

*Sub  
4/12*

**CLARK COUNTY  
STAFF REPORT**

**DEPARTMENT/DIVISION:** Public Works / Transportation Program

**DATE:** June 11, 2013

**REQUEST:** Authorize the Public Works Director to amend the existing on-call consultant agreement with DKS & Associates by increasing the existing contract by \$166,000, and authorize the Transportation Division Manager to sign specific Task Orders relating to this contract.

**CHECK ONE:**  Consent  Chief Administrative Officer

**PUBLIC WORKS GOALS:**

- Provide safe and efficient transportation systems within Clark County
- Continue responsible stewardship of public funds
- Promote family-wage job creation and economic development to support a thriving community
- Maintain a desirable quality of life
- Improve environmental stewardship and protection of natural resources
- Increase partnerships and foster an engaged, informed community
- Make Public Works a great place to work

**BACKGROUND:**

This request will authorize the Public Works Director to amend the existing on-call consultant agreement with DKS Associates for an additional amount of \$166,000. This contract amendment will support Phase Two of the Transportation System Management and Operations (TSMO) Pilot Project. Phase Two of the project would utilize only \$7,500 in Clark County funds with remaining funds provided by a federal grant and other agency local funds.

Phase Two of the TSMO project will evaluate the efficiency of the new blue tooth technology implemented in Phase One. This new technology will make traffic signal systems in the unincorporated County run more efficiently, thus reducing the need for future capital road and signal projects.

And with respect to the state consultant qualification review requirements (RCW 39.80.40), they have been addressed because the existing contract with DKS already underwent the competitive review process. Staff is only proposing to amend the existing DKS contract.

**COMMUNITY OUTREACH:** None.

**BUDGET AND POLICY IMPLICATIONS:** There are no budget or policy implications associated with this amendment. The Clark County costs for these services are budgeted within the adopted 2013-2014 budget and anticipated future budgets.

**FISCAL IMPACTS:**  Yes (see Fiscal Impacts Attachment)  No

*PW 13-053*



**ACTION REQUESTED:** Authorize the Public Works Director to amend the existing on-call consultant agreement with DKS & Associates by increasing the existing contract by \$166,000, and authorize the Transportation Division Manager to sign specific Task Orders relating to this contract.

**DISTRIBUTION:** Please provide copies of the approved staff report to the Department of Public Works. The Department of Public Works will forward a completed copy of the agreements to the Board after they are signed by the Public Works Director.

Steven C. Schulte  
Steven C. Schulte, P.E.  
Transportation Division Manager

APPROVED: [Signature]  
CLARK COUNTY, WASHINGTON  
BOARD OF COMMISSIONERS

Peter Capell  
Peter Capell, P.E.  
Public Works Director/County Engineer

June 11, 2013

SR 106-13

Attachments: Fiscal Impacts Sheet; Consultant Agreements

SS/PC/LL/sw

**FISCAL IMPACT ATTACHMENT**

313722 - TSMO

**Part I: Narrative Explanation**

I.A - Explanation of what the request does that has fiscal impact and the assumptions for developing revenue and costing information.

This project will evaluate the effectiveness of traffic measurement devices recently installed on county roadways under the grant-funded Transportation Systems Management and Operations (TSMO) project. The project is a partnership between Clark County, WSDOT and City of Vancouver originally approved on October 23, 2012 (PW-12-094).

This project is programmed in the 2013-2018 TIP and Annual Construction Program (Item #25). Revenues and expenses are included in the 2013 Road Fund budget.

This TSMO evaluation will cost \$166,000, including \$143,500 in Congestion Mitigation and Air Quality (CMAQ) grant funds, and \$22,500 in local match split evenly between the partners (\$7,500 each: County, Vancouver, WSDOT).

**Part II: Estimated Revenues**

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	Road Fund	Total	Road Fund	Total	Road Fund	Total
1012 Road Fund	\$166,000	\$166,000				
	\$ -	\$ -				
<b>Total:</b>	<b>\$166,000</b>	<b>\$166,000</b>	<b>\$0</b>	<b>\$0</b>		

II.A - Describe the type of revenue (grant, fees, etc.)

Total project cost is \$166,000. Congestion Mitigation and Air Quality (CMAQ) grant funds will pay \$143,500. \$22,500 will be split equally between the County, City of Vancouver and WSDOT (\$7,500 each).

**Part III: Estimated Expenditures**

III.A - Expenditures summed up

Fund #/Title	FTE's	Current Biennium		Next Biennium		Second Biennium	
		Road Fund	Total	Road Fund	Total	Road Fund	Total
1012 Road Fund		\$166,000	\$166,000				
		\$ -	\$ -				
<b>Total:</b>		<b>\$166,000</b>	<b>\$166,000</b>	<b>\$0</b>	<b>\$0</b>		

III.B = Expenditure by object category

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	Road Fund	Total	Road Fund	Total	Road Fund	Total
Salary/Benefits						
Consultant	\$166,000	\$166,000				
Supplies						
Travel						
Other controllables						
Capital Outlays						
Inter-fund Transfers						
Debt Service						
<b>Total:</b>	<b>\$166,000</b>	<b>\$166,000</b>	<b>\$0</b>	<b>\$0</b>		

<p align="center"><b>Local Agency Standard Consultant Agreement-<u>Amended Contract</u></b></p>	<p><b>Consultant/Address/Telephone:</b>   <b>DKS Associates</b>  <b>1400 SW 5<sup>th</sup> Ave, #500</b>  <b>Portland OR 97201</b>   <b>503-243-3500</b>  <b>FAX 503.243.1934</b></p>
<p><input checked="" type="checkbox"/> Architectural/Engineering Agreement  <input type="checkbox"/> Personal Services Agreement</p>	<p><b>Project Title And Work Description:</b>   <b>Clark County Public Works  Traffic Engineering Professional Services On-Call  Phase II of the TSMO project</b></p>
<p>Agreement Number</p>	<p>DBE Participation  <input type="checkbox"/> Yes    <input type="checkbox"/> No _____ %</p>
<p>Federal Aid Number</p>	<p>Federal ID Number or Social Security Number  94-2583153</p>
<p>Agreement Type (Choose one)</p> <p><input type="checkbox"/> <b>Lump Sum</b>  Lump Sum Amount \$ _____</p> <p><input type="checkbox"/> <b>Cost Plus Fixed Fee</b>  Overhead Progress Payment Rate _____ %  Overhead Cost Method</p> <p><input type="checkbox"/> Actual Cost  <input type="checkbox"/> Actual Cost Not To Exceed _____ %  <input type="checkbox"/> Fixed Rate _____ %  Fixed Fee \$ _____</p> <p><input checked="" type="checkbox"/> <b>Specific Rates Of Pay</b>  <input checked="" type="checkbox"/> Negotiated Hourly Rate  <input type="checkbox"/> Provisional Hourly Rate</p> <p><input type="checkbox"/> <b>Cost Per Unit of Work</b></p>	<p>Do you require a 1099 for IRS?    Completion Date  <input type="checkbox"/> Yes    <input checked="" type="checkbox"/> No</p> <p align="center">Total Authorized Amount: <u>\$466,000.00</u>  Management Reserve Fund: <u>\$30,000.00</u>  Maximum Amount Payable: <u>\$496,000.00</u></p>

**Index of Exhibits**

- Exhibit "A" - Scope of Work
- Exhibit "B" - DBE Participation-removed
- Exhibit "C" - Electronic Exchange of Engineering and Other Data
- Exhibit "D" - Payment (by Agreement Type)

Exhibit "E" - Consultant Fee Determination  
Exhibit "F" - Breakdown of Overhead Cost  
Exhibit "G" - Subcontract Work/Fee Determination -  
removed  
Exhibit "H" - Title VI Assurances  
Exhibit "I" - Payment Upon Termination of Agreement  
Exhibit "J" - Alleged Consultant Design Error Procedures  
Exhibit "K" - Consultant Claim Procedures  
Exhibit "L" - Liability Insurance Increase - removed  
Exhibit "M" - Certification Documents

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_,  
between the Local Agency of Clark County, \_\_\_\_\_ Washington, hereinafter called the "AGENCY",  
and the above organization hereinafter called the "CONSULTANT".

**WITNESSETH THAT:**

**WHEREAS**, the AGENCY desires to accomplish the above referenced project, and

**WHEREAS**, the AGENCY 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 for the PROJECT; and

**WHEREAS**, the CONSULTANT represents that he/she is in compliance 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 work and services as herein defined and necessary to accomplish the completed work for this PROJECT. The CONSULTANT shall furnish all services, labor, and related equipment necessary to conduct and complete the work as designated elsewhere in this AGREEMENT.

**II Scope of Work**

The Scope of Work and projected level of effort required for this PROJECT is detailed in Exhibit "A" attached hereto and by this reference made a part of this AGREEMENT.

**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 Federal, State, 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 work in sufficient detail so that the progress of the work can easily be evaluated.

The CONSULTANT, and each SUBCONSULTANT, shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONSULTANT, and each SUBCONSULTANT, shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT that may result in the termination of this AGREEMENT.

Participation for Disadvantaged Business Enterprises (DBE), if required, per 49 CFR Part 26, or participation of Minority Business Enterprises (MBE), and Women Business Enterprises (WBE), shall be shown on the heading of this

AGREEMENT. If D/M/WBE firms are utilized, the amounts authorized to each firm and their certification number will be shown on Exhibit "B" attached hereto and by this reference made a part of this AGREEMENT. If the Prime CONSULTANT is a DBE firm they must comply with the Commercial Useful Function (CUF) regulation outlined in the AGENCY'S "DBE Program Participation Plan". The mandatory DBE participation goals of the AGREEMENT are those established by the WSDOT'S Highway and Local Programs Project Development Engineer in consultation with the AGENCY.

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."

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 this PROJECT, 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 PROJECT, shall be without liability or legal exposure to the CONSULTANT.

#### **IV Time for Beginning and Completion**

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY.

All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under 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 or 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 work and services rendered under this AGREEMENT as provided in Exhibit "D" attached hereto, and by reference made part of this AGREEMENT. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31.

A post audit may be performed on this AGREEMENT. The need for a post audit will be determined by the State Auditor, WSDOT External Audit Office and/or at the request of the AGENCY'S PROJECT Manager.

#### **VI Sub-Contracting**

The AGENCY permits sub-contracts for those items of work as shown in Exhibit "G" attached hereto and by this reference made part of this AGREEMENT.

Compensation for this sub-consultant work shall be based on the cost factors shown on Exhibit "G."

The work of the sub-consultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the AGENCY.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the sub-consultant shall be substantiated in the same manner as outlined in Section V. All sub-contracts shall contain all applicable provisions of this AGREEMENT.

With respect to sub-consultant payment, the CONSULTANT shall comply with all applicable sections of the Prompt Payment laws as set forth in RCW 39.04.250 and RCW 39.76.011.

The CONSULTANT shall not sub-contract for the performance of any work under this AGREEMENT without prior written permission of the AGENCY. No permission for sub-contracting shall create, between the AGENCY and sub-contractor, any contract or any other relationship. A DBE certified sub-consultant is required to perform a minimum

amount of their sub-contracted agreement that is established by the WSDOT Highways and Local Programs Project Development Engineer in consultation with the AGENCY.

## **VII Employment**

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the AGENCY shall have the right to annul this AGREEMENT without liability or, in its discretion, to deduct from the 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 the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation, or the STATE, or the AGENCY, except regularly retired employees, without written consent of the public employer of such person.

## **VIII Nondiscrimination**

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest agrees to comply with the following laws and regulations:

Title VI of the Civil Rights Act of 1964  
(42 USC Chapter 21 Subchapter V Section 2000d through 2000d-4a)

Federal-aid Highway Act of 1973 (23  
USC Chapter 3 Section 324)

Rehabilitation Act of 1973  
(29 USC Chapter 16 Subchapter V Section 794)

Age Discrimination Act of 1975  
(42 USC Chapter 76 Section 6101 et. seq.)

Civil Rights Restoration Act of 1987  
(Public Law 100-259)

American with Disabilities Act of 1990  
(42 USC Chapter 126 Section 12101 et. seq.)

49 CFR Part 21

23 CPR Part 200

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 "H" attached hereto and by this reference made part of this AGREEMENT, and shall include the attached Exhibit "H" 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 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 as shown in Exhibit "I" for the type of AGREEMENT used.

No payment shall be made for any work 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 herein above, 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 such an event, the amount to be paid shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work 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 work required and the time which may be required to do so, and other factors which affect the value to the AGENCY of the work 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 above.

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 default 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.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the PROJECT, or dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the AGENCY. This subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the AGENCY, if the AGENCY so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the AGENCY'S concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work 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 work 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 complete work of this AGREEMENT as necessary to



correct errors appearing therein, when required to do so by the AGENCY, without additional compensation thereof. Should the AGENCY find it desirable for its own purposes to have previously satisfactorily completed work 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 XIV.

### **XI Disputes**

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the AGENCY shall be referred for determination 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 de novo 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", and disputes concerning claims will be conducted under the procedures found in Exhibit "K".

### **XII Venue, Applicable Law, and Personal Jurisdiction**

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such 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 to such action shall 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.

### **XIII Legal Relations**

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREEMENT. This contract shall be interpreted and construed in accordance with the laws of the State of Washington.

The CONSULTANT shall indemnify and hold the AGENCY and the STATE and its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT'S negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the AGENCY or the STATE against and hold harmless the AGENCY or the STATE from claims, demands or suits based solely upon the conduct of the AGENCY or the STATE, their agents, officers and employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT'S agents or employees, and (b) the AGENCY or the STATE, their agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence (2) the costs to the AGENCY or the STATE of defending such claims and suits shall be valid and enforceable only to the extent of the CONSULTANT'S negligence or the negligence of the CONSULTANT'S agents or employees.

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

The CONSULTANT shall comply with all applicable sections of the applicable Ethics laws, including RCW 42.23, which is the Code of Ethics for regulating contract interest by municipal officers. The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT'S own employees against 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.

Unless otherwise specified in the 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 the 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 and property damage insurance in an aggregate amount not less than two million dollars (\$2,000,000) for bodily injury, including death and property damage. The per occurrence amount shall not exceed one million dollars (\$1,000,000).
- C. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar (\$1,000,000) combined single limit.

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance secured by the CONSULTANT, the AGENCY will be named on all policies as an additional insured. The CONSULTANT shall furnish the AGENCY with verification of insurance and endorsements required by the 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 the AGENCY.

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 shall be limited to the amount payable under this AGREEMENT or one million (\$1,000,000) dollars, whichever is the greater, unless modified by Exhibit "L". In no case shall the CONSULTANT'S professional liability to third parties be limited in any way.

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

#### **XIV Extra Work**

- A. The AGENCY may at any time, by written order, make changes within the general scope of the 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 work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the 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 the 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 the AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the 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.

#### **XV Endorsement of Plans**

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

#### **XVI Federal and State Review**

The Federal Highway Administration and the Washington State Department of Transportation shall have the right to participate in the review or examination of the work in progress.

**XVII Certification of the Consultant and the Agency**

Attached hereto as Exhibit "M-1 (a and b)" are the Certifications of the CONSULTANT and the AGENCY, Exhibit "M-2" Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions, Exhibit "M-3" Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying and Exhibit "M-4" Certificate of Current Cost or Pricing Data. Exhibit "M-3" is required only in AGREEMENTS over \$100,000 and Exhibit "M-4" is required only in AGREEMENTS over \$500,000.

**XVIII 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 an amendment to this AGREEMENT.

**XIX 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 agreements contained in the proposal, and the supporting material submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

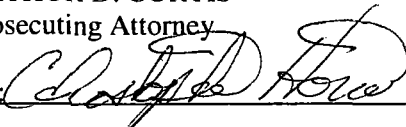
In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year shown in the "Execution Date" box on page one (1) of this AGREEMENT.

APPROVED AS TO FORM ONLY:

FOR CLARK COUNTY, WASHINGTON

ARTHUR D. CURTIS  
Prosecuting Attorney

By: \_\_\_\_\_  
Peter Capell, P.E.  
Director of Public Works

By:  \_\_\_\_\_  
Christopher Horne  
Deputy Prosecuting Attorney

FOR: \_\_\_\_\_

By: \_\_\_\_\_

TITLE: \_\_\_\_\_

## **Exhibit A-1 Scope of Work**

### **I. Scope of Work**

This Scope of Work addresses On-Call Traffic Engineering Services Contract, by and between **CLARK COUNTY, WASHINGTON**, after this called "County", a municipal corporation of the State of Washington, and **DKS & Associates**, after this called "Consultant".

#### **Task 1: Project Management and Coordination**

This task oversees integration with PORTAL, coordination with agencies, and managing the Naztec development work, and the before-after analysis. This task includes oversight effort, meeting attendances, meeting documentation, invoicing, and progress reports.

Budget: \$25,000

Schedule:

Deliverables:

- Meeting agendas and minutes for up to seven meetings
- Attendance for up to seven meetings
- Monthly progress reports
- Monthly invoices

#### **Task 2: System and Equipment Evaluation**

The data collection devices installed as part of the demonstration project shall be used to perform a before and after evaluation of the current and proposed City and County improvement projects as well as to enhance traffic signal operations.

##### **Task 2.1 Evaluate the System Installation**

Consultant shall evaluate the system installation and provide recommendations for the next phase of implementation. Consultant shall work with the project stakeholders to determine the questions that must be addressed, which may include:

- Should the region continue to install Bluetooth for travel time measurements?
- Should the region continue to install Radar for volume, speed, and occupancy information?
- What spacing is optimum for this equipment?
- What implementation approach is required to take full advantage of the new reporting capability such as percent arrival on green?
- Can the Bluetooth devices support origin-destination measurements?

As part of this task, the consultant shall gather data from the equipment and evaluate the usefulness based on the quality of the data and device locations. The consultant shall also compare the data against other available existing data (Inrix) to evaluate the equipment capability.

### **Task 2.2 System Performance Evaluation**

Consultant shall compare the on-street performance before and after implementation of the transportation system management and operations devices. The comparison must include travel times before and after installation of the signal timings. Consultant shall document the improvements made, compare the before and after travel times and present a summary of the benefits and costs for the project.

Budget: \$40,000

Schedule:

Deliverables:

- Draft and final system installation report
- Draft and final before and after report

### **Task 3: Traffic Signal Timing Support**

Consultant shall use the percent arrival on green report and the performance data collected in Task 2 to provide recommendations for signal timing improvements. For budgeting purposes, the signal timing adjustments are expected to be split and offset adjustments and not significant cycle length changes.

If signal timing improvements are recommended based the system evaluation the Consultant shall work with the City and County to implement these timings.

Budget: \$10,000

Schedule:

Deliverables:

- Updated signal timings

### **Task 4: Data Integration with PORTAL (Western Pacific Signal)**

Western Pacific Signal, the local Naztec vendor/distributor, shall provide an interface to PORTAL to create a link between ATMS and their system. Consultant shall coordinate with the VAST stakeholders, Western Pacific Signal, and Portland State University to define the data transfer requirements. This scope includes budget for Naztec to make modifications to their system to support data transfer to PORTAL.

Budget: \$6,500; *Optional: \$4,200 signal split; \$5,800 Wavetronix*

Schedule:

Deliverables:

### **Task 5: ATMS System Upgrades (Western Pacific Signal)**

The Consultant shall work with Clark County and City of Vancouver to develop a list of requirements for the upgrades to the ATMS and Naztec signal controller systems for a new percent arrival on green report. The consultant shall use this list of requirements to coordinate with Western Pacific Signal (the local Naztec vendor/distributor) to define the scope of the upgrades. This scope includes the system modifications to support the new Naztec percent arrival on green report.

Naztec Budget: \$25,000 (preliminary estimate)

DKS/IBI Budget: \$10,000

Schedule:

Deliverables:

- Draft and final list of requirements
- Scope and budget estimate for upgrades
- Draft and final percent arrival on green report

### **Task 6 ITS Network Communications Expansions**

The consultant shall work with VAST partner agencies to develop fiber sharing agreements, network and routing design, fiber splicing diagrams, installation oversight, testing and will provide network reconfiguration support to connect the City of Vancouver, Clark County and C-TRAN to the VAST ITS Network.

Budget: \$20,000

Schedule:

### **Contingency Task**

Budget: \$30,000

Schedule:

### **Phase 2 Budget**

Total Amount: \$166,500

IBI Budget: \$53,000

DKS Budget: \$52,000

Naztec Budget: \$31,500

Contingency: \$30,000

**Exhibit A-2  
Scope of Work  
(Task Order Agreement)**

Each item of work under this AGREEMENT will be provided by task assignment. Each assignment will be individually negotiated with the CONSULTANT. The amount established for each assignment will be the maximum amount payable for that assignment unless modified in writing by the AGENCY. The AGENCY is not obligated to assign any specific number of tasks to the CONSULTANT, and the AGENCY'S and CONSULTANT'S obligations hereunder are limited to tasks assigned in writing. Task assignments may include but are not limited to, the following types of work:

- A. TRAFFIC MODELING
- B. TRANSPORTATION PLANNING
- C. SIGNAL ANALYSIS
- D. TRAFFIC COUNTING AND INTERSECTION EVALUATIONS
- E. TRAFFIC SAFETY ASSESSMENTS
- F. TRAFFIC ANALYSIS
- G. DATA COLLECTION
- H. EVALUATION OF TRANSPORTATION SYSTEM MANAGEMENT AND OPERATIONS DEVICES

Task assignments made by the AGENCY shall be issued in writing by a Formal Task Assignment Document similar in format to page 2 of this exhibit.

An assignment shall become effective when a Formal Task Assignment Document is signed by the CONSULTANT and the AGENCY, except that emergency actions requiring a 24-hour or less response can be handled by an oral authorization. Such oral authorization shall be followed up with a Formal Task Assignment Document within four working days, and any billing rates agreed to orally (for individuals, subconsultants, or organizations whose rates were not previously established in the AGREEMENT) shall be provisional and subject to final negotiation and acceptance by the AGENCY.

**Exhibit A-3  
Formal Task Assignment Document**

**Consulting Services for  
Environmental Professional Services On-Call Contract  
Contract Expiration: (insert contract expiration date)**

**Task Order (Enter Task Number)  
Date**

**Project Name and Location  
Project Type  
CRP #**

This Task Order is provided in accordance with Local Agency Consultant Agreement for Consulting Services for Environmental Services and Regulatory Compliance, by and between CLARK COUNTY, WASHINGTON, after this called "County," a municipal corporation of the State of Washington, and (insert name), after this called "Consultant." All provisions outlined in the Local Agency Consultant Agreement shall apply to work performed by the Consultant in the execution of this task order.

**Scope of Work**

*Enter project specific scope of work*

**Documents/Materials to be Furnished by Consultant**

- *Enter materials*

**Documents/materials to be Furnished by the County**

- *Enter materials*

**Compensation**

All requests for payment are to be submitted to the County by the 10<sup>th</sup> of each month for the previous month's work. Include period beginning and ending dates in your invoice. Based on the attached cost estimate and schedule, the Consultant and the County mutually agree that the total amount of the billings for Task Order (*Enter Task Number*) shall not exceed \$(*Enter task maximum payable*)

**Schedule**

All work associated with Task Order (*Enter Task Number*) will be completed in accordance with the attached schedule. The completion date for all activities associated with this task order is (*Enter completion date, according to schedule*). The consultant shall inform the county of any potential changes to the schedule immediately.

**Other** Contact Steve Schulte, Concurrency Manager (360) 397-6118 ext. 4017, [steve.schulte@clark.wa.gov](mailto:steve.schulte@clark.wa.gov) with any questions or concerns, regarding this task order.

**By:** \_\_\_\_\_  
**Clark County Concurrency Manager**

**By:** \_\_\_\_\_  
**Consultant Contract Administrator**

**By:** \_\_\_\_\_  
**Clark County Project Manager**



**Disadvantaged Business  
Enterprise Utilization Certification  
(Optional – Use only when DBE Consultant is Utilized)**

To be eligible for award of this contract the bidder must fill out and submit, as part of its bid proposal, the following Disadvantaged Business Enterprise Utilization Certification relating to Disadvantaged Business Enterprise (DBE) requirements. The Contracting Agency shall consider as non-responsive and shall reject any bid proposal that does not contain a DBE Certification which properly demonstrates that the bidder will meet the DBE participation requirements in one of the manners provided for in the proposed contract. If the bidder is relying on the good faith effort method to meet the DBE assigned contract goal, documentation in addition to the certificate must be submitted with the bid proposal as support for such efforts. The successful bidder's DBE Certification shall be deemed a part of the resulting contract. Information on certified firms is available from OMWBE, telephone 360-753-9693.

certifies that the Disadvantaged Business

Name of Bidder \_\_\_\_\_

Enterprise (DBE) Firms listed below have been contacted regarding participation on this project. If this bidder is successful on this project and is awarded the contract, it shall assure that subcontracts or supply agreements are executed with those firms where an "Amount to be Applied Towards Goal" is listed. (If necessary, use additional sheet.)

Name of DBE Certificate Number	Project Role* (Prime, Joint Venture, Subcontractor, Manufacturer, Regular Dealer, Service Provider)	Description of Work	Amount to** be Applied Towards Goal
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

Disadvantaged Business Enterprise Subcontracting Goal: \_\_\_\_\_ DBE Total \$ \_\_\_\_\_ \*\*\*

\* Regular Dealer status must be approved by the Office of Equal Opportunity, Wash. State Dept. of Transportation, on each contract.  
 \*\* See the section "Counting DBE Participation Toward Meeting the Goal" in the Contract Document.  
 \*\*\* The Contracting Agency will utilize this amount to determine whether or not the bidder has met the goal or the average goal. In the event of an arithmetic difference between this total and the sum of the individual amounts listed above, then the sum of the amounts listed shall prevail and the total will be revised accordingly.

## **Exhibit C**

### **Electronic Exchange of 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

B. Roadway Design Files

C. Computer Aided Drafting Files

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

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

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

#### **II. Any Other Electronic Files to Be Provided**

#### **III. Methods to Electronically Exchange Data**

A. Agency Software Suite

B. Electronic Messaging System

C. File Transfers Format

## **Exhibit D-3**

### **Payment (Negotiated Hourly Rate)**

The CONSULTANT shall be paid by the AGENCY for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31.

1. **Hourly Rates:** The CONSULTANT shall be paid by the AGENCY for work done, based upon the negotiated hourly rates shown in Exhibit "E" and "F" attached hereto and by this reference made part of this AGREEMENT. The rates listed shall be applicable for the first twelve (12) month period and shall be subject to negotiation for the following twelve (12) month period upon request of the CONSULTANT or the AGENCY. If negotiations are not conducted for the second or subsequent twelve (12) month periods within ninety (90) days after completion of the previous period, the rates listed in this AGREEMENT, or subsequent written authorization(s) from the AGENCY shall be utilized. The rates are inclusive of direct salaries, payroll additives, overhead, and fee. The CONSULTANT shall maintain support data to verify the hours billed on the AGREEMENT.
2. **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.
  - a. Subconsultant costs will include a Sub-Consultant Oversight mark-up of 4% as allowed in accordance with 48 CFR 31.2. Subconsultant costs including Oversight Markup must be itemized on the Subconsultant Fee Determination – Summary sheet attached as Exhibit G-1.
  - b. Air or train travel will be reimbursed only to economy class levels unless otherwise approved by the AGENCY. The CONSULTANT shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance with the AGENCY'S Travel Rules and Procedures. However, air, train, and rental car costs shall be reimbursed in accordance with 48 Code of Federal Regulations (CFR) Part 31.205-46 "Travel Costs."
  - c. The billing for direct non-salary costs shall include an itemized listing of the charges directly identifiable with the PROJECT.
  - d. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the AGENCY upon request.
  - e. All above charges must be necessary for the services provided under this AGREEMENT.
3. **Management Reserve Fund:** The AGENCY may desire to establish a Management Reserve Fund to provide the Agreement Administrator with the flexibility to authorize additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$100,000 or 10% of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the Management Reserve Fund is shown in the heading of this AGREEMENT. This fund may not be replenished. Any changes requiring additional costs in excess of the Management Reserve Fund shall be made in accordance with Section XIV, "Extra Work."
4. **Maximum Total Amount Payable:** The Maximum Total Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The Maximum Total Amount Payable is comprised of the Total Amount

Authorized, and the Management Reserve Fund. The Maximum Total Amount Payable does not include payment for Extra Work as stipulated in Section XIV, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.

5. **Monthly Progress Payments:** Progress payments may be claimed on a monthly basis for all costs authorized in 1 and 2 above. The monthly billing shall be supported by detailed statements for hours expended at the rates established in Exhibit "E", 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 PROJECT at the time of the interview.
6. **Final Payment:** Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the work under this AGREEMENT, contingent 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) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the AGENCY for audit findings.

7. **Inspection of Cost Records:** The CONSULTANT and their sub-consultants shall keep available for inspection by representatives of the AGENCY, STATE and the United States, for a period of three (3) 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 contract is initiated before the expiration of the three (3) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

**Exhibit E-2**  
**Consultant Fee Determination - Summary Sheet**  
**(Specific Rates of Pay)**  
**Fee Schedule**

Discipline or Job Title	Hourly Rate	Overhead @ _____ %	Profit @ _____ %	Rate Per Hour

## Exhibit F Breakdown of Overhead Cost

Account Title	\$ Beginning Total	% of Direct Labor
Direct Labor		
Overhead Expenses:		
FICA		
Unemployment		
Health/Accident Insurance		
Medical Aid & Industrial Insurance		
Holiday/Vacation/Sick Leave		
Commission/Bonus/Pension		
<b>Total Fringe Benefits</b>		
General Overhead:		
State B&O Taxes		
Insurance		
Administration & Time Not Assignable		
Printing, Stationery & Supplies		
Professional Services		
Travel Not Assignable		
Telephone & Telegraph Not Assignable		
Fees, Dues & Professional Meetings		
Utilities & Maintenance		
Professional Development		
Rent		
Equipment Support		
Office, Miscellaneous & Postage		
<b>Total General Overhead</b>		
<b>Total Overhead (General + Fringe)</b>		
<b>Overhead Rate (Total Overhead / Direct Labor)</b>		

## **Exhibit H**

### **Title VI Assurances**

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees, and successors in interest agrees as follows:

1. **Compliance with Regulations:** The CONSULTANT shall comply with the Regulations relative to non-discrimination in federally assisted programs of the AGENCY, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "REGULATIONS"), which are herein incorporated by reference and made a part of this AGREEMENT.
2. **Non-discrimination:** The CONSULTANT, with regard to the work performed during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of sub-consultants, including procurement of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the AGREEMENT covers a program set forth in Appendix B of the REGULATIONS.
3. **Solicitations for Sub-consultants, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiations made by the CONSULTANT for work to be performed under a sub-contract, including procurement of materials or leases of equipment, each potential sub-consultant or supplier shall be notified by the CONSULTANT of the CONSULTANT'S obligations under this AGREEMENT and the REGULATIONS relative to non-discrimination on the grounds of race, color, sex, or national origin.
4. **Information and Reports:** The CONSULTANT shall provide all information and reports required by the REGULATIONS or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by AGENCY, STATE or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with such REGULATIONS, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the AGENCY, STATE or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Non-compliance:** In the event of the CONSULTANT'S non-compliance with the non-discrimination provisions of this AGREEMENT, the AGENCY shall impose such AGREEMENT sanctions as it, the STATE or the FHWA may determine to be appropriate, including, but not limited to:
  - Withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies, and/or;
  - Cancellation, termination, or suspension of the AGREEMENT, in whole or in part
6. **Incorporation of Provisions:** The CONSULTANT shall include the provisions of paragraphs (1) through (5) in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any sub-consultant or procurement as the AGENCY, STATE or FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance.

Provided, however, that in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a sub-consultant or supplier as a result of such direction, the CONSULTANT may request the AGENCY and the STATE enter into such litigation to protect the interests of the AGENCY and the STATE and, in addition, the CONSULTANT may request the United States enter into such litigation to protect the interests of the United States.

**Exhibit I**  
**Payment Upon Termination of Agreement**  
**By the Agency Other Than for**  
**Fault of the Consultant**

**(Refer to Agreement, Section IX)**

**Lump Sum Contracts**

A final payment shall be made to the CONSULTANT which when added to any payments previously made shall total the same percentage of the Lump Sum Amount as the work completed at the time of termination is to the total work required for the PROJECT. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

**Cost Plus Fixed Fee Contracts**

A final payment shall be made to the CONSULTANT which when added to any payments previously made, shall total the actual costs plus the same percentage of the fixed fee as the work completed at the time of termination is to the total work required for the Project. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

**Specific Rates of Pay Contracts**

A final payment shall be made to the CONSULTANT for actual hours charged at the time of termination of this AGREEMENT plus any direct nonsalary costs incurred at the time of termination of this AGREEMENT.

**Cost Per Unit of Work Contracts**

A final payment shall be made to the CONSULTANT for actual units of work completed at the time of termination of this AGREEMENT.



## **Exhibit J**

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

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

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

At the first indication of potential consultant design error(s), the first step in the process is for the Agency's project manager to notify the Director of Public Works or Agency Engineer regarding the potential design error(s). For federally funded projects, the Region Highways and 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 H&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 Highways and Local Programs

For federally funded projects all available information, including costs, should be forwarded through the Region Highways and Local Programs Engineer to H&LP for their review and consultation with the FHWA. H&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, H&LP will request assistance from the Attorney General's Office for legal interpretation. H&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. H&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 K**

### **Consultant Claim Procedures**

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

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

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

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

The consultant's claim must outline the following:

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

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

After the consultant has completed step 1, the next step in the process is to forward the request to the Agency's project manager. The project manager will review the consultant's claim and will 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 Highways and 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 Highways and 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 associated with the additional work;
- Explanation regarding those areas in which the Agency does/does not agree with the consultant's claim(s);
- Explanation to describe what has been instituted to preclude future consultant claim(s); and
- Recommendations to resolve the claim.

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

The Director of Public Works or Agency Engineer shall review and administratively approve or disapprove the claim, or portions thereof, which may include getting Agency Council or Commission approval (as appropriate to agency dispute resolution procedures). If the project involves federal participation, obtain concurrence from WSDOT Highways and 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.

**Exhibit M-1 (a)**  
**Certification Of Consultant**

Project No. \_\_\_\_\_

Local Agency \_\_\_\_\_

I hereby certify that I am \_\_\_\_\_ and duly authorized  
representative of the firm of \_\_\_\_\_ whose address is  
\_\_\_\_\_  
and that neither I nor the above  
firm I here represent has:

- (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 the 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 available to the Washington State Department of Transportation 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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

**Exhibit M-1(b)**  
**Certification Of Agency Official**

I hereby certify that I am the AGENCY Official of the Local Agency of \_\_\_\_\_ , Washington, and that the consulting firm or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this AGREEMENT to:

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

I acknowledge that this certificate is to be available to the Washington State Department of Transportation 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.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

**Exhibit M-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-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission or 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 antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (I)(B). of this certification; and
  - D. Have not within a three (3) year period preceding this application/proposal had one or more public transactions (federal, state, or 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): \_\_\_\_\_

\_\_\_\_\_  
Date

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

**Exhibit M-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 an 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 any Federal contract, grant, loan, or cooperative agreement.
  
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 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 subcontracts which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

Consultant (Firm): \_\_\_\_\_

\_\_\_\_\_  
(Date)

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



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

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 15.401 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 \_\_\_\_\_<sup>\*</sup> are accurate, complete, and current as of \_\_\_\_\_<sup>\*\*</sup>. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offer or and the Government that are part of the proposal.

Firm \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date of Execution<sup>\*\*\*</sup> \_\_\_\_\_

- \* Identify the proposal, quotation, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP No.).
- \* 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.