

RESOLUTION NO. 754

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF RUSTON, WASHINGTON, DECLARING AN
EMERGENCY, AUTHORIZING THE MAYOR TO
EXECUTE AN ON-CALL ENGINEERING SERVICES
CONTRACT WITH DAVID EVANS AND ASSOCIATES,
INC. FOR CITY ON-CALL ENGINEERING SERVICES.**

WHEREAS, Ruston has its own electrical power utility system; and

WHEREAS, the key personnel for such utility is the City's Electrical Engineer; and

WHEREAS, the City entered into an agreement with Select Power Systems, LLC for electrical engineering services in December 2021 following passage of Resolution No. 739; and

WHEREAS, the City's Electrical Engineer at Select Power Systems, LLC was Clint Thayer who has been the City's Electrical Engineer for approximately 10 years; and

WHEREAS, Mr. Thayer has left Select Power Systems, LLC and joined David Evans and Associates, Inc. and Select Power Systems therefore lacks the personnel with adequate experience and knowledge to continue to manage the City's electrical utility system; and

WHEREAS, the City will be issuing an SOQ for electrical engineering services but in the meantime the City needs the personnel immediately to serve the City's electrical utility; and

WHEREAS, having no knowledgeable electrical engineer has created an emergency for the City; and

WHEREAS, RCW 39.04.280(1)(c) specifically authorizes a City to waive bidding requirements in the event of an emergency which is beyond the control of the city and will create a real, immediate threat to the proper performance of essential functions; and

WHEREAS, lack of personnel with adequate experience and knowledge to manage the City's electrical utility system creates a real and immediate threat to the proper performance of essential functions, to wit: operations and management of the City's electrical utility; and

WHEREAS, the City Council declares that this is an emergency and that bidding requirements are waived for approving an interim contract for the required engineering services; and

WHEREAS, the attached contract will only be in effect through the end of the year or until such time as the City has completed the required process under Chapter 39.80 RCW for obtaining the on-call engineering services and has executed a longer-term agreement; and

WHEREAS, David Evans and Associates, Inc. has agreed to maintain a similar contract as had been in place in prior years with the previous engineering firms; and

WHEREAS, the proposed contract for on-call professional engineering services is attached to this Resolution as Exhibit 1 and is for an amount not to exceed \$100,000.00 with the scope of work and applicable hourly rates set forth in Exhibit A of the Agreement; and

WHEREAS, such Agreement expires on December 31, 2022 or when a longer term agreement is in place; and

WHEREAS, in addition to the general on-call work, the City, in its sole discretion, may provide additional work to the On-Call Electrical Engineer, including grant-funded work that falls within the general scope of work or general civil engineering work as needed; and

WHEREAS, the City Council finds it in the public interest to authorize the Mayor to execute the proposed On-Call Engineering Services Agreement in substantially the form that is attached to this Resolution as Exhibit "1";

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RUSTON,
WASHINGTON, DOES HEREBY RESOLVE AS FOLLOWS:


Section 1. Findings. The findings and recitals set forth above are hereby adopted and incorporated herein by this reference.

Section 2. Declaration of an Emergency. The City Council finds that the lack of personnel with adequate experience and knowledge to manage the City's electrical utility system creates a real and immediate threat to the proper performance of essential functions, to wit: operations and management of the City's electrical utility. The City Council declares that this is an emergency and that bidding requirements are waived for the purposes of approving an interim contract for these engineering services.

Section 3. Agreement Authorized. The Mayor is hereby authorized to execute the On-Call Engineering Services Contract between the City of Ruston and David Evans and Associates, Inc. in substantially the form attached to this Resolution as Exhibit "1" provided that David Evans and Associates, Inc. has first accepted and executed the Agreement.

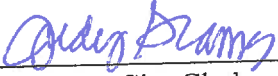
RESOLVED this 16th day of August, 2022.

APPROVED:



Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:



Judy Grams, City Clerk

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
RESOLUTION NO.: 754 _____

EXHIBIT “1”

ON-CALL ENGINEERING SERVICES AGREEMENT

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF RUSTON AND DAVID EVANS AND ASSOCIATES, INC.
FOR ON-CALL ENGINEERING**

THIS AGREEMENT is made by and between the City of Ruston, a Washington municipal corporation (hereinafter the "City"), and David Evans and Associates, Inc., a corporation organized under the laws of the State of Oregon located and doing business at 2106 Pacific Avenue, Suite 400, Tacoma WA 98402 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is a Washington municipal corporation and an electrical utility provider and is interested in On-Call Engineering Services; and

WHEREAS, the Consultant has agreed to perform said services;

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 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.

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) for the services described in Section I herein during the term of the Agreement. This is the maximum annual amount to be paid under this Agreement 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. 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 promptly upon execution of this Agreement and upon receipt of a specific email confirmation for each task order. In addition, any work undertaken at the request of the City prior to this effective date will be considered to be under the scope of the services hereunder. The term of this Agreement shall be from the date this Agreement is executed by both parties, until December 31, 2022 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 material 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. Any reuse

or modification of the records or data without the prior written consent of the Consultant shall be at the sole risk of the City.

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 reasonable attorneys' fees, to the extent arising out of or in connection with the negligent acts, errors or omissions in the performance of this Agreement, except for injuries and damages caused by the 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:

1. Business auto coverage for any auto \$1,000,000 each accident limit, and
2. Commercial General Liability insurance \$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 in the amount of \$1,000,000 per claim/aggregate. All policies and coverage's shall be on a claims made basis.

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. Consultant's additional insured endorsement shall be pursuant to ISO form CG 2010 0413. The City reserves the right to receive a certified and complete copy of all of the Consultant's insurance policies which may be redacted at the Consultant's or the Consultant's insurers' discretion to protect confidential or proprietary elements of the policies.

E. Under this agreement, the Consultant's commercial general liability and automobile liability 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 provide prior written notification to the City of Ruston at least 30-days in advance of any cancellation, suspension or material change that does not meet the requirement of this agreement 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 provided that the City has paid the Consultant's fees related to such work. Any reuse or modification of the work product without the prior written consent of Consultant will be at the sole risk of the Client. 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. Notwithstanding anything to the contrary notwithstanding, Consultant shall maintain its ownership in materials and inventions (a) which Consultant owned and preexisted prior to Consultant entering into this Agreement, and/or (b) which constitute refinements to Consultant processes, whether or not developed under any project for the City. Anything in the foregoing that may appear to the contrary notwithstanding, nothing in this Agreement shall be construed so as to limit or transfer Consultant's ownership of all any or rights, facts and data (regardless of whether such rights arise from the law of copyright, trademark, patent or trade secret or any other source) to use its basic know-how, methods of analysis, experience, techniques, processes, models, industry knowledge and contacts, models, skills and presentation formats, that existed with the Consultant prior to Consultant's performance of the services. However, to the extent necessary for the City to utilize the work, and to the extent not in conflict with any pre-existing rights (or applicable law or regulation), Consultant shall grant the City a non-exclusive license to use the intellectual property embodied in the work product, at no extra cost to the City.

C. 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. 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.

D. 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 its files for responsive records, Consultant agrees to make a prompt and thorough search through its 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 comply with OSHA and WSHA (as applicable) requirements and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize protection 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 a Party 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:

David Evans and Associates, Inc.
Attn. Clint Thayer
2106 Pacific Ave., Suite 400
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.

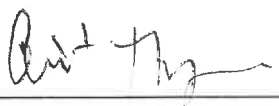
The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reasons held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision.

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 August, 2022.

CONSULTANT

By: 
Clint Thayer, Sr. Associate


CITY OF RUSTON

By: 
Bruce Hopkins, Mayor

ATTEST:


Judy Grams, City Clerk

APPROVED AS TO FORM:



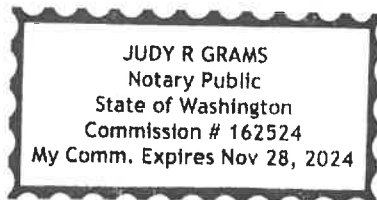
Jennifer S. Robertson, City Attorney

NOTARY BLOCK - CONSULTANT

STATE OF Washington)
) ss.
COUNTY OF Pierce)

I certify that I know or have satisfactory evidence that Clint Thayer 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 Sr. Associate of David Evans and Associates, Inc. to be the free and voluntary act of such company for the uses and purposes mentioned in the instrument.

Dated: August 15 2022



Judy R. Grams
Judy R. Grams
(print or type name)

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

Puyallup, Washington

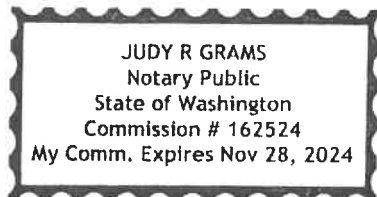
My Commission expires: 11-28-2024

NOTARY BLOCK - CITY

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: August 18 2022



Judy R. Grams
Judy R. Grams
(print or type name)

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

City of Ruston

My Commission expires: Nov-28, 2024

Exhibit A
SCOPE OF SERVICES
On-Call Engineering Services

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

- Design of electrical circuits
- Sizing of electrical services
- Sizing of electrical switchgear
- Sizing of pad-mounted or pole-mounted transformers
- Fault studies
- Protective relay settings development
- Protection scheme design
- Supervisory Control and Data Acquisition (SCADA) design
- Protective relay test procedures
- SCADA test procedures
- Design of power system model in computer software
- Development of operating manuals pertaining to electrical system operations
- Assist the City with compliance with the Clean Energy Implementation Plan requirements under Washington law
- Other electrical engineering tasks as assigned by the Mayor of Ruston

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

- Civil Engineering
- Geotechnical/geological (performed by subconsultant)
- Surveying and mapping
- Structural
- Water/wastewater/stormwater/drainage
- Streets and roadways
- Transportation/traffic
- Site planning/permitting/development plan review
- Environmental documentation
- Computer aided drafting and design (CADD)
- Utility services and rate analysis
- Preparation of construction plans and specifications
- Estimating
- Construction support
- Selected grant funding project support and program management
- Other tasks as may be assigned from time to time by the Mayor

- 3. Rate Schedule.** Consultant shall be compensated based upon the following rates for services:



ENERGY RATE SCHEDULE

Effective April 1, 2022 – March 31, 2023

Labor Classification	Code	Billing Rate
CADD Technician I	CAD1	\$97
CADD Technician II	CAD2	\$111
CADD Technician III	CAD3	\$121
CADD Technician IV	CAD4	\$135
Construction Services Manager I	CSM1	\$154
Construction Services Manager II	CSM2	\$169
Construction Services Manager III	CSM3	\$179
Designer I	DES1	\$118
Designer II	DES2	\$134
Designer III	DES3	\$158
Designer IV	DES4	\$175
Engineering Designer I	END1	\$133
Engineering Designer II	END2	\$149
Engineer III	ENG3	\$174
Engineer IV	ENG4	\$200
Engineer V	ENG5	\$220
Engineer VI	ENG6	\$246
Engineer VII	ENG7	\$267
Principal in Charge	PICH	\$295
Project Accountant I	PAC1	\$67
Project Accountant II	PAC2	\$77
Project Accountant III	PAC3	\$97
Project Accountant IV	PAC4	\$118
Project Coordinator I	PJC1	\$72
Project Coordinator II	PJC2	\$89
Project Coordinator III	PJC3	\$97
Project Coordinator IV	PJC4	\$108
Project Manager I	PJM1	\$154
Project Manager II	PJM2	\$185
Project Manager III	PJM3	\$220
Project Manager IV	PJM4	\$267
Project Manager V	PJM5	\$297
Subject Matter Expert I	SME1	\$220
Subject Matter Expert II	SME2	\$260

- Mileage will be reimbursed at the current federal rate.
- Per Diem will be billed at the current GSA amount.
- Expenses will be billed at cost.
- Outside services will be billed at cost plus ten percent (10%).
- Billing rates are subject to annual adjustment April of each year.