

PROFESSIONAL SERVICES AGREEMENT
FOR
Consulting Engineering Services

THIS AGREEMENT is entered into between CLALLAM CONSERVATION DISTRICT, a political subdivision of the State of Washington, (hereinafter called the "District") and **Zenovic & Associates Incorporated of Port Angeles, WA.** (hereinafter called the "Engineer").

This Agreement is comprised of:

- Attachment "A" - Scope of Work.
- Attachment "B" - Fee Schedule.
- Attachment "C" - General Conditions.
- Attachment "D" - Special Terms and Conditions.

Copies of which are attached hereto and incorporated herein by this reference as if fully set forth.

The terms of this Agreement shall commence on **November 11, 2020**, and shall terminate on or before **December 31, 2022**, unless terminated as provided elsewhere in the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of _____, 2020.

ZENOVIC & ASSOCIATES, INC.

CLALLAM CONSERVATION DISTRICT

(Signature)

Matthew V. Heins, Chair

By: _____

Title: _____

Date: _____

Date: _____

SCOPE OF WORK

General project descriptions, scopes of work, deliverables and engineering services cost estimates for specific projects requiring extensive engineering will be added to this agreement in the form of addenda to Attachment A. The following includes the general scope of engineering services and typical on-call activities covered under this agreement:

1. The Engineer shall perform all work in consultation with the District.
2. In consultation with the District on a project by project basis, the Engineer shall make determinations about the engineering nature of the projects and requirements for additional Professional Engineering services.
3. The Engineer shall provide direction, guidance and oversight to District technical staff on engineering projects, ensuring that each project is designed and installed according to standards and specifications or design.
4. The Engineer shall conduct on-site, pre-bid meeting/walks-through with prospective bidders for projects as necessary. The Engineer may delegate this task to District technical staff when deemed appropriate by the District and the Engineer.
5. The Engineer shall assist the District with bid process tabulation and analysis.
6. The Engineer, in collaboration with District technical staff shall prepare addenda and answer questions during the bid process as needed and prepare and circulate all addenda and additional information.
7. Construction supervision shall be at the discretion of the Engineer; however, the Engineer shall be responsible for ensuring that each practice is installed according to standards and specifications or design, unless other arrangements are made between the Engineer and the District.
8. The Engineer shall review and approve Payment Requests for accuracy and completeness unless such responsibility is delegated to the District as appropriate.
9. The Engineer shall collaborate with District technical staff to produce as-built drawings for each practice.
10. The Engineer shall collaborate with the District to acquire any permits and notifications required from governing jurisdiction.

ENGINEERING SERVICES FEE SCHEDULE

Compensation shall be based on an hourly rate specified in the Fee Schedule below.

Office

Principal Engineer	\$160/hr.
Engineering Manager	\$145/hr.
Senior Design Engineer (PE)	\$130/hr.
Design Engineer II	\$115/hr.
Design Engineer I	\$100/hr.
Engineering Technician	\$85/hr.

Fees as set forth herein include all incidental overhead fees, such as mileage, copy and printing costs, telephone charges and similar costs, unless noted otherwise in the Professional Services Agreement.

Outside services (laboratory fees, sub-consultant fees, etc.) are charged to the client at direct cost plus 5%.

GENERAL CONDITIONS

1. Scope of Engineer's Services. The Engineer agrees to provide to the District services and any materials set forth in the project narrative identified as Attachment "A" during the agreement period. No material, labor, or facilities will be furnished by the District, unless otherwise provided for in the Agreement.

2. Accounting and Payment for Engineer Services. Payment to the Engineer for services rendered under this Agreement shall be as set forth in Attachment "B". Where Attachment "B" requires payments by the District, payment shall be based upon billings, supported unless otherwise provided in Attachment "B", by documentation of units of work actually performed and amounts earned, including where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested. Unless specifically stated in Attachment "B" or approved in writing in advance by the District designated project manager ("Project Manager"), the District will not reimburse the Engineer for any costs or expenses incurred by the Engineer in the performance of this contract. Where required, the District shall, upon receipt of appropriate documentation, compensate the Engineer, no more often than monthly, through the District voucher system for the Engineer's service pursuant to the fee schedule set forth in Attachment "B".

3. Delegation and Subcontracting. Engineer's services are deemed personal and no portion of this contract may be delegated or subcontracted to any other individual, firm or entity without the express and prior written approval of the Project Manager. However, subcontracting for such services as surveying, drafting and printing are understood to be necessary for the provision of general engineering services. The Engineer will typically charge a 10 percent processing fee for subcontracted services.

4. Independent Engineer. The Engineer's services shall be furnished by the Engineer as an independent contractor and nothing herein contained shall be construed to create a relationship of employer/employee or master/servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Engineer as an independent contractor.

The Engineer acknowledges that the entire compensation for this Agreement is specified in Attachment "B" and the Engineer is not entitled to any District benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental or other insurance benefits, or any other rights or privileges afforded to District employees. The Engineer represents that he/she/it maintains a separate place of business, serves clients other than the District, will report all income and expense accrued under this contract with the Internal Revenue Service on a business tax schedule, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

Engineer will defend, indemnify and hold harmless the District, its officers, agents or employees from any loss or expense, including but not limited to settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

In the event that either the state or federal government determines that an employer/employee or master/servant relationship exists rather than an independent contractor relationship such that the District is deemed responsible for federal withholding, social security contributions, workers compensation and the like, the Engineer agrees to reimburse the District for any payments made or required to be made by the District. Should any payments be due to the Engineer pursuant to this Agreement, the Engineer agrees that reimbursement may be made by deducting from such future payments a pro rata share of the amount to be reimbursed based upon the following formula:

$$\frac{\text{Total amount to be reimbursed}}{\text{Number of payments remaining}} = \text{Deduction from payment}$$

Notwithstanding a determination by the state or federal government that an employer/employee or master/servant relationship exists, the Engineer, its officers, employees and agents, shall not be entitled to any benefits which the District provides to its employees.

5. No Guarantee of Employment. The performance of all or part of this contract by the Engineer shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Engineer or any employee of the Engineer or any subcontractor or any employee of any subcontractor by the District at the present time or in the future.

6. Regulations and Requirement. This Agreement shall be subject to all federal, state and local laws, rules, and regulations.

7. Right to Review. This contract is subject to review by any federal or state auditor. The District shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Project Manager. Such review may occur with or without notice, and may include, but is not limited to, on-site inspection by District agents or employees, inspection of all records or other materials which the District deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Engineer shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for three (3) years after contract termination, and shall make them available for such review, within Clallam County, State of Washington, upon request, during reasonable business hours.

8. Modifications. Either party may request changes in the Agreement. Any and all agreed modifications shall be in writing, signed by each of the parties.

9. Termination for Default. If the Engineer defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or makes an assignment for the benefit of creditors, the District may, by depositing written notice to the Engineer in the U.S. Mail, postage prepaid, terminate the contract, and at the District's option, obtain performance of the work elsewhere. If the contract is terminated for default, the Engineer shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the District resulting from such default(s) shall be deducted from any money due or coming due to the Engineer. The Engineer shall bear any extra expenses incurred by the District in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the District by reason of such default.

If a notice of termination for default has been issued and it is later determined for any reason that the Engineer was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

10. Termination for Public Convenience. The District may terminate the contract in whole or in part whenever the District determines, in its sole discretion, that such termination is in the interests of the District. Whenever the contract is terminated in accordance with this paragraph, the Engineer shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this contract by the District at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the District.

11. Rights and Remedies. The duties and obligations imposed by this Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

12. Defense and Indemnity Agreement. The Engineer agrees to defend, indemnify and save harmless the District, its appointed and elected officers and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorneys' fees and costs by reason of any and all claims and demands upon the District, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property including loss

of use thereof, whether such injury to persons or damage to property is due to the negligence of the Engineer, his/her subcontractors, its successor or assigns, or its or their agent, servants, or employees, the District, its appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the District, its appointed or elected officials or employees. It is further provided that no liability shall attach to the District by reason of entering into this contract, except as expressly provided herein.

13. Industrial Insurance Waiver. With respect to the performance of this Agreement and as to claims against the District, its appointed and elected officers, agents and employees, the Engineer expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, as now or hereafter amended, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this Agreement extend to any claim brought by or on behalf of any employee of the Engineer. This waiver is mutually negotiated by the parties to this Agreement.

14. Venue and Choice of Law. In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action shall be in the courts of the State of Washington in and for the County of Clallam. This Agreement shall be governed by the law of the State of Washington.

15. Withholding Payment. In the event the Project Manager determines that the Engineer has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the District may withhold from amounts otherwise due and payable to Engineer the amount determined by the District as necessary to cure the default, until the Project Manager determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Engineer to termination or damages, provided that the District promptly gives notice in writing to the Engineer of the nature of the default or failure to perform, and in no case more than ten (10) days after it determines to withhold amounts otherwise due. A determination of the Project Manager set forth in a notice to the Engineer of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Engineer acts within the times and in strict accord with the provision of the Disputes clause of this Agreement. The District may act in accordance with any determination of the Project Manager which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Engineer, (3) to set off any amount of paid or incurred from amounts due or to become due the Engineer. In the event the Engineer obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to the Engineer by reason of good faith withholding by the District under this clause.

16. Insufficient Funds. If sufficient funds are not appropriated or allocated for payment under this contract, this contract shall be null and void. No penalty or expense shall accrue to the District in the event this provision applies.

17. Engineer Commitments, Warranties and Representations. Any written commitment received from the Engineer concerning this Agreement shall be binding upon the Engineer, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Engineer to fulfill such a commitment shall render the Engineer liable for damages to the District. A commitment includes, but is not limited to any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

18. Patent/Copyright Infringement. Engineer will defend, indemnify and save harmless the District, its appointed and elected officers and employees from any claimed action, cause or demand brought against the District, its appointed and elected officers and employees, to the extent such action is based on the claim that information supplied by the Engineer infringes any patent or copyright. The Engineer will pay those costs and damages attributable to any such claims that are finally awarded against the District, its appointed and elected officers and employees in any action. Such defense and payments are conditioned upon the following:

- (a) That Engineer shall be notified promptly in writing by District of any notice of such claim.
- (b) Engineer shall have the right, hereunder, at its option and expense, to obtain for the District the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the District.

19. Disputes:

- (a) General. Differences between the Engineer and the District, arising under and by virtue of the contract documents shall be brought to the attention of the District at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. The records, orders, rulings, instructions, and decision of the Project Manager shall be final and conclusive thirty (30) days from the date of mailing unless the Engineer mails or otherwise furnishes to the District administrator a written notice of appeal. The notice of appeal shall include facts, law, and argument as to why the conclusions of the Project Manager are in error.

In connection with appeal of any proceeding under this clause, the Engineer shall have the opportunity to be heard and to offer evidence in support of the appeal. The decision of the District administrator for the determination of such appeals shall be final and conclusive. Reviews of the appellate determination shall be brought in the Superior Court of Clallam District within fifteen (15) days of mailing of the written appellate determination. Pending final decision of the dispute, the Engineer shall proceed diligently with the performance of this Agreement and in accordance with the decision rendered.

- (b) Notice of Potential Claims. The Engineer shall not be entitled to additional compensation or to extension of time for (1) any act or failure to act by the Project Manager or the District, or (2) the happening of any event or occurrence, unless the Engineer has given the District a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the District. The written Notice of Potential Claim shall set forth the reasons for which the Engineer believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Engineer shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.
- (c) Detailed Claim. The Engineer shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the District, the Engineer has given the District a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

20. Ownership of Items Produced. All writings, programs, data, public records or other materials prepared by the Engineer and/or its consultants or subcontractors, in connection performance of this Agreement shall be the sole and absolute property of the District and constitute "work made for hire" as that phrase is used in federal and/or state intellectual property laws.

21. Recovery of Payments to Engineer. The right of the Engineer to retain monies paid to it is contingent upon satisfactory performance of this Agreement. In the event that the Engineer fails, for any reason, to perform obligations required of it by this Agreement, the Engineer may, at the Project Manager's sole discretion, be required to repay to the District all monies disbursed to the Engineer for those parts of the project that are rendered worthless in the opinion of the Project Manager by such failure to perform.

Interest shall accrue at the rate of twelve percent (12%) per annum from the time the Project Manager demands repayment of funds.

22. Project Approval. The extent and character of all work and services to be performed under this Agreement by the Engineer shall be subject to the review and approval of the Project Manager. In the event there is a dispute with regard to the extent and character of the work to be done, the determination of the Project Manager as to the extent and character of the work to be done shall govern subject to the Engineer's right to appeal that decision as provided herein. For purposes of this Agreement, the District Project Manager is the District Executive Director or his/her designee.

23. Non-Discrimination. The Engineer shall not discriminate against any person on the basis of race, creed, political ideology, color, national origin, sex, marital status, sexual orientation, age, or the presence of any sensory, mental or physical handicap.

24. Subcontractors. In the event that the Engineer uses any subcontractors, the contract between the Engineer and the subcontractor shall provide that the subcontractor is bound by the terms of this Agreement between the District and the Engineer. The Engineer shall ensure that in all subcontracts entered into, the District is named as an express third-party beneficiary of such contracts with full rights as such.

25. Time is of the Essence. Time is of the essence in the performance of this contract unless a more specific time period is set forth in either the Special Terms and Conditions or Scope of Work.

26. Notice. Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, any notices shall be given by the Engineer to the Project Manager. Notice to the Engineer for all purposes under this Agreement shall be given to the person executing the Agreement on behalf of the Engineer at the address identified on the signature page.

27. Severability. If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

28. Precedence. In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

- (a) Applicable federal and state statutes and regulations;
- (b) Scope of Work [Attachment "A"] and Compensation [Attachment "B"];
- (c) Special Terms and Conditions [Attachment "D"]; and
- (d) General Conditions [Attachment "C"].

29. Waiver. Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

30. Survival. The provision of Paragraphs 4, 7, 11-15, 17- 23, 28, 29 and 31 shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

31. Entire Agreement. This contract represents the entire Agreement between the parties and supersedes any prior statements, discussions or understandings between the parties except as provided herein.

SPECIAL TERMS AND CONDITIONS

1. Reporting. The Engineer shall submit written progress reports to the Project Manager as set forth below:

- With each request for payment.
- Monthly.
- Quarterly.
- Semi-annually.
- Annually.
- Project completion.
- Other (specify): As requested by Project Manager

Progress reports shall include, at a minimum, the following: **current budget status, work progress, anticipated delays, any other pertinent information.**

Reports shall include any problems, delays or adverse conditions which will materially affect the Engineer's ability to meet project objectives or time schedules together with a statement of action taken or proposed to resolve the situation. Reports shall also include recommendations for changes to the Scope of Work, if any. Payments may be withheld if reports are not submitted.

2. Insurance. The Engineer shall maintain in full force and effect during the term of this Agreement, and until final acceptance of the product, public liability and property damage insurance with companies or through sources approved by the state insurance commissioner pursuant to RCW Title 48, as now or hereafter amended. The District, its appointed and elected officials and employees, shall be specifically named as co-insured in a policy with the same company which insures the Engineer or by endorsement to an existing policy or with a separate carrier approved pursuant to RCW Title 48, as now or hereafter amended, and the following coverages shall be provided:

- COMPREHENSIVE GENERAL LIABILITY:
 - Bodily injury, including death **\$1,000,000** per occurrence
 - Property damage **\$1,000,000** per occurrence
- ERRORS AND OMISSIONS: **\$500,000** per occurrence
- WORKERS COMPENSATION: Statutory amount
- AUTOMOBILE: coverage on owned, non-owned, rented and hired vehicles
 - \$1,000,000** bodily injury, liability, including death, per occurrence
 - \$1,000,000** property damage liability, per occurrence

Any such insurance carried by the Engineer is primary over any insurance carried by the District. The District shall have no obligation to report occurrences unless a claim or lawsuit is filed with it and the District has no obligation to pay any insurance premiums.

Evidence of insurance coverage shall be submitted to the Project Manager within twenty (20) days of the execution of the Agreement. The Agreement shall be void ab initio if the proof of coverage is not timely supplied.

3. Liquidated Damages. For delays in timely completion of engineering work to be done or missed design milestones of the work in progress for which the Engineer is solely responsible, the Engineer shall be assessed Twenty Five Dollars (\$25.00) per day as liquidated damages and not as a penalty because the District finds it impractical to calculate the actual cost of delays. Liquidated damages will not be assessed for any days for which an extension of time has been granted. No deduction or payment of liquidated damages will, in any degree, release the Engineer from further obligations and liabilities to complete the entire project.

4. Other (specify):