

RFQ 13-21SB – PRO FORMA CONTRACT

CONSULTANT: Bratslavsky Consulting Engineers, Inc.
CONTACT PERSON: Felix Bratslavsky
ADDRESS: 23939 SW Gage Road, Wilsonville, OR 97070
FEDERAL TAX ID NUMBER/U.B.I. NUMBER: 92-0169405/ 602859177
TELEPHONE/FAX NUMBER: (877) 844-5264
COUNTY DEPT: Conservation and Natural Resources, Parks and Recreation Div.
DEPT. CONTACT PERSON: Emily Griffith, Senior Planner
TELEPHONE/FAX NUMBER: (425) 388-6620
PROJECT: Whitehorse Trail Design and Improvements
AMOUNT: Not to Exceed \$202,793.74
FUND SOURCE: 309-51094804126599
CONTRACT DURATION: Execution through March 31, 2023, unless extended
or renewed pursuant to Section 2 hereof

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT (the “Agreement”) is made by and between SNOHOMISH COUNTY, a political subdivision of the State of Washington (the “County”) and Bratslavsky Consulting Engineers, Inc., a corporation incorporated in the State of Alaska and registered and licensed to conduct business in the State of Washington (the “Contractor”). In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. Purpose of Agreement; Scope of Services. The purpose of this Agreement is to provide professional services for Phase 1 of the design, permitting, bid support, and construction support for the Whitehorse Trail Design and Improvements Project. The project will be separated into three phases of work. This contract is for Phase 1 which includes the work associated with concept development and selection and initial site analysis and investigation. (Future Phases 2 and 3, not subject of this Agreement, will include design and engineering documentation including 60%, 90% and 100% design specifications, cost estimates, permitting support, SEPA checklist and bidding and construction support.) The scope of services for this Agreement is as defined in Schedule A and attached hereto and by this reference made a part hereof. This Agreement is the product of County RFQ-13-21SB.

The services shall be performed in accordance with the requirements of this Agreement and with generally accepted practices prevailing in the western Washington region in the occupation or industry in which the Contractor practices or operates at the time the services are performed. The Contractor shall perform the work in a timely manner and in accordance with the terms of this Agreement. Any materials or equipment used by the Contractor in connection with performing the services shall be of good quality. The Contractor represents that it

is fully qualified to perform the services to be performed under this Agreement in a competent and professional manner.

The Contractor will prepare and present status reports and other information regarding performance of the Agreement as the County may request.

2. Term of Agreement; Time of Performance. This Agreement shall be effective upon mutual execution by the parties (the “Effective Date”) and shall terminate on March 31, 2023. The Contractor shall commence work upon the Effective Date and shall complete the work required by this Agreement no later than March 31, 2023 (with anticipated potential Agreement amendments for Phases 2 and 3 to follow). PROVIDED, HOWEVER, that the County’s ability to request continued Contractor performance and the County’s obligations after December 31, 2022 are contingent upon local legislative appropriation of necessary funds for this specific purpose in accordance with the County Charter and applicable law. Additionally, this Agreement does not guarantee County will enter into an agreement (or amendment to this Agreement) with Contractor for Phases 2 and 3 of the design, permitting, bid support, and construction support for the Whitehorse Trail Design and Improvements Project

3. Compensation.

a. Services. The County will pay the Contractor for services as and when set forth in Schedule A, which is attached hereto and by this reference made a part of this Agreement.

b. Overhead and Expenses. The Contractor’s compensation for services set forth in Section 3a above includes overhead and expenses and no separate claims for reimbursement of overhead or expenses will be allowed under this contract.

c. Invoices. The Contractor shall submit properly executed invoices to the County no more frequently than monthly. Each invoice shall include an itemization of the dates on which services were provided, including the number of hours and a brief description of the work performed on each such date. Each invoice shall also include an itemization of any reimbursable expenses incurred by the Contractor during the time period covered by the invoice, together with reasonable documentation substantiating such expenses, all in accordance with this Section 3. Subject to Section 8 of this Agreement, the County will pay such invoices within thirty (30) calendar days of receipt.

d. Payment. The County’s preferred method of payment under this contract is electronic using the County’s “e-Payable” system with Bank of America. The Contractor is highly encouraged to take advantage of the electronic payment method.

In order to utilize the electronic payment method, the Contractor shall email SnocoEpaybles@snoco.org and indicate it was awarded a contract with Snohomish County and will be receiving payment through the County’s e-Payable process. The Contractor needs to provide contact information (name, phone number and email address). The Contractor will be contacted by a person in the Finance Accounts Payable group and assisted with the enrollment process. This should be done as soon as feasible after County award of a contract or purchase order, but not exceeding ten (10) business days.

Department approved invoices received in Finance will be processed for payment within seven calendar days for e-Payable contractors. Invoices are processed for payment by Finance two times a week for contractors who have selected the e-Payable payment option.

In the alternative, if the Contractor does not enroll in the electronic (“e-Payable”) payment method described above, contract payments will be processed by Finance with the issuance of paper checks or, if available, an alternative electronic method. Alternative payment methods, other than e-Payables, will be processed not more than 30 days from receipt of department approved invoices to Finance.

THE COUNTY MAY MAKE PAYMENTS FOR PURCHASES UNDER THIS CONTRACT USING THE COUNTY’S VISA PURCHASING CARD (PCARD).

Upon acceptance of payment, the Contractor waives any claims for the goods or services covered by the Invoice. No advance payment shall be made for the goods or services furnished by Contractor pursuant to this Contract.

e. Payment Method. In addition to Payment section above, the County may make payments for purchases under this contract using the County’s VISA purchasing card (PCARD).

Are you willing to accept PCARD payments without any fees or surcharges?

Yes No

f. Contract Maximum. Total charges under this Agreement, all fees and expenses included, shall not exceed \$202,793.74 for the for work completed by March 31, 2023 under the initial term of this Agreement (excluding extensions or renewals, if any).

4. Independent Contractor. The Contractor agrees that Contractor will perform the services under this Agreement as an independent contractor and not as an agent, employee, or servant of the County. This Agreement neither constitutes nor creates an employer-employee relationship. The parties agree that the Contractor is not entitled to any benefits or rights enjoyed by employees of the County. The Contractor specifically has the right to direct and control Contractor’s own activities in providing the agreed services in accordance with the specifications set out in this Agreement. The County shall only have the right to ensure performance. Nothing in this Agreement shall be construed to render the parties partners or joint venturers.

The Contractor shall furnish, employ and have exclusive control of all persons to be engaged in performing the Contractor’s obligations under this Agreement (the “Contractor personnel”), and shall prescribe and control the means and methods of performing such obligations by providing adequate and proper supervision. Such Contractor personnel shall for all purposes be solely the employees or agents of the Contractor and shall not be deemed to be employees or agents of the County for any purposes whatsoever. With respect to Contractor personnel, the Contractor shall be solely responsible for compliance with all rules, laws and regulations relating to employment of labor, hours of labor, working conditions, payment of wages and payment of taxes, including applicable contributions from Contractor personnel when required by law.

Because it is an independent contractor, the Contractor shall be responsible for all obligations relating to federal income tax, self-employment or FICA taxes and contributions, and all other so-called employer taxes and contributions including, but not limited to, industrial insurance (workers’ compensation). The Contractor agrees to indemnify, defend and hold the County harmless from any and all claims, valid or otherwise, made to the County because of these obligations.

The Contractor assumes full responsibility for the payment of all payroll taxes, use, sales, income, or other form of taxes, fees, licenses, excises or payments required by any city, county, federal or state legislation which are now or may during the term of the Agreement be enacted as to all persons employed by the Contractor and as to all duties, activities and requirements by the Contractor in performance of the work under this Agreement. The Contractor shall assume exclusive liability therefor, and shall meet all requirements thereunder pursuant to any rules or regulations that are now or may be promulgated in connection therewith.

5. Ownership. Any and all data, reports, analyses, documents, photographs, pamphlets, plans, specifications, surveys, films or any other materials created, prepared, produced, constructed, assembled, made, performed or otherwise produced by the Contractor or the Contractor’s subcontractors or consultants for delivery to the County under this Agreement shall be the sole and absolute property of the County. Such property shall constitute “work made for hire” as defined by the U.S. Copyright Act of 1976, 17 U.S.C. § 101, and the ownership of the copyright and any other intellectual property rights in such property shall vest in the County at the time of

its creation. Ownership of the intellectual property includes the right to copyright, patent, and register, and the ability to transfer these rights. Material which the Contractor uses to perform this Agreement but is not created, prepared, constructed, assembled, made, performed or otherwise produced for or paid for by the County is owned by the Contractor and is not “work made for hire” within the terms of this Agreement.

6. Changes. No changes or additions shall be made in this Agreement except as agreed to by both parties, reduced to writing and executed with the same formalities as are required for the execution of this Agreement.

7. County Contact Person. The assigned contact person (or project manager) for the County for this Agreement shall be:

Name: Emily Griffith
Title: Senior Park Planner
Department: Conservation and Natural Resources, Parks and Recreation Div.
Telephone: (425) 388-6620
Email: emily.griffith@snoco.org

8. County Review and Approval. When the Contractor has completed any discrete portion of the services, the Contractor shall verify that the work is free from errors and defects and otherwise conforms to the requirements of this Agreement. The Contractor shall then notify the County that said work is complete. The County shall promptly review and inspect the work to determine whether the work is acceptable. If the County determines the work conforms to the requirements of this Agreement, the County shall notify the Contractor that the County accepts the work. If the County determines the work contains errors, omissions, or otherwise fails to conform to the requirements of this Agreement, the County shall reject the work by providing the Contractor with written notice describing the problems with the work and describing the necessary corrections or modifications to same. In such event, the Contractor shall promptly remedy the problem or problems and re-submit the work to the County. The Contractor shall receive no additional compensation for time spent correcting errors. Payment for the work will not be made until the work is accepted by the County. The Contractor shall be responsible for the accuracy of work even after the County accepts the work.

If the Contractor fails or refuses to correct the Contractor’s work when so directed by the County, the County may withhold from any payment otherwise due to the Contractor an amount that the County in good faith believes is equal to the cost the County would incur in correcting the errors, in re-procuring the work from an alternate source, and in remedying any damage caused by the Contractor’s conduct.

9. Subcontracting and Assignment. The Contractor shall not subcontract, assign, or delegate any of the rights, duties or obligations covered by this Agreement without prior express written consent of the County. Any attempt by the Contractor to subcontract, assign, or delegate any portion of the Contractor’s obligations under this Agreement to another party in violation of the preceding sentence shall be null and void and shall constitute a material breach of this Agreement.

10. Records and Access; Audit; Ineligible Expenditures. The Contractor shall maintain adequate records to support billings. Said records shall be maintained for a period of seven (7) years after completion of this Agreement by the Contractor. The County or any of its duly authorized representatives shall have access at reasonable times to any books, documents, papers and records of the Contractor which are directly related to this Agreement for the purposes of making audit examinations, obtaining excerpts, transcripts or copies, and ensuring compliance by the County with applicable laws. Expenditures under this Agreement, which are determined by

audit to be ineligible for reimbursement and for which payment has been made to the Contractor, shall be refunded to the County by the Contractor.

11. Indemnification.

a. Professional Liability.

The Contractor agrees to indemnify the County and, if any funds for this Agreement are provided by the State, the State and their officers, officials, agents and employees from damages and liability for damages, including reasonable attorneys' fees, court costs, expert witness fees, and other claims-related expenses, arising out of the performance of the Contractor's professional services under this Agreement, to the extent that such liability is caused by the negligent acts, errors or omissions of the Contractor, its principals, employees or subcontractors. The Contractor has no obligation to pay for any of the indemnities' defense-related cost prior to a final determination of liability or to pay any amount that exceeds Contractor's finally determined percentage of liability based upon the comparative fault of the Contractor, its principals, employees and subcontractors. For the purpose of this section, the County and the Contractor agree that the County's and, if applicable, the State's costs of defense shall be included in the definition of damages above, subject to the final determination of liability.

b. All Other Liabilities Except Professional Liability.

To the maximum extent permitted by law and except to the extent caused by the sole negligence of the County and, if any funds for this Agreement are provided by the State, the State, the Contractor shall indemnify and hold harmless the County and the State, their officers, officials, agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature arising out of, in connection with, or incidental to the services and/or deliverables provided by or on behalf of the Contractor. In addition, the Contractor shall assume the defense of the County and, if applicable, the State and their officers and employees in all legal or claim proceedings arising out of, in connection with, or incidental to such services and/or deliverables and shall pay all defense expenses, including reasonable attorneys' fees, expert fees and costs incurred by the County and, if applicable, the State, on account of such litigation or claims.

The above indemnification obligations shall include, but are not limited to, all claims against the County and, if applicable, the State by an employee or former employee of the Contractor or its subcontractors, and the Contractor, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects only the County and, if applicable, the State, under any industrial insurance act, including Title 51 RCW, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim.

In the event that the County or, if applicable, the State incurs any judgment, award and/or cost including attorneys' fees arising from the provisions of this section, or to enforce the provisions of this section, any such judgment, award, fees, expenses and costs shall be recoverable from the Contractor.

In addition to injuries to persons and damage to property, the term "claims," for purposes of this provision, shall include, but not be limited to, assertions that the use or transfer of any software, book, document, report, film, tape, or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in an unfair trade practice.

The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Agreement.

Nothing contained within this provision shall affect or alter the application of any other provision contained within this Agreement.

12. Insurance Requirements. The Contractor shall procure by the time of execution of this Agreement, and maintain for the duration of this Agreement, (i) insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the services hereunder by the Contractor, its agents, representatives, or employees, and (ii) a current certificate of insurance and additional insured endorsement when applicable.

- a. General. Each insurance policy shall be written on an “occurrence” form, except that Professional Liability, Errors and Omissions coverage, if applicable, may be written on a claims made basis. If coverage is approved and purchased on a “claims made” basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the work which is the subject of this Agreement.

By requiring the minimum insurance coverage set forth in this Section 12, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Agreement. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

- b. No Limitation on Liability. The Contractor’s maintenance of insurance as required by this Agreement shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the County’s recourse to any remedy available at law or in equity.

- c. Minimum Scope and Limits of Insurance. The Contractor shall maintain coverage at least as broad as, and with limits no less than:

- (i) General Liability: \$2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit. CG 00 01 current edition, including Products and Completed Operations;
- (ii) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. CA 0001 current edition, Symbol 1;
- (iii) Workers’ Compensation: To meet applicable statutory requirements for workers’ compensation coverage of the state or states of residency of the workers providing services under this Agreement;
- (iv) Employers’ Liability or “Stop Gap” coverage: \$1,000,000.
- (v) Professional Liability: \$1,000,000

- d. Other Insurance Provisions and Requirements. The insurance coverages required in this Agreement for all liability policies except workers’ compensation and Professional Liability, if applicable, must contain, or must be endorsed to contain, the following provisions:

- (i) The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Agreement. Such coverage shall be primary and non-contributory insurance as respects the County, its officers, officials, employees and

agents. Additional Insured Endorsement shall be included with the certificate of insurance, "CG 20 26 07/04" or its equivalent is required.

(ii) The Contractor's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

(iii) Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the County and shall be the sole responsibility of the Contractor.

(iv) Insurance coverage must be placed with insurers with a Best's Underwriting Guide rating of no less than A:VIII, or, if not rated in the Best's Underwriting Guide, with minimum surpluses the equivalent of Best's surplus size VIII. Professional Liability, Errors and Omissions insurance coverage, if applicable, may be placed with insurers with a Best's rating of B+:VII. Any exception must be approved by the County.

Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits until after forty-five (45) calendar days' prior written notice has been given to the County.

If at any time any of the foregoing policies fail to meet minimum requirements, the Contractor shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

e. Subcontractors. The Contractor shall include all subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each subcontractor. **Insurance coverages provided by subcontractors instead of the Contractor as evidence of compliance with the insurance requirements of this Agreement shall be subject to all of the requirements stated herein.**

13. County Non-discrimination. It is the policy of the County to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability as provided in Washington's Law against Discrimination, Chapter 49.60 RCW, and the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC. These laws protect against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and county contracts.

The Contractor shall comply with the substantive requirements of Chapter 2.460 SCC, which are incorporated herein by this reference. Execution of this Agreement constitutes a certification by the Contractor of the Contractor's compliance with the requirements of Chapter 2.460 SCC. If the Contractor is found to have violated this provision, or to have furnished false or misleading information in an investigation or proceeding conducted pursuant to this Agreement or Chapter 2.460 SCC, this Agreement may be subject to a declaration of default and termination at the County's discretion. This provision shall not affect the Contractor's obligations under other federal, state, or local laws against discrimination.

14. Federal Non-discrimination. Snohomish County assures that no persons shall on the grounds of race, color, national origin, or sex as provided by Title VI of the Civil Rights Act of 1964 (Pub. L. No. 88-352), as amended, and the Civil Rights Restoration Act of 1987 (Pub. L. No. 100-259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any County sponsored program or activity. Snohomish County further assures that every effort will be made to ensure nondiscrimination in all of its programs and activities, whether those programs and activities are federally funded or not.

15. Employment of County Employees. SCC 2.50.075, “Restrictions on future employment of County employees,” imposes certain restrictions on the subsequent employment and compensation of County employees. The Contractor represents and warrants to the County that it does not at the time of execution of this Agreement, and that it shall not during the term of this Agreement, employ a former or current County employee in violation of SCC 2.50.075. For breach or violation of these representations and warranties, the County shall have the right to terminate this Agreement without liability.

16. Compliance with Other Laws. The Contractor shall comply with all other applicable federal, state and local laws, rules, and regulations in performing this Agreement.

17. Compliance with Grant Terms and Conditions. The Contractor shall comply with any and all conditions, terms and requirements of any federal, state or other grant, if any, that wholly or partially funds the Contractor’s work hereunder.

18. Prohibition of Contingency Fee Arrangements. The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the County shall have the right to terminate this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

19. Force Majeure. If either party is unable to perform any of its obligations under this Agreement as a direct result of an unforeseeable event beyond that party’s reasonable control, including but not limited to an act of war, act of nature (including but not limited to earthquake and flood), embargo, riot, sabotage, labor shortage or dispute (despite due diligence in obtaining the same), or governmental restriction imposed subsequent to execution of the Agreement (collectively, a “force majeure event”), the time for performance shall be extended by the number of days directly attributable to the force majeure event. Both parties agree to use their best efforts to minimize the effects of such failures or delays.

20. Suspension of Work. The County may, at any time, instruct the Contractor in writing to stop work effective immediately, or as directed, pending either further instructions from the County to resume the work or a notice from the County of breach or termination under Section 21 of this Agreement.

21. Non-Waiver of Breach; Termination.

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

b. If the Contractor breaches any of its obligations hereunder, and fails to cure the same within seven (7) business days of written notice to do so by the County, the County may terminate this Agreement, in which case the County shall pay the Contractor only for the services and corresponding reimbursable expenses, if any, accepted by the County in accordance with Sections 3 and 8 hereof.

c. The County may terminate this Agreement upon seven (7) business days’ written notice to the Contractor for any reason other than stated in subparagraph b above, in which case payment shall be

made in accordance with Sections 3 and 8 hereof for the services and corresponding reimbursable expenses, if any, reasonably and directly incurred by the Contractor in performing this Agreement prior to receipt of the termination notice.

d. Termination by the County hereunder shall not affect the rights of the County as against the Contractor provided under any other section or paragraph herein. The County does not, by exercising its rights under this Section 21, waive, release or forego any legal remedy for any violation, breach or non-performance of any of the provisions of this Agreement. At its sole option, the County may deduct from the final payment due the Contractor (i) any damages, expenses or costs arising out of any such violations, breaches or non-performance and (ii) any other set-offs or credits including, but not limited to, the costs to the County of selecting and compensating another contractor to complete the work of the Agreement.

22. Notices. All notices and other communications shall be in writing and shall be sufficient if given, and shall be deemed given, on the date on which the same has been mailed by certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the County: Snohomish County Dept. of Conservation and Natural Resources,
Parks Division
6705 Puget Park Drive
Snohomish, Washington 98296
Attention: Sharon Swan
 Parks Director

and to: Snohomish County Purchasing Division
3000 Rockefeller Avenue, M/S 507
Everett, Washington 98201
Attention: Bramby Tollen
 Purchasing Manager

If to the Contractor: Bratslavsky Consulting Engineers, Inc.
23939 SW Gage Road
Wilsonville, OR 97070
Attention: Felix Bratslavsky
 Senior Vice-President

The County or the Contractor may, by notice to the other given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent.

23. Confidentiality. The Contractor shall not disclose, transfer, sell or otherwise release to any third party any confidential information gained by reason of or otherwise in connection with the Contractor's performance under this Agreement. The Contractor may use such information solely for the purposes necessary to perform its obligations under this Agreement. The Contractor shall promptly give written notice to the County of any judicial proceeding seeking disclosure of such information.

24. Public Records Act. This Agreement and all public records associated with this Agreement shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County. If the Contractor considers any portion of any record provided

to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

25. Interpretation. This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the parties. The language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the parties hereto. The captions and headings of this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. This Agreement shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

26. Complete Agreement. The Contractor was selected through the County's RFP identified in Section 1. The RFP and the Contractor's response are incorporated herein by this reference. To the extent of any inconsistency among this Agreement, the RFP, and the Contractor's response, this Agreement shall govern. To the extent of any inconsistency between the RFP and the Contractor's response, the RFP shall govern.

27. Conflicts between Attachments and Text. Should any conflicts exist between any attached exhibit or schedule and the text or main body of this Agreement, the text or main body of this Agreement shall prevail.

28. No Third Party Beneficiaries. The provisions of this Agreement are for the exclusive benefit of the County and the Contractor. This Agreement shall not be deemed to have conferred any rights, express or implied, upon any third parties.

29. Governing Law; Venue. This Agreement shall be governed by the laws of the State of Washington. The venue of any action arising out of this Agreement shall be in the Superior Court of the State of Washington, in and for Snohomish County.

30. Severability. Should any clause, phrase, sentence or paragraph of this agreement be declared invalid or void, the remaining provisions of this Agreement shall remain in full force and effect.

31. Authority. Each signatory to this Agreement represents that he or she has full and sufficient authority to execute this Agreement on behalf of the County or the Contractor, as the case may be, and that upon execution of this Agreement it shall constitute a binding obligation of the County or the Contractor, as the case may be.

32. Survival. Those provisions of this Agreement that by their sense and purpose should survive expiration or termination of the Agreement shall so survive.

33. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement.

SNOHOMISH COUNTY:

BRATSLAVSKYCONSULTING
ENGINEERS _____ :

Anastasia
Kharitonova

Digitally signed by Anastasia
Kharitonova
Date: 2022.09.21 09:47:17
-07'00'

County Executive Date

September 21, 2022 Date
Director of Contracts Title/Position

Approved as to insurance
and indemnification provisions:

Approved as to form only:

Barker, Sheila Digitally signed by Barker, Sheila
Date: 2022.09.21 15:07:38 -07'00'

Risk Management Date

Legal Counsel to the Contractor Date

Approved as to form only:

/s/ Sean Reay 9/19/22
Deputy Prosecuting Attorney Date

COUNCIL USE ONLY	
Approved	<u>9/28/2022</u>
ECAF #	<u>2022-0976</u>
MOT/ORD	<u>Motion 22-404</u>

SCHEDULE A
Scope of Services



September 7, 2022

BCE Reference # 2044.21-P

Emily Griffith, PLA
Senior Park Planner
Snohomish County Conservation and Natural Resources
Parks & Recreation
6705 Puget Park Drive
Snohomish, WA 98296
Office: 425-388-6620
Cell: 425-407-2704

Submitted via e-mail to emily.griffith@snoco.org

Re: *Whitehorse Trail Design and Improvements – Proposal for Phase I - FINAL*

Dear Ms. Griffith,

Bratslavsky Consulting Engineers, Inc. (BCE) appreciates the opportunity to present this proposal for Whitehorse Trail Design and Improvements. In order to provide Snohomish County with the most cost-efficient and effective product, we propose that this project be completed via a 3-phase approach. This proposal is for Phase I only.

Phase I will include: project meetings through concept selection, initial site analysis/investigation, familiarization with Snohomish County codes, review of previous work, geotechnical and geomorphology investigation and report, a critical areas investigation and report, a channel migration zone study, an onsite analysis of whether a cultural resources report and a tree arborist assessment are needed, survey and utility locates, (3) concept design alternatives for slide stabilization between Centennial Trailhead and Trafton Trailhead, (3) concept design alternatives for the reroute West of 435th Avenue NE, assistance in selection of a concept design and Phase II design fees for selected concepts.

Phase II will include design and engineering documentation including 60%, 90% and 100% design, design specifications, cost estimates, permitting support, SEPA checklist and Phase III bidding and construction support fees.

Phase III will include bidding and construction support, review of submittals, construction inspections, response to RFI's, requisitions for payment processing, as-built drawings, and special inspections.

SCOPE OF WORK AND ASSUMPTIONS/CLARIFICATIONS

This proposal was prepared in accordance with the Scope of Work outlined in the RFQ-13-21SB, as well as review of existing documentation provided by the County, subsequent discussions with the County, and the assumptions made by the BCE Team and provided herein.

0101 Phase I - Project Coordination & Meetings

- All meetings with the exclusion of the site analysis/investigation will be virtual or telephonic.
- 1.1 Kickoff meeting to be held with the County stakeholders and Design team. Proposal includes organization, agenda, and meeting minutes for kickoff meeting.
- 1.2 Document preparation and consultation support for Stakeholder/Regulatory Coordination and Public Outreach meetings. Meetings account for two virtual tribal meetings during concept phase and preparation of meeting minutes.
- 1.3 Concept design alternative meeting and concept selection assistance, including preparation of agenda/meeting minutes.
- 1.4 Monthly progress meetings with Snohomish County, including preparation of agenda/meeting minutes.

0102 Phase I - Site Analysis/Existing Conditions

- All site investigative work will occur during this Phase I and will include survey, geotechnical investigation, wetland delineation, channel migration zone analysis, critical area report, and civil engineering.
- Cultural resources report and tree risk arborist assessment are not included at this time. We will evaluate the need for this work while on site and provide a recommendation and fee if required.

2.1 Survey:

This work will be performed by Cascade Surveying & Engineering, Inc. and will include additional survey as needed to supplement existing information for both sites, identification and survey of existing utilities, and survey of wetland boundary, if wetlands are discovered. BCE will coordinate with the surveyor regarding information needed for BCE engineers to start their work, appropriate drawings set-up, coordination with other on-site professionals (i.e. wetland biologists), as well as provide quality control of the survey deliverable.

- Provide horizontal and vertical control at East and West site locations. Three points will be set at each site. Horizontal and vertical datums will be as required by Snohomish County for permitting (Washington plane coordinate system north zone and NAVD88, respectively).
- Perform topographic and existing features field survey at the East and West site locations:
East Location:
 - Length: 620-feet (220' length of slide+ 200' beyond slide in east and west direction for transition).
 - Width: from the top of slope on the river side (north side) of the trail, south to 10-foot beyond top of slope or 100-feet south of the south side of the existing trail, whichever comes first.
 - The existing culvert 250-feet east of the slide will be located.

West Location:

- Length: 520-feet (120' length slide+ 200' beyond slide in east and west direction for transition).
- Width: from the top of slope on the river side (south side) of the trail, north to 10-feet north of the top of bluff.
- Prepare existing topography and existing features maps for East and West Site Locations:
 - Contour interval will be 2-foot within area of field survey.
 - Provide legible spot elevations at existing built features, top of slope, bottom of slope, and other key site features.
 - Contours and river location at both sites from the top of bank along the river to the opposite side of the river will be provided from Snohomish County LIDAR maps.
- Utility locations will be provided, including research and field work for the locations of underground utilities.
- Water edge for the West area will be included in the topography map.
- Wetland boundary survey at the East and West site locations, if wetlands are encountered. If wetlands are not present, this task could be considered optional and potentially be deducted.
- Survey of river cross-sections is not included at this time. BCE will use LIDAR to get as close as possible. If river cross-sections are required, pricing will be discussed at that time.
- Boundary survey is not included at this time. BCE will use GIS Boundary to get as close as possible. If a boundary survey is required, pricing will be discussed at that time.
- **BCE will make all survey files available to Snohomish County.**

2.2 Geotechnical Investigation:

This work will be performed by geotechnical engineers of Shannon & Wilson, Inc. and will include geotechnical reconnaissance, evaluation, and production of geotechnical report with recommendations. BCE will coordinate on-site work between geotechnical subconsultant and the County, BCE engineers will work closely with the geotechnical professional on confirming findings and refining recommendations and provide quality control review of the deliverables.

- Site Reconnaissance to observe existing site conditions conducted by a geotechnical engineer, wetland biologist, and geomorphologist.
- Conduct reconnaissance throughout the landslide area(s) to evaluate landslide surface features, exposed rock and soil, and collect photos and field measurements sufficient for stability improvement measures concept development and final design scoping.
- Conduct reconnaissance throughout the bank erosion area(s) to evaluate surface features, exposed rock and soil, and collect photos and field measurements sufficient for bank erosion site trail setback concept development and final design scoping.
- Wetlands biologist will identify the presence or absence of potential wetlands within or near the landslide area(s) and bank erosion and trail setback concept area(s).
- Geomorphologist will collect field data and identify data needs for the channel migration zone study within and near the landslide area(s) and bank erosion area(s).

- Based on the conditions observed during the reconnaissance, review of existing information, and discussions with the design team, a report will be prepared, including brief descriptions and sketches of three feasible design concepts for the landslide site.
- The Bank Erosion Site will be addressed by setback only, and no design alternative development is included in this scope.
- **BCE will provide Snohomish County with a Geotechnical Report.**

2.3 Wetland Delineation:

BCE will coordinate work performed by wetland biologists (Shannon & Wilson, Inc.), if wetlands are discovered during geotechnical reconnaissance in 2.2 above. No additional BCE effort is included with this task.

- Scope includes effort to complete wetland delineation at both sites in the event that wetland areas are identified during the reconnaissance. Delineation will include placing flags around each wetland area perimeter and collecting GPS waypoints at each flag location for use in showing the approximate wetland boundaries on project plan sheets.
- Prepare a wetlands delineation report as necessary to satisfy Snohomish County Critical Areas requirements and for use in project permitting.
- It is possible that wetlands may not be present. As such, this task could be considered optional and potentially be deducted.
- **BCE will provide Snohomish County with a Wetland Delineation.**

2.4 Channel Migration Zone Analysis:

BCE will coordinate work performed by geomorphologist supported by Shannon & Wilson, Inc. BCE will coordinate with the professional prior to on-site work and throughout preparation of the deliverable and provide quality control.

- Channel Migration Zone report will address potential bank stability and will be based on hydraulic model.
- Field Assessment: Complete a site reconnaissance to observe conditions (vegetation, bank conditions, mass wasting evidence, hydromodification, and bank material) relevant to CMZ analysis.
- Historic Imaging and Digital Elevation Model (DEM) Compilation and Analysis: Obtain aerial imaging for six different years, georeference them, and analyze DEMs for three different years.
- Historic Channel Mapping and Migration Interpretation: Perform a historic channel mapping and migration interpretation based on the field assessment and historic image and DEM analysis.
- Determine Erosion Hazard Areas and Widths: Determine erosion hazard areas based on the results of the tasks described above and evaluate site conditions using the Washington State Department of Ecology CMZ Rubric1.
- **BCE will provide Snohomish County with a Draft and Final Report:** Deliver a draft report for review and comment. The final report will incorporate review comments.

2.5 Critical Areas Report:

This work will be performed by geotechnical staff of Shannon & Wilson, Inc. BCE will provide coordination and quality control of the deliverable.

- Critical areas report for the subject site will include a site description based on our reconnaissance and will describe our understanding of proposed site development and will include information necessary to satisfy Snohomish County Code Chapter 20.93, Environmentally Critical Areas. The report will include a description of site topography, surface conditions, geology, subsurface conditions, and landslide activity based on our review of existing information and site surface conditions.
- **BCE will provide Snohomish County with a critical areas report that will include both the wetlands delineation report and CMZ report such that a single report can be used for project permitting purposes.**

2.6 Engineering Investigation:

- BCE Civil Engineer will walk project area to review existing conditions and discuss options, which will be further refined upon completion of survey and geotechnical reconnaissance.
- **Field Study Report recommendations, along with pros and cons for concepts will be prepared.**

0104 Phase I - Schematic Design

BCE will provide Snohomish County with three (3) alternatives for slide stabilization between Centennial Trailhead and Trafton Trailhead, Alternatives for the reroute west of 435th Ave NE, along with rough order of magnitude construction cost estimates and pros and cons for each concept. BCE will additionally provide support to Snohomish County for the selection of an alternative.

ESTIMATED COSTS FOR SERVICES

BCE estimates a total fee of **\$202,793.74** for furnishing of services required to accomplish the work of Phase I of this project. Cost breakdown by discipline is provided in the enclosed attachment.

Please feel free to contact me with any questions or requests at (503) 473-8477 or felix@bce-ak.com. We appreciate the opportunity and look forward to working with you on this project.

Best regards,

Felix Bratslavsky

Felix Bratslavsky
Sr. Vice President

Enclosure: Breakdown of costs

Budget - Original Cost Estimate

Code	Task Description	Principal	Project Manager	Contract Administrator	Senior Engineer/Architect	Engineer/Architect	Cost Estimator	ACAD Technician	Surveyor	Geotechnical Engineer	Wetland Biologist	Geomorphologist	Sub Totals
0101	Phase I - Project Coordination & Meetings		57		39	47			\$ -	\$ -	\$ -	\$ -	\$23,101.00
0102	Phase I - Site Analysis/Existing Conditions	8	48		62	6			\$46,775.00	\$ 39,962.00	\$ 9,960.00	\$ 35,550.00	\$22,482.00
0104	Phase I - Schematic Design	4	16		47		36	60	\$ -	\$ -	\$ -	\$ -	\$23,704.00
	Total Hours	12	121		148	53	36	60					\$69,287.00
	Labor Rate	\$222.00	\$184.00	\$95.00	\$180.00	\$119.00	\$147.00	\$102.00					
	Labor Costs	\$2,664.00	\$22,264.00		\$26,640.00	\$6,307.00	\$5,292.00	\$6,120.00	\$46,775.00	\$39,962.00	\$9,960.00	\$35,550.00	\$201,534.00

Total Professional Labor \$69,287.00
 Total Direct Expenses \$1,259.74
 Total Subconsultants \$132,247.00 * Please see breakdown by deliverable in the subconsultant columns in the tables below
Total Budget Phase I \$202,793.74

Cost Estimate

0101 Phase I - Project Coordination & Meetings

Work Breakdown	Principal	Project Manager	Contract Administrator	Senior Engineer/Architect	Engineer/Architect	Cost Estimator	ACAD Technician	Surveyor	Geotechnical Engineer	Wetland Biologist	Geomorphologist
1.1 Kick-off Meeting & Minutes		4		2	2						
1.2 Stakeholder/Regulatory Coordination and Public Outreach & Minutes		28		20	20						
1.3 Schematic Stage Meeting, Agenda/Minutes		6		4	4						
1.4 Monthly Progress Meetings, Agenda/Minutes		15		5	5						
Review of Snohomish Code and previous work along the Whitehorse Trail Corridor		4		8	16						
Total Hours		57		39	47						
Labor Rate	\$222.00	\$184.00	\$95.00	\$180.00	\$119.00	\$147.00	\$102.00				
Labor Costs		\$10,488.00		\$7,020.00	\$5,593.00						
Sub Total	\$23,101.00										

0102 Phase I - Site Analysis/Existing Conditions

Work Breakdown	Principal	Project Manager	Contract Administrator	Senior Engineer/Architect	Engineer/Architect	Cost Estimator	ACAD Technician	Surveyor	Geotechnical Engineer	Wetland Biologist	Geomorphologist
2.1 Survey additional as needed for both sites	1	4		8				\$ 20,125.00			
2.1 Identification and survey of existing utilities		2						\$ 5,800.00			
2.1 Survey of wetland boundary (potential deduct)								\$ 20,850.00			
2.2 Geotechnical Reconnaissance		2		2					\$ 10,802.00		
2.2 Geotechnical evaluation	2	2		8					\$ 14,570.00		
2.3 Wetland Delineation (potential deduct)										\$ 9,960.00	
2.4 Channel Migration Zone analysis	2	2		4							\$ 35,550.00
2.5 Critical Areas Report	1	2							\$ 14,590.00		
2.6 Site Investigation		24		24							
2.6 Site Investigation Report	2	10		16	6						
Total Hours	8	48		62	6						
Labor Rate	\$222.00	\$184.00	\$95.00	\$180.00	\$119.00	\$147.00	\$102.00				
Labor Costs	\$1,776.00	\$8,832.00		\$11,160.00	\$714.00			\$46,775.00	\$39,962.00	\$9,960.00	\$35,550.00
Sub Total	\$154,729.00										

0104 Phase I - Schematic Design

Work Breakdown	Principal	Project Manager	Contract Administrator	Senior Engineer/Architect	Engineer/Architect	Cost Estimator	ACAD Technician	Surveyor	Geotechnical Engineer	Wetland Biologist	Geomorphologist
3. Alternatives for slide stabilization between Centennial Trailhead and	2	8		32		18	40				
3. Alternatives for the reroute west of 435th Ave NE	2	8		15		18	20				
Total Hours	4	16		47		36	60				
Labor Rate	\$222.00	\$184.00	\$95.00	\$180.00	\$119.00	\$147.00	\$102.00				
Labor Costs	\$888.00	\$2,944.00		\$8,460.00		\$5,292.00	\$6,120.00				
Sub Total	\$23,704.00										

0300 Direct Expenses

Description	Qty.	Unit Price	Cost
Mileage (RT Wilsonville - Arlington)	444	\$0.59	\$259.74
Lodging (2 nights 2 people)	4	\$139.00	\$556.00
Per Diem (3 days 2 people)	6	\$74.00	\$444.00
Total Expenses			\$1,259.74