

# Local Agency A&E Professional Services Negotiated Hourly Rate Consultant Agreement

Agreement Number: \_\_\_\_\_

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

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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.

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 absence 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:

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

If to CONSULTANT:

Name:  
Agency:  
Address:  
City:                      State:              Zip:  
Email:  
Phone:  
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 conform to the criteria agreed upon detailed in the AGREEMENT documents. These SERVICES must 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.

## 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. The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31 ([www.ecfr.gov](http://www.ecfr.gov)).

- A. Hourly Rates: Hourly rates are comprised of the following elements - Direct (Raw) Labor, Indirect Cost Rate, and Fee (Profit). The CONSULTANT shall be paid by the AGENCY for work done, based upon the negotiated hourly rates shown in Exhibits "D" and "E" attached hereto and by reference made part of this AGREEMENT. These negotiated hourly rates will be accepted based on a review of the CONSULTANT's direct labor rates and indirect cost rate computations and agreed upon fee. The accepted negotiated rates shall be memorialized in a final written acknowledgment between the parties. Such final written acknowledgment shall be incorporated into, and become a part of, this AGREEMENT. The initially accepted negotiated rates shall be applicable from the approval date, as memorialized in a final written acknowledgment, to 180 days following the CONSULTANT's fiscal year end (FYE) date.

The direct (raw) labor rates and classifications, as shown on Exhibits "D" and "E" shall be subject to renegotiations for each subsequent twelve (12) month period (180 days following FYE date to 180 days following FYE date) upon written request of the CONSULTANT or the AGENCY. The written request must be made to the other party within ninety (90) days following the CONSULTANT's FYE date. If no such written request is made, the current direct (raw) labor rates and classifications as shown on Exhibits "D" and "E" will remain in effect for the twelve (12) month period.

Conversely, if a timely request is made in the manner set forth above, the parties will commence negotiations to determine the new direct (raw) labor rates and classifications that will be applicable for the twelve (12) month period. Any agreed to renegotiated rates shall be memorialized in a final written acknowledgment between the parties. Such final written acknowledgment shall be incorporated into, and become a part of, this AGREEMENT. If requested, the CONSULTANT shall provide current payroll register and classifications to aid in negotiations. If the parties cannot reach an agreement on the direct (raw) labor rates and classifications, the AGENCY shall perform an audit of the CONSULTANT's books and records to determine the CONSULTANT's actual costs. The audit findings will establish the direct (raw) labor rates and classifications that will be applicable for the twelve (12) month period.

The fee as identified in Exhibits "D" and "E" shall represent a value to be applied throughout the life of the AGREEMENT.

The CONSULTANT shall submit annually to the AGENCY an updated indirect cost rate within 180 days of the close of its fiscal year. An approved updated indirect cost rate shall be included in the current fiscal year rate under this AGREEMENT, even if/when other components of the hourly rate are not renegotiated. These rates will be applicable for the twelve (12) month period. At the AGENCY's option, a provisional and/or conditional indirect cost rate may be negotiated. This provisional or conditional indirect rate shall remain in effect until the updated indirect cost rate is completed and approved. Indirect cost rate costs incurred during the provisional or conditional period will not be adjusted. The CONSULTANT may request an extension of the last approved indirect cost rate for the twelve (12) month period. These requests for provisional indirect cost rate and/or extension will be considered on a case-by-case basis, and if granted, will be memorialized in a final written acknowledgment.

The CONSULTANT shall maintain and have accessible support data for verification of the components of the hourly rates, i.e., direct (raw) labor, indirect cost rate, and fee (profit) percentage. The CONSULTANT shall bill each employee's actual classification, and actual salary plus indirect cost rate plus fee.

- A. **Direct Non-Salary Costs:** Direct Non-Salary Costs will be reimbursed at the actual cost to the CONSULTANT. 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 lowest price available, 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 the WSDOT's Accounting Manual M 13-82, Chapter 10 – Travel Rules and Procedures, and all 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 these SERVICES. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the STATE upon request. All above charges must be necessary for the SERVICES provided under this AGREEMENT.
- B. **Maximum Amount Payable:** The Maximum Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT on page one (1.) The Maximum 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.
- C. **Monthly Progress Payments:** Progress payments may be claimed on a monthly basis for all costs authorized in A and B above. Detailed statements shall support the monthly billings for hours expended at the rates established in Exhibit "D," including names and classifications of all employees, and billings for all direct non-salary expenses. To provide a means of verifying the billed salary costs for the CONSULTANT's employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates, and present duties of those employees performing work on the SERVICES at the time of the interview.
- D. **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 SERVICES under this AGREEMENT, contingent 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. Per WSDOT's "Audit Guide for Consultants," Chapter 23 "Resolution Procedures," 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

E. **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 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 acknowledgment 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 agreement. 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 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.

Agreement Number:

## 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 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 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 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.

## **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. The Parties have mutually negotiated this waiver.

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 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.

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 AGREEMENTS over one hundred thousand dollars (\$100,000.00) and Exhibit “G-4” is required only in AGREEMENTS 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.

### **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 and AGENCY 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.

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, AGREEMENTs, 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, scribbles, recordings, visual displays, photographs, minutes of meetings, 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.*

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

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Project No.

See attached scope of work.

# SCOPE OF WORK

## MAIN AND WOOD IMPROVEMENTS CONSTRUCTION MANAGEMENT & INSPECTION SERVICES CITY OF SUMNER

### Project Background

The City of Sumner is initiating a project to upgrade the signalized intersection at Main Street and Wood Avenue. Once constructed, this project will improve pedestrian safety and mobility around the intersection. Key work includes the reconstruction of sidewalk, driveways, and ADA curb ramps; upgrades to the water, sewer and storm systems; stamped concrete paving; and replacement upgrades to the intersection signal system. The project design is complete and the construction contractor bids are expected to be opened in late 2022. The City is contracting with Consor North America, Inc. (Consultant) to provide construction management and inspection services for the construction phase of the project.

### Project Summary

Consultant will perform project management, contract administration, construction management, construction inspection, and testing and special inspection for the Main and Wood Improvements Project.

### Project Assumptions

Construction is anticipated to commence in January 2023 for project kick-off and critical submittal phase. Once traffic signal system components and bollard submittals are approved, a work suspension is anticipated until traffic signal system components are fabricated. For budgeting purposes, a project suspension period of 120 calendar days (approximately 17 weeks) and an active construction duration of 100 working days (approximately 20 weeks) has been assumed.

### Scope of Services

Consultant is proposing to perform the following services in relation to the City's Main and Wood Improvements Project:



## Task 1 - Project Management and Contract Administration

### *Objective*

Provide overall leadership and team strategic guidance aligned with City staff objectives. Coordinate, monitor, and control the project resources to meet the technical, communication, and contractual obligations required for developing and implementing the project scope.

### *Subtask 1.1 Project Coordination*

- Perform general administration and project management throughout the construction phase to ensure successful completion of all tasks and elements of the Project within the established scope, schedule, and budget.
- Proactively track progress of project work completed against schedule & budget.
- Inform the City of any anticipated challenges during the construction phase as they may arise and develop solutions together.

### *Subtask 1.2 Invoices/Status Reporting*

- Prepare monthly invoices, including expenditures by task, hours worked by project personnel, and other direct expenses with the associated backup documentation.
- Monthly status reports to accompany each invoice and include comparisons of monthly expenditures and cumulative charges to budget by Task.

### *Subtask 1.2 Assumptions*

- Assume ten (10) monthly invoices and status reports

### *Subtask 1.2 Deliverables*

- Consultant will deliver to the City a monthly invoice and status report covering:
  - Work on the project performed during the previous month
  - Issues encountered, and actions taken for their resolution
  - Potential impacts to submittal dates, budget shortfalls, or optional services
  - Construction schedule updates
  - Issues requiring project team action

### *Subtask 1.3 Project Safety Plan and SBE participation plan*

Prepare a project specific safety plan for Consultant employees, to be used in conjunction with safety plans provided by the construction contractor.

### *Subtask 1.3 Deliverables*

- Copy of project specific safety plan

## Task 2 – Construction Contract Administration and Closeout

### *Objective*

Oversee construction phase activities as first point of contact for construction contractor. Coordinate with City staff and design team. Lead all project meetings and monitor project budget and schedule, quantities and quality of materials, and verify conformance with contract documents.

### *Subtask 2.1 Pre-Construction Meeting*

Attend and lead the Pre-Construction Meeting with up to three (3) consultant team members in attendance. Prepare meeting agenda, run meeting, and issue meeting summary.

#### *Subtask 2.1 Assumptions*

- Three (3) consultant staff to attend Pre-Construction Meeting.

#### *Subtask 2.1 Deliverables*

- Meeting agenda and meeting minutes

### *Subtask 2.2 Project and Weekly Construction Meetings*

Attend and lead project, weekly construction, and utility coordination meetings with up to one (1) consultant team members in attendance. Prepare meeting agenda, run meeting, and issue meeting summary.

#### *Subtask 2.2 Assumptions*

- One (1) consultant staff to attend (Construction Manager). Construction Inspector attendance is covered in Task 3 and not included in this subtask. Assume 2 project meetings during the suspension period, 20 weekly meetings during active construction, and 2 utility coordination meetings.

#### *Subtask 2.2 Deliverables*

- Meeting agenda and meeting minutes

### *Subtask 2.3 Contract Administration*

Provide construction management and administration services to monitor that the project is completed according to the Contract Documents. Perform the following tasks.

1. Coordinate and communicate with City and construction contractor on a regular basis to discuss project issues and status.
2. Issue change orders, including independent cost justifications, and maintain a change order log.
3. Issue field work directives and non-conformance reports.
4. Assess contractor-submitted baseline schedule, schedule updates, and 3-week look ahead schedules for feasibility and conformance with the Contract.
5. Monitor overall project construction budget.
6. Maintain material quantity and quality documentation, including setting up and maintenance of the Record of Materials (ROM).

### *Subtask 2.3 Assumptions*

- Development of ROM anticipated at 40 hours.
- Assume five (5) change orders taking ten (10) hours per change orders to coordinate with City, EOR and contractor and draft change orders.

### *Subtask 2.3 Deliverables*

- Change order documents for City review and approval.
- Field work directives and non-conformance reports
- Quality and quantity documentation
- ROM

### *Subtask 2.4 Monthly Progress Estimates*

Track quantities of materials installed monthly on pay note documents and draft progress estimates. Review estimates with the construction contractor prior to finalizing and submitting to the City for payment.

### *Subtask 2.4 Assumptions*

- Ten (10) monthly estimates are assumed. It is anticipated that three (3) monthly estimates will be required during the suspension period for material on hand (MOH) requests and that seven (7) monthly estimates will be required during active construction and project closeout.

### *Subtask 2.4 Deliverables*

- Quantity tracking spreadsheet
- Monthly progress estimates with recommendation to pay

### *Subtask 2.5 Shop Drawings, Submittals and RFIs*

Prepare and maintain submittal log for approximately 75 submittals and/or shop drawings. Receive, log, distribute, and track submittal reviews and responses for project submittals. Prepare a submittal and documentation matrix for reference by contractor, EOR and construction management team. Prepare and maintain RFI log for 25 RFIs. Receive, log, distribute, and track RFIs and respond to construction contractor.

### *Subtask 2.5 Assumptions*

- 75 shop drawings and submittals are assumed, with an average of two (2) hours per submittal. Assume 10 additional re-submittals.
- 25 RFIs are assumed, with an average of two (2) hours per RFI.

### *Subtask 2.5 Deliverables*

- Updated Submittal Log
- Reviewed submittals and shop drawings returned to construction contractor
- Updated RFI Log
- Reviewed RFI responses to construction contractor

### *Subtask 2.6 Labor Compliance*

Lead all labor compliance monitoring including the following tasks.

1. Track and file statements of intent to pay prevailing wages (Intent) and affidavit of paid wages (Affidavit).
2. Review and approve Request to Sublets (RTS).
3. Collect and review certified payroll and work with contractor and subcontractors to resolve deficiencies.
4. Coordinate wage rate interviews with construction inspector and contractors.
5. Oversee contractor DBE compliance and reporting, including subcontract review, utilization reports.

### *Subtask 2.6 Assumptions*

- 15 Request to Sublets are assumed, with an average of one and half (1.5) hours per request.

### *Subtask 2.6 Deliverables*

- Requests to Sublet filed
- Intents and Affidavits filed
- Certified payroll filed
- Wage rate interviews filed
- DBE reporting filed

### *Subtask 2.7 Project Closeout*

Consultant will lead the close-out phase to document completion of the project and adherence to WSDOT LAG requirements. Consultant will provide complete project files to the City and perform the following duties to assist with project close-out.

**Substantial Completion/Punch List:** Upon substantial completion of work, Construction Inspector will provide punch list of any outstanding items and coordinate completion with contractor.

**As-Built Drawings:** Construction Inspector will confirm that the contractor is maintaining a set of “Record Drawings”

**Project Closeout:** Transfer project documentation to the City for permanent storage. Provide a thumb drive or other electronic transfer method with all electronic documents and pictures. Provide hard copies of documentation upon request.

### *Subtask 2.7 Deliverables*

- Punch list
- Project Closeout Documents (Project documentation files including Electronic documents and pictures on a thumb drive). Hard copies if requested.

## **Task 3 – Construction Inspection**

### *Objective*

Provide full time construction inspection to observe construction, monitor the work by the construction contractor, and document that the work is in general compliance with the requirements of the Contract Documents. The Construction Inspector is to act as the City’s on-site representative, is responsible for routine interfacing with the construction contractor and stakeholders, and is to observe the construction contractor’s operations and work.

### *Subtask 3.1 Construction Inspection*

The Construction Inspector's activities, in general, will include the following tasks.

1. Attend pre-construction conference, project, and weekly progress meetings.
2. Establish pre-construction site conditions using photo and video log of sites.
3. Observe/inspect the contractor's activities, operations, and work and document the contractor's work is in general compliance with the requirements of the contract documents. Observations will be completed on the standard WSDOT daily report form unless specified differently by the City.
4. Monitor the contractor's progress with respect to planned/scheduled work.
5. Document contractors and DBE subcontractors working onsite and conduct wage rate interviews for all DBE contractors, contractor and sub-contractors.
6. Document the contractor's construction activities (preparation of daily reports, photographs, etc.).
7. Create field note records of bid item work performed.
8. Verify and document that traffic control is per accepted traffic control plans when on-site.
9. Keep Construction Manager and City informed of project progress, issues, and developments.
10. Review minor change requests by the contractor.
11. Coordinate, observe, and document material testing and special inspection
12. Utility coordination with stakeholders
13. Track force account labor and equipment/materials; issue force account sheets for additional payment when required.
14. Maintain field construction records and as-built set.
15. Maintain photo log

### *Subtask 3.1 Assumptions*

- Inspection hours estimated at 45 hours per week
- for 100 working days (20 weeks) and includes attendance at all project meetings.
- 3 site visits at 8 hours estimate per visit will be required for MOH requests during the suspension period.

### *Subtask 3.1 Deliverables*

- Daily progress reports, photos, force account documentation
- DBE on site review
- Contractor and sub-contractors wage rate interviews
- Daily on-site contractor and sub-contractors list

## **Task 4 – Testing and Special Inspection Services During Construction**

### *Objective*

Work under this task includes material testing and special inspection services in accordance with LAG testing requirements and NHS Highway System requirements.

### *Subtask 4.1 Material Testing and Special Inspections*

Consultant will assist the City in developing a quality assurance program. Consultant will provide material testing and special inspection as outlined and at the frequency indicated in the LAG Manual.

### *Subtask 4.1 Assumptions*

- Testing level of effort based on assumptions included in Materials Testing Consulting, Inc's quote (attached)

### *Subtask 4.1 Deliverables*

- Material test and special inspection test reports

## **Proposed Material Testing and Special Inspection Firm**

- Materials Testing Consulting, Inc. – Material Testing and Special Inspection

## **Proposed Project Fee Estimate**

Consultant proposes to perform this work on a time and expenses basis with a total not to exceed amount of \$ 316,130.00. The proposed fee estimate is provided as "Attachment A." Fee estimates are based upon Consultant's approved indirect overhead rates.

## **Proposed Project Schedule**

Construction is anticipated to commence in January 2023 for project kick-off and critical submittal phase. Once traffic signal system components and bollard submittals are approved, a work suspension is anticipated until traffic signal system components are fabricated. For budgeting purposes, a project suspension period of 120 calendar days (approximately 17 weeks) and an active construction duration of 100 working days (approximately 20 weeks) has been assumed.

**Exhibit B**  
**DBE Participation Plan**

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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.

NA



**Preparation and Delivery of Electronic Engineering and Other Data**

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

NA

B. Roadway Design Files

NA

C. Computer Aided Drafting Files

NA

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

The agency has the right to review products provided by the consultant

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

Project documents

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

Project plans and specifications, contractor bid tabs, Contractor contract documents

II. Any Other Electronic Files to Be Provided

NA

III. Methods to Electronically Exchange Data

Email, sharepoint

A. Agency Software Suite

B. Electronic Messaging System

C. File Transfers Format

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

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See attached.

**Consultant Fee Determination - Summary Sheet  
Negotiated Fee**

**City of Sumner  
MAIN AND WOOD IMPROVEMENTS PROJECT**

**Task Description:**

**Consultant Fee Determination**

**Consultant:** Consor

| <b>Code</b>   | <b>Classification</b>             | <b>Man Hours</b> |   | <b>Rate</b>         |   | <b>Dollars</b>                  |
|---|-----------------------------------|------------------|---|---------------------|---|---------------------------------|
| <b>LABOR</b>  |                                   | <b>Hours</b>     |   |                     |   |                                 |
|   | Principal II (Machan)             | 5                | x | \$98.06             | = | 490.30                          |
|   | Construction Manager V (M Warren) | 537              | x | \$60.90             | = | 32,703.30                       |
|   | Inspector IV (Hawkins)            | 984              | x | \$43.58             | = | 42,877.80                       |
|   | Technician III (Ramos)            | 273              | x | \$40.79             | = | 11,136.35                       |
|   | Technician I (E Warren)           | 215              | x | \$27.30             | = | 5,869.50                        |
|   | Administrative II (Gillis)        | 10               | x | \$30.33             | = | 303.35                          |
|   | <b>Total Hours</b>                | <b>2,024</b>     |   |                     |   |                                 |
|   | <b>Total DSC</b>                  |                  |   |                     | = | <b>93,380.60</b>                |
| <b>Overhead (OH Cost -- including Salary Additives)</b>               |                                   |                  |   |                     |   |                                 |
|   | OH Rate x DSC of                  | <u>194.22%</u>   | x | <u>\$ 93,380.60</u> | = | <b>181,363.80</b>               |
| <b>Negotiated Fee (NF):</b>   |                                   |                  |   |                     |   |                                 |
|   | NF Rate x DSC of                  | <u>25.40%</u>    | x | <u>\$ 93,380.60</u> | = | <b>23,718.67</b>                |
| <b>Reimbursables</b>  |                                   |                  |   |                     |   |                                 |
| <u>Itemized</u>   | <b>Quantity</b>                   | <b>Units</b>     |   | <b>Rate</b>         |   | <b>In Scope</b>                 |
| Mileage   | 3,484                             | each             | @ | \$0.625             | = | <u>2,177.50</u>                 |
| <b>Reimbursables Total</b>  |                                   |                  |   |                     |   | <b><u>2,177.50</u></b>          |
| <b>Consor Subtotal</b>  |                                   |                  |   |                     |   | <b><u>300,640.57</u></b>        |
| <b>Material Testing and Special Inspection Costs (Direct Expense)</b> |                                   |                  |   |                     |   |                                 |
| MTC   |                                   |                  |   |                     |   | <b><u>15,489.00</u></b>         |
| <b>Grand Total</b>  |                                   |                  |   |                     |   | <b><u><u>316,129.57</u></u></b> |

Prepared By: Mark Warren

Date: October 27, 2022

Select 2023 Rate Schedule to Use:  
Custom

MAIN AND WOOD IMPROVEMENTS PROJECT  
CITY OF SUMNER  
PROPOSED FEE ESTIMATE

|   | LABOR CLASSIFICATION (HOURS)                            |                        |              |                |              |                  |             | Hours             | Labor            | Subconsultants                    |                  | Subconsultant Total with Markup | Expenses          | Total |
|---|---|------------------------|--------------|----------------|--------------|------------------|-------------|-------------------|------------------|-----------------------------------|------------------|---------------------------------|-------------------|-------|
|   | Principal II  | Construction Manager V | Inspector IV | Technician III | Technician I | Administrative I | MTC         |                   |                  | Subconsultant Multiplier % Markup |                  |                                 |                   |       |
|   | Average Billing Rate Estimated per Classification/Staff |                        |              |                |              |                  |             |                   |                  |                                   |                  |                                 |                   |       |
| Staff Name  | Machan  | WarrenM                | Hawkins      | Ramos          | WarrenE      | Gillis           |             |                   |                  |                                   |                  |                                 |                   |       |
| <b>Task 1 - Project Management and Contract Administration</b>              |   |                        |              |                |              |                  |             |                   |                  |                                   |                  |                                 |                   |       |
| Task 1.1 - Project Coordination   | 4   |                        |              |                |              |                  | 4           | \$ 1,254          |                  | 1.0                               | \$ -             | \$ -                            | \$ 1,254          |       |
| Task 1.2 - Invoices/Status Reporting  |   | 5                      |              |                |              |                  | 15          | \$ 1,943          |                  | 1.0                               | \$ -             | \$ -                            | \$ 1,943          |       |
| Task 1.3 - Project Safety Plan  | 1   | 2                      |              |                |              |                  | 3           | \$ 703            |                  | 1.0                               | \$ -             | \$ -                            | \$ 703            |       |
| <b>Task 1 Subtotal</b>  | <b>5</b>  | <b>7</b>               | <b>0</b>     | <b>0</b>       | <b>0</b>     | <b>10</b>        | <b>22</b>   | <b>\$ 3,899</b>   | <b>\$ -</b>      |                                   | <b>\$ -</b>      | <b>\$ -</b>                     | <b>\$ 3,899</b>   |       |
| <b>Task 2 - Construction Contract Administration and Closeout</b>           |   |                        |              |                |              |                  |             |                   |                  |                                   |                  |                                 |                   |       |
| Task 2.1 - Pre-Construction Meeting   |   | 17                     | 4            | 3              |              |                  | 24          | \$ 4,257          |                  | 1.0                               | \$ -             | \$ -                            | \$ 4,257          |       |
| Task 2.2 - Project and Weekly Construction Meetings                         |   | 120                    |              |                |              |                  | 120         | \$ 23,358         |                  | 1.0                               | \$ -             | \$ 406                          | \$ 23,764         |       |
| Task 2.3 - Contract Administration  |   | 100                    |              | 200            |              |                  | 300         | \$ 45,541         |                  | 1.0                               | \$ -             | \$ -                            | \$ 45,541         |       |
| Task 2.4 - Monthly Progress Estimates                                       |   | 45                     |              | 30             | 30           |                  | 105         | \$ 15,288         |                  | 1.0                               | \$ -             | \$ -                            | \$ 15,288         |       |
| Task 2.5 - Shop Drawings, Submittals and RFIs                               |   | 200                    |              |                | 50           |                  | 250         | \$ 43,293         |                  | 1.0                               | \$ -             | \$ -                            | \$ 43,293         |       |
| Task 2.6 - Labor Compliance   |   | 8                      |              |                | 135          |                  | 143         | \$ 13,337         |                  | 1.0                               | \$ -             | \$ -                            | \$ 13,337         |       |
| Task 2.7 - Project Closeout   |   | 40                     | 40           | 40             |              |                  | 120         | \$ 18,572         |                  | 1.0                               | \$ -             | \$ -                            | \$ 18,572         |       |
| <b>Task 2 Subtotal</b>  | <b>0</b>  | <b>530</b>             | <b>44</b>    | <b>273</b>     | <b>215</b>   | <b>0</b>         | <b>1062</b> | <b>\$ 163,646</b> | <b>\$ -</b>      |                                   | <b>\$ -</b>      | <b>\$ 406</b>                   | <b>\$ 164,052</b> |       |
| <b>Task 3 - Construction Inspection</b>                                     |   |                        |              |                |              |                  |             |                   |                  |                                   |                  |                                 |                   |       |
| Task 3.1 - Construction Inspection  |   |                        | 940          |                |              |                  | 940         | \$ 130,918        |                  | 1.0                               | \$ -             | \$ 1,771                        | \$ 132,689        |       |
| <b>Task 3 Subtotal</b>  | <b>0</b>  | <b>0</b>               | <b>940</b>   | <b>0</b>       | <b>0</b>     | <b>0</b>         | <b>940</b>  | <b>\$ 130,918</b> | <b>\$ -</b>      |                                   | <b>\$ -</b>      | <b>\$ 1,771</b>                 | <b>\$ 132,689</b> |       |
| <b>Task 4 - Testing and Special Inspection Services During Construction</b> |   |                        |              |                |              |                  |             |                   |                  |                                   |                  |                                 |                   |       |
| Task 4.1 - Material Testing and Special Inspections                         |   |                        |              |                |              |                  | 0           | \$ -              | 15,489           | 1.0                               | \$ 15,489        | \$ -                            | \$ 15,489         |       |
| <b>Task 4 Subtotal</b>  | <b>0</b>  | <b>0</b>               | <b>0</b>     | <b>0</b>       | <b>0</b>     | <b>0</b>         | <b>0</b>    | <b>\$ -</b>       | <b>\$ 15,489</b> |                                   | <b>\$ 15,489</b> | <b>\$ -</b>                     | <b>\$ 15,489</b>  |       |
| <b>TOTAL - ALL TASKS</b>  | <b>5</b>  | <b>537</b>             | <b>984</b>   | <b>273</b>     | <b>215</b>   | <b>10</b>        | <b>2024</b> | <b>\$ 298,463</b> | <b>\$ 15,489</b> |                                   | <b>\$ 15,489</b> | <b>\$ 2,178</b>                 | <b>\$ 316,130</b> |       |

**Exhibit E**  
**Sub-consultant Cost Computations**

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If no sub-consultant participation listed 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.

See attached.





Date: **October 24, 2022**  
 Client Name: **City of Sumner** Contact: **Mark Warren**  
 Address: **1104 Maple St., Sumner, WA 98390** Phone: **1.360.628.6896**  
 Email: **Mark Warren <Mark.Warren@consoreng.com>** Geotech of Record: **NA**  
 Engineer: **BCRA** Based on Plans Dated: **10-12-22 Bid set**  
 Project: Name / **MAIN AND WOOD INTERSECTION IMPROVEMENTS, SUMNER, WA**

Materials Testing & Consulting, Inc. (MTC) thanks you for the opportunity, and respectfully submits the following proposal to provide materials testing and special inspection services during construction of the above-referenced project. Combined with our past experience with projects of similar size and scope, we estimate the total cost of our services for this project to be:

| <b>Special &amp; Construction Inspection</b>                    |  |      |          |           |                     |
|---|--|------|----------|-----------|---------------------|
| Bill Code   | Item / Description   | Unit | Quantity | Rate      | Total               |
| IPDS  | Subgrade Compaction / Visual Soils/ Tprobe/ Proof Rolls          | Hour | 24       | \$ 78.00  | \$ 1,872.00         |
| IPDS  | Utility Trench Compaction  | Hour | 20       | \$ 78.00  | \$ 1,560.00         |
| IPDS  | Site Subgrade & Rock Course Compaction                           | Hour | 24       | \$ 78.00  | \$ 1,872.00         |
| IPDA  | Asphalt Paving Compaction Verification / Inspection and Sampling | Hour | 24       | \$ 78.00  | \$ 1,872.00         |
| SAMPU   | Sample Pickup if Required (Allowance)                            | Hour | 4        | \$ 78.00  | \$ 312.00           |
| RC  | All Concrete Pavement, Walks, Curbs, etc                         | Hour | 32       | \$ 80.00  | \$ 2,560.00         |
| <b>Subtotal - Special &amp; Construction Inspection:</b>        |  |      |          |           | <b>\$ 10,048.00</b> |
| <b>Laboratory Testing</b>                                       |  |      |          |           |                     |
| Bill Code   | Item / Description   | Unit | Quantity | Rate      | Total               |
| PROC  | Moisture Density Relationship/Proctor with Sieve                 | Each | 4        | \$ 325.00 | \$ 1,300.00         |
| COMB  | Sieve Analysis with #200 Wash/Combined Gradation                 | Each | 4        | \$ 156.00 | \$ 624.00           |
| SE  | Sand Equivalent  | Each | 4        | \$ 120.00 | \$ 480.00           |
| FRAC  | Fracture Percentage  | Each | 4        | \$ 84.00  | \$ 336.00           |
| UVC   | Uncompacted Void Content   | Each | 1        | \$ 150.00 | \$ 150.00           |
| EXT   | Asphalt Extraction with Gradation                                | Each | 1        | \$ 285.00 | \$ 285.00           |
| RICE  | Rice Density   | Each | 4        | \$ 114.00 | \$ 456.00           |
| CONC  | Concrete Compression Test Cylinders - 4" x 8" - Sets of 5        | Each | 35       | \$ 30.00  | \$ 1,050.00         |
| <b>Subtotal - Laboratory Testing:</b>                           |  |      |          |           | <b>\$ 4,681.00</b>  |
| <b>Project Management &amp; Consulting Services</b>             |  |      |          |           |                     |
| Bill Code   | Item / Description   | Unit | Quantity | Rate      | Total               |
| PM - STR  | Project Management   | Hour | 8        | \$ 95.00  | \$ 760.00           |
| <b>Subtotal - Project Management &amp; Consulting Services:</b> |  |      |          |           | <b>\$ 760.00</b>    |
| <b>Budget Estimate for Services - Total:</b>                    |  |      |          |           | <b>\$ 15,489.00</b> |

- Soils inspection and testing services are proposed to measure compliance with project documents, including drawings, specifications and the recommendation of the soils report. In the event that a test or tests fail to meet the soils report's recommendations or if project conditions differ from approved project documents, it shall be referred to the Geotechnical Engineer of Record for resolution.
- Prices are subject to change if this agreement is not executed within 90 days from the date of the bid.
- All services will be provided on a time and materials basis. The total is an estimate and the actual construction cost will be based on the project schedule and sequencing. The estimate is not a guaranteed price. A four hour minimum charge applies to all work performed, billing is also based on a portal to portal basis. A premium rate of 1.5 times the regular rate will be charge for overtime and 2 times the regular charge for Sundays and holidays.
- MTC will utilize the laboratory based closest to the project site. MTC offers additional services upon request which will be billed at our regular fee schedule. Acceptance of this proposal will constitute agreement to MTC standard general terms and conditions.
- Invoices are due and payable upon receipt. Any invoice not paid within thirty (30) days of the date rendered may be assessed a finance charge of one-and-one-half (1½%) percent per month, for each month beyond thirty (30) days past due. Invoices not paid within sixty (60) days of the date rendered may result in MTC stopping work until such invoices are paid in full. Invoices not paid within ninety (90) days of the date rendered may be referred to an independent company for collection. Client will be responsible for all expenses incurred by MTC for the collection of any unpaid invoice(s), including collection fees, actual attorneys' fees, and costs for legal counsel as stated in RCW 19.16.250.21. Furthermore, Client acknowledges that MTC may elect to withhold a Final Letter of Compliance for the project, and/or place a lien on any real property until all outstanding invoices and/or fees have been paid in full.
- As a mutual protection to clients, the public and ourselves, all reports are submitted as the confidential property of clients, and authorization for publication of statements, conclusions or extracts from or regarding our reports is reserved pending our written approval.
- In closing, our experienced inspection staff will ensure the highest level of quality is brought to your project. We believe that our local staff and vast experience on projects of similar size and scope make MTC the clear team member of choice for this project. We look forward to working with you.

Respectfully Submitted,

*Deane Ramsdell*

**Deane Ramsdell**  
**360-508-6336**

\_\_\_\_\_  
 Client Authorized Signature

\_\_\_\_\_  
 Printed Name & Title

\_\_\_\_\_  
 Date

# **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, (*Federal Highway 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 Washington State Department of Transportation 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 Washington State Department of Transportation 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 (*Federal Highway 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 (*Federal Highway 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 (*Federal Highway 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 (*Federal Highway 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 Document**

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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

## 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

**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; o
- 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

## 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 statues 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; an
  - 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

## **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 require 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.

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Consultant (Firm Name)

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Signature (Authorized Official of Consultant)

---

Date



## Exhibit G-4 Certification 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 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.

# **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
-

# **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 has 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.

## **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.

# *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) total a \$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 meet 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 is needed regarding the claim procedures.

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

### **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 associate 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