



PUBLIC WORKS DEPARTMENT  
525 N Third Avenue  
Pasco, WA 99301  
Phone 509.545.3444

## **REQUEST FOR QUALIFICATIONS**

**Court Street Overlay (Road 44 to Road 68)**

**Engineering Services**

**Federal Aid No. TBD**

**Project No. 21304**

**Oregon Avenue (SR 397) Overlay**

**Engineering Services**

**Federal Aid No. TBD**

**Project No. 21305**

**RESPONSE DUE: Thursday, February 3, 2022 at 11:00AM**

**January 2022**

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## 1 INFORMATION AND INSTRUCTIONS

### 1.1 INVITATION TO PROPOSE

The City of Pasco, Washington, (City) Department of Public Works – CIP Engineering is soliciting Statements of Qualifications (SOQ) from qualified Consultants registered in the State of Washington to perform Engineering Services for the following two projects funded through the 2021 National Highway System (NHS) Asset Management program:

- Court Street Overlay (Road 44 to Road 68) (Fed Aid No. TBD)
- Oregon Avenue (SR 397) Overlay (Fed Aid No. TBD)

Court Street Overlay project will mill and overlay 1.5-miles of Court Street between Road 44 and Road 68. Work includes localized asphalt repairs, taper mill at curbed edges, overlay with 2" of HMA, and striping. ADA upgrades will be included as needed.

Oregon Avenue (SR 397) Overlay will overlay 2.3-miles of Oregon Avenue between Ainsworth Ave. and I-182. Work includes localized asphalt repairs, 2" mill and overlay, and striping. ADA upgrades will also be included as needed.

The design phase for these projects is anticipated to extend six (6) months, beginning in March 2022. Right-of-Way (ROW) acquisition for either project is not anticipated, but should it be needed, it will be required to be completed by no later than September 30, 2022. Construction funding for both projects will need to be obligated by October 31, 2022.

The selected Consultant shall provide services including: topographic surveying, preparation of plans, specifications, and estimate (PS&E), public outreach, right-of-way (ROW) acquisition and certification services when needed, preparation and processing of all necessary environmental documents to achieve environmental compliance, bid support and construction administration services (on a need basis).

The selected Consultant will be responsible for following all processes and completing all documentation required to comply with Washington Department of Transportation (WSDOT) and/or Federal Highway Administration (FHWA) requirements. The selected Consultant's submittals will be evaluated and ranked based on the following criteria: Project Understanding & Approach, Project Team Experience & Qualifications, Presentation, Organization and Clarity of the Submittal.

Court Street Overlay (Road 44 to Road 68) has a mandatory Disadvantaged Business Enterprise (DBE) goal of zero percent (0%). Oregon Ave (SR 397) Overlay has a mandatory Disadvantaged Business Enterprise (DBE) goal of six percent (6%). These goals were established by WSDOT for PE phase of each project on December 7, 2021. These projects do not have a voluntary Small Business Enterprise (SBE) goal. There is no training hour requirement on these projects.

The complete RFQ may be obtained via the City website – <http://www.pasco-wa.gov/Bids.aspx> . It is the sole responsibility of the Consultant to obtain any RFQ updates or addenda from the City website.

For consideration, Consultants are required to submit either an electronic or a hard copy of their SOQ up to the hour of **11:00 am, Thursday, February 3rd, 2022**. Hard copy responses shall be addressed to the City of Pasco – Public Works Department and will be received at the office of the City Clerk, City Hall, 525 North 3<sup>rd</sup> Avenue, Pasco, Washington. Electronic responses shall be transmitted to [wittmand@pasco-wa.gov](mailto:wittmand@pasco-wa.gov) with a maximum size of 20mb.

Technical questions regarding the scope of this project should be put in writing and directed to Faigda Rico, Engineer I, City of Pasco, Public Works, 525 N. 3<sup>rd</sup> Avenue, PO Box 293, Pasco, WA 99301; email: [ricof@pasco-wa.gov](mailto:ricof@pasco-wa.gov).

The City of Pasco, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252,42 U.S.C. 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that will affirmatively ensure that any

contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

Projects funded wholly or in part by Federal appropriations must comply with Code of Federal Regulations; 24 CFR 570.502, 24 CFR 85.36, 2 CFR 200. All federally-funded projects will be held to federal Equal Employment Opportunity (EEO) requirements. The City of Pasco is an equal opportunity and affirmative action employer. Small, minority, and women-owned businesses are encouraged to submit bids. The City of Pasco in accordance with Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA), commits to nondiscrimination on the basis of disability, in all of its programs and activities. This material can be made available in an alternate format by e-mailing Dustin Wittman at [wittmand@pasco-wa.gov](mailto:wittmand@pasco-wa.gov) or calling (509) 545-3447.

Those submitting Firms determined to be best qualified to undertake the services required under this Request for Qualifications (RFQ) may be invited to make a presentation to the City's interview team.

The City reserves the right to reject any and all responses and to waive technicalities or irregularities, and after careful consideration of all submissions and factors involved make the award to best serve the interests of the City of Pasco.

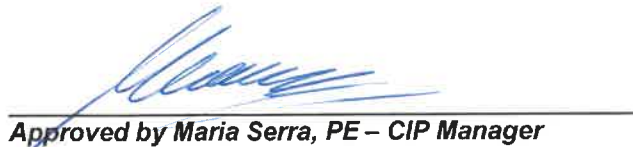
**City of Pasco, Washington**

F. R.

**Prepared by Faigda Rico – Engineer I**



**Reviewed by Dustin Wittman, CPSM – Project Support Specialist**



**Approved by Maria Serra, PE – CIP Manager**

## 1.2 INTENT OF THE CITY

The objective of this Request for Qualifications (RFQ) is to provide sufficient information to enable qualified Consultants to submit a single written Statement of Qualifications (SOQ) demonstrating their recent and relevant experience in providing design and environmental services involving the design of municipal roadways. Consultants must be familiar with all WSDOT/FHWA rules and regulations. It is also preferred that Consultants have worked on projects within an urban environment, surrounding businesses and pedestrian traffic.

It is the City's intent to have a Consultant provide services that include: topographic surveying, preparation of plans, specifications, and estimate (PS&E), public outreach, right-of-way (ROW) acquisition and certification services when needed, preparation and processing of all necessary environmental documents to achieve environmental compliance, bid support and construction administration services (on a need basis).

The selected Consultant is expected to work closely with the City's Public Works – Capital Improvements Program (CIP) Engineering Division as part of the project team to successfully complete this project. The anticipated timeframe for completing PE and ROW phases of this project is Friday, September 30, 2022 or sooner.

The City may opt to extend the limits of the Court Street Overlay Project, in an attempt to materialize efficiencies, for pavement preservation efforts planned along the same corridor. These additional extends would be funded with local moneys and tracked separately, bid as additives.

This RFQ is not a contractual offer, nor is it a commitment to contract services. Contents of this RFQ and the Consultant's submittal will be used as the basis to determine final contractual obligations. It is understood that this RFQ and the successful Consultant's submittal may be attached or included by reference, in part or in whole, to any agreement regarding the services included in this RFQ between the City and said Consultant.

## 1.3 QUESTIONS

Any explanation desired by a submitting Consultant regarding the meaning or interpretation of the RFQ, or any part thereof, must be submitted in writing (via email) and directed to Dustin Wittman at [wittmand@pasco-wa.gov](mailto:wittmand@pasco-wa.gov), no less than three (3) working days prior to the time that submittals are due.

Any interpretation made will be in the form of an addendum to the RFQ, issued by the City and will be posted to the City Website – <http://www.pasco-wa.gov/Bids.aspx>. It is the sole responsibility of the Consultant to obtain any RFQ updates or addenda. Please include **"COURT ST & OREGON AVE OVERLAY PROJECTS SOQ"** in the subject line for all emails and correspondence related to these projects.

## 1.4 SUBMISSION PROCEDURES

For consideration, Consultants are required to submit either an electronic or hard copy of their SOQ. Fax submittals will not be accepted. Failure to provide the submittal in the appropriate manners will result in disqualification. Hard-copy submittals can be delivered to the City Clerk or mailed to:

CITY OF PASCO PUBLIC WORKS DEPARTMENT  
ATTN: CITY CLERK  
P.O. BOX 293  
525 NORTH 3RD AVENUE  
PASCO, WASHINGTON, 99301

Electronic submissions, including attachments, shall be transmitted to Dustin Wittman at: [wittmand@pasco-wa.gov](mailto:wittmand@pasco-wa.gov). Receipt time of submittal will be considered the timestamp of the incoming e-mail created automatically by the City's e-mail server. Consultants using electronic means are encouraged to submit the SOQ with adequate time for the e-mail to be processed by the City's e-mail server, with a maximum size of 20mb. For hard copy submittals please provide one (1) original and four (4) copies.

The outside of the envelope must bear the following notation:

CITY OF PASCO, WASHINGTON  
PUBLIC WORKS DEPARTMENT, CIP ENGINEERING DIVISION  
RFQ – #21304 COURT STREET OVERLAY (RD 44 TO RD 68)  
#21305 OREGON AVENUE OVERLAY (SR 397)  
DUE DATE: FEBRUARY 3, 2022 AT 11:00 AM

Email subject shall be:

RFQ – COURT ST & OREGON AVE OVERLAY PROJECTS– CONSULTANT SERVICES RFQ  
DUE DATE: FEBRUARY 3, 2022 AT 11:00 AM

### 1.5 LATE SUBMITTALS AND MODIFICATIONS

Submittals and modifications thereof received after the stated time of closing may be returned unopened. The City is not responsible for late deliveries. In accordance with the due date from Section 1.4 of this RFQ, the time of closing will be determined per the Pacific Time Clock at <http://www.time.gov/>.

### 1.6 WITHDRAWAL OF SUBMITTALS

Submittals may be withdrawn by written request up to one (1) hour after the stated time of closing, as mentioned above. Determination of the one-hour grace period shall be calculated based on the same reference as identified in Section 1.5.

### 1.7 CONDITIONS AFFECTING THE WORK

Before submitting a Statement of Qualifications, each submitting Consultant is advised to:

- 1) Examine this RFQ document(s) thoroughly.
- 2) Review and be familiar with these projects.
- 3) Review STIP, CIP and TIP, as well as 2021-2022 Biennial budget and subsequent budget amendment.
- 4) Be familiar with federal, state, and local laws, ordinances, rules, and regulations that may – in any manner – affect the cost, progress, or performance of the work, including WSDOT/FHWA.
- 5) Study and carefully correlate said Consultant's observations with the RFQ response.

Failure to do so will not relieve any Consultant from any contractual obligations of the work described herein.

### 1.8 EXPLANATIONS FOR SUBMITTING CONSULTANTS

There are thirteen (13) pages in this RFQ, including the cover sheet, table of contents, and body, excluding appendices. Each is sequentially numbered at the bottom right corner of the page (Pages 1 through 13). Appendix A retained its independent numbering system. It is the responsibility of the submitting Consultant to ensure that all pages are included. If any pages are missing, the Consultant should immediately request a copy of the missing page(s) by e-mailing the request to the City Representatives listed in Section 1.9. Please write "**COURT ST & OREGON AVE OVERLAY PROJECTS– CONSULTANT SERVICES RFQ**" in the subject line. It is the responsibility of the Consultant to procure missing pages; submittals based on incomplete information will not be granted exception for any faults deriving thereof.

Any explanation desired by a submitting Consultant regarding the meaning or interpretation of the RFQ, or any part thereof, must be requested in writing (via e-mail) and directed to Dustin Wittman at [wittmand@pasco-wa.gov](mailto:wittmand@pasco-wa.gov), no less than 72 hours prior to the time that submittals are due. Any interpretation made will be in the form of an

addendum to the RFQ, issued by the City and will be posted to the City Website – <http://www.pasco-wa.gov/Bids.aspx> . It is the sole responsibility of the Consultant to obtain any RFQ updates or addenda.

## **1.9 CITY REPRESENTATIVES**

Faigda Rico – Engineer I  
City of Pasco  
525 N 3rd Avenue  
Pasco, WA 99301  
[ricof@pasco-wa.gov](mailto:ricof@pasco-wa.gov)

Dustin C Wittman, CPSM – Project Support Specialist  
City of Pasco  
525 N 3rd Avenue  
Pasco, WA 99301  
[wittmand@pasco-wa.gov](mailto:wittmand@pasco-wa.gov)

## **1.10 FORMAT OF SUBMITTALS**

To assist in the evaluation process, submittals shall conform to the following:

- 1) The submittal shall be limited to a maximum of 12 numbered pages (6 double-sided pages).
- 2) All pages will be counted towards the page total, except for the front cover, back cover, tab pages, resumes, references, and the cover letter. The cover letter shall be limited to a maximum of 1 double-sided page.
- 3) All pages shall be printed on 8½" x 11" size paper and shall be printed double-sided.
- 4) Font shall be "Arial" no smaller than "10 point". The body of this RFQ is written in "Arial 10-point" as example.
- 5) Margins on all edges should be a minimum of 0.75-inches.

## **1.11 BASIS FOR SELECTION**

### **A. GENERAL**

The selection will be based on demonstrated experience and qualifications from similar projects. The Consultant must demonstrate relevant experience on projects requiring engineering design, environmental compliance, and bid support services for overlay improvements. The selected Consultant will be responsible for providing topographic surveying, plans, specifications, and an estimate (PS&E Package), public outreach, right-of-way (ROW) acquisition and certification services when needed, environmental documents to achieve environmental compliance, bid support and construction administration services (on a need basis). Consultants must also demonstrate an ability to work closely with City Public Works staff to ensure a successful completion of the project.

### **B. SELECTION COMMITTEE**

The Selection Committee will be made up of three (3) or more City selected individuals and may include the City Representatives listed in Section 1.9 of this RFQ.

### **C. EVALUATION PROCESS**

The Selection Committee will review the SOQ submittal and evaluate all responses received based on the criteria listed herein. The City intends to select the Consultant who represents the most qualified team to the City and begin the negotiation and award process based on the evaluated scores. Submittals will be scored based on Evaluation Criteria from Section 3.1 of this RFQ. The City reserves the right to make a selection based solely on the information contained in the written submittal.

The City further reserves the right to either interview selected Consultants or request additional information to help in determining the most qualified Consultant. Should the City elect to conduct an interview for shortlisted candidates, interviews will be evaluated per criteria from Section 3.3 of this RFQ. The City may select a Consultant based on any combination of written or interview evaluations.

Selection of the committee shall be final. The selected Consultant shall be notified in writing by the City, and no other method shall be considered to be an official notification of selection by the City.

The City reserves the right to reject any or all of the submittals. If the City elects to select one of the submitting Consultants, the City will have the right to negotiate with said submitting Consultant over the final terms and conditions of the contract in the best interest of the City. The primary objective of the negotiations is to maximize the City's ability to obtain the best value, based on the requirements and evaluations relating to this RFQ. If an agreement cannot be reached, the negotiations will be terminated and similar negotiations will occur with the second-ranked submitting Consultant.

## **1.12 LOCAL AGENCY A&E PROFESSIONAL SERVICES COST PLUS FIXED FEE CONSULTANT AGREEMENT**

The successful Consultant will be required to sign the **WSDOT Local Agency A&E Professional Services Cost Plus Fixed Fee Consultant Agreement**, a copy of which is included in this RFQ as Appendix A. Details regarding the needed information are provided in the instructions and include updates of the Consultant's audited or approved overhead rates. Failure to supply this information by either the prime Consultant or any of their A&E Sub-Consultants, shall cause the Agency to withhold payment until the required information is received and the overhead rate for billing purposes is approved. Write "**COURT ST & OREGON AVE OVERLAY PROJECTS– CONSULTANT SERVICES RFQ**" in the subject line for all e-mails and correspondence related to this project. All submitting Consultants are directed to carefully review the WSDOT Local Agency A&E Professional Services Cost Plus Fixed Fee Consultant Agreement before preparing their submittal, as the successful Consultant will not be able to modify the wording of the Agreement. The successful Consultant's refusal to sign the WSDOT Local Agency A&E Professional Services Cost Plus Fixed Fee Consultant Agreement will render their submission nonresponsive, all dialogues will be immediately terminated, and negotiations will begin with the second ranked submitting Consultant.

## **2 SCOPE OF WORK**

### **2.1 BACKGROUND**

Court Street between Road 44 and Road 68 is a principal arterial that connects residential areas of the City to one of the major corridors in Pasco, Road 68. Oregon Ave (SR 397) between Ainsworth Ave and I-182 is also a principal arterial connecting industrial areas on the south to general businesses on the north.

The Court Street Overlay project plans to mill and overlay 1.5-miles of Court Street between Road 44 and Road 68. Work includes localized asphalt repairs, taper mill at curbed edges, overlay with 2" of HMA, and striping. ADA upgrades will be included as needed.

The Oregon Avenue Overlay project plans to overlay 2.3-miles of Oregon Avenue between Ainsworth Ave. and I-182. Work includes localized asphalt repairs, 2" mill and overlay, and striping. ADA upgrades will also be included as needed.

The two projects are funded through the 2021 National Highway System (NHS) Asset Management program.

Support for Oregon Ave (SR397) overlay project from WSDOT Local Programs was obtained during the grant application process.

The City may opt to extend the limits of the Court Street Overlay Project, in an attempt to materialize efficiencies, for pavement preservation efforts planned along the same corridor. These additional extends would be funded with local moneys and tracked separately, then bid as additives.

## 2.2 PURPOSE

This RFQ will be issued for the purpose of soliciting qualified Consultants to perform Civil Engineering Design Services, public outreach, acquisition and certification services to obtain Right-Of-Way when needed, environmental compliance document preparation and processing, and construction management and administration services on a need basis for the Court Street Overlay and Oregon Avenue Overlay Projects. Work will include, but it not limited to, the services requested in Section 2.3 – Scope of Work. Consultants must be able to demonstrate experience in providing these services to a public agency. The selected Consultant shall be responsible for performing all tasks necessary to complete the work that will help deliver bid documents and ensuring that they are in accordance with all regulatory agency guidelines and standards, including all efforts described within this RFQ. The selected Consultant shall be responsible for performing all tasks necessary to complete the work as described herein.

## 2.3 SCOPE OF WORK

This Consultant shall perform Civil Engineering Services for the design phase, acquisition and certification services for the right-of-way phase as needed, bid support and construction management services for the construction phase on a need basis. The Scope of Work may include, but is not limited to, the following elements:

### ADMINISTRATION & PROJECT MANAGEMENT

- Monitor and track schedule and budget.
- Prepare and provide monthly invoices with progress reports.
- Provide appropriately qualified staff in support of this project. Administration of resources to ensure timely advancement of the project.
- Schedule meetings. Prepare and distribute meeting agendas and minutes, including kickoff meeting.
- Coordinate with stakeholders, including funding agencies and WSDOT for work on State Route.
- Coordination with utilities and transit.
- Assistance with timely obligation of funds.
- Attendance to Council meetings for project related presentations, as needed.
- Support the City's public on outreach efforts.

### DESIGN SERVICES

- Provide topographic surveying.
- Prepare all design documentation including: Plans, Specifications, and Estimate (PS&E) required to conform to WSDOT/FHWA standards.
- Prepare and process environmental documentation to achieve complete environmental compliance; NEPA Categorical Exclusion is anticipated.

### RIGHT-OF-WAY SERVICES, as needed

- Prepare a Project Funding Estimate (PFE).
- Prepare right-of-way plans and legal descriptions.
- Provide services to acquire right-of-way as required.
- Assist with preparation of right-of-way certification documentation.

### BIDDING SUPPORT

- Assist in answering prospective bidder questions.
- Prepare addenda for issuance.
- Review of bids and other documentation.

### PRE-CONSTRUCTION SERVICES

- Organize and conduct a pre-construction conference.
- Prepare and distribute meeting agendas and minutes.

### CONSTRUCTION MANAGEMENT SERVICES, as needed

- Responsible for processing progress estimates, verifying certified payroll, and verifying prevailing wage intents and affidavits.
- Track and report on construction costs and maintain a detailed construction cost record(s) to ensure project is delivered on time and within budget.
- Prepare final estimate and comparison of preliminary and final quantities.
- Prepare WSDOT reporting as needed, including but not limited to: DBE, EEO, and Training Goals.
- Process and approve all required Sub-Contractor documentation.
- Resolve contract disputes and/or assist in claims analysis, mitigation, and resolution.
- Transmit Operations and Maintenance (O&M) manuals to the City, as required.
- Prepare and furnish reproducible record drawings from actual constructed work on the project.
- Coordinate materials testing services for records and review for compliance; testing will be provided by a City contracted testing firm.
- Prepare quantity ledger to track daily quantities.
- Prepare contract correspondence with Contractor, including anticipated suspension of contract days.

## 2.4 PROJECT SCHEDULE

It is anticipated that services will be provided through 2023. It is the City's intention to have design, environmental, and right-of-way for the project completed by **September 30, 2022**.

## 2.5 CITY RESPONSIBILITIES

City staff will assist the selected Consultant where possible but said Consultant should anticipate and be prepared to be completely self-reliant in accomplishing the tasks associated with this RFQ. The City will provide, when available, historical information and any other associated documents, as well as base information (such as base maps with existing utility data, City Standards, etc.).

## 3 REQUIREMENTS AND QUALIFICATIONS

### 3.1 SUBMITTAL REQUIREMENTS

At a minimum, the following items shall be included in the Statement of Qualifications (SOQ) submittal. The Selection Committee will perform a review of submitted SOQs based on the point distribution provided in this section.

After the due date, submittals received by the City will be provided to the Selection Committee for evaluation. Each submittal will be reviewed by the Selection Committee and scored based upon requirements set forth in this Section. Those requirements, and the scoring below, establish the evaluation criteria herein.

#### 1) EXPERIENCE & QUALIFICATIONS

##### A. Proposed Staff, Qualifications (25 Points Possible)

In a narrative, identify the proposed staff member(s) for these services (include working titles, degrees, certificates, and licenses) describe the roles and responsibility of each team member (if more than one and why each member is critical to the success of the overall contract. Describe the individual's experience and capacity for providing the services being requested in this RFQ.

- 1) Identify key members by name, position, discipline and firm, as well as key back up personnel. Key back up personnel shall be provided for all staff in the org chart.
- 2) Resume of the Consultant's key individuals and back up personnel are to be included as an appendix. Resume length shall not exceed one page per team member. DO NOT submit resumes of employees who will not actively work on this project. Note that changing key personnel after the contract has been awarded will be subject to the review and approval of the City. On each key individual's resume, provide a list of all federally funded municipal projects completed in the last 5 years by this individual, and a description of the key individual's role in

several key projects, including each of the projects shown in the project history matrix this staff member participated in.

- 3) Provide the forecasted availability of key member(s) to work on this project in average hours per week over the duration of the contract period.

**B. Project History Summary & Matrix (25 Points Possible)**

- 1) Provide description of previous experience, including a summarized Project History Matrix. At a minimum, provide a list of five (5) recent contracts/projects the Consultant has completed in the last five years or are ongoing. Include a point of contact for each one, contact information (phone and email). Note if the projects listed were in compliance with WSDOT/FHWA rules and regulations and/or other state or federal funding agencies.
- 2) Provide a matrix listing the Consultant's recent/ongoing projects. Identify all key personnel that completed these recent/ongoing projects and their role in the project. Note that only projects completed by key members of the project team will be considered.
- 3) For each of the listed projects, provide the following information:
  - i. A detailed description of the project scope
  - ii. Awarded construction contract value
  - iii. Final construction value (after change orders)
  - iv. Audit results (indicate if an audit was performed, and describe in detail any findings)
  - v. Legal action following the project between any involved parties (arbitration, mediation, litigation)

**C. References (5 Points Possible)**

Provide the contact information (to include names, phone numbers, and email) for a minimum of three references for each key personnel and a minimum of one reference for all other proposed personnel. References should have direct experience with the Project Manager and other proposed key team members on services of similar characteristics.

**2) SCOPE UNDERSTANDING & APPROACH**

**A. Understanding of Requested Services (15 points Possible)**

Describe the Consultant's understanding of:

- Project funding requirements (WSDOT/FHWA)
- Possible risks associated with the work, and the Consultant's approach to implement strategies and advance projects effectively.
- Recognize "project specific" challenges associated with this work and develop potential solutions to address them. Provide examples of challenges and resulting solutions from previous similar projects.

**B. Description of Approach (25 points Possible)**

Describe how the Consultant's team will:

- 1) Manage and coordinate the necessary disciplines required for accomplishing the services requested.
- 2) Lead the project in a way that will result in full compliance with regulatory, time, and funding requirements
- 3) Approach the gathering of required data and strategies to filling any anticipated gaps.
- 4) Coordinate with City staff, funding and oversight agencies, and other stakeholders.
- 5) Identify the Consultant's project communication plan between the team, City staff, local agencies, and various stakeholders including adjacent businesses and/or concerned/interested citizens.
- 6) The Consultant should propose a public outreach program for the scope, complexity, and the funding available for the project.
- 7) Describe of the Consultant's Quality Control (QC) and Quality Assurance (QA) program for the requested services.

- 8) Implement effective project management methodologies, techniques and tools, such as cost control and scheduling programs, and progress reporting to be used on this project.
- 9) Approach working during the ongoing COVID-19 protective measures, and accomplishing tasks within the mandated timeframe.
- 10) Provide a detailed schedule showing how the Consultant intends to accomplish the work and meet the schedule requirements provided in this RFQ. The schedule shall indicate the anticipated workshops, review periods, onsite-work, and draft and final submissions.

3) **PRESENTATION, ORGANIZATION AND CLARITY OF SOQ SUBMITTAL**

A. Formatting, Document Clarity (**5 Points Possible**)

- Consultant's SOQ shall follow formatting requirements as set forth in Section 1.10 of this RFQ. Organization of the SOQ, and the manner in which information is presented, should promote the Consultant's ability to assemble clear and concise documentation.

**3.2 CONSULTANT QUALIFICATIONS**

The required minimum qualifications for submitting Consultants are as follows:

- 1) Staff shown in the organization chart should currently possess all applicable certifications and licensing from the State of Washington required to complete the project.
- 2) Knowledge of all applicable Federal, State, and Local regulations and standards, including WSDOT/FHWA.
- 3) Minimum of 5 years of experience in providing professional engineering services for public agencies, specifically related to federally funded transportation projects.

**3.3 INTERVIEW PROCESS**

Should the City elect to conduct interviews with short-listed candidates, Consultants should plan for the following:

- 1) Interview format (if used):
  - A. Approximately 30-minute presentation.
  - B. Approximately 30 minutes for questions and answers.
  - C. The Consultant's proposed Project Manager shall lead the presentation.
  - D. The City may elect to conduct a phone or telecommunications-based interview without the requirement of a presentation.
- 2) Presentation: The objective of the interview will be to clearly demonstrate the Consultant's qualifications to complete the project to the satisfaction of the City. The presentation shall be brief and concise and shall include but shall not be limited to:
  - A. Team Organization and Qualifications
  - B. Project History
  - C. Project Understanding
  - D. Description of Approach
  - E. A discussion of how the team proposes to manage these projects and successfully keep them on schedule and within budget
  - F. A description of how the Project Manager and the team propose to work and communicate with the City and the public throughout each project

Following a review of the submitted SOQ's, the City may establish specific requirements and content for the interview to further aid in the determination of the Consultant's qualifications. The selection team may prepare a

list of standard questions for the interview. Additional questions may be developed based on the Consultant's Statement of Qualifications to clarify information submitted.

Following selection of a Consultant, the City will then negotiate a specific scope of services, fees, and schedule with the selected Consultant. If an agreement can't be reached with the first selected Consultant, the City will terminate negotiations with said Consultant and open negotiations with the second ranked Consultant. The compensation discussed with one Consultant is confidential and will not be discussed or disclosed with others.

CITY OF PASCO, WASHINGTON  
#21304 – Court Street Overlay (Road 44 to Road 68) – Consultant Services RFQ  
#21305 – Oregon Avenue (US 397) Overlay – Consultant Services RFQ

**APPENDIX A:**

LOCAL AGENCY A&E PROFESSIONAL SERVICES  
COST PLUS FIXED FEE CONSULTANT AGREEMENT

# Local Agency A&E Professional Services Cost Plus Fixed Fee Consultant Agreement

Agreement Number:

Firm/Organization Legal Name (do not use dba's):		
Address	Federal Aid Number	
UBI Number	Federal TIN or SSN Number	
Execution Date	Completion Date	
1099 Form Required <input type="checkbox"/> Yes <input type="checkbox"/> No	Federal Participation <input type="checkbox"/> Yes <input type="checkbox"/> No	
Project Title		
Description of Work		
<input type="checkbox"/> Yes <input type="checkbox"/> Yes <input type="checkbox"/> Yes <input type="checkbox"/> Yes	<input type="checkbox"/> No DBE Participation <input type="checkbox"/> No MBE Participation <input type="checkbox"/> No WBE Participation <input type="checkbox"/> No SBE Participation	Total Amount Authorized:  Management Reserve Fund:  Maximum Amount Payable:

## Index of Exhibits

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THIS AGREEMENT, made and entered into as shown in the “Execution Date” box on page one (1) of this AGREEMENT, between the hereinafter called the “AGENCY,” and the “Firm / Organization Name” referenced on page one (1) of this AGREEMENT, hereinafter called the “CONSULTANT.”

WHEREAS, the AGENCY desires to accomplish the work referenced in “Description of Work” on page one (1) of this AGREEMENT and hereafter called the “SERVICES;” and does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary SERVICES; and

WHEREAS, the CONSULTANT represents that they comply with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish consulting services to the AGENCY.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

## **I. General Description of Work**

The work under this AGREEMENT shall consist of the above-described SERVICES as herein defined, and necessary to accomplish the completed work for this project. The CONSULTANT shall furnish all services, labor, and related equipment and, if applicable, sub-consultants and subcontractors necessary to conduct and complete the SERVICES as designated elsewhere in this AGREEMENT.

## **II. General Scope of Work**

The Scope of Work and projected level of effort required for these SERVICES is described in Exhibit “A” attached hereto and by this reference made a part of this AGREEMENT. The General Scope of Work was developed utilizing performance based contracting methodologies.

## **III. General Requirements**

All aspects of coordination of the work of this AGREEMENT with outside agencies, groups, or individuals shall receive advance approval by the AGENCY. Necessary contacts and meetings with agencies, groups, and/or individuals shall be coordinated through the AGENCY. The CONSULTANT shall attend coordination, progress, and presentation meetings with the AGENCY and/or such State, Federal, Community, City, or County officials, groups or individuals as may be requested by the AGENCY. The AGENCY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum required hours or days’ notice shall be agreed to between the AGENCY and the CONSULTANT and shown in Exhibit “A.”

The CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, which will outline in written and graphical form the various phases and the order of performance of the SERVICES in sufficient detail so that the progress of the SERVICES can easily be evaluated.

The CONSULTANT, any sub-consultants, and the AGENCY shall comply with all Federal, State, and local laws, rules, codes, regulations, and all AGENCY policies and directives, applicable to the work to be performed under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accordance with the laws of the State of Washington.

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Participation for Disadvantaged Business Enterprises (DBE) or Small Business Enterprises (SBE), if required, per 49 CFR Part 26, shall be shown on the heading of this AGREEMENT. If DBE firms are utilized at the commencement of this AGREEMENT, the amounts authorized to each firm and their certification number will be shown on Exhibit “B” attached hereto and by this reference made part of this AGREEMENT. If the Prime CONSULTANT is a DBE certified firm they must comply with the Commercial Useful Function (CUF) regulation outlined in the AGENCY’s “DBE Program Participation Plan” and perform a minimum of 30% of the total amount of this AGREEMENT. It is recommended, but not required, that non-DBE Prime CONSULTANTS perform a minimum of 30% of the total amount of this AGREEMENT.

In the absents of a mandatory DBE goal, a voluntary SBE goal amount of ten percent of the Consultant Agreement is established. The Consultant shall develop a SBE Participation Plan prior to commencing work. Although the goal is voluntary, the outreach efforts to provide SBE maximum practicable opportunities are not.

The CONSULTANT, on a monthly basis, shall enter the amounts paid to all firms (including Prime) involved with this AGREEMENT into the [wsdot.diversitycompliance.com](http://wsdot.diversitycompliance.com) program. Payment information shall identify any DBE Participation.

All Reports, PS&E materials, and other data furnished to the CONSULTANT by the AGENCY shall be returned. All electronic files, prepared by the CONSULTANT, must meet the requirements as outlined in Exhibit “C – Preparation and Delivery of Electronic Engineering and other Data.”

All designs, drawings, specifications, documents, and other work products, including all electronic files, prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for these SERVICES, and are the property of the AGENCY. Reuse by the AGENCY or by others, acting through or on behalf of the AGENCY of any such instruments of service, not occurring as a part of this SERVICE, shall be without liability or legal exposure to the CONSULTANT.

Any and all notices or requests required under this AGREEMENT shall be made in writing and sent to the other party by (i) certified mail, return receipt requested, or (ii) by email or facsimile, to the address set forth below:

If to AGENCY:			If to CONSULTANT:		
Name:			Name:		
Agency:			Agency:		
Address:			Address:		
City:	State:	Zip:	City:	State:	Zip:
Email:			Email:		
Phone:			Phone:		
Facsimile:			Facsimile:		

**IV. Time for Beginning and Completion**

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT titled “Completion Date.”

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the AGENCY in the event of a delay attributable to the AGENCY, or because of unavoidable delays caused by an act of GOD, governmental actions, or other conditions beyond the control of the CONSULTANT. A prior supplemental AGREEMENT issued by the AGENCY is required to extend the established completion time.

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## V. Payment Provisions

The CONSULTANT shall be paid by the AGENCY for completed SERVICES rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for SERVICES performed or SERVICES rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete SERVICES, specified in Section II, "Scope of Work". The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31 ([www.ecfr.gov](http://www.ecfr.gov)). The estimate in support of the Cost Plus Fixed Fee amount is attached hereto as Exhibits "D" and "E" and by this reference made part of this AGREEMENT.

- A. Actual Costs: Payment for all consulting services for this PROJECT shall be on the basis of the CONSULTANT'S actual cost plus a fixed fee. The actual cost shall include direct salary cost, indirect cost rate, and direct non-salary costs.
1. Direct (RAW) Labor Costs: The Direct (RAW) Labor Cost is the direct salary paid to principals, professional, technical, and clerical personnel for the time they are productively engaged in work necessary to fulfill the terms of this AGREEMENT. The CONSULTANT shall maintain support data to verify the direct salary costs billed to the AGENCY.
  2. Indirect Cost Rate (ICR) Costs: ICR Costs are those costs, other than direct costs, which are included as such on the books of the CONSULTANT in the normal everyday keeping of its books. Progress payments shall be made at the ICR rates shown in attached Exhibits "D" and "E" of this AGREEMENT. Total ICR payment shall be based on Actual Costs. The AGENCY agrees to reimburse the CONSULTANT the actual ICR costs verified by audit, up to the Maximum Total Amount Payable, authorized under this AGREEMENT, when accumulated with all other Actual Costs.  
A summary of the CONSULTANT'S cost estimate and the ICR percentage is shown in Exhibits "D" and "E", attached hereto and by this reference made part of this AGREEMENT. The CONSULTANT (prime and all A&E sub-consultants) will submit to the AGENCY within six (6) months after the end of each firm's fiscal year, an ICR schedule in the format required by the AGENCY (cost category, dollar expenditures, etc.) for the purpose of adjusting the ICR rate for billings received and paid during the fiscal year represented by the ICR schedule. It shall also be used for the computation of progress payments during the following year and for retroactively adjusting the previous year's ICR cost to reflect the actual rate. The ICR schedule will be sent to Email: [ConsultantRates@wsdot.wa.gov](mailto:ConsultantRates@wsdot.wa.gov).  
Failure to supply this information by either the prime CONSULTANT or any of their A&E sub-consultants shall cause the AGENCY to withhold payment of the billed ICR costs until such time as the required information is received and an overhead rate for billing purposes is approved.  
The AGENCY's Project Manager and/or the Federal Government may perform an audit of the CONSULTANT'S books and records at any time during regular business hours to determine the actual ICR rate, if they so desire.
  3. Direct Non-Salary Costs: Direct Non-Salary Costs will be reimbursed at the Actual Cost to the CONSULTANT. (excluding Meals, which are reimbursed at the per diem rates identified in this section) These charges may include, but are not limited to, the following items: travel, printing, long distance telephone, supplies, computer charges and fees of sub-consultants. Air or train travel will be reimbursed only to economy class levels unless otherwise approved by the AGENCY. The CONSULTANT shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance with WSDOT's Accounting Manual M 13-82, Chapter 10 – Travel Rules and Procedures, and revisions thereto. Air, train, and rental car costs shall be reimbursed in accordance with 48 Code of Federal Regulations (CFR) Part 31.205-46 "Travel Costs." The billing for Direct Non-Salary Costs shall include an itemized listing of the charges directly identifiable with the PROJECT. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the AGENCY upon request. All above charges must be necessary for the services provided under this AGREEMENT.

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4. Fixed Fee: The Fixed Fee, which represents the CONSULTANT'S profit, is shown in attached Exhibits "D" and "E" of this AGREEMENT. This fee is based on the Scope of Work defined in this AGREEMENT and the estimated person-hours required to perform the stated Scope of Work. In the event the CONSULTANT enters into a supplemental AGREEMENT for additional work, the supplemental AGREEMENT may include provisions for the added costs and an appropriate additional fee. The Fixed Fee will be prorated and paid monthly in proportion to the percentage of work completed by the CONSULTANT and reported in the Monthly Progress Reports accompanying the billings. Any portion of the Fixed Fee earned but not previously paid in the progress payments will be covered in the final payment, subject to the provisions of Section IX entitled "Termination of Agreement."
  5. Management Reserve Fund (MRF): The AGENCY may desire to establish MRF to provide the Agreement Administrator with the flexibility to authorize additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$100,000 or 10% of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the MRF is shown in the heading of this AGREEMENT. This fund may not be replenished. Any changes requiring additional costs in excess of the MRF shall be made in accordance with Section XIII, "Extra Work."
  6. Maximum Total Amount Payable: The Maximum Total Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The Maximum Total Amount Payable is comprised of the Total Amount Authorized, and the MRF. The Maximum Total Amount Payable does not include payment for Extra Work as stipulated in Section XIII, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.
- B. Monthly Progress Payments: The CONSULTANT may submit billings to the AGENCY for reimbursement of Actual Costs plus the ICR and calculated fee on a monthly basis during the progress of the work. Such billings shall be in a format approved by the AGENCY and accompanied by the monthly progress reports required under Section III, "General Requirements" of this AGREEMENT. The billings will be supported by an itemized listing for each item including Direct (RAW) Labor, Direct Non-Salary, and allowable ICR Costs to which will be added the prorated Fixed Fee. To provide a means of verifying the billed Direct (RAW) Labor costs for CONSULTANT employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, Direct (RAW) Labor rates, and present duties of those employees performing work on the PROJECT at the time of the interview.
- C. Final Payment: Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the work under this AGREEMENT, contingent, if applicable, upon receipt of all PS&E, plans, maps, notes, reports, electronic data and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such Final Payment by the CONSULTANT shall constitute a release of all claims for payment, which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit; all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the AGENCY within thirty (30) calendar days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment. The CONSULTANT has twenty (20) working days after receipt of the final POST AUDIT to begin the appeal process to the AGENCY for audit findings.

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D. Inspection of Cost Records: The CONSULTANT and their sub-consultants shall keep available for inspection by representatives of the AGENCY and the United States, for a period of six (6) years after receipt of final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this AGREEMENT is initiated before the expiration of the six (6) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

An interim or post audit may be performed on this AGREEMENT. The audit, if any, will be performed by the State Auditor, WSDOT's Internal Audit Office and/or at the request of the AGENCY's Project Manager.

## **VI. Sub-Contracting**

The AGENCY permits subcontracts for those items of SERVICES as shown in Exhibit "A" attached hereto and by this reference made part of this AGREEMENT.

The CONSULTANT shall not subcontract for the performance of any SERVICE under this AGREEMENT without prior written permission of the AGENCY. No permission for subcontracting shall create, between the AGENCY and sub-consultant, any contract or any other relationship.

Compensation for this sub-consultant SERVICES shall be based on the cost factors shown on Exhibit "E" attached hereto and by this reference made part of this AGREEMENT.

The SERVICES of the sub-consultant shall not exceed its maximum amount payable identified in each sub-consultant cost estimate unless a prior written approval has been issued by the AGENCY.

All reimbursable direct labor, indirect cost rate, direct non-salary costs and fixed fee costs for the sub-consultant shall be negotiated and substantiated in accordance with section V "Payment Provisions" herein and shall be memorialized in a final written acknowledgement between the parties.

All subcontracts shall contain all applicable provisions of this AGREEMENT, and the CONSULTANT shall require each sub-consultant or subcontractor, of any tier, to abide by the terms and conditions of this AGREEMENT. With respect to sub-consultant payment, the CONSULTANT shall comply with all applicable sections of the STATE's Prompt Payment laws as set forth in RCW 39.04.250 and RCW 39.76.011.

The CONSULTANT, sub-recipient, or sub-consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as the recipient deems appropriate.

## **VII. Employment and Organizational Conflict of Interest**

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the AGENCY shall have the right to annul this AGREEMENT without liability or, in its discretion, to deduct from this AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may arise under any Workmen's

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Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full- or part-time basis, or other basis, during the period of this AGREEMENT, any professional or technical personnel who are, or have been, at any time during the period of this AGREEMENT, in the employ of the United States Department of Transportation or the AGENCY, except regularly retired employees, without written consent of the public employer of such person if he/she will be working on this AGREEMENT for the CONSULTANT.

## **VIII. Nondiscrimination**

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees, sub-consultants, subcontractors and successors in interest, agrees to comply with the following laws and regulations:

- Title VI of the Civil Rights Act of 1964  
(42 U.S.C. Chapter 21 Subchapter V § 2000d through 2000d-4a)
- Federal-aid Highway Act of 1973  
(23 U.S.C. Chapter 3 § 324)
- Rehabilitation Act of 1973  
(29 U.S.C. Chapter 16 Subchapter V § 794)
- Age Discrimination Act of 1975  
(42 U.S.C. Chapter 76 § 6101 *et. seq.*)
- Civil Rights Restoration Act of 1987  
(Public Law 100-259)
- American with Disabilities Act of 1990  
(42 U.S.C. Chapter 126 § 12101 *et. seq.*)
- 23 CFR Part 200
- 49 CFR Part 21
- 49 CFR Part 26
- RCW 49.60.180

In relation to Title VI of the Civil Rights Act of 1964, the CONSULTANT is bound by the provisions of Exhibit "F" attached hereto and by this reference made part of this AGREEMENT, and shall include the attached Exhibit "F" in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

## **IX. Termination of Agreement**

The right is reserved by the AGENCY to terminate this AGREEMENT at any time with or without cause upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the AGENCY, other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged and any appropriate fixed fee percentage at the time of termination of this AGREEMENT, plus any direct non-salary costs incurred up to the time of termination of this AGREEMENT.

No payment shall be made for any SERVICES completed after ten (10) days following receipt by the CONSULTANT of the notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth in paragraph two (2) of this section, then no final payment shall be due and the CONSULTANT shall immediately reimburse the AGENCY for any excess paid.

If the services of the CONSULTANT are terminated by the AGENCY for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In the event of a termination for default, the amount to be paid to the CONSULTANT shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing SERVICES to the date of termination, the amount of SERVICES originally required which was satisfactorily completed to

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date of termination, whether that SERVICE is in a form or a type which is usable to the AGENCY at the time of termination, the cost to the AGENCY of employing another firm to complete the SERVICES required and the time which may be required to do so, and other factors which affect the value to the AGENCY of the SERVICES performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount, which would have been made using the formula set forth in paragraph two (2) of this section.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT's or its employee's fault or negligence, the termination shall be deemed to be a termination for the convenience of the AGENCY. In such an event, the CONSULTANT would be reimbursed for actual costs and appropriate fixed fee percentage in accordance with the termination for other than default clauses listed previously.

The CONSULTANT shall, within 15 days, notify the AGENCY in writing, in the event of the death of any member, partner, or officer of the CONSULTANT or the death or change of any of the CONSULTANT's supervisory and/or other key personnel assigned to the project or disaffiliation of any principally involved CONSULTANT employee. The CONSULTANT shall also notify the AGENCY, in writing, in the event of the sale or transfer of 50% or more of the beneficial ownership of the CONSULTANT within 15 days of such sale or transfer occurring. The CONSULTANT shall continue to be obligated to complete the SERVICES under the terms of this AGREEMENT unless the AGENCY chooses to terminate this AGREEMENT for convenience or chooses to renegotiate any term(s) of this AGREEMENT. If termination for convenience occurs, final payment will be made to the CONSULTANT as set forth in the second and third paragraphs of this section.

Payment for any part of the SERVICES by the AGENCY shall not constitute a waiver by the AGENCY of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform SERVICES required of it by the AGENCY. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

## **X. Changes of Work**

The CONSULTANT shall make such changes and revisions in the completed work of this AGREEMENT as necessary to correct errors appearing therein, without additional compensation thereof. Should the AGENCY find it desirable for its own purposes to have previously satisfactorily completed SERVICES or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the AGENCY. This work shall be considered as Extra Work and will be paid for as herein provided under section XIII "Extra Work."

## **XI. Disputes**

Any disputed issue not resolved pursuant to the terms of this AGREEMENT shall be submitted in writing within 10 days to the Director of Public Works or AGENCY Engineer, whose decision in the matter shall be final and binding on the parties of this AGREEMENT; provided however, that if an action is brought challenging the Director of Public Works or AGENCY Engineer's decision, that decision shall be subject to judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in Exhibit "J". In the event that either party deem it necessary to institute legal action or proceeding to enforce any right or obligation under this AGREEMENT, this action shall be initiated in the Superior Court of the State of Washington, situated in the county in which the AGENCY is located. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties have the right of appeal from such decisions of the Superior Court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, situated in the county in which the AGENCY is located.

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## **XII. Legal Relations**

The CONSULTANT, any sub-consultants, and the AGENCY shall comply with all Federal, State, and local laws, rules, codes, regulations and all AGENCY policies and directives, applicable to the work to be performed under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accordance with the laws of the State of Washington.

The CONSULTANT shall defend, indemnify, and hold The State of Washington (STATE) and the AGENCY and their officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the negligence of, or the breach of any obligation under this AGREEMENT by, the CONSULTANT or the CONSULTANT's agents, employees, sub consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable; provided that nothing herein shall require a CONSULTANT to defend or indemnify the STATE and the AGENCY and their officers and employees against and hold harmless the STATE and the AGENCY and their officers and employees from claims, demands or suits based solely upon the negligence of, or breach of any obligation under this AGREEMENT by the STATE and the AGENCY, their agents, officers, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the STATE and/or the AGENCY may be legally liable; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT or the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT is legally liable, and (b) the STATE and/or AGENCY, their agents, officers, employees, sub-consultants, subcontractors and or vendors, of any tier, or any other persons for whom the STATE and or AGENCY may be legally liable, the defense and indemnity obligation shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable. This provision shall be included in any AGREEMENT between CONSULTANT and any sub-consultant, subcontractor and vendor, of any tier.

The CONSULTANT shall also defend, indemnify, and hold the STATE and the AGENCY and their officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by the CONSULTANT or the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable, in performance of the Work under this AGREEMENT or arising out of any use in connection with the AGREEMENT of methods, processes, designs, information or other items furnished or communicated to STATE and/or the AGENCY, their agents, officers and employees pursuant to the AGREEMENT; provided that this indemnity shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from STATE and/or AGENCY's, their agents', officers' and employees' failure to comply with specific written instructions regarding use provided to STATE and/or AGENCY, their agents, officers and employees by the CONSULTANT, its agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable.

The CONSULTANT's relation to the AGENCY shall be at all times as an independent contractor.

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the AGENCY may, in its sole discretion, by written notice to the CONSULTANT terminate this AGREEMENT if it is found after due notice and examination by the AGENCY that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the CONSULTANT in the procurement of, or performance under, this AGREEMENT.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees or its agents against the STATE and /or the AGENCY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW. This waiver has been mutually negotiated between the Parties.

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Unless otherwise specified in this AGREEMENT, the AGENCY shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of a new sole source, or an acceptable supplemental AGREEMENT, the CONSULTANT shall provide On-Call assistance to the AGENCY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor’s failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of this AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

Insurance Coverage

- A. Worker’s compensation and employer’s liability insurance as required by the STATE.
- B. Commercial general liability insurance written under ISO Form CG 00 01 12 04 or its equivalent with minimum limits of one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in the aggregate for each policy period.
- C. Business auto liability insurance written under ISO Form CG 00 01 10 01 or equivalent providing coverage for any “Auto” (Symbol 1) used in an amount not less than a one million dollar (\$1,000,000.00) combined single limit for each occurrence.

Excepting the Worker’s Compensation Insurance and any Professional Liability Insurance, the STATE and AGENCY, their officers, employees, and agents will be named on all policies of CONSULTANT and any sub-consultant and/or subcontractor as an additional insured (the “AIs”), with no restrictions or limitations concerning products and completed operations coverage. This coverage shall be primary coverage and non-contributory and any coverage maintained by the AIs shall be excess over, and shall not contribute with, the additional insured coverage required hereunder. The CONSULTANT’s and the sub-consultant’s and/or subcontractor’s insurer shall waive any and all rights of subrogation against the AIs. The CONSULTANT shall furnish the AGENCY with verification of insurance and endorsements required by this AGREEMENT. The AGENCY reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Name:  
Agency:  
Address:  
City: State: Zip:  
Email:  
Phone:  
Facsimile:

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the AGENCY.

The CONSULTANT’s professional liability to the AGENCY, including that which may arise in reference to section IX “Termination of Agreement” of this AGREEMENT, shall be limited to the accumulative amount of the authorized AGREEMENT amount or one million dollars (\$1,000,000.00), whichever is greater, unless the limit of liability is increased by the AGENCY pursuant to Exhibit H. In no case shall the CONSULTANT’s professional liability to third parties be limited in any way.

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The parties enter into this AGREEMENT for the sole benefit of the parties, and to the exclusion of any third party, and no third party beneficiary is intended or created by the execution of this AGREEMENT.

The AGENCY will pay no progress payments under section V “Payment Provisions” until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the AGENCY may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

### **XIII. Extra Work**

- A. The AGENCY may at any time, by written order, make changes within the general scope of this AGREEMENT in the SERVICES to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the SERVICES under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of this AGREEMENT, the AGENCY shall make an equitable adjustment in the: (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify this AGREEMENT accordingly.
- C. The CONSULTANT must submit any “request for equitable adjustment,” hereafter referred to as “CLAIM,” under this clause within thirty (30) days from the date of receipt of the written order. However, if the AGENCY decides that the facts justify it, the AGENCY may receive and act upon a CLAIM submitted before final payment of this AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the section XI “Disputes” clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and conditions of paragraphs (A.) and (B.) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

### **XIV. Endorsement of Plans**

If applicable, the CONSULTANT shall place their endorsement on all plans, estimates, or any other engineering data furnished by them.

### **XV. Federal Review**

The Federal Highway Administration shall have the right to participate in the review or examination of the SERVICES in progress.

### **XVI. Certification of the Consultant and the Agency**

Attached hereto as Exhibit “G-1(a and b)” are the Certifications of the CONSULTANT and the AGENCY, Exhibit “G-2” Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions, Exhibit “G-3” Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying and Exhibit “G-4” Certificate of Current Cost or Pricing Data. Exhibit “G-3” is required only in AGREEMENT’s over one hundred thousand dollars (\$100,000.00) and Exhibit “G-4” is required only in AGREEMENT’s over five hundred thousand dollars (\$500,000.00.) These Exhibits must be executed by the CONSULTANT, and submitted with the master AGREEMENT, and returned to the AGENCY at the address listed in section III “General Requirements” prior to its performance of any SERVICES under this AGREEMENT.

Agreement Number:

## **XVII. Complete Agreement**

This document and referenced attachments contain all covenants, stipulations, and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as a supplement to this AGREEMENT.

## **XVIII. Execution and Acceptance**

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and AGREEMENT's contained in the proposal, and the supporting material submitted by the CONSULTANT, and does hereby accept this AGREEMENT and agrees to all of the terms and conditions thereof.

## **XIX. Protection of Confidential Information**

The CONSULTANT acknowledges that some of the material and information that may come into its possession or knowledge in connection with this AGREEMENT or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other local, state or federal statutes ("State's Confidential Information"). The "State's Confidential Information" includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records (or any other information identifiable to an individual), STATE and AGENCY source code or object code, STATE and AGENCY security data, non-public Specifications, STATE and AGENCY non-publicly available data, proprietary software, State security data, or information which may jeopardize any part of the project that relates to any of these types of information. The CONSULTANT agrees to hold the State's Confidential Information in strictest confidence and not to make use of the State's Confidential Information for any purpose other than the performance of this AGREEMENT, to release it only to authorized employees, sub-consultants or subcontractors requiring such information for the purposes of carrying out this AGREEMENT, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make it known to any other party without the AGENCY's express written consent or as provided by law. The CONSULTANT agrees to release such information or material only to employees, sub-consultants or subcontractors who have signed a nondisclosure AGREEMENT, the terms of which have been previously approved by the AGENCY. The CONSULTANT agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to the State's Confidential Information.

Immediately upon expiration or termination of this AGREEMENT, the CONSULTANT shall, at the AGENCY's option: (i) certify to the AGENCY that the CONSULTANT has destroyed all of the State's Confidential Information; or (ii) returned all of the State's Confidential Information to the AGENCY; or (iii) take whatever other steps the AGENCY requires of the CONSULTANT to protect the State's Confidential Information.

As required under Executive Order 00-03, the CONSULTANT shall maintain a log documenting the following: the State's Confidential Information received in the performance of this AGREEMENT; the purpose(s) for which the State's Confidential Information was received; who received, maintained and used the State's Confidential Information; and the final disposition of the State's Confidential Information. The CONSULTANT's records shall be subject to inspection, review, or audit upon reasonable notice from the AGENCY.

The AGENCY reserves the right to monitor, audit, or investigate the use of the State's Confidential Information collected, used, or acquired by the CONSULTANT through this AGREEMENT. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

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Violation of this section by the CONSULTANT or its sub-consultants or subcontractors may result in termination of this AGREEMENT and demand for return of all State's Confidential Information, monetary damages, or penalties.

It is understood and acknowledged that the CONSULTANT may provide the AGENCY with information which is proprietary and/or confidential during the term of this AGREEMENT. The parties agree to maintain the confidentiality of such information during the term of this AGREEMENT and afterwards. All materials containing such proprietary and/or confidential information shall be clearly identified and marked as "Confidential" and shall be returned to the disclosing party at the conclusion of the SERVICES under this AGREEMENT.

The CONSULTANT shall provide the AGENCY with a list of all information and materials it considers confidential and/or proprietary in nature: (a) at the commencement of the term of this AGREEMENT; or (b) as soon as such confidential or proprietary material is developed. "Proprietary and/or confidential information" is not meant to include any information which, at the time of its disclosure: (i) is already known to the other party; (ii) is rightfully disclosed to one of the parties by a third party that is not acting as an agent or representative for the other party; (iii) is independently developed by or for the other party; (iv) is publicly known; or (v) is generally utilized by unaffiliated third parties engaged in the same business or businesses as the CONSULTANT.

The parties also acknowledge that the AGENCY is subject to Washington State and federal public disclosure laws. As such, the AGENCY shall maintain the confidentiality of all such information marked proprietary and/or confidential or otherwise exempt, unless such disclosure is required under applicable state or federal law. If a public disclosure request is made to view materials identified as "Proprietary and/or confidential information" or otherwise exempt information, the AGENCY will notify the CONSULTANT of the request and of the date that such records will be released to the requester unless the CONSULTANT obtains a court order from a court of competent jurisdiction enjoining that disclosure. If the CONSULTANT fails to obtain the court order enjoining disclosure, the AGENCY will release the requested information on the date specified.

The CONSULTANT agrees to notify the sub-consultant of any AGENCY communication regarding disclosure that may include a sub-consultant's proprietary and/or confidential information. The CONSULTANT notification to the sub-consultant will include the date that such records will be released by the AGENCY to the requester and state that unless the sub-consultant obtains a court order from a court of competent jurisdiction enjoining that disclosure the AGENCY will release the requested information. If the CONSULTANT and/or sub-consultant fail to obtain a court order or other judicial relief enjoining the AGENCY by the release date, the CONSULTANT shall waive and release and shall hold harmless and indemnify the AGENCY from all claims of actual or alleged damages, liabilities, or costs associated with the AGENCY's said disclosure of sub-consultants' information.

## **XX. Records Maintenance**

During the progress of the Work and SERVICES provided hereunder and for a period of not less than six (6) years from the date of final payment to the CONSULTANT, the CONSULTANT shall keep, retain and maintain all "documents" pertaining to the SERVICES provided pursuant to this AGREEMENT. Copies of all "documents" pertaining to the SERVICES provided hereunder shall be made available for review at the CONSULTANT's place of business during normal working hours. If any litigation, claim or audit is commenced, the CONSULTANT shall cooperate with AGENCY and assist in the production of all such documents. "Documents" shall be retained until all litigation, claims or audit findings have been resolved even though such litigation, claim or audit continues past the six (6) year retention period.

For purposes of this AGREEMENT, "documents" means every writing or record of every type and description, including electronically stored information ("ESI"), that is in the possession, control, or custody of the CONSULTANT, including, without limitation, any and all correspondences, contracts, AGREEMENT 's, appraisals, plans, designs, data, surveys, maps, spreadsheets, memoranda, stenographic or handwritten notes, reports, records, telegrams, schedules, diaries, notebooks, logbooks, invoices, accounting records, work sheets, charts, notes, drafts, scribbings, recordings, visual displays, photographs, minutes of meetings,

Agreement Number:

tabulations, computations, summaries, inventories, and writings regarding conferences, conversations or telephone conversations, and any and all other taped, recorded, written, printed or typed matters of any kind or description; every copy of the foregoing whether or not the original is in the possession, custody, or control of the CONSULTANT, and every copy of any of the foregoing, whether or not such copy is a copy identical to an original, or whether or not such copy contains any commentary or notation whatsoever that does not appear on the original.

For purposes of this AGREEMENT, “ESI” means any and all computer data or electronic recorded media of any kind, including “Native Files”, that are stored in any medium from which it can be retrieved and examined, either directly or after translation into a reasonably useable form. ESI may include information and/or documentation stored in various software programs such as: Email, Outlook, Word, Excel, Access, Publisher, PowerPoint, Adobe Acrobat, SQL databases, or any other software or electronic communication programs or databases that the CONSULTANT may use in the performance of its operations. ESI may be located on network servers, backup tapes, smart phones, thumb drives, CDs, DVDs, floppy disks, work computers, cell phones, laptops or any other electronic device that CONSULTANT uses in the performance of its Work or SERVICES hereunder, including any personal devices used by the CONSULTANT or any sub-consultant at home.

“Native files” are a subset of ESI and refer to the electronic format of the application in which such ESI is normally created, viewed, and /or modified.

The CONSULTANT shall include this section XX “Records Maintenance” in every subcontract it enters into in relation to this AGREEMENT and bind the sub-consultant to its terms, unless expressly agreed to otherwise in writing by the AGENCY prior to the execution of such subcontract.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year shown in the “Execution Date” box on page one (1) of this AGREEMENT.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

*Any modification, change, or reformation of this AGREEMENT shall require approval as to form by the Office of the Attorney General.*

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# ***Exhibit A Scope of Work***

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Project No.

Agreement Number:

Agreement Number:

# ***Exhibit C*** ***Preparation and Delivery of Electronic Engineering and Other Data***

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In this Exhibit the agency, as applicable, is to provide a description of the format and standards the consultant is to use in preparing electronic files for transmission to the agency. The format and standards to be provided may include, but are not limited to, the following:

I. Surveying, Roadway Design & Plans Preparation Section

A. Survey Data

B. Roadway Design Files

C. Computer Aided Drafting Files

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D. Specify the Agency's Right to Review Product with the Consultant

E. Specify the Electronic Deliverables to Be Provided to the Agency

F. Specify What Agency Furnished Services and Information Is to Be Provided

Agreement Number:

## II. Any Other Electronic Files to Be Provided

## III. Methods to Electronically Exchange Data

A. Agency Software Suite

B. Electronic Messaging System

C. File Transfers Format

***Exhibit D***  
***Prime Consultant Cost Computations***

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Agreement Number:

## ***Exhibit E***

### ***Sub-consultant Cost Computations***

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If no sub-consultant participation at this time. The CONSULTANT shall not sub-contract for the performance of any work under this AGREEMENT without prior written permission of the AGENCY. Refer to section VI "Sub-Contracting" of this AGREEMENT.

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# ***Exhibit F - Title VI Assurances Appendix A & E***

## **APPENDIX A**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, ***(Title of Modal Operating Administration)***, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.  
***[Include Modal Operating Administration specific program requirements.]***
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin. ***[Include Modal Operating Administration specific program requirements.]***
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the ***(Title of Modal Operating Administration)*** to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the ***(Title of Modal Operating Administration)***, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non- discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the ***(Title of Modal Operating Administration)*** may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the ***(Title of Modal Operating Administration)*** may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

# ***Exhibit F - Title VI Assurances Appendix A & E***

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## **APPENDIX E**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

### **Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

## ***Exhibit G***

### ***Certification Documents***

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- Exhibit G-1(a) Certification of Consultant
- Exhibit G-1(b) Certification of \_\_\_\_\_
- Exhibit G-2 Certification Regarding Debarment, Suspension and Other Responsibility Matters -  
Primary Covered Transactions
- Exhibit G-3 Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying
- Exhibit G-4 Certificate of Current Cost or Pricing Data

Agreement Number:

**Exhibit G-1(a) Certification of Consultant**

I hereby certify that I am the and duly authorized representative of the firm of  
whose address is

and that neither the above firm nor I have:

- a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this AGREEMENT;
- b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this AGREEMENT; or
- c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this AGREEMENT; except as hereby expressly stated (if any);

I acknowledge that this certificate is to be furnished to the  
and the Federal Highway Administration, U.S. Department of Transportation in connection with this  
AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and  
Federal laws, both criminal and civil.

\_\_\_\_\_  
Consultant (Firm Name)

\_\_\_\_\_  
Signature (Authorized Official of Consultant)

\_\_\_\_\_  
Date

Agreement Number:

**Exhibit G-1(b)    Certification of**

I hereby certify that I am the:

☐

☐ Other

of the \_\_\_\_\_, and  
or its representative has not been required, directly or indirectly as an express or implied condition in connection  
with obtaining or carrying out this AGREEMENT to:

- a) Employ or retain, or agree to employ to retain, any firm or person; or
- b) Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration  
of any kind; except as hereby expressly stated (if any):

I acknowledge that this certificate is to be furnished to the \_\_\_\_\_  
and the Federal Highway Administration, U.S. Department of Transportation, in connection with this  
AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and  
Federal laws, both criminal and civil.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Agreement Number:

**Exhibit G-2    Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions**

- I.    The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
  - A.    Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - B.    Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - C.    Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - D.    Have not within a three (3) year period preceding this application / proposal had one or more public transactions (Federal, State and local) terminated for cause or default.
- II.   Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\_\_\_\_\_  
Consultant (Firm Name)

\_\_\_\_\_  
Signature (Authorized Official of Consultant)

\_\_\_\_\_  
Date

Agreement Number:

## **Exhibit G-3 Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying**

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative AGREEMENT, and the extension, continuation, renewal, amendment, or modification of Federal contract, grant, loan or cooperative AGREEMENT.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative AGREEMENT, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00, and not more than \$100,000.00, for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier sub-contracts, which exceed \$100,000, and that all such sub-recipients shall certify and disclose accordingly.

---

Consultant (Firm Name)

---

Signature (Authorized Official of Consultant)

---

Date

Agreement Number:

**Exhibit G-4    Certificate of Current Cost or Pricing Data**

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 2.101 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer’s representative in support of \_\_\_\_\_\* are accurate, complete, and current as of \_\_\_\_\_\*\*.

This certification includes the cost or pricing data supporting any advance AGREEMENT’s and forward pricing rate AGREEMENT’s between the offer or and the Government that are part of the proposal.

Firm:

\_\_\_\_\_

Signature

\_\_\_\_\_

Title

Date of Execution\*\*\*:

\_\_\_\_\_  
\*Identify the proposal, quotation, request for pricing adjustment, or other submission involved, giving the appropriate identifying number (e.g. project title.)  
\*\*Insert the day, month, and year, when price negotiations were concluded and price AGREEMENT was reached.  
\*\*\*Insert the day, month, and year, of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

Agreement Number:

# ***Exhibit H***

## ***Liability Insurance Increase***

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### **To Be Used Only If Insurance Requirements Are Increased**

The professional liability limit of the CONSULTANT to the AGENCY identified in Section XII, Legal Relations and Insurance of this Agreement is amended to \$

The CONSULTANT shall provide Professional Liability insurance with minimum per occurrence limits in the amount of \$

Such insurance coverage shall be evidenced by one of the following methods:

- Certificate of Insurance.
- Self-insurance through an irrevocable Letter of Credit from a qualified financial institution.

Self-insurance through documentation of a separate fund established exclusively for the payment of professional liability claims, including claim amounts already reserved against the fund, safeguards established for payment from the fund, a copy of the latest annual financial statements, and disclosure of the investment portfolio for those funds.

Should the minimum Professional Liability insurance limit required by the AGENCY as specified above exceed \$1 million per occurrence or the value of the contract, whichever is greater, then justification shall be submitted to the Federal Highway Administration (FHWA) for approval to increase the minimum insurance limit.

If FHWA approval is obtained, the AGENCY may, at its own cost, reimburse the CONSULTANT for the additional professional liability insurance required.

Notes: Cost of added insurance requirements: \$

- Include all costs, fee increase, premiums.
- This cost shall not be billed against an FHWA funded project.
- For final contracts, include this exhibit.

Agreement Number:

# **Exhibit I**

## ***Alleged Consultant Design Error Procedures***

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The purpose of this exhibit is to establish a procedure to determine if a consultant's alleged design error is of a nature that exceeds the accepted standard of care. In addition, it will establish a uniform method for the resolution and/or cost recovery procedures in those instances where the agency believes it has suffered some material damage due to the alleged error by the consultant.

### **Step 1 Potential Consultant Design Error(s) is Identified by Agency's Project Manager**

At the first indication of potential consultant design error(s), the first step in the process is for the Agency's project manager to notify the Director of Public Works or Agency Engineer regarding the potential design error(s). For federally funded projects, the Region Local Programs Engineer should be informed and involved in these procedures. (Note: The Director of Public Works or Agency Engineer may appoint an agency staff person other than the project manager, who has not been as directly involved in the project, to be responsible for the remaining steps in these procedures.)

### **Step 2 Project Manager Documents the Alleged Consultant Design Error(s)**

After discussion of the alleged design error(s) and the magnitude of the alleged error(s), and with the Director of Public Works or Agency Engineer's concurrence, the project manager obtains more detailed documentation than is normally required on the project. Examples include: all decisions and descriptions of work; photographs, records of labor, materials and equipment.

### **Step 3 Contact the Consultant Regarding the Alleged Design Error(s)**

If it is determined that there is a need to proceed further, the next step in the process is for the project manager to contact the consultant regarding the alleged design error(s) and the magnitude of the alleged error(s). The project manager and other appropriate agency staff should represent the agency and the consultant should be represented by their project manager and any personnel (including sub-consultants) deemed appropriate for the alleged design error(s) issue.

### **Step 4 Attempt to Resolve Alleged Design Error with Consultant**

After the meeting(s) with the consultant have been completed regarding the consultant's alleged design error(s), there are three possible scenarios:

- It is determined via mutual agreement that there is not a consultant design error(s). If this is the case, then the process will not proceed beyond this point.
- It is determined via mutual agreement that a consultant design error(s) occurred. If this is the case, then the Director of Public Works or Agency Engineer, or their representatives, negotiate a settlement with the consultant. The settlement would be paid to the agency or the amount would be reduced from the consultant's agreement with the agency for the services on the project in which the design error took place. The agency is to provide LP, through the Region Local Programs Engineer, a summary of the settlement for review and to make adjustments, if any, as to how the settlement affects federal reimbursements. No further action is required.
- There is not a mutual agreement regarding the alleged consultant design error(s). The consultant may request that the alleged design error(s) issue be forwarded to the Director of Public Works or Agency Engineer for review. If the Director of Public Works or Agency Engineer, after review with their legal counsel, is not able to reach mutual agreement with the consultant, proceed to Step 5.

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## **Step 5 Forward Documents to Local Programs**

For federally funded projects all available information, including costs, should be forwarded through the Region Local Programs Engineer to LP for their review and consultation with the FHWA. LP will meet with representatives of the agency and the consultant to review the alleged design error(s), and attempt to find a resolution to the issue. If necessary, LP will request assistance from the Attorney General's Office for legal interpretation. LP will also identify how the alleged error(s) affects eligibility of project costs for federal reimbursement.

- If mutual agreement is reached, the agency and consultant adjust the scope of work and costs to reflect the agreed upon resolution. LP, in consultation with FHWA, will identify the amount of federal participation in the agreed upon resolution of the issue.
- If mutual agreement is not reached, the agency and consultant may seek settlement by arbitration or by litigation.

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# **Exhibit J**

## **Consultant Claim Procedures**

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The purpose of this exhibit is to describe a procedure regarding claim(s) on a consultant agreement. The following procedures should only be utilized on consultant claims greater than \$1,000. If the consultant's claim(s) are a total of \$1,000 or less, it would not be cost effective to proceed through the outlined steps. It is suggested that the Director of Public Works or Agency Engineer negotiate a fair and reasonable price for the consultant's claim(s) that total \$1,000 or less.

This exhibit will outline the procedures to be followed by the consultant and the agency to consider a potential claim by the consultant.

### **Step 1 Consultant Files a Claim with the Agency Project Manager**

If the consultant determines that they were requested to perform additional services that were outside of the agreement's scope of work, they may be entitled to a claim. The first step that must be completed is the request for consideration of the claim to the Agency's project manager.

The consultant's claim must outline the following:

- Summation of hours by classification for each firm that is included in the claim;
- Any correspondence that directed the consultant to perform the additional work;
- Timeframe of the additional work that was outside of the project scope;
- Summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work; and
- Explanation as to why the consultant believes the additional work was outside of the agreement scope of work.

### **Step 2 Review by Agency Personnel Regarding the Consultant's Claim for Additional Compensation**

After the consultant has completed step 1, the next step in the process is to forward the request to the Agency's project manager. The project manager will review the consultant's claim and will met with the Director of Public Works or Agency Engineer to determine if the Agency agrees with the claim. If the FHWA is participating in the project's funding, forward a copy of the consultant's claim and the Agency's recommendation for federal participation in the claim to the WSDOT Local Programs through the Region Local Programs Engineer. If the claim is not eligible for federal participation, payment will need to be from agency funds.

If the Agency project manager, Director of Public Works or Agency Engineer, WSDOT Local Programs (if applicable), and FHWA (if applicable) agree with the consultant's claim, send a request memo, including backup documentation to the consultant to either supplement the agreement, or create a new agreement for the claim. After the request has been approved, the Agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit. No further action in needed regarding the claim procedures.

If the Agency does not agree with the consultant's claim, proceed to step 3 of the procedures.

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### **Step 3 Preparation of Support Documentation Regarding Consultant's Claim(s)**

If the Agency does not agree with the consultant's claim, the project manager shall prepare a summary for the Director of Public Works or Agency Engineer that included the following:

- Copy of information supplied by the consultant regarding the claim;
- Agency's summation of hours by classification for each firm that should be included in the claim;
- Any correspondence that directed the consultant to perform the additional work;
- Agency's summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work;
- Explanation regarding those areas in which the Agency does/does not agree with the consultant's claim(s);
- Explanation to describe what has been instituted to preclude future consultant claim(s); and
- Recommendations to resolve the claim.

### **Step 4 Director of Public Works or Agency Engineer Reviews Consultant Claim and Agency Documentation**

The Director of Public Works or Agency Engineer shall review and administratively approve or disapprove the claim, or portions thereof, which may include getting Agency Council or Commission approval (as appropriate to agency dispute resolution procedures). If the project involves federal participation, obtain concurrence from WSDOT Local Programs and FHWA regarding final settlement of the claim. If the claim is not eligible for federal participation, payment will need to be from agency funds.

### **Step 5 Informing Consultant of Decision Regarding the Claim**

The Director of Public Works or Agency Engineer shall notify (in writing) the consultant of their final decision regarding the consultant's claim(s). Include the final dollar amount of the accepted claim(s) and rationale utilized for the decision.

### **Step 6 Preparation of Supplement or New Agreement for the Consultant's Claim(s)**

The agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit.

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