

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

Agreement Number: Original

Firm/Organization Legal Name (do not use dba's): DOWL	
Address 5 Centerpointe Dr, Ste 350; Lake Oswego, OR 97035	Federal Aid Number 30A2 (001)
UBI Number	Federal TIN or SSN Number
Execution Date 4/18/2024	Completion Date 12/31/2024
1099 Form Required <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Federal Participation <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Project Title First Street Pedestrian Amenities and Overlook Project	
Description of Work The project will include crosswalk striping, vegetated curb extensions, new sidewalk, pedestrian overlook, path connecting to existing waterfront path, and streetscaping.	
<input type="checkbox"/> Yes <input type="checkbox"/> Yes <input type="checkbox"/> Yes <input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No DBE Participation <input checked="" type="checkbox"/> No MBE Participation <input checked="" type="checkbox"/> No WBE Participation <input checked="" type="checkbox"/> No SBE Participation
Total Amount Authorized: \$159,105 Management Reserve Fund: \$0 Maximum Amount Payable: \$159,105	

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

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

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

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

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

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

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

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

## **III. General Requirements**

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

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

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

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

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

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

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

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

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

**If to AGENCY:**

Name: Carolyn Sourek  
Agency: City of Stevenson  
Address: 7121 E Loop Road  
City: Stevenson State: WA Zip: 98648  
Email: carolyn@ci.stevenson.wa.us  
Phone: 509.427.5970  
Facsimile: NA

**If to CONSULTANT:**

Name: Jason Kelly  
Agency: DOWL  
Address: 5 Centerpointe Drive; Suite 350  
City: Lake Oswego State: OR Zip: 97035  
Email: jkelly@dowl.com  
Phone: 971.634.2002  
Facsimile: 800.865.9847

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

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

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

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## V. Payment Provisions

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

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

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

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

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

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

## **VI. Sub-Contracting**

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

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

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

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

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

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

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

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

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

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

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

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

## **VIII. Nondiscrimination**

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

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

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

## **IX. Termination of Agreement**

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

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

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

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

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

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

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

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

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

## **X. Changes of Work**

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

## **XI. Disputes**

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

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## **XII. Legal Relations**

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

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

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

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

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

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

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

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

#### Insurance Coverage

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

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

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

Name: Carolyn Sourek  
Agency: City of Stevenson  
Address: 7121 E Loop Road  
City: Stevenson State: WA Zip: 98648  
Email: carolyn@ci.stevenson.wa.us  
Phone: 509.427.5970  
Facsimile: NA

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

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

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

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

### **XIII. Extra Work**

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

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

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

### **XV. Federal Review**

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

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

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

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## **XVII. Complete Agreement**

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

## **XVIII. Execution and Acceptance**

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

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

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

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

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

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

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

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

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

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

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

## **XX. Records Maintenance**

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

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

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

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

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

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

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

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

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Project No. 30A2(001)

See attached Exhibit A-1 - Scope of Work and Delivery Schedule.

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**Exhibit A-1**

**SCOPE OF WORK AND DELIVERY SCHEDULE**

**Construction Inspection, Management, and Engineering**

**City of Stevenson**

**First Street Pedestrian Amenities and Overlook Project**

**Federal Aid NO. 30A2 (001)**

**Abbreviations**

LAG - WSDOT Local Agency Guidelines  
CONSULTANT – DOWL LLC  
CITY – Stevenson Washington  
SOW – Scope of Work  
CCO - Contract Change Orders  
EWO - Extra Work Orders  
FA - Force Account  
CC – Construction Contractor

**A. PROJECT DESCRIPTION AND OVERVIEW OF SERVICES**

The purpose of this Scope of Work (SOW) is for Construction Inspection, Management, and Engineering (CIM&E) Service for the Construction Phase of the First Street Pedestrian Amenities and Overlook Project (PROJECT). The CONSULTANT will be responsible for providing all work, materials, and equipment necessary to provide the services required for the PROJECT detailed below. The CONSULTANT shall complete the tasks as specified in this SOW to the satisfaction of the CITY.

**Background**

The SOW is related to the public improvements along First Street including vegetated curb extensions, new sidewalk, crosswalk, and pedestrian overlook, and referred to as the PROJECT. The PROJECT objective and goal is the successful completion of the improvements per the Contract Plans and Specifications within 80 working days.

**Project Team Roles, Responsibilities, and Overview of Services:**

The project team consists of the City of Stevenson Washington (CITY) and DOWL LLC (CONSULTANT) (Construction Inspection, Management, and Engineering Service). WSP is the Engineer of Record and will not continue into the Construction Phase.

**List of Attachments:**

**Exhibit A: Breakdown of Costs (BOC) for Services**



## **B. STANDARDS and GENERAL REQUIREMENTS**

### **1. Standards**

All Services under the Contract shall be performed in accordance with the professional standard of care.

CONSULTANT shall complete the CIM&E Services in accordance with the current edition and version in effect of the WSDOT Construction Manual, the WSDOT Local Agency Guidelines (LAG), the WSDOT Materials Manual, AASHTO Standard Specifications for Highway Bridges, and this Contract.

### **2. General Requirements**

CONSULTANT'S Inspectors shall diligently monitor the work of the Contractor in order to determine whether the PROJECT is constructed in compliance with the construction contract documents and any applicable current standards and Local Agency manuals or procedures, and those listed in the Contract.

CONSULTANT shall immediately (within 24 hours) advise CITY of any construction or planned construction which fails to conform to the construction contract requirements applicable to the PROJECT. CONSULTANT shall also immediately advise CITY of any design errors, deficiencies or other problems that could have a negative impact on the PROJECT construction schedule, or construction cost.

### **3. Project Communication**

Communication is an essential element to the successful completion of the PROJECT. The CONSULTANT shall be primary contact for all communication and deliverables from the Contractor and shall direct communications appropriately to the Project Team for resolution with final recommendations and approvals to the CITY Project Manager assigned to this PROJECT.

The Contractor for this PROJECT will be determined through the competitive bidding process.

## **4. ROLES AND RESPONSIBILITIES**

### **Local Agency**

CITY has overall authority in scope, schedule, and budget of the Project. The CITY PM is the Local Agency's primary point of contact for the CONSULTANT. The CITY PM has the authority to review and accept or recommend acceptance of part or all CONSULTANT deliverables. The CITY may also distribute deliverables for this phase of the work to appropriate Local Agency and WSDOT personnel for review and approval.

All construction Change Orders [Contract Change Orders (CCO), Extra Work Orders (EWO) or Force Account (FA)] prepared by CONSULTANT are subject to CITY review and approval prior to implementation by the Contractor. Authority to approve all CCOs and FAs shall be as outlined in the WSDOT Construction Manual, Chapter 3 - Delegated Authority and in Delegation Letters.

### **CITY is responsible for the following:**

- Bid Opening, review (per 46.26 of LAG), Contractor contract preparation, contract execution, award and Notice to Proceed
- Attend Pre-Construction Conference
- Submittal of project to WSDOT materials office for development of Record of Materials (ROM)
- Reviewing and executing construction CCOs, EWO's and FAs

- Lead Claims negotiations.
- Approving requests for overrun or increase in Project authorization.
- Reviewing Consultant RFI responses prior to sending back to the Contractor
- All contact with Federal Highway Administration (FHWA) or other federal agencies
- All contact with Native American Tribes
- Reviewing and executing monthly pay estimates for construction contract.
- Final Project acceptance, including council certification, completion letter and submittal of completion paperwork to WSDOT.
- Retainage monitoring and release
- Grant Report administration
- Review and comment on final as built drawings.
- Providing access for the Consultant to Local Agency-owned Right of Way (ROW) and easements

## **CONSULTANT**

CONSULTANT shall provide all labor, equipment, and materials to provide these Services and assistance with technical engineering as outlined in this SOW.

Changes to CONSULTANT'S Project Manager, Administrative Assistant and Inspector are subject to CITY approval and will require written notice and acceptance prior to the change.

CONSULTANT is not responsible for the means, methods, operating procedures or safety precautions of any Contractor or other entity. CONSULTANT shall notify the Contractor's representative of procedures they see that violate the safety plan, but the Contractor is solely responsible for the safety of their employees.

### **CONSULTANT is responsible for the following:**

- Administration for all aspects of the Construction Contract
- Primary point of contact for the Contractor and Contractor's field personnel
- Provide on-site observation, and monitoring of all Contractor activities and the preparation of Inspector's Daily Reports
- Project lead in review and approval of all Request for Approval of Materials (RAM) submitted by the Contractor.
- Establish and lead weekly Construction meeting, including agenda and meeting minutes.
- Assist in coordination with the CITY and Project Team members.

## **C. REVIEW, COMMENT and SCHEDULE REQUIREMENTS**

- Throughout this PROJECT, CONSULTANT shall complete all tasks and deliverables in a timely manner to avoid unnecessary delays in the construction PROJECT. CONSULTANT shall provide written notice to CITY at the first sign of delays caused by CITY, CONSULTANT, Contractor, or any other entity that may delay completion of the PROJECT or otherwise have a negative impact on the construction schedule.
- CONSULTANT shall notify CITY immediately (within 24 hours) upon discovery of any changes in the Project that may affect scope, schedule, or budget.
- CONSULTANT shall submit all deliverables to the CITY's PM or designee unless otherwise stated in specific tasks.
- Deliverables that the CITY elects to review are considered draft until reviewed and accepted by CITY. CONSULTANT shall revise address CITY'S comments and submit revised deliverable(s) to the CITY's PM within 5 business days of receipt of CITY'S review comments unless a different

period is stated in specific tasks or otherwise agreed to in writing. If no revisions are necessary, the submittal will be considered final.

- CONSULTANT shall upon receipt forward copies of all submittals, requests for information, change orders, RAMs, and other technical engineering submittals to the appropriate parties for review and approval. CONSULTANT shall assist if requested in the review and response to requests, but ultimate acceptance and approval responsibility of technical and engineering submittals shall to the CITY.

#### **D. FORMAT REQUIREMENTS**

- Deliverables shall be submitted to CITY in either preapproved forms or forms described in the WSDOT Construction Manual and individual tasks.
- **WSDOT Forms** – CONSULTANT shall use WSDOT forms where required. Construction related forms referenced in this SOW are available online at:  
<http://www.wsdot.wa.gov/forms/pdfForms.html>

#### **E. TASKS, DELIVERABLES and SCHEDULE**

Unless specifically stated otherwise in a particular task, CONSULTANT shall complete all tasks and provide all deliverables (collectively, the “Services”) included in this SOW. CONSULTANT shall provide all labor, equipment, and materials to manage, coordinate, and complete the work in accordance with the performance and delivery schedules identified in this SOW.

##### **TASK CE-1 PROJECT MANAGEMENT**

This activity is continuous throughout the duration of the PROJECT. CONSULTANT shall guide and direct the overall processes and the Project Team (CITY and CONSULTANT) in conformance with the PROJECT’S goals and objectives. CONSULTANT shall monitor progress of the PROJECT.

##### **Task CE-1.1 Coordination**

CONSULTANT shall provide leadership, direction, and control of work tasks within the construction phase of this PROJECT.

CONSULTANT shall:

- Direct the PROJECT’S CONSULTANT team with regard to overall Project activities and team meetings.
- Maintain liaison, communication and coordination between CONSULTANT’S staff, Contractor, and CITY staff to facilitate timely, efficient operations for all involved. CITY will be responsible for coordination with WSDOT and the WSDOT Material Testing Lab.

**ASSUMPTIONS FOR BUDGETING PURPOSES:** We anticipate the PM spending two (2) hour per week for twenty-four (24) weeks and a Principal and Administrator providing minimal hours for coordination for the Project.

##### **Deliverables:**

- Ongoing coordination and communication as needed to appropriately manage the PROJECT (hard copies or electronic correspondence related to the project).
- All correspondence will be submitted electronically to the CITY with the final deliverables.

## **Task CE-1.2 Status Reports and Invoices**

CONSULTANT shall prepare seven (7) Monthly Project Status Reports to show progress throughout the duration of this PROJECT. See Section E.1, PROJECT Schedule for project duration.

The Monthly PROJECT Status Report must:

- Describe the previous month's PROJECT activities.
- Describe the planned activities for the next month.
- Identify any issues or concerns that may affect the SOW, PROJECT schedule or budget.

If the construction PROJECT schedule milestones are significantly revised, CONSULTANT shall attach the updated PROJECT schedule and submit with Monthly PROJECT Status Report. CONSULTANT shall submit the Monthly PROJECT Status Reports to the City with the monthly CONSULTANT invoice.

**ASSUMPTIONS FOR BUDGETING PURPOSES:** The budget includes time to prepare seven (7) invoices at one (1) hour each for the PM and Administrator.

### **Deliverables**

- Monthly Project Status Report - Submitted with the monthly invoice no later than the 10th calendar day of the month following the reporting month.

## **TASK CE-2 CONSTRUCTION CONTRACT ADMINISTRATION**

CONSULTANT shall support the Project's needs by providing administrative services required for the CONSULTANT to certify, that the PROJECT was completed according to the Plans and Specifications for the PROJECT. CONSULTANT shall complete all construction engineering documentation for CITY processing and work to assist in the administration of engineering services and design changes that are necessary during the construction phase of the work.

### **Task CE-2.1 Pre-Construction Conference**

CONSULTANT shall prepare for and assist the Pre-Construction Conference in accordance with **WSDOT Construction Manual**. Attendees will include the Contractor, CITY PM, and others as may be appropriate to discuss the construction schedule, utility involvement, permit concerns, required documentation submittals, materials, and other items relevant to the construction of the PROJECT.

CONSULTANT shall consult with the CITY to determine participants and schedule the Pre-Construction Conference at an agreed upon time and place.

### **CONSULTANT shall:**

- Assist in the preparation and distribution of the Pre-Construction Conference agenda and minutes.
- Attend, facilitate and participate in Pre-Construction Conference

**ASSUMPTIONS FOR BUDGETING PURPOSES:** The budget includes one (1) day of preparation for the meeting by the CONSULTANT PM, and attendance by the PM, Administrator, and Inspector.

### **Deliverables:**

- Review and Comment on Pre-Construction Conference Agenda – 1 copy to the CITY 1 week prior to the scheduled conference.

## **Review and Comment on Pre-Construction Conference Minutes prepared by the CITY.**

### **Task CE-2.2 Construction Contract Administration**

CONSULTANT shall provide day-to-day administration of the construction contract. CONSULTANT shall complete contract administration tasks as outlined in the WSDOT Construction Manual, the WSDOT Materials Manual, the WSDOT LAG, the Contract Plans and Specifications, and this Contract.

WSDOT will perform periodic reviews on all Project quality, quantity, and labor compliance documentation. The reviews will be performed by WSDOT Region Local Programs Engineer. CONSULTANT shall resolve all documentation deficiencies noted during the periodic reviews prior to the next scheduled review.

In addition to any other requirements identified in the reference standards identified above, CONSULTANT construction engineering documentation shall include, but is not limited to:

- Track working days weekly using the DOWL-developed form.
- Contractor Schedules.
- Monitor overall PROJECT budget and costs included in the PROJECT Authorization.
- Monitor and evaluate the construction schedule and determine whether the Construction Contractor (CC ) is proceeding in a manner that will result in timely PROJECT completion in conformance with the construction contract documents. If the CC is not proceeding in this manner, document the delay and determine and pursue the appropriate action.
- Review the CC Request to Sublet Work form 421-012 and accompanying subcontracts and verify compliance per 1-08.1(4) of the Standard Specifications for subcontracting and provide approval to the CC in writing.
- Perform Equal Employment Opportunity (EEO) and Labor Compliance monitoring as required by the construction contract and the WSDOT Construction Manual.

Tasks include:

- Conduct
  - Employee interviews per form 424-003
  - Owner-operator checks in accordance with the FHWA-1273
  - Commercially Useful Function (CUF) per form 272-052
- Review, tracking, and comment with Contractor and CITY submittals for:
  - Quarterly Reports of Amounts Credited as DBE Participation, WSDOT form 422-102
  - Statements of Intent to Pay Prevailing Wages, State L&I
  - Federal-Aid Highway Construction Contractors Annual EEO Report, FHWA form 1391
  - Federal-Aid Highway Construction Summary of Employment Data, FHWA form 1392
  - Monthly Employment Utilization Report, WSDOT form 820-010
  - Reviewing certified payrolls and assuring compliance with Prevailing wage requirements
- Prepare, submit, and coordinate processing of CCO, EWO and FA as outlined in the WSDOT Construction Manual.
- Documentation and coordination of:
  - Inspector's Daily Reports
  - Contractor Submittals
  - Requests for Information from Contractor
  - Temporary traffic closures and disruptions
  - Correspondence with CITY and PROJECT consultant team
  - Resolutions of construction problems with the Contractor

- Prepare, track, and submit to CITY the Breakdown of the cost of Lump Sum Items and Force Account billings from Contractor.

**ASSUMPTIONS FOR BUDGETING PURPOSES:** This task assumes two (1) hour per week for the PM and three 1.5) hour per week for the Administrator for twenty-four (24) weeks.

**Deliverables**

- Resolution of any documentation deficiencies as noted by the WSDOT Region Local Programs Engineer and submitted on a PMR Summary.
- Contractor Request to Sublet Work Form.
- Employee Interview Reports and owner-operator checks – Maintain in project files. Submit originals with final Project documentation per task 5.4.
- One copy of all project documentation of this task, maintained, organized, and provided as part of final Project documentation per task 5.4.
- Draft CCO, EWO and FA documents with supporting documents (cost estimate and justification) - Submit to CITY by date agreed to when work was requested.

**Task CE-2.3 Monthly Preliminary Progress Estimates**

CONSULTANT shall review the Contractor's Application and Certificate of Payment (form 570-020A), provide feedback and resolution of the monthly progress payment.

CONSULTANT shall prepare all source documents as Field Note Records (Form 422-635, 422-636 & 422-637) for the monthly preliminary progress estimate for Contractor's work performed through the last working day of the month. All Field Note Records will be submitted to the CITY when requested and with the final documentation.

No later than the 10<sup>th</sup> of the month, CONSULTANT shall submit to the CITY via e-mail the executed certificate of payment.

**ASSUMPTIONS FOR BUDGETING PURPOSES:** This task assumes preparation of up to five (5) monthly estimates, including: four (4) hours each month for the Administrative Assistant to review and transmit per month. The Inspector is anticipated to support the Administrator's review and transmittal of this work product during, and that effort is included in Task 3.1.

**Deliverables**

- Monthly Preliminary Progress Estimate Application and Certificate of Payment - Completed and ready for CITY review by the 10<sup>th</sup> of the month following each month in which Contractor work was performed.

**Task CE-2.4 Weekly Project Progress Meetings**

CONSULTANT shall conduct weekly Project Progress Meetings with the Contractor, CITY, and other third parties, if required. The Project Progress Meetings are intended to monitor the project and promote PROJECT planning, progress, proper communications, effective working relationships, and timely issue resolution.

CONSULTANT shall conduct additional activity-specific technical kick-off meetings for various activities required by the construction Contract.

**CONSULTANT shall:**

- Schedule weekly Project Progress Meetings as agreed to by the CITY.
- Project Progress Meetings are recommended to be held weekly during active construction periods and at the startup of the project but may be held less frequently during periods of low construction activity.
- Prepare Project Progress Meeting agendas.
- Attend and participate in Project Progress Meetings
- Record and distribute general Project Progress Meeting minutes upon request.

**ASSUMPTIONS FOR BUDGETING PURPOSES:** Project Progress Meetings are assumed to be weekly (during active construction) with no more than three (3) Consultant staff attending and twenty (20) meetings are assumed, see Section E.1 Project Schedule. The CI shall be present at all Progress Meetings.

**Deliverables**

- Project Progress Meeting minutes – Submit via email, 1 copy to each attendee upon request.
- Request to cancel Project Progress Meetings based on inactive construction period – Submit written request electronically to CITY at least 2 business days prior to scheduled meeting.

**Task CE-2.5 Shop Drawing and Submittal Review**

CONSULTANT shall review and disseminate to the CITY construction shop drawings and working drawings submitted either electronically or in paper form by the Contractor. CONSULTANT shall log in the submittal when it arrives, track the submittal to ensure timely response, and log out the reviewed submittal when it is returned to the Contractor. CONSULTANT shall conduct submittal review in accordance with Section 1-05.3 of the Standard Specifications, and the WSDOT Construction Manual, Chapter 1-2.4H – Contractor Shop Plans and Working Drawings. Of the multiple copies of each shop drawing received from Contractor, CONSULTANT shall:

- Maintain 1 of the as-submitted copies in the Project files.
- Conduct review and prepare up to three (3) mark-up/comment copies of the shop drawing, if provided as paper copy or one scanned and signed mark-up electronic (PDF) format if provided electronically. Stamped Drawings and submittals shall be signed and dated by CONSULTANT and marked as either RV = Reviewed, or RVC = Reviewed with Comment. Unstamped Drawings and technical submittals shall be signed, dated, and marked as AP = Approved, AX = Approved as Noted, or RC = Returned for Correction.
- Include construction contract number on all shop drawings.

CONSULTANT shall facilitate and assist with the review the following submittals as required using the guidelines in WSDOT's Construction Manual, Chapter 1-2.4H – Contractor Shop Plans and Working Drawings, and the Standard Specifications Section 1-05.3:

- Traffic Control Plans (TCP) and temporary closure requests
- Temporary Erosion & Sediment Control Plan (TESC)
- Spill Prevention, Control, and Countermeasure Plan (SPCC)
- Construction schedules (baseline and monthly updates)

- Drainage modifications submittals and sketches
- Retaining Wall
- Others as required by construction contract specifications.

**ASSUMPTIONS FOR BUDGETING PURPOSES:** We anticipate reviewing up to twenty-five (25) submittals, including revised submittals with an average time for review and transmission of three (1.5) hours per submittal.

**Deliverables:**

- Return approved shop drawings with comments:
  - Electronic copy Submittals (within period established in construction contract specified requirements)-
    - 1 copy to CITY
    - 1 copy to Contractor
    - 1 copy maintained in Project files.

**Files Retained by CONSULTANT:**

CONSULTANT shall maintain files of all reviewed shop drawing submittals according to the retention period set forth in the terms and conditions of the Contract. The Local Agency may request these files at any time during the retention period. CONSULTANT shall provide the files to the Local Agency within 14 calendar days of the request.

**Task CE-2.6 Consultation during construction**

CONSULTANT shall facilitate and assist with the consultation and technical services regarding design issues raised during construction of the PROJECT. CONSULTANT shall clarify construction contract documents and provide written responses to Requests for Information (RFIs). The design consultation will occur only as required and may be ongoing throughout the PROJECT.

Upon request of the Contractor or CITY during construction, CONSULTANT shall:

- Clarify construction contract documents.
- Respond to field inquiries.
- Prepare response to RFI's and all matters involving design changes.

**ASSUMPTIONS FOR BUDGETING PURPOSES:** We anticipate facilitating and assisting with approximately four (4) RFI's with an average of four (4) hours per RFI, for a total of sixteen (16) hours of support and assistance. RFI's will be recorded in a log concurrently with the submittal log. Subconsultants will have additional time commensurate with their portion of the project.

**Deliverable:**

- Written documentation of responses to Contractor or CITY inquiries – Submit 1 copy to CITY within 2 business days of inquiry unless other delivery date is agreed to.
- RFI and CCO log available to the CITY upon request.

**TASK CE-3 CONSTRUCTION, ENVIRONMENTAL COMPLIANCE AND WORK ZONE MONITORING AND INSPECTION**

CONSULTANT shall provide on-site monitoring and inspection of construction for conformance with, and shall enforce compliance with, construction contract documents. CONSULTANT shall coordinate and



conduct on-site monitoring and inspections, so they do not cause unnecessary adverse impacts to the construction schedule. On-site monitoring and inspections must occur at critical times during the construction process based on CONSULTANT'S evaluation of the Contractor's schedule, Contract documents and as outlined in the WSDOT Construction Manual, the WSDOT Local Agency Guidelines (LAG), the WSDOT Materials Manual.

CONSULTANT shall have a qualified Inspector on site during critical construction operations. CONSULTANT shall monitor the Contractor's quality control process for compliance with the construction Contract requirements.

CONSULTANT shall perform work zone monitoring as required by the WSDOT Construction Manual and the construction contract documents. Accordingly, CONSULTANT shall monitor and enforce the following for compliance to construction contract requirements:

- Permit compliance during construction.
- Temporary Traffic Control measures
- Erosion Control installation and maintenance

CONSULTANT shall monitor the Project to verify the following deliverables are completed and submitted (to the extent the deliverables are required by the construction contract documents). If the documents are not submitted to the CONSULTANT, then the CONSULTANT shall take appropriate action to require compliance by the Contractor:

- Contractor's Daily Report of Traffic Control - Summary form 421-40A
- Permit Compliance reporting, weekly at a minimum.

### **Task CE-3.1 Construction Activity Monitoring**

CONSULTANT shall perform compliance monitoring related to permit conditions agreed upon with State and Federal regulatory agencies through and as included in the construction contract.

CONSULTANT shall conduct site inspections to assist Contractor and CITY in maintaining compliance with issued regulatory permits and the special provisions.

CONSULTANT shall review the Contractor's submittals for the TESC, and SPCC for compliance with the construction contract and permits.

CONSULTANT shall coordinate monitoring with activities that have significant environmental components, including Clearing and Grading work.

CONSULTANT shall identify deficiencies and potential permit compliance issues and provide guidance to Local Agency, LAPM and CC to aid in avoiding potential regulatory involvement or violations.

CONSULTANT shall evaluate on-site conditions and construction techniques during site inspections to assess compliance with Project permits, the SPCC, the TESC, proposed site rehabilitation measures, and general environmental conservation measures. In the event that deficiencies are noted, CONSULTANT'S Environmental Specialist shall immediately bring the deficiency to the attention of the Contractor and CITY, recommend a corrective course of action to comply with environmental regulations, performance standards, and permit conditions.

CONSULTANT shall conduct daily review of the work site summarizing site conditions and providing recommended measures to facilitate permit compliance and correct deficiencies.

CONSULTANT shall provide inspection concurrently with the Contractor's operation. CONSULTANT shall coordinate closely with CC to ensure on-site inspections are coordinated with the construction schedule. CONSULTANT shall perform inspections as detailed in the WSDOT Construction Manual and the WSDOT Local Agency Guidelines (LAG). CONSULTANT shall prepare Inspector Daily Reports of construction for days CONSULTANT is on site.

CONSULTANT shall determine and document all pay quantities for work and materials incorporated into the Project. As required by the WSDOT Construction Manual, CONSULTANT shall prepare source documents for all pay items and include supporting documentation to support each payment. CONSULTANT shall keep quantity documentation current at all times and available for Local Agency review upon request.

CONSULTANT shall document, with digital photographs, the site conditions prior to the CC mobilizing on-site, specifically conditions of trees and paved surfaces immediately adjacent to the project limits.

**ASSUMPTIONS FOR BUDGETING PURPOSES:** One (1) full time inspector for 60 working days at 8 hours per day of inspection before and/or after the contractors mobilizes or is substantially complete. Of the 80 working days the contractor is allotted, we assume only 60 days will have active construction.

**Deliverables:**

- Inspector's Daily Reports (IDR's) form 422-004 – Completed each day CONSULTANT is on-site. Make available for review at CONSULTANT'S field office or home office. Originals submitted to CITY with final Project documentation submittal per task 5.4.
- Source Documents - Field notes, calculations, receipts, invoices, reports used to determine project pay quantities, installation sheets, and other supporting documentation – Complete as work is performed. Make available for Local Agency review as needed and submit with final Project documentation per task 5.4.
- CC's EEO/DBE and OJT/Apprenticeship reports, if required – Submit as required by construction contract.

**Task CE-3.2 Quality Control Monitoring & Testing**

CONSULTANT shall document the work and Non-field-Tested Materials incorporated into the Project by completing Field Inspection/Verification Reports (RAM/QPL) as required by the WSDOT Construction Manual. It is assumed that WSDOT will be providing the Record of Material (ROM) for the project. CONSULTANT shall keep a log of the reports and other supporting quality documentation and keep up to date and available for review by Local Agency. CONSULTANT shall ensure that all the quality documentation requirements for the ROM are met.

CONSULTANT shall monitor the Quality Control (QC) program for conformance with requirements of the WSDOT Materials Manual and the construction contract documents.

CONSULTANT'S SUBCONSULTANT, Columbia West Engineering Inc. will provide on-call construction testing services as requested by the Project.

**CONSULTANT shall:**

- Review and monitor the Contractor's documentation for the quality of all materials incorporated into the Project.
- Verify that all materials furnished and placed on the project comply with the approved specifications.
- Certify that the documentation confirms that all materials comply with Construction Contract requirements.
- Maintain a quality documentation log in accordance with the ROM.
- Obtain, review, and compile all required Project quality documentation in accordance with the WSDOT Construction Manual and the construction contract documents.
- Prepare quality price adjustments as necessary for materials per the Standard Specifications

**ASSUMPTIONS FOR BUDGETING PURPOSES:** This task is budgeted for the DOWL's Material Quality Control Technician to spend 40 hours for:

- Coordinating testing with the inspector, contractor and testing company
- Managing the ROM
- Reviewing test results
- Resolving field testing issues

Assumptions for onsite testing visits:

- 9 total trips for earthwork and compaction
- 7 total trips for concrete testing and inspection
- 9 total trips for specimen pickup/transport/processing

Assumptions for Laboratory Services:

- 24 concrete cylinder strength tests
- 6 grout cube strength tests
- 2 soil Proctor tests
- 2 sieve tests
- 2 sand equivalent tests
- 2 fracture face determination tests
- 2 Rise Density tests
- 1 each oil content furnace calibration and oil content & gradation tests

**Deliverables:**

- Field Acceptance/Verification Report (RAM/QPL) (Form 350-130) and quality document log - Maintained with Project files throughout the Project and available for Local Agency review as needed. Submit originals to Local Agency with final Project documentation per task 5.4.
- Daily field reports from Columbia West staff when on-site testing occurs.
- Laboratory test results from Columbia West

**TASK CE-5 PROJECT CLOSE-OUT**

CONSULTANT shall complete interim and final on-site inspections and submit all Project records required for final payment and project acceptance.

**Task CE-5.1 Final Inspection(s) and Submittals**

CONSULTANT shall schedule a final inspection of the project per 1-05.11 once the physical work has been completed, including final cleanup and extra work. If additional construction items are identified, CONSULTANT shall prepare a punch list of items to be corrected by the Contractor. Once the punch list items have been corrected, CONSULTANT shall meet at Project site with Local Agency for a follow-up to the Final Inspection. Once Contractor has satisfactorily completed all construction contract work and fulfilled its obligations concerning Project documentation per 1-08.5(2), CONSULTANT shall prepare the written notice of the Completion Date.

CONSULTANT shall complete a Project Managers Narrative Report after notification of the physical completion, but prior to notification of the completion date.

CONSULTANT shall notify the Contractor of the completion date after all construction contract work and inspections are complete, and all required documentation is submitted per Standard Specification, Section 1-05.12.

**ASSUMPTIONS FOR BUDGETING PURPOSES:** It is assumed that the PM and Inspector will spend one (1) day performing the final inspection.

**Deliverables:**

- Notify the CITY of Substantial Completion date.
- Punch list of items to be corrected following the final inspection.
- Notify CITY of Substantial/Physical Completion Date
- Notify CITY of Final Completion Date
- Project Manager's Narrative Report

**Task CE-5.2 As-Built Plans and Shop Drawings**

CONSULTANT shall provide redline as-built plans and shop drawings in conformance with WSDOT Construction Manual Chapter 10, Section 3.10.

**ASSUMPTIONS FOR BUDGETING PURPOSES:** This task has been budgeted for the Inspector to spend one (1) day preparing red-line copies for submittal.

**Deliverables & Schedule**

In addition to the deliverables listed below, CONSULTANT shall submit paper format of as-built mark-ups to CITY for review.

**Task CE-5.3 Submittal of Final Project Documentation**

CONSULTANT shall organize and submit the final Project documentation as detailed in the WSDOT LAG Chapter 52.83a-f.

Within 15 calendar days after the Contractor is notified of the Completion Date the CITY will notify the Region Local Programs Engineer the project is complete. The Region Local Programs Engineer will then conduct a WSDOT Project Review and attend the final inspection.

**ASSUMPTIONS FOR BUDGETING PURPOSES:** The Inspector is budgeted for ten (10) hours, the Administrator ten (10) hours and the PM two (2) hours to complete and submit the required documents.

**Deliverables:**

- All final Project quality and quantity documentation – Original documents must be submitted to the CITY within 30 calendar days after receiving the Region Local Agency Engineers PMR or documentation Review.

**E.1 PROJECT SCHEDULE**

**Schedule Assumptions**

The Project is scheduled for a May 2, 2024, bid opening for the CC. It is anticipated that the Contractor will receive NTP no later than June 10, 2024. CITY shall issue the CC Notice of Award in accordance with 1-03.2 of the Standard Specifications.

- Physical Completion Date is 80 working days as specified in the construction contract which is anticipated to be on or about September 27, 2024.

**Regardless of the schedule for deliverables identified in specific tasks, all tasks, and deliverables except Claims Support (if applicable) must be completed no later than April 30, 2025.**

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

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See attached Exhibit B-1 - DBE Goal Letter (0%).

Agreement Number: Original

## Exhibit B-1 DBE Goal Letter

February 1, 2024

Ms. Carolyn Sourek, PE  
Public Works Director  
City of Stevenson  
PO Box 371  
Stevenson, Washington 98648

**City of Stevenson  
1st Street Pedestrian Amenities & Overlook  
TAP-30A2(001)  
DBE Goal**

Dear Ms. Sourek:

The WSDOT Disadvantaged Business Enterprise (DBE) and Training program, approved by FHWA, requires the evaluation of each local agency project to determine the feasibility of including goals (See chapter 26 of the Local Agency Guidelines (LAG) manual).

This office applied the criteria and determined that setting a **Zero** percent DBE goal for consultants on this project is appropriate. This evaluation of the mandatory DBE goal will remain in effect for one year from the date of this letter. If the advertisement is scheduled for a date more than one year after the date of this letter or the cost estimate changes more than twenty percent prior to going to advertisement, reevaluation of the DBE goal is required.

The Consultant shall continue their outreach efforts to provide DBE/SBE firms maximum practicable opportunities to participate in this project. Additionally, payment reporting in the Diversity Management and Compliance System (DMCS) will be a requirement of this consultant agreement.

If you have any questions, you can contact me at 360.705.7383, or by email at [BrittoM@wsdot.wa.gov](mailto:BrittoM@wsdot.wa.gov).

Sincerely,

Michele L. Britton, PE  
Asst. State Local Programs Engineer  
Local Programs

MLB:jd:ml

cc: Rob Klug, Southwest Region Local Programs Engineer

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

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

I. Surveying, Roadway Design & Plans Preparation Section

A. Survey Data

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

Agreement Number: Original

## II. Any Other Electronic Files to Be Provided

## III. Methods to Electronically Exchange Data

A. Agency Software Suite

B. Electronic Messaging System

C. File Transfers Format

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

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See attached Exhibit D-1 - Prime Consultant Cost Worksheet  
See attached Exhibit D-2 - Prime Consultant Hours Worksheet  
See attached Exhibit D-3 - Prime Consultant Indirect Cost Rate

Agreement Number: Original

**Exhibit D - 1 - Prime Consultant Cost Worksheet**

**Agreement Number  
City of Stevenson 1st Street Pedestrian Overlook CA/CEI  
DOWL  
Cost Worksheet**

**Firm Name:** PRIME

<b>Class</b>	<b>Classification</b>	<b>Role</b>	<b>Staff</b>	<b>Hours</b>	<b>x</b>	<b>Rate</b>	<b>=</b>	<b>Cost</b>
	CIVIL ENGINEER 4 (Bohanek)	Principal	Bohanek	4		\$ 90.87		\$ 363.48
	DEPUTY (Kelly)	Project Manager	Kelly	78		\$ 97.84		\$ 7,631.52
	CIVIL ENGINEER 4 (Miles)	Designer	Miles	0		\$ 90.87		\$ -
	CONSTRUCTION PROJECT COORDINATOR 4 (Fernando)	Assitant PM	Fernando	51		\$ 56.98		\$ 2,905.98
	CONSTRUCTION PROJECT COORDINATOR 3 (Cendana)	Inspector	Cendana	525		\$ 52.64		\$ 27,636.00
	ADMINISTRATIVE ASSISTANT 3 (Kamsler or Polly)	Adminstrator	Kamsler or Polly	125		\$ 40.28		\$ 5,035.00
	CONSTRUCTION PROJECT COORDINATOR 2 (Downer)	Material Inspector	Downer	40		\$ 41.58		\$ 1,663.20
				0		\$ -		\$ -
				0		\$ -		\$ -
				0		\$ -		\$ -
			Total Hours	823				
							Total Direct Labor	\$ 45,235.18
<b>Overhead &amp; Fee</b>								
	Overhead Cost @		160.50% of Direct Labor					\$ 72,602.46
	Fee @		30.0% Direct Labor					\$ 13,570.55
<b>Total Direct Labor, Overhead and Fee</b>								<b>\$ 131,408.20</b>
<b>Direct Non-Salary Costs</b>								
	60 round trips, vancouver office to Stevenson			5400	\$	0.67		\$ 3,618.00
	Construction Testing Services			1	\$	18,925.00		\$ 18,925.00
<b>Direct Non-Salary Costs Total</b>								<b>\$ 22,543.00</b>
<b>Prime Subtotal</b>								<b>\$ 153,951.20</b>

**Exhibit D - 2 - Prime Consultant Hours Worksheet**  
**Agreement Number**  
**City of Stevenson 1st Street Pedestrian Overlook CA/CEI ESTIMATED HOURS**  
**Prime Consultant - DOWL**

**Labor Estimate**

\$ 263.98 \$ 284.23 \$ 263.98 \$ 165.53 \$ 152.92 \$ 117.01 \$ 120.79 \$ -

Work Elem.	Sub Elem.	Description	CIVIL ENGINEER 4 (Bohanek)	DEPUTY (Kelly)	CIVIL ENGINEER 4 (Miles)	CONSTRUCTION PROJECT COORDINATOR 4 (Fernando)	CONSTRUCTION PROJECT COORDINATOR 3 (Cendana)	ADMINISTRATIVE ASSISTANT 3 (Kamsler or Polly)	CONSTRUCTION PROJECT COORDINATOR 2 (Downer)		Total Hours	Fee
<b>CE-01</b>		<b>PROJECT MANAGEMENT AND ADMINISTRATION</b>	4	19	-	12	-	11	-	-	46	9,730
	1.1	Coordination	4	12		12		4			32	6,921
	1.2	Status Reports and Invoices		7				7			14	2,809
<b>CE-02</b>		<b>CONSTRUCTION CONTRACT ADMINISTRATION</b>	-	49	-	39	19	102	-	-	209	35,223
	2.1	Pre construction Conference		4			6	6			16	2,756
	2.2	Construction Contract Administration		12		12		36			60	9,610
	2.3	Monthly Preliminary Progress Estimates						20			20	2,340
	2.4	Project Progress Meetings		20		20		20			60	11,335
	2.5	Shope Drawings and Submittal Review		5		7	13	12			37	5,972
	2.6	Consultation During Construction		8				8			16	3,210
<b>CE-03</b>		<b>CONSTRUCTION ENVIRONMENTAL COMPLIANCE AND WORKZONE MONITORING AND INSPECTION</b>	-	-	-	-	480	-	40	-	520	78,233
	3.1	Construction Activity Monitoring					480				480	73,401
	3.2	Quality Control Monitoring							40		40	4,832
<b>CE-05</b>		<b>PROJECT CLOSE-OUT</b>	-	10	-	-	26	12	-	-	48	8,222
	5.1	Final Inspection and Submittals		8			8				16	3,497
	5.2	As-Built Plans and Shop Drawings						2			10	1,457
	5.3	Submittal of Final Project Documentation		2			10	10			22	3,268
		<b>Total</b>	<b>4</b>	<b>78</b>	<b>-</b>	<b>51</b>	<b>525</b>	<b>125</b>	<b>40</b>	<b>-</b>	<b>823</b>	<b>131,408.20</b>

## **Exhibit E**

# **Sub-consultant Cost Computations**

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

See attached Exhibit E-1 - Sub Consultant Cost Worksheet (Rhino)

See attached Exhibit E-2 - Sub Consultant Hours Worksheet (Rhino)

See attached Exhibit E-3 - Sub Consultant Indirect Cost Rate (Rhino)

Agreement Number: Original

**Exhibit E - 1 - Sub Consultant Cost Worksheet**  
 Agreement Number  
**Buck Creek Scour Repair Project**  
**SUBCONSULTANT 1- Rhino One**  
**Cost Worksheet**

Firm Name: Rhino One

Class	Classification	Role	Staff	Hours	x	Rate	=	Cost
	Principal Geotechnical Engineer			25		\$ 80.86		\$ 2,021.50
				0		\$ -		\$ -
				0		\$ -		\$ -
			Total Hours	25		Total Direct Labor		\$ 2,021.50

**Overhead & Fee**

Overhead Cost @	119.01% of Direct Labor	\$ 2,405.79
Fee @	30.0% Direct Labor	\$ 606.45

**Total Direct Labor, Overhead and Fee** \$ **5,033.74**

**Direct Non-Salary Costs**

				Cost
Automobile	Office to site	Miles	180 \$ 0.670 \$/Mi	\$ 120.60
Photocopies		Copies	\$/copy	\$ -
Postage / Delivery (allowance)				\$ -
Parking		Events	\$/event	\$ -

**Direct Non-Salary Costs Total** \$ **120.60**

**Total** \$ **5,154.34**

**SUBCONSULTANT 1- Rhino One Total Cost:**

**Rounded** **\$ 5,154**



**Exhibit E - 2 - Sub Consultant Hours Worksheet**  
**Agreement Number**  
**SUBCONSULTANT ESTIMATED HOURS**

**SUBCONSULTANT - Rhino One**

Labor Estimate

\$ 201.35 \$ - \$ -

Work Elem.	Sub Elem.	Description	Rajiv			Total Hours	Fee
						<b>25</b>	<b>5,033</b>
1.1		Project Management Coordination, progress reporting and invoicing	5			5	1,007
2.7		Submittal Review Wall submittal	10			10	2,013
3.1		Inspection up to 2 site visit for wall construction	10			10	2,013
		<b>Total</b>	<b>25</b>	<b>0</b>	<b>0</b>	<b>25</b>	<b>5,033</b>

# Exhibit F - Title VI Assurances Appendix A & E

## APPENDIX A

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

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

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

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## APPENDIX E

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

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

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

**Exhibit G**  
**Certification Documents**

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

Agreement Number:

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

I hereby certify that I am the and duly authorized representative of the firm of  
DOWL

whose address is

5 Centerpointe Drive; Suite 350; Lake Oswego, OR 97035

and that neither the above firm nor I have:

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

I acknowledge that this certificate is to be furnished to the City of Stevenson 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.

DOWL

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Consultant (Firm Name)

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Signature (Authorized Official of Consultant)

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Date

Agreement Number: Original

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

I hereby certify that I am the:

Other

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

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

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Agreement Number:

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

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

DOWL

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Consultant (Firm Name)

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Signature (Authorized Official of Consultant)

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Date

Agreement Number: Original

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

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

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

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

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

DOWL

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Consultant (Firm Name)

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Signature (Authorized Official of Consultant)

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Date

Agreement Number: Original



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

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 2.101 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of 1st Street Pedestrian Amenities & Overlook \* are accurate, complete, and current as of \*\*.

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

Firm: DOWL

\_\_\_\_\_  
Signature

Project Manager  
\_\_\_\_\_  
Title

Date of Execution\*\*\*:

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\*Identify the proposal, quotation, request for pricing adjustment, or other submission involved, giving the appropriate identifying number (e.g. project title.)

\*\*Insert the day, month, and year, when price negotiations were concluded and price AGREEMENT was reached.

\*\*\*Insert the day, month, and year, of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

Agreement Number: Original

# **Exhibit H**

## **Liability Insurance Increase**

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

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

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

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

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

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

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

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

Notes: Cost of added insurance requirements: \$ NA

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

NA

Agreement Number: Original

# **Exhibit I**

## **Alleged Consultant Design Error Procedures**

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

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

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

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

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

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

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

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

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

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

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

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

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

# **Exhibit J**

## **Consultant Claim Procedures**

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

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

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

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

The consultant's claim must outline the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Agreement Number: Original