RESOLUTION NO. 18-0416

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, PIERCE COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT FOR TRANSPORTATION PLANNING AND ENGINEERING ON-CALL SERVICES.

WHEREAS, DN Traffic Consultants is a regional transportation traffic study company well known for its area of expertise and has worked with a variety of local government entities; and

WHEREAS, chapter 39.80 RCW establishes the procedures for publication of the need for engineering services and procurement of engineering services by the City; and

WHEREAS, the City complied with the requirements of chapter 39.80 RCW by utilizing the MSRC consultants roster to solicit interest in approximately 800 recipients; and

WHEREAS, the City advertised the need for engineering services in the Tacoma News Tribune (the City’s official newspaper); and

WHEREAS, the City posted its need for engineering services on the City’s webpage, as well as its Facebook page; and

WHEREAS, after logging all submittals, the City evaluated the qualifications of the companies and persons responding to the City’s advertisements, and then interviewed the most qualified; and

WHEREAS, the City then made a selection according to RCW 39.80.050, after determining that the selected candidate(s) had the available resources to engage in the engineering services desired; and

WHEREAS, ultimately, DN Traffic Consultants was selected to provide traffic study services as the need arises for the City of Edgewood;

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

Section 1. The Mayor is hereby authorized to execute a professional services agreement for services with DN Traffic Consultants to provide traffic study services as the need arises for the City of Edgewood in an amount not to exceed $250,000.00 over a three-year period.

ATTEST:

Rachel Pitzel, City Clerk

Daryl Eidinger, Mayor
ON-CALL CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF EDGEWOOD AND
DN TRAFFIC CONSULTANTS, INC.

THIS AGREEMENT is made by and between the City of Edgewood, a Washington municipal corporation (hereinafter the "City"), and DN Traffic Consultants, Inc., (hereinafter the "Consultant," a Washington corporation organized under the laws of the State of Washington located and doing business at 12131 113TH Avenue NE, Ste. 203, Kirkland, WA 98034.

RECITALS

WHEREAS, the City requires the provision of transportation planning and engineering on-call services, and

WHEREAS, the Consultant has agreed to provide transportation planning and engineering on-call services under the terms and conditions specified herein;

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 services described in Exhibit A, Scope of Services, which is attached hereto and incorporated herein by this reference, according to the existing standard of care for such services. The City shall issue a written Task Order for each project assigned to the Consultant. The written Task Order shall include the following information, which may be furnished in consultation with the Consultant: (1) Task Order Title (project name); (2) technical approach to the task (if necessary); (3) specific deliverables; (4) schedule with milestones and deliverables; (5) cost/hour estimate; (6) due date of work. All of these items may be brief, but will be sufficiently detailed for the Consultant to understand the work being authorized and the amount it will cost. Written Task Orders and Notices to Proceed may be issued as e-mail documents.

The City does not permit sub consultants for those items of work necessary for the completion of any Task Order on any project. The Consultant shall not subcontract with sub consultants for the performance of any work under this Agreement without prior written permission of the City.

II. Payment

A. This Agreement does not guarantee any amount of work for the Consultant. Task Orders will be developed as determined by the City and as provided for in this Agreement. The City shall pay the Consultant an amount based on time and materials, not to exceed Two Hundred
Fifty Thousand Dollars ($250,000.00) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in this Agreement, 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 be paid by the City for completed services rendered under each approved individual Task Order. 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. The Consultant shall submit an itemized invoice to the City for each separate Task Order after the services have been performed.

C. The amount paid by the City for each invoice shall not exceed the amount in Section II(A) above and the Hourly Billing Rates set forth in Exhibit B, which is attached hereto and incorporated herein by this reference. The City shall pay the full amount of an invoice within sixty (60) 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.

D. The Consultant will not undertake any work or otherwise financially obligate the City in excess of said not-to-exceed amount in Section II(A) without a duly authorized amendment to this Agreement. In the event services are required beyond those specified in the Scope of Work and are not included in the compensation listed in this Agreement, a written contract amendment shall be negotiated and approved by the City before any effort is expended on such services.

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. Duration of Work

The Consultant shall not begin any work under this Agreement until an authorized Task Order has been agreed upon by the parties, and the City has issued a Notice to Proceed. This Agreement shall expire on July 1, 2021, unless extended by an amendment executed by the duly authorized representatives of the parties.

V. Termination

A. Termination of Agreement. The City may terminate this Agreement, for public convenience, the Consultant's default, the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors, at any time prior to completion of the work described herein. 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 subcontract 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 resulting from the errors or omissions of the Consultant in connection with the 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.

Notwithstanding the duty to indemnify and hold harmless, the Consultant expressly agrees, after adjudication by a court of competent jurisdiction, to reimburse the Client pursuant to this provision for any costs and fees determined by the court to have been reasonably, necessarily and actually incurred by the Client in the defense of those claims specifically founded upon the Consultant’s liability as set forth in this Section.

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

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 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named by endorsement as an additional 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.

4. **Employer’s Liability** each accident $1,000,000. Employer’s Liability Disease each employee $1,000,000. Employer’s Liability Disease -- Policy Limit $1,000,000.

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.

3. The City will not waive its right to subrogation against the Consultant. The Consultant’s insurance shall be endorsed acknowledging that the City will not waive the right of subrogation against the City, or any self-insurance, or insurance pool coverage maintained by the City.

4. If any coverage is written on a “claims made” basis, then a minimum of three (3) year extended reporting period shall be included with the claims made policy and proof of this extended reporting period provided 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.

**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**

Original documents, drawings, designs and reports developed under this Agreement shall belong to and become the property of the City. 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.

**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 Edgewood shall determine the term or provision's true intent or meaning. The City of Edgewood 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:
Attn: Gary Norris, PE, PTOE
DN Traffic Consultants, Inc.
12131 113th Avenue NE, Ste. 203
Kirkland, WA 98034
Mailing:
PO Box 547, Preston, WA 98050

CITY:
Attn: Jeremy Metzler
City of Edgewood
2224 - 104th Avenue East
Edgewood, WA 98372

With a copy to the “City Clerk” at the same 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 24 day of ___July___, 2018.
CONSULTANT

By: Gary Norris, President

CITY OF EDGEWOOD

By: Daryl Eidinger, Mayor

ATTEST:

Rachel Pitzel, City Clerk

APPROVED AS TO FORM:

Carol Morris, City Attorney
EXHIBIT A

ON-CALL (UNIT BASED) CONTRACT-TASK ORDERS:

When the City has a need for the Consultant’s services, the City will issue a Task Order, discretely identified numerically with a Task Number, and assigned a Task Name.

The written Task Order shall include the following information, which may be furnished in consultation with the Consultant:

1. Task Order Title (project name) & Task Order Number;

2. General overview of the task to be accomplished, technical approach to the task (if necessary). Where the City or other contractors will be performing work in conjunction with the Consultant, the Task Order shall identify the work to be completed by all parties, especially where the Consultant’s work is dependent on the City or other contractors meeting their obligations;

3. Specific deliverables and an estimate of the quantities of the anticipated types of work or trades;

4. Schedule with milestones and deliverables;

5. Cost/hour estimate (by deliverable if progress payments are anticipated).

6. Due date of work.

All of these items may be brief, but will be sufficiently detailed for the City and the Consultant to understand the work being authorized and the amount it will cost. Written Task Orders and Notices to Proceed may be issued as e-mail documents.

The Consultant shall reference this Task Order Number on all correspondence, invoicing traffic and payments or reimbursements. The City will have no financial responsibility to make payment upon or provide reimbursement for any work performed prior to the Task Order acceptance by the Consultant.

NOTICE TO PROCEED. Once the Consultant has accepted the Task Order in writing, the City will issue a Notice to Proceed to the Consultant.
Exhibit B
Fee Schedule

Billing rates for all personnel included in any/all Task Orders.

Unit price Consultant/contractors shall pay prevailing wages for all work that would otherwise be subject to the requirements of chapter 39.12 RCW. Prevailing wages for all work performed pursuant to each Task Order must be the prevailing wages in effect at the beginning date for each contract year. Unit priced contracts must have prevailing wages rates updated annually. Intents and affidavits for prevailing wages paid must be submitted annually for all work completed within the previous twelve-month period of the unit priced contract.

List of pass-through costs for supplies, materials or services (sub-contracting is not allowed for On-Call Task Orders without specific authorization by the City) (Copies of your paid invoices for pass-through costs must be attached to the appropriate invoice).

If any billing rates increase after execution of the Agreement, the Consultant shall provide an updated Fee Schedule to the City at least 60 days prior to inclusion of the new billing rates in any invoice. Fee Schedules must state the effective date. The Updated Fee Schedule shall be for not less than a minimum of one year.

ATTACH FEE SCHEDULE
## Personnel

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<th>Hourly Rate</th>
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<td>Project Manager/Lead Traffic Engineer</td>
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<td>CADD</td>
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All Expenses are invoiced at cost plus 10 percent

Mileage is invoiced at the prevailing IRS Rate
CERTIFICATE OF LIABILITY INSURANCE

PRODUCER: Hall & Company
19660 10th Ave NE
Poulsbo WA 98370

INSURED: DN Transportation Planning & Engineering dba DN Tr
PO Box 547
Preston WA 98050

COVERAGES CERTIFICATE NUMBER: 1249975334

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DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

Edgewood
Jill Schwerzler-Herrera
Communications Coordinator
2224 104th Ave E.
Edgewood WA 98372

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Jill Schwerzler-Herrera
Communications Coordinator
2224 104th Ave E.
Edgewood WA 98372

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