

Three Party Consultant Agreement Non-Public Work

PROJECT TITLE & IDENTIFICATION NUMBER (if # is known) Building X - Professional Fire Engineering Services - Performance Based Design Review and Technical Assistance 10301 Willows Road, Redmond, WA 98052	WORK DESCRIPTION (reference & list all attached exhibits) Consulting Services Agreement Exhibit A, Scope of Work Exhibit B, Work Schedule Exhibit C, Payment Schedule Exhibit D, Insurance Addendum Exhibit E, Building X Atrium Smoke Control Modeling Parameters (attached) Building X Atrium Smoke Control Modeling Parameters (attached) Exhibit F, Building X Structural Fire Engineering Parameters Report (attached) Building X Structural Fire Engineering Parameters Report (attached)
CONSULTANT AEGIS Engineering Mukilteo, Washington 13024 Beverly Park Road, Suite 202 Mukilteo, WA 98275	CITY PROJECT ADMINISTRATOR (Name, address, phone #) City of Redmond 15670 NE 85th Street Redmond, WA PO Box 9710 Redmond, WA 98073-9710
CONSULTANT CONTACT (Name, address, phone #) Brian Thompson AEGIS Engineering 13024 Beverly Park Road, Suite 202 Mukilteo, WA 98275 (425)745-4700 X105 BrianT@AEGISEngineering.com	BUDGET OR FUNDING SOURCE Applicant reimbursed technical review Account number to be determined
FEDERAL ID # Federal ID# 20-4435033	MAXIMUM AMOUNT PAYABLE, IF ANY \$200,000
SUPPLIER/CONTRACTOR'S REDMOND BUSINESS LICENSE ID # Redmond Business License ID # RED06-000113	COMPLETION DATE December 31, 2023
APPLICANT NAME Willow Run, LLC 251 Little Falls Drive Wilmington, DE 19808	APPLICANT CONTACT (Name, address & phone #) Rory O'Brien Senior Project Manager, Facebook Redmond, WA 650.313.4821 roryob@fb.com

THIS AGREEMENT is entered into on _____, 20__ between the City of Redmond, Washington, hereinafter called "the CITY", and the above-referenced person, firm or organization, hereinafter called "the CONSULTANT", and the above-referenced person, firm or organization, hereinafter called "the APPLICANT", referenced individually as "Party" and collectively as "Parties".

WHEREAS, the APPLICANT has applied to the CITY for certain development approvals in connection with the above-referenced project, and

WHEREAS, the CITY does not have sufficient staff or expertise to conduct certain technical portions of the project review and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary services for the project review; and

WHEREAS, the CONSULTANT has represented to the CITY that the CONSULTANT is in compliance with the professional registration statutes of the State of Washington, if applicable, and has signified a willingness to furnish consulting services to the CITY, now, therefore,

IN CONSIDERATION OF the terms and conditions set forth below, or attached and incorporated and made a part hereof, the parties agree as follows:

1. **Retention of Consultant - Scope of Work.** The CITY hereby retains the CONSULTANT to provide professional services as defined in this agreement and as necessary to accomplish the scope of work attached hereto as Exhibit A and incorporated herein by this reference as if set forth in full. The CONSULTANT shall furnish all services, labor and related equipment necessary to conduct and complete the work, except as specifically noted otherwise in this agreement.
2. **Completion of Work.** The CONSULTANT shall not begin any work under the terms of this agreement until authorized in writing by the CITY. The CONSULTANT shall complete all work required by this agreement according to the schedule attached as Exhibit B and incorporated herein by this reference as if set forth in full. A failure to complete the work according to the attached schedule, except where such failure is due to circumstances beyond the control of the CONSULTANT, shall be deemed a breach of this agreement. The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the CITY, in the event of a delay attributable to the CITY or APPLICANT, or because of unavoidable delays caused by circumstances beyond the control of the CONSULTANT. All such extensions shall be in writing and shall be executed by both CITY and CONSULTANT.
3. **Payment to CONSULTANT.** The CONSULTANT shall be paid for satisfactorily completed work and services satisfactorily rendered under this agreement at the rates provided in Exhibit C, attached hereto and incorporated herein by this reference as if set forth in full. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in the Scope of Work attached. When work is performed or services rendered, the CONSULTANT shall submit invoices to the CITY (with a copy to the APPLICANT) at least,

and no more frequently than, once per month during the course of the completion of work and services by the CONSULTANT. Invoices shall detail the work performed or services rendered, the time involved (if compensation is based on an hourly rate) and the amount to be paid. The CITY shall pay all undisputed amounts of an invoice within 30 days of its submittal, and the CITY shall give notice with justification to the CONSULTANT for any invoice amount that is in dispute.

4. **Payment by APPLICANT.** The CITY shall be reimbursed by the APPLICANT for all invoices received from the CONSULTANT for satisfactorily completed work and services satisfactorily rendered under this agreement at the rates provided in Exhibit C. Such payment by the APPLICANT shall be full compensation for the work performed or services rendered for all labor, materials, supplies, equipment and incidentals necessary to complete the work specified in the Scope of Work attached. The invoices submitted to the APPLICANT shall detail the work performed or services rendered, the time involved (if compensation is based on an hourly rate) and the amount to be paid. When work is performed or services rendered, the CITY shall submit invoices to the APPLICANT at least, and no more frequently than, once per month. The APPLICANT shall pay all such invoices within 30 days of submittal, unless the APPLICANT gives notice to the CITY that the invoice is in dispute. The APPLICANT shall give notice with justification to the CITY within 15 days of receipt of the copy of the invoice from the CONSULTANT if any amount of the invoice is in dispute. If the CITY receives notice that APPLICANT disputes an invoice, the parties will seek to resolve the dispute rapidly and in good faith, before exercising rights under Section 15. APPLICANT shall not be responsible for the disputed amounts until the dispute is resolved. Unless otherwise agreed in writing by the APPLICANT, in no event will the APPLICANT pay the CITY more than one hundred thousand dollars (\$100,000). Notwithstanding anything to the contrary in this Agreement, APPLICANT's sole responsibility in this agreement is to reimburse the CITY consistent with this Section 4.

5. **Changes in Work.** The CONSULTANT shall make such changes and revisions in the complete work provided by this agreement as may be necessary to correct errors made by the CONSULTANT and appearing therein when required to do so by the CITY. The CONSULTANT shall make such corrective changes and revisions without additional compensation from the CITY. Should the CITY find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the CITY. This work shall be considered as Extra Work and will be paid for as provided in Section 6.

6. **Extra Work.**

a. The CITY may, at any time, by written order, make changes within the general scope of the agreement in the services to be performed. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work or services under this agreement, whether or not changed by the order, or otherwise affects any other terms or conditions of the agreement, the CITY shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule or both; and (3) other affected terms, and shall modify the agreement accordingly.

b. The CONSULTANT must submit any “proposal for adjustment” under this clause within 30 days from the date of receipt of the written order to make changes. However, if the CITY decides that the facts justify it, the CITY may receive and act upon a proposal submitted before final payment of the agreement.

c. Failure to agree to any adjustment shall be a dispute under the Disputes clause of this agreement, as provided in Section 14. Notwithstanding any such dispute, the CONSULTANT shall proceed with the agreement as changed.

d. Notwithstanding any other provision in this section, the maximum amount payable for this agreement shall not be increased or considered to be increased except by specific written amendment of this agreement.

7. **Ownership of Work Product.** Any and all documents, drawings, reports, and other work product produced by the CONSULTANT under this agreement shall become the property of the CITY upon payment of the CONSULTANT’S fees and charges therefore. The CITY shall have the complete right to use and re-use such work product in any manner deemed appropriate by the CITY, provided, that use on any project other than that for which the work product is prepared shall be at the CITY’S risk unless such use is agreed to by the CONSULTANT. APPLICANT shall receive a copy of all work product prepared under this agreement.

8. **Independent Contractor.** The CONSULTANT is an independent contractor for the performance of services under this agreement. The CITY shall not be liable for, nor obligated to pay to the CONSULTANT, or any employee of the CONSULTANT, sick leave, vacation pay, overtime or any other benefit applicable to employees of the CITY, nor to pay or deduct any social security, income tax, or other tax from the payments made to the CONSULTANT which may arise as an incident of the CONSULTANT performing services for the CITY. The CITY shall not be obligated to pay industrial insurance for the services rendered by the CONSULTANT.

9. **Indemnity.** The CONSULTANT agrees to hold harmless and indemnify the CITY, its officers, agents and employees, from and against any and all claims, losses, or liability, including reasonable attorney’s fees and costs expended by the City in defense thereof for injuries, sickness or death of persons, including employees of the CONSULTANT, or damage to property, arising out of any willful misconduct or negligent act, error, or omission of the CONSULTANT, its officers, agents, subconsultants or employees, in connection with the services required by this agreement, provided, however, that:

a. The CONSULTANT’s obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the misconduct or sole negligence of the CITY, its officers, agents or employees, or of the APPLICANT, its officers, agents, or employees; and

b. The CONSULTANT’s obligations to indemnify, defend and hold harmless for injuries, sickness, death or damage caused by or resulting from the concurrent

negligence or willful misconduct of the CONSULTANT and the CITY, or of the CONSULTANT and a third party other than an officer, agent, subconsultant or employee of the CONSULTANT, shall apply only to the extent of the negligence or willful misconduct of the CONSULTANT.

10. **Insurance.** The CONSULTANT shall provide the following minimum insurance coverages:

a. Worker's compensation and employer's liability insurance as required by the State of Washington;

b. General public liability and property damage insurance in an amount not less than a combined single limit of two million dollars (\$2,000,000) for bodily injury, including death, and property damage per occurrence.

c. Professional liability insurance, if commercially available in CONSULTANT's field of expertise, in the amount of one million dollars (\$1,000,000) each occurrence or two million dollars (\$2,000,000) in the aggregate against claims arising out of work provided for in this agreement.

The amounts listed above are the minimum deemed necessary by the CITY to protect the CITY'S interests in this matter. The CITY has made no recommendation to the CONSULTANT as to the insurance necessary to protect the CONSULTANT'S interests and any decision by the CONSULTANT to carry or not carry insurance amounts in excess of the above is solely that of the CONSULTANT.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. Excepting the professional liability insurance, the CITY will be named on all insurance as an additional insured. The CONSULTANT shall submit a certificate of insurance to the CITY evidencing the coverages specified above, together with an additional insured endorsement naming the CITY, within fifteen (15) days of the execution of this agreement. The additional insured endorsement shall provide that to the extent of the CONSULTANT's negligence, the CONSULTANT's insurance shall be primary and non-contributing as to the City, and any other insurance maintained by the CITY shall be excess and not contributing insurance with respect to the CONSULTANT's insurance. The certificates of insurance shall cover the work specified in or performed under this agreement. No cancellation of the foregoing policies shall be effective without thirty (30) days prior written notice to the CITY.

11. **Compliance and Governing Law.** The CONSULTANT shall at all times comply with all applicable federal, state, and local laws, rules, ordinances, and regulations. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

12. **Records.** The CONSULTANT shall keep all records related to this agreement for a period of three years following completion of the work for which the CONSULTANT is retained. The CONSULTANT shall permit any authorized representative of the CITY, and any person authorized by the CITY for audit purposes, to inspect such records at all reasonable times

during regular business hours of the CONSULTANT. Upon request, the CONSULTANT will provide the CITY with reproducible copies of any such records. The copies will be provided without cost if required to substantiate any billing of the CONSULTANT, but the CONSULTANT may charge the CITY for copies requested for any other purpose.

13. **Notices.** All notices required to be given by any party to another under this Agreement shall be in writing and shall be given in person or by mail to the addresses set forth in the box for the same appearing at the outset of this Agreement. Notice by mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, addressed as provided in this paragraph.

14. **Project Administrator.** The Project Administrator shall be responsible for coordinating the work of the CONSULTANT, for providing any necessary information for and direction of the CONSULTANT's work in order to ensure that it meets the requirements of this Agreement, and for reviewing, monitoring and approving the quality and quantity of such work. The CONSULTANT shall report to and take any necessary direction from the Project Administrator.

15. **Disputes.** Any dispute concerning questions of fact in connection with the work not disposed of by agreement between the CONSULTANT, the APPLICANT and the CITY shall be referred for resolution to a mutually acceptable mediator, provided that the parties first attempt to resolve the dispute through good faith negotiations and the reasonable exchange of relevant information. If the dispute is between two parties, the parties shall each be responsible for one-half of the mediator's fees and costs unless or until the mediation warrants a different proportional responsibility. If the dispute is between all three parties, each party shall be responsible for one-third (1/3) of the mediator's fees and costs unless or until the mediation warrants a different proportional responsibility.

16. **Termination.** The CITY reserves the right to terminate this agreement at any time upon ten (10) days written notice to the CONSULTANT. Any such notice shall be given to the address specified above. In the event that this agreement is terminated by the City other than for fault on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for all services performed. No payment shall be made for any work completed after ten (10) days following receipt by the CONSULTANT of the notice to terminate. In the event that services of the CONSULTANT are terminated by the CITY for fault on part of the CONSULTANT, the amount to be paid shall be determined by the CITY, after receiving the written approval of the APPLICANT, with consideration given to the actual cost incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which would satisfactorily complete it to date of termination, whether that work is in a form or type which is usable to the CITY at the time of termination, the cost of the CITY of employing another firm to complete the work required, and the time which may be required to do so. Prior to terminating this agreement, the CITY will meet and confer with the APPLICANT, and the agreement shall not be terminated without the written consent of the APPLICANT, which shall not be unreasonably withheld, conditioned, or delayed.

17. **Non-Discrimination.** The CONTRACTOR agrees not to discriminate against any customer, employee or applicant for employment, subcontractor, supplier or materialman,

because of race, creed, color, national origin, sex, religion, honorable discharged veteran or military status, familial status, sexual orientation, age, or the presence of any sensory, mental, or physical disability or the use of a trained dog or service animal by a person with a disability, except for a bona fide occupational qualification. The CONTRACTOR understands that if it violates this provision, this Agreement may be terminated by the CITY and that the CONTRACTOR may be barred from performing any services for the CITY now or in the future.

18. **Subcontracting or Assignment.** The CONSULTANT may not assign or subcontract any portion of the services to be provided under this agreement without the express written consent of the CITY. Any subconsultants approved by the CITY at the outset of this agreement are named on Exhibit D attached hereto and incorporated herein by this reference as if set forth in full.

19. **Non-Waiver.** Payment for any part of the work or services by the CITY shall not constitute a waiver by the CITY of any remedies of any type it may have against the CONSULTANT for any breach of the agreement by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it under the agreement by the CITY. Waiver of any right or entitlement under this agreement by the CITY shall not constitute waiver of any other right or entitlement.

20. **Litigation.** In the event that any party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this agreement, the parties agree that such actions shall be initiated in the Superior Court of the State of Washington, in and for King County. The parties agree that all questions shall be resolved by application of Washington law and that parties to such actions shall have the right of appeal from such decisions of the Superior Court in accordance with the law of the State of Washington. The CONSULTANT and APPLICANT hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, in and for King County. The prevailing party/parties in any such litigation shall be entitled to recover their costs, including reasonable attorney's fees, in addition to any other award.

21. **Taxes.** The CONSULTANT will be solely responsible for the payment of any and all applicable taxes related to the services provided under this agreement and if such taxes are required to be passed through to the CITY by law, the same shall be duly itemized on any billings submitted to the CITY by the CONSULTANT.

22. **City Business License.** The CONSULTANT has obtained, or agrees to obtain, a business license from the CITY prior to commencing to perform any services under this agreement. The CONSULTANT will maintain the business license in good standing throughout the term of this Agreement.

23. **Entire Agreement.** This agreement represents the entire integrated agreement between the CITY, the APPLICANT and the CONSULTANT, superseding all prior negotiations, representations or agreements, written or oral. This agreement may be modified, amended, or added to, only by written instrument properly signed by all parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

CONSULTANT Signed: _____ By: _____ Its: _____	CITY OF REDMOND Signed: _____ By: Angela Birney Its: Mayor
APPLICANT Signed: _____ By: _____ Its: _____	APPROVED AS TO FORM: Signed: _____ By: _____ Its: City Attorney

EXHIBIT A
SCOPE OF WORK

Building X – Performance Based Design

Alternate methods and material engineering review

The Consultant shall perform all services and provide all goods as described below:

Consultant will provide technical assistance to the Redmond Building and Fire departments in the evaluation of an alternate methods and materials proposal for unprotected structural steel and performance-based design of high-rise and atrium smoke control systems with Building X. The technical assistance will consist of the following:

1. Participate in a kick-off meeting with project team and/or City of Redmond and review meeting minutes provided by others. It is anticipated that this meeting would occur remotely via common virtual platform and/or telephone conference.
2. Review the performance methodology and criteria such as presented in the Smoke Control Parameters Memo dated March 2, 2020 addressing both exhaust of the atrium and pressurization of high-rise shafts. Evaluate and report on the acceptability of such criteria based on generally accepted and well-established principles of fire engineering relevant to the design.
3. Review submittal of revisions to the report in Item 2 and provide a written response; up two (2) such submittals are included for budgeting purposes.
4. Review the performance methodology and criteria with regard to design fires and CFD analysis, such as presented in the Structural Fire Engineering Parameters Report dated November 19, 2019. Evaluate and report on the acceptability of such criteria based on generally accepted and well-established principles of fire engineering relevant to the design.
5. Review submittal of revisions to the report in Item 4 and provide a written response; up two (2) such submittals are included for budgeting purposes.
6. Review submittal of smoke control performance-based design and analysis addressing both atrium exhaust and high-rise shaft pressurization. Evaluate and report on findings relative to the approved methodology and criteria, and generally accepted and well-established principles of fire engineering relevant to the design. Review and comment on up to three (3) submittals is included for budgeting purposes.
7. Review submittal of smoke control special inspection and test requirements for the building. Evaluate and report on findings relative to building smoke control system equipment and functionality. Review and comment on up to three (3) submittals is included for budgeting purposes.

8. Review submittal of design fire scenarios and fire modeling analysis associated with identifying the temperature at the surface of building structural elements. Evaluate and report on findings relative to the approved methodology and criteria, and generally accepted and well-established principles of fire engineering relevant to the design. Review and comment on up to three (3) submittals is included for budgeting purposes.
9. Participate in up to six (6) periodic meetings with City of Redmond and/or project team and review meeting minutes provided by others. It is anticipated that these meetings would occur remotely via common virtual platform and/or telephone conference.
10. Provide up to eight (8) hours of general consulting time, including telephone or e-mail communications associated with any questions, clarifications, and/or coordination with other reviewers pertaining to project design submittals.
11. Upon request, participate in site visits to observe constructed conditions with regard to project elements reviewed in Items 6, 7, and/or 8 above. Up to three (3) site visits are included for budgeting purposes. Provide written report of items inspected and non-conforming features observed by AEGIS Engineering following each site visit.
12. Witness smoke control system commissioning, including acceptance testing and performance measurements demonstrated by others. Provide written report of items inspected and non-conforming features observed by AEGIS Engineering following each site visit. Participation in up to three (3) total site visits of testing is included for budgeting purposes.
13. Perform one (1) review of final report on smoke control testing prepared by special inspector or special inspection agency. Provide a written response presenting the findings of our review.
14. Provide up to eight (8) hours of general consulting time, including telephone or e-mail communications regarding construction period services such as to discuss expectations, observations, findings, or impressions.

Consultant shall provide the following:

- A. Written letter consistent with the indicated purpose for each instance in Items 1 thru 13 above, excluding Items 1, 9, and 10, where “report”, “written response”, or “comment” is identified.
- B. Written letter(s) upon request with Items 10 or 14 above regarding adjustments to, or modification of, approved conditions.

EXHIBIT B
WORK SCHEDULE

The contractor/consultant shall complete project milestones as identified below:

Milestone	Schedule
Kick-off meeting	Attend at mutually agreeable day and time, anticipated to occur within two (2) weeks following receipt of fully- executed contract.
Review of submitted materials.	Provide written deliverable within 3 weeks of receipt of a submittal and direction from the City to review the same, whichever is later.
Periodic meetings.	Participate in meetings when provided with advance notification, subject to Consultant availability. Review meeting minutes within one (1) week following receipt.
Site visit.	Attend site visit when provided with advance notification, subject to Consultant availability. Provide written summary within two (2) business days following site visit.
Review of certain limited supplemental, partial, additional or modified individual parameters, if needed	Respond to preliminary or select revisions involving certain individual parameters within one (1) week of receipt of informal correspondence.
Acceptance Test	Witness system commissioning, acceptance testing and meeting performance measures by others with written report on items inspected and non-conforming features.
Final Report	Review final report on the smoke control testing by the special inspector with a written response of findings.

EXHIBIT C

PAYMENT SCHEDULE

For the goods and services identified in the Scope of Work, the City shall pay Contractor/Consultant:

Position	Standard Work	Expedited Work
Fire Protection Engineer	\$275 per hour	\$400 per hour
Fire Protection Associate II	\$215 per hour	\$315 per hour
Fire Protection Associate I	\$175 per hour	\$255 per hour
Fire Protection Technician	\$115 per hour	\$170 per hour
Administrative	\$90 per hour	\$130 per hour

EXHIBIT D
Insurance Addendum

INSURANCE ADDENDUM

THIS ADDENDUM modifies the provisions of the (check one): General Services Agreement, X Non-Public Work Consultant Agreement, Instructional Services Agreement, Social/Community Services Agreement, Short Term Facility Agreement, Fixed Asset Loan Agreement, Three Party Consultant Agreement (hereinafter "the Agreement") or Public Work Consultant Agreement entered into between the parties on _____, _____.

THE UNDERSIGNED PARTIES agree to modify paragraph 8 (if a General Services Agreement), 9 (if Non-Public Work Consultant Agreement), 7 (if Instructional Services Agreement), 6 (if Social/Community Services Agreement), 9 (if Short Term Facility Agreement), exhibit 5 (if Fixed Asset Loan Agreement), 10 (if a Three Party Consultant Agreement) or 8 (if Public Work Consultant Agreement) as follows (check all applicable items):

The general public liability and property damage insurance limit is increased/reduced to \$ _____ (insert amount).

The professional liability insurance amount is increased/reduced to \$ _____ (insert amount). This item relates to Consultant and Three Party Consultant Agreements only.

The professional liability insurance requirement is eliminated. This item relates to Consultant and Three Party Consultant Agreements only.

X The insurance provisions are otherwise modified as follows:

Professional liability insurance, if commercially available in CONSULTANT'S field of expertise, in the amount of \$1,000,000 each claim, \$2,000,000 in aggregate, or more for work provided outside this agreement.

Except as expressly modified above, all insurance-related terms and conditions of the Agreement will remain unchanged and in full force and effect. The City has made no recommendation to the contractor/consultant as to the insurance necessary to protect the contractor/consultant's interests and any decision by the contractor/consultant to carry or not carry insurance amounts or coverage in excess of the above is solely that of the contractor/ consultant.

DATED: _____, _____

CONTRACTOR/CONSULTANT

By: Brian Thompson
Title: Principal

CITY OF REDMOND

MAYOR ANGELA BIRNEY

ATTEST/AUTHENTICATED:

CITY CLERK, CITY OF REDMOND

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

APPROVED:

RISK MANAGER, CITY OF REDMOND