

ATTACHMENT B  
**Local Agency A&E Professional Services  
Negotiated Hourly Rate Consultant Agreement**

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

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

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

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

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

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

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

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

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

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

## **III. General Requirements**

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

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

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

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

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

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

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

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

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

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

**IV. Time for Beginning and Completion**

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY. All work under this AGREEMENT shall conform to the criteria agreed upon detailed in the AGREEMENT documents. These SERVICES must be completed by the date shown in the heading of this AGREEMENT titled “Completion Date.”

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

## V. Payment Provisions

The CONSULTANT shall be paid by the AGENCY for completed SERVICES rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for SERVICES performed or SERVICES rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete SERVICES. The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31 ([www.ecfr.gov](http://www.ecfr.gov)).

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

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

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

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

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

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

- A. **Direct Non-Salary Costs:** Direct Non-Salary Costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to, the following items: travel, printing, long distance telephone, supplies, computer charges, and fees of sub-consultants. Air or train travel will be reimbursed only to lowest price available, unless otherwise approved by the AGENCY. The CONSULTANT shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance with the WSDOT's Accounting Manual M 13-82, Chapter 10 – Travel Rules and Procedures, and all revisions thereto. Air, train, and rental car costs shall be reimbursed in accordance with 48 Code of Federal Regulations (CFR) Part 31.205-46 "Travel Costs." The billing for Direct Non-salary Costs shall include an itemized listing of the charges directly identifiable with these SERVICES. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the STATE upon request. All above charges must be necessary for the SERVICES provided under this AGREEMENT.
- B. **Maximum Amount Payable:** The Maximum Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT on page one (1.) The Maximum Amount Payable does not include payment for extra work as stipulated in section XIII, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.
- C. **Monthly Progress Payments:** Progress payments may be claimed on a monthly basis for all costs authorized in A and B above. Detailed statements shall support the monthly billings for hours expended at the rates established in Exhibit "D," including names and classifications of all employees, and billings for all direct non-salary expenses. To provide a means of verifying the billed salary costs for the CONSULTANT's employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates, and present duties of those employees performing work on the SERVICES at the time of the interview.
- D. **Final Payment:** Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the SERVICES under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports, electronic data, and other related documents, which are required to be furnished under this AGREEMENT. Acceptance of such Final Payment by the CONSULTANT shall constitute a release of all claims for payment, which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the AGENCY within thirty (30) calendar days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment. Per WSDOT's "Audit Guide for Consultants," Chapter 23 "Resolution Procedures," the CONSULTANT has twenty (20) working days after receipt of the final Post Audit to begin the appeal process to the AGENCY for audit findings

E. **Inspection of Cost Records:** The CONSULTANT and their sub-consultants shall keep available for inspection by representatives of the AGENCY and the United States, for a period of six (6) years after receipt of final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this AGREEMENT is initiated before the expiration of the six (6) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed. An interim or post audit may be performed on this AGREEMENT. The audit, if any, will be performed by the State Auditor, WSDOT's Internal Audit Office and /or at the request of the AGENCY's Project Manager.

## **VI. Sub-Contracting**

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

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

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

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

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

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

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

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

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

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may arise under any Workmen's Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

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

Agreement Number:

## VIII. Nondiscrimination

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

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

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

## IX. Termination of Agreement

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

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

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

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

In the event of a termination for default, the amount to be paid to the CONSULTANT shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing SERVICES to the date of termination, the amount of SERVICES originally required which was satisfactorily completed to date of termination, whether that SERVICE is in a form or a type which is usable to the AGENCY at the time of termination, the cost to the AGENCY of employing another firm to complete the SERVICES required and the time which may be required to do so, and other factors which affect the value to the AGENCY of the SERVICES performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount, which would have been made using the formula set forth in paragraph two (2) of this section.

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

The CONSULTANT shall, within 15 days, notify the AGENCY in writing, in the event of the death of any member, partner, or officer of the CONSULTANT or the death or change of any of the CONSULTANT's supervisory and/or other key personnel assigned to the project or disaffiliation of any principally involved CONSULTANT employee.

The CONSULTANT shall also notify the AGENCY, in writing, in the event of the sale or transfer of 50% or more of the beneficial ownership of the CONSULTANT within 15 days of such sale or transfer occurring. The CONSULTANT shall continue to be obligated to complete the SERVICES under the terms of this AGREEMENT unless the AGENCY chooses to terminate this AGREEMENT for convenience or chooses to renegotiate any term(s) of this AGREEMENT. If termination for convenience occurs, final payment will be made to the CONSULTANT as set forth in the second and third paragraphs of this section.

Payment for any part of the SERVICES by the AGENCY shall not constitute a waiver by the AGENCY of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform SERVICES required of it by the AGENCY.

Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

## **X. Changes of Work**

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

## **XI. Disputes**

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

## **XII. Legal Relations**

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

The CONSULTANT shall defend, indemnify, and hold the State of Washington (STATE) and the AGENCY and their officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the negligence of, or the breach of any obligation under this AGREEMENT by, the CONSULTANT or the CONSULTANT's agents, employees, sub consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable; provided that nothing herein shall require a CONSULTANT



to defend or indemnify the STATE and the AGENCY and their officers and employees against and hold harmless the STATE and the AGENCY and their officers and employees from claims, demands or suits based solely upon the negligence of, or breach of any obligation under this AGREEMENT by the STATE and the AGENCY, their agents, officers, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the STATE and /or the AGENCY may be legally liable; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT or the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT is legally liable, and (b) the STATE and/or AGENCY, their agents, officers, employees, sub-consultants, subcontractors and or vendors, of any tier, or any other persons for whom the STATE and/or AGENCY may be legally liable, the defense and indemnity obligation shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable. This provision shall be included in any AGREEMENT between CONSULTANT and any sub-consultant, subcontractor and vendor, of any tier.

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

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

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

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

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

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

## Insurance Coverage

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

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

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

Name:

Agency:

Address:

City: State: Zip:

Email:

Phone:

Facsimile:

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

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

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

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

### **XIII. Extra Work**

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

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

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

### **XV. Federal Review**

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

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

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

### **XVII. Complete Agreement**

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

### **XVIII. Execution and Acceptance**

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

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

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

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

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

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

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

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

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

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

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

## **XX. Records Maintenance**

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

For purposes of this AGREEMENT, "documents" means every writing or record of every type and description, including electronically stored information ("ESI"), that is in the possession, control, or custody of the CONSULTANT, including, without limitation, any and all correspondences, contracts, AGREEMENTs, appraisals, plans, designs, data, surveys, maps, spreadsheets, memoranda, stenographic or handwritten notes, reports, records, telegrams, schedules, diaries, notebooks, logbooks, invoices, accounting records, work sheets, charts, notes, drafts, scribbles, recordings, visual displays, photographs, minutes of meetings, tabulations, computations, summaries, inventories, and writings regarding conferences, conversations or telephone conversations, and any and all other taped, recorded, written, printed or typed matters of any kind or description; every copy of the foregoing whether or not the original is in the possession, custody, or control of the CONSULTANT, and every copy of any of the foregoing, whether or not such copy is a copy identical to an original, or whether or not such copy contains any commentary or notation whatsoever that does not appear on the original.

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

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

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

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

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

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Project No. 2210

See Attached Exhibit A, A.1, and A.2 (Pg 36-56)

## ***Exhibit B***

### ***DBE Participation Plan***

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

The City does not anticipate receiving Federal Funding for the Willows Road Watermain . As such, the Consultant will not have access to the WSDOT Diversity Compliance program and is exempt from all reporting requirements within [wsdot.diversitycompliance.com](http://wsdot.diversitycompliance.com) program. The estimated DBE percentage for the project is shown in Exhibit D and E. (Pg 57-60)



# ***Exhibit C***

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

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

### **I. Surveying, Roadway Design & Plans Preparation Section**

#### **A. Survey Data**

See full details in Exhibit A, A.1, and A.2 (Pg 36-56)

Standard: City of Redmond Datum Control, State Plan Coordinate System

Format: Basemap in CAD/Civil3D 2013 or higher

Transmission: SharePoint

#### **B. Roadway Design Files**

See full details in Exhibit A, A.1, and A.2 (Pg 36-56)

Standard: City of Redmond

Format: Basemap in CAD/Civil3D 2013 or higher

Transmission: SharePoint

#### **C. Computer Aided Drafting Files**

See Full details in Exhibit A, A.1, and A.2 (Pg 36-56)

Standard: Consultant Drafting Standards

Format: Basemap in CAD/Civil3D 2013 or higher

Transmission: SharePoint

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

Agency will retain the right to review all deliverable referenced in the Scope of Work Exhibit A, A.1, and A.2 (Pg 36-56)

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

Deliverables outlined in Scope of Work Exhibit A, A.1, and A.2 (Pg 36-56)

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

Agency furnished services and information outlined in Scope of Work Exhibit A, A.1, and A.2 (Pg 36-56)

II. Any Other Electronic Files to Be Provided

Deliverables outlined in Scope of Work Exhibit A, A.1, and A.2 (Pg 36-56)

III. Methods to Electronically Exchange Data

City SharePoint

A. Agency Software Suite

N/A

B. Electronic Messaging System

N/A

C. File Transfers Format

PDF, Zip Files, Word, Excel, CAD

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

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See Exhibit D (Pg 57-58)

## ***Exhibit E***

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

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

See Exhibit E and E.1 (Pg 59-60)

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

## **APPENDIX A**

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

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

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

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## **APPENDIX E**

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

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

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



## ***Exhibit G*** ***Certification Document***

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

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

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

\_\_\_\_\_

whose address is

\_\_\_\_\_

and that neither the above firm nor I have

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

I acknowledge that this certificate is to be furnished to the \_\_\_\_\_

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

\_\_\_\_\_

Consultant (Firm Name)

\_\_\_\_\_

Signature (Authorized Official of Consultant)

\_\_\_\_\_

Date

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

I hereby certify that I am the:

☐

☐ Other

of the \_\_\_\_\_, and \_\_\_\_\_

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

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

I acknowledge that this certificate is to be furnished to the \_\_\_\_\_

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

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

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

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

\_\_\_\_\_  
Date

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

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

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

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

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

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

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

\_\_\_\_\_  
Date

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

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

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

Firm: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Date of Execution \_\_\_\_\_\*\*\*.

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

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

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

# **Exhibit H**

## **Liability Insurance Increase**

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

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

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

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

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

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

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

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

Notes: Cost of added insurance requirements: \$ \_\_\_\_\_.

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

# **Exhibit I**

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

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

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

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

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

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

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

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

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

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

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



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

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

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

# **Exhibit J**

## **Consultant Claim Procedures**

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

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

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

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

The consultant's claim must outline the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# **EXHIBIT A**

## **SCOPE OF SERVICES**

### **Willows Road Watermain Extension City Project No. 2210**

### **CITY OF REDMOND, WA**

## **Project Understanding and Assumptions**

### **Background**

The Willow Road Watermain Extension project (project) consists of designing approximately 1,300 linear feet (LF) of 12-inch diameter watermain within the existing roadway prism in Willows Road from the watermain constructed by the Proctor Willows development to the existing 12-inch diameter watermain approximately 800 LF north of the intersection with N.E. 116th Street. The project will require approximately 0.25 miles of roadway restoration. No sidewalk improvements are included in this Scope of Services (scope) due to wetland and buffer mitigation requirements. The watermain crosses three existing 18-inch diameter culverts and it is assumed that the watermain design can be achieved without impacting the culverts. The project is included in an interlocal agreement with the City of Kirkland that was put in place as part of the Proctor Willows Development Agreement.

Project work will include coordination of design efforts by others in the project vicinity including the King County Lake Hills Trunk Sewer Replacement Project.

## **Scope of Services**

The Scope of Services details a work program for final design services for the Willows Road Watermain Extension. This Scope of Services has been developed based on an understanding of the work to be performed from meetings with the City and is organized by the following tasks:

- Task 1 – Project Management
- Task 2 – Data Collection and Review
- Task 3 – Preliminary Design
- Task 4 – 60% Design
- Task 5 – 90% Design
- Task 6 – 100% Design
- Task 7 – Bid Documents
- Task 8 – Bidding Support
- Task 9 – Management Reserve

# Task 1 - Project Management

## Objective

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

## Activities

### *1.1 Invoices/Status Reports*

Prepare monthly invoices, including expenditures by task, hours worked by project personnel, and other direct expenses with the associated backup documentation.

### *1.2 Project Kickoff Meeting*

Prepare for and attend project kickoff meeting with City staff and key team members. Consor shall prepare for, attend, and lead the kickoff meeting. Prepare a detailed meeting agenda and distribute ahead of the kickoff meeting for City review. Prepare and distribute notes after the meeting.

### *1.3 Coordination with the Owner*

Coordinate with City staff via status meetings, telephone communication, and email during the project. City PM to be copied on email communications with City staff.

### *1.4 Quality Management*

Perform quality management at key milestones and on project deliverables.

### *1.5 Project Management Plan*

Create a Project Management Plan (PMP) to include the scope and budget, project schedule, contact list, health and safety plan, and quality management plan. Develop baseline project schedule as part of the PMP.

## Task Deliverables

- Consor shall deliver to the City a monthly invoice and status report.
- Kickoff meeting agenda and notes.
- Updated monthly schedule.
- Project Management Plan.

## City Responsibilities

- Timely review and processing of consultant invoices.

## Assumptions

- The project duration is anticipated to be 12 months; therefore it is assumed that there will be up to 12 progress payments/status reports.

- Kickoff meeting will be virtual and will be attended by three (3) members of the Consor team.
- Meeting agenda will be submitted to City in advance of meetings and workshops for City review and input.
- City review period for deliverables is 15 working days.
- City review comments will be compiled into a single document before submitting to consultant.
- Consultant assumes up to 12, 30-minute virtual meetings with the Consultant's Project Manager and the City Project Manager.

## Task 2 – Data Collection and Review

### Objective

Complete a detailed topographic survey of existing surface features and subsurface utilities within the right-of-way and along the utility alignments in accordance with the Scope of Services provided by DHA on February 5, 2025 and included as Exhibit A.1. The easterly mapping limits as defined by Consor are to be 5 feet east of the easterly edge of pavement.

Collect relevant data review the basemap based on the data. Utilizing preliminary design drawings and data collected. Identify any conflicts that need to be potholed to collect additional information and pothole in accordance with the Scope of Services provided by APS on February 5, 2025 and included as Exhibit A.2.

### Activities

#### *2.1 Data Collection and Review*

Request and review relevant data from the City and private utilities to complete the preliminary engineering task. Develop a formal "Request for Information" and coordinate with the City during data collection. Incorporate private utility information into the project design.

#### *2.2 Surveying*

Topographic mapping will consist of above ground planimetric features, curbs, walks, striping, fences, low wire sag elevation on existing overhead wires along the west side of street, trees (greater than 6 inches in diameter), water appurtenances including top of water valve nut elevations etc., and above and underground utilities. The easterly mapping limits as defined by Consor are to be 5 feet east of the easterly edge of pavement.

#### *2.3 Basemap Review and Site Visit Verification*

Attend one site visit following receipt of the survey drawings to confirm pertinent topographic features were included in the survey.

Provide consolidated comments and questions to the City regarding basemap updates required before design effort is initiated. Comments will be provided via Bluebeam mark-up or similar.

## 2.4 Conflict Analysis and Potholing

Perform a conflict analysis to inform potholing plan based on topographic survey, third party utility locates, and as-built information provided by the City using the preliminary design utility drawings. Develop Potholing Plan for up to 15 potholes. Submit to City for review and approval.

### Task Deliverables

- Updated survey files
- Electronic copy of formal “Request for Information” (RFI).
- Potholing Plan
- Up to 15 test-hole data sheets, which include Top, Bottom, Width, Diameter and Direction of the utility.
- Excel spread sheet containing test-hole data for the project.
- Google Earth RM map with interactive link accompanied with an SHP File.
- Photo of all Found Utilities.

### City Responsibilities

- Provide City owned as-built information and other information noted in RFI.
- Review and approve Potholing Plan.

### Assumptions

- Locating services will be included in the survey scope and fee to paint out the existing underground utilities, as well as contacting One-Call to engage the city to locate its water, storm and sanitary sewer systems.
- One (1) field day to establish City of Redmond project horizontal and vertical control and four (4) field days to perform the topographic mapping.
- The horizontal datum will be Washington State Plane coordinates, north zone NAD-83(1991), US Feet. The vertical datum will be NAVD-88, US Feet. The topographic survey will be developed as a 1”=20’ scale file with one (1) foot contours and delivered in .dwg and .pdf formats
- An additional half day of surveying included to pick up any additional items following basemap review.
- Utilities will be between 0 and 10 feet in depth.
- Restoration will include 5/8” crushed rock back fill with a 3’x3’ saw cut and an HMA patch.
- Grind and overlay of the existing roadway is not anticipated.

## Task 3 – Preliminary Design

### Objective

Develop preliminary utility design in the project area. Preliminary drawing list is provided at the end of this document.

#### *3.1 Preliminary Design*

Develop preliminary design plans to the 30% level that consider long-term operation and maintenance needs, location of existing utilities, end connection requirements, valving, service connections, air relief and blow-off features, maintaining water service during construction, minimizing neighborhood traffic and construction impacts, and constructability. Drawings will be consistent with the drawing list provided at the end of this document.

#### *3.2 Preliminary OPCC*

Develop 30% OPCC consistent with AACE International Class 2 Estimate including a 30% contingency to account for unknowns and an anticipated accuracy range of -20% to +30%.

#### *3.3 Constructability Review*

Perform a constructability review to identify risks, constraints, access needs, easement needs and possible issues with proposed design.

#### *3.4 Preliminary Design Workshop*

Prepare for and conduct a preliminary design workshop with City staff. Prepare meeting agenda and meeting notes to document discussion items, action items, and decisions and transmit to the City.

### Task Deliverables

- Preliminary design package including electronic copies of the drawings, special provisions, and OPCC via file sharing site; no hard copies will be provided.
- SEPA exemption documents.

### City Responsibilities

- Provide one set of comments for each deliverable in electronic format. Review comments will be provided in PDF format and will be a consolidated PDF plan set prior to being delivered to the Consultant to eliminate redundant or conflicting comments.
- Attend Preliminary Design Workshop
- Coordinate and obtain temporary construction easements if needed.

### Assumptions

- Work will be limited to road right of way and or defined City of Redmond easements.
- No storm, sewer, or water modeling services are needed.
- No specifications to be developed for preliminary design.



- Preliminary Design Workshop will be up to two (2) hours and attended by up to two (2) Consor team members.
- The drawing list is provided at the end of this document and is the basis for the fee estimate related to design drawings. Detail sheets are not included. No traffic control sheets will be a part of preliminary design.
- City review period is 15 working days for preliminary design deliverable.
- Review comments will be received in a complete, single submittal. Multiple rounds of review comments on the same design completion submittal are not anticipated.
- City of Redmond will coordinate with City of Kirkland as needed.
- Pavement rehabilitation to match existing. Striping and signing of the roadway to match existing.

## Task 4 – 60% Design

### Objective

Develop 60% level design drawings, special provisions, and OPCC. 60% design level deliverables will incorporate City review comments received on the preliminary design documents.

### Activities

#### *4.1 60% Design Drawings*

Develop 60% design level drawings. Drawings will be consistent with the drawing list provided at the end of this document.

#### *4.2 60% OPCC*

Develop 60% OPCC consistent with AACE International Class 2 Estimate including a 20% contingency to account for unknowns and an anticipated accuracy range of -15% to +20%.

#### *4.3 60% Special Provisions*

Develop 60% design level Special Provisions to be based on City Standard Specifications and modified to meet specifics of the project.

#### *4.4 60% Design Workshop*

Prepare for and conduct a 60% design workshop with City staff. Prepare meeting agenda and meeting notes to document discussion items, action items, and decisions and transmit to the City.

### Task Deliverables

- 60% design package including electronic copies of the drawings, special provisions, and OPCC via file sharing site; no hard copies will be provided.

## City Responsibilities

- Provide one set of comments for each deliverable in electronic format. Review comments will be provided in PDF format and will be a consolidated PDF plan set prior to being delivered to the Consultant to eliminate redundant or conflicting comments.
- Attend 60% Design Workshop.
- Coordinate and obtain temporary construction easements if needed.

## Assumptions

- Work will be limited to road right of way and or defined City of Redmond easements.
- No storm, sewer, or water modeling services are needed.
- 60% Design Workshop will be up to two (2) hours and attended by up to two (2) Consor team members.
- The drawing list is provided at the end of this document and is the basis for the fee estimate related to design drawings.
- City review period is 15 working days for 60% deliverable.
- Review comments will be received in a complete, single submittal. Multiple rounds of review comments on the same design completion submittal are not anticipated.
- City of Redmond will coordinate with City of Kirkland as needed.
- Pavement rehabilitation to match existing. Striping and signing of the roadway to match existing.
- Special provisions will be submitted to the City as Word documents with changes being captured using the Track Changes function in Word.

## Task 5 – 90% Design

### Objective

Develop 90% level design drawings, Special Provisions, and OPCC. 90% design level deliverables will incorporate City review comments received on the 60% design documents.

### Activities

#### *5.1 90% Design Drawings*

Develop 90% design level drawings. Drawings will be consistent with the drawing list provided at the end of this document.

#### *5.2 90% OPCC*

Develop 90% OPCC consistent with AACE International Class 1 Estimate including a 10% contingency to account for unknowns and an anticipated accuracy range of -10% to +15%.

### 5.3 90% Special Provisions

Develop 90% design level Special Provisions to be based on City Standard Specifications and modified to meet specifics of the project.

### 5.4 90% Design Workshop

Prepare for and conduct a 90% design workshop with City staff. Prepare meeting agenda and meeting notes to document discussion items, action items, and decisions and transmit to the City.

## Task Deliverables

- 90% design package including electronic copies of the drawings, special provisions, and OPCC via file sharing site. No hard copies will be provided.

## City Responsibilities

- Provide one set of comments for each deliverable in electronic format. Review comments will be provided in PDF format and will be a consolidated PDF plan set prior to being delivered to the Consultant to eliminate redundant or conflicting comments.
- Attend 90% Design Workshop.
- Coordinate and obtain temporary construction easements if needed.
- Prepare and provide electronic files, and periodic updates, of text, forms, schedules, and other components of the contract documents, including preferred “front-end” sections.

## Assumptions

- Work will be limited to road right of way and or defined City of Redmond easements.
- No storm, sewer, or water modeling services are needed.
- 90% Design Workshop will be up to two (2) hours and attended by up to two (2) Consor team members.
- The drawing list is provided at the end of this document and is the basis for the fee estimate related to design drawings.
- City review period is 15 working days for 90% deliverable.
- Review comments will be received in a complete, single submittal. Multiple rounds of review comments on the same design completion submittal are not anticipated.
- City of Redmond will coordinate with City of Kirkland as needed.
- Pavement rehabilitation to match existing. Striping and signing of the roadway to match existing.
- Special provisions will be submitted to the City as Word documents with changes being captured using the Track Changes function in Word.

## Task 6 – Final Design

### Objective

Develop 100% level design drawings, Special Provisions, and OPCC. 100% design level deliverables will incorporate City review comments received on the 90% design documents.

### Activities

#### *6.1 100% Design Bid-Check Set Drawings*

Develop 100% design level design drawings. Drawings will be consistent with the drawing list provided at the end of this document.

#### *6.2 100% OPCC*

Develop 100% OPCC consistent with AACE International Class 1 Estimate and will including 0% contingency (force account minor changes bid item will serve as contingency) and an anticipated accuracy range of -10% to +10%.

#### *6.3 100% Special Provisions*

Develop 100% design level special provisions and bid proposal package to address all anticipated project work.

### Task Deliverables

- 100% design package including electronic copies of the drawings, special provisions, and OPCC via file sharing site. No hard copies will be provided.

### City Responsibilities

- Provide one set of comments for each deliverable in electronic format. Review comments will be provided in PDF format and will be a consolidated PDF plan set prior to being delivered to the Consultant to eliminate redundant or conflicting comments.
- Coordinate and obtain temporary construction easements if needed.
- Prepare and provide electronic files, and periodic updates, of text, forms, schedules, and other components of the contract documents, including preferred “front-end” sections.

### Assumptions

- Work will be limited to road right of way and or defined City of Redmond easements.
- No storm, sewer, or water modeling services are needed.
- The drawing list is provided at the end of this document and is the basis for the fee estimate related to design drawings.
- City review period is 15 working days for 100% deliverable.
- Review comments will be received in a complete, single submittal. Multiple rounds of review comments on the same design completion submittal are not anticipated.

- City of Redmond will coordinate with City of Kirkland as needed.
- Pavement rehabilitation to match existing. Striping and signing of the roadway to match existing.
- Special provisions will be submitted to the City as Word documents with changes being captured using the Track Changes function in Word.

## Task 7 – Bid Documents

### Objective

Develop bid documents including drawings, special provisions, and OPCC based on comments from the City's review of the 100% design.

### Activities

#### *7.1 Bid-Ready Drawings, Special Provisions, and OPCC*

Incorporate City final design review comments into design documents to develop the Bid-Ready drawings, special provisions, and OPCC. Drawings, special provisions, and OPCC will be submitted to the City that are ready for bidding and distribution. Drawings and special provisions will be electronically stamped and signed by a Professional Engineer licensed in the State of Washington.

### Task Deliverables

- Bid-Ready design documents including final electronically stamped design drawings, special provisions, and OPCC (PDF, AutoCAD, MS Word, and/or MS Excel, as applicable) via file sharing site. No hard copies will be provided.

### City Responsibilities

- Advertise project for bid

### Assumptions

- Work will be limited to road right of way and or defined City of Redmond easements.
- No storm, sewer, or water modeling services are needed.
- The drawing list is provided at the end of this document and is the basis for the fee estimate related to design drawings.
- City of Redmond will coordinate with City of Kirkland as needed.
- Pavement rehabilitation to match existing. Striping and signing of the roadway to match existing.
- No new property acquisition or easements are anticipated

## Task 8 – Bidding Support

### Objective

Support the City on during bidding of the project up to the approved budget amount.

## Activities

### *8.1 Respond to Bidder Questions*

Respond to questions from bidders, subcontractors, equipment suppliers, and vendors regarding the project contract documents. Maintain a written record of communications during bidding process.

Questions are to be routed through the City; the Consultant team will not receive or respond to any direct requests from bidders.

### *8.2 Addenda*

Prepare and submit up to two addenda.

## Task Deliverables

- Written responses to bidder's questions.
- Draft addenda for the City to distribute to plan holders.

## City Responsibilities

- City to coordinate and submit bid-ready Contract Documents to Builders Exchange.
- The City will be responsible for tasks associated with printing bid documents, document distribution, bid advertisement, pre-bid meeting, addenda distribution, plan holder administration, bid evaluation, and bid tabulation.

## Assumptions

- Up to two addenda will be prepared.

## Task 9 – Management Reserve

### Activities

#### *9.1 Management Reserve*

Written permission from the City is required to access \$50,000 of management reserve funds. Scope of services and fee estimate to be negotiated with request to access the management reserve.

## Fee Estimate

The project fee estimate is included as Exhibit D and E and includes resource allocations by staffing class and budget estimates for all the work by task. The budget amounts shown will not be exceeded without written authorization by the City.

## Project Schedule

The project is estimated to be up to twelve (12) months after Consor receives Notice to Proceed. A tentative project schedule is provided below assuming notice to proceed is given by April 2025.

Major Milestones	Anticipated Date
Notice to Proceed from City	May 2025
Survey and Data Collection	June 2025
Preliminary Design Deliverable	July 2025
60% Design Deliverable	September 2025
90% Design Deliverable	November 2025
Final Design Deliverable	January 2026
Bidding	March 2026

## Drawing List

		30%	60%	90%, 100%, Bid
<b>GENERAL</b>				
G-001	COVER SHEET	X	X	X
G-002	SHEET INDEX AND GENERAL SYMBOLS	X	X	X
G-003	ABBREVIATIONS	X	X	X
G-004	NOTES	X	X	X
G-005	POTHOLE TABLE		X	X
G-006	LEGEND AND SYMBOLS	X	X	X
G-010	SURVEY CONTROL AND KEY MAP	X	X	X
<b>CIVIL - WATER</b>				
W-C-101	PLAN AND PROFILE BEGIN A10+00 TO A14+00	X	X	X
W-C-102	PLAN AND PROFILE A14+00 TO A18+00	X	X	X
W-C-103	PLAN AND PROFILE A18+00 TO A22+00	X	X	X
W-C-104	PLAN AND PROFILE A22+00 TO A26+00	X	X	X
W-C-301	WATER CONNECTION DETAILS 1-2		X	X
W-C-501	DETAILS - 1		X	X
W-C-502	DETAILS - 2		X	X
<b>CIVIL - TRAFFIC CONTROL</b>				
TC-C-101/102	BEGIN A10+00 TO 18+00		X	X
TC-C-103/104	A18+00 TO A26+00		X	X
<b>CIVIL - PAVING</b>				
P-C-101/102	BEGIN A10+00 TO 18+00		X	X
P-C-103/104	A18+00 TO A26+00		X	X
P-C-501	ROADWAY DETAILS - 1		X	X
P-C-502	ROADWAY DETAILS - 2		X	X



# EXHIBIT A.1

**DHA** Duane Hartman & Associates, Inc.

[doug@dhasurveyors.com](mailto:doug@dhasurveyors.com)

16928 Woodinville-Redmond Road, B-107  
Woodinville, WA 98072

Business (425) 483-5355  
FAX (425) 483-4650

February 5, 2025

Conzor  
1601 Fifth Avenue  
Suite 500  
Seattle, WA 98101  
Tacoma, WA 98402

Attention: Mr. Jon Miner, PE

**Subject: Revised Cost Estimate for Professional Land Surveying Services, City of Redmond Water Main Extension (Willow Road NE), City of Redmond, Washington.**

Dear Jon:

Duane Hartman & Associates, Inc. (DHA) is pleased to offer the enclosed cost estimate for the subject project. The project consists of Topographic Mapping over approximately 1,500 lineal feet of Willows Road NE right of way.

The surveying tasks and limits are specified by Consor in the email to DHA on 01/07/2025.

## **SCOPE OF SERVICES**

Topographic mapping will consist of all above ground planimetric features, curbs, walks, striping, fences, low wire sag elevation on existing overhead wires along the west side of street, trees (greater than 12 inches in diameter for deciduous and 8 inches in diameter for conifer), all water appurtenances including top of water valve nut elevations etc., and all above and underground utilities. The easterly mapping limits as defined by Consor are to be 5 feet east of the easterly edge of pavement. Additional task for base map edits added 02/05/2025.

DHA will employ APS Locating to paint out the existing underground utilities, as well as contacting One-Call to engage the city to locate its water, storm and sanitary sewer systems.

I anticipate one (1) field day to establish City of Redmond project horizontal and vertical control and four (4) field days to perform the topographic mapping.

DHA will utilize Published City of Redmond (COR) horizontal and vertical control to perform the topographic mapping. All field data will be processed in accordance with Consor and COR CAD standards and sent in AutoCAD as a block drawing. The horizontal datum will be Washington State Plane coordinates, north zone NAD-83(1991), US Feet. The vertical datum will be NAVD-88, US Feet. The topographic survey will be developed as a 1"=20' scale file with one (1) foot contours and delivered in .dwg and .pdf formats.

Mr. Jon Miner  
City of Redmond – Willow Road NE Water Main Extension Topographic Survey  
February 5, 2025

**COST ESTIMATE** – Not to exceed fee to perform the surveying is \$ 24,635.00, itemized as follows.

Topographic Survey

Principal Surveyor	11.0 hrs	@	161.00/hr	=	\$	1,771.00
Project Surveyor	48.0 hrs	@	154.00/hr	=		7,392.00
Field Tech II	48.0 hrs	@	92.00/hr	=		4,416.00
Office Tech I/CAD	38.0 hrs	@	113.00/hr	=		4,294.00
APS Locating	32.0 hrs	@	115.00/hr	=		3,680.00
Mileage/Materials				=		<u>225.00</u>

**TOTAL** = \$ **21,778.00**

Base Map Edits

Principal Surveyor	1.0 hrs	@	161.00/hr	=	\$	161.00
Project Surveyor	8.0 hrs	@	154.00/hr	=		1,232.00
Field Tech II	8.0 hrs	@	92.00/hr	=		736.00
Office Tech I/CAD	6.0 hrs	@	113.00/hr	=		678.00
Mileage/Materials				=		<u>50.00</u>

**TOTAL** = \$ **2,857.00**

**GRAND TOTAL** = \$ **24,635.00**

**TIME SCHEDULE** - The foregoing services shall be completed and delivered within thirty (30) Calendar days of the official notice to proceed.

Thank you for considering DHA for your surveying needs. Until further notice, we remain at your service.

Sincerely,

**DUANE HARTMAN & ASSOCIATES, INC.**



Douglas A. Hartman, PLS  
President, Principal Surveyor

File: Consor – Willows Road NE WME.5043



## EXHIBIT A.2

# Applied Professional Services, Inc.

## Willows Rd

### Project Scope: Potholing

APS, Inc. will utilize our Air Vacuum Excavation System to verify utilities at selected test-hole locations to verify depth and location determined by **Consor Engineers**.

- APS, Inc. shall air vacuum excavate approximately **(15)** test-holes on existing underground utilities.
- Scope assumes that the utility will be between 0' and 10' in depth.
- If a test-hole falls in the hard surface APS, Inc. shall **jackhammer** the existing asphalt or concrete.
- APS, Inc. shall backfill all test-holes with a material approved by the local jurisdiction (5/8" select, sand or pea gravel).
- CDF backfill and permanent asphalt repair are excluded from this scope. If the local jurisdiction requires CDF backfill and/or permanent asphalt repair additional fees will be required.
- Collect utility and test-hole data, and photograph all found utilities.
- This estimate is based on design engineering rates in which case prevailing wages do not apply.
- Restoration is assumed at this time to be 5/8" crushed rock back fill with an HMA Tee Cut at all 15 locations. Grind and overlay of the existing roadway is not covered in this scope. Should the local jurisdiction require additional restoration, other than what is included in the scope, then additional fees will be required.
- All bonding and/or right of entry will be obtained prior to APS arriving on site.

### Deliverables: Potholing

- Test-hole data sheets, which include Top, Bottom, Width, Diameter and Direction of the utility.
- Excel spread sheet containing test-hole data for the project.
- Google Earth RM map with interactive link accompanied with an SHP File.
- Photo of all Found Utilities.
- One and a quarter inch zinc washer left at grade where utility was found with measurements stamped into it.

SERVICE PROVIDED	COST / UNIT	EST. HRS/UNITS	TOTAL COST
AIR VACUUM POTHOLING (portal-to-portal)	\$ 400.00	30	\$ 12,000.00
PROJECT COORDINATION	\$ 130.00	12	\$ 1,560.00
PROJECT MANAGEMENT	\$ 170.00	6	\$ 1,020.00
TRAFFIC CONTROL PLANS	\$ 250.00	15	\$ 3,750.00
CONDUCTABLE LOCATES	\$ 135.00	3	\$ 405.00
GPR LOCATES	\$ 190.00	3	\$ 570.00
NON CONDUCTABLE LOCATES	\$ 265.00	8	\$ 2,120.00
DUMPING FEE (per hole)	\$ 25.00	15	\$ 375.00
FLAGGING & TC (plus 10%)	\$ 220.00	30	\$ 7,260.00
POLICE FLAGGING (plus 10%)	\$ 135.00	16	\$ 2,376.00
HMA PATCHING (plus 10%)	\$ 2,250.00	15	\$ 37,125.00
<b>TOTAL PROJECT ESTIMATE</b>			<b>\$ 68,561.00</b>

**Project Site Address**

- Willows Rd NE & NE 116<sup>th</sup> St. Redmond, WA

**Contact Information:**

**CLIENT:**

Conzor Engineers

Jon Miner  
600 University St #300  
Seattle, WA 98101  
(206) 462-7691

**Authorization to Proceed**

The undersigned hereby acknowledges the terms and conditions of this agreement and authorizes APS, Inc. to proceed according to the project scope and cost.

**Conzor Engineers**  
**Willows Rd. Project**

Name: \_\_\_\_\_

Date: \_\_\_\_\_

### ACKNOWLEDGEMENT AND ACCEPTANCE OF TERMS AND CONDITIONS FOR SERVICES

“Client” acknowledges that the Proposal prepared by Applied Professional Services, Inc. (“APS”), along with the Terms and Conditions (“Terms”) below comprise the entire agreement between the Client and APS (collectively “Agreement”), and supersedes all prior or contemporaneous written and oral understandings, agreements, negotiations, representations, warranties, and communications.

### GENERAL TERMS AND CONDITIONS

**RELATIONSHIP OF THE PARTIES:** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

**SERVICES:** APS shall provide services to the Client for the project (“Project”), as defined in the Proposal and the Agreement, or as requested by the Client by an agreed Order (the “Services”) in accordance with these Terms.

**PROJECT SCHEDULE:** APS shall use reasonable efforts to meet the Project schedule dates specified in the Proposal. These dates shall be estimates only.

**CLIENT’S RESPONSIBILITIES:** Client shall provide/perform the following in a timely manner so as not to delay the Services:

- Provide accurate information about the location and survey of the site where services are to be provided.
- Cooperate with APS in all matters relating to the Services.
- Secure legal rights to and provide access to the Project site property and authorize APS staff to access the site for activities necessary for the performance of the Services.
- Respond promptly to any APS request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for APS to perform Services in accordance with the requirements of this Agreement.
- Provide materials, data, or information that APS may request that is reasonably necessary to carry out the Services in a timely manner and ensure that such materials, data, or information provided are complete and accurate in all material respects.
- Comply with all applicable laws in relation to the Services before the date on which the Services are to start, including required licenses, permits, and consents to allow APS to perform Services.
- Give prompt consideration and action to all communications, reports and other documents relating to the Services furnished by APS and inform APS in writing of decisions in reasonable time so as not to delay the Services.

**CLIENT’S ACTS OR OMISSIONS:** If APS’s performance of its obligations under this Agreement is prevented or delayed by any act or omission of Client or its agents, subcontractors, consultants or employees, APS shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Client, in each case, to the extent arising directly or indirectly from such prevention or delay.

**COMPENSATION AND PAYMENT:** In consideration of the provision of the Services by APS under this Agreement, Compensation will be made as follows:

- **Payment:** Invoices for APS’s Services shall be submitted on a monthly basis and are payable within thirty (30) days after the invoice date. In the event that the Client disputes any portion of an invoice, client shall notify APS - of such disputed items within ten (10) days of invoice date. Retainers/deposits shall be credited on the final invoice. Interest will accrue on accounts overdue by 30 days at the lesser of 1.5 percent per month (18 percent per annum) or the maximum legal rate of interest allowable.

- Failure to make any payment when due is a material breach of this Agreement. In the event any invoice has not been paid in full within ninety (90) days of the invoice date, APS shall have the right to immediately suspend all or any portion of the Services hereunder indefinitely, pending payment in full of such invoice(s).
- **Taxes:** Client shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Client hereunder.
- **Compensation:** Client shall pay the agreed upon rates or amounts set forth in the Proposal. If the agreement extends across multiple years, the compensation paid to APS may be adjusted due to market conditions, underlying labor costs, overhead and pricing influences.

**CHANGE ORDERS:** If either party wishes to change the scope or performance of the Services, it shall submit details in writing of the requested change in a timely manner to the other party. APS shall, within a reasonable time after such request, provide a written estimate to Client of:

- the likely time required to implement the change
- any necessary variations to the compensation and other charges for the Services arising from the change
- the likely effect of the change on the Services
- any other impact the change might have on the performance of this Agreement

Promptly after receipt of the written estimate, the parties shall negotiate in good faith and agree in writing on the terms of such change (a “Change Order”). Neither party shall be bound by any Change Order unless mutually agreed upon in writing.

APS may charge for the time it spends assessing and documenting a request for a Change Order on a time and materials basis in accordance with the Proposal.

**DOCUMENTS:** Unless otherwise agreed to by the parties in writing, all of the documents prepared by or on behalf of APS in connection with the Services (herein called the “Documents”) will be considered Instruments of Service and will become the property of Client upon full and final payment of the Compensation. Any copyright of the Documents shall be retained by APS. APS grants to Client a non-exclusive right and license to use, disclose and reproduce the Documents solely for the purpose of the Project.

**DATA AND DOCUMENT RETENTION:** APS will retain all data and Documents in accordance with its Data Retention Policy, unless otherwise agreed upon in writing.

**LIMITATION OF USE:** Client shall not amend, alter or revise, reuse, permit the use of, disclose or reproduce any of the Documents for the completion of another project or work, without first obtaining the written consent of APS, and all reproductions shall include notice of this restriction.

APS shall have no responsibility for any loss or damage suffered by Client or others resulting from any unauthorized use or modification of the Documents, errors in transmission of the Documents, changes to the Documents by others. The Documents may be relied upon by Client for design and construction work undertaken by other parties with respect to the Project provided such parties

# TERMS AND CONDITIONS

## Applied Professional Services, Inc.



verify the accuracy and completeness of the Documents to their satisfaction. The Client agrees to defend, indemnify and hold APS harmless from and against all claims, demands, losses, damages, liability and costs associated therewith.

In the event any of APS's work product documents are modified in any respect, without involvement and oversight of APS, Client agrees that any modification is at the Client's sole risk.

In the event that Client is in default of its obligations under this Agreement, APS may terminate Client's right and license to use, disclose and reproduce the Documents upon providing written notice to Client. Client shall return to APS all Documents and that no residual copies of any part of any Documents are to be retained by the Client or other parties.

**STANDARD OF CARE:** The standard of care for all Services performed under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. APS makes no warranties or guarantees under this Agreement in connection with the Services. APS makes no warranty whatsoever with respect to the services, including any warranty of merchantability, warranty of fitness for a particular purpose, warranty of title, or warranty against infringement of intellectual property rights of a third party; whether express or implied by law, course of dealing, course of performance, usage of trade, or otherwise.

**CONFIDENTIALITY:** Both parties shall use reasonable efforts to keep confidential all data and information which is marked confidential and furnished by the respective parties under this Agreement. Confidentiality obligations shall not apply if such data or information is within the public domain, was known to the Client or APS at the time of disclosure, or was rightfully obtained by Client or APS on a non-confidential basis from a third party.

**PERSONAL INFORMATION:** Unless otherwise agreed to by the parties in writing, Client shall only collect and use individually identifiable information from or about APS employees if such collection and use is required. Client shall collect and use all Personal Information in accordance with applicable federal, state or personal information protection legislation.

**NON-SOLICITATION OF EMPLOYEES:** Neither party shall knowingly solicit, recruit, hire or otherwise employ or retain the employees of the other party during the Term of this Agreement and for one (1) year following the termination or expiration of this Agreement without the prior written consent of the other party. However, neither party shall be restricted from soliciting or recruiting generally in the media, or from hiring, without prior written consent, the other party's employees who answer any advertisement or otherwise voluntarily applies for hire without having been personally solicited.

For a breach of Non-Solicitation, an amount equal to twice the base annual salary of the recruited employee at the time of their departure shall be paid by the hiring party to the other party.

**INDEMNIFICATION:** To the fullest extent permitted by law, APS shall indemnify and hold harmless Client from and against any and all damages, liabilities, costs and expenses, including but not limited to reimbursement of reasonable attorney's fees arising out of damages or injuries to persons or property to the proportionate extent caused by the negligence, gross negligence or willful misconduct of APS or anyone acting under its direction or control or on its behalf in the course of its performance under this Agreement; provided that APS's aforesaid indemnity and hold harmless obligation shall not be applicable to any liability based upon the willful misconduct or negligence of Client or upon use of or reliance on information supplied by Client or on behalf of Client to APS in preparation of any report, study or other written document.

Client shall indemnify and hold harmless APS from and against any and all damages, liabilities, costs and expenses, including but not limited to reimbursement of reasonable attorney fees arising out of (i) damages or injuries to persons or property caused by the negligence, gross negligence or willful misconduct by Client or anyone acting under its direction or control or on its behalf in connection with this Agreement and (ii) claims, actions or demands for environmental liability arising from, or in relation to, any condition, not caused by the negligence of APS or anyone acting under its authority; provided

that Client's aforesaid indemnity and hold harmless obligation shall not be applicable to any liability based upon the willful misconduct or negligence of APS.

The duty to indemnify does not include the duty to pay for or to provide an up-front defense against unproven claims or allegations.

Where any claim results from the joint negligence, gross negligence, or willful misconduct, by Client and APS, the amount of such damage for which Client or APS is liable shall equal the proportionate part that the amount of such claim attributable to indemnitor's negligence, gross negligence, willful misconduct, bears to the amount of the total claim attributable to the joint negligence, gross negligence, or willful misconduct, at issue.

**LIMITATION OF LIABILITIES:** Notwithstanding any other provision in the Agreement, the Client agrees to limit APS's liability under the Agreement or arising from the performance or non-performance of the Services under any theory of law, including but not limited to claims for negligence, negligent misrepresentation and breach of contract, to the lesser of: (a) the fees paid to APS for Services or (b) the maximum of remaining available insurance provided. No claim may be brought against APS in contract or tort more than two (2) years after the cause of action arose. Any claim, suit, demand or action brought under the Agreement shall be directed and/or asserted only against APS and not against any of APS's employees, shareholders, officers or directors. APS's liability with respect to any claims arising out of this Agreement shall be limited as provided herein to direct damages arising out of the performance of the Services and APS shall not be held responsible or liable whatsoever for any consequential damages, injury or damage incurred by the actions or inactions of the Client, including but not limited to claims for loss of use, loss of profits and loss of markets.

**FORCE MAJEURE:** If performance of the Services is affected by causes beyond APS's reasonable control, the Project schedule and the Compensation shall be equitably adjusted by mutual agreement of the parties. APS shall not be liable or responsible to Client, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of APS.

These causes include, without limitation, inclement weather conditions, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, pandemic/epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage, or similar causes and without the fault or negligence of the delayed party. If the event in question continues for a period in excess of thirty (30) days, Client shall be entitled to give notice in writing to APS to terminate this Agreement.

**INSURANCE:** APS shall maintain Insurance which it deems to be reasonable throughout the term of this Agreement. APS shall provide Client with certificates of insurance upon written request.

Client assumes sole responsibility and waives all rights and claims against APS for all loss of or damage to property owned by or in the custody of Client and any items at the site or in transit thereto however such loss or damage shall occur, unless caused by the sole negligence of APS.

Client agrees to maintain appropriate Property Insurance and shall require its insurers to waive all rights of subrogation against APS for claims covered under any Property Insurance that Client may carry. Such waivers shall survive termination or discharge of this Agreement.

**TERM AND TERMINATION:** This Agreement will continue in effect unless terminated by either party with thirty (30) days written notice to the other party. In the event of any termination, APS shall be paid for all Services rendered and reimbursable costs incurred through the date of notice of termination. In the event of termination, the Client shall pay all additional compensation related to termination of the project.

# TERMS AND CONDITIONS

## Applied Professional Services, Inc.



In addition to any remedies that are provided under this Agreement, APS may also terminate this Agreement with immediate effect upon written notice if the Client becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

In the event of termination, APS shall be paid for all Services rendered and costs incurred by APS through the date of notice of termination. In the event of termination due to the termination of the Project, the Client shall pay all additional costs incurred by APS related to termination of the Project.

**DISPUTE RESOLUTION:** If requested in writing by either the Client or APS, the Parties shall attempt to resolve any dispute between them arising out of or in connection with this Agreement by entering into a management/principal level meeting(s). The first such meeting shall occur within thirty (30) days from the first date of the written request for such meeting.

- If a dispute cannot be settled informally between the Parties within a period of sixty (60) calendar days from the first date of the written request, the Parties shall enter structured non-binding negotiations with the assistance of a mediator. The mediator shall be appointed by agreement of the Parties.
- If the Parties are unable to reach an acceptable resolution of the dispute, controversy, or claim through the mediation process, the Parties shall have any and all rights and remedies available to it under this Agreement and any and all rights and remedies at law or in equity.
- **Attorney Fee Provision:** With respect to any dispute relating to this Agreement, or in the event that a lien, suit, action, arbitration, mediation, or other proceeding of any nature whatsoever is instituted to interpret or enforce the provisions of this Agreement, including, without limitation, any proceeding under the U.S. Bankruptcy Code and involving issues peculiar to federal bankruptcy law or any action, suit, arbitration, or proceeding seeking a declaration of rights or rescission, the prevailing party shall be entitled to recover from the losing party its reasonable attorney fees, paralegal fees, expert fees, and all other fees, costs, title reports, title guarantee reports, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge or arbitrator at trial, arbitration, mediation, or other proceeding, or on any appeal or review, and all proceedings in U.S. Bankruptcy Court. APS shall also be entitled to reasonable attorney's fees and costs incurred in enforcing any award and/or judgment, in addition to all other amounts provided by law.

**ASSIGNMENT:** Neither party to this Agreement shall, without the prior written consent of the other party, which shall not be unreasonably withheld, assign the benefit or in any way transfer any claim or obligation under this Agreement or any part hereof. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and except as otherwise provided herein, upon their executors, administrators, successors, and assigns.

**NO THIRD-PARTY BENEFICIARY:** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**LEGAL CONSTRUCTION:** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof. This Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

**ENTIRE AGREEMENT:** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties relating to the subject matter of this Agreement and is the entire understanding and agreement related thereto. This Agreement may be amended by mutual consent of the parties in writing to be attached hereto and incorporated herein, executed by APS's and the Client's authorized representatives.

**WAIVER:** Failure by one party to notify the other party of a breach of any provision of this Agreement shall not constitute a waiver of any continuing breach. Failure by one party to enforce any of its rights under this Agreement shall not constitute a waiver of those rights. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or any other provision hereof.

**SEVERABILITY:** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**SURVIVAL OF PROVISIONS:** The expiration or termination of this Agreement, or any Task Order shall not affect the provisions, and the rights and obligations set forth in which either by their terms state or evidence the intent of the Parties that the provisions survive the expiration or termination, or must survive to give effect to the provisions.

**GOVERNING LAW:** The validity of the Agreement and any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be interpreted and governed by the laws of the state in which the Project is located.

Specific state statutes and regulations will be adhered to under this contractual agreement through the use of Addendums, as appropriate.



# EXHIBIT D

## Exhibit D

### Consultant Fee Determination

Project Name: Willows Road Watermain Extension  
Project Number: 2210  
Consultant: Consor

#### NEGOTIATED HOURLY RATES

Classification	Hours	DSC	Overhead 171%	Fee (Profit) 29%	Total Hourly Rate	Total
Principal Engineer VI	36	\$ 124.49	\$212.91	\$35.60	\$373	\$13,428
Principal Engineer V		\$ 117.14	\$200.35	\$33.50	\$351	
Principal Engineer IV		\$ 110.80	\$189.51	\$31.69	\$332	
Principal Engineer III		\$ 104.46	\$178.66	\$29.88	\$313	
Principal Engineer II	52	\$ 98.45	\$168.39	\$28.16	\$295	\$15,340
Principal Engineer I		\$ 93.45	\$159.83	\$26.73	\$280	
Professional Engineer IX		\$ 90.11	\$154.12	\$25.77	\$270	
Engineering Designer IX		\$ 86.77	\$148.41	\$24.82	\$260.00	
Professional Engineer VIII		\$ 85.44	\$146.13	\$24.44	\$256.00	
Engineering Designer VIII		\$ 83.10	\$142.13	\$23.77	\$249.00	
Professional Engineer VII		\$ 81.77	\$139.85	\$23.39	\$245.00	
Engineering Designer VII	366	\$ 78.76	\$134.71	\$22.53	\$236.00	\$86,376
Professional Engineer VI	232	\$ 77.76	\$133.00	\$22.24	\$233.00	\$54,056
Engineering Designer VI		\$ 75.09	\$128.43	\$21.48	\$225.00	
Professional Engineer V		\$ 73.76	\$126.15	\$21.09	\$221.00	
Engineering Designer V		\$ 71.09	\$121.58	\$20.33	\$213.00	
Professional Engineer IV		\$ 69.42	\$118.73	\$19.85	\$208.00	
Engineering Designer IV		\$ 68.08	\$116.44	\$19.47	\$204.00	
Professional Engineer III		\$ 67.08	\$114.73	\$19.19	\$201.00	
Engineering Designer III	557	\$ 67.08	\$114.73	\$19.19	\$201.00	\$111,957
Engineering Designer II		\$ 63.08	\$107.88	\$18.04	\$189.00	
Engineering Designer I		\$ 58.74	\$100.46	\$16.80	\$176.00	
Technician IV		\$ 67.08	\$114.73	\$19.19	\$201.00	
Technician III		\$ 61.08	\$104.46	\$17.47	\$183.00	
Technician II		\$ 53.07	\$90.76	\$15.18	\$159.00	
Technician I		\$ 46.72	\$79.91	\$13.36	\$140.00	
Administrative III	14	\$ 48.73	\$83.34	\$13.94	\$146.00	\$2,044
Administrative II		\$ 44.72	\$76.49	\$12.79	\$134.00	
Administrative I		\$ 40.05	\$68.50	\$11.45	\$120.00	
Cost Estimator III		\$ 105.46	\$180.37	\$30.16	\$316.00	
Cost Estimator II		\$ 85.44	\$146.13	\$24.44	\$256.00	
Cost Estimator I		\$ 64.75	\$110.74	\$18.52	\$194.00	
Construction Manager X		\$ 110.14	\$188.37	\$31.50	\$330.00	
Construction Manager IX		\$ 102.46	\$175.24	\$29.30	\$307.00	
Construction Manager VIII		\$ 96.79	\$165.53	\$27.68	\$290.00	
Construction Manager VII		\$ 93.11	\$159.25	\$26.63	\$279.00	
Construction Manager VI	12	\$ 86.44	\$147.84	\$24.72	\$259.00	\$3,108
Construction Manager V		\$ 79.77	\$136.42	\$22.81	\$239.00	
Construction Manager IV		\$ 75.76	\$129.57	\$21.67	\$227.00	
Construction Manager III		\$ 69.09	\$118.16	\$19.76	\$207.00	
Construction Manager II		\$ 63.75	\$109.02	\$18.23	\$191.00	
Construction Manager I		\$ 54.07	\$92.47	\$15.46	\$162.00	
Construction Coordinator V		\$ 73.76	\$126.15	\$21.09	\$221.00	
Construction Coordinator IV		\$ 66.75	\$114.16	\$19.09	\$200.00	
Construction Coordinator III		\$ 61.74	\$105.60	\$17.66	\$185.00	
Construction Coordinator II		\$ 54.73	\$93.61	\$15.65	\$164.00	
Construction Coordinator I		\$ 49.73	\$85.05	\$14.22	\$149.00	
Construction Admin Specialist IV		\$ 67.08	\$114.73	\$19.19	\$201.00	
Construction Admin Specialist III		\$ 61.08	\$104.46	\$17.47	\$183.00	
Construction Admin Specialist II		\$ 53.07	\$90.76	\$15.18	\$159.00	
Construction Admin Specialist I		\$ 46.72	\$79.91	\$13.36	\$140.00	
Inspector VII		\$ 79.77	\$136.42	\$22.81	\$239.00	
Inspector VI		\$ 73.76	\$126.15	\$21.09	\$221.00	
Inspector V		\$ 66.75	\$114.16	\$19.09	\$200.00	
Inspector IV		\$ 61.74	\$105.60	\$17.66	\$185.00	
Inspector III		\$ 54.73	\$93.61	\$15.65	\$164.00	
Inspector II		\$ 49.73	\$85.05	\$14.22	\$149.00	
Inspector I		\$ 42.72	\$73.06	\$12.22	\$128.00	
Principal III		\$ 126.49	\$216.33	\$36.18	\$379.00	
Principal II		\$ 113.14	\$193.50	\$32.36	\$339.00	
Principal I		\$ 100.46	\$171.81	\$28.73	\$301.00	
Project Manager IV		\$ 95.12	\$162.68	\$27.20	\$285.00	
Project Manager III		\$ 89.11	\$152.40	\$25.49	\$267.00	
Project Manager II		\$ 79.10	\$135.28	\$22.62	\$237.00	
Project Manager I		\$ 69.42	\$118.73	\$19.85	\$208.00	
Project Coordinator IV	8	\$ 64.75	\$110.74	\$18.52	\$194.00	\$1,552
Project Coordinator III		\$ 58.74	\$100.46	\$16.80	\$176.00	
Project Coordinator II		\$ 53.07	\$90.76	\$15.18	\$159.00	
Project Coordinator I	29	\$ 48.73	\$83.34	\$13.94	\$146.00	\$4,234
Quality Control Compliance Spe		\$ 66.75	\$114.16	\$19.09	\$200.00	
<b>Total Hours</b>	<b>1,306</b>				<b>Subtotal:</b>	<b>\$292,095</b>

#### REIMBURSABLES

Mileage	\$224
Reproduction (copies, plots, etc.)	
Survey	\$24,635
Potholing	\$68,561
<b>Subtotal:</b>	<b>\$93,420</b>

#### SUBCONSULTANT COSTS (See Exhibit E)

<b>Subtotal:</b>	

**Total:** \$385,515

**Contingency:** 50,000

**GRAND TOTAL:** \$435,515

## Negotiated Fee

Project Name:	Willows Road Watermain Extension
Project Number:	2210
Consultant:	Conсор
Estimated Design Fee:	\$450,000
Prepared By:	Jon Miner

### Fee Computation

Factor	Rate	Weight	Value
Degree of Risk	0.30	X 25	7.50
Relative Difficulty of Work	0.30	X 20	6.00
Estimated Design Fee	\$450,000	0.33 X 15	4.95
Period of Performance enter in months	12	0.26 X 15	3.90
Assistance by the Agency	0.25	X 15	3.75
Subconsulting enter %	17%	0.25 X 10	2.50
<b>Negotiated Fee (% of DSC)</b>		<b>100</b>	<b>28.60 %</b>

Note: See Instructions for factor descriptions and rate guidelines. Minimum is .17 and maximum is .35.

### Multiplier Computation

Component	Multiplier
Labor (DSC)	1.00
Overhead (OH)	1.71
Fee	0.29
<b>Total Multiplier (DSC+OH+Fee)</b>	<b>3.00</b>

# EXHIBIT E

## Negotiated Fee

Project Name:	Willows Road Watermain Extension
Project Number:	2210
Consultant:	DHA Surveyors
Estimated Design Fee:	\$25,000
Prepared By:	Doug Hartman

### Fee Computation

Factor	Rate	Weight	Value
Degree of Risk	0.35	X 25	8.75
Relative Difficulty of Work	0.35	X 20	7.00
Estimated Design Fee	\$25,000	0.35 X 15	5.25
Period of Performance enter in months	12	0.26 X 15	3.90
Assistance by the Agency	0.25	X 15	3.75
Subconsulting enter %	15%	0.24 X 10	2.40
<b>Negotiated Fee (% of DSC)</b>		<b>100</b>	<b>31.05 %</b>

Note: See Instructions for factor descriptions and rate guidelines. Minimum is .17 and maximum is .35.

### Multiplier Computation

Component	Multiplier
Labor (DSC)	1.00
Overhead (OH)	1.96
Fee	0.31
<b>Total Multiplier (DSC+OH+Fee)</b>	<b>3.27</b>

## EXHIBIT E 1

### Subcontracted Work

Project Name: Willows Road Watermain Extension

Project Number: 2210

Consultant: DHA Surveyors

The City permits subcontracts for the following portions of work of the Agreement:

Subconsultant	Work Description	Amount
APS	Utility Locating	\$3,680
Total:		\$3,680