

**CLARK COUNTY  
STAFF REPORT**

**DEPARTMENT/DIVISION:** Department of Environmental Services / Resource Enhancement and Permitting Division

**DATE:** December 10<sup>th</sup>, 2013

**REQUEST:** Authorize the Environmental Services Director to sign professional services agreements for archaeological/cultural resources and environmental permitting support services with 8 firms in a total amount not to exceed \$1,250,000. Authorize the Director to sign supplemental agreements, and authorize the Division Manager to sign task orders.

**CHECK ONE:**       Consent       Hearing       Chief Administrative Officer

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**BACKGROUND:** The Department of Environmental Services (DES) delivers environmental permitting services and archaeological or cultural resources services to support the programs and capital projects for multiple departments of Clark County, including Public Works (CCPW), Clark County Parks Department, General Services, and other departments as needed. Use of state and federal funding necessitates following associated regulatory processes, including National Environmental Policy Act (NEPA), State Environmental Policy Act (SEPA), Endangered Species Act (ESA), National Historic Preservation Act (NHPA), and National Pollutant Discharge Elimination System (NPDES) programs. Some of these services are used infrequently and are beyond the skill set of county staff. At times the required workload exceeds available staff capacity and contracts are used for additional capacity.

Request for Proposals #660 Environmental Permitting, Archaeological/Cultural Resources and Public Involvement On-Call Professional Services was issued jointly between Department of Environmental Services (DES) and Clark County Public Works in September, 2013. The RFP was split into the 3 discipline areas listed above. DES received 12 responses for the Environmental Permitting discipline and 8 responses for the Archaeological/Cultural Resources discipline area. Public Works received 5 proposals for Public Involvement. Award of Public Involvement contracts will be requested by Public Works in a separate staff report. Staff reviewed each submittal and recommends entering into 8 contracts for on-call services to serve DES. The following contracts are being negotiated and are anticipated to be ready for execution prior to December 31, 2013:

- Archaeological Investigations Northwest (AINW) - \$100,000
- Archaeological Services of Clark County (ASCC) - \$100,000
- Berger-ABAM - \$100,000
- ESA-Vigil - \$250,000
- HDR Engineering Inc - \$250,000
- PBS Engineering and Environmental - \$150,000
- SWCA - \$100,000
- URS Corporation - \$200,000

The total amount contracted maintains capacity for DES to deliver programs and projects based on existing capital plans over the next several years. Contracts are for a two year period, with 3 possible one-year extensions.

**COMMUNITY OUTREACH:** Through the RFP process, notification to the public has occurred through the release of the Request for Proposals document through the Purchasing Department website. Contractors were also notified individually and invited to participate in the process. This recommendation will primarily have an impact on project managers and project owners within the Clark County departments who will utilize them. The work produced by these contractors is incorporated into capital projects being

implemented through their adopted annual plans (Transportation Improvement Plan, Clean Water Capital Plan, Parks Department capital plan). Each of those plans went through its own community outreach effort, such as public meetings, mailers, email notifications, etc. Each project identified in those plans has a lengthy public notification and outreach process throughout all stages of project development (predesign through construction). The format of the public outreach are varied, and include open house meetings, advisory groups, mailings, public notices in the newspaper or online, and/or property owner negotiations.

**BUDGET AND POLICY IMPLICATIONS:** These services are budgeted in the remaining 2013/2014 Environmental Services budget and will be proposed in the 2015/2016 Environmental Services budget.

As on-call contracts, the agreements do not obligate Clark County to expend all authorized dollars. Rather, Clark County will pay only for services specifically requested by task order and provided by consultants within constraints of the contracts. In other words, each contract designates a maximum cap, not a guarantee.

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

**ACTION REQUESTED:** Authorize the Environmental Services Director to sign professional services agreements for environmental permitting services and archaeological or cultural resources services with AINW, ASCC, Berger ABAM, ESA-Vigil, HDR Engineering Inc., PBS Engineering and Environmental, SWCA, and URS Corporation in an amount not to exceed \$1,250,000. Authorize the Director to sign supplemental agreements extending the duration and amount of the contracts up to 10% of the contract amount, and authorize the Division Manager to sign task orders up to \$25,000.

**DISTRIBUTION:** Please forward the approved staff report to Environmental Services Administration.

  
\_\_\_\_\_  
Kevin Tyler  
Resource Enhancement & Permitting Manager

  
\_\_\_\_\_  
Don Benton  
Environmental Services Director

APPROVED:   
\_\_\_\_\_  
CLARK COUNTY, WASHINGTON  
BOARD OF COMMISSIONERS

DEC. 10, 2013  
\_\_\_\_\_  
SR 251-13

KT/KT/kt

c: Kevin Tyler, Susan Rice, Mike Westerman

Attachments: RFP Scoring Matrix, RFP Memo to Don Benton, WSDOT Local Agency Standard Consultant Agreement

# FISCAL IMPACT ATTACHMENT

## 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.

The request authorizes the Environmental Services Director to sign contracts for archaeology/cultural resources and environmental permitting professional services in support of capital projects and programs for multiple departments including Environmental Services, Public Works, Parks Department, and General Services. Submitted proposals were reviewed and scored, and contracts are being negotiated with the highest ranking firms. Award recommendations considered the work in existing capital and program plans, as well as amounts remaining in the 2013-2014 budget for professional services and anticipated amounts in the 2015-2016 budget for professional services.

Contracts are proposed for 8 firms with expertise in environmental permitting and archaeology/cultural resources in a total amount not to exceed \$1,250,000. Work will be administered on an on-call basis using task orders for specific projects and activities. Work is not guaranteed as these contracts only provide the capacity for work if staff skills or availability preclude their use.

Revenues and expenditures are rough estimates based on anticipated workloads during the proposed contract periods.

## Part II: Estimated Revenues

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total	GF	Total
1012/Road Fund	\$ -	\$ 425,000	\$ -	\$ 350,000	\$ -	\$ 290,000
4420/Clean Water Fund	\$ -	\$ 35,000	\$ -	\$ 15,000	\$ -	\$ 15,000
3055/Urban REET Fund	\$ -	\$ 15,000	\$ -	\$ 20,000	\$ -	\$ 15,000
0001/General Fund	\$ 25,000	\$ -	\$ 25,000	\$ -	\$ 20,000	\$ -
<b>Total:</b>	<b>\$ 25,000</b>	<b>\$ 475,000</b>	<b>\$ 25,000</b>	<b>\$ 385,000</b>	<b>\$ 20,000</b>	<b>\$ 320,000</b>

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

Revenues applied to the projects using these contracts may come from various funds, including the Road Fund for transportation projects, Urban Real Estate Excise Tax (REET) Fund for park projects, Clean Water Fund for stormwater and habitat improvement projects, Conservation Futures Fund for habitat improvement projects, and the General Fund. The existing 2013/2014 biennial budgets for these funds include authority for professional services using these contracts, and it is anticipated that the 2015-2016 biennial budget will include similar authority.

## Part III: Estimated Expenditures

III.A - Expenditures summed up

Fund #/Title	FTE's	Current Biennium		Next Biennium		Second Biennium	
		GF	Total	GF	Total	GF	Total
1012/Road Fund		\$ -	\$ 425,000	\$ -	\$ 350,000	\$ -	\$ 290,000
4420/Clean Water Fund		\$ -	\$ 35,000	\$ -	\$ 15,000	\$ -	\$ 15,000
3055/Urban REET Fund		\$ -	\$ 15,000	\$ -	\$ 20,000	\$ -	\$ 15,000
0001/General Fund		\$ 25,000	\$ -	\$ 25,000	\$ -	\$ 20,000	\$ -
<b>Total:</b>		<b>\$ 25,000</b>	<b>\$ 475,000</b>	<b>\$ 25,000</b>	<b>\$ 385,000</b>	<b>\$ 20,000</b>	<b>\$ 320,000</b>

III.B = Expenditure by object category

Fund #/Title	Current Biennium		Next Biennium		Second Biennium	
	GF	Total	GF	Total	GF	Total
Salary/Benefits						
Contractual	\$ 25,000	\$ 475,000	\$ 25,000	\$ 385,000	\$ 20,000	\$ 320,000
Supplies						
Travel						
Other controllables						
Capital Outlays						
Inter-fund Transfers						
Debt Service						
<b>Total:</b>	<b>\$ 25,000</b>	<b>\$ 475,000</b>	<b>\$ 25,000</b>	<b>\$ 385,000</b>	<b>\$ 20,000</b>	<b>\$ 320,000</b>



**Staff Report Attachment (RFP Selection Process)**

Date:		12/2/2013																
RFP Description:		RFP# 690, Titled: Environmental Permitting, Archaeological/Cultural Resources, and Public Involvement On-Call Professional Services, Clark County Environmental Services (COES) and Clark County Public Works (CCPW) intend to award multiple contracts for these areas of service on an as-needed basis. The services to be provided are to support capital project design and/or construction activities.																
Evaluation Process:		Three qualified panel members independently reviewed the 20 submitted proposals over the course of 2 weeks. Reviewers scored each of the 4 categories. The categories and point value are listed in the evaluation matrix. Reviewers met the week of October 28th to discuss proposals and tally final scores.																
<b>Evaluation Matrix</b>																		
<b>PROPOSERS - RFP #690, AREA 1: ENVIRONMENTAL PERMITTING</b>																		
Evaluation Criteria	URS			Normandeau			Environ			DEIA			SWCA			RH2		
	Panel Members	Average	Rank	Panel Members	Average	Rank	Panel Members	Average	Rank	Panel Members	Average	Rank	Panel Members	Average	Rank	Panel Members	Average	Rank
Max Pts.	1	2	3	1	2	3	1	2	3	1	2	3	1	2	3	1	2	3
Proposal Quality	14	14	14	14	13	13	13	13	13	14	13	14	13	10	13	14	12	10
Project Team	27	28	27	28	23	20	23	28	20	22	23	22	24	20	22	22	22	15
Proposer's Capabilities	30	24	28	28	24	23	19	21	25	20	18	21	24	20	20	22	21	20
References & Past Performance	25	20	23	21	22	22	18	21	18	13	18	22	22	15	20	20	18	21
<b>Total Average Score</b>	Rank 4			Rank 7			Rank 9			Rank 6			Rank 9			Rank 7		
<b>Evaluation Matrix</b>																		
<b>PROPOSERS - RFP #690, AREA 1: ENVIRONMENTAL PERMITTING</b>																		
Evaluation Criteria	HDR			SCS			ESA-Vjgil			Berger-ABAM			PBS			ELS		
	Panel Members	Average	Rank	Panel Members	Average	Rank	Panel Members	Average	Rank	Panel Members	Average	Rank	Panel Members	Average	Rank	Panel Members	Average	Rank
Max Pts.	1	2	3	1	2	3	1	2	3	1	2	3	1	2	3	1	2	3
Proposal Quality	15	14	15	14	12	13	8	11	14	13	14	14	13	13	13	14	15	14
Project Team	30	28	25	25	28	12	22	10	15	27	30	28	23	23	24	25	27	30
Proposer's Capabilities	30	28	27	30	28	8	22	25	18	24	27	30	27	28	25	24	25	24
References & Past Performance	25	24	20	22	15	20	10	15	22	23	25	23	20	20	21	20	22	23
<b>Total Average Score</b>	Rank 2			Rank 12			Rank 1			Rank 5			Rank 3			Rank 7		
<b>Recommended Proposer:</b>																		
Recommended Awards: URS (\$150,000); HDR (\$250,000); ESA-Vjgil (\$250,000); Berger-ABAM (\$100,000); PBS Engineering and Environmental (\$150,000) (TOTAL AWARD FOR AREA 1: ENVIRONMENTAL PERMITTING: \$900,000)																		
<b>Evaluation Matrix</b>																		
<b>PROPOSERS - RFP #590, AREA 2: Archaeological/Cultural Resources</b>																		
Evaluation Criteria	URS			AAR			ASCC			SRI			Tierra			SWCA		
	Panel Members	Average	Rank	Panel Members	Average	Rank	Panel Members	Average	Rank	Panel Members	Average	Rank	Panel Members	Average	Rank	Panel Members	Average	Rank
Max Pts.	1	2	3	1	2	3	1	2	3	1	2	3	1	2	3	1	2	3
Proposal Quality	15	14	13	14	12	12	12	12	12	13	15	13	11	11	13	13	13	13
Project Team	30	28	28	28	28	24	20	24	28	25	20	24	28	20	22	25	20	22
Proposer's Capabilities	30	28	25	25	26	24	25	25	25	28	25	22	22	20	20	21	20	22
References & Past Performance	25	18	20	18	19	22	20	18	20	24	21	25	23	19	22	10	17	20
<b>Total Average Score</b>	Rank 4			Rank 8			Rank 2			Rank 8			Rank 7			Rank 3		
<b>Evaluation Matrix</b>																		
<b>PROPOSERS - RFP #590, AREA 2: Archaeological/Cultural Resources</b>																		
Evaluation Criteria	AINW			ESA-Vjgil														
	Panel Members	Average	Rank	Panel Members	Average	Rank												
Max Pts.	1	2	3	1	2	3												
Proposal Quality	15	12	13	15	13	13												
Project Team	30	28	27	30	28	28												
Proposer's Capabilities	30	28	27	30	28	23												
References & Past Performance	25	24	23	25	24	23												
<b>Total Average Score</b>	Rank 1			Rank 5														
<b>Recommended Proposer:</b>																		
Recommended Awards: URS (\$50,000); ASCC (\$100,000); SWCA (\$100,000); AINW (\$100,000); ANW (\$100,000) (TOTAL AWARD FOR AREA 1: ARCHAEOLOGICAL/CULTURAL RESOURCES: \$350,000)																		





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**DEPARTMENT OF ENVIRONMENTAL SERVICES**

**MEMORANDUM**

**TO:** Don Benton

**FROM:** Kevin Tyler

**DATE:** December 2, 2013

**SUBJECT: Request for Proposal #660 Environmental Permitting, Archaeological / Cultural Resources and Public Involvement On-Call Professional Services**

**Background:** This RFP was issued jointly between the Department of Environmental Services (DES) and Clark County Public Works (CCPW) in September, 2013. The RFP was split into the 3 discipline areas listed above. DES received 12 responses for the Environmental Permitting discipline and 8 responses for the Archaeological/Cultural Resources discipline area. Three qualified panel members independently reviewed the 20 submitted proposals over the course of 2 weeks. Reviewers scored each of the four categories, including proposal quality, project team, proposer's capabilities, and references and past performance. Several of these categories included an emphasis on work in Southwest Washington. Reviewers met the week of October 28th to discuss proposals and tally final scores. The categories and point values are listed in the evaluation matrix.

CCPW received 5 proposals for Public Involvement. Award of Public Involvement contracts will be requested by Public Works in a separate staff report.

**Historic Use of On-call Consultants:** DES delivers environmental permitting services and archaeological or cultural resources services to support the programs and capital projects for multiple departments of Clark County, including DES Clean Water, CCPW Transportation, CCPW Parks, General Services, and other departments as needed. Use of state and federal funding necessitates following associated regulatory processes, including National Environmental Policy Act (NEPA), State Environmental Policy Act (SEPA), Endangered Species Act (ESA), National Historic Preservation Act (NHPA), National Pollutant Discharge Elimination System (NPDES), Clean Water Act, and several other local ordinances. The County currently does not employ staff with the necessary qualifications to do all of this work, nor do we employ enough staff to maintain the current or future workload.

From the period of 2008 through 2013, the environmental permitting section of CCPW, and now DES, has utilized more than \$1.8 million in on-call consulting services, averaging roughly \$300K each year (Table 1).

<b>Table 1: REP Consultant Use History 2008-2013</b>					
2008	2009	2010*	2011	2012	2013**
\$ 332,402	\$ 355,016	\$ 137,634	\$ 431,973	\$ 269,376	\$ 311,655
<b>2008-2013 Totals</b>					<b>\$ 1,838,056</b>
<b>2008-2013 Annual Average</b>					<b>\$ 306,343</b>
<b>2008-2013 Average Without 2010 Data</b>					<b>\$ 340,084</b>
*Unreliable data for 2010 with transition from PW to DES.					
**Spent through 10/30. Projecting to spend \$375K in 2013.					



**Current On-call Consultant Use:** Starting in 2011, DES entered into agreements with several firms following two separate RFPs for Environmental Permitting and Archaeological/Cultural on-call services. These contracts were initially for a period of 2 years and were extended for 1 additional year at the close of 2012. At that time, a 10% management reserve was added to several of these contracts to increase capacity to a total of approximately \$1.3 million. To date, DES has tasked out more than 80% of the contract capacity of these various firms and paid out 70% of the contract capacity (Table 2). With a majority of these contracts almost fully tasked, DES needs to establish new on-call contracts with similar firms to maintain service delivery on county capital projects.

Consultants	Initial	With 10% Reserve	Tasked to Date	Spent to Date
Berger-ABAM	\$25,000	\$27,500	\$24,947.92	\$24,605.45
ESA	\$150,000	\$150,000	\$58,019.00	\$30,589.76
GeoEngineers	\$25,000	\$25,000	\$ -	\$ -
HDR	\$300,000	\$330,000	\$284,221.66	\$237,155.75
PBS	\$200,000	\$220,000	\$214,628.42	\$168,809.56
Vigil-Agrimis	\$300,000	\$330,000	\$300,105.49	\$281,721.41
ASCC	\$70,000	\$77,000	\$59,902.50	\$47,535.50
AINW	\$70,000	\$77,000	\$71,595.52	\$68,937.95
SWCA	\$70,000	\$77,000	\$55,862.54	\$55,382.14
<b>Totals</b>	<b>\$1,210,000</b>	<b>\$1,313,500</b>	<b>\$1,069,283.05</b>	<b>\$914,737.52</b>
<b>% Tasked to Date</b>			<b>81%</b>	
<b>% Spent to Date</b>			<b>70%</b>	

**2013-2018 Projected Workload:** Clark County Public Works maintains a 2013-2018 capital workload analysis that includes environmental permitting support. For the period of 2014 to 2018, Public Works analysis suggests that DES will contribute approximately \$900K in external consulting services to capital construction projects (Table 3). However, this analysis includes data from 2010 that is inaccurate because of the transition of environmental permitting functions from CCPW to DES. One additional factor to consider is that unplanned projects often arise requiring on-call consultant services, and DES needs to maintain adequate capacity to respond in a timely manner.

2014	2015	2016	2017	2018	Total
\$ 302,300	\$ 159,400	\$ 151,965	\$ 151,700	\$ 136,026	\$ 901,391



<b>Table 4: Consultant Budget Calculation</b>					
<b>2013-2014 Biennium</b>	<b>Projected 2013</b>	<b>Remaining 2014</b>	<b>2015-2016 Biennium</b>	<b>2017-2018 Biennium</b>	<b>2014-2018 Maximum</b>
\$ 875,000	\$ 375,000	\$ 500,000	\$ 311,365	\$ 287,725	\$ 1,099,090

The current RFP was written to allow for 2 year contracts with selected consultants, and one-year extensions up to an additional 3 years, making the potential life of these contracts 5 years. Using the portion of DES budget remaining for on-call consulting services for 2014, combined with the analysis above, we anticipate approximately \$1.1 million in on-call consulting services over the next 5 years (Table 4). In order to maintain adequate capacity over the coming years to respond as necessary, we recommend entering into 8 contracts for on-call services to serve DES. The following contract award amounts are recommended based on results of the scoring and an analysis of past on-call consultant use and projected workload:

- Archaeological Investigations Northwest (AINW) - \$100,000
- Archaeological Services of Clark County (ASCC) - \$100,000
- Berger-ABAM - \$100,000
- ESA-Vigil - \$250,000
- HDR Engineering Inc - \$250,000
- PBS Engineering and Environmental - \$150,000
- SWCA - \$100,000
- URS Corporation - \$200,000

A draft staff report and a matrix documenting the RFP selection process are attached for any potential communication with the Board of County Commissioners.



<b>Local Agency Standard Consultant Agreement</b>	Consultant/Address/Telephone/Fax/E-Mail/Contact Person	
<input type="checkbox"/> Architectural/Engineering Agreement <input type="checkbox"/> Personal Services Agreement		
Agreement Number	Project Title And Work Description	
Federal Aid Number		
Agreement Type (Choose one) <input type="checkbox"/> <b>Lump Sum</b> Lump Sum Amount \$ _____ <input type="checkbox"/> <b>Cost Plus Fixed Fee</b> Overhead Progress Payment Rate _____ % Overhead Cost Method <input type="checkbox"/> Actual Cost <input type="checkbox"/> Actual Cost Not To Exceed _____ % <input type="checkbox"/> Fixed Rate _____ % Fixed Fee \$ _____ <input checked="" type="checkbox"/> <b>Specific Rates Of Pay</b> <input type="checkbox"/> Negotiated Hourly Rate <input type="checkbox"/> Provisional Hourly Rate <input type="checkbox"/> <b>Cost Per Unit of Work</b>	DBE Participation <input type="checkbox"/> Yes <input type="checkbox"/> No _____ %	
	Federal ID Number or Social Security Number	
	Do you require a 1099 for IRS? <input type="checkbox"/> Yes <input type="checkbox"/> No	Completion Date
	Total Amount Authorized	\$ _____
	Management Reserve Fund	\$ _____
	Maximum Amount Payable	\$ _____

**Index of Exhibits**

- |  |   |
|--|---|
| <input type="checkbox"/> Exhibit A-1 Scope of Work<br><input checked="" type="checkbox"/> Exhibit A-2 Task Order Agreement<br><input type="checkbox"/> Exhibit B-1 DBE Utilization Certification<br><input type="checkbox"/> Exhibit C Electronic Exchange of Data<br><input type="checkbox"/> Exhibit D-1 Payment – Lump Sum<br><input type="checkbox"/> Exhibit D-2 Payment – Cost Plus<br><input checked="" type="checkbox"/> Exhibit D-3 Payment – Hourly Rate<br><input type="checkbox"/> Exhibit D-4 Payment – Provisional<br><input type="checkbox"/> Exhibit E-1 Fee – Lump/Fixed/Unit<br><input checked="" type="checkbox"/> Exhibit E-2 Fee – Specific Rates<br><input checked="" type="checkbox"/> Exhibit F Overhead Cost<br><input type="checkbox"/> Exhibit G Subcontracted Work<br><input type="checkbox"/> Exhibit G-1 Subconsultant Fee | <input type="checkbox"/> Exhibit G-2 Fee-Sub Specific Rates<br><input type="checkbox"/> Exhibit G-3 Sub Overhead Cost<br><input checked="" type="checkbox"/> Exhibit H Title VI Assurances<br><input checked="" type="checkbox"/> Exhibit I Payment Upon Termination of Agreement<br><input checked="" type="checkbox"/> Exhibit J Alleged Consultant Design Error Procedures<br><input checked="" type="checkbox"/> Exhibit K Consultant Claim Procedures<br><input type="checkbox"/> Exhibit L Liability Insurance Increase<br><input checked="" type="checkbox"/> Exhibit M-1a Consultant Certification<br><input checked="" type="checkbox"/> Exhibit M-1b Agency Official Certification<br><input checked="" type="checkbox"/> Exhibit M-2 Certification – Primary<br><input checked="" type="checkbox"/> Exhibit M-3 Lobbying Certification<br><input checked="" type="checkbox"/> Exhibit M-4 Pricing Data Certification<br><input type="checkbox"/> App. 31.910 Supplemental Signature Page |
|--|---|

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 written under ISO Form CG 00 01 12 04 or its equivalent with minimum limits of one million dollars (\$1,000,000) per occurrences and two million dollars (\$2,000,000) in the aggregate for each policy period.
- 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

Anthony F. Golik  
Prosecuting Attorney

By: \_\_\_\_\_  
Don Benton  
Environmental Services Director

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

Christopher Horne  
Deputy Prosecuting Attorney

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

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

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

**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. \_\_\_\_\_
- B. \_\_\_\_\_
- C. \_\_\_\_\_
- D. \_\_\_\_\_
- E. \_\_\_\_\_
- F. \_\_\_\_\_

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.

**Formal Task Assignment Document**

**Professional Engineering Services  
Consultant Firms Name.  
On-Call Contract # XXXXXX  
Contract Expiration: December 31, 20XX**

**Task Order 1**

**Task Order Date**

**Project Name & Description  
WO# or CRP #**

This Task Order is provided in accordance with Local Agency Consultant Agreement for Consulting Services for Engineering Services, by and between CLARK COUNTY, WASHINGTON, after this called "County," a municipal corporation of the State of Washington, and **Consultant Firms 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**

Fill in

**Sample**

**Deliverables:**  
Fill in.

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

Fill in.

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

Fill in.

**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 1 shall not exceed \$??,???.00.

**Schedule**

All work associated with Task Order 1 will be completed by **December 31, 20XX**. The consultant shall inform the county of any potential changes to the schedule immediately.

**Other**

Contact Tom Grange, (Contract Administrator), (360) 397-6118, ext. 4449, with any questions or concerns, regarding this task order.

By: \_\_\_\_\_  
**Clark County Contract Administrator**

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

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

## **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 sub-consultant costs.
  - a. 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 CFR Part 31.205-46 "Travel Costs."
  - b. The billing for direct Non-Salary Costs shall include an itemized listing of the charges directly identifiable with the PROJECT.
  - c. 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.
  - d. 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**

<b>Account Title</b>	<b>\$ Beginning Total</b>	<b>% of Direct Labor</b>
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 FH WA, 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 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 Clark County ,  
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

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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 \_\_\_\_\_\* are accurate, complete, and current as of \_\_\_\_\_\*\*. 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\*\*\* \_\_\_\_\_

\* 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.



<b>Supplemental Agreement</b>		Consultant/Address/Telephone/E-mail/Contract Person
Agreement Number NA (CONTRACT PO #)		
Project Number NA (CRP/WO #)		
Project Title	New Maximum Amount Payable \$ (contract amount)	
Description of Work Description of project and work to be performed.		<b>SAMPLE</b>

The Local Agency of Clark County, Washington desires to supplement the agreement entered into with \_\_\_\_\_ and executed on \_\_\_\_\_ and identified as Agreement No. 1. All provisions in the basic agreement remain in effect except as expressly modified by this supplement.

The changes to the agreement are described as follows:

I

Section 1, SCOPE OF WORK, is hereby changed to read:

II

Section IV, TIME FOR BEGINNING AND COMPLETION, is amended to change the number of calendar days for completion of the work to read: Completion Date.

III

Section V, PAYMENT, shall be amended as follows: The new maximum amount payable is an increase of \$ \_\_\_\_\_.

As set forth in the attached Exhibit A, and by this reference made a part of this supplement.

If you concur with this supplement and agree to the changes as stated above, please sign in the appropriate spaces below and return to this office for final action.

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

\_\_\_\_\_  
Consultant Signature

\_\_\_\_\_  
Approving Authority Signature

