RESOLUTION NO. 2400

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, WASHINGTON, AUTHORIZING A CONTRACT WITH CASCADE RIGHT OF WAY SERVICES, INC. FOR THE PURCHASE OF RIGHT OF WAY FOR THE 186TH CORRIDOR IMPROVEMENTS PROJECT.

WHEREAS, the City Council approved Resolution 2303 on 14 May 2013 a Developer Agreement with the Renwood LLC. This agreement requires offsite street improvements to mitigate the impact of the Renwood development on surrounding streets; and

WHEREAS, on October 15th, 2013 the CDC met and directed staff to submit a design effort of 30% for two options, the 186th Ave., 88th Ave., and 188th Ave. improvement and the 186th Ave. alignment to Veteran Memorial Drive.; and

WHEREAS, the design effort that quantified 30% design costs to purchase right of way, underground utilities, and construct the improvements was submitted on May 5th, 2014 and presented to the Community Development Committee on June 3rd, 2014 and the Finance Committee on June 10th, 2014; and

WHEREAS, the Public Works Department was directed to begin the Right of Way acquisition phase of this effort during the June 10th Finance Committee; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, WASHINGTON HEREBY RESOLVES AS FOLLOWS:

That the City of Bonney Lake Council does hereby authorize the Mayor to sign the attached contract with Cascade Right of Way Services, Inc in the amount of $63,300.

PASSED BY THE CITY COUNCIL this 1st day of July, 2014.

Neil Johnson, Jr., Mayor

ATTEST:

Harwood T. Edvalson, MMC, City Clerk

APPROVED AS TO FORM:

Kathleen Haggard, City Attorney
PROFESSIONAL SERVICES AGREEMENT

THI~OFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this [1st] day of [July], 2014, by and between the City of Bonney Lake ("City") and Cascade Right-of-Way Services, Inc. ("Consultant").

The parties hereby agree as follows:

1. **Scope of Work.** The Consultant shall perform all work and provide all materials described in the Scope of Work set out in Exhibit A attached hereto and incorporated herein by this reference. Such work shall be performed using facilities, equipment and staff provided by Consultant, and shall be performed in accordance with all applicable federal, state and local laws, ordinances and regulations. The Consultant shall exercise reasonable care and judgment in the performance of work pursuant to this Agreement. The Consultant shall make minor changes, amendments or revisions in the detail of the work as may be required by the City, such work not to constitute Extra Work under this Agreement.

2. **Ownership of Work Product.** Documents, presentations and any other work product produced by the Consultant in performance of work under this Agreement shall be tendered to the City upon completion of the work, and all such product shall become and remain the property of the City and may be used by the City without restriction; *provided*, that any such use by the City not directly related to the particular purposes for which the work product was produced shall be without any liability whatsoever to the Consultant.

3. **Payment.** The Consultant shall be paid by the City for completed work and services rendered under this Agreement pursuant to the rates and charges set out in Exhibit B, attached hereto and incorporated herein by this reference. 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. All billings for compensation for work performed under this Agreement shall list actual time and dates during which the work was performed and the compensation shall be figured using the rates set out in Exhibit B; *provided*, that payment for work within the Scope of Work (Exhibit A) shall not exceed the fee/hour estimate set out in Exhibit B without written amendment to this Agreement, agreed to and signed by both parties.

Acceptance of final payment by the Consultant shall constitute a release of all claims, related to payment under this Agreement, which the Consultant may have against the City unless such claims are specifically reserved in writing and transmitted to the City by the Consultant prior to acceptance of final payment. Final payment shall not, however, be a bar to any claims that the City may have against the Consultant or to any remedies the City may pursue with respect to such claims.

The Consultant and its sub consultants shall keep available for inspection, by the City, for a period of three years after final payment, the cost records and accounts pertaining to this Agreement and all items related to, or bearing upon, such records. If any litigation, claim or audit is started before
the expiration of the three-year retention period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The three-year retention period shall commence when the Consultant receives final payment.

4. **Changes in Work.** The Consultant shall make all revisions and changes in the work completed under this Agreement as are necessary to correct errors, when required to do so by the City, without additional compensation.

5. **Extra Work.** The City may desire to have the Consultant perform work or render services in addition to or other than work provided for by the expressed intent of the Scope of Work. Such work will be considered Extra Work and will be specified in a written supplement which will set forth the nature and scope thereof. Work under a supplement shall not proceed until authorized in writing by the City. Any dispute as to whether work is Extra Work or work already covered by this Agreement shall be resolved before the work is undertaken. Performance of the work by the Consultant prior to resolution of any such dispute shall waive any claim by the Consultant for compensation as Extra Work.

6. **Employment.** Any and all employees of 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 said employees, while so engaged; any and all taxes arising out of Consultant's or Consultant's employees' work under this Agreement; and any and all claims made by a third party as a consequence of any acts, errors, or omissions on the part of the Consultant's employees, while so engaged, shall be the sole obligation and responsibility of the Consultant, except as provided in Section 12 of this agreement. The Consultant's relation to the City shall at all times be as an independent contractor.

7. **Nondiscrimination and Legal Compliance.** Consultant agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, gender, age or handicap except for a bona fide occupational qualification with regard to, but not limited to, the following: employment upgrading; demotion or transfer; recruitment or any recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and rendition of services. The consultant represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Reform and Control Act of 1986, including but not limited to the provisions of the Act prohibiting the hiring and continued employment of unauthorized aliens and requiring verification and record keeping with respect to the status of each of its employees' eligibility for employment. The consultant shall include a provision substantially the same as this section in any and all contracts with sub consultants performing work required of the contractor under this contract. The consultant agrees to indemnify and hold the City harmless from any and all liability, including liability for interest and penalties, the City may incur as a result of the consultant failing to comply with any provisions of the Immigration Reform and Control Act of 1986. Consultant understands and agrees that if it violates this section, this Agreement may be terminated by the City, and that Consultant shall be barred from performing any services for the
City in the future unless and until a showing is made satisfactory to the City that discriminatory practices have terminated and that recurrence of such action is unlikely.

8. **Term.** This Agreement shall become effective upon the day of its execution by both parties, and shall terminate upon completion of the work and delivery of all materials described in Exhibit A.

9. **Termination by City.** The City may terminate this Agreement at any time upon not less than ten (10) days written notice to Consultant, subject to the City's obligation to pay Consultant in accordance with subsections A and B below.

   A. In the event 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 actual cost of work complete at the time of termination of the Agreement. In addition, the Consultant shall be paid on the same basis as above for any authorized Extra Work completed. No payment shall be made for any work completed after ten (10) days following receipt by the Consultant of the termination notice. If the accumulated payment(s) made to the Consultant prior to the termination notice exceeds the total amount that would be due as set forth in this subsection, then no final payment shall be due and the Consultant shall immediately reimburse the City for any excess paid.

   B. In the event the services of the Consultant are terminated by the City for fault on the part of the Consultant, subsection A of this section shall not apply. In such event the amount to be paid shall be determined by the City with consideration given to the actual costs incurred by the Consultant in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or of a type which is usable by the City at the time of termination, the cost to the City of employing another person or firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the City of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made if subsection A of this section applied.

   C. In the event this Agreement is terminated prior to completion of the work, the original copies of all work products prepared by the Consultant prior to termination shall become the property of the City for its use without restriction; provided, that any such use by the City not directly related to the particular purposes for which the work product was produced shall be without any liability whatsoever to the Consultant.

10. **Termination by Consultant.** Consultant may terminate this Agreement only in response to material breach of this Agreement by the City, or upon completion of the work set out in the Scope of Work and any Extra Work agreed upon by the parties.

11. **Applicable Law; Venue.** The law of the State of Washington shall apply in interpreting this Agreement. Venue for any lawsuit arising out of this Agreement shall be in the Superior Court of the State of Washington, in and for Pierce County.
12. **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 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 sole negligence of the City. 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. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant’s waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

**Insurance**

The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

**A. 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. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. **Commercial General Liability insurance** shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.

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.

**B. Minimum Amounts of Insurance**
Consultant shall maintain the following insurance limits:

1. **Automobile Liability** insurance with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.

2. **Commercial General Liability** insurance shall be written with limits no less than $1,000,000 each occurrence, $2,000,000 general aggregate.

3. **Professional Liability** insurance shall be written with limits no less than $1,000,000 per claim and $1,000,000 policy aggregate limit.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant’s insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant’s insurance and shall not contribute with it.

2. The Consultant’s insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage

Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

13. Subletting or Assigning. The Consultant shall not sublet or assign any of the work covered by this Agreement without the express written consent of the City.

14. Entire Agreement. This Agreement represents the entire Agreement between the parties. No change, termination or attempted waiver of any of the provisions of the Agreement shall be binding on any party unless executed in writing by authorized representatives of each party. The agreement shall not be modified, supplemented or otherwise affected by the course of dealing between the parties.
15. **Waiver.** Failure by any party to this Agreement to enforce any provision of this Agreement or to declare a breach shall not constitute a waiver thereof, nor shall it impair any party's right to demand strict performance of that or any other provision of this Agreement any time thereafter.

16. **Severability.** If any provision of this Agreement or its application is held invalid, the remainder of the Agreement or the application of the remainder of the Agreement shall not be affected.

17. **Execution and Acceptance.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The Consultant hereby ratifies and adopts all statements, representations, warranties, covenants, and agreements contained in the supporting materials submitted by the Consultant, and does hereby accept the Agreement and agrees to all of the terms and conditions thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY OF BONNEY LAKE  

By:  

Neil Johnson Jr., Mayor

CONSULTANT  

By:

Attachments:
Exhibit A: Scope of Work/Deliverables/Fee
Exhibit B: Rates
EXHIBIT A: SCOPE OF WORK

The Consultant shall perform the following services as directed by the City:

186th Ave. – 88th Street – 188th Ave.
Right-of-Way Services
June 24th, 2014

The City of Bonney Lake is in the process of designing improvements to the above named project. The proposed improvements require the valuation and negotiation of property interests for up to nine (9) parcels specifically identified as Pierce County Assessor’s Parcel Nos. 5640001514, 5640001335, 5640011350, 5640011340, 564001209, 564001136, 5640011242, 5640011361 and 5640011323. In the event the City opts to purchase the parcels necessary for the 186th Extension Option (5640001361 and 5640001323), relocation services will be considered extra work if they are deemed necessary.

Process

Cascade Right-of-Way Services, Inc. (hereinafter known as CONSULTANT) will provide right-of-way acquisition and valuation services for the above stated property interests using procedures specified herein and in accordance with the Washington State Department of Transportation (WSDOT) Right-of-Way Manual and Local Agency Guidelines, which by this reference are made a part of this Agreement.

The CONSULTANT will contract with an appraiser listed on the latest WSDOT Fee Appraiser List to complete a Project Funding Estimate and Administrative Offer Summaries for the proposed acquisitions.

The CONSULTANT will contact property owners, advise them of the process, assemble negotiation packages, and schedule appointments. The CONSULTANT will supply all necessary transfer documents using city forms (excluding legal descriptions which will be provided by the CITY). The CONSULTANT will manage the documents, obtain signatures, and submit them to the CITY for approval.

Upon reaching a mutually acceptable agreement, the CONSULTANT will then coordinate with an Escrow and Title Company to clear any necessary title encumbrances and close the transactions.

The CONSULTANT will provide the following:

140.1) Valuation of Proposed Acquisition Areas
The CONSULTANT will contract with a WSDOT-approved appraiser for valuation services. The appraiser will prepare a Project Funding Estimate, and where necessary, Administrative Offer Summaries for the proposed acquisitions. It is assumed the project will require up to two (2) full appraisals. In the event any additional appraisals are required, they will be considered extra work.

The CONSULTANT will perform appraisal functions to the limit of the authority set forth in the title reports, project maps, determination of fair market value, and the manuals noted above.
140.2) Appraisal Review
The CONSULTANT will contract with a WSDOT-approved review appraiser for appraisal review services. Upon completion of the review appraisals, they will be submitted to the CITY for review and approval. Upon approval, the CONSULTANT will begin negotiations. It is assumed there will be up to two (2) appraisal reviews on this project.

140.3) Negotiations
The CONSULTANT will assemble negotiation packages, contact property owners to schedule an appointment to begin negotiations, and advise them of the process. Absentee owners will be contacted and negotiations conducted by telephone. The CONSULTANT will notify the CITY of those owners with whom contact could not be made and request direction on how to proceed.

The CONSULTANT will assure that negotiations are performed only to the limit of authority delineated by the title reports, project maps, determined fair market value, procedures manual, acquisition schedule, or written instructions issued by the CITY.

The CONSULTANT will work such days and hours as may be necessary to meet with interested property owners that may not be available during regular working days or hours.

The CONSULTANT will provide a diary with all negotiation packages submitted to the CITY. The diary information will include, at a minimum, the time, place, amount of offer, to whom the offer was made, parties present, and owner response.

At the first negotiation meeting or phone conversation with each property owner or their agent, the CONSULTANT will explain the purpose and need for the project, identify what is needed from each owner's property for the project, attempt to receive a commitment from the owner to accept the CITY'S offer, and make record of all information needed to prepare closing documents.

The CONSULTANT will assure that up to three negotiation contacts are made with each interested party (owner or owner's agent) in order to acquire valid title to the needed property rights as shown on the project map or as instructed in writing by the CITY. Any additional personal contact with the owner or their representative will be negotiated as extra work.

Following a successful negotiation, all closing documents will be presented to the owner for signature. When all documents are signed, the CONSULTANT will deliver them to the CITY for review and signing and then coordinate the closing with an escrow company approved by the CITY. The CITY will pay for all recording fees, title reports, and typical closing costs. Should any documents require revisions or if the terms are found unacceptable to the CITY, the CITY will make clear the appropriate revisions required for re-negotiations.

140.4) Closing Coordination
It is assumed the CITY will contract directly with the escrow company for closing. When the CITY receives acceptable documents from the CONSULTANT, they will be signed by the CITY and forwarded to the title/escrow company for processing, recording and closing. The escrow company will be responsible for the preparation and receipt of all signatures for all documents such as Waivers of Compensation, Requests for Partial Re-conveyance, and satisfaction of all liens and encumbrances for each parcel.
In the event the escrow company needs additional information from property sellers, the CONSULTANT will assist the title company in obtaining the needed information. As each transaction is closed, the escrow company will then record all documents and return originals to the CITY.

140.5) Preparation of Documents
The CONSULTANT will prepare and provide First Offer Letters, Request for Taxpayer Identification Number and Certification documents (W-9), Real Property Vouchers, Real Estate Tax Affidavits, and Deeds. The CITY will provide in electronic format legal descriptions and parcel exhibits. The CONSULTANT will also prepare the Right-of-Way Diaries for documentation of individual parcel contacts.

140.6) Temporary Construction Permits
The CONSULTANT will prepare and attempt to secure signatures on Temporary Construction Permits (TCP’s) for up to (nine) 9 parcels where acquisitions are involved. Said permits will be completed in a format provided by the CITY. It is assumed no compensation will be paid for said Temporary Construction Permits as they are for the mutual benefit of the landowners and the City.

140.7) Progress Reports/Invoicing
Included in this task is time for completing monthly progress reports and preparing invoices.

140.8) Valuation Services
To be provided by Appraisal Solutions Northwest, Inc.

140.9) Review Appraisal Services
To be provided by the Granger Company

Condemnation
If the CONSULTANT does not reach a successful agreement with the owner(s), the documents will be referred to the CITY. The CITY will then decide on the next step with any unsuccessful negotiations. The CITY may wish to proceed with condemnation. Condemnation proceedings are the responsibility of the CITY, unless the CONSULTANT is authorized to assist in the condemnation process by a supplement to the Contract. The preparation, negotiation and execution of Possession & Use Agreements are considered a part of the condemnation process.

Direct expenses associated with limited liability guarantees, title reports, title insurance, escrow fees, other closing costs and payments to property owners will be the responsibility of the CITY.

Relocation
It is assumed that no relocation will be required for this project. If relocations are found to be necessary and the CITY wishes to have the CONSULTANT assist in the relocation process, that work will be negotiated and added by supplemental agreement.

Right-of-Way Certification
It is understood that there are no state/federal funds involved in any portion of this project and WSDOT right-of-way certification will not be required.
Survey
The CITY will stake the proposed right-of-way with nails, lath or paint at intervals sufficient to provide inter-visibility.

End Scope of Work

**Consultant Fee Determination – Man-Hour Sheet**
**(Specific Rates of Pay)**
**Fee Schedule**

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**HOURS PER DISCIPLINE**: 339
EXHIBIT B: RATES

Consultant Fee Determination - Summary Sheet
(Specific Rates of Pay)
Fee Schedule

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City of Bonney Lake, Washington
City Council Agenda Bill (AB)

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Agenda Item Type: Resolution
Ordinance/Resolution Number: 2400
Councilmember Sponsor: Dan Swatman

Agenda Subject: Authorize Agreement with Cascade Right-of-Way Services for the 186th Ave-88th St-188th Ave Option Project.

Full Title/Motion: A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Authorize Agreement With Cascade Right-Of-Way Services For The 186th Ave-88th St-188th Ave Option Project.

Administrative Recommendation: TBD. If this is determined to be an excessive amount for the services provided, the Administration may determine not to enter into the contract, but put the ROW services out to bid per existing City administrative policy.

Background Summary: The City of Bonney Lake is in the process of designing improvements for the 186th Corridor above named project. The proposed improvements require the valuation and negotiation of property interests for up to nine (9) parcels.

Cascade Right-of-Way Services, Inc. will provide right-of-way acquisition and valuation services for the above stated property interests using procedures specified in accordance with the Washington State Department of Transportation (WSDOT) Right-of-Way Manual and Local Agency Guidelines. Cascade will contract with an appraiser listed on the latest WSDOT Fee Appraiser List to complete a Project Funding Estimate and Administrative Offer Summaries for the proposed acquisitions. This effort will include contacting property owners, advising them of the process, assembling negotiation packages, and schedule appointments. Cascade will manage the documents, obtain signatures, and submit them to the CITY for approval.

After reaching a mutually acceptable agreement Cascade ROW Services will coordinate with an Escrow and Title Company to clear any necessary title encumbrances and close the transactions.

Attachments: Resolution; Contract; Map

BUDGET INFORMATION

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Budget Explanation: 301.034.032.595.10.63.01

COMMITTEE, BOARD & COMMISSION REVIEW

Council Committee Review:
Date:
Chair/Councilmember: Dan Swatman
Councilmember: Donn Lewis
Councilmember: Katrina Minton-Davis
Forward to:
Consent Agenda: [ ] Yes [ ] No

Commission/Board Review:
Hearing Examiner Review:
COUNCIL ACTION

Workshop Date(s):
Meeting Date(s):

Public Hearing Date(s):
Tabled to Date:

APPROVALS

Director:
Dan Grigsby, P.E.

Mayor:
Neil Johnson Jr.

Date Reviewed
by City Attorney:
(if applicable):

Version Oct 2010