the amount of the total claim attributable to the joint negligence, gross negligence, or willful misconduct, at issue.

LIMITATION OF LIABILITIES: Notwithstanding any other provision in the Agreement, the Client agrees to limit APS's liability under the Agreement or arising from the performance or non-performance of the Services under any theory of law, including but not limited to claims for negligence, negligent misrepresentation and breach of contract, to the lesser of: (a) the fees paid to APS for Services or (b) the maximum of remaining available insurance provided. No claim may be brought against APS in contract or tort more than two (2) years after the cause of action arose. Any claim, suit, demand or action brought under the Agreement shall be directed and/or asserted only against APS and not against any of APS's employees, shareholders, officers or directors. APS's liability with respect to any claims arising out of this Agreement shall be limited as provided herein to direct damages arising out of the performance of the Services and APS shall not be held responsible or liable whatsoever for any consequential damages, injury or damage incurred by the actions or inactions of the Client, including but not limited to claims for loss of use, loss of profits and loss of markets.

FORCE MAJEURE: If performance of the Services is affected by causes beyond APS's reasonable control, the Project schedule and the Compensation shall be equitably adjusted by mutual agreement of the parties. APS shall not be liable or responsible to Client, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of APS.

These causes include, without limitation, inclement weather conditions, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, pandemic/epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage, or similar causes and without the fault or negligence of the delayed party. If the event in question continues for a period in excess of thirty (30) days, Client shall be entitled to give notice in writing to APS to terminate this Agreement.

INSURANCE: APS shall maintain Insurance which it deems to be reasonable throughout the term of this Agreement. APS shall provide Client with certificates of insurance upon written request.

Client assumes sole responsibility and waives all rights and claims against APS for all loss of or damage to property owned by or in the custody of Client and any items at the site or in transit thereto however such loss or damage shall occur, unless caused by the sole negligence of APS.

Client agrees to maintain appropriate Property Insurance and shall require its insurers to waive all rights of subrogation against APS for claims covered under any Property Insurance that Client may carry. Such waivers shall survive termination or discharge of this Agreement.

TERM AND TERMINATION: This Agreement will continue in effect unless terminated by either party with thirty (30) days written notice to the other party. In the event of any termination, APS shall be paid for all Services rendered and reimbursable costs incurred through the date of notice of termination. In the event of termination, the Client shall pay all additional compensation related to termination of the project.

TERMS AND CONDITIONS

Applied Professional Services, Inc.



In addition to any remedies that are provided under this Agreement, APS may also terminate this Agreement with immediate effect upon written notice if the Client becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

In the event of termination, APS shall be paid for all Services rendered and costs incurred by APS through the date of notice of termination. In the event of termination due to the termination of the Project, the Client shall pay all additional costs incurred by APS related to termination of the Project.

DISPUTE RESOLUTION: If requested in writing by either the Client or APS, the Parties shall attempt to resolve any dispute between them arising out of or in connection with this Agreement by entering into a management/principal level meeting(s). The first such meeting shall occur within thirty (30) days from the first date of the written request for such meeting.

- If a dispute cannot be settled informally between the Parties within a period of sixty (60) calendar days from the first date of the written request, the Parties shall enter structured non-binding negotiations with the assistance of a mediator. The mediator shall be appointed by agreement of the Parties.
- If the Parties are unable to reach an acceptable resolution of the dispute, controversy, or claim through the mediation process, the Parties shall have any and all rights and remedies available to it under this Agreement and any and all rights and remedies at law or in equity.
- **Attorney Fee Provision:** With respect to any dispute relating to this Agreement, or in the event that a lien, suit, action, arbitration, mediation, or other proceeding of any nature whatsoever is instituted to interpret or enforce the provisions of this Agreement, including, without limitation, any proceeding under the U.S. Bankruptcy Code and involving issues peculiar to federal bankruptcy law or any action, suit, arbitration, or proceeding seeking a declaration of rights or rescission, the prevailing party shall be entitled to recover from the losing party its reasonable attorney fees, paralegal fees, expert fees, and all other fees, costs, title reports, title guarantee reports, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge or arbitrator at trial, arbitration, mediation, or other proceeding, or on any appeal or review, and all proceedings in U.S. Bankruptcy Court. APS shall also be entitled to reasonable attorney's fees and costs incurred in enforcing any award and/or judgment, in addition to all other amounts provided by law.

ASSIGNMENT: Neither party to this Agreement shall, without the prior written consent of the other party, which shall not be unreasonably withheld, assign the benefit or in any way transfer any claim or obligation under this Agreement or any part hereof. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and except as otherwise provided herein, upon their executors, administrators, successors, and assigns.

NO THIRD-PARTY BENEFICIARY: This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

LEGAL CONSTRUCTION: In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof. This Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

ENTIRE AGREEMENT: This Agreement supersedes any and all other agreements, either oral or in writing, between the parties relating to the subject matter of this Agreement and is the entire understanding and agreement related thereto. This Agreement may be amended by mutual consent of the parties in writing to be attached hereto and incorporated herein, executed by APS's and the Client's authorized representatives.

WAIVER: Failure by one party to notify the other party of a breach of any provision of this Agreement shall not constitute a waiver of any continuing breach. Failure by one party to enforce any of its rights under this Agreement shall not constitute a waiver of those rights. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or any other provision hereof.

SEVERABILITY: If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

SURVIVAL OF PROVISIONS: The expiration or termination of this Agreement, or any Task Order shall not affect the provisions, and the rights and obligations set forth in which either by their terms state or evidence the intent of the Parties that the provisions survive the expiration or termination, or must survive to give effect to the provisions.

GOVERNING LAW: The validity of the Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be interpreted and governed by the laws of the state in which the Project is located.

Specific state statutes and regulations will be adhered to under this contractual agreement through the use of Addendums, as appropriate.

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
CITY OF STANWOOD, WASHINGTON
AND KIMLEY-HORN
FOR CONSULTANT SERVICES**

THIS AGREEMENT (“Agreement”) is made and entered into by and between the **CITY OF STANWOOD**, Washington, a Washington State municipal corporation (“City”), and **KIMLEY-HORN AND ASSOCIATES, INC.** a North Carolina Corporation ("Consultant") **licensed to do business in Washington State]** .

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

ARTICLE I. PURPOSE

The purpose of this Agreement is to provide the City with consultant services regarding **SR 532 & 72ND AVE NW** as described in Article II. The general terms and conditions of the relationship between the City and the Consultant are specified in this Agreement.

ARTICLE II. SCOPE OF SERVICES

The Scope of Services is attached hereto as **Exhibit “A”** and incorporated herein by this reference (“Scope of Services”). All services and materials necessary to accomplish the tasks outlined in the Scope of Services shall be provided by the Consultant unless noted otherwise in the Scope of Services or this Agreement. All such services shall be provided in accordance with the standards of the Consultant’s profession.

ARTICLE III. OBLIGATIONS OF THE CONSULTANT

III.1 MINOR CHANGES IN SCOPE. The Consultant shall accept minor changes, amendments, or revision in the detail of the Scope of Services as may be required by the City when such changes will not have any impact on the service costs or proposed delivery schedule. Extra work, if any, involving substantial changes and/or changes in cost or schedules will be addressed as follows:

Extra Work. The City may desire to have the Consultant perform work or render services in connection with each project in addition to or other than work provided for by the expressed intent of the Scope of Services in the scope of services. Such work will be considered as extra work and will be specified in a written supplement to the scope of services, to be signed by both parties, which will set forth the nature and the scope thereof. All proposals for extra work or services shall be prepared by the Consultant at no cost to the City. Work under a supplemental agreement shall not proceed until executed in writing by the parties.

III.2 WORK PRODUCT AND DOCUMENTS. The work product and all documents produced under this Agreement shall be furnished by the Consultant to the City, and upon completion of the work and payment in full of all monies due to the Consultant shall become the property of the City, except that the Consultant may retain one copy of the work product and documents for its records. The Consultant will be responsible for the accuracy of the work, even though the work has been accepted by the City.

In the event that the Consultant shall default on this Agreement or in the event that this Agreement shall be terminated prior to its completion as herein provided, all work product of the Consultant, along with a summary of work as of the date of default or termination, shall become the property of the City. Upon request, the Consultant shall tender the work product and summary to the City. Tender of said work product shall be a prerequisite to final payment under this Agreement. The summary of work done shall be prepared at no additional cost to the City.

Consultant will not be held liable for reuse of documents produced under this Agreement or modifications thereof for any purpose other than those authorized under this Agreement without the written authorization of Consultant.

III.3 TERM. The term of this Agreement shall commence on January 1, 2025, and shall terminate at midnight, December 31, 2025. The parties may extend the term of this Agreement by written mutual agreement.

III.4 NONASSIGNABLE. The services to be provided by the Consultant shall not be assigned or subcontracted without the express written consent of the City.

III.5 EMPLOYMENT.

a. The term “employee” or “employees” as used herein shall mean any officers, agents, or employee of the Consultant.

b. Any and all employees of the Consultant, while engaged in the performance of any work or services required by the Consultant under this Agreement, shall be considered employees of the Consultant only and not of the City, and any and all claims that may or might arise under the Workman's Compensation Act on behalf of any said employees while so engaged, and any and all claims made by any third party as a consequence of any negligent act or omission on the part of the Consultant or its employees while so engaged in any of the work or services provided herein shall be the sole obligation of the Consultant.

c. Consultant represents, unless otherwise indicated below, that all employees of Consultant that will provide any of the work under this Agreement have not ever been retired from a Washington State retirement system, including but not limited to Teacher (TRS), School District (SERS), Public Employee (PERS), Public Safety (PSERS), law enforcement and fire fighters (LEOFF), Washington State Patrol (WSPRS), Judicial Retirement System (JRS), or otherwise. *(Please indicate No or Yes below)*

_____ No employees supplying work have ever been retired from a Washington state retirement system.

_____ Yes employees supplying work have been retired from a Washington state retirement system.

In the event the Consultant indicates “no”, but an employee in fact was a retiree of a Washington State retirement system, and because of the misrepresentation the City is required to defend a claim by the Washington State retirement system, or to make contributions for or on account of the employee, or reimbursement to the Washington State retirement system for benefits paid, Consultant hereby agrees to save, indemnify, defend and hold City harmless from and against all

expenses and costs, including reasonable attorney's fees incurred in defending the claim of the Washington State retirement system and from all contributions paid or required to be paid, and for all reimbursement required to the Washington State retirement system. In the event Consultant affirms that an employee providing work has ever retired from a Washington State retirement system, said employee shall be identified by Consultant, and such retirees shall provide City with all information required by City to report the employment with Consultant to the Department of Retirement Services of the State of Washington.

III.6 INDEMNITY.

a. **Indemnification / Hold Harmless.** 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 caused by, arising out of or resulting from the negligent acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the negligence of the City.

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 City, 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. **Public Records Requests.**
In addition to Paragraph IV.3 b, when the City provides the Consultant with notice of a public records request per Paragraph IV. 3 b, Consultant agrees to save, hold harmless, indemnify and defend the City its officers, agents, employees and elected officials from and against all claims, lawsuits, fees, penalties and costs resulting from the consultants violation of the Public Records Act RCW 42.56, or consultant's failure to produce public records as required under the Public Records Act.

e. The provisions of this section III.6 shall survive the expiration or termination of this agreement.

III.7 INSURANCE.

a. **Insurance Term**
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.

b. **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 City's recourse to any remedy available at law or in equity.

c. **Minimum Scope of Insurance - Consultant shall obtain insurance of the types described below:**

- (1). 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.
- (2). Commercial General Liability insurance shall be written at least as broad on 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 CG 20 26.
- (3). Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- (4). Professional Liability insurance appropriate to the Consultant's profession.

d. **The minimum insurance limits shall be as follows:**

Consultant shall maintain the following insurance limits:

- (1) Comprehensive General Liability. \$2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage; \$2,000,000 general aggregate.
- (2) Automobile Liability. \$1,000,000 combined single limit per accident for bodily injury and property damage.
- (3) Workers' Compensation. Workers' compensation limits as required by the Workers' Compensation Act of Washington.
- (4) Professional Liability/Consultant's Errors and Omissions Liability. \$2,000,000 per claim and \$2,000,000 as an annual aggregate.

e. **Notice of Cancellation.** In the event that the Consultant receives notice (written, electronic or otherwise) that any of the above required insurance coverage is being cancelled and/or terminated, the Consultant shall immediately (within forty-eight (48) hours) provide written notification of such cancellation/termination to the City.

f. **Acceptability of Insurers.** Insurance to be provided by Consultant shall be with insurers with a current A.M.Best rating of no less than A:VII, or if not rated by Best, with minimum surpluses the equivalent of Best VII rating.

g. **Verification of Coverage.** In signing this agreement, the Consultant is acknowledging and representing that required insurance is active and current. 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 Consultant before commencement of the work. Further, throughout the term of this Agreement, the Consultant shall provide the City with proof of insurance upon request by the City.

h. **Insurance shall be Primary - Other Insurance Provision.** The Consultant's insurance coverage shall be primary insurance as respect the City. 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 as respect the City. Any Insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

i. **Claims-made Basis.** Unless approved by the City all insurance policies (except Professional Liability/Consultant's Errors and Omissions Liability insurance), shall be written on an "Occurrence" policy as opposed to a "Claims-made" policy. The City may require an extended reporting endorsement on any approved "Claims-made" policy.

j. **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.

k. **Public Entity Full Availability of Consultant Limits**
If the Consultant 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 Consultant, irrespective of whether such limits maintained by the Consultant 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 Consultant.

l. **Subcontractors' Insurance**

The Contractor shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Contractor shall ensure that the City is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement at least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

III.8 DISCRIMINATION PROHIBITED AND COMPLIANCE WITH EQUAL OPPORTUNITY LEGISLATION. The Consultant agrees to comply with equal opportunity employment and not to discriminate against client, employee, or applicant for employment or for services because of race, creed, color, religion, national origin, marital status, sex, sexual orientation, age or handicap except for a bona fide occupational qualification with regard, but not limited to, the following: employment

upgrading; demotion or transfer; recruitment or any recruitment advertising; layoff or terminations; rates of pay or other forms of compensation; selection for training, rendition of services. The Consultant further agrees to maintain (as appropriate) notices, posted in conspicuous places, setting forth the provisions of this nondiscrimination clause. The Consultant understands and agrees that if it violates this nondiscrimination provision, this Agreement may be terminated by the City, and further that the Consultant will be barred from performing any services for the City now or in the future, unless a showing is made satisfactory to the City that discriminatory practices have been terminated and that recurrence of such action is unlikely.

III.9 UNFAIR EMPLOYMENT PRACTICES. During the performance of this Agreement, the Consultant agrees to comply with RCW 49.60.180, prohibiting unfair employment practices.

III.10 LEGAL RELATIONS. The Consultant shall comply with all federal, state and local laws and ordinances applicable to work to be done under this Agreement. The Consultant represents that the firm and all employees assigned to work on any City project are in full compliance with the statutes of the State of Washington governing activities to be performed and that all personnel to be assigned to the work required under this Agreement are fully qualified-and properly licensed to perform the work to which they will be assigned. This Agreement shall be interpreted and construed in accordance with the laws of Washington. Venue for any litigation commenced relating to this Agreement shall be in Snohomish County Superior Court.

III.11 INDEPENDENT CONTRACTOR.

a. The Consultant and the City understand and expressly agree that the Consultant is an independent contractor in the performance of each and every part of this Agreement. The Consultant expressly represents, warrants and agrees that his status as an independent contractor in the performance of the work and services required under this Agreement is consistent with and meets the six-part independent contractor test set forth in RCW 51.08.195 or as hereafter amended. The Consultant, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing the services required under this Agreement. The Consultant shall make no claim of City employment nor shall claim any related employment benefits, social security, and/or retirement benefits.

b. The Consultant shall be solely responsible for paying all taxes, deductions, and assessments, including but not limited to federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement. In the event the City is assessed a tax or assessment as a result of this Agreement, the Consultant shall pay the same before it becomes due.

c. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

d. Prior to commencement of work, the Consultant shall obtain a business license from the City.

III.12 CONFLICTS OF INTEREST. The Consultant agrees to and shall notify the City of any potential conflicts of interest in Consultant's client base and shall obtain written permission from the City prior to providing services to third parties where a conflict or potential conflict of interest is apparent. If the City determines in its sole discretion that a conflict is irreconcilable, the City reserves the right to terminate this Agreement.

III.13 **CITY CONFIDENCES.** The Consultant agrees to and will keep in strict confidence, and will not disclose, communicate or advertise to third parties without specific prior written consent from the City in each instance, the confidences of the City or any information regarding the City or services provided to the City.

III.14 **SUBCONTRACTORS/SUBCONSULTANTS.**

a. The Consultant shall be responsible for all work performed by subcontractors/subconsultants pursuant to the terms of this Agreement.

b. The Consultant must verify that any subcontractors/subconsultants they directly hire meet the responsibility criteria for the project. Verification that a subcontractor/subconsultant has proper license and bonding, if required by statute, must be included in the verification process. The Consultant will use the following Subcontractors/Subconsultants or as set forth in Exhibit ____:

c. The Consultant may not substitute or add subcontractors/subconsultants without the written approval of the City.

d. All Subcontractors/Subconsultants shall have the same insurance coverages and limits as set forth in this Agreement and the Consultant shall provide verification of said insurance coverage.

ARTICLE IV. OBLIGATIONS OF THE CITY

IV.1 **PAYMENTS.**

a. The Consultant shall be paid by the City for services rendered under this Agreement as described in the Scope of Services and as provided in this section. In no event shall the compensation paid to Consultant under this Agreement exceed ***\$60,120.00 (Sixty Thousand and One Hundred Twenty Dollars)*** without the written agreement of the Consultant and the City. Such payment shall be full compensation for work performed and services rendered and for all labor, materials, supplies, equipment and incidentals necessary to complete the work. In the event the City elects to expand the scope of services from that set forth in Exhibit A, the City shall pay Consultant a mutually agreed amount.

b. Given the nature of the events and work described in Exhibit A, the Consultant has indicated that progress payments are not appropriate and make it difficult for Consultant to make the necessary plans and preparation to complete the Work. The Consultant has, therefore, requested the City make payment in advance and has guaranteed that should the work and services described in Exhibit A not occur, the Consultant shall remit to the City all fund received. Based upon this promise and guarantee, and the fact that the Consultant is a community partner and a known entity, the City is willing to make payment in full upon execution of this Agreement. The Consultant shall maintain time and expense records and provide them to the City upon request.

c. The City will pay timely submitted and approved invoices received before the 20th

of each month within thirty (30) days of receipt.

IV.2 CITY APPROVAL. Notwithstanding the Consultant's status as an independent contractor, results of the work performed pursuant to this Agreement must meet the approval of the City, which shall not be unreasonably withheld if work has been completed in compliance with the Scope of Services and City requirements.

IV.3 MAINTENANCE/INSPECTION OF RECORDS.

a. The Consultant shall maintain all books, records, documents and other evidence pertaining to the costs and expenses allowable under this Agreement in accordance with generally accepted accounting practices. All such books and records required to be maintained by this Agreement shall be subject to inspection and audit by representatives of the City and/or the Washington State Auditor at all reasonable times, and the Consultant shall afford the proper facilities for such inspection and audit. Representatives of the City and/or the Washington State Auditor may copy such books, accounts and records where necessary to conduct or document an audit. The Consultant shall preserve and make available all such books of account and records for a period of three (3) years after final payment under this Agreement. In the event that any audit or inspection identifies any discrepancy in such financial records, the Consultant shall provide the City with appropriate clarification and/or financial adjustments within thirty (30) calendar days of notification of the discrepancy.

b. Public Records

The parties agree that this Agreement and records related to the performance of the Agreement are with limited exception, public records subject to disclosure under the Public Records Act RCW 42.56. Further, in the event of a Public Records Request to the City, the City may provide the Consultant with a copy of the Records Request and the Consultant shall provide copies of any City records in Consultant's possession, necessary to fulfill that Public Records Request. If the Public Records Request is large the Consultant will provide the City with an estimate of reasonable time needed to fulfill the records request.

ARTICLE V. GENERAL

V.1 NOTICES. Notices to the City shall be sent to the following address:

Kevin Hushagen, Public Works Director
10220 270th ST NW
Stanwood, WA 98292
(360) 454-5230
Kevin.Hushagen@ci.stanwood.wa.us

Notices to the Consultant shall be sent to the following address:

Matt Ciarkowski
2828 Colby Avenue, Suite 200
Everett, WA 98201
(425) 708-8273
Matt.Ciarkowski@kimley-horn.com

Receipt of any notice shall be deemed effective three (3) days after deposit of written notice in the U.S. mail with proper postage and address.

V.2 TERMINATION. The right is reserved by the City to terminate this Agreement in whole or in part at any time upon ten (10) calendar days' written notice to the Consultant. Consultant shall have the right to terminate this agreement upon ten (10) calendar days' written notice to City, if City is in default and fails to cure such default within that ten-day period.

If this Agreement is terminated in its entirety by the City for its convenience, the City shall pay the Consultant for satisfactory services performed through the date of termination in accordance with payment provisions of Section IV.1.

V.3 DISPUTES. The parties agree that, following reasonable attempts at negotiation and compromise, any unresolved dispute arising under this Agreement may be resolved by a mutually agreed-upon alternative dispute resolution of arbitration or mediation.

V.4 EXTENT OF AGREEMENT/MODIFICATION. This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.

V.5 SEVERABILITY

a. If a court of competent jurisdiction holds any part, term or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

b. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

V.6 NONWAIVER. A waiver by either party hereto of a breach by the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

V.7 FAIR MEANING. The terms of this Agreement shall be given their fair meaning and shall not be construed in favor of or against either party hereto because of authorship. This Agreement shall be deemed to have been drafted by both of the parties.

V.8 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

V.9 VENUE. The venue for any action to enforce or interpret this Agreement shall lie in the

Superior Court of Washington for Snohomish County, Washington.

V.10 **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

V.11 **AUTHORITY TO BIND PARTIES AND ENTER INTO AGREEMENT.** The undersigned represent that they have full authority to enter into this Agreement and to bind the parties for and on behalf of the legal entities set forth below.

DATED this _____ day of _____, 2024.

CITY OF STANWOOD

KIMLEY HORN

By _____
Kevin Hushagen, Public Works Director

By _____
David Williams, Associate

Exhibit A
Scope of Services

Exhibit A

Kimley-Horn and Associates, Inc. (“Kimley-Horn” or “Consultant”) submits this scope and fee proposal letter to the City of Stanwood (“City” or “Client”) for providing professional traffic engineering services for the traffic signal modification and intersection improvements at the intersection of SR 532 & 72nd Ave NW (“Project Intersection”) in the City of Stanwood, WA.

Project Understanding

This Consultant will prepare the design of a traffic signal modification at the Project Intersection to support a pedestrian crossing of the east leg.

A summary of the traffic signal modification, civil improvements, and assumptions at the Project Intersection is included below.

- Traffic Signal
 - Modification of signal heads to include mast-arm mounted 4-section flashing yellow arrow indications for northbound left-turn and southbound left-turn movements using existing signal tenons.
 - Modification of signal heads to include mast arm mounted 3-section red/yellow/green ball indications for northbound and southbound through movements using existing signal tenons.
 - Modification of signal heads to include signal pole mounted 4-section flashing yellow arrow indications for northbound right-turn and southbound right-turn movements.
 - One (1) pedestrian push button pole or pedestal pole on the northeast corner with pedestrian push button and pedestrian signal indication.
 - One (1) pedestrian push button pole or pedestal pole on the southeast corner with pedestrian push button and pedestrian signal indication.
 - The existing traffic signal controller is to remain.
- Civil
 - Design of up to two (2) new curb ramps will show approximate footprint/layout and identify a standard plan to follow. Detailed grading information will not be provided.
 - Base mapping will be based on available aerial imagery and GIS data provided by the City. No survey will be completed.
 - No stormwater report will be required.
 - City will provide as-builts of existing culvert system. Design assumption is that the inlet in the SE corner drains north to pond. Design to include swapping existing CB grate with a hard lid and shifting the CB upstream of pedestrian ramp.
- General
 - Topographic survey will not be provided by Consultant.
 - Traffic control plans will not be prepared by Consultant.
 - Specifications and project manual will not be prepared by Consultant.

- Cost estimate will not be prepared by Consultant.

Scope of Services

The Consultant will provide the services specifically set forth below.

TASK 1: PROJECT MANAGEMENT, MEETINGS, AND COORDINATION

The Consultant will participate in and attend project meetings and coordinate with the City and WSDOT. This task is intended to capture the effort for the meetings, conference calls, design coordination, and project management and administration necessary for this project. We have estimated up to twenty (20) hours for this task, with the assumed meetings detailed below.

- Attend up to two (2) virtual coordination meetings with the City, WSDOT, or other stakeholders.

TASK 2: DATA COLLECTION

The Consultant will perform the following data collection tasks:

- Assemble design standard details and specifications from the City and WSDOT;
- Obtain readily available existing record drawings and file information from City and WSDOT files, including, roadway plans, right-of-way information, and utility maps; and
- Perform up to one (1) field reconnaissance of the Project Intersection to determine existing field conditions, above ground utility locations, and to identify potential locations for proposed traffic signal equipment. Up to two (2) Consultant staff to attend site visit.

TASK 3: WSDOT DESIGN DOCUMENTATION PACKAGE & COORDINATION

The Consultant will perform the following tasks:

- WSDOT Design Approval is assumed to consist of
 - Table of Contents (DA.1.1)
 - Memorandum (DA.1.2)
 - Vicinity Map (DA.1.3)
 - Summary of Design (DA.2.3)
 - Channelization Plan (DA.3.5.1)
- WSDOT Channelization Plan to consist of one (1) plan sheet with one (1) supplemental typical section
- Up to one (1) revision of DA.1.1, DA.1.2, DA.1.3, and DA.2.3 is included with scope
- No Maximum Extent Feasible (MEF) or Design Analysis (DA) will be triggered by project work
- WSDOT Coordination to consist of:
 - Consultant to host 30-minute coordination meeting with WSDOT up to two (2) times
 - Up to five (5) hours of email coordination included between Consultant and WSDOT staff

- No stormwater analysis will be required or prepared by Consultant
- No WSDOT Traffic Control Plans will be required or prepared by Consultant

TASK 4: DESIGN AND PLANS

Consultant will prepare traffic signal modification and civil design at the Project Intersection per City and WSDOT standards and requirements including the items referenced in the Project Understanding.

Consultant will prepare 75% and 100% final traffic signal modification and civil plans and quantities for the Project Intersection. Up to one (1) revision of the 100% plans is included for final permit coordination. The plans are anticipated to consist of the following plan sheets:

- Title Sheet (up to one [1] sheet);
- General Notes (up to one [1] sheet);
- Summary of Approximate Quantities (up to one [1] sheet);
- Signal Removal Plan (up to one [1] sheet);
- Signal Modification Plan (up to one [1] sheet);
- Signal Detail (up to one [1] sheet);
- Wiring Terminations (up to two [2] sheets);
- Site Preparation and TESC Plan (up to one [1] sheet);
- Stormwater Plan (up to one [1] sheet);
- Curb Ramp Plan (up to one [1] sheet); and
- Channelization Plan (up to one [1] sheet).

Consultant will incorporate up to two (2) total rounds of reasonable City and WSDOT comments and submit the final plans and quantities. The final plans will be signed and sealed by a Professional Civil Engineer licensed in the State of Washington.

TASK 5: CONSTRUCTION PHASE SERVICES

Consultant will provide limited construction phase services to the Client for traffic signal construction at the Project Intersection. Consultant will provide the following services:

- Clarifications and interpretations
- Shop drawing review

Consultant will respond to reasonable and appropriate Contractor requests for information and issue necessary clarifications and interpretations of the Contract Documents. Any orders authorizing variations from the Contract Documents will be made by Client.

Consultant will review and approve or take other appropriate action in respect to Shop Drawings, but only for conformance with the information given in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, schedules, or procedures of construction or to related safety programs.

For estimating purposes, we have assumed up to twenty (20) hours for these services. Site visits during construction are not included. In the event that services are extended beyond the estimated fee, an amendment to this Agreement will be processed.

Additional Services

Any services not specifically provided for in the above scope will be billed as additional services and performed at Consultant's then-current hourly rates. Additional services Consultant can provide include, but are not limited to, the following:

- Topographic survey;
- Interconnect design and splice diagrams;
- Traffic control plans;
- Utility coordination or relocation;
- Preparation of project specification book or project manual;
- Engineers Opinion of Probable Construction Cost (EOPCC);
- Utility potholing for foundations;
- Site visits during construction;
- Construction phase services in excess of the anticipated 20 hours; and
- Bidding phase services.

Information Provided By Client

Consultant shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives. The Client shall provide all information requested by Consultant during the project.

Schedule

Consultant will perform the services as expeditiously as practicable with the goal of meeting a mutually agreed upon schedule.

Fee and Expenses

Consultant will perform the services in Tasks 1 - 5 for the total lump sum fee below. Individual task amounts are informational only. All permitting, application, and similar project fees will be paid directly by the Client.

Task Number & Name		Fee	Type
1	Project Management, Meetings, and Coordination	\$4,100	Lump Sum
2	Data Collection	\$3,360	Lump Sum
3	WSDOT Design Documentation Package & Coordination	\$11,560	Lump Sum
4	Design and Plans	\$36,600	Lump Sum
5	Construction Phase Services	\$4,500	Lump Sum
Total		\$60,120	