

Subject: Resolution #793 – Approving Consultant Services Contract With GeoEngineers, Inc. for On-Call Soil Testing Services And Authorizing The Mayor To Execute Said Contract

Dept. Origin: City Engineer’s Office

Prepared by: Jennifer Robertson
Randi Shaffer
City Attorney’s Office

For Agenda of: July 2, 2024

Exhibits: Resolution #793 and Consultant Services Contract

Proposed Council Action:

Pass Resolution #793.

	Initial & Date
Concurred by Mayor:	_____
Approved/form by City Atty:	<u>6-26-24/JSR</u>
Approved by City Engineer:	_____
Approved by Department Head:	_____

INFORMATION / BACKGROUND

The City of Ruston is interested in obtaining professional services for geotechnical engineering and soil testing on an on-call basis. The City published a request for Statements of Qualifications (SOQ) for these services. On June 10, 2024, GeoEngineers, Inc., submitted a SOQ for consideration. The City determined that GeoEngineers, Inc., was the most qualified applicant to perform the required services. The City subsequently negotiated an agreement for on-call soil testing services with GeoEngineers, Inc.

The consultant services contract is attached and includes a description of the work to be performed in Exhibit A. The work is on an on-call basis; additional work will be performed as assigned by the City and invoiced based on the compensation rates set forth in Exhibit B to the contract. The contract does not obligate the City to assign any specific work or any work to GeoEngineers.

FISCAL CONSIDERATION

The maximum contract price is \$100,000.00 per calendar year. This amount shall not be exceeded without prior written authorization from the City in the form of a negotiated and executed supplemental agreement.

RECOMMENDATION / MOTION

Pass Resolution #793.

MOTION: I move to approve Resolution #793 approving the Consultant Services Contract with GeoEngineers, Inc., for on-call soil testing services, and authorizing the Mayor to execute said contract.

RESOLUTION NO. 793

**A RESOLUTION OF THE CITY OF RUSTON,
WASHINGTON, APPROVING A CONSULTANT SERVICES
CONTRACT WITH GEOENGINEERS, INC. FOR ON-CALL
SOIL-TESTING SERVICES FOR THE CITY OF RUSTON
AND AUTHORIZING THE MAYOR TO EXECUTE SAID
CONTRACT**

WHEREAS, the City identified a need for professional services for soil-testing on an on-call basis; and

WHEREAS, the City published a request for qualifications for said services; and

WHEREAS, GeoEngineers, Inc. submitted to provide said services in response to the published request; and

WHEREAS, the City finds GeoEngineers Inc. to be the most qualified applicant and has selected GeoEngineers Inc. to provide such services on an on-call basis; and

WHEREAS, the City has negotiated with GeoEngineers Inc. and reached an agreement to perform said services for the City;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RUSTON
HEREBY RESOLVES AS FOLLOWS:**

Section 1. Approval of Contract to Most Qualified Applicant. The City Council approves the contract with GeoEngineers, Inc. for professional services for on-call soil testing.

Section 2. Mayor’s Execution Authorized. The Mayor is authorized to execute the contract with GeoEngineers, Inc. in substantially in the form attached hereto as Exhibit “1”.

RESOLVED this _____ day of _____, 2024.

APPROVED:

Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:

Judy Grams, City Clerk

FILED WITH THE CITY CLERK: _____

PASSED BY THE CITY COUNCIL: _____

RESOLUTION NO.: 793

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF RUSTON AND GEOENGINEERS**

THIS AGREEMENT is made by and between the City of Ruston, a Washington municipal corporation (hereinafter the "**City**"), and GeoEngineers, Inc., an Engineering Firm organized under the laws of the State of Washington located and doing business at 1101 Fawcett Avenue, Suite 200, Tacoma, WA 98402 (hereinafter the "**Consultant**").

RECITALS

WHEREAS, the City is interested in obtaining professional services for soil-testing on an on-call basis; and

WHEREAS, the City published a request for qualifications for these services, and Consultant submitted to provide these services and was selected by the City as the most qualified applicant; and

WHEREAS, the parties have negotiated for these services and have reached an agreement for the Consultant to perform said services for the City;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS

I. Description of Work

The Consultant shall perform all work as assigned by the City, which may include the work as described in **Exhibit A**, which is attached hereto and incorporated herein by this reference. This is an on-call contract, so additional work shall be performed by the Consultant as assigned by the City. This contract does not obligate the City to assign any specific work or any work to the Consultant.

II. Payment

A. The City shall pay the Consultant an amount based on time and materials, not to exceed One Hundred Thousand Dollars (\$100,000.00) per calendar year for the services described in Section I herein. This is the maximum amount to be paid under this Agreement annually for the work described in **Exhibit A** and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount.

B. The Consultant shall submit monthly invoices to the City after such services have been performed, and a final bill upon completion of all the services described in this Agreement. Such invoice shall be based on the compensation rates set forth in **Exhibit B** which is attached hereto and incorporated herein by this reference as if set forth in full. The City shall pay the full amount of an invoice within forty-five (45) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

III. Relationship of Parties

The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives, and sub-consultants during the performance of this Agreement. 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.

IV. Agreement Term

The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement as assigned by the City. The term of this Agreement shall be from the date this Agreement is executed by both parties, until December 31, 2025 unless earlier terminated in accordance with Section V below.

V. Termination

A. Termination of Agreement. Either party may terminate this Agreement with or without cause, by providing sixty (60) days written notice to the other party. In addition, the City may terminate this Agreement, for the Consultant's default, the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors, at any time by delivering notice of the termination for cause to the consultant. If delivered to consultant in person, termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date stated in the City's notice, whichever is later.

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise.

VI. Discrimination

In the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, the Consultant, its subcontractors, or any person acting on behalf of such Consultant or sub-consultant shall not, by reason of race, religion, color, sex, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

VII. Indemnification

The Consultant shall defend, indemnify, and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or in connection with the negligent performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's inspection or acceptance of any of the Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

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, agents and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE CONSULTANT'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

The provisions of this section shall survive the expiration or termination of this Agreement.

VIII. Insurance

A. 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 Consultant's own work including the work of the Consultant's agents, representatives, employees, sub-consultants or sub-contractors.

B. Before beginning work on the project described in this Agreement, the Consultant shall provide evidence, in the form of a Certificate of Insurance, of the following insurance coverage and limits (at a minimum):

1. Business auto coverage for any auto no less than a \$1,000,000 each accident limit, and
2. Commercial General Liability insurance no less than \$1,000,000 per occurrence with a \$2,000,000 aggregate. Coverage shall include, but is not limited to, contractual liability, products and completed operations, property damage, and employers liability, and
3. Professional Liability insurance with no less than \$1,000,000. All policies and coverage's shall be on a claims made basis.

"No less than" the limits state above means that the required coverage shall be the minimum amount listed unless the Consultant has coverage which is greater than the minimum amount.

C. The Consultant is responsible for the payment of any deductible or self-insured retention that is required by any of the Consultant's insurance. If the City is required to contribute to the deductible under any of the Consultant's insurance policies, the Contractor shall reimburse the City the full amount of the deductible within 10 working days of the City's deductible payment.

D. The City of Ruston shall be named as an additional insured on the Consultant's commercial general liability policy. This additional insured endorsement shall be included with evidence of insurance in the form of a Certificate of Insurance for coverage necessary in Section B. The City reserves the right to receive a certified and complete copy of all of the Consultant's insurance policies.

E. Under this agreement, the Consultant's insurance shall be considered primary in the event of a loss, damage, or suit. The City's own comprehensive general liability policy will be considered excess coverage with respect to defense and indemnity of the City only and no other party. Additionally, the Consultant's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

F. The Consultant shall request from his insurer a modification of the ACORD certificate to include language that prior written notification will be given to the City of Ruston at least 30-days in advance of any cancellation, suspension or material change in the Consultant's coverage.

IX. Exchange of Information

The City warrants the accuracy of any information supplied by it to the Consultant for the purpose of completion of the work under this Agreement. The parties agree that the Consultant will notify the City of any inaccuracies in the information provided by the City as may be discovered in the process of performing the work, and that the City is entitled to rely upon any information supplied by the Consultant which results as a product of this Agreement.

X. Ownership and Use of Records and Documents

A. Ownership. Original documents, drawings, designs and reports developed under this Agreement shall belong to and become the property of the City. Any reuse of documents by the City for another project shall be without liability to the Consultant. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in consultant's possession or known to it or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

B. Use of City's system mandatory. The Consultant agrees to use the City email system, if offered, for all City-related email and to put all records which are created, received, or used for City-related matters onto the City's drop box account, provided that the City provides this access. The Consultant agrees that the use of the City's email and drop box will result in all city-related records in the Consultant's use or control being placed or maintained within the City's server system.

C. Records preservation. Consultant understands that this Agreement is with a government agency and thus all records created or used in the course of Consultant's work for the City are considered "public records" and are subject to disclosure under the Public Records Act, Chapter 42.56 RCW ("the Act"). Consultant agrees to safeguard and preserve records in accordance with the Act. If the City receives a public records request and asks Consultant to search his files for responsive records, Consultant agrees to make a prompt and thorough search through his files for responsive records and to promptly turn over any responsive records to the City's public records officer.

XI. City's Right of Inspection

Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

XII. Consultant to Maintain Records to Support Independent Contractor Status

On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors including, but not limited to the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to the Revised Code of Washington (RCW) Section 51.08.195, as required to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties which is subject to RCW Title 51, Industrial Insurance.

XIII. Work Performed at the Consultant's Risk

The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

XIV. Non-Waiver of Breach

The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options, and the same shall be and remain in full force and effect.

XV. Resolution of Disputes and Governing Law

Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City of Ruston, who shall determine the term or provision's true intent or meaning. The City of Ruston shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the Mayor's determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The non-prevailing party in any action brought to enforce this Agreement shall pay the other parties' expenses and reasonable attorney's fees.

XVI. Written Notice

All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the agreement, unless notified to the contrary.

Unless otherwise specified, any written notice hereunder shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated below:

CONSULTANT:

GeoEngineers, Inc.
Attn. Dennis J. Thompsen
Attn. Ian Young
1101 Fawcett Avenue, Suite 200,
Tacoma, WA 98402

CITY:

Bruce Hopkins, Mayor
City of Ruston
5219 N. Shirley St.
Ruston, WA 98407-6597

A copy shall also be transmitted to the City Clerk at the above address.

XVII. Assignment

Any assignment of this Agreement by the Consultant without the written consent of the City shall be void. If the City shall give its consent to any assignment, this paragraph shall continue in full force and effect and no further assignment shall be made without the City's consent.

XVIII. Modification and Severability

No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant.

The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reasons held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision.

XIX. Entire Agreement

The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, this Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and any Exhibits attached hereto, which may or may not have been executed prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement on this ___ day of _____, 2024.

CONSULTANT

CITY OF RUSTON

By: _____
Dennis J. Thompson, P.E.

By: _____
Bruce Hopkins, Mayor

ATTEST:

Judy Grams, City Clerk

APPROVED AS TO FORM:

Jennifer Robertson, City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Mr. D. Bruce Hopkins is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Mayor of Ruston to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____ 20 _____

(print or type name)

NOTARY PUBLIC in and for the
State of Washington, residing at:

My Commission expires: _____

Exhibit A
SCOPE OF SERVICES

On-Call Engineering Services for Soil Testing

1. **Scope.** Consultant shall provide services to the City of Ruston on an on-call basis. Services required by the City may include, but are not limited to:

➤ **INSERT TASK LIST**

➤ ...

➤ ...

➤ ...

2. **Rates of Compensation.** Consultant shall be compensated based upon the attached rates for services.

Exhibit B

INSERT RATES FOR SERVICES