



June 7, 2016

Honorable Thomas Sims
Mayor
City of Oakville
204 E. Main Street
Oakville, WA 98568

RE: Agreement for Engineering Services – Drainage Analysis and Flood Mitigation Project

Dear Mayor Sims:

Gibbs & Olson appreciates the opportunity to provide the City of Oakville with engineering services for the above referenced drainage analysis and flood mitigation project. This Letter Agreement together with attached Exhibits A, B and C comprise our proposed Agreement for engineering services related to this project.

AGREEMENT

RELATIONSHIP

For the purposes of this contract, the Client shall be the City of Oakville, Oakville, Washington and the Engineer shall be Gibbs & Olson, Inc., Longview, Washington.

SCOPE OF WORK

The Engineer's Scope of Work and Schedule for this project is as presented in Exhibit A - Scope of Work.

SCHEDULE

The preliminary schedule for this project is presented below. The schedule shows starting work on June 14, 2016. If the starting date varies from that identified, the subsequent schedule milestones will be adjusted on a day for day basis.

Authorization to Proceed	June 14, 2016
Gather Data and Review Background Information	June 14 - 27, 2016
Field Reconnaissance	June 27 - July 8, 2016
Existing Infrastructure Inventory	July 11 - 29, 2016
Hydraulic Modeling of Drainage Basin	August 1 - 26, 2016
Prepare report and recommendations	Aug. 29 - Sept. 29, 2016
Submit Draft Report to Client	Sept. 30, 2016
Submit Final Report to Client	Nov. 14, 2016

BUDGET


Engineer proposes a total budget for the identified scope of work be set at \$55,000. The proposed budget is presented in detail in Exhibit B - Budget. Engineer agrees not to exceed the budget amount in completing the Scope of Work in Exhibit A without Client's prior authorization. Engineer will submit monthly progress billings for payment per Exhibit C, Item G. A progress report will also accompany each invoice which will include a brief description of work completed during each billing period.

GENERAL CONDITIONS

General Conditions for this Agreement are presented in Exhibit C - General Conditions.

We propose that this letter together with attached Exhibits A, B and C be the complete Agreement for this project. If you have any questions or would like to discuss this further, please feel free to give me a call. If however, it is agreeable, we would appreciate receiving a signed and dated copy for our file and we will begin work upon authorization from you to proceed.

Sincerely,
GIBBS & OLSON, INC.

By: 
Richard A. Gushman, President

**APPROVED AS TO
FORM AND CONTENT**

Date

ACCEPTED AND AUTHORIZED THIS

_____ DAY OF _____ 2016

CITY OF OAKVILLE Attorney

By: _____
Thomas Sims, Mayor

Attachments
Exhibit A - Scope of Work
Exhibit B - Budget
Exhibit C - General Conditions

**EXHIBIT A
SCOPE OF WORK
CITY OF OAKVILLE
DRAINAGE ANALYSIS AND FLOOD MITIGATION PROJECT**

PROJECT DESCRIPTION

The City of Oakville is located in Grays Harbor County, south of Highway 12, and is bounded to the north by steep, forested area and to the south by flat lowland that is subject to flooding by the Chehalis River during high flow periods. Drainage ditches north of Highway 12 within the City limits and water service area converge north of the rail road tracks at Alder Street and Capitol Ridge Road, and cross under Highway 12 via a 36-inch culvert near the east City limits. Historically, runoff was directed from north to south through a series of ditches within the core of the City, from School Street on the west to Temple Street on the east. Over time, the drainage ditches have been filled in and the drainage has been redirected toward the east City limits, east of Temple Street. After passing through the 36-inch culvert, runoff from north of Highway 12 flows to the south through ditches along the east City limits and into road side ditches along Arla and Avarie Roads. Under normal conditions, runoff flows to Harris Creek and ultimately the Chehalis River. However, during heavy rain events, or when steady rainfall occurs for up to 5 days in succession, the ditches will backup and flood the area between Elma Gate Road and Highway 12, from approximately Temple Street to Merry Road. The City desires to perform a drainage analysis to identify and evaluate up to three alternatives for mitigating flooding in the east portion of the City. The project will gather existing information on the current drainage system, perform a hydraulic analysis of the existing drainage system and its associated drainage area, identify and evaluate three alternatives for flood mitigation with opinions of total project cost, and identify a recommended alternative for implementation. A stormwater report will be prepared to present the analysis and the recommended alternative.

The main project elements include a basin delineation of the area draining to the 36-inch culvert under Highway 12, field reconnaissance to evaluate the existing drainage patterns upstream and downstream of Highway 12, as well as to verify drainage structures listed on the drainage map provided by the City, a basin hydraulic model and preparation of alternatives as associated opinions of cost. Topographic survey of the existing culverts and larger ditch cross-sections is desirable for the hydraulic modeling.

ASSUMPTIONS

The identified Scope of Work is based on the following assumptions. In the event that any ultimate facts or events differ from these assumptions, the Engineer's scope of work, schedule and compensation shall be adjusted accordingly.

- A. The project is funded by a grant from the Chehalis River Basin Flood Authority.
- B. The Client will provide Engineer with copies of available drawings and other relevant information for existing infrastructure as available.
- C. All schematic and mapping figures will be developed in AutoCAD Civil 3D 2015.

- D. No permit applications are required for this project.
- E. No cultural or historical resource evaluation or investigation is required to be performed.
- F. No wetland, biological or habitat investigation or reports are required.
- G. No special reports such as a hydrogeological or critical areas evaluation are required.
- H. Public involvement is not required for this project.
- I. The Client will obtain right-of-entry for Engineer to perform field investigation and field survey work on private property as appropriate.

SCOPE OF WORK

TASK 1: PROJECT MANAGEMENT, ADMINISTRATION & MEETINGS

The Engineer shall provide project management and administration consisting of the following:

- A. General project administration
- B. Prepare monthly narrative progress reports during project and submit them to the Client with Engineer's monthly invoice. Each progress report will summarize work completed during that billing period, work anticipated to be completed during the next billing period, any information the Engineer needs to receive from the Client, any unforeseen items which have arisen and how they are being handled, and any upcoming scheduled meetings.
- C. Conduct two (2) progress meetings with Client to review and discuss various aspects of the project as the work proceeds. It is anticipated the first meeting will take place after the field reconnaissance work is complete, but prior to beginning the hydrologic/hydraulic modeling. The second meeting is anticipated to occur after the draft report has been reviewed by the City to discuss the report.

TASK 2: GATHER AND REVIEW BACKGROUND INFORMATION

The Engineer will review LiDAR data, if available, or USGS contour maps to identify the area draining to the 36-inch culvert under Highway 12. The Engineer will also review the drainage map provided by the City to determine if additional infrastructure is located within the drainage basin affecting the overall runoff.

TASK 3: FIELD RECONNAISSANCE

Perform a field reconnaissance of the drainage area contributing flow to the 36-inch culvert under Highway 12 for identification of any additional existing infrastructure not identified on the map provided by the City. The reconnaissance will also include the area downstream of the 36-inch culvert leading to Harris Creek. Up to two (2) days of field survey work is budgeted to allow for invert and spot elevation data collection as necessary. If additional survey work is determined to be required, the Engineer will notify the City with an updated estimate of time required, and upon approval by the City, the additional work will be done on a time and materials basis.

TASK 4: EXISTING INFRASTRUCTURE INVENTORY

Based on the data obtained from the review of existing data and field reconnaissance, a log of all documented infrastructure within the portion of the drainage basin downstream of the 36-inch culvert under Highway 12 will be developed summarizing the type and size of infrastructure, materials of construction, current condition and any recommended maintenance work that can be performed to improve hydraulic capacity.

TASK 5: HYDRAULI MODELING OF DRAINAGE BASIN

A hydrologic/hydraulic analysis utilizing HEC-HMS will be performed for the identified drainage basin to determine the volume of runoff generated by the 25-year and 100-year, 24-hour design storm events for the overall area that drains to the 36-inch culvert under Highway 12 and the area between Highway 12 and Harris Creek. The evaluation will model the drainage area for existing land use conditions. If any infill development is anticipated to occur within the drainage basin, the model will also be run for the full-build land use conditions based on the City's current zoning code.

TASK 6: IDENTIFY AND RECOMMEND INFRASTRUCTURE IMPROVEMENTS

Develop up to three (3) alternatives for improving drainage capacity downstream of the 36-inch culvert to reduce flooding in the area between Highway 12 and Elma Gate Road, from Temple Street to Merry Road. Opinions of total project cost for all alternatives will be developed. Alternatives will be prioritized based on obtaining the most improvement in drainage per unit cost and a recommended alternative with specific capital improvements will be identified. Required permits and any associated specialized studies or evaluations required to be performed as part of the permit process will be identified for recommended capital improvements.

TASK 7: PREPARE PROJECT REPORT

Engineer will prepare a report summarizing the following:

- A. Model results for existing and full-build out land use conditions;
- B. Existing infrastructure and hydraulic capacity of the existing drainage network in the study;
- C. Maintenance work identified, if any, that can be performed to improve the function of existing infrastructure south of Highway 12, including upgrading or replacing inadequate infrastructure;
- D. A summary of alternatives identified and evaluated with opinions of total project cost for each alternative.
- E. Description of the recommended alternative with opinions of total project cost for component of the alternative for upgrading inadequate existing infrastructure or the addition of new infrastructure to allow the drainage network in the study area to provide protection against the desired design storm.

A draft report in pdf format will be provided to the Client for review and comment.

Engineer will discuss Client's review comments with Client and revise or modify the report as appropriate to incorporate agreed changes in response to Client's review comments.

Two hardcopies of the final report will be provided to the Client. The report will also be provided in pdf format.

Estimated Time and Cost Budget

Total Estimated Budget Amount

EXHIBIT C
GENERAL CONDITIONS

A. HEADINGS

Headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants, and conditions of this Agreement.

B. STANDARD OF PRACTICE

Services performed by the Engineer under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality and under similar conditions at the time the services are performed. No other representation, expressed or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document or otherwise.

C. MAINTENANCE OF PROFESSIONAL STANDARDS AND ETHICS

The Client recognizes that the Engineer's services in all cases must be rendered in accordance with prevailing professional standards and ethics, as well as certain laws or regulations that apply specifically to the Engineer. If a situation emerges that causes the Engineer to believe compliance with the Client's wishes could result in the Engineer violating an applicable provision or aspect of professional standards or ethics, laws or regulations, the Engineer shall so advise the Client, and the Client and the Engineer shall immediately enter into discussions to arrive at a mutually satisfactory solution. Failing achievement of a solution, either party may terminate this Agreement in accordance with termination provisions stated herein.

D. NO THIRD PARTY BENEFICIARIES

Engineer's services are intended for the Client's sole use and benefit and solely for the Client's use on this Project and shall not create any third party rights. Except as agreed in writing, Engineer's services and work products shall not be used by or relied upon by any other person or entity.

E. ASSIGNMENT

The Engineer shall not assign this Agreement in whole or in part nor subcontract any portion of the work to be performed hereunder, except that the Engineer may use the services of persons and entities not in his or her employ, when it is appropriate and customary to do so. Such persons and entities include, but are not necessarily limited to, specialized consultants, and testing laboratories. The Engineer's use of others for additional services shall not be unreasonably restricted by the Client provided the Engineer notifies the Client in advance.

F. INDEPENDENT CONSULTANT

The Engineer is an independent consultant. The Engineer and Engineer's employees or agents performing work under this Agreement are not employees or agents of the Client. The Engineer will not hold itself out as nor claim to be an officer or employee of the Client. The Engineer will not make any claim of right, privilege, or benefit which would accrue to an employee of Client under law. The Client shall neither be liable for nor obligated to pay sick leave, vacation pay, or any other benefit of employment, nor to pay any social security or other payroll taxes as due. Industrial or any other insurance which is purchased for the benefit of the Engineer shall not be deemed to convert this Agreement to an employment contract.

It is recognized that the Engineer may or will be performing professional services during the term for other parties and that the Client is not the exclusive user of the Engineer's services; provided, however, that the performance of other professional services shall not conflict with or interfere with the Engineer's ability to perform the services to be performed under this Agreement.

G. INSURANCE

1. The Engineer maintains: 1) worker's compensation and employer's liability insurance of a form and in an amount as required by state law; 2) comprehensive general liability and automotive liability insurance; and 3) professional liability insurance to cover negligent errors or omissions for which the Engineer becomes legally obligated to pay. Certificates of Insurance (COI) shall be provided to the Client upon request. The Client will be named as an additional insured if required on the comprehensive general liability and automotive liability insurance policies.

2. Client agrees to require Engineer and any Subconsultants, subcontractors or third parties utilized by Engineer to be named as additional insureds for all insurance policies related to this Project carried by contractors, subcontractors and suppliers on which Client has been or will be named as an additional insured.

H. INDEMNIFICATION

The Engineer agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors and employees (collectively, Client) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Engineer's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the Engineer is legally liable.

The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Engineer, its officers, directors, employees and subconsultants (collectively, Engineer) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Client's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the Client is legally liable.

Neither the Client nor the Engineer shall be obligated to indemnify or defend the other party in any manner whatsoever for the other party's own negligence.

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

I. BILLING AND PAYMENT

1. BUDGET FOR SERVICES

The budget estimate included in this proposal is only for those services identified within the attached scope of work. The budget and proposed scope of work are based on information currently available to the Engineer. If conditions change, unforeseen circumstances are encountered, or work efforts are redirected, the budget estimate may require modification. Similarly, if the work efforts are completed quicker than the time estimated or direct expenses are less than estimated, the Engineer will bill the Client only for the time or expense encountered.

Monthly billings will be submitted on a time and materials basis but will not exceed the estimated budget for the identified Scope of Work without the Client's prior authorization. For projects that extend beyond the calendar year in which the Agreement is executed was executed, the Engineer's billing rates are subject to adjustment each January.

2. REIMBURSABLE EXPENSES

Expenses incurred in connection with project tasks such as out-of-town subsistence, long distance telephone, reproduction costs and similar, will be invoiced at direct cost plus Ten (10%) percent. Mileage will be invoiced at the current IRS rate per mile.

3. SERVICES BY OTHERS

If this project requires the specialized services of consultants and other technical companies, then such services will be utilized only with the Client's written approval, with the cost of such services included at the invoice cost plus Ten (10%) percent.

4. **INVOICES.** The Engineer will submit invoices to Client on a monthly basis and a final bill upon completion of services. Payment is due upon receipt of the invoice and is past due Thirty (30) days after the invoice date. Client agrees that the invoice balance is correct unless Engineer is notified in writing within Fourteen (14) days of the invoice date. In the event of a disputed or contested billing, only that portion so contested will be withheld from payment, and the undisputed portion will be paid. The Client will exercise reasonableness in contesting any bill or portion thereof. No interest will accrue on any contested portion of the billing until it is mutually resolved. A service charge of 12% per annum (1% per month) will be added on all unpaid balances over Sixty (60) days old. If the account becomes delinquent, Engineer will perform no further services on the project until the Client pays the outstanding balance plus applicable interest or, at the Engineer's sole discretion, until satisfactory written payment arrangements have been made between the Engineer and the Client.

J. CHANGES IN THE AGREEMENT

If during the course of performance of this Agreement, the Client requests additional services to be performed, or if conditions or circumstances are discovered which were not contemplated by the Engineer at the commencement of this Agreement, then the Engineer shall notify the Client in writing of the additional services to be performed or the newly discovered conditions or circumstances. The Client and Engineer shall renegotiate in good faith, the budget, schedule and other applicable conditions of this Agreement. Unless otherwise agreed to, the Client and Engineer shall have Thirty (30) days after the notice to reach agreement on the amended terms and conditions.

K. RIGHT OF ENTRY

The Client shall provide for right of entry to the project site. Such right of entry shall be for the Engineer and others, and necessary equipment in order for the Engineer to fulfill the scope of services indicated in this Agreement. While the Engineer will take all reasonable precautions to minimize damage to the property, the Client understands that in the normal course of work some damage may occur, the correction of which is not part of this Agreement.

L. OPINION OF CONSTRUCTION COST

The Engineer shall submit to the Client an opinion of the probable cost required to construct work recommended, designed, or specified by the Engineer. The Engineer is not a construction cost estimator or construction contractor, nor should the Engineer's rendering an opinion of probable construction costs be considered equivalent to the nature and extent of service a construction cost estimator or construction contractor would provide. The Engineer's opinion will be based solely upon his or her own experience with construction. This requires the Engineer to make a number of assumptions as to actual conditions that will be encountered on site; the specific decisions of other design professionals engaged; the means and methods of construction the contractor will employ; the cost and extent of labor, equipment and materials the contractor will employ; contractor's techniques in determining prices and market conditions at the time, and other factors over which the Engineer has no control. Given the assumptions which must be made, the Engineer cannot guarantee the accuracy of his or her opinion of cost, and, in recognition of that fact, the Client waives any claim against the Engineer relative to the accuracy of the Engineer's opinion of probable construction cost.

M. OWNERSHIP OF DOCUMENTS

All reports, field data, field notes, test data, calculations, Drawings, specifications, cost opinions, quantity estimates, electronic files, and other documents (Document) prepared by the Engineer are instruments of service and the Engineer retains an ownership and property interest (including the copyright, if applicable, and the right of reuse) in such Documents, whether or not the Project is completed. Upon payment in full to Engineer, Engineer grants Client a license to use the Documents on the project and extensions of the project, subject to the following limitations: 1) Client may make and retain copies of Documents for information, reference and submittal to regulatory agencies; 2) Client acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer; 3) any reuse or modification of the Documents by any party other than Engineer is at Client's sole risk and without any liability whatsoever to Engineer; and 4) Client shall defend, indemnify and hold harmless Engineer from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use of Documents other than completion of the specific Project for which they were prepared.

N. DISPUTES

In the event of a dispute arising under this Agreement and if the dispute cannot be settled through direct discussions, the parties agree to first attempt to settle the dispute by non-binding mediation before recourse to a judicial forum. If the dispute is settled by litigation, the substantially prevailing party shall be awarded its reasonable costs incurred, including staff time at current billing rates, court costs, expert witness fees, attorney's fees upon trial, or appeal, collection or lien fees, late payment charges and interest, and other claim related expenses. Venue for any litigation shall be the Superior Court of the County in which the project is located.

O. TERMINATION

The Client may terminate this Agreement by giving the Engineer Thirty (30) days written notice. The Client or the Engineer may terminate this Agreement for reasons identified elsewhere in the Agreement or for other reasons which may arise.

Either party may terminate this Agreement if either party fails substantially to perform through no fault of the other and does not commence correction of such nonperformance within Five (5) workdays of written notice and diligently complete the correction thereafter. If corrective action is not taken within Five (5) workdays, termination will become effective Fourteen (14) calendar days after receipt of the termination notice.

Irrespective of which party shall effect termination or the cause therefore, or if the Client suspends work on the project for more than three (3) months, the Client shall within Thirty (30) calendar days of termination or suspension remunerate the Engineer for services rendered and costs incurred, in accordance with the Engineer's prevailing fee schedule and expense reimbursement policy. Services shall include those rendered up to the time of termination or suspension, as well as those associated with termination or suspension itself, such as demobilizing, modifying schedules, reassigning personnel, and so on. Costs shall include those incurred up to the time of termination or suspension, as well as those associated with termination or suspension and post-termination or suspension activities.

P. GOVERNING LAW

Unless otherwise provided in an addendum, the laws of the state in which the project takes place will govern the validity of this Agreement, its interpretation and performance, and remedies for contract breach or any other claims related to the Agreement. Venue for any litigation shall be the Superior Court in which the project is located.

Q. SEVERABILITY

The Client and the Engineer have entered into this Agreement of their own free will, to communicate to one another mutual understandings and responsibilities. Any element of this Agreement later held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force. However, the Client and the Engineer will in good faith attempt to replace an invalid or unenforceable provision with one that is valid and enforceable, and which comes as close as possible to expressing or achieving the intent of the original provision.

R. INTEGRATION

This Agreement, including attachments incorporated herein by reference, comprises a final and complete repository of understandings between the Client and the Engineer. It supersedes all prior or contemporaneous communications, representations, or agreements, whether oral or written, relating to the subject matter of this Agreement. Each party has advised the other to read this document thoroughly before accepting it to help assure it accurately conveys meanings and intents. Acceptance of this Agreement as provided for signifies that each party has read the document thoroughly and has had any questions or concerns completely explained by independent counsel and is satisfied. The Client and the Engineer agree that modifications to this Agreement shall not be binding unless made in writing and signed by an authorized representative of each party.

T. AGREEMENT DOCUMENTS

Letter Agreement signed by Client and Engineer
Exhibit A – Scope of Work
Exhibit B – Budget
Exhibit C – General Conditions

Each individual executing this Agreement on behalf of the Client and the Engineer represents and warrants that such individuals are duly authorized to execute and deliver this Agreement on behalf of the Client or the Engineer.

The exchange of copies of this Agreement and of signature pages by facsimile transmission (whether directly from one facsimile device to another by means of a dial-up connection or whether mediated by the worldwide web), by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by a combination of such means, shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of an original Agreement for all purposes. Signatures of the parties transmitted by facsimile or by electronic mail in .pdf form shall be deemed to be their original signatures for all purposes.

V. LIMITATION OF LIABILITY

The Engineer shall not be liable for loss or damage occasioned by delays beyond Engineer's control, or for loss of earnings, loss of use or other incidental or consequential damages suffered by Client or others, however caused. Engineer's liability hereunder, whether in tort or in contract, for any cause of action, inclusive of legal costs, shall be limited as follows: (a) for

insured liabilities arising out of Engineer's negligence, to the lesser of 1) the amount of insurance then available to fund any settlement, award or verdict, or 2) to 100 percent (100%) of the fee earned by Engineer under this Agreement; (b) for uninsured liabilities, to 100 percent (100%) of the fee earned by Engineer under this Agreement.

W. LIMITATION OF ACTIONS

All causes of action between the parties to this Agreement pertaining to any acts or failures to act shall be deemed to have accrued and the applicable statute of limitations starts to run no later than the last performance of professional services performed by the Engineer under this Agreement, including any steps or phases provided.