

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

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

Firm/Organization Legal Name (do not use dba's):		
Address	Federal Aid Number	
UBI Number	Federal TIN or SSN Number	
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"/> No DBE Participation <input type="checkbox"/> Yes _____ <input type="checkbox"/> No MBE Participation <input type="checkbox"/> Yes _____ <input type="checkbox"/> No WBE Participation <input type="checkbox"/> Yes _____ <input type="checkbox"/> No SBE Participation	Maximum Amount Payable:	

## **Index of Exhibits**

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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 UDBE, a voluntary SBE goal amount of ten percent of the Consultant Agreement is established. The Consultant shall submit 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. Non-minority, woman owned DBEs does not count towards UDBE goal attainment.

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: _____	City: _____
State: _____ Zip: _____	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 Fixed 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 fixed 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 fixed 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 fixed fee (profit) percentage. The CONSULTANT shall bill each employee’s actual classification, and actual salary plus indirect cost rate plus fixed fee.

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

## **VI. Sub-Contracting**

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

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

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

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

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

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

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

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

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

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

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

## VIII. Nondiscrimination

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

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

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

## IX. Termination of Agreement

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

In the event this AGREEMENT is terminated by the AGENCY, other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged 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 part, and no third party beneficiary is intended or created by the execution of this AGREEMENT.

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

### **XIII. Extra Work**

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

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

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

### **XV. Federal Review**

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

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

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

### **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.

**Exhibit A**  
**Scope of Services**  
**Smith Woods Pond / Stream Rehabilitation Preliminary Design**

## Background and Purpose

Smith Woods Park, the project site, is located in the headwaters of Monticello Creek in the northeast corner of the City of Redmond (King County parcel #2526059109 & 2526059110). Smith Woods Park includes a small stream (headwater to Monticello Creek) which flows into a small pond which appears to have been installed by the former owner.

In 2013, Redmond's City Council adopted the City-wide Watershed Management Plan, and selected Monticello Creek as a priority watershed for restoration. Subsequently, in 2015 a consultant team started work on a Watershed Restoration Plan (WRP) for the Monticello Creek subbasin. Site reconnaissance completed as part of the Monticello WRP identified sinkholes in the berm that forms the pond in Smith Woods Park. In late 2015, the City completed an emergency project, cutting a 2-foot deep temporary channel to reduce pond volume to eliminate the immediate risk of berm failure. As a follow-up to that repair, streambed cobble was later placed to stabilize the temporary channel. Permit requirements include building a fish-passable channel by 2021.

This project will be a cooperative effort between the Parks Department and the Environment and Utilities Services Division of Public Works. Improvements will focus on the stream/pond habitat enhancement along with associated mitigation requirements. Trails across the stream or into the woodlands are not currently envisioned as part of this project, though project design components will be integrated with park functions.

## Task Elements

The major tasks include:

1. Data Gathering & Reconnaissance
2. Hydrologic & Hydraulic (H&H) Modeling
3. Alternatives Analysis & Design Development
4. Geotechnical Analysis
5. Environmental /Permitting Support
6. Preliminary Design (30% Design Documentation)
7. Public Outreach Support
8. Project Administration

### TASK 1 – Data Gathering & Reconnaissance

The objective of this task is to review the existing documentation, including permits, wetland delineation data and report, geotechnical investigations, GIS data and Park Master Plan documentation and to collect and prepare documentation which will support the City's application for project permits.

The task will include the following field work:



- Bankfull width measurements, documentation and photographs throughout the project site and include 2 additional locations approximately 50 and 100 feet downstream of the NE 122<sup>nd</sup> Street culvert.
- Delineation and survey of ~25 flags marking the ordinary high-water mark (OHWM) along the approximately 500 feet of stream channel within project area, data collection for inclusion in the *Wetland and Stream Assessment Report* to comply with Redmond Critical Areas Reporting requirements (Task 5). See Figure 1.
- Update/field verification of ESA Adolfson delineation of Wetlands A and C, including up to 8 updated USACE data forms and two Ecology rating forms for Wetland A and Wetland C.
- Cultural Resources Investigation, including database search, archival research (including historic maps and aerial photos) and shovel probe field investigation of all areas of proposed disturbance to the depth of disturbance and in those areas with the highest probability of precontact cultural resources. Sub surface exploration locations will be flagged and surveyed.
- Site reconnaissance by landscape architect for conditions assessment and design support.
- Topographic Survey as shown on Figure 1 including:
  - Existing berm, outlet pipe and infrastructure.
  - Pond bathymetry.
  - Geotechnical boring and cultural resources pit locations will be surveyed and included in mapping.
  - Longitudinal stream profile through culverts up and downstream at 124<sup>th</sup> and 122<sup>nd</sup>.

Following the field work and flagging of OHWM and any adjusted wetland flags, a topographic survey will be completed within the project area, along with the survey checklist and review. Survey will include location and inverts of upstream and downstream culverts at NE 124<sup>th</sup> and NE 122<sup>nd</sup> and approximately eight (8) stream cross sections to establish longitudinal profile upstream and downstream of the existing pond within the project area.

#### Assumptions:

- Consultant will attend one coordination meeting with City Park and Natural Resources staff at City hall with up to 4 team members attending.
- City will provide the following:
  - Completed Field Investigations and Reports from City Staff and Geotech (Golder Report)
  - Most recent wetlands delineation report (ESA), shapefile/CAD files, and Ecology rating forms (received by consultant January 2019 and confirmed it is adequate for staking).
  - Smith Woods Park Plan Documentation (PDF Versions)
  - Previous Permit documentation for Emergency HPA and Interim Stream Channel HPA
- City will provide site access.
- Any utility locate markings from Geotech investigation will be picked up by consultant surveyor.
- Consultant surveyor will stake/flag previous ESA Adolfson wetland delineation of Wetland A and C for verification/update by Wetland consultant
- Collection of up to 8 USACE delineation data forms and completion of two Ecology Wetland Rating Forms (Wetlands A and C).
- Wetland B will not be field verified or re-delineated as it is located outside of the project area.
- The project area and survey extents will not exceed 4 acres of project area (as depicted in Figure 1).

- Up to eight (8) stream cross-sections will be flagged by Osborn Consulting and surveyed by PACE engineering for use in developing the hydraulic model.
- The City will not require an arborist report to accompany the tree survey
- The right-of-way of NE 122<sup>nd</sup> St. and parcel lines will be resolved with best available data from King County. PACE assumes that no right-of-way takes or easement will need to be written and no title report will need to be ordered.

**Deliverables:**

- Bankfull width documentation (photographs and measurements) to be included in summary memo; data will also be included within the *Wetland and Stream Assessment Report*
- Wetlands and OHWM delineation data and rating forms consistent with USACE, Ecology requirements, for inclusion in *Wetland and Stream Assessment Report* (task 5) suitable for submittal by the City to USACE, Ecology, and will meet the needs of the Redmond Planning and Community Development to support federal, state, and local permitting.
- Cultural Resources Assessment Report to support federal permitting.
- Topographic Survey Base Map including approximately 16-20 Wetland A and C delineation flags, approximately 25 OHWM flags, as well as location of pertinent site features like extent of lawn, significant trees (6" and greater DBH), with contour elevations shown at 1-foot intervals, and existing outfall pipe location, type, size
- Topographic data will be tied to the City of Redmond horizontal and vertical control network.

## Task 2 - Hydrologic and Hydraulic (H&H) Modeling

The objective of this task is to size the channel and associated stream features, including stream bed aggregate, wood, and bank stabilization. This task includes hydrologic and hydraulic modeling components.

### **Hydrology**

The results of existing hydrologic models developed by others will be reviewed for suitability. Suitability assessment will consider the locations of flow frequency results, land use assumptions, and if the results seem appropriate based on observed conditions. Existing models include the WWHM model prepared by our team as part of the emergency repair work in 2015 and the HSPF model prepared by King County as part of the Monticello Basin SUSTAIN modeling. Options for accounting for climate change in regards to future rainfall intensity and summer low flows such as updating the rainfall data or applying scaling factors to results will be identified. However, spending additional time developing design flows with a more sophisticated hydrology model and calibration is likely not warranted based on the project size and risk. This process and the selected design flows will be documented in a 2-page hydrology memorandum.

### **Hydraulics**

A HEC-RAS hydraulic model will be developed to document the existing condition, perform alternatives analysis, and support design. The limits of the HEC-RAS model will extend from the northern property limit to approximately 100-feet downstream of the existing 122<sup>nd</sup> Street culvert. Cross section spacing will be 30-feet maximum with additional sections added, as needed, to depict changes in typical channel shape and slope (10-foot minimum spacing).

The design flows described above will be used for the analysis, assuming peak flows will be modeled (as opposed to continuous flow). The HEC-RAS modeling results will be used to perform spreadsheet based calculations to size streambed gravel, and to assess shear stress, bank stability, and wood buoyancy. The following design flows will be used for the following design elements:

- 100-year flow – High flood flow, debris passage, and scour analysis
- 25-year flow – Flood flow and scour analysis
- 2-year flow – water surface elevation
- The range of flows for which fish passable conditions are met will be reported.

Hydraulic modeling and calculation methods and results will be documented in a Modeling Report. The hydrology memo described above will be incorporated into the Modeling Report so that all H&H modeling is documented in one place.

#### Assumptions:

- The existing models will have design flows that are suitable for alternatives analysis modeling.
- Accounting for climate change may involve scaling design flows based on the findings of the University of Washington Climate Impacts Group On-line Regional Projections Model Tool 2018. Adjusting rainfall data and rerunning the hydrologic models is not anticipated.
- Hydrology memorandum will be up to 2-pages. The memo will include a brief discussion of the two existing models, differences in results, and why the model selected for design flows was selected. Any comments on the draft hydrology memorandum will be addressed in the modeling report.
- HEC-RAS model will be developed using survey data. Survey data will be supplemented with GIS topo and as-built drawings for the existing NE 122<sup>nd</sup> culvert in order to build the model to the limits described above.
- City will provide the following:
  - Will review and approve Hydrology memorandum prior to the consultant beginning alternatives analysis.
  - Coordinate with King County to obtain existing HSPF model/results.

#### Deliverables:

- Hydrology Memorandum (Draft, up to 2-pages)
- Signed Modeling Report – Documenting modeling results and recommendations (Draft and Final).
- Electronic files of hydrologic model, hydraulic model, and spreadsheet calculations.

### Task 3 - Alternative Analysis & Design Development

The objective of this task is to coordinate with City staff and develop design alternatives for the proposed permanent solution to stabilize the pond and channel. The design will meet fish passage criteria as well as fit with the planned future development of the park. Two alternatives will be analyzed:

- Alternative 1 – rebuild a pond approximately its current size (after the emergency work)
- Alternative 2 – remove the berm and restore stream channel through the site

The task will include preparing for and attending a 2-hour workshop held at City Hall to review and rank the alternatives. This task will conclude with a selection of a preferred alternative to carry forward through Task 5 and 6.

#### Assumptions:

- City will lead and facilitate public involvement and outreach tasks (if any)
- One coordination meeting (3 hours including travel) with City will occur during this task, prior to the workshop.
- A maximum of two alternatives will be developed
- While one pedestrian stream crossing may be considered for the future, it will not be studied in detail. A single pedestrian connection will be assumed to be similar for both alternatives
- City Staff will determine preferred alternative following review of consultant prepared alternatives and a 2-hour meeting/workshop held at City Hall (budgeted at 3 hours including prep and travel).
- Workshop will be attended by 4 consultant team members.
- Design of an offsite compensatory wetland mitigation area will not be required; project design will include sufficient wetland enhancement and/or creation to be 'self-mitigating' for any unavoidable impacts on wetland area and functions including any conversion of wetland to stream channel.

#### Deliverables

- A single 11"x17" pdf-format 300 dpi graphic for each alternative, suitable for public outreach (task 7) which will include:
  - Schematic sketches (similar to Consultant Proposal) in Plan, Profile and Cross-Section
  - Concept drawings in CADD showing Plan, Profile and Cross-Section
  - Conceptual Cost
  - Bulleted list of Pros and Cons

## TASK 4 - Geotechnical Analysis

The consultant will complete a preliminary geotechnical investigation to support development of conceptual designs and cost estimates. Preliminary recommendations will be developed for the following options:

- Alternative 1: Rebuild a pond approximately its current size (size after the emergency work).
- Alternative 2: Remove the berm and restore stream channel through the site.

This task will include the following work:

- Two coordination meetings between consultant team and the City of Redmond (as necessary).
- Site investigation preparations
  - Health, safety, security and environmental (HSSE) plan preparation
  - Utility locate – One Call and utilize data collected by the surveyor during Task 1.
- Site investigation – A site investigation will be performed to assess existing surface and subsurface conditions at the site and will include:

- Site reconnaissance - Observe current site conditions, including areas of recent ground loss and the temporary channel.
- Subsurface Exploration – Determine subsurface soil and groundwater conditions by performing four hand-auger borings to depths ranging from 10 to 12 feet below the existing ground surface.
- Conduct four dynamic cone penetration tests (DCPT). DCPT's will be done to supplement the information from the hand augers. The DCPT test provides a measure of the soil's in-situ resistance to penetration (soil density). This information can then be used to develop engineering design parameters such as settlement, bearing capacity, cut slope stability, temporary and permanent cut slope inclinations
- Lab testing
  - Four samples will be selected to determine grain size distribution of the site soils.
- Provide preliminary analysis and recommendations to be used for developing 30% design as they relate to
  - Subsurface soil conditions,
  - Pond substrate material
  - Groundwater conditions
  - Existing berm stability evaluation
  - Proposed geotechnical design recommendations including berm repair and earthwork design specifications

Assumptions:

- A utility locate will be completed prior to geotechnical investigation as part of the survey in Task 1.
- It is estimated that the geotechnical analysis will take 4 to 5 weeks to complete. Field work will begin within two weeks of receiving notice-to-proceed and a draft memorandum will be provided two weeks following completion of the field and laboratory testing.
- Geotechnical consultant likely will not need to contribute to the Stream and Wetlands Assessment Report documenting critical areas because erosion, landslide, and seismic hazard areas are not mapped for the project site. See RZC 21.064.060.
- Geotechnical consultant will coordinate with archaeologist on any subsurface investigations. An EZ1 permit will be completed with assistance from archeologist.

Deliverables:

- A draft and final technical memorandum presenting the geotechnical engineer's preliminary opinion regarding geotechnical aspects of the proposed rehabilitation options. The report will include summary of the geotechnical investigation, analysis and design recommendations as described above.

## TASK 5 – Environmental / Permitting Support

The Consultant will assist the City in their preparation of applications for the federal, state, and local permits necessary to construct the selected preliminary design (30%), including providing support for the application for the following authorizations/ permits:

- Clean Water Act Section 404 authorization from USACE via NWP 27.
  - Consultant will prepare the Stream and Wetland Assessment Report for use by the City and inclusion in the JARPA package to USACE
  - Consultant will prepare the JARPA figures from the 30% design (task 6)
  - Consultant will provide area and type of impacts for City's use in the JARPA form
  - Consultant will prepare mitigation and functional lift summary for City's use in the JARPA
  - Consultant will prepare a performance monitoring memo (approximately 4 pages, similar to Mackay Creek project) covering wetland and stream restoration areas to accompany JARPA
  - Consultant will review draft JARPA form (prepared by City) and provide comments
- Clean Water Act Section 401 water quality certification (assumes certification under NWP 27 authorization, not individual water quality certification process).
  - Consultant will summarize construction BMPs and methods to assure water quality standards are met during construction
- National Historic Preservation Act identification and evaluation; and Section 106 Tribal Consultation support, including preparation of Cultural Resources Report.
- Endangered Species Act Section 7 Consultation with NMFS via *Specific Project Information Form (SPIFF)* for stream restoration project consistent with USACE/USFWS/NMFS Restoration Programmatic Consultations.
  - Consultant will prepare SPIFF from the 30% design (task 6)
  - Consultant will summarize construction BMPs and methods to assure water quality standards are met during construction and provisions for excluding fish from construction area are included in the design
- Hydraulic Project Approval from WDFW.
  - City will submit JARPA and JARPA figures via APPS system
  - Consultant will provide support with JARPA per CWA Section 404 deliverables
- SEPA Determination.
  - Consultant will provide City with *Stream and Wetland Assessment Report*, SPIFF, and related information for their use in preparing a SEPA checklist  
DNS or MDNS determination is assumed
- Public Agency Utility Exception.
- City Permits (Clear and Grade, Critical Areas, etc.).
  - Consultant will provide City with *Stream and Wetland Assessment Report*, SPIFF, and related information for City use in local permit compliance

The Consultant's permitting lead will attend two meetings with the City, anticipated to include one preapplication or other permitting meeting with the Federal, State, and Tribal representatives at the USACE office in Seattle and one onsite meeting with WDFW and representatives from the Muckleshoot Indian Nation once the updated delineation is complete and the alternatives are conceptualized such that the alternatives and extent of the project can be generally discussed.

The Consultant will assist the City in the preparation of a project narrative/project description and the JARPA by providing the impact areas and quantities for work within wetlands and waters, and information regarding construction timing, schedule, techniques, and BMPs. Consultant permitting lead will support preparation of project benefits/functional lift for the City's JARPA.

The Consultant will prepare the *Cultural Resources Report*, for submittal by the City.

The City will prepare an Area of Potential Effect drawing and description for Section 106 Consultation with the tribes and DAHP.

The Consultant will prepare one *Wetland and Stream Assessment Report* to satisfy the City's Critical Areas Reporting requirements, for submittal by/to the City.

Assumptions:

- It is assumed that the project design and the functional lift assessment will support CWA Section 404 authorization under NWP 27 and use of SPIFF process for Endangered Species Consultation under the Restoration Programmatic agreements between USACE, USFWS, and NMFS
  - An offsite Compensatory Wetland Mitigation Plan and design will *not* be required because the project will restore the pond and stream in such a manner that the project is 'self-mitigating' for any unavoidable permanent or temporary impacts to wetlands.
  - Preparation of an In-Lieu Fee Use plan will not be required as a component of offsite mitigation.
  - SPIFF will reference the JARPA plans and will not include independently prepared figures
  - Electroshocking will not be included in construction – SPIFF process cannot be pursued if electroshocking of fish is included in the project.
- It is assumed that Redmond Planning and Community Development will *not* require Geologically Hazardous Areas or Frequently Flooded Areas to be addressed because none of these critical areas are mapped by the City as occurring with the project site (per: RZC 21.61.010.E (maps), posted at: [Redmond Zoning Code 21.61.010.E](#))
- It is assumed that Redmond Planning and Community Development will *not* require Critical Aquifer Recharge Areas to be addressed, although the site is mapped as a Zone 3, because the project activities are protective of groundwater conditions and will employ standard construction BMPs.
- The *Wetland and Stream Assessment Report* prepared will include the required elements of a Wetlands Delineation Report and Stream Reconnaissance Report (per RZC Title 21, App 1 Critical Areas Reporting Requirements) and will thus be suitable for submittal by the City to USACE, Ecology, and will meet the needs of the Redmond Planning and Community Development.
- It is assumed that no human remains will be encountered during the field reconnaissance associated with the cultural resources assessment.

- The City will request the pre-application meeting and the field meeting with WDFW and the Muckleshoot Tribe habitat biologist once the updated delineation is complete.
  - Each meeting will encompass 4 hours, including prep, travel and 1-2 hours of meeting time.
- City will lead all coordination with permit agencies and lead overall permitting effort, including completing the JARPA, SEPA checklist, and applications for City permits and submitting the JARPA, Cultural Resources Report, and SPIFF (for ESA consultation) to USACE.
  - Consultant will prepare materials to support JARPA, including figures, as described above.
  - City will address site protection mechanisms in JARPA application
  - The City will utilize the JARPA as the submittal to WDFW via their APPS online system.
- The Consultant will support the City in addressing minor questions and clarifications posed by the regulatory agencies; project redesign, additional elements or analysis, or substantial modifications to planting plan or restoration approach are excluded.
  - Consultant will provide up to 8 hours of support to the City related to response to agency comments on application.

#### Deliverables:

- *Stream and Wetland Assessment Report*, draft and final
- *Performance Monitoring Memo*
- *Cultural Resources Report*, draft and final
- *Specific Project Information Form (SPIFF)* for endangered species act consultation for stream restoration project, draft and final
- 8-1/2 x 11 JARPA drawings for USACE derived from 30% design, draft and final
- Consolidated comments on City's draft JARPA

## TASK 6: PRELIMINARY DESIGN (30% Design Documentation)

Following the identification of the preferred alternative from Task 3, the Consultant will refine the design to a 30% level.

#### Assumptions:

- Design will be completed in AutoCAD and follow City of Redmond CADD standards.
- Design solutions must provide fish passage (per WDFW)
- Stream crossings (including pedestrian bridges) are not included
- Design solutions shall incorporate elements to ensure public safety
- Design solutions shall limit impacts to critical areas and any requirement for offsite or associated mitigation via an in-lieu fee program, to the extent possible
- Design solutions shall retain infiltration/groundwater recharge, if possible
- Design solutions shall facilitate limited east/west public access, if possible
- Design of park elements that are defined in the alternatives analysis will be included.
- Modelling performed for the Monticello Watershed Restoration Plan (WRP) will be adequate to establish design parameters



- The solution should function independent of proposed future upstream stormwater retrofits
- This design may not necessarily be included in the Monticello WRP
- City staff will provide consolidated review comments for one interim submittal. A consolidated list of comments, screened for duplicates and conflicting edits will be provided to the Consultant from the City.
- Only one round of review is required (Draft and Final)

#### Deliverables:

- 30% Plan Sheets (1/2 Size, 11x17 Plan Sheets)
  - Cover Sheet
  - Existing Conditions, TESC & Bypass Plan and Details
  - Proposed Conditions Plan and Stream Profile
  - Typical Sections
  - Stream Restoration and Planting Details
  - Proposed Pond Berm Repair (if applicable)
- Preliminary Design Level Cost Estimate

## TASK 7 – Public Outreach Support

The City will lead and facilitate public involvement with support. Graphics from previous tasks will be used as needed and modified slightly as needed. No additional graphic will be prepared to support this task.

#### Assumptions:

- Consultant will attend one outreach event with one staff member.
- Graphics developed for Task 3 will be used and this task includes time for coordination, small updates or formatting changes.

## TASK 8 – Project Administration

The objective of this task is to provide project administration including budget and schedule management, internal quality assurance/quality control review of deliverables prior to submission, maintenance of records and monthly progress reports, and project set-up and close-out. This task also includes internal coordination between the project team members.

#### Assumptions:

- Project duration is twelve (12) months, with the work occurring March 2019 through February 2020.

#### Deliverables

- Monthly Progress Reports

## ***Exhibit B***

### ***DBE Participation/SBE Plan***

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

# ***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**

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

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

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

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

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

## II. Any Other Electronic Files to Be Provided

## III. Methods to Electronically Exchange Data

A. Agency Software Suite

B. Electronic Messaging System

C. File Transfers Format

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

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## Exhibit D

### Consultant Fee Determination

Project Name: Smith Woods Pond / Stream Rehabilitation  
 Project Number: 20021811.04.01.02  
 Consultant: Osborn Consulting, Inc.

#### NEGOTIATED HOURLY RATES

Classification	Hours	DSC	Overhead 172%	Fee (Profit) 29%	Total Hourly Rate	Total
Principal Engineer	84	\$ 65.00	\$111.81	\$18.92	\$196	\$16,464
Project Manager		\$ 62.00	\$106.65	\$18.04	\$187	
Project Geomorphologist	26	\$ 66.10	\$113.71	\$19.24	\$199	\$5,174
Senior Engineer		\$ 52.00	\$89.45	\$15.13	\$157	
Project Engineer	211	\$ 45.50	\$78.27	\$13.24	\$137	\$28,907
Design Engineer	91	\$ 37.00	\$63.65	\$10.77	\$111	\$10,101
Engineer in Training		\$ 31.00	\$53.33	\$9.02	\$93	
Intern Engineer		\$ 20.00	\$34.40	\$5.82	\$60.22	
CADD Manager	87	\$ 44.50	\$76.55	\$12.95	\$134.00	\$11,658
CADD Tech		\$ 26.44	\$45.48	\$7.69	\$79.62	
Project Assistant	58	\$ 34.00	\$58.49	\$9.89	\$102.38	\$5,938
Graphic Design		\$ 39.00	\$67.09	\$11.35	\$117.44	
<b>Total Hours</b>		557			<b>Subtotal:</b>	\$78,242

#### REIMBURSABLES

Mileage		
Reproduction (copies, plots, etc.)		
Miscellaneous		\$800
<b>Subtotal:</b>		\$800

#### SUBCONSULTANT COSTS (See Exhibit E)

Golder Associates	\$22,777
Natural Systems Design	\$35,857
Equinox Resreach & Consulting International (ERCI)	\$6,174
PACE	\$24,115
<b>Subtotal:</b>	\$88,923

**Total:** \$167,965

**Contingency:** 12,035

**GRAND TOTAL:** \$180,000



## ***Exhibit E***

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

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There is not any sub-consultant participation at this time. The CONSULTANT shall not sub-contract for the performance of any work under this AGREEMENT without prior written permission of the AGENCY. Refer to section VI “Sub-Contracting” of this AGREEMENT.

**Exhibit E1**  
**Consultant Fee Determination**

Project Name: Smith Woods Pond / Stream  
Rehabilitation

Project Number: 20021811.04.01.02  
Consultant: Golder Associates

**NEGOTIATED HOURLY RATES**

<b><u>Classification</u></b>	<b><u>Hours</u></b>	<b><u>Rate</u></b>	<b><u>Cost</u></b>
C7 Program Practice Leader	3	\$232	\$696
C6 Senior Consultant	20	\$205	\$4,100
C5 Sr Eng/Scientist	40	\$179	\$7,160
C4 Sr. Proj. Eng/Sci.		\$151	
C3 Pr. Eng/Scientist		\$134	
C2 Staff Eng/Scientist	88	\$112	\$9,856
C1 Eng/Scientist		\$99	
D3 Sr. Draftperson		\$107	
D2 Staff Draftperson		\$91	
D1 Draftperson		\$80	
T3 Sr. Technician		\$107	
T2 Staff Technician		\$85	
T1 Technician		\$75	
B3 Sr. Admin. Support	3	\$95	\$285
B2 Staff Admin. Support		\$79	
B1 Admin. Support		\$67	
Subtotal:	154		\$22,097

**REIMBURSABLES**

Mileage	
Reproduction (copies, plots, etc.)	
Miscellaneous	
Subtotal:	\$680

**SUBCONSULTANT COSTS (See Exhibit D)**

Subtotal:	
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**TOTAL** \$22,777

**CONTINGENCY**

**GRAND TOTAL** \$22,777

## Exhibit E2

### Consultant Fee Determination

Project Name: Smith Woods Pond / Stream Rehabilitation  
Project Number: 20021811.04.01.02  
Consultant: Natural Systems Design

#### NEGOTIATED HOURLY RATES

Classification	Hours	DSC	Overhead 180%	Fee (Profit) 28%	Total Hourly Rate	Total
Principal Engineer		\$ 93.61	\$168.50	\$25.74	\$288	
Principal Scientist		\$ 93.61	\$168.50	\$25.74	\$288	
Senior Engineer	11	\$ 70.32	\$126.58	\$19.34	\$216	\$2,376
Senior Scientist	77	\$ 55.29	\$99.52	\$15.20	\$170	\$13,090
Project Engineer		\$ 44.92	\$80.86	\$12.35	\$138	
Project Scientist		\$ 29.99	\$53.98	\$8.25	\$92	
Project Landscape Architect	55	\$ 37.80	\$68.04	\$10.40	\$116	\$6,380
Staff Engineer		\$ 33.67	\$60.61	\$9.26	\$103.54	
Staff Scientist	56	\$ 31.54	\$56.77	\$8.67	\$96.99	\$5,431
Staff Landscape Designer	90	\$ 30.55	\$54.99	\$8.40	\$93.94	\$8,455
Senior CAD/GIS		\$ 25.48	\$45.86	\$7.01	\$78.35	
CAD/GIS		\$ 24.20	\$43.56	\$6.66	\$74.42	
Senior Admin Support		\$ 47.99	\$86.38	\$13.20	\$147.57	
Admin Support		\$ 33.18	\$59.72	\$9.12	\$102.03	
Total Hours		289			Subtotal:	\$35,732

#### REIMBURSABLES

Mileage		\$125
Reproduction (copies, plots, etc.)		
Miscellaneous		
Subtotal:		\$125

#### SUBCONSULTANT COSTS (See Exhibit E)

Subtotal:		
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Total: \$35,857

Contingency:

GRAND TOTAL: \$35,857

**Exhibit E3****Consultant Fee Determination**

Project Name: Smith Woods Pond / Stream Rehabilitation  
 Project Number: 20021811.04.01.02  
 Consultant: Equinox Research & Consulting International (ERCI)

**NEGOTIATED HOURLY RATES**

Classification	Hours	DSC	Overhead 184%	Fee (Profit) 28%	Total Hourly Rate	Total
Principal Investigator	6	\$ 40.00	\$73.60	\$11.00	\$125	\$750
Physical Anthropologist		\$ 40.00	\$73.60	\$11.00	\$125	
Senior Editor and Geoarchaeologist		\$ 32.00	\$58.88	\$8.80	\$100	
Senior Archaeologist 4	30	\$ 29.00	\$53.36	\$7.98	\$90	\$2,700
Senior Archaeologist 3		\$ 27.00	\$49.68	\$7.43	\$84	
Senior Archaeologist 2		\$ 26.00	\$47.84	\$7.15	\$81	
Senior Archaeologist 1		\$ 25.00	\$46.00	\$6.88	\$78	
Archaeologist 5		\$ 24.00	\$44.16	\$6.60	\$74.76	
Archaeologist 4		\$ 23.00	\$42.32	\$6.33	\$71.65	
Archaeologist 3		\$ 22.00	\$40.48	\$6.05	\$68.53	
Archaeologist 2		\$ 21.00	\$38.64	\$5.78	\$65.42	
Archaeologist 1		\$ 20.00	\$36.80	\$5.50	\$62.30	
GIS and Office Field Support	10	\$ 20.00	\$36.80	\$5.50	\$62.30	\$623
Archaeological Technician 4	35	\$ 19.00	\$34.96	\$5.23	\$59.19	\$2,071
Archaeological Technician 3		\$ 18.00	\$33.12	\$4.95	\$56.07	
Archaeological Technician 2		\$ 17.00	\$31.28	\$4.68	\$52.96	
Archaeological Technician 1		\$ 16.00	\$29.44	\$4.40	\$49.84	
<b>Total Hours</b>		81			<b>Subtotal:</b>	\$6,144
<b>REIMBURSABLES</b>						
Mileage						
Reproduction (copies, plots, etc.)						
Miscellaneous						\$30
<b>Subtotal:</b>						\$30
<b>SUBCONSULTANT COSTS (See Exhibit E)</b>						
<b>Subtotal:</b>						

**Total:** \$6,174

**Contingency:**

**GRAND TOTAL:** \$6,174

## Consultant Fee Determination

## NEGOTIATED HOURLY RATES

**GRAND TOTAL:** \$24,115

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

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

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

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

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

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

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

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

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

\_\_\_\_\_  
Date

# **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