Remarks and Instructions

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Please contact Stacey Kelsey at 360-705-7383 with comments, questions, or suggestions for improvement to the manual.

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Dave Mounts

Washington State Department of Transportation
Highways and Local Programs
Engineering Services
PO Box 47390
Olympia, WA 98504-7390
www.wsdot.wa.gov/localprograms
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Washington State Department of Transportation
Local Programs
Engineering Services
PO Box 47390
Olympia, WA 98504-7390
360-705-7383
www.wsdot.wa.gov/localprograms/
Foreword

This manual provides local agencies with statewide policies and standards to follow when using Federal Highway Administration (FHWA) funds for transportation projects. Considerable effort has been made to provide guidance on how to accomplish the work under the current federal transportation act, Moving Ahead for Progress in the 21st Century (MAP-21). MAP-21 creates a streamlined and performance-based surface transportation program and builds on many of the highway, transit, bike, and pedestrian programs and polices established in 1991. Updating this manual is a continuing process. Questions, observations, and recommendations are invited. The Comment Request Form is provided to encourage comments. Please use it to transmit comments, including marked copies of manual pages, to WSDOT Local Programs.

/s/
Kathleen B. Davis
Director
Headquarters Local Programs
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Chapter 12  FHWA Funding

12.1 General Discussion

This chapter describes the distribution of Federal Highway Administration (FHWA) funds administered by the Washington State Department of Transportation’s (WSDOT) Headquarters Local Programs, and presents the basic procedures for local agency participation.

FHWA funds may be used to reimburse project costs for general transportation planning, preliminary engineering, right of way acquisition, construction, and audit. FHWA funds may only be expended after authorization by WSDOT through FHWA. FHWA funds are not eligible for lobbying efforts.

To use donated lands as part of the agencies’ match to the project under certain conditions, see Section 25.10.

.11 FHWA Eligible Roadways – Under the Federal Transportation Act: Moving Ahead for Progress in the 21st Century (MAP-21), roadways eligible for FHWA administered funds are:

- The National Highway System (NHS).
- The Interstate System, which is a component of the NHS.
- Non-NHS routes which include all other functionally classified routes (except rural minor collector and local access). The Act allows up to 15 percent of Surface Transportation Program (STP) rural dollars to be used on rural minor collectors.

The NHS provides an interconnected system of principal arterials and other highways serving major population centers, international border crossings, ports, airports, public and intermodal transportation facilities, and other major travel destinations to meet national defense needs and to serve interstate and interregional travel.

Routes which must be included on the NHS are principal arterials, interstate highways, highways on the Strategic Highway Network (STRAHNET), major STRAHNET connectors, and congressional high priority routes.

.12 FHWA Funding Programs – FHWA programs are reimbursement programs for financing eligible transportation projects. The following are funding categories (see Section 12.5):

- National Highway Performance Program (NHPP)
- Surface Transportation Program (STP)
- Congestion Mitigation and Air Quality (CMAQ)
- Highway Safety Improvement Program (HSIP)
- Railway Highway Crossing
- Transportation Alternatives Program (TAP)
- Ferry Boat Program (FBP)
- Emergency Relief Program (ER)
12.2 Programming Projects

.21 Planning Requirements – Since 1991, the Federal Transportation Act requires a continuous transportation planning process. This process involves:

- Transportation Management Areas (TMA) long-range transportation plans.
- Metropolitan Planning Organization (MPO) long-range transportation plans.
- A statewide long-range transportation plan.
- A Statewide Transportation Improvement Program (STIP).

The statewide planning process establishes a cooperative, continuous, and comprehensive framework for making transportation investment decisions throughout the state. The process for developing the statewide plan and transportation improvement program shall include metropolitan and non-metropolitan local officials with responsibility for transportation, including Indian tribal governments, and provide for consideration of all modes of transportation.

At the state and federal levels, policies and procedures have been established to provide for statewide coordination of transportation programs.

.22 Transportation Improvement Program (TIP) – A TIP is a listing of prioritized projects that a local agency expects to begin during the next six years. Projects in a TIP are all FHWA, Federal Transit Administration (FTA), or other federally funded projects, and regionally significant projects. All cities, towns, counties, tribal nations, and transit agencies are required to prepare and adopt their individual TIPs annually.

- Cities and towns are required to prepare and adopt a six-year TIP by June 30 annually and file a copy with the Secretary of Transportation not more than 30 days after adoption (RCW 35.77.010).
- Counties are required to prepare and adopt a six-year TIP by December 31 annually and file copies with the County Road Administration Board (CRAB) and the Secretary of Transportation not more than 30 days after adoption (RCW 36.81.121).
- Tribes are required to prepare a Tribal Transportation Improvement Program (TTIP) (25 CFR 170.402).
- Transit agencies are required to prepare a six-year transit development plan by September 1 of each year and file a copy with WSDOT, the Transportation Improvement Board, cities, counties, and regional planning councils where the transit agency is located (RCW 35.58.2795).

Once the agency TIPs are approved, the first four years of federally funded and regionally significant projects are submitted to MPOs and/or RTPOs for inclusion in the Regional TIP as applicable.

WSDOT developed a web-based system for agencies to prepare their six-year programs and submit them electronically. For additional information on the system, go to www.wsdot.wa.gov/localprograms/programmgmt/stip.htm.
12.3 Coordination With Agencies

.31 Metropolitan Planning Organizations (MPO) – An MPO is an organization of elected officials in urbanized regions with 50,000 or more population. MPOs, in cooperation with any affected public transportation operator(s) and the state, are required to develop long-range transportation plans and TIPs for the metropolitan planning area (23 CFR Part 450).

MPOs with populations over 200,000 are designated as Transportation Management Areas (TMAs). Some responsibilities of the TMA/MPO are:

- Carry out a continuing, coordinated, and comprehensive transportation planning process (3 Cs), which includes the establishment and use of a performance based approach to transportation decision making to support the national goals.
- Prepare a 20-year metropolitan transportation plan (MTP) that is financially constrained and serves as a basis for the selection of projects in the TIP.
- Develop criteria that relates to regional priorities, establish application procedures, project selection, inform local agency of selection, and monitor to ensure delivery of regional STP, CMAQ, and TAP funds that correlates with the MTP. Federal funds cannot be suballocated to individual jurisdictions or modes based on a predetermined percentage or formula (23 CFR 450.324).
- Develop a four-year TIP, which:
  - Is required to be updated at least once every four years and approved by the MPO and Governor or Governor’s designee.
  - Contains projects consistent with the current metropolitan transportation plan.
  - Includes a list of prioritized projects for four years.
  - Has reasonable opportunity for public comment prior to approval.
  - Includes a financial plan for implementing the projects that is also consistent with reasonable expectation of available funding.
  - Includes sufficient descriptive project descriptions (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project.
  - Contains projects being funded by Title 23, FHWA or Title 49, FTA funding.
  - Estimates the total cost of the project (all phases, all funding sources).
  - Contains the amount of federal, state, and local funds to be obligated during each program year.
  - Contains regionally significant projects funded with federal funds other than those administered by FHWA or FTA and projects funded with non-federal funds.
  - Contains a project or identified phase of a project, only if full funding can reasonably be anticipated to be available for the project or phase within the time period contemplated for completion of the project or the identified phase (see STIP Appendix C).
  - Includes performance target achievement. The TIP shall include, to the maximum extent practicable, a description of the anticipated effect of the TIP toward achieving the performance targets established in the metropolitan transportation plan, linking investment priorities to those performance targets.
• Each year, include a listing of obligated projects (including investments in pedestrian walkways and bicycle transportation facilities). The listing shall be published by March 30 of each year, identifying the Title 23 and/or Title 49, FHWA funds, and FTA funds that were obligated in the preceding calendar year. For each federally funded project, the listing shall include:
  – All federal funded projects authorized or revised to increase obligations in the previous calendar year.
  – The agency responsible for carrying out the project or phase.
  – Sufficient project descriptions (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project.
  – The amount of federal funds requested in the TIP.
  – The federal funding obligated during the previous calendar year.
  – The federal funding remaining for subsequent years.

After the MPO TIP is approved, it is submitted to WSDOT through the web-based system for inclusion in the STIP.

.32 Regional Transportation Planning Organizations (RTPO) – As part of the Growth Management Act (GMA), the legislature authorized the creation of RTPOs (RCW 47.80). RTPOs are voluntary organizations composed of local governments whose purpose is to coordinate transportation planning on a regional basis and to develop a regional transportation plan. Some of the responsibilities of RTPOs are:
  • Establish a cooperative planning process with public involvement.
  • Provide a forum for state and local agencies to coordinate their planning.
  • Certify that local plans are consistent with the GMA and the regional plan.
  • Prepare a regional transportation plan that identifies regionally important transportation facilities, outline a strategy and approach for the region to guide system development and a financing plan.
  • Develop a six-year TIP which is required to be updated at least once every two years and includes a prioritized list of regional projects drawn from state, transit, tribal, city, and county TIPs and how the program of projects will be financed.
  • Develop criteria that relates to regional priorities, establish application procedures, project selection, inform local agency of selection, and monitor to ensure delivery of regional TAP funds. Federal funds cannot be suballocated to individual jurisdictions or modes based on a predetermined percentage or formula (23 CFR 450.324).

After the RTPO TIP is approved, it is submitted to WSDOT through the web-based system for inclusion in the STIP.

A list of MPOs and RTPOs is at:

A map of MPOs and RTPOs is at:
www.wsdot.wa.gov/nr/rdonlyres/cf5ead4f-f9e9-46f9-b97a-f0e7945f2254/0/mportpomapforweb.pdf
.33 County Lead Agencies – County lead agencies are responsible for developing a county-wide approach to select priority transportation projects in their respective regions. Transportation needs of the rural counties are often much different than the needs of metropolitan areas. Rural counties frequently partner with the smaller local jurisdictions to meet the broader needs of the county-wide transportation system. Responsibilities of county-lead agencies include:

- Develop criteria that relates to county-wide priorities, establish application procedures, project selection, inform local agencies of selection and monitor to ensure delivery of Surface Transportation Program (STP) funds. Federal funds cannot be suballocated to individual jurisdictions or modes based on a predetermined percentage or formula (23 CFR 450.324).
- Include non-metropolitan local officials with responsibility for transportation, including Indian tribal governments and provide for consideration of all modes of transportation.
- Public involvement through the respective agency’s six-year program hearings and selection processes.

After projects are prioritized, selected, and approved through the county-wide process, the projects are programmed in the respective lead agency’s TIP. Upon approval of the agency TIP, it is submitted to the RTPO or WSDOT (as applicable) for inclusion in the STIP.

.34 Local Agencies Outside MPOs – Local agencies outside MPOs are required to comply with the state six-year programming laws as well as federal law under the Federal Transportation Act, 23 USC, and 49 USC for any project they wish to finance with federal funds. Public involvement includes the six-year program hearings and the public comment processes for the local agency.

12.4 Statewide Transportation Improvement Program (STIP)

The Federal Transportation Act requires that each state develop a STIP as a condition to authorize federal funds for transportation projects. The STIP is a four-year prioritized program of transportation projects, compiled from local and regional plans along with the Washington Transportation Plan (WTP). The STIP includes projects such as pavement overlays, roadway widening, bridge replacement or repair, signal systems, safety enhancements, bicycle and pedestrian facilities, and transit improvements. Projects included in the STIP are funded by a combination of federal, state, and local sources. Federal aid projects must be included in the STIP before FHWA or FTA can authorize the expenditure of federal funds. Once projects are approved in the STIP, agencies may request project authorization with federal funds.

The STIP is developed annually beginning in October. A draft STIP is available for public review in November on WSDOT’s website. FHWA and FTA approve the STIP in January. WSDOT launches the searchable database of the STIP, available to all on WSDOT’s STIP web page.

The STIP includes:
- All TMA transportation improvement programs without change.
- All MPO transportation improvement programs without change.
- All transportation funding improvement programs for the remainder of the state.
• Involvement of:
  – Local Agencies
  – Regional Transportation Planning Organizations
  – Transportation Management Areas
  – Metropolitan Planning Organizations
  – WSDOT
  – Transit Agencies
  – Tribes
  – The Governor’s Office

The basic required elements of the STIP are:
• All proposed highway and transit projects in the state funded under Title 23 and Title 49 USC, including federal lands projects.
• Consistent with the statewide transportation plan.
• In carbon monoxide, ozone, PM-10, or PM-2.5 nonattainment areas, include projects that conform with the State Implementation Plan (SIP).
• Consistent with expected available funding.
• Identify projects and selection priorities developed with appropriate consultation and/or coordination with local jurisdictions, metropolitan planning organizations, and federal lands agencies.
• Include regionally significant projects funded with federal funds other than those administered by FHWA or FTA and projects funded with non-federal funds.
• Meet the requirements of 23 USC 135(f), Statewide Planning, coordination with local jurisdictions, and approved by FHWA and FTA.
• Include a project or identified phase of a project, only if full funding can reasonably be anticipated to be available for the project or phase within the time period contemplated for completion of the project or the identified phase.

The STIP shall include for each project or phase:
• Project descriptions (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project.
• Estimate the total project cost (all phases, all funding sources).
• Amount of federal, state, and local funds proposed to be obligated during each program year.
• Complete funding for the phase identified (all funding sources).

WSDOT is primarily responsible for implementation of the Washington State STIP. This cannot be accomplished without recognizing the requirements of all transportation providers in developing their various TIPs.

Agencies within an MPO must submit projects to the MPO, who will then submit to WSDOT for inclusion in the STIP.

Agencies with an RTPO need to check with their RTPO regarding the RTPO’s policy regarding project submittal for inclusion in the STIP. There are RTPOs which require that projects are submitted to them and the RTPO will submit to WSDOT for inclusion in the STIP, while other RTPOs allow agencies to submit directly to WSDOT for inclusion in the STIP.
The following schedule shows the processes and responsibilities required by state and federal law to develop Washington’s STIP. Many of the events on the schedule interact with others and require cooperation and communication between government agencies.

The schedule is crucial to managing transportation funding. Agencies must plan adequate time for discussion and analysis, public involvement, as well as time to submit information for review.

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<td>June 30</td>
<td>Cities and towns six-year transportation programs adopted.</td>
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<tr>
<td>July 31</td>
<td>Adopted TIPs due to WSDOT.</td>
</tr>
<tr>
<td>August/September</td>
<td>MPO/RTPO assemble regional TIP and MPOs prepare analysis for conformity finding (as applicable).</td>
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<tr>
<td>August</td>
<td>WSDOT reviews draft MPO/RTPO TIPs.</td>
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<tr>
<td>September/October</td>
<td>WSDOT, FHWA and FTA review MTIPs for air quality conformity.</td>
</tr>
<tr>
<td>October 15</td>
<td>All MPO and RTPO TIPs due to WSDOT.</td>
</tr>
<tr>
<td>November</td>
<td>WSDOT approves MPO TIPs. FHWA and FTA issue Regional Air Quality Conformity finding. Draft STIP available for public review.</td>
</tr>
<tr>
<td>December</td>
<td>WSDOT submits the STIP to FHWA and FTA for approval.</td>
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<td>December</td>
<td>Counties adopt annual budgets and six-year programs.</td>
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<td>January</td>
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The STIP is amended each month through October. The STIP amendment schedule is available at www.wsdot.wa.gov/ta/progmgt/stip/stiphp.htm.

12.5 Funding Sources

Once a project is selected to receive federal aid highway funding, the project must be developed in accordance with the federal requirements and procedures that apply to federal aid highway projects. The federal aid highway funding is administered through WSDOT which is responsible for ensuring that federal and state requirements and procedures are followed. Also, all FHWA funded programs are reimbursement programs for financing transportation projects.

.51 Surface Transportation Program – The STP program provides flexible funding that may be used by WSDOT and local agencies for projects to preserve and improve the conditions and performance on any federal aid highway, bridge and tunnel projects on any public road, pedestrian and bicycle infrastructure, and transit capital projects, including intercity bus terminals. For details on all eligible activities and additional details, go to www.fhwa.dot.gov/map21/guidance/index.cfm.

The agencies are expected to consider the relative importance of the route, roadway condition, and traffic impact on NHS routes as they prepare their six-year programs for their roadway systems. The local agencies and the responsible selection agencies will ensure their respective NHS routes are given priority in their programming process.

The federal participation rate is 86.5 percent.
Suballocation of STP

- 50 percent of STP funding is suballocated to MPOs, RTPOs, and county lead agencies based on 2010 census population as follows:
  - Urbanized areas greater than 200,000.
  - Areas greater than 5,000 but no more than 200,000.
  - Areas with population of 5,000 or less.
- The remaining 50 percent is available for use in any area of the state and distribution is left to the discretion of the state. Local agencies are provided a proportion of these funds in their annual allocation.

.52 National Highway Performance Program (NHPP) – The NHPP was created by the Moving Ahead for Progress in the 21st Century Act (MAP-21) of 2012.

The NHPP program provides funding for construction and preservation projects located on the newly expanded NHS, which includes the entire Interstate system and all other highways and roadways classified as principal arterials. The NHPP program provides funding that may be used by WSDOT and local agencies for projects located on the Interstate or newly expanded NHS including: construction, reconstruction, resurfacing, restoration, rehabilitation, and preservation of highways and bridges; bridge and tunnel inspection and evaluation, as well as training bridge and tunnel inspectors; transit capital; environmental restoration and mitigation; safety; construction, rehabilitation, or replacement of ferry boats and facilities; Intelligent Transportation Systems (ITS); and bicycle and pedestrian infrastructure.

In addition, MAP-21 eliminates dedicated funding for bridge repair. Therefore, the approximate 6 percent share of the NHPP program for local entities is dedicated to fund a portion of a statewide local agency competitive bridge program.

MAP-21 requires a new focus on performance and accountability and sets performance targets nationally. This requirement has states develop a risk-based asset management plan for the NHS. Once more information is provided, this section will be updated.

For information on the designated local NHS routes, go to www.wsdot.wa.gov/localprograms/.

For details on all eligible activities, go to www.fhwa.dot.gov/map21/guidance/index.cfm.

.53 Highway Safety Improvement Program (HSIP) – The HSIP continues in the Federal Transportation Act to achieve a significant reduction in traffic fatalities and serious injuries on all public roads, including non-state owned public roads and roads on tribal lands. The HSIP requires a data-driven, strategic approach to improving highway safety on all public roads that focuses on performance.

1. Strategic Highway Safety Plan – The safety program requires each state to develop and implement a strategic highway safety plan that is approved by the Governor. Washington State’s plan is called Target Zero. Target Zero identifies safety problems and includes strategies to improve them. As part of the plan, the state is required to develop an evaluation process to assess results and use the information for future improvements.
2. **Safety Program** – Safety projects selected after January 2007 will be consistent with the strategic highway safety plan.

WSDOT has two programs to address safety:

a. **City Safety Program** – The goal of the program is to fund the design/preliminary engineering, right of way, and construction phases of projects that will reduce fatal and serious injury collisions on city streets in cities of any population and state highways that serve as arterials within cities with a population above 25,000.

b. **County Safety Program** – The goal of the program is to fund the design/preliminary engineering, right of way, and construction phases of projects that will reduce run-off-road and intersection-related fatal and serious injury collisions on county roads.

Projects will be consistent with the strategic highway safety plan.

All projects funded through this program are required to report on subsequent crash data to FHWA for those years after completion of the project. The federal participation rate is 90 percent.

For details on all eligible activities, go to [www.fhwa.dot.gov/map21/guidance/index.cfm](http://www.fhwa.dot.gov/map21/guidance/index.cfm).

.54 **Transportation Alternatives Program (TAP)** – The current Federal Transportation Act created TAP. TAP provides funding for programs and projects defined as transportation alternatives, including on and off-road, pedestrian and bicycle facilities, infrastructure projects for improving non-driver access to public transportation and enhanced mobility, community improvement activities, environmental mitigation, recreational trail program projects, and Safe Routes to School projects.

**Suballocation of TAP**

- 50 percent of TAP funding is suballocated to MPOs, RTPOs, and county-lead agencies based on 2010 census population as follows:
  - Urbanized areas greater than 200,000.
  - Areas greater than 5,000 but no more than 200,000.
  - Areas with population of 5,000 or less.

- The remaining 50 percent is available for use in any area of the state and distribution is left to the discretion of the state. At this time, a proportion of these funds are dedicated to a statewide Safe Routes to School program and the remaining are provided to the RTPOs.

WSDOT and nonprofits are not eligible as direct grant recipients of the funds. The federal share is 86.5 percent.

For details on all eligible activities, go to [www.fhwa.dot.gov/map21/guidance/index.cfm](http://www.fhwa.dot.gov/map21/guidance/index.cfm).
.55 Congestion Management and Air Quality (CMAQ) – The CMAQ program provides funding for transportation projects and programs that will contribute to attainment of National Ambient Air Quality Standards (NAAQS). CMAQ provides funding for projects and programs in air quality nonattainment and maintenance areas for ozone, carbon monoxide (CO) and particulate matter (PM-10, PM-2.5) which reduce transportation related emissions. The Clean Air Act (CAA) of 1970 also provides for a set-aside for those areas with a classification for PM-2.5. For more information on Air Quality requirements, see the Environmental Procedures Manual M 31-11.

The primary intent is for these projects and programs to result in tangible reductions in ozone precursor and CO emissions within a timeframe to allow attainment as provided in the Clean Air Act Amendments (CAAA) of 1990. It is important to note that the Clean Air Act requires highest priority be given to the implementation of the transportation portions of applicable SIPs and Transportation Control Measures (TCMs) from applicable SIPs.

An evaluation and assessment of CMAQ projects and programs to determine the direct and indirect impact of the projects on air quality and congestion is required. Air quality benefits must be determined and documented to have projects qualify for CMAQ funds.

CMAQ funds are distributed to the five MPOs representing maintenance areas – Puget Sound Regional Council (PSRC), Spokane Regional Transportation Council (SRTC), Southwest Washington Regional Transportation Council (RTC), Yakima Valley Conference of Governments (YVCOG), and Thurston Regional Planning Council (TRPC). MAP-21 has a set-aside for MPOs designated as nonattainment or maintenance areas for PM-2.5 that are to be used to address PM-2.5 emissions. PSRC is designated as a maintenance area for PM-2.5.

CMAQ funds cannot supplant existing funds. If CMAQ eligible work is included within a project that is funded by another federal fund source, the CMAQ eligible work must be funded using the federal fund source for the rest of the project.

Project planning activities are eligible only if the project leads directly to construction of a CMAQ project; that is, system planning and other non-project specific planning is not eligible. Developing computerized systems, such as a Geographic Information System, are not eligible. Studies to analyze future transportation needs are eligible only to the extent they are needed to develop project specific construction plans.

Sidewalk extensions and wheelchair ramps are eligible if they are incidental to an eligible CMAQ project, but are not eligible if they are the only work in the project. Paving projects for dust control are eligible only in areas where PM-10 nonattainment has been attributed to transportation sources.

For details on all eligible activities, go to www.fhwa.dot.gov/map21/guidance/index.cfm.

If FTA determines eligibility, CMAQ funds may be transferred to FTA to purchase alternate fuel buses and refueling stations for bus fleets and transit conversion to alternate fuel and personal rapid transit systems. Converting municipal fleet operations to alternate fuel source such as compressed natural gas is eligible in areas that require conversion as a measure to mitigate noncompliance in the Clean Air Act.
MAP-21 requires performance measures be established by USDOT for states to use to assess traffic congestion and on-road mobile source emissions and target to address those performance measures to be set by the state. In Washington, PSRC (Transportation Management Area over one million in population representing a maintenance area) is required to develop and update biennially a performance plan to achieve air quality and congestion reduction targets.

The federal participation is 86.5 percent.

For details on all eligible activities, go to www.fhwa.dot.gov/map21/guidance/index.cfm.

.56 Ferry Boat Program (FBP) – The FBP was established in MAP-21 for the construction of ferry boats and for design, right of way, and construction of ferry terminal facilities. Funds will be allocated to states for distribution to the specific eligible public entity.

Federal aid highway funds are available for capital improvements to existing ferry facilities, as well as construction of new ferry facilities. Cost-effective preventive maintenance activities that extend the useful life of the ferry facility are also an eligible activity under 23 USC 116(e). However, operational costs of a ferry, such as costs of ferry service administration, crews, general maintenance, and fuel, are not eligible for direct federal aid highway funding.

The federal participation is 80 percent.

For details on all eligible activities, go to www.fhwa.dot.gov/map21/guidance/index.cfm.

.57 Emergency Relief (ER) Program – Refer to Chapter 33 for details.

12.6 FHWA Discretionary Programs

FHWA administers some discretionary programs through its various offices. These discretionary programs represent special funding categories where FHWA solicits for candidates and selects projects for funding based on applications received. Each program has its own eligibility and selection criteria that are established by law, by regulation, or administratively. Below is a brief description of these programs.

.61 Federal Lands and Tribal Transportation Programs – The Federal Transportation Act continues to acknowledge the importance of access to federal and tribal lands. Recognizing the need for all public federal and tribal transportation facilities to be treated under uniform policies similar to the policies that apply to federal aid highways and other public transportation facilities, a unified program was created for federal lands transportation facilities, federal lands access transportation facilities, and tribal transportation facilities.

• Federal Lands Transportation Program – Provides funding for projects that improve access within the federal estate, such as national forests and national recreation areas on infrastructure owned by the federal government. This program combines the former Park Roads and Refuge Roads programs, and adds three new Federal Land Management Agency (FLMA) partners. A portion of the funds will support traditional partner agencies at current funding levels with new partners competing for a modest portion. All FLMA partners will administer the program using a new performance management model.
• **Federal Lands Access Program** – Provides funding for projects that improve access to the federal estate on infrastructure owned by states and local governments. Replacing and expanding the forest highways program, projects providing access to any federal lands are eligible for this new comprehensive program. Funds are distributed by formula based on recreational visitation, federal land area, federal public road mileage, and the number of federal public bridges. Programming decisions will be made locally using a tri-party model in each state comprised of representatives from FHWA, state DOT, and local government, in consultation with applicable FLMAs. A new federal match is required for these funds. The Tribal Transportation Program provides funding for projects that improve access to and within Tribal lands. This program generally continues the existing Indian Reservation Roads (IRR) program, while adding new set asides for tribal bridge projects (in lieu of the existing Indian Reservation Road Bridge program) and tribal safety projects. It continues to provide set-asides for program management and oversight and tribal transportation planning. A new statutory formula for distributing funds among tribes, based on tribal population, road mileage, and average funding under SAFETEA-LU, plus an equity provision, is to be phased in over a four-year period.

For details on all eligible activities, go to [www.fhwa.dot.gov/map21/guidance/index.cfm](http://www.fhwa.dot.gov/map21/guidance/index.cfm).

### 12.7 Transfer of STP and CMAQ Funds to the Federal Transit Administration (FTA)

In the event an agency would like funds administered by another federal agency (FTA, BIA, WFL, etc.), the project must be in the STIP, and the local agency must submit to WSDOT a copy of the federal agency concurrence to accept FHWA funds and administer the project.

Funds may be transferred from FHWA to FTA for projects that are eligible under FTA. If the project is a traditional transit project, it should be transferred to FTA. If the project involves construction of roads or highways, it should stay with FHWA.

For projects that are not clearly transit or highway, the project sponsor should select the administering federal agency. This selection should be done in informal consultation with the two agencies and the Washington State Department of Transportation. Park and ride lots, Transportation Demand Management (TDM) activities, and intermodal facilities might be eligible under both agencies’ programs.
This matrix illustrates the FTA transfer options:

<table>
<thead>
<tr>
<th></th>
<th>FTA</th>
<th>FHWA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transit Rolling Stock</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Park and Ride Lots</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Pedestrian Ways</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Refueling Bus</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Carpool and Vanpool</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Regional Rideshare</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Commute Trip Reduction</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Bikeways</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Intermodal Station</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Bus and Signal Priority</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Transit Maintenance and Operations</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Ferry Terminals</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Passenger Ferry Vessels</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>People Mover</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Auto Ferry Vessels-Metro (Puget Sound)</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Auto Ferry Vessels-Rural</td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

If the project is to be implemented through FTA, the entire project, including all phases, should be transferred. In some instances (some transit planning studies and selected projects not clearly defined above), funds to a transit agency may be approved through FHWA. Generally, these projects will have their scope of work and administrative oversight administered through WSDOT’s Public Transportation Division.

Once FTA has reviewed the application and it is complete and ready for approval, FTA requests the transfer through Local Programs. Local Programs will request the transfer of funds from FHWA to FTA. FHWA action to transfer the funds is considered an obligation of federal funds. FTA will subsequently work with the grant recipient to utilize the transferred funds.

12.8 Appendices

12.81 MPO Planning Flowchart
12.82 STP Lead Agencies
Chapter 13 Certification Acceptance Program

13.1 General Discussion

The Federal Highway Administration (FHWA) through a Stewardship Agreement, delegates authority to the Washington State Department of Transportation (WSDOT) for approving project development and construction administration. WSDOT has the option of delegating some or all of this authority to qualified local agencies, state or federal agencies, or Tribal governments. This procedure permits an agency to retain more of the approval authority at the local level when developing FHWA assisted transportation projects. WSDOT delegates this authority through a Certification Acceptance (CA) program. The CA program does not eliminate any project development procedures. Benefits of CA to a local agency include savings in time and money since the agency has the authority to develop, advertise, award, and manage its own projects.

CA requires local agencies to commit sufficient staff and other resources to project administration to ensure that all applicable state and federal requirements are met, and that the work can be accomplished efficiently. Once an agency has been certified, the certification agreement remains in effect indefinitely unless rescinded due to lack of performance or modified by one of the parties.

A CA agency has the option of requesting that WSDOT or another CA agency administer any given project.

By agreeing to accept federal aid funds, the local agency understands its roles and responsibilities with respect to carrying out the federal aid program. WSDOT is permitted to delegate certain activities, under its supervision, to local agencies (cities, counties, private organizations, or other state agencies) under federal regulation 23 CFR 1.11 and 635.105; however, WSDOT accepts responsibility for delegated activities.

FHWA is required by federal legislation to conduct verification activities to assure that WSDOT and the local agencies’ implementation of the federal highway programs conform with laws, regulations and policies. Similarly per FHWA’s delegation, WSDOT is also required to conduct verification activities to assure that local agency federal aid projects are implemented in conformance with federal aid requirements.

Certification Acceptance requirements for the right of way program are addressed in Chapter 25. Note: Local agencies are not delegated the authority to certify right of way.

13.2 CA Features

A certified agency is the approving authority for administering FHWA funded projects in the following project items:

1. Design.
2. Utility agreements.
3. Railroad agreements.
5. Public hearings, findings, and orders.
7. Advertisement, award, and execution of construction contracts.
8. Construction administration.
9. Construction material testing and testing personnel.
10. Concurrence in Award of delegated projects.

All of the above functions should be administered per the responsibilities outlined in the Agency’s approved CA Agreement.

WSDOT and FHWA retain approval authority for the following:

**WSDOT**

1. Design Deviations
3. *Standard Specifications* Division 1 changes.
4. Public Interest Findings (local force work, agency supplied materials, proprietary items, etc.).
5. NEPA Categorical Exclusions per MOU, Section 106 Consultation.
6. Implementation of the Civil Rights Program Requirements (DBE, Title VI, ADA, and EEO/OJT).
7. Tied Bids approval (see Appendix 44.82).
8. Agency Certification Acceptance (CA) approval.
10. Revisions to Agreements, when applicable.
12. Concurrence in Award of DBE non-FHWA oversight projects.

**FHWA**

1. Authorization of FHWA funds.
2. Approval of National Environmental Protection Act (NEPA) and Endangered Species Act (ESA) environmental documents.
3. Right of way certification approval.
4. Approval of WSDOT’s Civil Rights Programs (DBE, Title VI, EEO, ADA).
5. Buy America waiver approval.
6. Approval for Advertisement Period less than three weeks.
7. Approval of the *Local Agency Guidelines*.
8. Full oversight project approvals per Stewardship and Oversight Agreement. (Concurrence in Award, PS&E, Change Orders over $200,000, etc.)
13.3 CA Requirements

1. Projects must be administered in accordance with the *Local Agency Guidelines*.

2. Projects must be administered utilizing a Professional Civil Engineer registered in the state of Washington who is either on staff as a public employee or is a contract employee designated as the agency’s Engineer.

3. The agency shall have sufficient expertise and capability to perform and supervise the design, environmental, PS&E, and construction-administration phases of the project.

4. The agency must have designated an official approving authority for all WSDOT-delegated project approvals. This authority (e.g., agency executive or policy body) must officially approve each project step for which it is the approving authority, as identified in the agreement.

13.4 Application for CA

An agency applying to administer contracts under Certification Acceptance procedures must submit two copies of the Certification Acceptance Qualification Agreement and their Table of Organization to the Region Local Programs Engineer. A “Certification Acceptance Qualification Agreement” form is located at the end of this chapter and is also available through the WSDOT Region Local Programs Engineer.

After receiving the CA Qualification Agreement, the WSDOT Local Program’s Project Development Engineer will conduct an interview with the local agency administrators to determine whether the agency is capable of administering an FHWA-funded project. Areas of consideration will be a determination of past performance, current staffing, overall capability, and knowledge of FHWA and state requirements.

Based on the interview, the Director of Local Programs will allow the agency to administer a project under a trial/mentoring status. Immediately following the completion of the project, a Project Management Review (PMR) will be performed to evaluate how the agency performs. A favorable PMR will result in the agency achieving CA status.

13.5 CA Compliance

The WSDOT Region Local Programs Engineer will consult and advise the CA agency concerning the project-management procedures to be followed. The level of this assistance will depend on the nature of each project and the demonstrated capabilities of the agency. In order to be reasonably certain that local agencies are administering FHWA funds in accordance with the *Local Agency Guidelines*, WSDOT will perform procedural reviews on selected local agency ad-and-award projects.

These reviews will be:

- Project Management Reviews (PMR) performed by Local Programs (see Appendix 53.51 for review questions for PMR’s and Documentation Reviews).
- Documentation Reviews performed by the Region Local Programs Engineer.

The agency may lose CA status, have its delegation of authority reduced to a project or phase of a project, or be placed on probationary CA. This may be the result of:

- A PMR or Documentation Review.
• An audit by the State Auditor.
• Final project inspection.
• The qualifications and experience of the agency staff are altered.
• A determination from any FHWA oversight activity.

If a vacancy occurs in the positions described in the CA Agreement as “Approving Authority,” the Region Local Programs Engineer shall be notified and may schedule an interview of the replacement person.

The loss of CA status and reinstatement conditions will be outlined in a letter from Local Programs.

13.6 Non-CA Status

Responsible Charge

When Local Agencies elect to use consultants for engineering services, the local agency, as provided under 23 CFR 635.105(b), shall provide a full-time employee of the agency to be in responsible charge of the project.

If an agency does not have CA status, the following two options are available for administration of a FHWA funded project

Option 1
• CA Agency Administering a Project for a Non-CA Agency

A non-CA agency enters into an Agreement with a CA agency to administer all aspects of the project. This requires approval by the Region Local Programs Engineer.

Option 2

The Region Local Programs Engineer acts as the CA for the agency and approves an agency to perform specific aspects of a project. An approved plan for the administration of the project is executed between the Region Local Program Engineer and the agency. This category allows projects of smaller sizes to be performed in part by the agency. The project plan shall address such issues as:

• Financing approvals – accounting/billing capabilities.
• Consultant involvement and monitoring. The agency must obtain the approval of the Region Local Programs Engineer prior to selection of a consultant.
• Development of design and design documentation.
• Development of plans, specifications, and estimates.
• Approval of contract documents.
• Advertising, award, execution of a contract.
• Contract oversight and documentation.
• Change order approval.
• Material approval.

13.7 Appendices

13.71 Certification Acceptance Qualification Agreement
13.72 Certification Acceptance Interview Form
Developing Projects Using the Local Agency Guidelines

Chapter 14

14.1 General Discussion

The previous three chapters of this manual explained how local agencies may qualify to receive Federal Highway Administration (FHWA) funding for their transportation projects. The remainder of the manual explains procedures for developing specific projects.

Once a local agency has qualified to receive FHWA funds, as described in Chapter 12, the next action is to apply for funds to develop specific projects in its transportation program. Depending on their size and complexity, different projects may require different development procedures. The remaining chapters of the manual are arranged to reflect these differences.

For projects selected by HQ Local Programs – Once a project has been awarded funds, the local agency is to complete the project as selected. In the event unforeseen conditions (e.g., environmental, right of way) are encountered requests for scope, schedule and budget adjustments may be considered.

Chapters 21–28, General Project Development Processes, describe activities required during preliminary engineering on all projects.

Chapters 31–34, Special Project Development Processes, describe activities that may be required on some projects.

Chapters 41–46, Design, and Chapters 51–53, Construction and Post Construction, offer the local agency a choice of procedures, depending on whether its projects are located in urban or rural areas and whether it or the state will administer its construction contracts.

Chapters 61, Local Agency Force Projects, describes procedures from project design approval through the closing of an FHWA project, using the agency’s labor, equipment, and materials.

The specific requirements for a project may change as project development progresses and as more information about a project becomes available. Further details of the specific requirements are shown in the Project Development Process Flowchart and Checklist. The meanings of unfamiliar terms may be found in the Glossary. Once the local agency has identified the steps required on a particular project, only the parts in the manual that deal specifically with those steps need be referred to.
14.2 Project Development Process Overview

This section describes the project development process by setting forth project phases, documentation requirements, options for construction administration, and required reviews and approvals.

.21 Phases of Authorization – FHWA funds may be authorized for the following project phases:
1. Preliminary engineering or separate planning study.
2. Right of way acquisition.
3. Construction.

Phase Requirements When Utilizing FHWA Funds – For all phases, and at the time of each phase authorization, all funds necessary to complete the scope of work being authorized for the phase must be secured.

Preliminary Engineering Phase – FHWA Funds in PE Phase Only. For FHWA funds to be used in the PE phase of the project, the environmental documentation including FHWA NEPA approval, must be completed prior to advertising the project for construction. With no federal funds in the right of way or construction phases, the local agency must still follow federal environmental regulations and the Uniform Relocation Assistance and Real Property Acquisition Policies Act. A NEPA document must be approved by FHWA and all environmental commitments must be incorporated into the right of way and construction phases. Effective October 1, 2012 Section 1518 of MAP-21 amended the Buy America Statute. If one contract within the scope of a NEPA document is awarded using Federal–aid funding then the Buy America provisions will apply to all contracts within the scope of the NEPA document, regardless of the source of funding. Right of way must be acquired per the Right of Way Manual M 26-01 and acquisition may proceed during the PE Phase in accordance with the manual.

Any study projects are excluded from NEPA approval, planning studies must be completed and a copy provided to WSDOT to close the project.

Note: Right of way acquisition or actual construction of the project must start prior to the close of the tenth federal fiscal year following the federal fiscal year in which preliminary engineering was authorized.

Right of Way Phase – FHWA Funds in Right of Way Phase. For FHWA funds to be used in the right of way phase of the project, the environmental documentation including FHWA NEPA approval, approved relocation plan (if applicable), Project Funding Estimate and approved right of way plan must be completed prior to FHWA R/W authorization. All property acquisitions and relocations must be completed prior to advertising the project and must comply with the Uniform Act and 49 CFR Part 24 or the local agency is at risk of repayment of all federal funds used in the project. All environmental commitments must be incorporated into the R/W and construction phases.

Note: Construction of the project must start prior to the close of the tenth federal fiscal year following the federal fiscal year in which right of way was authorized.
**Construction Phase** – FHWA Funds in Construction Phase. All federal laws are triggered with federal funds in the construction phase; examples include NEPA, Title 23 USC, Uniform Relocation Assistance and Real Property Acquisition Policies Act, Buy America, and Davis-Bacon. After approval of the NEPA document, right of way certification, and the DBE/Training goals are established the construction phase can be authorized by FHWA. Once FHWA authorizes construction funding the local agency has authority to advertise the project. For Intelligent Transportation Projects (ITS) or projects that include ITS components (cameras, signal interconnect, fiber optic, etc.) agencies must complete and submit the ITS information form (Appendix 41.53) with the construction authorization request.

<table>
<thead>
<tr>
<th>Documentation Requirements When Utilizing FHWA Funds</th>
<th>PE Phase: FHWA Funds in PE Phase Only&lt;sup&gt;1&lt;/sup&gt;</th>
<th>R/W Phase: FHWA Funds in the R/W Phase&lt;sup&gt;2&lt;/sup&gt;</th>
<th>CN Phase: FHWA Funds in the Construction Phase&lt;sup&gt;3&lt;/sup&gt;</th>
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</thead>
<tbody>
<tr>
<td>Required Documentation</td>
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<td>STIP</td>
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<tr>
<td>Approved NEPA</td>
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<td>Approved Relocation Plan (if applicable)</td>
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<tr>
<td>Project Funding Estimate</td>
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<tr>
<td>Approved R/W Plan</td>
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<td>WSDOT Approved Right of Way Certification</td>
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<td>Environmental per LAG Manual</td>
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<td>R/W Acquisition per LAG Manual</td>
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<td>Construction per LAG Manual</td>
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<tr>
<td>Intelligent Transportation Systems Information Form (Appendix 41.53)</td>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

<sup>1</sup>Local Agency must provide documentation after completion of the PE phase that the project has been or will be constructed with non-FHWA funds.

<sup>2</sup>Local Agency must provide documentation after completion of the PE and R/W phases that the project has been or will be constructed with non-federal funds.

<sup>3</sup>Local Agency must provide documentation after completion of the CN phase as documented in this manual.

<sup>4</sup>Any environmental commitments must be incorporated into the R/W and /or CN phases. NEPA is not required if it is a planning study only.

<sup>5</sup>Local Agencies must provide a completed form if the project includes ITS components (see Appendix 41.53).
.22 Documentation Required for Authorization of Funds

1. **Planning With STP Funds** – “Urban Transportation Planning” is an interdisciplinary process for developing and monitoring long- and short-range transportation plans and improvement programs. These plans and programs are formulated with due consideration of present and anticipated future social, economic, and environmental factors and the safety and mobility needs of the population of the urban area. It is a dynamic process, in that it is continuously monitored to accommodate changes of land use, economic conditions and other factors influencing travel patterns. Because of the vast amount of capital expenditures required in the implementation of transportation systems (both highway and transit related), these projects could radically influence land use development in an area or region. Due to the substantial influences that transportation improvements have on the character of the land, it is important that transportation improvements reflect the overall regional social and economic objectives pertaining to community development.

   FHWA funded planning activities and studies are identified in Title 23, Part 420 USC, as activities not included in a work program but necessary in development of procedures and project identification.

   For planning and Transportation Demand Management (TDM) funding, the following documents are required:

   a. Project prospectus planning scope of work (Chapter 21).
   b. Local Agency Agreement (Chapter 22).
   c. Evidence of STIP inclusion.
   d. Documented cost estimate.
   e. Updated Quarterly Project Report, if required.

2. **Preliminary Engineering Funds** – When applying for preliminary engineering funds only, the following documents are required:

   a. Project Prospectus (Chapter 21).
   b. Local Agency Agreement (Chapter 22).
   c. Typical sections, vicinity map, and evidence of STIP inclusion.
   d. Documented cost estimate
   e. Updated Quarterly Project Report, if required.

3. **Right of Way Funds** – When applying for right of way funds, after preliminary engineering funds have developed right of way plans, the following documents are required, if appropriate:

   a. Supplement to original Local Agency Agreement (Chapter 22).
   b. FHWA approval of environmental documents (Chapter 24).
   c. Relocation plan, if relocation is required (Chapter 25).
   d. Approved Right of way plan (Chapter 25).
Chapter 14 Developing Projects Using the Local Agency Guidelines

4. **Construction Funds** – The following documents must be submitted to request construction funds:
   
a. Supplement to Local Agency Agreement. The agency’s proposed advertisement date must be noted on the supplement, or the original LAA if construction is the first phase authorized.

   b. Right of way certification (if required).

   c. Final FHWA approval of environmental documents (Chapter 24).

   d. Evidence of STIP inclusion.

   e. Engineer’s Estimate.

   f. Evidence of assignment of DBE/training goals.

   g. Updated Quarterly Project Report, if required.

.23 **Construction Contract Administration** – The local agency has the option of:

1. Administering the contract if it has approved certification acceptance procedures and operates in compliance with Chapter 13.

2. Requesting that WSDOT administer the contract.

3. Using its own forces to perform the work if operating under Certification Acceptance (CA) (Chapter 61).

4. Requesting that another public agency (one operating under CA) perform the work (Chapter 13).

5. Performing contract administration by a consultant (Chapter 31 under CA).

14.3 **Projects Within Interstate Rights of Way**

Since all projects within the Interstate Rights of Way (R/W) have the potential to impact safety and operations on the Interstate route, they must incorporate Interstate design criteria and construction quality. It is the Federal Highway Administration’s (FHWA) policy that all projects within the Interstate R/W should be administered by WSDOT. However, given the scope and extent of non-Interstate projects within the Interstate R/W, it is recognized that local agency administration of some projects may be acceptable, and all requests will be considered on a case-by-case basis.

Whenever a local agency proposes a project within the Interstate R/W, they must develop an agreement with WSDOT that clearly outlines their duties and responsibilities to maintain the integrity of the Interstate facility, from both the safety and quality perspectives. The agreement should be executed prior to design approval and must be executed prior to advertising for bids. The following requirements must be incorporated into the agreement:
Responsibilities – WSDOT and the local agency must each assign a project engineer.

Design – WSDOT must review and approve all highway plans, profiles, deviations, structural plans, false-work plans, shoring plans, and traffic control plans for any work within the Interstate R/W.

Plans, Specifications, and Estimates – WSDOT must review and approve the plans and specifications for any work within Interstate R/W.

Advertising and Award – The local agency must confer with the WSDOT project engineer on any pre-award issues affecting the quality and timing of the contract.

Construction – All construction, materials, and quality control requirements contained in the current editions of the Standard Specifications M 41-10 and Construction Manual M 41-01 must be incorporated into the agreement.

Contract Changes – All contract changes affecting work within the Interstate R/W must have the prior concurrence of the WSDOT project engineer.

Final Inspection – The final inspection of the project must be performed by WSDOT or the Region Construction (Operations) Engineer and must provide proof of their approval.

The agreement must be submitted to FHWA. FHWA reserves the right to assume full oversight of the project.

14.4 Project Development Process Flowchart and Checklist

The flowchart (see Appendix 14.51) and checklist (see Appendix 14.52) depict the sequence of major activities necessary to develop transportation projects using FHWA funds. The forms required for a project are shown on the list of forms. Since the type of work varies on projects, see Construction Manual Chapter 11, for additional required forms.

It is recommended that a copy of the checklist be inserted in the project file and used to initiate and document the activities necessary to complete a project.

14.5 Appendices

14.51 Project Development Process Flowchart
14.52 Project Development Checklist
Appendix 14.61

Project Development Process Flow Chart

<table>
<thead>
<tr>
<th>Phase</th>
<th>Process Activities</th>
<th>Chapter Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initiate</td>
<td>Project Development Checklist</td>
<td>12 and 14 or</td>
</tr>
<tr>
<td></td>
<td>Included in STIP</td>
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<tr>
<td></td>
<td>Project Development Checklist</td>
<td></td>
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<tr>
<td>Design</td>
<td>Project Development Checklist</td>
<td></td>
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<tr>
<td></td>
<td>Project Prospectus</td>
<td>21</td>
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<tr>
<td></td>
<td>Local Agency Agreement</td>
<td>22</td>
</tr>
<tr>
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<td>If Applicable, Request Design Deviation</td>
<td>41</td>
</tr>
<tr>
<td>Request Preliminary Engineering Funds</td>
<td>Project Development Checklist</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Project Development Checklist</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Location/Design, Public Hearing, and Approval</td>
<td>43</td>
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<td>Complete Environmental Action</td>
<td>24</td>
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<tr>
<td></td>
<td>Develop Right of Way Plans and Estimate</td>
<td>25</td>
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<tr>
<td></td>
<td>Complete Relocation Plan</td>
<td>25</td>
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<tr>
<td></td>
<td>Supplement to Local Agency Agreement</td>
<td>22</td>
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<td>Request Right of Way Funds</td>
<td>Project Development Checklist</td>
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<td>Project Development Checklist</td>
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<td></td>
<td>Relocation and Right of Way Certification and Project Analysis</td>
<td>25</td>
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<tr>
<td></td>
<td>DBE Goals Set</td>
<td>26</td>
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<td>PS&amp;E Approval</td>
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<td>Supplement to Local Agency Agreement</td>
<td>22</td>
</tr>
<tr>
<td></td>
<td>For State Ad and Award, Financial Responsibility Letter</td>
<td>44</td>
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<tr>
<td>Request Construction Funds</td>
<td>Project Development Checklist</td>
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<tr>
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<td>Project Development Checklist</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Contract Number From the Region Local Programs Engineer</td>
<td>46</td>
</tr>
<tr>
<td></td>
<td>Notice to Minority Contractors Association (see Region Local Programs for Distribution Centers)</td>
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</tr>
<tr>
<td>Construction Administration</td>
<td>Project Development Checklist</td>
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<tr>
<td></td>
<td>Project Development Checklist</td>
<td></td>
</tr>
<tr>
<td></td>
<td>For Certified Agency (CA), Approve Award and Notify Region Local Programs Engineer</td>
<td>46</td>
</tr>
<tr>
<td></td>
<td>For WSDOT Administered Contracts, Award by WSDOT</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>Award Data to Region Local Programs Engineer</td>
<td>46</td>
</tr>
<tr>
<td></td>
<td>Preconstruction Conference</td>
<td>52</td>
</tr>
<tr>
<td></td>
<td>Construction Administration (Construction Manual M 41-01)</td>
<td>52</td>
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<td></td>
<td>Project Development Checklist</td>
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</tr>
<tr>
<td></td>
<td>Construction Completion Notice to Region Local Programs Engineer</td>
<td>53</td>
</tr>
<tr>
<td></td>
<td>Final Acceptance by FHWA</td>
<td>53</td>
</tr>
<tr>
<td></td>
<td>Final Billing and Cost Report to Region Local Programs Engineer</td>
<td>23 and 53</td>
</tr>
<tr>
<td></td>
<td>Complete DBE Form</td>
<td>26</td>
</tr>
<tr>
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<td>Final Records</td>
<td>53</td>
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<tr>
<td></td>
<td>Audit</td>
<td>53</td>
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</table>
# Project Development Checklist

**Project Title:** Click here to enter text.

**Project Location:** Click here to enter text.

**Road or Street Number:** Click here to enter text.  

**FA Program:** Click here to enter text.

<table>
<thead>
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<th>Date or N/A</th>
<th>Project Initiation (Chapter 12)</th>
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<tr>
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<td>Project in STIP</td>
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<tr>
<td></td>
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<td>Federal aid program form (Sheet 1 of Prospectus) to:</td>
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<tr>
<td></td>
<td></td>
<td>☐ Metropolitan planning organization</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Or WSDOT (Region Local Programs)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Program of project approved by appropriate agency</td>
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</table>

<table>
<thead>
<tr>
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<th>Project Prospectus (Chapters 21, 42, and ECS Guidebook)</th>
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<tr>
<td></td>
<td></td>
<td>Sheet 1</td>
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<td></td>
<td>☐ Project information, local agency project number</td>
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<tr>
<td></td>
<td></td>
<td>☐ Description of proposed work and existing facility</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Cost estimate of all phases</td>
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<tr>
<td></td>
<td></td>
<td>☐ Proposed obligation date</td>
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<tr>
<td></td>
<td></td>
<td>☐ Environmental determination (CE, EIS, EA)</td>
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<td></td>
<td></td>
<td>☐ Request species listing from USFWS, NMFS, DNR, and WDFW</td>
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<tr>
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<td>☐ Signature block</td>
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<td></td>
<td></td>
<td>Sheet 2</td>
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<tr>
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<td>☐ Geometric design data</td>
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<td>☐ Environmental considerations</td>
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<td>☐ Performance of work</td>
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<td></td>
<td></td>
<td>☐ Right of way relocation</td>
</tr>
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<td></td>
<td>☐ Utility relocations</td>
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<tr>
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<td></td>
<td>☐ FAA Involvement</td>
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<td></td>
<td>☐ Signature</td>
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<td></td>
<td>☐ Local Agency Design Matrix Checklist, Appendix 42.101</td>
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Prospectus Submittal Checklist, Appendix 21.41
### Local Agency Agreement (Chapters 22 and 23)

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<th>Initials</th>
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<td>□ Description of work matches prospectus</td>
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<tr>
<td></td>
<td></td>
<td>□ Check math on agreement</td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ Federal aid matching percentage</td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ Method of financing</td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ Agreement signed by approving authority</td>
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</table>

### Request Preliminary Engineering Funds (Chapter 14)

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<tr>
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<tr>
<td></td>
<td></td>
<td>Project application package to Region Local Programs Engineer:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ Project prospectus with attachments (including Roadway Section if applicable)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ Local Agency Agreement</td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ Prospectus Submittal Checklist completed</td>
</tr>
<tr>
<td></td>
<td></td>
<td>PE funds authorized by Local Programs</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Evaluate if WSDOT Access Permits are required</td>
</tr>
</tbody>
</table>

### Consultant Selection Process (Chapter 31)

<table>
<thead>
<tr>
<th>Initials</th>
<th>Date or N/A</th>
<th>Independent estimate for consultant services and recommendation (request) to approving authority</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Receive approval to advertise for consultant services</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Advertise for consultant services - see Appendix 31.74 (Must include Title VI language)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Develop consultant evaluation selection criteria</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Select minimum of three best qualified firms</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Submit request for approval of selected firm to approving authority</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Conduct pre award audit (if necessary) before negotiations</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Approving authority approves selection, negotiation begins</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Negotiation completed – submit final draft of agreement, etc., to the approving authority</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Receive approval from approving authority</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Agreement signed by consultant</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Agreement executed by approving authority (consultant may now begin work)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Notice to proceed sent to the consultant</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Send copy of agreement to Region Local Programs Engineer</td>
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</table>
## Consultant Administration (Chapter 31)

<table>
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<th>Initials</th>
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<th>Consultant Administration (Chapter 31)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Oversee the consultant’s work and billings to ensure compliance with the agreement</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Prepare diary to record discussions and visitation with the consultant</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Check consultant billings regarding employee classification, wage rate, actual invoices for direct non salary costs, etc.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Enter consultant payment on ledger system</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Conduct consultant employee interviews</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Establish and maintain a tracking system to monitor consultant agreement expiration dates</td>
</tr>
</tbody>
</table>

## Environmental Processes (Chapter 24 and ECS Guidebook)

### Categorical Exclusion

For Categorical exclusion to be approved by FHWA complete the ECS and all necessary discipline reports and approvals (including, but not limited to the ESA and Section 106 processes).

- Complete the ECS
- Submit completed drafts of discipline reports to WSDOT Region Local Programs for review by Local Programs
- Submit completed Discipline reports to WSDOT Region Local Programs
- Obtain all necessary approvals
- Submit concurrence letters for all applicable environmental considerations, including but not limited to the ESA and Section 106 requirements, final BA, Final Section 106 documentation, and final ECS to Region Local Programs for transmittal to Local Programs and FHWA

## Environmental Assessment

Submit preliminary environmental assessment to Region Local Programs
Revise draft environmental assessment, based on Local Programs and FHWA comments
WSDOT and FHWA approve environmental assessment
Publish notice of availability for environmental assessment
Publish opportunity for comment period and hearing, if held
Submit FONSI package (including summary of comments received and responses, any revisions to the environmental assessment and FONSI) to Region Local Programs for review by Local Programs and FHWA
FONSI issued by FHWA
Establish need to develop Environmental Impact Statement
### Initials | Date or N/A | Environmental Impact Statement (Chapter 24 and ECS Guidebook)
--- | --- | ---
|  |  | Submit draft Notice of Intent to Region Local Programs
|  |  | FHWA Publishes Notice of Intent
|  |  | Submit interdisciplinary team recommendations to project manager
|  |  | Develop public involvement plan
|  |  | Develop data inventory and evaluation from interdisciplinary team
|  |  | Submit preliminary discipline reports for review to Region Local Programs
|  |  | Submit completed discipline reports to Region Local Programs
|  |  | Submit preliminary Draft Environmental Impact Statement to Region Local Programs
|  |  | Receive WSDOT and FHWA comments on the preliminary draft of EIS
|  |  | Submit camera-ready Draft Environmental Impact Statement to Region Local Programs Engineer for WSDOT and FHWA signature
|  |  | Receive approval to publish Draft Environmental Impact Statement
|  |  | Distribute draft environmental impact statement to circulation list
|  |  | Publish notice of availability in Federal Register (minimum 45 days comment period)
|  |  | Advertise opportunity for public hearing
|  |  | Respond to all comments received and forward comments/responses to Region Local Programs for review by Local Programs
|  |  | Prepare and submit preliminary Final Environmental Impact Statement to Region Local Programs Engineer
|  |  | Receive comments from WSDOT and FHWA
|  |  | Receive approval to print Final Environmental Impact Statement
|  |  | Submit final Environmental Impact Statement to Region Local Programs Engineer for WSDOT and FHWA signature
|  |  | Circulate final Environmental Impact Statement
|  |  | Submit draft record of decision package to FHWA
|  |  | Final ROD issued by FHWA

### Initials | Date or N/A | Design Approval (Chapter 43)
--- | --- | ---
|  |  | Submit project prospectus
|  |  | Submit design report
|  |  | Submit “Work Zone Safety and Mobility” report where applicable (see Section 41.2)
|  |  | Submit pavement design criteria
|  |  | Meet public hearing requirements
|  |  | Meet environmental requirements
|  |  | Concurrency with BA effect determinations
|  |  | ECS approval by FHWA
|  |  | For projects over $50 million in the construction phase and bridge projects over $40 million in the construction phase conduct a Value Engineering Study.
|  |  | For traffic signal projects, submit warrants for signalization to Region Local Programs Engineer
|  |  | Obtain location and design approval
|  |  | Publish design approval notice
### Right of Way Funding and Acquisition Funding (Chapters 14 and 25)

<table>
<thead>
<tr>
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<th>Date or N/A</th>
<th>Project in STIP</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Complete design hearing requirements</td>
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<tr>
<td></td>
<td></td>
<td>Approve right of way plan</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Submit right of way relocation plan (if required) to Region Local Programs Engineer</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Submit right of way project funding estimate or true cost estimate, supplement to Local Agency Agreement and FHWA approval of environmental documents, to Region Local Programs Engineer with request for right of way funds</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Receive authorization to acquire R/W from the Director of Local Programs</td>
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</table>

### Acquisition (Chapter 25)

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<tr>
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<td>Acquisition procedures current</td>
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<tr>
<td></td>
<td></td>
<td>Set up documentation file for each parcel</td>
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<tr>
<td></td>
<td></td>
<td>Set up commitment file</td>
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#### Appraisal

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<tr>
<td></td>
<td></td>
<td>Give landowner opportunity to accompany appraiser</td>
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<tr>
<td></td>
<td></td>
<td>Signed appraiser certification in file</td>
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#### Appraisal Review

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<td></td>
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<td>Date of value determination precedes commencement of negotiations</td>
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<tr>
<td></td>
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<td>Just compensation set by agency</td>
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<td></td>
<td>Signed review appraiser certification in file</td>
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</table>

#### Negotiations

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<th>Initials</th>
<th>Date or N/A</th>
<th>Prepare diary of all owner contacts</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Give owner written statement of just compensation (Offer Letter)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ensure that settlement contains construction clauses</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Obtain evidence of clear title</td>
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<td></td>
<td></td>
<td>Negotiator disclaimer statement in file</td>
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#### Relocation Plan

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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Work with WSDOT relocation staff on all relocations</td>
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#### Project Completion

<table>
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<tr>
<th>Initials</th>
<th>Date or N/A</th>
<th>Complete relocation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Complete acquisition</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Complete administrative settlement documentation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Place a copy of deeds in file, include proof of payment in file</td>
</tr>
</tbody>
</table>

#### Send

<table>
<thead>
<tr>
<th>Initials</th>
<th>Date or N/A</th>
<th>Letter of certification sent from local agency to Region Local Programs Eng.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>LPA coordinator conducts certification review</td>
</tr>
<tr>
<td></td>
<td></td>
<td>WSDOT’s certification by Real Estate Services, Assistant Director Local Agency Projects</td>
</tr>
</tbody>
</table>
## Appendix 14.52 Project Development Checklist

### Initials | Date or N/A | Plans, Specifications, and Estimates (Chapters 24, 26, 27, 44, and ESC Guidebook)
---|---|---
| | Review commitment and correspondence file
| | When applicable, secure the following permits or interagency coordination:
| | - Airport roadway clearance from FAA
| | - Coastal zone management compliance from DOE
| | - For cultural, archeological, or historic sites SHPO contacted
| | - Obtain concurrence letters for environmental determination
| | - Request updated ESA species lists every six months
| | - When waters modified or controlled, USFWS and State Department of Fisheries and Wildlife consulted
| | - When stream is affected, permit from DOE
| | - For timber supporting land, permit from DNR
| | - When construction might reduce water quality, contact DOE
| | - For quarries of 2 acres (0.81 ha) and 10,000 tons (9,091 metric tons) or more DNR contacted
| | - Waters/wetlands – Army Corps of Engineers contacted
| | - For navigable waterways, permit from Coast Guard obtained
| | - If wetlands are affected, U.S. Fish and Wildlife Service or National Marine Fisheries Services contacted
| | - Utility agreement obtained
| | - Railway agreement(s) obtained
| | - On all federal aid projects, any revision to Division 1 of the Standard Specifications or APWA Division 1 General Special Provisions requires prior written approval from Local Programs

### PS&E completed:
- Vicinity map
- Summary of quantities
- Pit, quarry, stockpile, and waste sites
- Reclamation plans
- Roadway sections
- Plans/profiles
- Utility
- Structure notes
- Signing
- Illumination
- Bridge plans
- Traffic control plans
- Detour plans
- Standard plans
- Sheets numbered and dated
- Each sheet signed and stamped by Professional Engineer
- Bridge plans, design calculations, and soil report to Region
- Local Programs Engineer (State Ad and Award only)
<table>
<thead>
<tr>
<th>Initials</th>
<th>Date or N/A</th>
<th>Plans, Specifications, and Estimates (Chapters 24, 26, 27, 44, and ESC Guidebook)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>- Form FHWA-1273 and latest amendment included</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Log of test borings</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Training requirements</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- EEO requirement clauses</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- For steel, included Buy America requirement</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Traffic control special provisions</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Specialty items</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- General special provisions and amendments arranged in order and indexed</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Project proposal</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Noncollusion Declaration</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Contract</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- DBE Utilization Certification</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Engineer’s estimate complete</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Documentation for each item in engineer’s estimate</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Justification for nonparticipating items</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Detailed documentation for lump sum items available in project files</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Estimate to Region Local Programs Engineer</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Training goal set by Local Programs</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- DBE goal set by Local Programs</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Approval of local agency supplied materials</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Sources approved by approving authority</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Approval of stockpiling by the Director of Local Programs (when payment is requested for material when stockpiling aggregates, etc., for use on a future federal aid project)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Distribution of preliminary plans as determined by local agency</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Field review of PS&amp;E (State Ad and Award only)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Tied bids – Approval from WSDOT</td>
</tr>
<tr>
<td></td>
<td></td>
<td>For State Ad and Award, financial responsibility letter with PS&amp;E documents sent to Region Local Programs Engineer</td>
</tr>
<tr>
<td></td>
<td></td>
<td>PS&amp;E approved by approving authority</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Plans, contract specifications and estimate stamped, signed, and dated, and on file in the local agency office</td>
</tr>
<tr>
<td></td>
<td></td>
<td>State and federal wage rates added to ad plans</td>
</tr>
<tr>
<td></td>
<td></td>
<td>PS&amp;E sent to Region Local Programs Engineer</td>
</tr>
</tbody>
</table>
Chapter 14 Developing Projects Using the Local Agency Guidelines
Appendix 14.52 Project Development Checklist

Initials | Date or N/A | Request Construction Funds (Chapter 14)
--- | --- | ---
 |  | Project in STIP
 |  | Send letter with the following attachments to Region Local Programs Engineer requesting construction funds:
 | ☐ | Supplement to Local Agency Agreement, if project includes other phases
 | ☐ | Letter of right of way certification
 | ☐ | Final FHWA approval of environmental documents

Initials | Date or N/A | Local Ad and Award Advertise for Bids (Chapter 46)
--- | --- | ---
 |  | Get Local Programs Contract Number _____________ from Region Local Programs Engineer
 |  | Approve ad period of less than three weeks
 |  | Publish notice of bid opening
 |  | Date of publication for sealed bids

Initials | Date or N/A | Bid Opening (Chapter 46)
--- | --- | ---
 |  | Issued addendum (if within one week of bid opening, bid opening should be delayed)
 |  | Opened bids
 |  | Prepared bid tabulation sheet
 |  | Checked submitted bids for tabulation errors
 |  | Completed bid and bidders tabulation sheet
 |  | Checked DBE participation project goals – verify DBE certification status
 |  | Request DBE concurrence to award from Local Programs for contracts containing DBE Goals
 |  | Determine responsive bid
 |  | Determine contractor qualifications
 |  | Contractor registered by Washington State Department of Labor and Industries
 |  | Contractor licensed as required by the laws of the State of Washington
 |  | The System for Award Management (SAM) has been checked and documented (www.sam.gov/portal/public/sam)
 |  | Award recommendation sent to approving authority
 |  | When low bid is over engineer’s estimate, submit justification and letter of award recommendation to approving authority
 |  | Submit supplement to Local Agency Agreement
 |  | Supplement approved by Local Programs
<table>
<thead>
<tr>
<th>Initials</th>
<th>Date or N/A</th>
<th>Award of Contract (Chapter 46)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Establish contract award date</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sent “Award Letter” to successful low bidder</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sent request for a DBE Utilization Certification breakdown if a DBE goal was set</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sent “Condition of Award” to successful low bidder if DBE goals are set in the contract</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Notify all unsuccessful bidders</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Return bid bonds</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Notify second and third bidders of holding bid bonds until execution</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sent award data to the Region Local Programs Engineer:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Tabulation of bids</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Engineer’s estimate</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Award letter to the contractor</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ DBE Utilization Certification, DOT Form 272-056A EF (if applicable)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ DBE Written Confirmation Document, DOT Form 422-031A EF (if applicable)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Names and addresses of all firms that submitted a quote to the successful low bidder</td>
</tr>
</tbody>
</table>

**Date of Award is Cutoff for Charging to Preliminary Engineering**

<table>
<thead>
<tr>
<th>Initials</th>
<th>Date or N/A</th>
<th>Construction Administration Execution of Contract (Chapter 46)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Sent contract and contract bond papers to contractor for signature</td>
</tr>
<tr>
<td></td>
<td></td>
<td>“Certificate of Insurance” received from contractor</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Approving authority executed contract documents</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Notified the contractor by phone of the execution of the contract</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Executed a copy of the contract to contractor</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sent notice to proceed to contractor, with cc to Region Local Programs Engineer</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Returned bid bonds to second and third bidders</td>
</tr>
</tbody>
</table>
### Preconstruction Conference (Chapter 51)

<table>
<thead>
<tr>
<th>Initials</th>
<th>Date or N/A</th>
<th>Notice of preconstruction conference to:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>☐ Contractor</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Region Local Programs Engineer</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Affected utility companies</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Police department</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Fire department</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Hospital</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Ambulance service</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Post Office</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Others</td>
</tr>
</tbody>
</table>

Preconstruction conference agenda prepared

Preconstruction conference held

Minutes of meeting to:

<table>
<thead>
<tr>
<th>Initials</th>
<th>Date or N/A</th>
<th>Contractor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>☐ Subcontractors</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Region Local Programs Engineer</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Other attending persons</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Invited but not represented agencies</td>
</tr>
</tbody>
</table>

“Training Program”:

<table>
<thead>
<tr>
<th>Initials</th>
<th>Date or N/A</th>
<th>Received from contractor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>☐ Approved by agency</td>
</tr>
</tbody>
</table>

“Apprentice/Trainee”:

<table>
<thead>
<tr>
<th>Initials</th>
<th>Date or N/A</th>
<th>Approval request from contractor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>☐ Approved by agency</td>
</tr>
</tbody>
</table>

### Construction Documentation (Chapter 52)

<table>
<thead>
<tr>
<th>Initials</th>
<th>Date or N/A</th>
<th>“Record of Material” received from WSDOT Materials Laboratory</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Contractor provides copies of permits obtained from other agencies and/or property owners:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Washington State Department of Wildlife/Fisheries-Hydraulic Permit</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Washington State Department of Ecology</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Irrigation Regionals</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Burlington Northern Railroad</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Union Pacific Railroad</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Air Pollution Control Authority</td>
</tr>
</tbody>
</table>

Temporary water pollution control plan approved

Agency requests updated ESA species listing every six months
<table>
<thead>
<tr>
<th>Initials</th>
<th>Date or N/A</th>
<th>Construction Documentation (Chapter 52)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Approved contractor’s progress schedule</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Received railroad insurance from contractor</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Construction diary started</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Inspector’s diary started</td>
</tr>
<tr>
<td></td>
<td></td>
<td>“Certification of Materials Origin” received from contractor</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Material source approval received</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Plans for falsework and forms:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Received from contractor</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Approved by agency</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Required job site posters placed by contractor:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ WH 1321 – Employee Rights Under the Davis-Bacon Act (project engineer to fill in contact information on the form prior to supplying to the contractor)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ FHWA-1022 – Notice Federal Aid Project (project engineer to fill in contact information on the form prior to supplying to the contractor)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ EEOC-P/E-1 – Equal Employment Opportunity IS THE Law</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ Whistleblower (ARRA projects only)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ WHD Publication 1088 – Employee Rights Under the Fair Labor Standards Act</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ WHD Publication 1420 – Employee Rights and Responsibilities Under the Family and Medical Leave Act</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ WHD 1462 – Employee Polygraph Protection Act</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ WISHA F416-081-909 – Job Safety and Health Law</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ F242-191-909 – Notice to Employees (L&amp;I)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ F700-074-909 – Your Rights as a Worker in Washington State</td>
</tr>
<tr>
<td></td>
<td></td>
<td>☐ EMS 9874 – Unemployment Benefits</td>
</tr>
<tr>
<td></td>
<td></td>
<td>If federal funds are involved, all of these posters are required, except that the Whistleblower poster is required only for ARRA funded projects.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Daily construction signing records started (checked twice daily and recorded)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Weekly statement of working days started</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Material acceptance sampler appointed</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Material independent assurance sampler appointed</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Appointed office engineer for progress estimates and final records</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Obtain a copy of the scale certifications</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Daily scale check</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Received FHWA Form 1391 for each July from contractor and subcontractors</td>
</tr>
<tr>
<td></td>
<td></td>
<td>FHWA Form 1392 prepared and sent to Region Local Programs</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Received “Request to Sublet Work” and “Subcontractor or Agent Certification” from contractor</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Approved request to sublet (subject to 70 percent limit)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Received “Intent to Pay Prevailing Wages” from contractor, subcontractors, and agents</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Received approved “Intent to Pay Prevailing Wages” from Labor and Industries (required before first payment)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Checked first certified payroll from contractor and subcontractors to ensure payment of prevailing wages</td>
</tr>
<tr>
<td>Initials</td>
<td>Date or N/A</td>
<td><strong>Construction Documentation (Chapter 52)</strong></td>
</tr>
<tr>
<td>----------</td>
<td>-------------</td>
<td>--------------------------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Conducted random check of each successive payroll</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Wage rate interviews conducted</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Checked employee interview wage rate against certified payroll and Labor and Industries approved prevailing rate</td>
</tr>
</tbody>
</table>
|          |             | **Assigned Change Order Numbers**  
  (Local Programs approval required when change order will alter the termini, character, or scope of work. Approval must be obtained before effective date of change order to be eligible for federal participation.) |
|          |             | ☐ Prepare change order that details basis and need for the change |
|          |             | ☐ Extension of time approved ____________________ days |
|          |             | ☐ Change order signed by contractor |
|          |             | ☐ Change order signed by surety (if required) |
|          |             | ☐ Verbal approval obtained from approving authority |
|          |             | ☐ Signed by approving authority |
|          |             | ☐ Original sent to contractor |
|          |             | ☐ Copy of approved change order sent to Region Local Programs Engineer |
|          |             | ☐ Supplement to Local Agency Agreement approved by the Director of Local Programs |
|          |             | ☐ Obtained copy of monthly estimate |
|          |             | ☐ Verified and documented that DBE is performing a commercially useful function prior to making a monthly payment |
|          |             | ☐ Prepared estimate |
|          |             | ☐ Checked estimate |
|          |             | ☐ Estimate sent to contractor |
|          |             | ☐ Estimate received from contractor |
|          |             | ☐ Obtain all “Intent to Pay Prevailing Wages” forms (for first month only; no payment can be made to the contractor until the form is received) |
|          |             | **Overview of DBE Work (Chapter 26):** |
|          |             | ☐ Verify work being done per Condition of Award Letter |
|          |             | ☐ Conduct on-site review(s) of each DBE to determine if the DBE is performing a commercially useful function (CUF) |
|          |             | ☐ Review change orders that affected DBE work |
|          |             | ☐ DBE goal change approved by the Director of Local Programs |
|          |             | **Overview of EEO (Chapter 27):** |
|          |             | ☐ Agency designates an EEO officer |
|          |             | ☐ Conduct on-site compliance review |
|          |             | ☐ Monitor DOT Form 820-010 EF each month for each trade |
|          |             | ☐ Notify contractor of compliance or noncompliance with the contract provisions |
|          |             | ☐ Ensure EEO signs are posted |

Revised 10/2/2014
### Project Completion (Chapter 52)

<table>
<thead>
<tr>
<th>Initials</th>
<th>Date or N/A</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Prefinal inspection by local agency and contractor completed</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Final inspection by local construction agency and contractor completed</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Report of Non-American Made Material (GSP 0605.GR1) received from contractor</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Notice of completion sent to contractor</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Extension of time request with justification received from contractor</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Extension of time granted, __________ days</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Extension of time refused, __________ days</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Liquidated damages</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Letter sent notifying contractor of assessed liquidated damages</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Copy of completion notice requesting inspection and acceptance by Region Local Programs</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Contractor submitted claim</td>
</tr>
<tr>
<td></td>
<td></td>
<td>No claim submitted</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Notice of completion to: _____________________________</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Department of Labor and Industries</td>
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<td>Department of Revenue</td>
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<td></td>
<td></td>
<td>Received “Affidavit of Wages Paid” from contractor and subcontractors</td>
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<td>Received ESA species listing for the project every six months</td>
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<td>Received “Quarterly Report of Amounts Credited as DBE Participation” from contractor</td>
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<td>Release received from Department of Labor and Industries</td>
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<td>Release received from Department of Revenue</td>
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<td>Comparison of preliminary and final quantities sent to approving authority</td>
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<td>Material certification form sent to approving authority</td>
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<td></td>
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<td>Completed “Report of Contractor’s Performance” for prime contractor</td>
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<td></td>
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<td>As built plan completed (to be retained indefinitely)</td>
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<td>Final record book #1 completed</td>
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<td>Final estimate approved by the approving authority</td>
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<td>Final estimate received from contractor</td>
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<td>Paid final estimate</td>
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<td></td>
<td>Released retained percentage from escrow or mailed check to contractor</td>
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</tbody>
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### Project Closure (Chapters 32 and 53)

<table>
<thead>
<tr>
<th>Initials</th>
<th>Date or N/A</th>
<th>Description</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td>Completion letter sent to Region Local Programs Engineer (within 15 days after project is completed)</td>
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<tr>
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<td>Final billing sent to Region Local Programs Engineer (within 90 days after completion)</td>
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<td>Completed final field inspection by the Region Local Programs Engineer. Deficiencies (if any) will be noted on DOT Form 140-500 EF.</td>
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<td>Resolve deficiencies found during the above field inspection</td>
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<td>Informed by Region Local Programs Engineer of WSDOT final billing approval</td>
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Appendix 21.50

Washington State
Congressional Districts

Final Congressional Plan
January 1, 2012

Deviation from target population of 873,456:

1: 5
2: 6
3: 1
4: 2
5: 1
6: 9
7: 3
8: 9
9: 6
10: 1

Washington State Redistricting Commission
PO Box 40948
Olympia, WA 98504-0948
(360) 786-0770
(360) 586-0433
contact@redistricting.wa.gov
www.redistricting.wa.gov
Chapter 24  Environmental Processes

24.1 General Discussion

This chapter summarizes the regulations and federal coordination requirements that local agencies must follow on projects that receive funding from the Federal Highway Administration (FHWA). Detailed guidance for complying with the federal requirements is provided in the Environmental Classification Summary (ECS) Guidebook and in the Environmental Manual M 31-11.

Projects involving federal funds, permits, or land are governed by a number of environmental requirements, including but not limited to:

- National Environmental Policy Act (NEPA) of 1969, 42 USC 4321, et. seq.
- Council on Environmental Quality Regulations for Implementing NEPA, 40 CFR, Part 1500, et. seq.
- Federal Highway Administration and Federal Transit Administration Implementing Regulations, 23 CFR, Parts 771, 772, and 774
- Environmental Impact and Related Procedures, 49 CFR, Part 622
- Section 7 of the Endangered Species Act (ESA), 50 CFR, Part 402
- Section 106 of the National Historic Preservation Act, 36 CFR, Part 800
- Presidential Executive Order 12898 – Environmental Justice
- Section 4(f) of the U.S. Department of Transportation Act of 1966

FHWA’s approval of NEPA, in particular their signature on the Environmental Classification Summary (ECS), does not signify an approval of the State Environmental Policy Act (SEPA), nor any applicable local, state, and federal permits. Local agencies are responsible for ensuring compliance with SEPA and obtaining all applicable local, state, and federal permits. While the local agency may utilize the analysis completed in the NEPA process to assist in the completion of SEPA and applicable permits, NEPA approval must not be misconstrued as a guaranteed approval of any other local, state, or federal requirement. The local agency must work with other agencies, as appropriate, to provide the required analysis to complete their responsibilities under SEPA and other local, state, and federal permit and process requirements.

24.2 NEPA Classification

Projects subject to NEPA fall into one of the three following classifications:

- Class I Projects require preparation of an Environmental Impact Statement (EIS) because the action is likely to have significant adverse environmental impacts.
- Class II Projects are Categorical Exclusions (CE). These actions are not likely to cause significant adverse environmental impacts. They meet the definitions contained in 40 CFR 1508.4 and 23 CFR 771.117.
- Class III Projects require preparation of an Environmental Assessment (EA) because the project’s impact on the environment is not clearly understood.
.21 NEPA Class I Projects (EIS) – Actions that are likely to have significant impact on the environment because of their effects on land use, planned growth, development patterns, traffic volumes, travel patterns, transportation services, natural resources, or because they are apt to create substantial public controversy. See Appendix L in the ECS Guidebook and the EPM for guidance on preparing an EIS. Projects that usually require an EIS, as defined in 23 CFR 771.115, are:

- New controlled-access freeway.
- Highway project of four or more lanes in a new location.
- New construction or extension of fixed rail transit facilities (e.g., rapid rail, light rail, commuter rail, automated guideway transit).
- New construction or extension of a separate roadway for buses or high-occupancy vehicles not located within an existing highway facility.

Although examples are given, it is important to remember that the size and significance of the potential impacts determine the need for an EIS, not the size of the project.

.22 NEPA Class II Projects (CE) – Actions that meet descriptions contained in NEPA rules (40 CFR 1508.4, 23 CFR 771.117) and do not typically involve significant environmental impacts. Unless specifically requested by other agencies or due to either unusual circumstances or public controversy, these actions do not require an EIS or an EA. Class II projects typically:

- Do not induce significant impacts to planned growth or land use.
- Do not require the relocation of significant numbers of people.
- Do not have a significant impact on any natural, cultural, recreational, historic, or other resource.
- Do not involve significant air, noise, or water quality impacts.
- Do not have significant impacts on travel patterns.
- Do not otherwise, either individually or cumulatively, have any significant environmental impacts.

Class II Projects are subdivided into two subcategories, which determine the documentation and approval requirements.

a. C-list Categorical Exclusions (c-list CE) – Class II Projects that do not require FHWA concurrence. The following federal actions meeting the CEQ and FHWA criteria for c-list CEs are listed in FHWA regulations (23 CFR 771.117 (c)) and can be approved by Local Programs without signature by FHWA:

1. Activities which do not involve or lead directly to construction, such as planning and technical studies; grants for training and research programs; research activities as defined in 23 USC 307; approval of a unified work program and any findings required in the planning process pursuant to 23 USC 134; approval of statewide programs under 23 CFR part 630; approval of project concepts under 23 CFR part 476; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and federal aid system revisions which establish classes of highways on the federal aid highway system.

2. Approval of utility installations along or across a transportation facility.
3. Construction of bicycle and pedestrian lanes, paths, and facilities.
4. Activities included in the state’s highway safety plan under 23 USC 402.
5. Transfer of Federal lands pursuant to 23 USC 317 when the subsequent action is not an FHWA action.
6. The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.
7. Landscaping.
8. Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.
10. Acquisition of scenic easements.
11. Determination of payback under 23 CFR part 480 for property previously acquired with federal aid participation.
12. Improvements to existing rest areas and truck weigh stations.
13. Ridesharing activities.
15. Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.
16. Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.
17. The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE.
18. Track and railbed maintenance and improvements when carried out within the existing right of way.
19. Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.
20. Promulgation of rules, regulations, and directives.
21. Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience. Examples include, but are not limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locaters, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses.
22. Projects, as defined in 23 U.S.C. 101, that would take place entirely within the existing operational right-of-way. Existing operational right-of-way refers to right-of-way that has been disturbed for an existing transportation facility or is maintained for a transportation purpose. This area includes the features associated with the physical footprint of the transportation facility (including the roadway, bridges, interchanges, culverts, drainage, fixed guideways, mitigation areas, etc.) and other areas maintained for transportation purposes such as clear zone, traffic control signage, landscaping, any rest areas with direct access to a controlled access highway, areas maintained for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transit power substations, transit venting structures, and transit maintenance facilities. Portions of the right-of-way that have not been disturbed or that are not maintained for transportation purposes are not in the existing operational right-of-way.

23. Federally-funded projects:
   (i) That receive less than $5,000,000 of Federal funds; or
   (ii) With a total estimated cost of not more than $30,000,000 and Federal funds comprising less than 15 percent of the total estimated project cost.

b. **D-list Categorical Exclusions (d-list DCE)** – The second part of CFR (23 CFR 771.117 (d)) is known as the “d-list”. Examples of d-list projects identified in 23 CFR 771.117 (d) include but are not limited to:

1. Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (e.g., parking, weaving, turning, climbing).

2. Highway safety or traffic operations improvement projects including the installation of ramp metering control devices and lighting.

3. Bridge rehabilitation, reconstruction or replacement or the construction of grade separation to replace existing at-grade railroad crossings.

4. Transportation corridor fringe parking facilities.

5. Construction of new truck weigh stations or rest areas.

6. Approvals for disposal of excess right of way or for joint or limited use of right of way, where the proposed use does not have significant adverse impacts.

7. Approvals for changes in access control.

8. Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.

9. Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.
10. Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.

11. Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.

12. Acquisition of land for hardship or protective purposes; advance land acquisition loans under section 3(b) of the UMT Act. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition quality for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

Approval by FHWA is required for d-list CEs unless the entire project fits within the Programmatic Categorical Exclusion Agreement between FHWA and WSDOT (August 2013). Actions that qualify as Programmatic CEs are described in the ECS Guidebook (Appendix E).

.23 NEPA Class III Projects (EA) – Actions that have uncertain or poorly understood impacts on the environment. The EA determines the extent and level of environmental impact. An EA may support a NEPA Finding of No Significant Impact (FONSI) or indicate that an EIS is warranted. The content and complexity of an EA will vary depending on the project. See Appendix M of the ECS Guidebook and the EPM for details on EA procedures and documentation requirements.

24.3 Early Project Coordination & Environmental Mitigation

Many projects require early coordination with a range of federal, state, local agencies and tribal governments to ensure there are a minimum of delays to permitting and construction. Local agencies are encouraged to coordinate and communicate with federal, state and local agencies and tribal governments to discuss technical issues. However, discussions related to environmental mitigation require the advance participation by the FHWA Area Engineer and/or the designated Local Programs Environmental Engineer to assure that all parties understand whether potential environmental mitigation measures will be eligible for federal reimbursement prior to a commitment being made.

Note that all elements of Emergency Repair (ER) project work require advance coordination and approval by FHWA to ensure that Federal participation is allowable.

When there are multiple federal lead agencies, early coordination between those agencies is crucial to ensure that all agencies’ NEPA requirements are met.
24.4 Project Re-Evaluation

Whenever single or cumulative conditions have occurred that might cause new or more severe environmental impacts, the local agency shall re-evaluate an environmental document.

A written re-evaluation is required when any one of the following conditions exists:

1. There is a change to the project scope. This is required even if the NEPA approval is less than three years old. (Some kinds of scope changes, such as those that are outside previous study areas, are likely to result in a determination that a supplemental NEPA document is needed.)

2. An acceptable FEIS has not been submitted to FHWA within three years from the date of the DEIS circulation.

3. Federal approvals of major steps to advance the project (such as FHWA approval to acquire right of way or approval of PS&E) have not occurred within three years of NEPA approval (that is, FHWA’s approval of the ECS, issuance of a FONSI, or ROD).

4. There is a law change that is relevant to the information provided in the original document (i.e., a new species is listed as threatened or endangered under ESA). This is required even if the NEPA approval is less than three years old.

5. New information or circumstances relevant to environmental concerns and bearing on the proposed action or its impacts would result in significant environmental impacts not evaluated in the NEPA document. (This is likely to result in a determination that a supplemental NEPA document is needed.)

The re-evaluation needs to indicate whether any new information is known that alters the previous analysis and findings. If so, the local agency needs to conduct appropriate environmental studies to support the updated conclusions.

The re-evaluation is submitted in written form to the Region LPE. The Region LPE will transmit a copy of the re-evaluation to Local Programs for review and coordination with FHWA. Based on the findings of the re-evaluation, FHWA will determine if additional documentation is appropriate (for example, a supplemental EIS, updated EA or ECS, depending on the original NEPA classification).

24.5 Supplemental Document

If a project re-evaluation results in a determination that the NEPA document must be supplemented, the supplement should follow the same procedures as those used for the original document. The scope of the supplement can be limited to the changes to the project. FHWA should be consulted regarding the scope and disciplines that must be analyzed.
24.6 Other Federal Requirements

The NEPA document must include information on how the project complies with other federal regulations and requirements. The federal requirements that most frequently pose the greatest risk to project schedules and timelines are those addressing cultural resources (Section 106 of the National Historic Preservation Act), federally listed endangered species (Section 7 of ESA) and parklands and historic properties (Section 4(f) of the Department of Transportation Act). The ECS Guidebook provides guidance on meeting the federal regulations and requirements that must be considered under NEPA.

24.7 Tribal Consultation

In addition to the Section 106 process, FHWA and local agencies must consult with the affected tribes on projects that potentially affect treaty rights. Local Programs’s process for sharing discipline reports with tribes is described in the ECS Guidebook (Appendix I). Tribal contact information is available online at www.wsdot.wa.gov/tribal/tribalcontacts.htm.

24.8 Environmental Permitting

The local agency is responsible for ensuring that all required permits and approvals are obtained prior to initiating construction. The links below will direct users to a brief description of the federal, state, and local environmental permits.

- Federal Permits (www.wsdot.wa.gov/environment/permitting/permitfsl.htm)
- State Permits (www.wsdot.wa.gov/environment/permitting/state.htm)
- Local Permits (www.wsdot.wa.gov/environment/permitting/local.htm)

The Governor’s Office of Regulatory Assistance has developed a web-based tool to assist users to identify the permits that are required for different types of projects. This tool can be accessed at http://apps.ecy.wa.gov/opas/.

24.9 Appendices

24.81 Local Agency Environmental Classification Summary

24.10 Environmental Classification Summary Guidebook

www.wsdot.wa.gov/nr/rdonlyres/87901eb4-008a-43a0-9db7-2179e0bc939f/0/ecsguidebooksecure.pdf

24.11 Environmental Manual

www.wsdot.wa.gov/publications/manuals/m31-11.htm

24.12 Plain Talk Toolkit

wwwi.wsdot.wa.gov/library/pttoolkit.htm

24.13 Reader-Friendly Tool Kit

www.wsdot.wa.gov/environment/readerfriendly.htm
Chapter 26  Disadvantaged Business Enterprises

26.1 General Discussion

Under Public Law 105-178 (TEA-21), a 10 percent aspirational goal was established for the participation of Disadvantaged Business Enterprises (DBEs) in transportation contracting, in an effort to valuate equal opportunity in the award and administration of U.S. DOT-assisted contracting and address the effects of past and current discrimination. Requirements of the DBE Program, as prescribed in 49 CFR Part 26, apply to all recipients (and subrecipients) of highway, transit, and airport funds.

A local agency, when participating in programs funded in whole or in part with federal funds made available by the Washington State Department of Transportation (WSDOT), must either adopt WSDOT’s DBE Participation Plan, or develop an equivalent plan. The local agency equivalent plan must have the approval of WSDOT’s Office of Equal Opportunity (OEO) and the Federal Highway Administration (FHWA).

While WSDOT’s OEO has the overall responsibility for administration and implementation of WSDOT’s DBE Program, local agencies (as subrecipients) also have an important role to ensure that their federally-assisted contracts are administered in accordance with the state’s approved DBE Program Participation Plan, which is available on WSDOT’s website.

WSDOT’s OEO, in coordination with Local Programs, will conduct compliance reviews of the local agency’s administration of the DBE Plan. A local agency that is found to be in noncompliance may be subject to formal enforcement action (suspense or loss of federal funds and/or CA status). A finding of noncompliance will result for failure to comply with the requirements of WSDOT’s DBE Plan.

Each federally-assisted contract/subcontract must include the following assurance:

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

26.2 Procedures

1. Local Agency DBE Liaison Officer – The local agency is responsible for ensuring program compliance and monitoring its contractor’s DBE activities. To accomplish this, a DBE liaison officer must be appointed by the local agency. This liaison officer must be an administrator responsible to the chief executive of the agency. This administrator should have the authority to delegate the responsibility to the people who perform the contractor compliance function. The liaison officer’s duties are to ensure compliance with the DBE Plan by the local agency and by their contractors.
2. **DBE Firm(s) Certification** – The Washington State Office of Minority and Women’s Business Enterprise (OMWBE) is the sole authority in the State of Washington to perform certification of all minority business enterprises, women business enterprises, and socially and economically disadvantaged business enterprises for programs administered by any State, local, or Federal agency. This statutory authorization extends to and binds all USDOT DBE Program recipients in the State of Washington. In order to count DBE participation, only DBE firms that are currently certified by OMWBE may be used by prospective bidders on federally funded projects. A directory of certified DBE firms is maintained and published by OMWBE. The directory is available via OMWBE’s website at [www.omwbe.wa.gov/biznetwas](http://www.omwbe.wa.gov/biznetwas) or by calling 360-753-9693.

3. **Establishment of Project DBE Goals** – The Local Programs Project Development Engineer will review each project to determine if it involves work elements that are conducive to DBE participation. To initiate this review, the local agency must submit an engineer’s estimate with their suggested DBE goal to the Region Local Programs Engineer when the contract work is determined. The estimate must show the item quantities and costs of the project. No construction funding will be obligated prior to the project review for DBE goals.

   If a local agency has any other projects tied to a federally funded project which utilizes one set of bid documents, the total project is considered a federal aid project for DBE goal setting purposes.

   The goals for federal aid projects will be set under one of the following categories based on the projected participation level during the year to achieve the overall goal:

   - Mandatory Goal
   - Zero Goal

   The Local Programs Project Development Engineer will then establish a DBE goal for the project. The methodology employed by WSDOT determining state and local agency project contract goals is as follows:

   **A. Elements**

   a. Geographical location of the project.

   b. Type(s) of work included in the project, i.e., structure, roadway, new construction.

   c. Availability of DBEs to perform the type(s) of work.

   d. Potential subcontractable items of the work.

   e. Total dollar value of the contract.

   The attainment accomplished through this analysis will be reviewed annually to determine the appropriateness of the method of setting goals.
B. **Goal Setting Process**

   a. Review the department’s overall DBE goal and the means to meet the goal.
   
   b. If the contract includes federal funds, a DBE goal is considered.
   
   c. If the contract amount is under $100,000.00 then no goal is set. (However, if the work is such that the prime contractor has a distinctly separate class of work available, and meets the requirement for the prime to do 30 percent of the work, a goal may be considered).
   
   d. The bid items are sorted by pre-qualification work classes and the total estimated dollar amounts to help identify opportunities for subcontracting.
   
   e. Prime contractor work is assumed to be one class (the largest) unless two classes are needed to total a minimum of 30 percent of the total contract.
   
   f. Mobilization and specialty work are not considered for subcontracting.
   
   g. The remaining work is totaled, both as a percentage and a dollar amount. It is then evaluated to maximize the participation and to ensure that there are two distinct combinations of work classes to achieve the established goal.
   
   h. Ensure that DBE firms are ready, willing, and able to perform the work at the geographic location and time of the project.

   If a local agency feels the project goal set by the Local Programs Project Development Engineer is inappropriate, they may submit a request to have it changed. This request must be accompanied by justification based on the above criteria for establishing the contract goal.

4. **DBE Provisions in the Plans, Specifications, and Estimates (PS&E)** – After the goal has been determined, the applicable WSDOT General Special Provision (GSP), for the type of goal set as outlined above shall be included in the PS&E. These GSPs are available on the WSDOT website or from the Region Local Programs Engineer. Only the WSDOT GSPs are approved for use on a FHWA funded project.

   To complete the DBE requirements in the PS&E, when a mandatory goal is established, DOT Form 272-056A EF, Disadvantaged Business Enterprise Utilization Certification (Appendix 26.32), will be included. This form shall be in the proposal given to each bidder. This form is available from the Region Local Programs Engineer. When a zero goal is established the DBE Utilization Certification form is not required.

5. **Bid Opening** – Each bid proposal must be reviewed to determine if the bid is responsive. For a contract with goals, each proposal shall contain the Disadvantaged Business Enterprise Utilization Certification form completed by the contractor.

   Failure to accurately complete this form will be considered as evidence that the proposal is unresponsive and, therefore, is not eligible for award.
6. **Is the DBE Firm Certified by OMWBE** – The DBE firm named by the contractor in the bid proposal shall be certified as a DBE firm by OMWBE to be eligible for work on a FHWA funded project (see b, above). To verify whether a firm is certified as a DBE and eligible to perform work on a FHWA funded project, you must contact OMWBE at 360-753-9693 or their website at www.omwbe.wa.gov/biznetwas and document your contact effort in the project file. To meet the goals for the project, DBE firms not certified at the time fixed for the bid opening will not be accepted by the local agency for participation, as a Condition of Award (COA) Contractor, in the project.

7. **Selection of the Successful Bidder**

   **A. Selection of Successful Bidder** (when a mandatory goal is established)

   a. The successful bidder shall be selected on the basis of having submitted the lowest responsive bid and, in order to be responsive, making good faith efforts to meet the DBE goal. The bidder can meet this requirement in either of two ways:

   1. The bidder can meet the established DBE goal, documenting they have obtained enough commitments for participation by DBE firms to meet the goal.

   2. If the bidder does not meet the established DBE goal, the bidder can document its adequate good faith effort and submit it with their proposal.

   This means that the bidder must show that it took all necessary and reasonable steps to achieve the DBE goal, and by their scope, intensity, and appropriateness to the objective, the bidder could reasonably be expected to obtain sufficient DBE participation, even if the bidder were not fully successful in meeting the established DBE goal. Efforts done as a matter of form or for the sake of appearance are not considered “good faith efforts” to meet the contract requirements for DBE utilization.

   b. Should the low and otherwise responsive bidder fail to attain the goal and provide adequate good faith effort documentation in the bid submittal, its bid will be determined to be nonresponsive and the next low responsive bid accepted.

   All agencies that have projects with mandatory DBE goals must submit the bid tabs, the DBE Utilization Certification, and the DBE Written Confirmation Document of the apparent low bidder to the Region Local Programs Engineer (LPE) to obtain concurrence to award before the contract is officially awarded to the apparent low bidder. Failure to gain LPE concurrence prior to award on every project with DBE goals and subsequent award of a contract to a nonresponsive bidder will jeopardize the project’s federal funding.

   c. If the apparent low bidder submits Good Faith Effort documentation with the bid, the Local Agency will submit the Good Faith Effort to Local Programs for approval action prior to awarding the project.
B. **After Award** – The Local Agency will request that the apparent low bidder submit a description of the specific items of the work each DBE subcontractor named in the DBE Utilization Certification will perform. This description, dollar amount, and name of the DBE firm is identified in the award letter and made Condition of the Award (COA) of the contract.

C. **Administrative Reconsideration** – If Local Programs determines that the apparent successful bidder/offer did not meet the DBE goal or has failed to make a good faith effort to meet the goal, the Local Agency will, before awarding the contract, notify the bidder/offerer that it has five working days (from the date of notification) to request reconsideration or forfeit the right to reconsideration.

   a. WSDOT’s decision on reconsideration shall be made by an official who did not take part in the original determination that the bidder/offerer failed to meet the goal or make adequate good faith efforts to do so.

   b. The bidder/offerer shall have the opportunity to meet in person with said official to discuss the issue as to why it did not meet the goal or make good faith efforts to do so. The bidder’s position must be based on its bid submittal. The bidder may provide further explanation/clarification of the information and materials in the submittal, but no new material or information will be considered by the official in reaching a decision on reconsideration.

   c. WSDOT shall send the bidder/offerer a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or whether it made adequate good faith efforts to do so.

   d. The results of the reconsideration process is not administratively appealable to the USDOT.

8. **Condition of Award Letter** – The condition of award letter carries the same contractual obligation as the contract specifications and is only required when a mandatory goal is established for a project. An example of a zero goal award letter appears in Appendix 44.43 and an example of a mandatory goal award letter appears as Appendix 46.44. The information contained in the body of these examples must be included in the local agency award letter. If a portion of an item is sublet to a DBE and the remainder is done by the contractor or another subcontractor, the DBE’s work must be shown in detail. Also, any DBE suppliers and manufacturers shall be shown.

Send a copy of this letter, a copy of the “Disadvantaged Business Enterprise Utilization Certification and a copy of the “DBE Written Confirmation Document” to the Region Local Programs Engineer as a part of the award documentation submittal explained in Chapter 46.

Attach a copy of the letter to the contract papers that you send to your contractor for signature. The Region Local Programs Engineer shall be provided information on subletting by DBE contractors.
9. **Between Award and Execution** – The contractor shall supply a contractor’s bidders list as described in the GSP’s for all categories (zero and mandatory goals). The list shall include all firms (names and addresses) that bid on prime contracts or bid or quote subcontracts (successful and unsuccessful) on USDOT-assisted projects, including both DBEs and non-DBEs. The local agency shall immediately notify the Region Local Programs Engineer by email with the name and address of the successful contractor for forwarding to the OEO’s contract compliance officer.

10. **Monitoring of DBEs During Construction** – The local agency must place special emphasis on the DBE requirements at the preconstruction conference. Changes to a Condition of Award letter shall be handled in accordance with the GSP (Changes in the Quantity of Work). All change orders affecting the work of DBEs shall be submitted to the Region Local Programs Engineer for concurrence prior to executing the change order.

Project diary documentation of the DBE’s activities on the project must be performed in the same manner as is done on the prime contractor and any other subcontractor’s activities.

In addition to the project diary, the form “DBE On-Site Review” shall be completed by the CA Agency for every DBE contractor performing work on the project. See Appendix 26.33.

- at the start of work, and/or
- at the peak period of work, and/or
- whenever changes in the performance of the work warrants its completion.

The review should be completed per on-site observations, documentation review, and interviews of contractor’s personnel. This completed form becomes a part of the local agency’s project records. Additional forms are available from your Region Local Programs Engineer.

The WSDOT GSP, Disadvantaged Business Enterprise Participation Plan, and Chapter 1 of the *Construction Manual* M 41-01 shall be followed to ensure compliance with the DBE Plan.

In order to receive credit for DBE participation (count towards the contract goal) a DBE firm must be performing a commercially useful function on that contract. A DBE performs a commercially useful function when it is responsible for executing one or more distinct elements of the contract work and is carrying out those responsibilities by actually performing, managing, and supervising the work involved. The documentation in the project diary and on the DBE On-Site Review form is the information that the local agency will use to evaluate whether a DBE is performing a commercially useful function. If there is evidence that a DBE firm may not be performing a commercially useful function, immediately contact your Region Local Programs Engineer.

11. **Prompt Payment** – Refer to Amendment Section 1-08, Prosecution and Progress (March 6, 2000) and **RCW 39.04.250** for “Prompt Payment” requirements.
12. **During Construction and Upon Completion** – For all federal aid projects, the contractor shall submit Local Agency Quarterly Report of Amounts Credited as DBE Participation, DOT Form 422-103 EF (Appendix 26.31), to the local agency. On this form, the contractor shows the actual amount paid to the DBE firm for the contact work. The local agency shall forward a copy to the Region Local Programs Engineer. This completed form is required quarterly and a final at the completion of the project must be submitted to the Local Programs Project Development Engineer as specified on the form.

13. **Records and Reports** – The local agency will maintain such records and provide such reports as necessary to ensure full compliance with the Plan.

   Upon request from the OMWBE, WSDOT, or the USDOT (or its operating administrations), the local agency shall submit the records deemed necessary for inspection, auditing, and review purposes.

### 26.3 Appendices

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Section 504 and the
Americans with Disabilities Act

Chapter 29

29.1 General Discussion

This chapter summarizes the regulations and implementing requirements that local agencies must follow.

Section 504 of the Rehabilitation Act of 1973 states that no person with a disability shall be excluded from participation in, denied the benefits of, or be subjected to discrimination under any program or activity that receives Federal funding. This law extends to the entire operations of a recipient or subrecipient regardless of the specific funding source of a particular operation.

The Americans with Disabilities Act of 1990 is mirrored after Section 504 (nondiscrimination based on disability), but extends the reach of Federal accessibility laws to include those agencies that are not recipients or subrecipients of Federal funding. Title II (28 CFR Part 35) of the ADA specifically pertains to State and Local Governments.

Local agencies are always subject to the requirements of the ADA, and are typically subject to the requirements of Section 504 as well since they usually fall under the legal classification of being either a recipient or subrecipient of Federal funding. By legal definition, a recipient includes any public entity that receives Federal financial assistance from the United States Department of Transportation (USDOT), either directly or through another recipient (49 CFR Part 27.5). Note that recipient classification is not based on the funding source of a particular project, but rather on whether the public entity accepts any Federal funding for any purpose at any time.

29.2 Assurances

Local agencies receiving Federal funding from the USDOT or its operating administrations (i.e., Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration) are required to submit a written policy statement, signed by the Agency Executive and addressed to WSDOT, documenting that all programs, activities, and services will be conducted in compliance with Section 504 and the Americans with Disabilities Act (ADA). This policy statement is required as part of the local agency’s agreement with WSDOT.
29.3 Administrative Requirements

The following is a list of requirements set forth by Section 504 and/or the ADA: [Note: When a requirement cites a number of employees as a trigger, that number is based on the total of permanent, temporary, and contract employees regardless of whether the employees are full or part time.]

- Agencies with 50 or more employees are required to designate at least one person as their ADA/504 Coordinator. This person is responsible for coordinating ADA/504 compliance throughout the agency. The name, office address, and telephone number of the ADA/504 Coordinator must be provided both internally and externally.

- All agencies, regardless of size, are required to provide public notice of the ADA provisions. This notice must contain a brief description about how the agency will address ADA accessibility in its employment, communications, policies, and resolution of complaints. This notice must be placed in locations and/or facilities that are accessible internally and externally. The notice must also be available in alternative formats. For example, you must provide alternative formats that address the needs of persons with mobility, visual, and hearing disabilities.

- Agencies with 50 or more employees are required to adopt and publish grievance/complaint procedures. These procedures must be posted internally and externally, and be made available in alternative formats.

- All agencies are required to ensure that communications with persons with disabilities are as effective as communications with others. This is applicable to all forms of communications, including information posted on an agency’s website (ref. Section 508 of the Rehabilitation Act and the ADA), emergency services communications, and pedestrian signal systems.

- All agencies are required to ensure that their emergency management programs, services, and activities are also accessible to persons with disabilities. This includes transportation and community evacuation services.

- All agencies are required to conduct a self-evaluation of its policies, services, and activities to determine whether Section 504/ADA accessibility requirements are being met. This includes all public right-of-way facilities.

- Agencies with 50 or more employees are required to develop a Transition Plan (See Section 29.4) when structural modifications, identified through the self-evaluation process, are necessary to achieve program accessibility under Section 504 and the ADA. Operation and maintenance of pedestrian facilities in the public right of way (e.g., sidewalks, crosswalks, curb ramps, pedestrian signals, transit stops, etc.) is considered a “program, service, or activity” of State and local governments covered by Section 504 and ADA requirements. Ensure there is outreach to interested parties (i.e., persons with disabilities/advocacy groups) while developing both the Transition Plan and the Self-Evaluation Plan. For an example of a Transition Plan and a Self-Evaluation Plan see the Local Programs Local Agency Guidelines Manual website www.wsdot.wa.gov/LocalPrograms/LAG

- All agencies are required to maintain accessibility of programs and facilities. This includes maintaining accessibility of pedestrian facilities that may be impacted by overgrown vegetation, snow/ice, severe heaving/cracking of surfaces, construction work zones, and so on.
29.4 Transition Plan Elements

As mentioned under Administrative Requirements, agencies with 50 or more employees (ADA) are required to develop a transition plan when structural modifications are necessary to achieve ADA compliance. Using the results of the agency’s self-evaluation, the plan shall, at a minimum:

- Identify the physical obstacles in the public entity’s facilities that limit the accessibility of its programs or activities to individuals with disabilities (including those within the public right of way);
- Describe in detail what will be done to make the facilities accessible;
- Specify the schedule for each facility and/or obstacle to be retrofitted;
- Identify the individual responsible for implementation of the plan (typically the agency’s ADA/504 Coordinator).

It is recommended by FHWA that an estimated cost of each modification is included as part of the schedule described above to assist in the budget and/or TIP preparation. FHWA considers the transition plan to be a living document. The transition plan should be used in conjunction with planning and prioritizing of projects, and for monitoring progress on completing modifications. If the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period. It is recommended by FHWA that the transition plan be updated annually until all planned modifications have been made.

Based on input from the Department of Justice, it is FHWA’s policy that States and other public agencies establish a “reasonable and consistent” policy for installing APS on all alteration and new construction projects consistent with the requirements of Section 35.151 of Title II of the ADA. FHWA will work with WSDOT and local agencies to ensure that all new and altered pedestrian signal installations are usable by persons with visual disabilities.

29.5 Requirements for New Construction and Alterations

Title II of the ADA requires that new facilities be designed and constructed such that they are readily accessible to and usable by persons with disabilities. New construction projects address the construction of a new roadway, interchange, or other transportation facility where none existed before. New construction is expected to meet the highest level of ADA accessibility unless it is structurally impracticable to achieve full compliance. Full compliance will be considered structurally impracticable only when, in rare circumstances, the unique characteristics of terrain prevent full compliance. If full ADA compliance cannot be achieved in new construction, compliance is required to the extent structurally practicable. Note that the United States Department of Justice (USDOJ), the primary enforcement agency for the ADA, has explicitly clarified in its guidance on the ADA regulations that structural impracticability is not to be applied to situations in which a facility is located in “hilly” terrain or on a plot of land upon which there are steep grades. In such circumstances, accessibility can be achieved without destroying the physical integrity of a structure, and is required in the construction of new facilities.
The vast majority of construction projects undertaken by State and Local Agencies are not classified as new construction under the ADA, but rather they are classified as alterations. An alteration is a project that occurs within an existing developed right of way. Alterations include reconstruction, major rehabilitation, widening, resurfacing (e.g., asphalt overlays and mill and fill), signal installation and upgrades, and projects of similar scale and effect. An alteration project must be planned, designed, and constructed so that the required accessibility improvements occur at the same time as the alteration.

Alterations to existing facilities are required to meet new construction standards to the maximum extent feasible. Physical terrain or site conditions that would require structural impacts, environmental impacts, impacts to a historic feature (the feature must be classified as Section 106), or unacceptable impacts to the community in order to achieve full compliance with the ADA standards are some of the factors that can be used to determine that the maximum extent feasible is achieved.

If full ADA compliance cannot be achieved in an alteration, compliance is required to the extent feasible within the scope of the project. Note that the word “scope,” when referred to in Federal accessibility guidance and requirements, has a subtly different connotation than many civil engineers are accustomed to. Examples of work that is not within the scope of a project include the need to acquire right of way when right of way is not being acquired elsewhere on the project; the need to relocate utilities when utilities are not being relocated elsewhere on the project; the need to vertically realign the roadway when the roadway is not being vertically realigned elsewhere on the project; etc. Note that cost is not to be used as a justification for not meeting ADA standards on an alteration project.

While the ADA/504 regulations do not require documentation of the application of structural impracticability nor maximum extent feasible, both FHWA and the United States Access Board recommend that these instances be documented. The documentation of these instances should reveal the standard of care that guided engineering judgments. In the event of a challenge at a future time, documentation can be retrieved from project archives in support of the agency’s decisions. While careful documentation will not protect an agency against complaint, evidence of the considerations that led to the specific project solution may be persuasive in court or in discussions with stakeholders.

As described in the Design Manual M 22-01, WSDOT has an established documentation procedure for applications of maximum extent feasible in alteration projects on state routes. If a local agency applies maximum extent feasible to a pedestrian facility located on a state route, it is WSDOT’s expectation that the agency will follow the WSDOT documentation procedure described in the Design Manual M 22-01. The completed documentation should be contained in local agency project files to document the agencies design efforts in complying with the ADA requirements.”

If a local agency finds the need to apply maximum extent feasible to a pedestrian facility that is not located on a state route, the WSDOT documentation procedure does not need to be followed. However, it is highly recommended that the agency develops its own documentation protocol for such situations that is consistent with the FHWA and United States Access Board recommendations.
29.6 Monitoring and Enforcement

Responsibility for monitoring and enforcement of Section 504 rests with the Federal funding agency. The Section 504 regulations require WSDOT, as a recipient, to monitor and enforce the compliance with both Section 504 and the ADA of any entity receiving disbursement of either state or federal funding through WSDOT. While DOJ has the ultimate enforcement authority for ADA compliance, DOJ has delegated monitoring and enforcement responsibility to several federal executive agencies including the USDOT and its operating administrations. FHWA monitors WSDOT and local agency compliance through various means such as process and program reviews, construction inspections, PS&E reviews, and complaint investigations. If noncompliance is found, and the noncompliance is not corrected to FHWA’s satisfaction, FHWA may terminate or refuse to grant federal funding.

29.7 Authorities

- 29 USC 794 - Section 504 of the Rehabilitation Act of 1973 (as amended by the Civil Rights Restoration Act of 1987)
- 42 USC 12111 - Americans with Disabilities Act (Title II)

29.8 Regulations

- 28 CFR Part 35 (Title II) “Nondiscrimination on the Basis of Disability in State and Local Government Services”
- 49 CFR Part 27 (Section 504) “Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance”
- 49 CFR Part 37 “Transportation Services for Individuals with Disabilities (ADA)
- 49 CFR Part 38 “Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles”

29.9 Resources

- Chapters 1510 and 1515 of the Design Manual M 22-01
- Chapter 42 of the LAG Manual
Chapter 31  Using Consultants

To be eligible for reimbursement of Federal Highway Administration (FHWA) funds for payments to a consultant, the procedures in this chapter must be followed. If a Local Agency elects to retain the consultant at its own cost, state law must be followed.

This chapter covers agreements for architects, landscape architects, land surveying, and engineering services outlined in RCW 39.80 (see Section 31.1). The definitions of these four professions are described in RCW Chapters 18.08, 18.43, and 18.96. These will be referred to as architectural and engineering (A&E) services, or engineering services, in this chapter. These include:

- Professional services of an architectural or engineering nature, as defined by state law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide the services described in this paragraph.
- Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property.
- Professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering profession may logically or justifiably perform services, including but not limited to studies, investigations, surveying and mapping, tests, value engineering, construction phase services, soils engineering, and other related services.

This chapter also covers Professional Service agreements.

Professional Services require expertise provided by a consultant to accomplish a specific study, project, task, or other work statement (RCW 39.26). Professional Services agreements may be awarded to individuals, joint ventures, partnerships, corporations, or nonprofit organizations.

Examples of professional services typically include, but are not limited to:
- Financial and economic analyses.
- Environmental planning—as opposed to environmental engineering.
- Legal services.
- Management consulting not related to A&E projects.
- Media and public involvement; marketing services.
- Research.
- Scientific studies.
- Appraisal services not related to A&E projects.
- Acquisition, property management, and relocation services.
- Expert witness services for litigation.

Throughout this chapter the term “project” means the work to be undertaken by the consultant.
The basic steps for entering into a consultant agreement are:

1. Determine the need for services.
2. Advertise the need for services.
3. Evaluate the applicants’ qualifications.
4. Select the most qualified firm.
5. Negotiate with the most qualified firm.

### 31.1 A&E Services Consultants

A&E consultant services include the following:

1. Professional or technical expertise to accomplish a specific study, project, task, or other work statement.
2. Any phase of project development, as well as special studies or other assignments within any phase.
3. Periodic examination and consultation or full-time technical inspection during the construction phase.
4. Consultant design and preparation of plans, specifications, and estimates is common when an Agency’s staff is small or when an Agency needs additional expertise.

Consultant services do not include purchased services provided by a vendor to accomplish routine, continuing, and necessary services. These may be acquired through use of purchased service agreements. Purchased services include services for equipment maintenance and repair, operation of a physical plant, security, computer hardware and software maintenance, data entry, key punch services, computer time-sharing, contract programming, and analysis (RCW 39.26).

Section 319 of Public Law 101-121 prohibits federal funds from being expended by consultants or subconsultants who receive a federal contract, grant, loan, or cooperative agreement to pay, any person for influencing or attempting to influence a federal Agency or Congress in connection with awarding any of the above.

### 31.1.1 Determine the Need for A&E Consultant Services – Before an Agency advertises for A&E consultant services, it must have a clear definition of the work to be accomplished. This includes identification of:

1. The nature and scope of effort required.
2. The technical requirements and qualifications of the consultant services needed.
3. The level of funding resources available.
4. The time frame for performing the work.
5. The expected results and products to be received (deliverables).

If assistance is needed in describing the desired scope of work, the Agency should seek information from the Region Local Program Engineer or from other Local Agencies that have had similar projects.
Because selection of the most qualified consultant firm is based on evaluations by the Agency, it must develop clear selection guidelines (see Section 31.13). The selection criteria should enable the Agency to identify and select the consultant best qualified to meet the Agency’s needs and ensure that the selected consultant understands and provides services for the Agency’s needs in the most cost-effective manner.

The basic agreement types are lump sum, cost plus fixed fee, and negotiated hourly rates (see Section 31.32). The Agency should determine the type of agreement to be developed with the consultant (though this may be modified during negotiations with the selected consultant). Consultant agreements are available at www.wsdot.wa.gov/localprograms.

Consultant selection shall provide for maximum open and free competition and should provide opportunities for small and disadvantaged business enterprises to obtain an equitable share of the work, consistent with the project scope and capabilities of available small and disadvantaged owned firms.

A&E consultants may be solicited for:

1. A specific project.
2. A specific stage of a project (i.e., Design Report).
3. Engineering services (i.e., supporting services of an Agency’s staff in studies, design).
4. For more than one project (i.e., several small bridge design projects) or multiple phases of a single project.
5. Or a combination of the above.

.11a Multi-Phase Projects – In the case of projects covering two or more distinct phases, when the cost for the second phase depends on decisions reached during the first phase, the agreement should cover only the first phase. The agreement for preliminary engineering should state that the consultant may be considered for subsequent phases provided this option was identified in the advertised solicitation. The consultant’s engagement to complete subsequent phases depends upon the consultant’s satisfactory performance on prior work and upon negotiation of an agreement for the subsequent phase(s). The Agency is not obligated to use the same consultant firm for all phases. Separate consultant agreements may be considered for each phase (e.g., one for preliminary engineering and another for construction engineering).

.11b Environmental Assessment/Environmental Impact Statement/Environmental Classification Summary – The first agreement would include preliminary engineering through final approval of the environmental documents. Preparation of the PS&E could be under a separate agreement with continuation of the original consultant at the option of the Agency, provided this was stated in the original advertisement.

.11c Engineering Management Consultants – While an engineering management consultant may assist an Agency in fulfilling its responsibilities, the Agency cannot delegate these responsibilities to a consultant or to another Agency. A consultant serving in a management role for an Agency, and then managing consultant agreements with its own firm, is a conflict of interest.
.12 Advertise the Need for A&E Consultant Services – State law, RCW 39.80, requires that each Agency must advertise that Agency’s requirement(s) for architectural services, land surveying services, or engineering services. An Agency can comply with these requirements by either:

1. Publishing an announcement on each occasion when A&E consultants are required by the Agency.

2. Publishing an annual notice to establish an “On Call Roster” (or rosters by specialty) to receive qualifications from consultants as to projected requirements for any category or type of engineering services (see Section 31.11). In addition, responsible A&E consultants shall be added to the appropriate “On Call Roster(s)” at any time they submit a written request and their qualifications.

3. The need for consultant services must be advertised at least one day per week for two consecutive weeks (14 day minimum) in the area newspaper used for publication of legal notices. A three week minimum response time from the initial date of publication should be provided to consultants. These advertisements may be supplemented by additional advertisements in special interest publications such as the Daily Journal of Commerce, trade magazines, or publications utilized by disadvantaged business enterprises.

.12a Advertisement Content – The advertisement should contain the following information (see Appendix 31.78 for an advertisement example):

1. A project title and estimated start and end dates.

2. The general scope and nature of the project or work for which services are required and the address of a representative of the Agency who can provide further details.

3. Solicitations of qualification statements, referred to as Requests for Qualifications (RFQ) from consultants, must incorporate a clear and accurate description of the technical requirements for the service to be procured, including any special conditions or certifications required. (Example Submittal Information Forms to obtain consultant qualifications for Prime and Subconsultants are contained in Appendix 31.79(a) and 31.79(b), respectively.)

4. Solicitations must clearly set forth sufficient detail on how applicant qualifications will be evaluated. These may include but are not limited to key personnel, firm experience, ability to meet schedule, past performance, in-house expertise, familiarity with WSDOT/FHWA standards, and DBE approach and commitment.

5. Nonengineering service applicants should be asked to provide estimates for the man-hours and classifications needed to complete the project.

6. In the event that a project covers multiple phases (see Section 31.11a), the Agency is not obligated to utilize the original consultant for subsequent phases. If the Agency desires this option, the advertisement must state the possibility of a multi-phase agreement at the discretion of the contracting Agency.

7. All prospective consultants must be advised that Federally funded projects will be held to Federal EEO requirements.

8. Consultants will also be held to ADA and Civil Rights language for the employing Agency.
9. Local Agencies must be in compliance with Chapter 28 and their Title VI Agreement. Therefore, when advertising for Consultant Services, the following Title VI language must be included in advertisement:

“The (Local Agency) in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, Part 21, nondiscrimination in federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin or sex in consideration for an award.”

10. Response due date.

11. Publication dates.

Specific project cost estimates shall not be requested until a consultant has been selected.

1.3 A&E Consultant Evaluation and Selection Process – The Local Agency must establish guidelines for technical evaluation of the qualifications received, determination of finalists for the purpose of written or oral discussions, and selection for agreement award. Consultants will be selected based upon the qualifications they present. For A&E related services, fees for services cannot be considered during the selection process.

One of the following must be utilized as part of the consultant selection process:

1. **“Live” Interviews and Presentation of the RFQ by Consultant Individuals or Teams** – This provides interaction with the Agency and showcases the consultant’s presentation skills. This approach is best for larger, more complex projects, but does increase travel time and costs to the applicant. Video presentation or teleconferencing may be considered as an alternative to reduce travel costs.

2. **Telephone Interviews** – This provides for interaction but eliminates travel time and cost. This approach is useful for smaller projects or for selecting from an on-call or small works roster.

A. Exceptions to the competitive process used for consultant selection:

1. **Subsequent Phasing** – Selection of a consultant to perform subsequent project phases may only occur if this option was advertised originally (i.e., Phase 1 Preliminary Engineering, Phase 2 Right of Way, Phase 3 Construction Engineering).

2. **Contract Amendments** – Amendments that do not significantly alter the scope of work can be renegotiated with the existing consultant. However, this should not be used to avoid the responsibility of providing competition for consultant selection.
3. **Emergency** – To address a set of unforeseen circumstances beyond the Agency’s control which present a real, immediate threat to the proper performance of essential functions, or may result in the material loss or damage to property, bodily injury, or loss of life if immediate action is not taken (see Chapter 33).

4. **Sole Source** – Sole source agreements may be requested from Local Programs when the consultant provides professional or technical expertise of such a unique nature that the consultant is clearly and justifiably the only practicable source to provide the service. The Local Agency must provide the Region Local Programs Engineer written justification (see Appendix 31.80) for requesting this option based upon:
   a. The unique nature of the services and/or the unique qualifications, abilities, or expertise of the consultant to meet the Agency’s needs (e.g., are they highly specialized or one-of-a-kind? What is their past performance, their cost effectiveness (learning curve), and/or the follow-up nature of the required services?).
   b. Other special circumstances that may be relevant such as confidential investigations, copyright restrictions, or time constraints.
   c. Availability of consultants in the location required. Local Programs must approve all consultant procedures that are exceptions to the competitive process.

B. **Documentation of Selection** – Following consultant selection, the Local Agency shall retain the following documentation in the project file:
   1. The names of a minimum of three consultants considered for the work (excluding exceptions detailed above).
   2. Consultant selected and reasons why this consultant was chosen over the others.

.14 **Establishing a Consultant “On-Call Roster”** – To efficiently obtain consultant services, a process for developing and maintaining a consultant “On-Call Roster” is necessary. Agencies may, therefore, establish and maintain a continuous “On-Call Roster” to which interested and qualified firms may apply. This “On-Call Roster” must be maintained annually and may be shared with other interested public agencies. The Agency must name all agencies that are utilizing the “On-Call Roster,” if any, in addition to the Agency establishing the “On Call Roster.”

No “On-Call Roster” consultant may be awarded more than one federal aid contract from the “On Call Roster” at a time. When active contracts are complete, the consultant’s name will be returned to “available” status.

1. The Agency must publish an announcement in a newspaper of general circulation at least once per year to invite consultant firms to submit statements of qualifications and performance data. The advertisement shall be for future project needs and announce generally projected requirements for any category or type of professional services. The advertisement shall state the address of the representative who can provide further details.
a. Separate “On Call Rosters” will be kept for each discipline of work. Agencies may not select a firm from one “On Call Roster” to perform work that is covered by a different “On Call Roster.” Each “On Call Roster” must have a separate list of qualification criteria which will be clearly stated in the advertisement for “On Call Roster” participants.

2. The advertisement shall encourage firms to submit or update qualifications and performance data.

3. The Agency may either provide an application that solicits desired information or allow firms to apply through other means of establishing credentials as best meets the agency’s needs, or a combination thereof.

4. The Agency shall review submittals to insure firms meet minimum eligibility criteria for responsible firms as defined by the Agency prior to establishing the “On-Call Roster.” Verification shall consider required licensing, experience, and financial stability in order to establish firms that are reasonably capable of performing the work.

5. Firms that meet at least minimum levels of responsibility based on the advertisement shall be placed onto the “On-Call Roster.” The “On Call Roster” shall list firms that responded to the advertisement and were found eligible for further consideration by the Agency as project needs arise.

6. Applications on file after one year will be required to update information through annual advertisement or through a direct process established by the Agency prior to establishing the “On-Call Roster.”

7. The Agency may issue repeat advertisements to solicit additional firms or firms with a particular specialty for the “On-Call Roster” at any time during the year.

8. The “On-Call Roster” shall be continuously open.

9. Firms listed on an Agency “On-Call Roster” shall be available for consideration and eligibility for a project need, unless a specific reason causes the firm to be placed on an inactive status. Such inactive status will be the right of the Agency; however, written notification of the change of status will be given to firms within 30 days of status change. The reason for the status change will be stated clearly in the notification.

10. The process to select firms from the “On-Call Roster” and enter into a contract shall be as follows.

   a. Agencies must interview at least three firms for each contract from the “On Call Roster.”

   b. If less than three qualified firms are available for a given contract, the agency will interview as many as are available on the “On Call Roster” for that particular contract.

   c. If no qualified firms are available from the established “On Call Roster,” a separate advertisement and award process must be followed.

   d. Following the interview, the Agency will select the best qualified consultant from those interviewed.
31.2 **Professional Services Consultants**

Professions outside the fields described in RCW 39.80 may provide such consulting services such as long range planning and studies, economic analyses, real estate negotiations. These consulting services are provided through professional services agreements (RCW 39.26). The basic difference between professional services and A&E consultants is that consultant fees may be considered in selecting professional services consultants, but cannot be considered in selecting A&E services consultants.

The Local Agency is to work with WSDOT Real Estate Services on right of way professional services agreements.

.21 **Determine the Need for Professional Services Consultants** – Before an Agency advertises for a professional services consultant, the agency must have a clear definition of the work to be accomplished. This includes identification of:

1. The nature and scope of effort required.
2. The technical requirements and qualifications of the consultant services needed.
3. The level of funding resources available.
4. The time frame for performing the work.
5. The expected results and products to be received.

If assistance is needed in describing the desired scope of work, the Agency should seek information from the Region Local Program Engineer or from other Local Agencies that have had similar projects.

The Agency should develop selection guidelines for all to understand, because selection of the most qualified consultant firm is based upon evaluations by the Agency. The selection criteria should enable the Agency to identify and select the consultant best qualified to meet the Agency’s needs and ensure that the selected consultant understands and provides the Agency’s needs in the most cost-effective manner.

The Agency should determine the type of agreement to be developed with the consultant. (This may be modified during negotiations with the selected consultant.) The basic agreement types are lump sum, cost plus fixed fee and negotiated hourly rates, (see Section 31.42).

Consultant selection shall provide for maximum open and free competition and should provide opportunities for small and disadvantaged business enterprises to obtain an equitable share of the work, consistent with the project scope, and capabilities of available small and disadvantaged owned firms.

Professional Services consultants may be solicited for:

1. A specific study (i.e., Economic Study).
2. A specific project (i.e., Acquisition of Real Estate).
3. A specific task (i.e., Real Estate negotiations).
4. Or a combination of the above.
.22 Advertise the Need for Professional Services Consultants – State law (RCW 39.26) requires that each Agency must competitively solicit that Agency’s requirement for professional services. An Agency can comply with these requirements by either:

1. Using a competitive solicitation process that provides an equal and open opportunity to qualified parties.

2. Publishing an annual notice to establish an “On Call Roster” (or rosters by specialty) to receive qualifications from consultants for projected requirements for any category or type of professional services consultants. In addition, responsible consultants shall be added to the appropriate “On Call Roster(s)” at any time upon the submittal of a written request and a list of their qualifications. (See Section 31.14 for more information about establishing an “On Call Roster.”)

The need for consultant services must be advertised at least one day per week for two consecutive weeks (14 day minimum) in the area newspaper used for publication of legal notices. A three week minimum response time from the initial date of publication should be provided to consultants. These advertisements may be supplemented by additional advertisements in special interest publications such as the Daily Journal of Commerce, trade magazines, or publications utilized by disadvantaged business enterprises.

.22a Advertisement Content – The advertisement should contain the same information listed in Section 31.12a (see Appendix 31.78 for an advertisement example).

.23 Professional Services Consultant Evaluation and Selection Process – The Local Agency must establish guidelines for technical evaluation of the qualifications received, determination of finalists for the purpose of written or oral discussions, and selection for agreement award. Consultants will be selected based upon the qualifications they present. Fees may be considered as an evaluation factor in the professional services selection process, but it is not a “low-bid” consultant selection where the low bidder wins the contract automatically. For more guidance, refer to the Municipal Research and Services Center (MRSC) of Washington guide, “Contracting for Professional Services in Washington State,” Informational Bulletin Number 485.

One of the following is required as part of the consultant selection process:

1. Written Response Only to the Request for Qualifications (RFQ) – This approach is best for smaller, clearly defined projects, or projects which are heavily reliant upon their written presentation such as environmental reports.

2. “Live” Interviews and Presentation of the RFQ by Consultant Individuals or Teams – Provides for interaction with the Agency and showcases the consultant’s presentation skills. This approach is best for larger, more complex projects but does increase travel time and costs to the applicant. Video presentation or teleconferencing may be considered as an alternative to reduce travel costs.

3. Telephone Interviews – Provides for interaction but eliminates travel time and cost. This approach is useful for smaller projects or for selecting from an on-call or small works roster.
Exceptions to the competitive process used for consultant selection:

1. **Sole Source** – Sole source agreements may be requested from Local Programs when the consultant provides professional or technical expertise of such a unique nature that the consultant is clearly and justifiably the only practicable source to provide the service. The Local Agency must provide the Region Local Programs Engineer written justification (see Appendix 31.80) for requesting this option based upon:
   a. The unique nature of the services and/or the unique qualifications, abilities, or expertise of the consultant to meet the Agency’s needs (e.g., are they highly specialized or one-of-a-kind? what is their past performance, their cost effectiveness (learning curve), and/or the follow-up nature of the required services?).
   b. Other special circumstances that may be relevant such as confidential investigations, copyright restrictions, or time constraints.
   c. Availability of consultants in the location required.

2. **Emergency** – To address a set of unforeseen circumstances beyond the Agency’s control which present a real, immediate threat to the proper performance of essential functions or may result in the material loss or damage to property, bodily injury, or loss of life, if immediate action is not taken (see Chapter 33).

3. **Contract Amendments or Added Scope** (beyond the original advertisement) – Amendments that do not significantly alter the scope of work can be renegotiated with the existing consultant. However, this should not be used to avoid the responsibility of providing competition for consultant selection.

Local Programs must approve consultant procedures that are exceptions to the competitive process.

.24 **Document Selection** – Following consultant selection, the Local Agency shall retain the following documentation in the project file:

1. The names of a minimum of three consultants considered for the work (excluding exceptions detailed above); and
2. Justification for the consultant selected, including the reasons why this consultant was chosen over the others.

### 31.3 Negotiation With Selected Firm, A&E, and Professional Services

The Local Agency will notify the consultant of their selection in writing, meet with the consultant to reach a complete and mutual understanding of the scope of services, and begin negotiations on the terms of the agreement.

In this meeting with the selected consultant, the Local Agency should include key people with appropriate technical expertise within the Agency to ensure that their concerns are addressed. The following are typically discussed while developing an agreed upon scope of services:

1. A list of meetings the consultant is expected to attend, expected location of the meetings, and key personnel.
2. The anticipated design schedule. The Local Agency shall designate the basic premises and list criteria to be used in design development.

3. Any special services required.

4. Complexity of the design.

5. Safety and operational considerations.


7. Survey and geotechnical testing requirements.

8. Inspection services during construction.


.31 Agency Preparation for Negotiations – Following receipt of the consultant’s proposal, Agency responsibilities include:

Compare the consultant’s proposal with the Agency’s own estimate, examining the scope of work, work hours, and estimate of cost. (See Appendix 31.81, Independent Estimate for Consulting Services, DOT Form 140-012 EF.) The Agency is to prepare its independent cost estimate using:

1. The salary rates by position from the consultant’s Payroll Register.

2. Multiplying these by the Agency’s estimates of staff hours by position for work elements.

3. Apply the consultant’s overhead rate and profit/fixed fee (see below) to develop the total project staff cost estimate.

The Agency will use this independent estimate, along with estimates of nonsalary costs, to negotiate the agreement with the consultant.

1. Ensure the consultant has divided the project into work units and related time units in such a manner that the estimate can be readily reviewed for work hours, rates of pay, overhead, profit, and itemized direct nonsalary costs.

2. Request records to confirm the consultant’s rates (i.e., their Payroll Register, giving payroll rates by name and position of staff working on the project).

3. Request the consulting firm’s indirect cost rate from the WSDOT Consulting Services Office (see Section 31.5 for indirect cost rate details).

4. Calculate the consultant’s profit/fixed fee amount. WSDOT’s procedure for calculating this is described in Consultant Services Manual M 27-50, Appendix L. The fee is determined through evaluation of the following:

   a. Degree of risk.

   b. Relative difficulty of work.

   c. Size of job.

   d. Period of performance.

   e. Assistance of agency.
f. Subconsulting.

g. An acceptable profit for a federally funded project may not exceed 15 percent of the total of direct labor plus overhead costs or the fixed fee/profit percentage may not exceed 35 percent of direct labor costs only. Maximum allowable profit percentage rates (20 to 35 percent) are reserved for the most difficult, complex, and risky projects. Mark-ups are not allowed on direct “nonsalary” costs.

h. A Management Reserve Fund (MRF) may be established to be used for:

(1) Overage of direct salary and overhead costs that might occur under the existing scope of work, or

(2) The consultant to perform additional work that is outside the agreement or supplement’s scope of work (but within the scope of the advertised project).

The maximum MRF set up at the beginning of the agreement is $100,000 or 10 percent of the agreement, whichever is less. If the original MRF is less than $100,000, the MRF may be increased by preparing a supplement to a total accumulative amount that cannot exceed $100,000, (or exceed the cumulative 10 percent). An MRF cannot be included in a Lump Sum agreement. The Agency cannot authorize, and the consultant cannot utilize, the MRF until a task order is set up. To set up a task order, the Agency and consultant must negotiate the scope, schedule, and budget for the increase in direct salary and overhead costs, or the increase in additional work to use all or a portion of the MRF.

5. Record and retain an explanation of differences in work hours or costs between the Agency’s independent estimate and the negotiated consultant fee.

.32 Agreement Types/Payment Options – The following are the types of agreements that contain acceptable methods of payment for FHWA funded projects. Consultant agreements are available at www.wsdot.wa.gov/localprograms.

1. **Lump Sum** – This type of agreement is only appropriate where the scope of work (quantity and type) can be clearly defined in advance. It is not recommended for construction engineering agreements. The agreement should state the exact service to be provided within a specific time frame, and when the lump sum payment is to be made. Payments may also be paid in installments as the work proceeds.

Scope of work changes and Management Reserve Funds are not allowed with this type of payment.

Lump sum payment is generally used for investigations, studies, and basic services on design projects. A qualified representative for the Agency must prepare, date, and sign an estimate detailing the hours required for each type of work, as well as the hourly rate.

2. **Actual Costs Plus a Fixed Fee** – This type of agreement is used when the extent, scope, complexity, character, or duration of the work cannot be reasonably determined in advance. The consultant is reimbursed for all eligible direct and indirect costs within defined limits, plus a predetermined amount as a fixed fee. The costs for methods 1-3 above are determined by:
Chapter 31 Using Consultants

a. Salaries of employees with time directly chargeable to the project and salaries of principals for the time they are productively engaged in work necessary to fulfill the terms of the agreement. Actual rates of pay for employees and principals actively involved in the project will be included in each agreement.

b. Direct nonsalary costs incurred in fulfilling the terms of the agreement. Travel costs, (excluding air, train, and rental car costs), shall be in accordance with the Agency’s travel rules and procedures. Air, train and rental car costs shall be reimbursed in accordance with 48 CFR Part 31.205-46 “Travel Costs.”

c. The consultant’s overhead schedule must be prepared in compliance with CFR Part 31. The indirect costs must be allowable, allocable and properly segregated.

d. Management reserve funds are an Agency option and are to address overruns of direct salary and overhead costs that might occur under the existing scope of work or a need for additional work beyond the existing agreement scope of work, but within the advertised project scope of work.

e. Profit/fixed fee is derived by considering the degree of risk, relative difficulty of work, size of job, period of performance, assistance by the Agency, and subconsulting assumed by the consultant at the time of the negotiations (see Section 31.31).

Shown as exhibits to the agreement are the consultant’s estimate of work, direct labor rates, indirect cost rate and fixed fee.

3. Specific Rates of Pay Agreement. This type of agreement is based upon specific rates of pay for each class of employee and is appropriate for relatively minor items of work of indeterminable extent. This method requires constant and direct control of the time and class of employees used by the consultant. This rate of pay is established through:

a. Negotiated hourly rate payment. This establishes the rate of pay through use of the consultant firm’s Payroll Register, the indirect cost rate obtained from WSDOT’s Consultant Services Office, plus the calculation of the consultant’s profit/fixed fee. (See Section 31.31 for guidance in developing the independent estimates of these costs for use in negotiations with the consultant firm.) The following items also apply to negotiated hourly rate agreements.

1. Direct nonsalary costs incurred in fulfilling the terms of the agreement. Travel costs, (excluding air, train, and rental car costs), shall be in accordance with the Agency’s travel rules and procedures. Air, train, and rental car costs shall be reimbursed in accordance with 48 CFR Part 31.205-46 “Travel Costs.”

2. The consultant’s overhead schedule must be prepared in compliance with 48 CFR Part 31. The indirect costs must be allowable, allocable and properly segregated.

3. Management reserve funds are an Agency option and are to address overruns of direct salary and overhead costs that might occur under the existing scope of work or a need for additional work beyond the existing agreement scope of work, but within the advertised project scope of work.
4. Profit/fee is derived by considering the degree of risk, relative difficulty of work, size of job, period of performance, assistance by the Agency, and subconsulting assumed by the consultant at the time of the negotiations (see Section 31.31).

33 Agency/Consultant Negotiations – Negotiate an agreement with the selected consultant and retain a record of these negotiations (see Appendix 31.82). Negotiations may include the following:

1. The Agency negotiator and the consultant meet in person or by telephone and go over any significant areas of discrepancy between the Agency estimate and consultant proposal. Either the consultant satisfactorily explains differences or agrees to address concerns in a revised proposal.

2. The Agency reviews revised proposals and revises their detailed cost analysis accordingly. Steps 1 and 2 are repeated, if required.

3. The consultant submits a final fee proposal.
   a. Provide a final offer in writing.
      (1) The final agreement must specify the maximum amount payable.
      (2) The basis for establishing the maximum amount should be documented.
      (3) Procedures for adjustments to the maximum amount to accommodate changes in the work distribution or workload shall be explained.
   b. When unresolved differences exist between the consultant and Local Agency, the Agency shall notify the Region Local Programs Engineer. The Local Programs Engineer will review and confirm that the Agency has followed all the required procedures and will notify the Agency of the finding. The Agency will then notify the consultant in writing that negotiations are terminated and proceed to the next highest ranked consultant to begin the negotiation process again. Negotiation steps and records will be repeated with the alternate consultant selected.

31.4 Consultant Agreements, Exhibits, and Supplements to Agreements, A&E, and Professional Services

When the total cost of consulting services is $10,000 or more, Local Agencies must use the Local Agency Standard Consultant Agreements. (See agreements in Appendix 31.71 – Appendix 31.76, Consultant Agreement forms are available online at www.wsdot.wa.gov/localprograms. The agreement completion date establishes the last possible date the consultant may work, and be paid for that work, utilizing federal funds. Any work performed after expiration of the agreement will be considered non-federally participating. It is of the utmost importance that the Agency monitors the project completion date and extend the date by supplemental agreement, if appropriate, prior to the completion date.

The time period for completion of the agreement is dependent upon the complexity of the project’s scope of work. The duration may vary from two years for a relatively simple project, to six or more years for a complex project having multiple phases of work.
.41 Vacant

.42 Supplements to the Agreements – An agreement shall be supplemented in writing when work that falls outside the scope of the original agreement is requested, when supplemental language to the standard agreement is desired, or when there is a need for time extension or wage adjustment. This may be done by a supplemental agreement only when the agreement completion date has not expired. (See Appendix 31.77) The work in the supplement must have been included in the advertisement for consultant services regarding the original agreement.

The supplemental agreement should include:

1. A statement that the original agreement will be supplemented to add/change/amend conditions.
2. A scope of work described in sufficient detail to clearly outline what additional work the consultant is to do or what changes are authorized to the existing scope.
3. The method of payment, i.e., cost-plus-fixed-fee, specified hourly rate, daily rate, and any indirect cost. (Note: Always include a maximum amount payable.) Section V of the original agreement should be reviewed prior to negotiating any supplements.
4. A specific time for beginning/continuing work under the supplement and completing the project in calendar days or day and month of the year.
5. A summary of the estimated costs of the original agreement plus those of the supplement(s).
6. Provisions that give both parties of the agreement the authority to act.
7. Specific rates of pay shall be established for the supplemental agreement in the same manner as described in Section 31.32, Agreement Types/Payment Options, Sub-Part d, Specific Rates of Pay.

.43 Patent or Royalty Rights – Agreements that involve research, developmental, experimental, or demonstration work may include patent or royalty rights. In this case, the Standard Agreement should be supplemented by adding the appropriate language to account for this. The Region Local Programs Engineer is to be contacted for assistance in developing these supplemental agreements.

.44 Risk Management and Added Insurance Requirements – The Agency may change Section XIII of the Standard Agreement to reduce the requirement for the Consultant Professional Liability from one million dollars to the amount of the Agreement; whichever is the lesser of the two. This should be done for work that involves minimal risk, such as studies. For many consultant firms, covering the one million dollar liability would be an added cost to their overhead or directly to the project.

In the event the Agency determines that added liabilities or an insurance policy are warranted beyond the amount allowed in the Standard Agreement, they should negotiate this with the Consultant after the selection process is complete. This ensures that engineering qualifications, rather than the ability to obtain insurance, is the criteria for selection.
The Agency will determine the sufficiency of insurance normally provided within the consultant’s overhead costs, and will identify the costs beyond that amount on Exhibit L. This exhibit is not needed if the standard agreement provisions are used. These costs will be considered direct project costs, and will not be billed to an FHWA funded project. In the event that Exhibit L is warranted, it should be sent with the risk analysis to the Region Local Programs Engineer for approval, who will forward it to Headquarters for review, prior to execution by the Agency and the consultant.

The Agency risk analysis should show that the work warrants this added cost and that consideration has been given to less costly solutions, including assuming the risk; insuring the risk outside of the agreement as an Agency cost; or adding a third tier of engineering overview to check the work.

To calculate the risk requires an ability to judge the likely amount of a jury’s award if liability is determined. A suggested method is to determine the number of comparative cases presently existing within this state and to develop the probabilities based upon historic awards.

### 31.5 Indirect Cost Rates

The Agency will utilize a consultant’s Indirect Cost Rate (ICR) that is compliant with 48 CFR Part 31 of the Federal Acquisition Regulation (FAR), or has been approved through the Safe Harbor program.

If a consultant does not have a FAR compliant ICR, it is their responsibility to review the eligibility requirements of the Safe Harbor program ([www.wsdot.wa.gov/Audit/default.htm](http://www.wsdot.wa.gov/Audit/default.htm)).

Consultants who do not qualify or choose not to enroll in the Safe Harbor will be subject to a review by the WSDOT Consultant Service Office (CSO). CSO will utilize a risk assessment process to provide WSDOT the necessary assurance that the consultant’s accounting practices are FAR compliant. There are multiple tools that consultants may submit to assist CSO review such as the following:

- An audit conducted by another governmental agency that conforms to 48 CFR Part 31;
- An audit conducted by an independent CPA that conforms to 48 CFR Part 31
- A WSDOT approved ICR provided by the Internal Audit Office (IAO)

If the consultant does not have any of the above, the consultant may submit their ICR schedule to the CSO for review. The CSO will perform a review of the consultant’s proposed rate using the 48 CFR part 31 to adjust line item costs on the ICR and determine a possible provisional ICR rate. The CSO will notify the consultant of these adjustments. The consultant will decide whether these adjustments are fair and reasonable and notify the CSO whether they agree or disagree with the determination.

If the consultant does not have an ICR, the CSO may establish a provisional ICR of 100% and a recommended fixed fee of 10% or less of direct labor and overhead. This rate would be effective from the end of the consultant’s fiscal year plus 180 days. During that time it is expected that the consultant will develop an ICR which would conform to the requirement outlined in 48 CFR Part 31.
Each firm has the option of providing an Indirect Cost Rate or qualifying for the Safe Harbor program. Please choose one of those options listed below and provide the documentation listed with your request for a rate. Incomplete submission of documents for review will not be evaluated.

**For the Safe Harbor Program**

Documents needed include:

- Labor Checklist
- Examples of timesheets from December 2013
  - For smaller firms – one for each person

Link to Safe Harbor: [www.wsdot.wa.gov/audit/default.htm](http://www.wsdot.wa.gov/audit/default.htm)

**CSO review of an Indirect Cost Rate**

Documents needed include:

- Indirect Cost Rate Schedule (ICR)
- FHWA Certification Document
- Consultant Information Worksheet
- Timesheet & Labor System Checklist

All requests for the Safe Harbor Program or for an Indirect Cost Rate review must be sent to ConsultantRates@WSDOT.WA.GOV, include the words “Local Programs” in the subject line of your email. The following information must also be included:

- Number of active local agency contracts, including the contract amount.
- Number of local agency contracts, including the contract amount for the previous fiscal year.

The documents listed above are available at [www.wsdot.wa.gov/localprograms](http://www.wsdot.wa.gov/localprograms).

### 31.6 Oversight of the Agreement and Project Closure

The Local Agency shall assign one of its personnel as project administrator to work with the consultant. The project administrator’s responsibilities are to:

1. Prepare supplements to existing agreements for services beyond the scope of the original agreement and include the Agency’s independent estimate of the costs for the work involved.
2. Ensure that no work is done or costs incurred until the agreements and supplements are approved by the approving authority and executed by the proper parties.
3. Conduct regular meetings with the consultant to track progress and identify potential concerns.
4. Act as a liaison between the Agency and the consultant to assure compliance with the terms of the agreement, including OEO provisions and the use of mandatory forms.
5. Monitor the consultant’s progress reports to ensure that problem areas are reported and corrective action taken.
6. Make sure that all work is within the agreement’s scope of work.
7. Establish controls to monitor the time for completion of the agreement to ensure that the specified time limitations are not exceeded.

8. Ensure the accuracy of bills presented by the consultant and their consistency with the work performed.

9. Maintain cumulative cost records to assure that costs are allowable, allocable, and reasonable. Track bills to ensure compliance with agreement and fixed fees.

10. Establish controls to prevent overpayment of the agreement.

11. Ensure that all terms and conditions of the agreement have been met prior to final release of the consultant.

.61 Invoicing – The invoice will include the following:

1. All employees who worked on the project during the billing period;

2. The classification of each employee, the hours worked, the actual hourly payroll rate, and the amount billed; and

3. Direct nonsalary costs. Nonsalary costs should be supported for auditing purposes by copies of the invoice or billing instruments the consultant received for payment. Either the consultant or the Agency may retain these copies.

The Local Agency may disallow claimed cost, which are not adequately supported by documentation.

.62 Documentation – Original documents may include but are not limited to signed time sheets, invoices, payroll records, rental slips, and gasoline tickets that support the costs billed to WSDOT. In compliance with 48 CFR part 31, the consultant is responsible for maintaining records, including supporting documentation that costs claimed have been incurred and are allocable to the agreement. Time sheets should document hours worked, the billing rate of pay, and must be signed by the supervisor or his designee and the employee. Records will be retained for a period of three years after receipt of final payment.

.63 Closure – Upon completion of the work under the consultant agreement, the Agency will ensure that all terms and conditions of the agreement have been complied with and that all services to be performed under the agreement have been completed prior to final release of the consultant. The Local Agency should evaluate the consultant’s performance and retain this in their records (see Appendix 31.83).
## 31.7 Appendices

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Local Agency A&E Professional Services
Appendix 31.71 Cost Plus Fixed Fee Consultant Agreement

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

Agreement Number:

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<thead>
<tr>
<th>Firm/Organization Legal Name (do not use dba's):</th>
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<td>Federal Participation</td>
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Description of Work

| Yes   | No DBE Participation |
| Yes   | No MBE Participation |
| Yes   | No WBE Participation |
| Yes   | No SBE Participation |

Total Amount Authorized:

Management Reserve Fund:

Maximum Amount Payable:

Index of Exhibits

| Exhibit A | Scope of Work               |
| Exhibit B | DBE Participation           |
| Exhibit C | Preparation and Delivery of Electronic Engineering and Other Data |
| Exhibit D | Prime Consultant Cost Computations |
| Exhibit E | Sub-consultant Cost Computations |
| Exhibit F | Title VI Assurances         |
| Exhibit G | Certification Documents     |
| Exhibit H | Liability Insurance Increase |
| Exhibit I | Alleged Consultant Design Error Procedures |
| Exhibit J | Consultant Claim Procedures |

Agreement Number:
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.

Agreement Number:
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.

The CONSULTANT, on a monthly basis, is required to submit DBE Participation of the amounts paid to all DBE firms invoiced for this AGREEMENT.

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

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

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

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

If to CONSULTANT:
Name: 
Agency: 
Address: 
City: State: Zip: 
Email: 
Phone: 
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 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, specified in Section II, “Scope of Work”. The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31 (www.ecfr.gov). The estimate in support of the Cost Plus Fixed Fee amount is attached hereto as Exhibits “D” and “E” and by this reference made part of this AGREEMENT.

A. Actual Costs: Payment for all consulting services for this PROJECT shall be on the basis of the CONSULTANT’S actual cost plus a fixed fee. The actual cost shall include direct salary cost, indirect cost rate, and direct non-salary costs.

1. Direct (RAW) Labor Costs: The Direct (RAW) Labor Cost is the direct salary paid to principals, professional, technical, and clerical personnel for the time they are productively engaged in work necessary to fulfill the terms of this AGREEMENT. The CONSULTANT shall maintain support data to verify the direct salary costs billed to the AGENCY.

2. Indirect Cost Rate (ICR) Costs: ICR Costs are those costs, other than direct costs, which are included as such on the books of the CONSULTANT in the normal everyday keeping of its books. Progress payments shall be made at the ICR rates shown in attached Exhibits “D” and “E” of this AGREEMENT. Total ICR payment shall be based on Actual Costs. The AGENCY agrees to reimburse the CONSULTANT the actual ICR costs verified by audit, up to the Maximum Total Amount Payable, authorized under this AGREEMENT, when accumulated with all other Actual Costs.

A summary of the CONSULTANT’S cost estimate and the ICR percentage is shown in Exhibits “D” and “E”, attached hereto and by this reference made part of this AGREEMENT. The CONSULTANT (prime and all sub-consultants) will submit to the AGENCY within six (6) months after the end of each firm’s fiscal year, an ICR schedule in the format required by the AGENCY (cost category, dollar expenditures, etc.) for the purpose of adjusting the ICR rate for billings received and paid during the fiscal year represented by the ICR schedule. It shall also be used for the computation of progress payments during the following year and for retroactively adjusting the previous year’s ICR cost to reflect the actual rate. The ICR schedule will be sent to Email: ConsultantRates@wsdot.wa.gov.

Failure to supply this information by either the prime CONSULTANT or any of their sub-consultants shall cause the AGENCY to withhold payment of the billed ICR costs until such time as the required information is received and an overhead rate for billing purposes is approved.

The AGENCY’s Project Manager and/or the Federal Government may perform an audit of the CONSULTANT’S books and records at any time during regular business hours to determine the actual ICR rate, if they so desire.

3. Direct Non-Salary Costs: Direct Non-Salary Costs will be reimbursed at the Actual Cost to the CONSULTANT. These charges may include, but are not limited to, the following items: travel, printing, long distance telephone, supplies, computer charges and fees of sub-consultants. Air or train travel will be reimbursed only to economy class levels unless otherwise approved by the AGENCY. The CONSULTANT shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance with WSDOT’s Accounting Manual M 13-82, Chapter 10 – Travel Rules and Procedures, and revisions thereto. Air, train, and rental car costs shall be reimbursed in accordance with 48 Code of Federal Regulations (CFR) Part 31.205-46 “Travel Costs.” The billing for Direct Non-Salary Costs shall include an itemized listing of the charges directly identifiable with the PROJECT. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the AGENCY upon request. All above charges must be necessary for the services provided under this AGREEMENT.

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4. Fixed Fee: The Fixed Fee, which represents the CONSULTANT’S profit, is shown in attached Exhibits “D” and “E” of this AGREEMENT. This fee is based on the Scope of Work defined in this AGREEMENT and the estimated person-hours required to perform the stated Scope of Work. In the event the CONSULTANT enters into a supplemental AGREEMENT for additional work, the supplemental AGREEMENT may include provisions for the added costs and an appropriate additional fee. The Fixed Fee will be prorated and paid monthly in proportion to the percentage of work completed by the CONSULTANT and reported in the Monthly Progress Reports accompanying the billings. Any portion of the Fixed Fee earned but not previously paid in the progress payments will be covered in the final payment, subject to the provisions of Section IX entitled “Termination of Agreement.”

5. Management Reserve Fund (MRF): The AGENCY may desire to establish MRF to provide the Agreement Administrator with the flexibility to authorize additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of $100,000 or 10% of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the MRF is shown in the heading of this AGREEMENT. This fund may not be replenished. Any changes requiring additional costs in excess of the MRF shall be made in accordance with Section XIII, “Changes of Work.”

6. Maximum Total Amount Payable: The Maximum Total Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The Maximum Total Amount Payable is comprised of the Total Amount Authorized, and the MRF. The Maximum Total Amount Payable does not include payment for Extra Work as stipulated in Section XIII, “Changes of Work.” No minimum amount payable is guaranteed under this AGREEMENT.

B. Monthly Progress Payments: The CONSULTANT may submit billings to the AGENCY for reimbursement of Actual Costs plus the ICR and calculated fee on a monthly basis during the progress of the work. Such billings shall be in a format approved by the AGENCY and accompanied by the monthly progress reports required under Section III, “General Requirements” of this AGREEMENT. The billings will be supported by an itemized listing for each item including Direct (RAW) Labor, Direct Non-Salary, and allowable ICR Costs to which will be added the prorated Fixed Fee. To provide a means of verifying the billed Direct (RAW) Labor costs for CONSULTANT employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, Direct (RAW) Labor rates, and present duties of those employees performing work on the PROJECT at the time of the interview.

C. Final Payment: Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the work under this AGREEMENT, contingent, if applicable, upon receipt of all PS&E, plans, maps, notes, reports, electronic data and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such Final Payment by the CONSULTANT shall constitute a release of all claims for payment, which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

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

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

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

VI. Sub-Contracting

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

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

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

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

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

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

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

VII. Employment and Organizational Conflict of Interest

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

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may arise under any Workmen’s
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)
- Age Discrimination Act of 1975 (42 U.S.C. Chapter 76 § 6101 et. seq.)
- Civil Rights Restoration Act of 1987 (Public Law 100-259)
- American with Disabilities Act of 1990 (42 U.S.C. Chapter 126 § 12101 et. seq.)
- 23 CFR Part 200
- 49 CFR Part 21
- 49 CFR Part 26
- RCW 49.60.180

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

IX. Termination of Agreement

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

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

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

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

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

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

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

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

X. Changes of Work

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

XI. Disputes

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

Agreement Number:
XII. Legal Relations

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

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

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

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

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

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

Agreement Number:
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 amount or one million dollars ($1,000,000.00), whichever is greater, unless the limit of liability is increased by the AGENCY pursuant to Exhibit H. In no case shall the CONSULTANT’s professional liability to third parties be limited in any way.

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

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

XIII. Extra Work

A. The AGENCY may at any time, by written order, make changes within the general scope of this AGREEMENT in the SERVICES to be performed.

B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the SERVICES under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of this AGREEMENT, the AGENCY shall make an equitable adjustment in the: (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify this AGREEMENT accordingly.

C. The CONSULTANT must submit any “request for equitable adjustment,” hereafter referred to as “CLAIM,” under this clause within thirty (30) days from the date of receipt of the written order. However, if the AGENCY decides that the facts justify it, the AGENCY may receive and act upon a CLAIM submitted before final payment of this AGREEMENT.

D. Failure to agree to any adjustment shall be a dispute under the section XI “Disputes” clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.

E. Notwithstanding the terms and conditions of paragraphs (A.) and (B.) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

XIV. Endorsement of Plans

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

XV. Federal Review

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

XVI. Certification of the Consultant and the Agency

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

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

XVIII. Execution and Acceptance

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

XIX. Protection of Confidential Information

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

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

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

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

Agreement Number:
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, whichever is. “Proprietary and/or confidential information” is not meant to include any information which, at the time of its disclosure: (i) is already known to the other party; (ii) is rightfully disclosed to one of the parties by a third party that is not acting as an agent or representative for the other party; (iii) is independently developed by or for the other party; (iv) is publicly known; or (v) is generally utilized by unaffiliated third parties engaged in the same business or businesses as the CONSULTANT.

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

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

XX. Records Maintenance

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

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

Project No.

Agreement Number:

WSDOT Form 140-089 EF Exhibit A
Revised 10/30/2014
Exhibit B
DBE Participation

Agreement Number:
Exhibit C

Preparation and Delivery of Electronic Engineering and Other Data

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

I. Surveying, Roadway Design & Plans Preparation Section
   A. Survey Data

   B. Roadway Design Files

   C. Computer Aided Drafting Files

Agreement Number:
D. Specify the Agency’s Right to Review Product with the Consultant

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

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

Agreement Number:
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 E

Sub-consultant Cost Computations

There isn’t 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 F
Title VI Assurances

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

1. Compliance with Regulations: The CONSULTANT shall comply with the Regulations relative to non-discrimination in federally assisted programs of the AGENCY, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the “REGULATIONS”), which are herein incorporated by reference and made a part of this AGREEMENT.

2. Non-discrimination: The CONSULTANT, with regard to the work performed during 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.
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<tr>
<th>Exhibit G-1(a)</th>
<th>Certification of Consultant</th>
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<td>Exhibit G-1(b)</td>
<td>Certification of ______________________________</td>
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<td>Exhibit G-2</td>
<td>Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions</td>
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<tr>
<td>Exhibit G-3</td>
<td>Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying</td>
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<tr>
<td>Exhibit G-4</td>
<td>Certificate of Current Cost or Pricing Data</td>
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Agreement Number:
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

Agreement Number:

WSDOT Form 140-089 EF Exhibit G
Revised 10/30/2014
Exhibit G-1(b)  Certification of

I hereby certify that I am the:

☐

☐ Other

of the , and

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

a) Employ or retain, or agree to employ to retain, any firm or person; or

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

I acknowledge that this certificate is to be furnished to the

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

_________________________  _______________________
Signature                             Date

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

I. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

B. Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State anti-trust statues 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

Agreement Number:

WSDOT Form 140-089 EF Exhibit G Revised 10/30/2014
Exhibit G-3  Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, a member of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative AGREEMENT, and the extension, continuation, renewal, amendment, or modification of Federal contract, grant, loan or cooperative AGREEMENT.

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

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

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

Consultant (Firm Name)

________________________________________
Signature (Authorized Official of Consultant)

________________________________________
Date

Agreement Number:
Exhibit G-4  Certificate of Current Cost or Pricing Data

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

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

Firm:

________________________________________  __________________________________________
Signature                                      Title

Date of Execution***:

________________________________________  __________________________________________

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

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

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

Agreement Number:
Exhibit H
Liability Insurance Increase

To Be Used Only If Insurance Requirements Are Increased

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

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

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

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

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

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

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

Notes: Cost of added insurance requirements: $.

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

Agreement Number:
Exhibit I

Alleged Consultant Design Error Procedures

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

Step 1 Potential Consultant Design Error(s) is Identified by Agency’s Project Manager
At the first indication of potential consultant design error(s), the first step in the process is for the Agency’s project manager to notify the Director of Public Works or Agency Engineer regarding the potential design error(s). For federally funded projects, the Region 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.

Agreement Number:
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

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

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

Step 1 Consultant Files a Claim with the Agency Project Manager

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

The consultant’s claim must outline the following:

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

Step 2 Review by Agency Personnel Regarding the Consultant’s Claim for Additional Compensation

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

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

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

Agreement Number:
Step 3 Preparation of Support Documentation Regarding Consultant’s Claim(s)

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

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

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

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

Step 5 Informing Consultant of Decision Regarding the Claim

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

Step 6 Preparation of Supplement or New Agreement for the Consultant’s Claim(s)

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

The CONSULTANT, on a monthly basis, is required to submit DBE Participation of the amounts paid to all DBE firms invoiced for this AGREEMENT.

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

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

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

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

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

Agreement Number:
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).

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 acknowledgement between the parties. Such final written acknowledgement 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 acknowledgement, 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 acknowledgement between the parties. Such final written acknowledgement 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 rates 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 acknowledgement.

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 card 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. The monthly billings shall be supported by detailed statements 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 comply with all applicable sections of the WORKMEN’S Compensation Act as set forth in 49 CFR Part 26. 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.

Agreement Number:
VIII. Nondiscrimination

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

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

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

IX. Termination of Agreement

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

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

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

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

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

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

Agreement Number:
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 hereby 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

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

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

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

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

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

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.

Agreement Number:
Insurance Coverage

A. Worker’s compensation and employer’s liability insurance as required by the STATE.

B. Commercial general liability insurance written under ISO Form CG 00 01 12 04 or its equivalent with minimum limits of one million dollars ($1,000,000.00) per occurrence and two million dollars ($2,000,000.00) in the aggregate for each policy period.

C. Business auto liability insurance written under ISO Form CG 00 01 10 01 or equivalent providing coverage for any “Auto” (Symbol 1) used in an amount not less than a one million dollar ($1,000,000.00) combined single limit for each occurrence.

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

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

Name:
Agency:
Address:
City: State: Zip:
Email:
Phone:
Facsimile:

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

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

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

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

A. The AGENCY may at any time, by written order, make changes within the general scope of this AGREEMENT in the SERVICES to be performed.

B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the SERVICES under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of this AGREEMENT, the AGENCY shall make an equitable adjustment in the: (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify this AGREEMENT accordingly.

C. The CONSULTANT must submit any “request for equitable adjustment,” hereafter referred to as “CLAIM,” under this clause within thirty (30) days from the date of receipt of the written order. However, if the AGENCY decides that the facts justify it, the AGENCY may receive and act upon a CLAIM submitted before final payment of this AGREEMENT.

D. Failure to agree to any adjustment shall be a dispute under the section XI “Disputes” clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.

E. Notwithstanding the terms and conditions of paragraphs (A.) and (B.) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

XIV. Endorsement of Plans

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

XV. Federal Review

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

XVI. Certification of the Consultant and the Agency

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

Agreement Number:
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, whichever is. “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, ledgers, invoices, accounting records, work sheets, charts, notes, drafts, scrubbings, 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.

Agreement Number:
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.

Agreement Number: 
Exhibit A
Scope of Work

Project No.

Agreement Number:
Exhibit B

DBE Participation

Agreement Number:
Exhibit C

Preparation and Delivery of Electronic Engineering and Other Data

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

I. Surveying, Roadway Design & Plans Preparation Section
   A. Survey Data

B. Roadway Design Files

C. Computer Aided Drafting Files
D. Specify the Agency’s Right to Review Product with the Consultant

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

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

Agreement Number:

WSDOT Form 140-089 EF Exhibit D
Revised 10/30/2014
Exhibit E
Sub-consultant Cost Computations

There isn’t 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 F**  
**Title VI Assurances**

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

1. **Compliance with Regulations:** The CONSULTANT shall comply with the Regulations relative to non-discrimination in federally assisted programs of the AGENCY, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the “REGULATIONS”), which are herein incorporated by reference and made a part of this AGREEMENT.

2. **Non-discrimination:** The CONSULTANT, with regard to the work performed during 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.

Agreement Number:
Exhibit G
Certification Documents

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

Agreement Number:
Exhibit G-1(a) Certification of Consultant

I hereby certify that I am the 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

Agreement Number:

WSDOT Form 140-089 EF Exhibit G Revised 10/30/2014
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 statues 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

Agreement Number:

WSDOT Form 140-089 EF Exhibit G
Revised 10/30/2014
Exhibit G-3 Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, a officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative AGREEMENT, and the extension, continuation, renewal, amendment, or modification of Federal contract, grant, loan or cooperative AGREEMENT.

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

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

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

______________________________
Consultant (Firm Name)

______________________________
Signature (Authorized Official of Consultant)    Date

Agreement Number:

WSDOT Form 140-089 EF Exhibit G
Revised 10/30/2014

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November 2014
Exhibit G-4  Certificate of Current Cost or Pricing Data

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

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

Firm:

Signature

Title

Date of Execution***:

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

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

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

Agreement Number:
Exhibit H

Liability Insurance Increase

To Be Used Only If Insurance Requirements Are Increased

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

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

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

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

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

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

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

Notes: Cost of added insurance requirements: $ .

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

Alleged Consultant Design Error Procedures

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

Step 1 Potential Consultant Design Error(s) is Identified by Agency’s Project Manager

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

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

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

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

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

Step 4 Attempt to Resolve Alleged Design Error with Consultant

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

• It is determined via mutual agreement that there is not a consultant design error(s). If this is the case, then the process will not proceed beyond this point.

• It is determined via mutual agreement that a consultant design error(s) occurred. If this is the case, then the Director of Public Works or Agency Engineer, or their representatives, negotiate a settlement with the consultant. The settlement would be paid to the agency or the amount would be reduced from the consultant’s agreement with the agency for the services on the project in which the design error took place. The agency is to provide LP, through the Region Local Programs Engineer, a summary of the settlement for review and to make adjustments, if any, as to how the settlement affects federal reimbursements. No further action is required.

• There is not a mutual agreement regarding the alleged consultant design error(s). The consultant may request that the alleged design error(s) issue be forwarded to the Director of Public Works or Agency Engineer for review. If the Director of Public Works or Agency Engineer, after review with their legal counsel, is not able to reach mutual agreement with the consultant, proceed to Step 5.
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

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

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

Step 1 Consultant Files a Claim with the Agency Project Manager

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

The consultant’s claim must outline the following:

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

Step 2 Review by Agency Personnel Regarding the Consultant’s Claim for Additional Compensation

After the consultant has completed step 1, the next step in the process is to forward the request to the Agency’s project manager. The project manager will review the consultant’s claim and will met 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 in needed regarding the claim procedures.

If the Agency does not agree with the consultant’s claim, proceed to step 3 of the procedures.
Step 3 Preparation of Support Documentation Regarding Consultant’s Claim(s)

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

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

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

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

Step 5 Informing Consultant of Decision Regarding the Claim

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

Step 6 Preparation of Supplement or New Agreement for the Consultant’s Claim(s)

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

Agreement Number:
Local Agency A & E Professional Services

Lump Sum Consultant Agreement

Agreement Number:

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<tr>
<th>Firm/Organization Legal Name (do not use dba's):</th>
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<th>1099 Form Required</th>
<th>Federal Participation</th>
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<th>Description of Work</th>
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<td>No DBE Participation</td>
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<th>Maximum Amount Payable:</th>
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<tr>
<th>Exhibit</th>
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<td>Exhibit B</td>
<td>DBE Participation</td>
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<td>Preparation and Delivery of Electronic Engineering and Other Data</td>
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<td>Sub-consultant Cost Computations</td>
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Index of Exhibits
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. 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 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.

The CONSULTANT, on a monthly basis, is required to submit DBE Participation of the amounts paid to all DBE firms invoiced for this AGREEMENT.

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

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

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

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

If to CONSULTANT:  
Name:  
Agency:  
Address:  
City:  State:  Zip:  
Email:  
Phone:  
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 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). The estimate in support of the lump sum amount is attached hereto as Exhibits “D” and “E” and by this reference made part of this AGREEMENT.

A. Lump Sum Agreement: Payment for all consulting SERVICES shall be on the basis of a lump sum amount as shown on page one (1) of this AGREEMENT.

B. Maximum Amount Payable: The Maximum Total Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT on page one (1.). The Maximum Amount Payable does not include payment for extra work as stipulated in section XIII, “Extra Work.” No minimum amount payable is guaranteed under this AGREEMENT.

C. Monthly Progress Payments: The CONSULTANT may submit billings to the AGENCY for reimbursement of costs on a monthly basis. To provide a means of verifying the billed salary costs for the CONSULTANT’s employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates, and present duties of those employees performing work on the SERVICES at the time of the interview.

D. Final Payment: Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the SERVICES under this AGREEMENT, contingent, if applicable, upon receipt of all PS&E, plans, maps, notes, reports, electronic data, and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such Final Payment by the CONSULTANT shall constitute a release of all claims for payment, which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

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

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

A 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.

Agreement Number:
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.

Agreement Number:
VIII. Nondiscrimination

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

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

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

IX. Termination of Agreement

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

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

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

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

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

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

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

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

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

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

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

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.

Agreement Number:
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 amount or one million dollars ($1,000,000.00), whichever is greater, unless the limit of liability is increased by the AGENCY pursuant to Exhibit H. In no case shall the CONSULTANT’s professional liability to third parties be limited in any way.

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

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

Agreement Number:
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 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.

Agreement Number:
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, whichever is. “Proprietary and/or confidential information” is not meant to include any information which, at the time of its disclosure: (i) is already known to the other party; (ii) is rightfully disclosed to one of the parties by a third party that is not acting as an agent or representative for the other party; (iii) is independently developed by or for the other party; (iv) is publicly known; or (v) is generally utilized by unaffiliated third parties engaged in the same business or businesses as the CONSULTANT.

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

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

XX. Records Maintenance

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

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

Agreement Number:
Exhibit A
Scope of Work

Project No.

Agreement Number:

WSDOT Form 140-089 EF Exhibit A
Revised 10/30/2014

Page 1 of 1
Exhibit C

Preparation and Delivery of Electronic Engineering and Other Data

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

I. Surveying, Roadway Design & Plans Preparation Section
   A. Survey Data

B. Roadway Design Files

C. Computer Aided Drafting Files
D. Specify the Agency’s Right to Review Product with the Consultant

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

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

Agreement Number:

WSDOT Form 140-089 EF Exhibit D
Revised 10/30/2014

Page 1 of 1
Exhibit E
Sub-consultant Cost Computations

There isn’t 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 F
Title VI Assurances

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

1. Compliance with Regulations: The CONSULTANT shall comply with the Regulations relative to non-discrimination in federally assisted programs of the AGENCY, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the “REGULATIONS”), which are herein incorporated by reference and made a part of this AGREEMENT.

2. Non-discrimination: The CONSULTANT, with regard to the work performed during 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 Documents**

<table>
<thead>
<tr>
<th>Exhibit G-1(a)</th>
<th>Certification of Consultant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exhibit G-1(b)</td>
<td>Certification of _______________</td>
</tr>
<tr>
<td>Exhibit G-2</td>
<td>Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions</td>
</tr>
<tr>
<td>Exhibit G-3</td>
<td>Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying</td>
</tr>
<tr>
<td>Exhibit G-4</td>
<td>Certificate of Current Cost or Pricing Data</td>
</tr>
</tbody>
</table>

Agreement Number:
Exhibit G-1(a) Certification of Consultant

I hereby certify that I am the 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

Agreement Number:

WSDOT Form 140-089 EF Exhibit G
Revised 10/30/2014
Exhibit G-1(b) Certification of

I hereby certify that I am the:

☐

☐ Other

of the , and

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

a) Employ or retain, or agree to employ to retain, any firm or person; or

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

I acknowledge that this certificate is to be furnished to the

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

Signature Date

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

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

Agreement Number:

WSDOT Form 140-089 EF Exhibit G
Revised 10/30/2014
Exhibit G-3  Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, a officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative AGREEMENT, and the extension, continuation, renewal, amendment, or modification of Federal contract, grant, loan or cooperative AGREEMENT.

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

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

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

______________________________
Consultant (Firm Name)

______________________________
Signature (Authorized Official of Consultant)  Date

Agreement Number:

WSDOT Form 140-089 EF Exhibit G
Revised 10/30/2014

Page 1 of 1
Exhibit G-4 Certificate of Current Cost or Pricing Data

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

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

Firm:

________________________________________  
Signature                          Title

Date of Execution***:

________________________________________

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

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

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

Agreement Number:

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WSDOT Form 140-089 EF Exhibit G
Revised 10/30/2014
Exhibit H

Liability Insurance Increase

To Be Used Only If Insurance Requirements Are Increased

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

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

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

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

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

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

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

Notes: Cost of added insurance requirements: $ .

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

Agreement Number:
Exhibit I

Alleged Consultant Design Error Procedures

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

Step 1 Potential Consultant Design Error(s) is Identified by Agency’s Project Manager
At the first indication of potential consultant design error(s), the first step in the process is for the Agency’s project manager to notify the Director of Public Works or Agency Engineer regarding the potential design error(s). For federally funded projects, the Region 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.

Agreement Number:
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.

Agreement Number:
Exhibit J
Consultant Claim Procedures

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

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

Step 1 Consultant Files a Claim with the Agency Project Manager

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

The consultant’s claim must outline the following:

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

Step 2 Review by Agency Personnel Regarding the Consultant’s Claim for Additional Compensation

After the consultant has completed step 1, the next step in the process is to forward the request to the Agency’s project manager. The project manager will review the consultant’s claim and will met 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 in needed regarding the claim procedures.

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

Agreement Number:
Step 3 Preparation of Support Documentation Regarding Consultant’s Claim(s)

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

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

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

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

Step 5 Informing Consultant of Decision Regarding the Claim

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

Step 6 Preparation of Supplement or New Agreement for the Consultant’s Claim(s)

The agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit.
# Local Agency Professional Services
## Appendix 31.74 Cost Plus Fixed Fee Consultant Agreement

### Local Agency Professional Services

#### Cost Plus Fixed Fee Consultant Agreement

<table>
<thead>
<tr>
<th>Agreement Number:</th>
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### Index of Exhibits

- **Exhibit A** Scope of Work
- **Exhibit B** DBE Participation
- **Exhibit C** Preparation and Delivery of Electronic Engineering and Other Data
- **Exhibit D** Prime Consultant Cost Computations
- **Exhibit E** Sub-consultant Cost Computations
- **Exhibit F** Title VI Assurances
- **Exhibit G** Certification Documents
- **Exhibit H** Liability Insurance Increase
- **Exhibit I** Alleged Consultant Design Error Procedures
- **Exhibit J** Consultant Claim Procedures
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.

The CONSULTANT, on a monthly basis, is required to submit DBE Participation of the amounts paid to all DBE firms invoiced for this AGREEMENT.

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

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

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

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

If to CONSULTANT:
Name:
Agency:
Address:
City: State: Zip:
Email:
Phone:
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. This AGREEMENT may require filing with the Department of Enterprise Services (DES) pursuant to RCW 39.26.140. If such approval is required by DES, this AGREEMENT shall not bind the AGENCY until approved by DES. If the AGREEMENT must be approved by DES, work cannot begin, nor payment made until ten (10) or more working days following the date of filing, and, until approved by DES. Any subsequent SUPPLEMENTAL AGREEMENT may also be subject to filing and/or approval from DES. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT titled “Completion Date.”

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

Agreement Number:
V. Payment Provisions

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

A. Actual Costs: Payment for all consulting services for this PROJECT shall be on the basis of the CONSULTANT’S actual cost plus a fixed fee. The actual cost shall include direct salary cost, indirect cost rate, and direct non-salary costs.

1. Direct (RAW) Labor Costs: The Direct (RAW) Labor Cost is the direct salary paid to principals, professional, technical, and clerical personnel for the time they are productively engaged in work necessary to fulfill the terms of this AGREEMENT. The CONSULTANT shall maintain support data to verify the direct salary costs billed to the AGENCY.

2. Indirect Cost Rate (ICR) Costs: ICR Costs are those costs, other than direct costs, which are included as such on the books of the CONSULTANT in the normal everyday keeping of its books. Progress payments shall be made at the ICR rates shown in attached Exhibits “D” and “E” of this AGREEMENT. Total ICR payment shall be based on Actual Costs. The AGENCY agrees to reimburse the CONSULTANT the actual ICR costs verified by audit, up to the Maximum Total Amount Payable, authorized under this AGREEMENT, when accumulated with all other Actual Costs.

A summary of the CONSULTANT’S cost estimate and the ICR percentage is shown in Exhibits “D” and “E”, attached hereto and by this reference made part of this AGREEMENT. The CONSULTANT (prime and all sub-consultants) will submit to the AGENCY within six (6) months after the end of each firm’s fiscal year, an ICR schedule in the format required by the AGENCY (cost category, dollar expenditures, etc.) for the purpose of adjusting the ICR rate for billings received and paid during the fiscal year represented by the ICR schedule. It shall also be used for the computation of progress payments during the following year and for retroactively adjusting the previous year’s ICR cost to reflect the actual rate. The ICR schedule will be sent to Email: ConsultantRates@wsdot.wa.gov.

Failure to supply this information by either the prime CONSULTANT or any of their sub-consultants shall cause the AGENCY to withhold payment of the billed ICR costs until such time as the required information is received and an overhead rate for billing purposes is approved.

The AGENCY’s Project Manager and/or the Federal Government may perform an audit of the CONSULTANT’S books and records at any time during regular business hours to determine the actual ICR rate, if they so desire.

3. Direct Non-Salary Costs: Direct Non-Salary Costs will be reimbursed at the Actual Cost to the CONSULTANT. These charges may include, but are not limited to, the following items: travel, printing, long distance telephone, supplies, computer charges and fees of sub-consultants. Air or train travel will be reimbursed only to economy class levels unless otherwise approved by the AGENCY. The CONSULTANT shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance with the WSDOT Accounting Manual M 13-82, Chapter 10 – Travel Rules and Procedures, and revisions thereto. Air, train, and rental car costs shall be reimbursed in accordance with 48 Code of Federal Regulations (CFR) Part 31.205-46 “Travel Costs.” The billing for Direct Non-Salary Costs shall include an itemized listing of the charges directly identifiable with the PROJECT. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the AGENCY upon request. All above charges must be necessary for the services provided under this AGREEMENT.
4. Fixed Fee: The Fixed Fee, which represents the CONSULTANT’S profit, is shown in attached Exhibits “D” and “E” of this AGREEMENT. This fee is based on the Scope of Work defined in this AGREEMENT and the estimated person-hours required to perform the stated Scope of Work. In the event the CONSULTANT enters into a supplemental AGREEMENT for additional work, the supplemental AGREEMENT may include provisions for the added costs and an appropriate additional fee. The Fixed Fee will be prorated and paid monthly in proportion to the percentage of work completed by the CONSULTANT and reported in the Monthly Progress Reports accompanying the billings. Any portion of the Fixed Fee earned but not previously paid in the progress payments will be covered in the final payment, subject to the provisions of Section IX entitled “Termination of Agreement.”

5. Management Reserve Fund (MRF): The AGENCY may desire to establish a MRF to provide the Agreement Administrator with the flexibility to authorize additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of $100,000 or 10% of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the MRF is shown in the heading of this AGREEMENT. This fund may not be replenished. Any changes requiring additional costs in excess of the MRF shall be made in accordance with Section XIII, “Changes of Work.”

6. Maximum Total Amount Payable: The Maximum Total Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The Maximum Total Amount Payable is comprised of the Total Amount Authorized, and the MRF. The Maximum Total Amount Payable does not include payment for Extra Work as stipulated in Section XIII, “Changes of Work.” No minimum amount payable is guaranteed under this AGREEMENT.

B. Monthly Progress Payments: The CONSULTANT may submit billings to the AGENCY for reimbursement of Actual Costs plus the ICR and calculated fee on a monthly basis during the progress of the work. Such billings shall be in a format approved by the AGENCY and accompanied by the monthly progress reports required under Section III, “General Requirements” of this AGREEMENT. The billings will be supported by an itemized listing for each item including Direct (RAW) Labor, Direct Non-Salary, and allowable ICR Costs to which will be added the prorated Fixed Fee. To provide a means of verifying the billed Direct (RAW) Labor costs for CONSULTANT employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, Direct (RAW) Labor rates, and present duties of those employees performing work on the PROJECT at the time of the interview.

C. Final Payment: Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the work under this AGREEMENT, contingent, if applicable, upon receipt of all PS&E, plans, maps, notes, reports, electronic data and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such Final Payment by the CONSULTANT shall constitute a release of all claims for payment, which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

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

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

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

VI. Sub-Contracting

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

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

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

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

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

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

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

VII. Employment and Organizational Conflict of Interest

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

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may arise under any Workmen’s Agreement Number:
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)
- Age Discrimination Act of 1975 (42 U.S.C. Chapter 76 § 6101 et. seq.)
- Civil Rights Restoration Act of 1987 (Public Law 100-259)
- American with Disabilities Act of 1990 (42 U.S.C. Chapter 126 § 12101 et. seq.)
- 23 CFR Part 200
- 49 CFR Part 21
- 49 CFR Part 26
- RCW 49.60.180

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

IX. Termination of Agreement

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

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

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

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

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

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

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

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

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

X. Changes of Work

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

XI. Disputes

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

Agreement Number:
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 the AGENCY’s, their agents’, officers’ and employees’ failure to comply with specific written instructions regarding use provided to STATE and/or the AGENCY, their agents, officers and employees by the CONSULTANT, their agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable.

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

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

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT’s own employees or its agents against the STATE and/or the AGENCY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW. This waiver has been mutually negotiated by the Parties.
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 amount or one million dollars ($1,000,000.00), whichever is greater, unless the limit of liability is increased by the AGENCY pursuant to Exhibit H. In no case shall the CONSULTANT’s professional liability to third parties be limited in any way.
The parties enter into this AGREEMENT for the sole benefit of the parties, and to the exclusion of any third party, and no third party beneficiary is intended or created by the execution of this AGREEMENT.

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

**XIII. Extra Work**

A. The AGENCY may at any time, by written order, make changes within the general scope of this AGREEMENT in the SERVICES to be performed.

B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the SERVICES under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of this AGREEMENT, the AGENCY shall make an equitable adjustment in the: (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify this AGREEMENT accordingly.

C. The CONSULTANT must submit any “request for equitable adjustment,” hereafter referred to as “CLAIM,” under this clause within thirty (30) days from the date of receipt of the written order. However, if the AGENCY decides that the facts justify it, the AGENCY may receive and act upon a CLAIM submitted before final payment of this AGREEMENT.

D. Failure to agree to any adjustment shall be a dispute under the section XI “Disputes” clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.

E. Notwithstanding the terms and conditions of paragraphs (A.) and (B.) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

**XIV. Endorsement of Plans**

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

**XV. Federal Review**

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

**XVI. Certification of the Consultant and the AGENCY**

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

Agreement Number:
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, whichever is. “Proprietary and/or confidential information” is not meant to include any information which, at the time of its disclosure: (i) is already known to the other party; (ii) is rightfully disclosed to one of the parties by a third party that is not acting as an agent or representative for the other party; (iii) is independently developed by or for the other party; (iv) is publicly known; or (v) is generally utilized by unaffiliated third parties engaged in the same business or businesses as the CONSULTANT.

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

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

XX. Records Maintenance

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

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

Agreement Number:
Exhibit A
Scope of Work

Project No.

Agreement Number:

WSDOT Form 140-089 EF Exhibit A
Revised 10/30/2014
Exhibit B
DBE Participation

Agreement Number:
Exhibit C

Preparation and Delivery of Electronic Engineering and Other Data

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

I. Surveying, Roadway Design & Plans Preparation Section
   A. Survey Data

   B. Roadway Design Files

   C. Computer Aided Drafting Files
D. Specify the Agency’s Right to Review Product with the Consultant

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

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

Agreement Number: 
Exhibit E

Sub-consultant Cost Computations

There isn’t 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.


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.

Agreement Number:
## Exhibit G

### Certification Documents

<table>
<thead>
<tr>
<th>Exhibit</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>G-1(a)</td>
<td>Certification of Consultant</td>
</tr>
<tr>
<td>G-1(b)</td>
<td>Certification of _________________</td>
</tr>
<tr>
<td>G-2</td>
<td>Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions</td>
</tr>
<tr>
<td>G-3</td>
<td>Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying</td>
</tr>
<tr>
<td>G-4</td>
<td>Certificate of Current Cost or Pricing Data</td>
</tr>
</tbody>
</table>

Agreement Number:
Exhibit G-1(a)  Certification of Consultant

I hereby certify that I am the 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

Agreement Number:

WSDOT Form 140-089 EF Exhibit G
Revised 10/30/2014

Page 1 of 1
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 statues 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

Agreement Number:
Exhibit G-3  Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, a officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative AGREEMENT, and the extension, continuation, renewal, amendment, or modification of Federal contract, grant, loan or cooperative AGREEMENT.

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

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

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

__________________________________________  ___________
Consultant (Firm Name)                             Date

__________________________________________  ___________
Signature (Authorized Official of Consultant)       Date

Agreement Number:

WSDOT Form 140-089 EF Exhibit G
Revised 10/30/2014
Exhibit G-4 Certificate of Current Cost or Pricing Data

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

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

Firm:

__________________________________________
Signature

__________________________________________
Title

Date of Execution***:

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

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

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

Agreement Number:
Exhibit H
Liability Insurance Increase

To Be Used Only If Insurance Requirements Are Increased

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

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

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

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

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

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

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

Notes: Cost of added insurance requirements: $ .

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

Agreement Number:
Exhibit I
Alleged Consultant Design Error Procedures

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

Step 1 Potential Consultant Design Error(s) is Identified by Agency’s Project Manager
At the first indication of potential consultant design error(s), the first step in the process is for the Agency’s project manager to notify the Director of Public Works or Agency Engineer regarding the potential design error(s). For federally funded projects, the Region 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.

Agreement Number:
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**

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

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

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

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

The consultant’s claim must outline the following:

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

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

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

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

If the Agency does not agree with the consultant’s claim, proceed to step 3 of the procedures.
Step 3 Preparation of Support Documentation Regarding Consultant’s Claim(s)

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

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

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

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

## Negotiated Hourly Rate Consultant Agreement

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<tr>
<th>Agreement Number:</th>
<th>Does this Require DES filing?</th>
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<td>UBI Number</td>
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<tr>
<td>Maximum Amount Payable:</td>
<td></td>
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### Index of Exhibits

- **Exhibit A**: Scope of Work
- **Exhibit A-2**: Scope of Work (Task Order)
- **Exhibit B**: DBE Participation
- **Exhibit C**: Preparation and Delivery of Electronic Engineering and Other Data
- **Exhibit D**: Prime Consultant Cost Computations
- **Exhibit E**: Sub-consultant Cost Computations
- **Exhibit F**: Title VI Assurances
- **Exhibit G**: Certification Documents
- **Exhibit H**: Liability Insurance Increase
- **Exhibit I**: Alleged Consultant Design Error Procedures
- **Exhibit J**: Consultant Claim Procedures
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. 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 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.

Agreement Number:
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.

The CONSULTANT, on a monthly basis, is required to submit DBE Participation of the amounts paid to all DBE firms invoiced for this AGREEMENT.

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

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

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

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

If to CONSULTANT:
Name:
Agency:
Address:
City: State: Zip:
Email:
Phone:
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. This AGREEMENT may require filing with the Department of Enterprise Services (DES) pursuant to RCW 39.26.140. If such approval is required by DES, this AGREEMENT shall not bind the AGENCY until approved by DES. If the AGREEMENT must be approved by DES, work cannot begin, nor payment made until ten (10) or more working days following the date of filing, and until approved by DES. Any subsequent SUPPLEMENTAL AGREEMENT may also be subject to filing and/or approval from DES. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT titled “Completion Date.”

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

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 acknowledgement between the parties. Such final written acknowledgement 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 acknowledgement, 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 acknowledgement between the parties. Such final written acknowledgement 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 rates 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 acknowledgement.

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.

Agreement Number:
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. 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 card 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 AGENCY 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. The monthly billings shall be supported by detailed statements 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 the 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.

Agreement Number:
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 Task Order 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.

Agreement Number:
VIII. Nondiscrimination

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

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. Chapter 21 Subchapter V § 2000d through 2000d-4a)
- 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.

Agreement Number:
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), 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 Agreement Number:

Local Agency Professional Services Negotiated Hourly Rate Consultant Agreement
Revised 10/30/2014

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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/or 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 the AGENCY, its agents, officers, employees, sub-consultants, subcontractors
and or vendors, of any tier, or any other persons for whom the STATE and/or the AGENCY may be legally liable,
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, its 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’s and/or the AGENCY’s, their agents’, officers’ and employees’ failure to comply
with specific written instructions regarding use provided to STATE and/or the AGENCY, their agents, officers and
employees by the CONSULTANT, its agents, employees, sub-consultants, subcontractors or vendors, of any tier, or
any other persons for whom the CONSULTANT may be legally liable.

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

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

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

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

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

A. Worker’s compensation and employer’s liability insurance as required by the STATE.

B. Commercial general liability insurance written under ISO Form CG 00 01 12 04 or its equivalent with minimum limits of one million dollars ($1,000,000.00) per occurrence and two million dollars ($2,000,000.00) in the aggregate for each policy period.

C. Business auto liability insurance written under ISO Form CG 00 01 10 01 or equivalent providing coverage for any “Auto” (Symbol 1) used in an amount not less than a one million dollar ($1,000,000.00) combined single limit for each occurrence.

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

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

Name:
Agency:
Address:
City: State: Zip:
Email:
Phone:
Facsimile:

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

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

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

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

Agreement Number:
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.

Agreement Number:
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, whichever is. “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.

XIX. Records Maintenance

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

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

Agreement Number:
Exhibit A

Scope of Work

Project No.

Agreement Number:

WSDOT Form 140-089 EF Exhibit A
Revised 10/30/2014
Exhibit A-2
Scope of Work (Task Order)

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

A.
B.
C.
D.
E.
F.

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

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

Task Number:

The general provisions and clauses of Agreement and effect for this Task Assignment.

Location of Project:

Project Title:

Maximum Amount Payable Per Task Assignment:

Completion Date:

Description of Work:
Note attachments and give brief description)
Exhibit C

Preparation and Delivery of Electronic Engineering and Other Data

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

I. Surveying, Roadway Design & Plans Preparation Section
   A. Survey Data
   B. Roadway Design Files
   C. Computer Aided Drafting Files
D. Specify the Agency’s Right to Review Product with the Consultant

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

F. Specify What Agency Furnished Services and Information Is to Be Provided
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
Exhibit E
Sub-consultant Cost Computations

There isn’t 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 F
Title VI Assurances

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

1. Compliance with Regulations: The CONSULTANT shall comply with the Regulations relative to non-discrimination in federally assisted programs of the AGENCY, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the “REGULATIONS”), which are herein incorporated by reference and made a part of this AGREEMENT.

2. Non-discrimination: The CONSULTANT, with regard to the work performed during 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.

Agreement Number:
Exhibit G  
Certification Documents

<table>
<thead>
<tr>
<th>Exhibit G-1(a)</th>
<th>Certification of Consultant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exhibit G-1(b)</td>
<td>Certification of ____________</td>
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<tr>
<td>Exhibit G-2</td>
<td>Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions</td>
</tr>
<tr>
<td>Exhibit G-3</td>
<td>Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying</td>
</tr>
<tr>
<td>Exhibit G-4</td>
<td>Certificate of Current Cost or Pricing Data</td>
</tr>
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</table>

Agreement Number:
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

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

I. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

B. Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

D. Have not within a three (3) year period preceding this application/proposal had one or more public transactions (Federal, State and local) terminated for cause or default.

II. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Consultant (Firm Name)

Signature (Authorized Official of Consultant) Date

Agreement Number:

WSDOT Form 140-089 EF Exhibit G Revised 10/30/2014
Exhibit G-3  Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, a officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative AGREEMENT, and the extension, continuation, renewal, amendment, or modification of Federal contract, grant, loan or cooperative AGREEMENT.

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

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

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

______________________________________________
Consultant (Firm Name)

______________________________________________
Signature (Authorized Official of Consultant) Date

Agreement Number:
Exhibit G-4  Certificate of Current Cost or Pricing Data

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

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

Firm:

________________________________________  __________________________
Signature                                      Title

Date of Execution***:

________________________________________  __________________________
*Identify the proposal, quotation, request for pricing adjustment, or other submission involved, giving the appropriate identifying number (e.g. project title.)
**Insert the day, month, and year, when price negotiations were concluded and price AGREEMENT was reached.
***Insert the day, month, and year, of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

Agreement Number:
Exhibit H
Liability Insurance Increase

To Be Used Only If Insurance Requirements Are Increased

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

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

Such insurance coverage shall be evidenced by one of the following methods:
- Certificate of Insurance.
- Self-insurance through an irrevocable Letter of Credit from a qualified financial institution.

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

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

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

Notes: Cost of added insurance requirements: $ .
- Include all costs, fee increase, premiums.
- This cost shall not be billed against an FHWA funded project.
- For final contracts, include this exhibit.
The purpose of this exhibit is to establish a procedure to determine if a consultant’s alleged design error is of a nature that exceeds the accepted standard of care. In addition, it will establish a uniform method for the resolution and/or cost recovery procedures in those instances where the agency believes it has suffered some material damage due to the alleged error by the consultant.

**Step 1 Potential Consultant Design Error(s) is Identified by Agency’s Project Manager**
At the first indication of potential consultant design error(s), the first step in the process is for the Agency’s project manager to notify the Director of Public Works or Agency Engineer regarding the potential design error(s). For federally funded projects, the Region Local Programs Engineer should be informed and involved in these procedures. (Note: The Director of Public Works or Agency Engineer may appoint an agency staff person other than the project manager, who has not been as directly involved in the project, to be responsible for the remaining steps in these procedures.)

**Step 2 Project Manager Documents the Alleged Consultant Design Error(s)**
After discussion of the alleged design error(s) and the magnitude of the alleged error(s), and with the Director of Public Works or Agency Engineer’s concurrence, the project manager obtains more detailed documentation than is normally required on the project. Examples include: all decisions and descriptions of work; photographs, records of labor, materials and equipment.

**Step 3 Contact the Consultant Regarding the Alleged Design Error(s)**
If it is determined that there is a need to proceed further, the next step in the process is for the project manager to contact the consultant regarding the alleged design error(s) and the magnitude of the alleged error(s). The project manager and other appropriate agency staff should represent the agency and the consultant should be represented by their project manager and any personnel (including sub-consultants) deemed appropriate for the alleged design error(s) issue.

**Step 4 Attempt to Resolve Alleged Design Error with Consultant**
After the meeting(s) with the consultant have been completed regarding the consultant’s alleged design error(s), there are three possible scenarios:

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

Agreement Number:
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

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

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

Step 1 Consultant Files a Claim with the Agency Project Manager

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

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

Step 2 Review by Agency Personnel Regarding the Consultant’s Claim for Additional Compensation

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

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

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

Agreement Number:
Step 3 Preparation of Support Documentation Regarding Consultant’s Claim(s)

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

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

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

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

Step 5 Informing Consultant of Decision Regarding the Claim

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

Step 6 Preparation of Supplement or New Agreement for the Consultant’s Claim(s)

The agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit.
### Local Agency Professional Services
#### Lump Sum Consultant Agreement

**Agreement Number:**

**Does this Require DES filing?**
- [ ] Yes
- [ ] No

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**Maximum Amount Payable:**

**Index of Exhibits**

- **Exhibit A** Scope of Work
- **Exhibit B** DBE Participation
- **Exhibit C** Preparation and Delivery of Electronic Engineering and Other Data
- **Exhibit D** Prime Consultant Cost Computations
- **Exhibit E** Sub-consultant Cost Computations
- **Exhibit F** Title VI Assurances
- **Exhibit G** Certification Documents
- **Exhibit H** Liability Insurance Increase
- **Exhibit I** Alleged Consultant Design Error Procedures
- **Exhibit J** Consultant Claim Procedures

**Agreement Number:**
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. 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 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.

Agreement Number:
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.

The CONSULTANT, on a monthly basis, is required to submit DBE Participation of the amounts paid to all DBE firms invoiced for this AGREEMENT.

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

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

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

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

If to CONSULTANT:
Name:
Agency:
Address:
City: State: Zip:
Email:
Phone:
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. This AGREEMENT may require filing with the Department of Enterprise Services (DES) pursuant to RCW 39.26.140. If such approval is required by DES, this AGREEMENT shall not bind the AGENCY until approved by DES. If the AGREEMENT must be approved by DES, work cannot begin, nor payment made until ten (10) or more working days following the date of filing, and until approved by DES. Any subsequent SUPPLEMENTAL AGREEMENT may also be subject to filing and/or approval from DES. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT titled “Completion Date.”

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

The CONSULTANT shall be paid by the AGENCY for completed 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). The estimate in support of the lump sum amount is attached hereto as Exhibits “D” and “E” and by this reference made part of this AGREEMENT.

A. Lump Sum Agreement: Payment for all consulting SERVICES shall be on the basis of a lump sum amount as shown on page one (1) of this AGREEMENT.

B. Maximum Amount Payable: The Maximum Total Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT on page one (1). The Maximum Amount Payable does not include payment for extra work as stipulated in section XIII, “Extra Work.” No minimum amount payable is guaranteed under this AGREEMENT.

C. Monthly Progress Payments: The CONSULTANT may submit billings to the AGENCY for reimbursement of costs on a monthly basis. To provide a means of verifying the billed salary costs for the CONSULTANT’s employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates, and present duties of those employees performing work on the SERVICES at the time of the interview.

D. Final Payment: Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the SERVICES under this AGREEMENT, contingent, if applicable, upon receipt of all PS&E, plans, maps, notes, reports, electronic data, and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such Final Payment by the CONSULTANT shall constitute a release of all claims for payment, which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

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

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

A 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.

Agreement Number:
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.

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 the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

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

The CONSULTANT shall not engage, on a full- or part-time basis, or other basis, during the period of 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)
- 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 which, when added to any payments previously made, shall total the same percentage of the Lump Sum Amount as the work completed at the time of termination is to the total work required for the SERVICES. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

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.

Agreement Number:
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 Agreement Number:
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 the AGENCY, their agents, officers, employees, sub-consultants, subcontractors
and or vendors, of any tier, or any other persons for whom the STATE and or the 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’s and/or the AGENCY’s, their agents’, officers’ and employees’ failure to comply
with specific written instructions regarding use provided to STATE and/or the AGENCY, their agents, officers and
employees by the CONSULTANT, its agents, employees, sub-consultants, subcontractors or vendors, of any tier, or
any other persons for whom the CONSULTANT may be legally liable.

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

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

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

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.

Agreement Number:
Insurance Coverage

A. Worker’s compensation and employer’s liability insurance as required by the STATE.

B. Commercial general liability insurance written under ISO Form CG 00 01 12 04 or its equivalent with minimum limits of one million dollars ($1,000,000.00) per occurrence and two million dollars ($2,000,000.00) in the aggregate for each policy period.

C. Business auto liability insurance written under ISO Form CG 00 01 10 01 or equivalent providing coverage for any “Auto” (Symbol 1) used in an amount not less than a one million dollar ($1,000,000.00) combined single limit for each occurrence.

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

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

Name:
Agency:
Address:
City: State: Zip:
Email:
Phone:
Facsimile:

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

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

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

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

Agreement Number:
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.

Agreement Number:
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, whichever is. “Proprietary and/or confidential information” is not meant to include any information which, at the time of its disclosure: (i) is already known to the other party; (ii) is rightfully disclosed to one of the parties by a third party that is not acting as an agent or representative for the other party; (iii) is independently developed by or for the other party; (iv) is publicly known; or (v) is generally utilized by unaffiliated third parties engaged in the same business or businesses as the CONSULTANT.

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

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

XX. Records Maintenance

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

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

Agreement Number:
Exhibit A
Scope of Work

Project No.

Agreement Number:

WSDOT Form 140-089 EF Exhibit A
Revised 10/30/2014
Exhibit B
DBE Participation

Agreement Number:

WSDOT Form 140-089 EF Exhibit B
Revised 10/30/2014

Page 1 of 1
Exhibit C

Preparation and Delivery of Electronic Engineering and Other Data

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

I. Surveying, Roadway Design & Plans Preparation Section
   A. Survey Data

   B. Roadway Design Files

   C. Computer Aided Drafting Files

Agreement Number:
D. Specify the Agency’s Right to Review Product with the Consultant

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

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

Agreement Number:
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

Agreement Number:

WSDOT Form 140-089 EF Exhibit D
Revised 10/30/2014
Exhibit E
Sub-consultant Cost Computations

There isn’t 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.
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 Documents**

<table>
<thead>
<tr>
<th>Exhibit</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>G-1(a)</td>
<td>Certification of Consultant</td>
</tr>
<tr>
<td>G-1(b)</td>
<td>Certification of _________________</td>
</tr>
<tr>
<td>G-2</td>
<td>Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions</td>
</tr>
<tr>
<td>G-3</td>
<td>Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying</td>
</tr>
<tr>
<td>G-4</td>
<td>Certificate of Current Cost or Pricing Data</td>
</tr>
</tbody>
</table>

Agreement Number:
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

Agreement Number:

WSDOT Form 140-089 EF Exhibit G  Revised 10/30/2014
Exhibit G-1(b)  Certification of

I hereby certify that I am the:

☐

☐ Other

of the , and

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

a)  Employ or retain, or agree to employ to retain, any firm or person; or

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

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

______________________________  __________________________
Signature                        Date

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

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

Agreement Number:

WSDOT Form 140-089 EF Exhibit G
Revised 10/30/2014
Exhibit G-3  Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, a officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative AGREEMENT, and the extension, continuation, renewal, amendment, or modification of Federal contract, grant, loan or cooperative AGREEMENT.

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

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

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

________________________
Consultant (Firm Name)

________________________
Signature (Authorized Official of Consultant)  Date

Agreement Number:

WSDOT Form 140-089 EF Exhibit G
Revised 10/30/2014
Exhibit G-4  Certificate of Current Cost or Pricing Data

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

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

Firm:

______________________________
Signature

______________________________
Title

Date of Execution***:

__________________________________________________________
Agreement Number:

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

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

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

Liability Insurance Increase

To Be Used Only If Insurance Requirements Are Increased

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

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

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

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

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

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

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

Notes: Cost of added insurance requirements: $ .

• Include all costs, fee increase, premiums.
• This cost shall not be billed against an FHWA funded project.
• For final contracts, include this exhibit.
The purpose of this exhibit is to establish a procedure to determine if a consultant’s alleged design error is of a nature that exceeds the accepted standard of care. In addition, it will establish a uniform method for the resolution and/or cost recovery procedures in those instances where the agency believes it has suffered some material damage due to the alleged error by the consultant.

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

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

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

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

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

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

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

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

- It is determined via mutual agreement that there is not a consultant design error(s). If this is the case, then the process will not proceed beyond this point.

- It is determined via mutual agreement that a consultant design error(s) occurred. If this is the case, then the Director of Public Works or Agency Engineer, or their representatives, negotiate a settlement with the consultant. The settlement would be paid to the agency or the amount would be reduced from the consultant’s agreement with the agency for the services on the project in which the design error took place. The agency is to provide LP, through the Region Local Programs Engineer, a summary of the settlement for review and to make adjustments, if any, as to how the settlement affects federal reimbursements. No further action is required.

- There is not a mutual agreement regarding the alleged consultant design error(s). The consultant may request that the alleged design error(s) issue be forwarded to the Director of Public Works or Agency Engineer for review. If the Director of Public Works or Agency Engineer, after review with their legal counsel, is not able to reach mutual agreement with the consultant, proceed to Step 5.
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**

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

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

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

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

The consultant’s claim must outline the following:

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

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

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

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

If the Agency does not agree with the consultant’s claim, proceed to step 3 of the procedures.
Step 3 Preparation of Support Documentation Regarding Consultant’s Claim(s)

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

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

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

The Director of Public Works or Agency Engineer shall review and administratively approve or disapprove the claim, or portions thereof, which may include getting Agency Council or Commission approval (as appropriate to agency dispute resolution procedures). If the project involves federal participation, obtain concurrence from WSDOT 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.
The Local Agency of ___________________________________________________________________________
desires to supplement the agreement entered into with __________________________________________________________________________ and executed on __________ and identified as Agreement No. __________________________________________________________________________
All provisions in the basic agreement remain in effect except as expressly modified by this supplement.
The changes to the agreement are described as follows:

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

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

III
Section V, PAYMENT, shall be amended as follows:
______________________________________________________________________________
as set forth in the attached Exhibit A, and by this reference made a part of this supplement.
If you concur with this supplement and agree to the changes as stated above, please sign in the appropriate spaces below and return to this office for final action.

By: ____________________________________________ By: ____________________________________________

Consultant Signature __________________________________________________________________ Approving Authority Signature __________________________________________________________________

DOT Form 140-063 EF
Revised 9/2005
(AGENCY NAME) NOTICE TO CONSULTANTS FOR
(PROJECT NAME)

The AGENCY NAME solicits interest from consulting firms with expertise in Civil and Structural Design. Consultants will be considered for the following project.

Project Description
The work to be performed by the CONSULTANT consists of preparing preliminary engineering and PS&E for improvement of 36th Street East to Jovita Boulevard East. The proposed improvements include widening the road to accommodate four lanes of traffic, improving intersection radii, increasing left turn storage, revisions to existing signal systems in order to accommodate the proposed improvements, and construction of retaining walls to provide for roadway widening. The major features of the project are as follows:

- Approximately 1.74 miles of widening for two additional lanes.
- Improving intersection radii to meet design standards.
- Environmental planning and preparation of permit applications.
- Signal modifications and design.
- Structural design for retaining walls and culvert extensions/replacements.
- Determination of R/W needs and R/W plan preparation.
- A partnering effort is possible to assist with short project schedule, coordination of management, decision-making, and interaction with the (Agency name) regarding structural issues and reviews.

SUBMITTAL
Submittals should include the following information: Firm name, phone and fax numbers; Name of Principal-in-Charge and Project Manager; and Number of employees in each firm proposed to project.

Submittals will be evaluated and ranked based on the following criteria:
1) Key personnel; 2) Firm experience with PS&E; 3) Firm experience with environmental planning and permitting process; 4) Ability to meet schedule; 5) Approach to project; 6) Familiarity with relevant codes and standards; 7) Past performance/references.

Double rating will be given to criteria #2.
AGENCY NAME encourages disadvantaged, minority, and women-owned consultant firms to respond.

Please submit FOUR copies of your Statement of Qualifications to: Director of Services Consultant Agency Name, Address, and Contact Person by April 7, 2002 not later than 10:00 AM. No submittals will be accepted after that date and time. Any questions regarding this project should be directed to Director of Consultant Services, at Agency Phone.

Persons with disabilities may request this information be prepared and supplied in alternate forms by calling collect (Alternate format Phone).

The Recipient, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award.

Appendix 31.79(a) Submittal Information Form (Prime)

Project Name or Roster Category: Click here to enter text.

Prime

   Firm Name: Click here to enter text.

   Address: Click here to enter text.

   Phone: Click here to enter text.               Fax: Click here to enter text.

   Company Website: Click here to enter text.

   Federal Tax ID Number: Click here to enter text.

   Unified Business Identifier Number: Click here to enter text.

   D/M/WBE Certification Number: Click here to enter text.

   Year Firm Established: Click here to enter text.

   SIC Code (Name): Click here to enter text.

   NAICS Code (Name): Click here to enter text.

   Contact Person Regarding This Submittal’s Information: Click here to enter text.

Firm Type

   ☐ Solo Proprietor  ☐ Partnership  ☐ C – Corp.
   ☐ Limited Partnership  ☐ Subchapter S Corp.  ☐ Limited Liability Company

Annual Gross Receipt

   ☐ $0 to $1 Million  ☐ $1 Million to $5 Million  ☐ $5 Million to $10 Million
   ☐ $10 Million to $15 Million  ☐ Over $15 Million

Firms Areas of Expertise

   Click here to enter text.

Note:

Firm Name: Please ensure that the firm name listed is the same firm name that is legally assigned to the federal tax ID number. Please do not use: DBA’s – Doing Business As; Combination names when two firms are working together; derivatives of your legal name; Acronyms; etc.

Unified Business Identifier (UBI) Number: If your firm does not have a UBI number for Washington State, please put pending in the box. You will be required to acquire a UBI Number if you are awarded the contract.
Project Name or Roster Category: Click here to enter text.

Sub-consultant

Firm Name: Click here to enter text.
Address: Click here to enter text.
Phone: Click here to enter text. Fax: Click here to enter text.
Company Website: Click here to enter text.
Federal Tax ID Number: Click here to enter text.
Unified Business Identifier Number: Click here to enter text.
D/M/WBE Certification Number: Click here to enter text.
Year Firm Established: Click here to enter text.
SIC Code (Name): Click here to enter text.
NAICS Code (Name): Click here to enter text.
Contact Person Regarding This Submittal’s Information: Click here to enter text.

Firm Type

☐ Sole Proprietor ☐ Partnership ☐ C – Corp.
☐ Limited Partnership ☐ Subchapter S Corp. ☐ Limited Liability Company

Annual Gross Receipt

☐ $0 to $1 Million ☐ $1 Million to $5 Million ☐ $5 Million to $10 Million
☐ $10 Million to $15 Million ☐ Over $15 Million

Firms Areas of Expertise

Click here to enter text.

Note:
Firm Name: Please ensure that the firm name listed is the same firm name that is legally assigned to the federal tax ID number. Please do not use: DBA’s – Doing Business As; Combination names when two firms are working together; derivatives of your legal name; Acronyms; etc.
Unified Business Identifier (UBI) Number: If your firm does not have a UBI number for Washington State, please put pending in the box. You will be required to acquire a UBI Number if you are awarded the contract.
## Request for Sole Source Consultant Services

Checklist for Submitting a Request for Sole Source Consulting Services
(Adapted in part from a WSDOT Memorandum: Request for Consultant Services, A&E Services Project Specific Sole Source)

The following checklist must be provided with requests to use sole source consultant services, rather than competitive bid procedures, on a project:

<table>
<thead>
<tr>
<th>Agency:</th>
<th>Click here to enter text.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date:</td>
<td>Click here to enter text.</td>
</tr>
<tr>
<td>Project Title:</td>
<td>Click here to enter text.</td>
</tr>
<tr>
<td>Federal-Aid Number:</td>
<td>Click here to enter text.</td>
</tr>
</tbody>
</table>

1. **Checklist for a Supplement to an Existing Agreement**
   Description of the Existing Project:

<table>
<thead>
<tr>
<th>Initials</th>
<th>Date or N/A</th>
<th>Checklist Items for a Supplement to an Existing Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Date the project was originally advertised.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Date the original Agreement was executed.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Completion date of the original Agreement.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Total dollar amount of the original Agreement Click here to enter text.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Date Supplemental Agreement Number 1 was executed.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Completion date of Supplemental Agreement Number 1.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Total dollar amount of Supplemental Agreement Number 1.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Describe the reason(s) for Supplemental Agreement Number 1.</td>
</tr>
</tbody>
</table>

   *(Note: Using an electronic form of this checklist, provide the above information for each existing Supplemental Agreement, numbering the Supplements sequentially.)*

2. **Checklist for Both a New Agreement and Supplement to an Existing Agreement**

<table>
<thead>
<tr>
<th>Initials</th>
<th>Date or N/A</th>
<th>Checklist Items – New and Supplements to Agreements</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Describe the proposed project for the Sole Source Agreement:</td>
</tr>
<tr>
<td></td>
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<td>Click here to enter text.</td>
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<tr>
<td></td>
<td></td>
<td>State the specific intended purpose of the Agreement and describe the services and/or deliverables that are needed: <em>(Note: If two or more phases of work are anticipated, describe each phase separately.)</em></td>
</tr>
<tr>
<td></td>
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<td>Click here to enter text.</td>
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<tr>
<td></td>
<td></td>
<td>Date that the sole source consulting services are desired.</td>
</tr>
<tr>
<td></td>
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<td>Click here to enter text.</td>
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<tr>
<td></td>
<td></td>
<td>Duration of work/phase 1 of work Click here to enter text.</td>
</tr>
<tr>
<td>Initials</td>
<td>Date or N/A</td>
<td>Checklist Items – New and Supplements to Agreements</td>
</tr>
<tr>
<td>----------</td>
<td>-------------</td>
<td>---------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(Repeat this line for each phase of work, numbering them sequentially.)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Describe the funding sources of the project (including participation percentages):</td>
</tr>
<tr>
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<tr>
<td></td>
<td></td>
<td>Provide the estimated cost of the services that will be performed by the sole source consultant&quot;:</td>
</tr>
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<td>Click here to enter text.</td>
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<tr>
<td></td>
<td></td>
<td>Provide the estimated cost of services to be provided by a subconsultant:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Click here to enter text.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Describe the work to be performed by a subconsultant:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Click here to enter text.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Provide justification for the use of sole source consultant services (i.e., how it was determined that competitive procurement is not appropriate for this project) by giving an explanation to the items listed below:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Click here to enter text.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Describe the unique nature of the services and/or the unique qualifications, abilities or expertise of the consultant to meet the agency’s needs (e.g., describe how they are highly specialized or one-of-a-kind, include other factors which may be considered, such as what is their past performance, cost effectiveness [learning curve], and/or the follow-up nature of the required services):</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Click here to enter text.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Describe other special circumstances which may be relevant, such as confidential investigations, copyright restrictions or time constraints. If time constraints are applicable, identify when the agency was on notice of the need for the services and the entity that imposed the constraints, explain the authority (if not obvious) of the entity to impose them, and provide the timelines within which the work must be accomplished.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Click here to enter text.</td>
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<tr>
<td></td>
<td></td>
<td>Describe the availability of consultants in the location required (e.g., if the proposed consultant is the only source available in the geographical area, state the basis for this conclusion and the rationale for limiting the size of the geographical area selected):</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Click here to enter text.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Disadvantaged Business Enterprise (DBE) goals may apply on a federally funded project. Explain reason(s) for waiving DBE participation goals:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Click here to enter text.</td>
</tr>
</tbody>
</table>
Appendix 31.80 Request for Sole Source Consultant Services

Agency

Signature of Agency Official  Date

Recommended Approval

Region Local Programs Engineer  Date

Approval

Local Programs  Date
## Independent Estimate For Consulting Services

### Direct Salary Cost (Composite):

<table>
<thead>
<tr>
<th>Breakdown Of Work</th>
<th>Manhours</th>
<th>Average Rate Of Pay</th>
<th>Estimated Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Totals

<table>
<thead>
<tr>
<th>Overhead Cost (including payroll additives)</th>
<th>%</th>
<th>$</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Fixed Fee</th>
<th>%</th>
<th>$</th>
</tr>
</thead>
</table>

### Reimbursable

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Travel and Per Diem</td>
<td></td>
</tr>
<tr>
<td>B. Reproduction Expenses</td>
<td></td>
</tr>
<tr>
<td>C. Computer Expense</td>
<td></td>
</tr>
<tr>
<td>D. Communication</td>
<td></td>
</tr>
<tr>
<td>E. Sampling and Testing</td>
<td></td>
</tr>
<tr>
<td>F. Outside Consultants</td>
<td></td>
</tr>
<tr>
<td>G. Other (Specify)</td>
<td></td>
</tr>
</tbody>
</table>

Total: $        

Sub-total: $        

Contingencies: %  

*Contingencies: $        

Grand Total: $        

* Use only on cost plus net fee type of payment

<table>
<thead>
<tr>
<th>Agency</th>
<th>File No.</th>
<th>Project No.</th>
</tr>
</thead>
</table>

Project Title

Estimate Prepared By: (signature)  

Date: April 24, 2013

DOT Form 140-012 EF  
Revised 04/2007
### Appendix 31.82 Record of Negotiations – Example

Name and Job Title: John Doe, PW Contracts Manager

_________________________________ (signature)

<table>
<thead>
<tr>
<th>Action</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Consulting firm of Acme Consulting selected.</td>
<td>2/15/99</td>
</tr>
<tr>
<td>2. Independent cost estimate of $953,000.00 prepared by agency to address the following*: Develop design for Timermann Rd. Realignment from MP 53 to MP 57; including pre-engineering services of biological assessment, &amp; NEPA/SEPA documentation.</td>
<td>2/25/99</td>
</tr>
<tr>
<td>3. Meeting held with consultant to ensure thorough understanding of the scope of work.</td>
<td>2/20/99</td>
</tr>
<tr>
<td>4. Consultant provided scope of work; request for proposal solicited.</td>
<td>2/15/99</td>
</tr>
<tr>
<td>5. Consultant submitted proposal in the amount of $1,203,000.00.</td>
<td>2/27/99</td>
</tr>
<tr>
<td>6. Agency compared proposal with independent estimate and negotiation objectives were established</td>
<td>3/3/99</td>
</tr>
<tr>
<td>7. Agency negotiator contacted/met with the consultant and identified the following as items which needed revision (i.e., excessive or insufficient principal/management involvement, high overhead, unallowable costs). <strong>Mark-ups on two subconsultants for environmental work not allowable; overhead rate of 35 percent too high based on nature of the work and degree of risk; consultant management and principal attendance redundant at meetings; subconsultant time excessive</strong></td>
<td>3/5/99</td>
</tr>
<tr>
<td>8. Agency revised detailed cost estimate based on negotiations.**</td>
<td>3/15/99</td>
</tr>
<tr>
<td>9. Consultant submitted revised proposal with following changes: ** Removed $53,000 in subconsultant mark-ups; overhead rate reduced to 26 percent; reduced management attendance with principal to two meetings.*</td>
<td>3/20/99</td>
</tr>
<tr>
<td>10. Agency accepted final fee proposal of $1,000,000.00 to address the following: Develop design for Timermann Rd. Realignment from MP 53 to MP 57; including pre-engineering services of biological assessment, and NEPA/SEPA documentation to be completed by Ace Engineering Services as subconsultant.*</td>
<td>3/23/99</td>
</tr>
<tr>
<td>11. <em>(or alternately) Agency could not agree to final proposal and notified the consultant in writing of this fact.</em></td>
<td>3/23/99</td>
</tr>
</tbody>
</table>

The negotiations were conducted in good faith to ensure the fees were fair and reasonable. The procedures outlined in this manual were followed.

*Additional detail should be expanded upon with documentation.
**These steps should be repeated as often as necessary, with documentation.

This example has been simplified and does not include the level of detail typically found in a complete record of negotiations.
### Performance Evaluation

**Appendix 31.83**

**Consultant Services**

<table>
<thead>
<tr>
<th>Consultant Name</th>
<th>Evaluation Type</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>☐ Interim ☐ Subconsultant ☐ Final</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Consultant Address</th>
<th>Project Title</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Agreement Number</th>
<th>Type of Work</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>☐ Study ☐ Design ☐ R/W ☐ PS&amp;E ☐ Other (Specify Below):</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Type of Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Lump Sum ☐ Hourly Rate ☐ Cost Plus Fixed Fee</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Complexity of Work</th>
<th>Date Agreement Approved</th>
<th>Type and Extent of Subcontracting</th>
</tr>
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<tbody>
<tr>
<td>☐ Difficult ☐ Routine</td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>Amount of Original Agreement</th>
<th>Total Amount Modifications</th>
<th>Total Amount Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td>$</td>
<td>$</td>
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</table>

<table>
<thead>
<tr>
<th>Completion Date Including Extensions</th>
<th>Actual Completion Date</th>
<th>Actual Total Paid</th>
</tr>
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<tbody>
<tr>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>Performance Rating Scale (From Average Score Below)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Superior</td>
</tr>
<tr>
<td>10</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Criteria</th>
<th>Comment</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Negotiations</td>
<td>Cooperative and responsive.</td>
<td></td>
</tr>
<tr>
<td>2. Cost / Budget</td>
<td>Complete within agreement budget including supplements.</td>
<td></td>
</tr>
<tr>
<td>3. Schedule</td>
<td>Complete within agreement schedule including supplements.</td>
<td></td>
</tr>
<tr>
<td>5. Communications</td>
<td>Clear, Concise Communication (Oral, written, drawings).</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Total Score</th>
<th>Average Score (Total Score / Number of criteria rated)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Rated By (Project Manager Name and Title)</th>
<th>Project Manager Signature</th>
<th>Date</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Rated By (Area Consultant Liaison Name and Title)</th>
<th>Area Consultant Liaison Signature</th>
<th>Date</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Executive Review (Name and Title)</th>
<th>Executive Signature</th>
<th>Date</th>
</tr>
</thead>
</table>

**Distribution:**

- Original: Consultant
- Copies: Project Manager - Area Consultant Liaison - Consultant Services Office

*DOT Form 272-019 EF Revised 3/2002*
Performance Evaluation Instructions

How

- Form should be reviewed and discussed with the Consultant prior to contract negotiations. Establish your expectations.
- Supplementary forms are available from the Consultant Services Office which expand the considerations for each criteria (e.g. “Schedule: A. Achieved schedule; B. Prompt response to review comments; C. Adapted to changes by WSDOT; D. Notified WSDOT early, regarding schedule impactors”).
- If evaluation criterion number 7, “Other” is relevant (e.g. public involvement or volume of work) that criterion must be specified and mutually agreeable in advance.
- Score accurately. A “7” is respectable; “9” is exceptional, it should be rare.

When

Final Evaluation

- Always complete and distribute a performance evaluation at the point of termination of the agreement.
- See distribution at bottom of form.

Interim Evaluation

- Interim evaluations should be performed as follows:
  1. At phase transitions.
  2. When any project management changes occur.
  3. To alert a consultant to poor performance.
  4. Annually if none of the other conditions occur.
- Distribute as usual.

Subconsultant Evaluation

- For subconsultants with significant project participation (more than $100,000) an evaluation is recommended. Ensure coordination and review with the prime consultant prior to distribution.
- Distribute similar to usual. Include prime consultant and subconsultant.

Why

- Scores from these evaluations factor into “Past Performance” ratings, which are used to help determine selection of future consultants. Meaningful evaluations help us hire the best.
### Consultant Services Evaluation Supplement

**Consultant Name**

**Evaluation Type**
- Interim
- Subconsultant
- Final

**Consultant Address**

**Project Title**

**Agreement Number**

### Performance Rating Scale (From Average Scores)

<table>
<thead>
<tr>
<th>Score</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Superior</td>
</tr>
<tr>
<td>9</td>
<td>Above Reqmnts</td>
</tr>
<tr>
<td>8</td>
<td>Meets Reqmnts</td>
</tr>
<tr>
<td>7</td>
<td>Below Reqmnts</td>
</tr>
<tr>
<td>6</td>
<td>Poor</td>
</tr>
</tbody>
</table>

### Negotiation and Cost / Budget Criteria

#### 1. Negotiations

**Sub-Criteria**

<table>
<thead>
<tr>
<th>Score</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>Adhered to WSDOT guidelines on fee.</td>
</tr>
<tr>
<td>B.</td>
<td>Met negotiation schedule.</td>
</tr>
<tr>
<td>C.</td>
<td>Open and honest communications.</td>
</tr>
<tr>
<td>D.</td>
<td>Willingness to compromise.</td>
</tr>
<tr>
<td>E.</td>
<td></td>
</tr>
<tr>
<td>F.</td>
<td></td>
</tr>
</tbody>
</table>

**Total Score**

**Average Score (Total Score / Number of sub-criteria rated)**

**Comments**

#### 2. Cost / Budget

**Sub-Criteria**

<table>
<thead>
<tr>
<th>Score</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>Finished within budget, including all supplements.</td>
</tr>
<tr>
<td>B.</td>
<td>Appropriate level of effort.</td>
</tr>
<tr>
<td>C.</td>
<td>Reasonable direct, non-salary expenses.</td>
</tr>
<tr>
<td>D.</td>
<td></td>
</tr>
<tr>
<td>E.</td>
<td></td>
</tr>
<tr>
<td>F.</td>
<td></td>
</tr>
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</table>

**Total Score**

**Average Score (Total Score / Number of sub-criteria rated)**

**Comments**
## Schedule and Technical Quality Criteria

<table>
<thead>
<tr>
<th>Consultant Name</th>
<th>Agreement Number</th>
</tr>
</thead>
</table>

### 3. Schedule

<table>
<thead>
<tr>
<th>Sub-Criteria</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Achieved schedule (Including all supplements).</td>
<td></td>
</tr>
<tr>
<td>B. Prompt response to review comments.</td>
<td></td>
</tr>
<tr>
<td>C. Adapted to changes by WSDOT.</td>
<td></td>
</tr>
<tr>
<td>D. Notified WSDOT early regarding schedule “impactors.”</td>
<td></td>
</tr>
<tr>
<td>E.</td>
<td></td>
</tr>
<tr>
<td>F.</td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>Total Score</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Average Score (Total Score / Number of sub-criteria rated)</td>
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</tr>
</tbody>
</table>

Comments:

### 4. Technical Quality

<table>
<thead>
<tr>
<th>Sub-Criteria</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Work products meet standards; where “practical.”</td>
<td></td>
</tr>
<tr>
<td>B. Performed appropriate quality control.</td>
<td></td>
</tr>
<tr>
<td>C. Responds to review comments in subsequent submission.</td>
<td></td>
</tr>
<tr>
<td>D. Sought opportunities to incorporate innovative designs.</td>
<td></td>
</tr>
<tr>
<td>E. Delivered “compatible” electronic files.</td>
<td></td>
</tr>
<tr>
<td>F. Implemented procedures to control construction costs.</td>
<td></td>
</tr>
<tr>
<td>G.</td>
<td></td>
</tr>
<tr>
<td>H.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Total Score</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Average Score (Total Score / Number of sub-criteria rated)</td>
<td></td>
</tr>
</tbody>
</table>

Comments:
### Comunication and Management Criteria

<table>
<thead>
<tr>
<th>Consultant Name</th>
<th>Agreement Number</th>
</tr>
</thead>
</table>

#### 5. Communications

<table>
<thead>
<tr>
<th>Sub-Criteria</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Produced clear, concise oral and written communication.</td>
<td></td>
</tr>
<tr>
<td>B. Demonstrates an understanding of oral and written instructions.</td>
<td></td>
</tr>
<tr>
<td>C. Communicated at intervals appropriate for the work.</td>
<td></td>
</tr>
<tr>
<td>D. Respects and uses lines of communications.</td>
<td></td>
</tr>
<tr>
<td>E.</td>
<td></td>
</tr>
<tr>
<td>F.</td>
<td></td>
</tr>
<tr>
<td>G.</td>
<td></td>
</tr>
</tbody>
</table>

**Total Score**

**Average Score (Total Score / Number of sub-criteria rated)**

**Comments:**

#### 6. Management

<table>
<thead>
<tr>
<th>Sub-Criteria</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Provided creative cost control measures / ideas.</td>
<td></td>
</tr>
<tr>
<td>B. Submitted appropriate, periodic, accurate progress reports.</td>
<td></td>
</tr>
<tr>
<td>C. Accurate and timely invoicing.</td>
<td></td>
</tr>
<tr>
<td>D. Conducted meetings efficiently.</td>
<td></td>
</tr>
<tr>
<td>E. Limited the number of consultant-initiated contract modifications / supplements.</td>
<td></td>
</tr>
<tr>
<td>F. Coordinated with WSDOT effectively; was a “team player.”</td>
<td></td>
</tr>
<tr>
<td>G. Responsive</td>
<td></td>
</tr>
<tr>
<td>H. Managed subconsultants effectively.</td>
<td></td>
</tr>
<tr>
<td>I.</td>
<td></td>
</tr>
<tr>
<td>J.</td>
<td></td>
</tr>
</tbody>
</table>

**Total Score**

**Average Score (Total Score / Number of sub-criteria rated)**

**Comments:**
Chapter 32  Railroad/Highway Crossing Program

32.1 General Discussion

The purpose of this program is to reduce the number of fatalities and injuries at public highway-rail grade crossings through the elimination of hazards and/or the installation/upgrade of protective devices at crossings.

The program focus is on adding protection to projects that demonstrate a need for safety and efficiency.

Funding for this program is discussed in Chapter 12.

The first alternative to be investigated for improving a grade crossing is closure and/or consolidation with nearby grade crossing. Consolidation will reduce train-vehicle accident potential and maintenance costs. It is also possible that important accessibility may be reduced and unacceptable rerouting of vehicular traffic will result. Nevertheless, when improvement alternatives are considered, these factors should not preclude the consideration of crossing consolidation and the resulting benefits. Removal of crossing surfaces, erection of barriers, and other costs associated with closing a crossing are eligible under this program.

It is the position of the Federal Highway Administration that funding on railroad-highway grade separation projects will only be approved where closure of associated at-grade crossing(s) is imminent. When the grade separation project is opened, the at grade crossing must be closed.

The standards contained in this chapter are to be considered minimum standards for railroad/highway crossing projects. They may be inadequate if extraordinarily hazardous conditions exist. In these cases, higher levels of protection should be provided.

32.2 Selection of Appropriate Warning Devices

References:

- Manual on Uniform Traffic Control Devices
- Design Manual M 22-01
- FHWA Railroad-Highway Grade Crossing Handbook

.21 Passive Protection – These devices include signing and pavement markings. The crossbuck sign is the responsibility of the railroad. All other signs and pavement markings are the responsibility of the local agency and are eligible for reimbursement.
.22 Design Standards for Active Protection – Active grade crossing traffic control devices include all signals, bells, and gates or other devices or methods that inform motorists and pedestrians of the approach or presence of trains, locomotives, or railroad cars on grade intersections. The majority of the devices are automatically activated by the train. Active protection may be appropriate for those locations which have an exposure factor (trains per day times vehicle ADT) greater than 1,500 or are located on railroad main lines. However, a site specific evaluation of train and vehicle traffic volumes and speeds, rural or urban location, potential danger to a large number of people, sight distance and accident history should be completed before making a decision. The basic active protection device consists of post-mounted flashing lights. Gates should be added when any one of the conditions listed in Appendix 32.43 exist. Additional cantilevered flashing lights should be provided if any one of the conditions listed in Appendix 32.43 apply. Unless special circumstances exist, all cantilevered installations should include gates. Signal lenses shall be 12 inches in diameter. The design standards are illustrated in Appendix 32.41 and 32.42 and are in addition to those found in the Manual on Uniform Traffic Control Devices (MUTCD). MUTCD design standards also apply.

a. Post-Mounted Signals – These flashing light signals are normally placed to the right of approaching highway traffic on all roadway approaches to a crossing. The design standards included as appendices to this division show the minimum dimensions for the following cases:
   - Appendix 32.41 – Shoulder Section
   - Appendix 32.42 – Curb Section

b. Automatic Gates – Automatic gates should be added to post-mounted signals when any one of the following conditions is present:
   - Multiple main line railroad tracks.
   - Multiple tracks at or in the vicinity of the crossing which may be occupied by a train or locomotive so as to obscure the visibility of another train approaching the crossing.
   - High-speed train operation combined with limited sight distance at either single or multiple track crossings (see Appendix 32.43).
   - A combination of high speeds and moderately high volumes of highway and railroad traffic.
   - Either a high volume of vehicular traffic, high number of train movements, school buses, or trucks carrying hazardous materials, unusually restricted sight distance, continuing accident occurrences, or any combination of these conditions.

When utilizing gates, the departure side of the crossing is always left open to allow highway traffic to escape from the crossing.
c. **Cantilevered Signals** – Cantilevered flashing light signals should be added to post-mounted signals and gates when any one of the following conditions is present:

- There are considerable distractions near or beyond the crossing which would compete for the driver’s attention.
- Traffic or parking conditions are such that the view of a post-mounted flashing light signal could be blocked.
- The angle of approach to the crossing is acute and post-mounted signals could go undetected.
- The highway has two or more lanes in each direction.
- The highway carries high-speed and high-volume traffic.

Unless special circumstances exist, all cantilevered installations should include gates. The design standards included as appendices to this division show the minimum dimensions for the following cases:

- Appendix 32.41 – Shoulder Section
- Appendix 32.42 – Curb Section

All crossing sites will be reviewed and recommendations made by a diagnostic team consisting of representatives of the Federal Highway Administration (FHWA), railroad, WUTC, local agency, and the Washington State Department of Transportation (WSDOT).

d. **Traffic Signals at or Near Grade Crossings** – When highway intersection traffic control signals are within 200 feet of a grade crossing, control of the traffic flow should be designed to provide the vehicle operators using the crossing a measure of safety at least equal to that which existed prior to the installation of such signal. Accordingly, design, installation, and operation should be based upon a total systems approach in order that all relevant features may be considered (see MUTCD Section 8C-6).

.23 **Traffic Barriers** – A railroad signal may be a point hazard warranting the use of a traffic barrier or crash cushion. Traffic barrier and crash cushion guidelines are shown in Section 710 of the *Design Manual* M 22-01. A guardrail should be installed if the speed limit is greater than 35 mph.

.24 **Approaches** – Funding to improve road approaches for safety purposes may be considered as a part of signalization projects on a case-by-case basis. Approach work for safety improvement includes profile corrections to reduce approach grades at main line locations.

.25 **Crossing Surfaces** – Funding to improve crossing surfaces may be considered as a part of signalization projects on a case-by-case basis. The street or highway must have an ADT of at least 7,500 in order to be considered.

.26 **Illumination** – Railroad grade crossings may be considered for illumination where a nighttime accident pattern is known to exist or is likely to occur. These projects will be considered on a case-by-case basis.
32.3 Project Development Process

.31 Project Application Package – A local agency wishing to develop a project to provide protection at a railroad/highway crossing must follow the application process outlined in Chapter 21, including all support information listed in Appendix 21.41.

The railroad should be contacted during the project development process to provide notification of the proposed project and to obtain relevant data on train movements. Nearly all rail trackage in Washington State is operated by the Union Pacific or Burlington Northern Santa Fe. The contact person for these railroads are listed below:

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
<th>Address</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Terrel A. Anderson</td>
<td>Manager Industry &amp; Public Projects</td>
<td>9451 Atkinson Street, Roseville, CA 95747</td>
<td>916-789-5134</td>
</tr>
<tr>
<td>Richard W. Wagner</td>
<td>BNSF Railway Mgr. Public Projects for WA.</td>
<td>2454 Occidental Avenue South Ste 2D, Seattle, WA 98134</td>
<td>206-625-6152</td>
</tr>
</tbody>
</table>

A list of Short Line Railroad contacts is located on the website located at [www.wsdot.wa.gov/rail/information/railcontacts.cfm](http://www.wsdot.wa.gov/rail/information/railcontacts.cfm).

The Region Local Programs Engineer will assist in determining the owner of the trackage and the appropriate contact person if necessary. In completing the Project Application Package, sufficient preliminary engineering funds should be requested to cover the agency’s PE costs as well as an additional $3,000 to $5,000 to cover the railroad’s costs. The additional dollars for PE work done by the railroad should be shown under “other” on the Local Agency Agreement.

If existing devices are to be removed, the agency will notify the Local Programs Operations Engineer who will determine the salvage rights and values, and determine the railroad’s credit to the FHWA, if they are federal property.

.32 Preparation of Project Data – When preliminary engineering funding has been approved, the agency should submit the necessary project data to the railroad along with a notice to proceed. Appendix 32.44 shows a Railroad Project Data Form which provides a railroad with data to prepare an estimate of cost. The data required by the railroad is traffic lane widths, shoulder widths, curbs and sidewalks, angle at which the highway crosses the tracks, and the legal description of the crossing location. The location of any underground and overhead utilities in the area which will be excavated for the signal foundation should also be included.

.33 Railroad Agreement and Petition – Upon completion of the signal layout and design, the railroad will prepare the standard agreement shown in Appendix 32.46 and a petition to the Washington State Utilities and Transportation Commission for installation of the crossing protection as required by RCW 81.53.261. At this time, the railroad will also request construction authorization and the local agency should proceed with the construction authorization process as per Section 32.34. The drawing shall form part of the agreement.

The petition and the agreement will be forwarded to the local agency for execution and returned to the railroad. The railroad will file the petition with the WUTC. The WUTC will review the petition and, if appropriate, issue an order directing installation of the crossing protection.
.34 Construction Administration and Project Closure – Upon receipt of construction authorization, the railroad will order material and proceed with construction. Approximately five to eight months are required to obtain the signal material. The railroad will attempt to coordinate construction with other projects in the area to more effectively utilize crews.

The local agency is responsible for all work associated with a railroad agreement, from date of authorization for the railroad to proceed with the work through final completion of the work, subsequent closing of the agreement, and completion of the final audit.

The local agency is required to document the work performed by the railroad to ensure that the railroad’s billing can be verified, thereby leaving an audit trail. This documentation may be performed by random oversight which is defined as on-site reviews two or three times a week while the railroad is working.

The documentation should be a record in the form of a diary and supplemental reports of the work performed by the railroad. This record shall be sufficiently complete to establish a record of the following:

- Number and general type of labor and supervision and number of hours chargeable to the agreement work.
- Number and type of major items of equipment used and number of hours chargeable to the agreement work.
- Description of work accomplished.
- Major items of material installed.
- Major items of material removed and disposition, i.e., salvage, scrap, junk.
- Details concerning any changes or extra work or other conditions affecting the work.

Within 30 days of project completion, the railroad will notify the local agency by letter that construction is completed. The local agency requests final billing from the railroad.

The local agency and the WUTC will be notified when the signals are completed and in operation. The agency should notify the Region Local Programs Engineer when the project is completed and submit any railroad and agency billings.

WSDOT will perform the final inspection and send a 90 day closure letter to the local agency (see Chapter 53).

32.4 Appendices

32.41 Signal Design – Shoulder Section
32.42 Signal Design – Curb Section
32.43 Railroad/Highway Grade Crossing Protection Sight Distance Diagram and Gate Warrant Form
32.44 Railroad Project Data Form
32.45 Type 3 Party Agreement – Example
32.46 Local Agency Railway Agreement
This chapter identifies the design standards document, deviation approval authority, and design approval for a specific facility. The deviation process, Work Zone Safety and Mobility, and Intelligent Transportation Systems are also discussed.

This part of the manual is organized into six chapters relating to the design phase: General Design Information; City and County Design Standards for Non NHS facilities; Location and Design Approval; Plans, Specifications, and Estimates; State Advertising and Award Procedures; and Local Advertising and Award Procedures.

Compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 is required in the design, construction, operation and maintenance of transportation facilities (i.e., pedestrian facilities, park and ride lots). Where sidewalks are provided, public agencies shall provide pedestrian access features such as continuous, unobstructed sidewalks, and curb cuts with detectable warnings at highway and street crossings. See 28 CFR Part 36, Appendix A, for minimum federal requirements for curb ramps. The design standards and deviation and design approval authority are shown in the following table.

<table>
<thead>
<tr>
<th>Facility</th>
<th>Design Standards</th>
<th>Deviation Approval</th>
<th>Design Approval</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interstate</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>New/Reconstruction</td>
<td>WSDOT Design Manual</td>
<td>WSDOT/FHWA</td>
<td>WSDOT/FHWA</td>
</tr>
<tr>
<td>ITS Over $1,000,000</td>
<td>WSDOT Design Manual</td>
<td>WSDOT HQ</td>
<td>WSDOT HQ</td>
</tr>
<tr>
<td>All Other</td>
<td>WSDOT Design Manual</td>
<td>WSDOT HQ</td>
<td>WSDOT Region</td>
</tr>
<tr>
<td>National Highway System (NHS)</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>State Highways outside of incorporated cities, or on a limited access highway</td>
<td>WSDOT Design Manual</td>
<td>WSDOT HQ</td>
<td>WSDOT Region</td>
</tr>
<tr>
<td>State Highways within incorporated cities between back of curb to back of curb</td>
<td>WSDOT Design Manual</td>
<td>WSDOT HQ</td>
<td>WSDOT Region</td>
</tr>
<tr>
<td>State Highways within incorporated cities beyond curb line</td>
<td>*City and County Design Standards See Chapter 42</td>
<td>WSDOT Local Programs</td>
<td>City</td>
</tr>
<tr>
<td>City Streets (non-State highways)</td>
<td>*City and County Design Standards See Chapter 42</td>
<td>WSDOT Local Programs</td>
<td>City</td>
</tr>
<tr>
<td>County Roads</td>
<td>*City and County Design Standards See Chapter 42</td>
<td>WSDOT Local Programs</td>
<td>County</td>
</tr>
<tr>
<td>Facility</td>
<td>Design Standards</td>
<td>Deviation Approval</td>
<td>Design Approval</td>
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<tr>
<td>----------</td>
<td>------------------</td>
<td>--------------------</td>
<td>----------------</td>
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<tr>
<td>Non-National Highway Systems (Non-NHS)</td>
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</tr>
<tr>
<td>State Highways outside of incorporated cities, or on a limited access highway</td>
<td>WSDOT Design Manual</td>
<td>WSDOT HQ</td>
<td>WSDOT Region</td>
</tr>
<tr>
<td>State Highways within incorporated cities between back of curb to back of curb</td>
<td>WSDOT Design Manual</td>
<td>WSDOT HQ</td>
<td>WSDOT Region</td>
</tr>
<tr>
<td>State Highways within incorporated cities beyond curb line</td>
<td>*City and County Design Standards See Chapter 42</td>
<td>WSDOT Local Programs</td>
<td>City</td>
</tr>
<tr>
<td>City Streets (non-State Highways)</td>
<td>*City and County Design Standards See Chapter 42</td>
<td>WSDOT Local Programs</td>
<td>City</td>
</tr>
<tr>
<td>County Roads</td>
<td>*City and County Design Standards See Chapter 42</td>
<td>WSDOT Local Programs</td>
<td>County</td>
</tr>
</tbody>
</table>

*Bicycle facilities and multi-use facilities per RCW 35.75.060 and 36.82.145 must follow the current AASHTO bicycle design standards and/or standards submitted by the local agency which have been approved by Local Programs for any facility allowing bicycle traffic.

Different standards apply to the design of new construction/reconstruction, 3-R (resurfacing, restoration, and rehabilitation), and 2-R (resurfacing and restoration). Each of these terms is defined in Chapter 42. Local agencies must determine which standards apply before beginning design. See Chapter 42 for design standards on non-NHS routes.

See Section 43.4 for information on Value Engineering.

### 41.2 Work Zone Safety and Mobility

All projects on the Interstate system must comply with 23 Code of Federal Regulations (CFR), Part 630, Subpart J: Work Zone Safety and Mobility. These rules apply to all federally funded projects advertised on or after October 12, 2007. It is recommended that any other federally funded project over $10 million or any project that includes a detour also apply the rules. WSDOT Design Manual M 22-01 Chapter 1010 has a list of requirements and key elements as well as checklist for developing a formal Transportation Management Plan (TMP) document.

For more information, please see WSDOT Local Program’s Work Zone Safety and Mobility page: www.wsdot.wa.gov/localprograms/traffic/wzsafetymobility.htm
41.3 Intelligent Transportation Systems (ITS)

Intelligent Transportation Systems (ITS) have the potential to reduce crashes and increase the mobility of transportation facilities. They also enhance productivity through the use of advanced communications technologies and their integration into vehicles and the transportation infrastructure. These systems involve a broad range of wireless and wire line communications-based information, electronics, or information processing technologies. Some of these technologies include cameras, variable message signs, ramp meters, road weather information systems, highway advisory radios, traffic management centers, and adaptive signal control technology (ASCT). ASCT is a traffic signal system that detects traffic conditions and adjusts signal timing remotely in response. More information on ASCT can be found at [www.fhwa.dot.gov/everydaycounts/technology/adsc](http://www.fhwa.dot.gov/everydaycounts/technology/adsc).

Systems engineering is a typical part of any ITS project development process. It is required on any federal aid project that has an ITS work element, per 23 CFR 940.11. Systems engineering is an interdisciplinary step-by-step process for complex projects such as ITS projects to:

- assess a system’s needs and its relationship to the regional architecture.
- plan a project that meets those needs and meets stakeholder needs and expectations.
- define other specific requirements for the project/system.
- develop and implement the project/system.
- define the operations and maintenance requirements for the system.
- plan for the refinement or replacement of the system.

Using systems engineering on ITS projects has been shown to increase the likelihood of a project’s success. A successful project is one that meets the project scope and stakeholder/project sponsor expectations, is completed on time and within budget, and is efficient and cost effective to operate and maintain.

The level of systems engineering used for a project should be on a scale commensurate with the scope, cost, and risk of the project. Complete the Intelligent Transportation Systems (ITS) Systems Engineering Analysis Worksheet in Appendix 41.53, or a document with the same information, for all federal aid projects that include ITS elements. Completing the worksheet will meet the minimum requirements in 23 CFR 940.11 for systems engineering, determine the project’s risk, and determine if a more in-depth systems engineering analysis is required.

As shown in the worksheet, a more in-depth analysis requires that the following four documents be completed and used to implement the project. These documents are produced as the result of the steps in the systems engineering process, often referred to as the “V” diagram, shown in Appendix 41.52.

1. **Concept of Operations** – This document defines the problem, the project’s goals, stakeholder needs and expectations, constraints, and the way the ITS system is required to operate and be maintained.
2. **System Requirements** – This document contains specifications of what the system is required to do, how well it is required to do it, and under what conditions. These requirements are based on the goals, stakeholder needs and expectations, constraints, and operation and maintenance requirements documented in the Concept of Operations.

3. **System Verification Plan** – This document describes how the agency will verify that the system being built meets the requirements in the System Requirements document. The agency will implement the System Verification Plan to ensure that all system requirements are verified before it accepts the system.

4. **System Validation Plan** – This document describes how the agency will assess the system’s performance against the goals, stakeholder needs and expectations, constraints, and operation and maintenance requirements documented in the Concept of Operations. The goal is for the agency to understand and review the strengths and weaknesses of the system and identify any new opportunities and needs if appropriate. The agency will implement the System Validation Plan after it accepts the system. This evaluation sets the stage for the next time the system/project is changed or expanded.

For more specific guidance on developing the four systems engineering plans listed above, see the plan templates in the USDOT/CalTrans’ Systems Engineering Guidebook for Intelligent Transportation Systems, Version 3, November 2009 document. Pertinent page numbers include:

- Concept of Operations Template: Page 254
- System Requirements Template: Page 257
- Verification Documents Plan Template: Page 269
- Validation Documents Plan Template: Page 278


For more information on systems engineering, please see the following documents, which are available on the Local Programs Use of Traffic Control Devices Web page:

- 23 Code of Federal Regulations (CFR), Part 940, Intelligent Transportation System Architecture and Standards
- USDOT’s Systems Engineering for Intelligent Transportation Systems, FHWA HOP-07-069, January 2007

For guidance on contracting for ITS projects, see Appendix 41.54.
41.4 Deviations

.41 General – The Agency is authorized to design projects to the standards as indicated in the table shown in Section 41.1. In the event all design standards cannot be incorporated into the design, the agency shall submit a deviation request for review and approval.

.42 Documentation – An agency shall document their reasons for the deviation. The deviation request shall include a description of the problem and its proposed solution and a vicinity map in sufficient detail to aid in evaluating the problem. The deviation request document is a stand alone engineering document. If references to other sources or documents are required, the document should use the appropriate quotes and excerpts as necessary.

An analysis of the engineering and financial aspects of the proposal as compared to the standard and options considered shall be provided. The analysis shall specifically address safety issues, including collision history and projections. It shall address applicable operational characteristics, including traffic speeds, traffic volumes, capacity and route continuity. It should include financial considerations such as high construction costs, unusual or extraordinary site conditions, or environmental requirements that may impact the decision. The analysis may include a Benefit/Cost comparison, and/or Life Cycle Costing of alternatives considered. The analysis should also include any other information which may be helpful as a future reference.

The level of detail of the request should be based on the relative complexity and scope of the project and the deviation requested. Requests will be considered based on the merits presented. This analysis and deviation request shall be documented and completed prior to the agency’s completion of PS&E documents.

.43 Format – Appendix 41.51 is a Deviation Analysis Format sheet for use on locally owned facilities (deviations approved by WSDOT Local Programs). Refer to the WSDOT Design Manual M 22-01 for format on all other deviations. The example is intended to present format only.

41.5 Appendices

41.51 Deviation Analysis Format
41.52 System Engineering Process “V” Diagram
41.53 Intelligent Transportation Systems (ITS) Systems Engineering Analysis Worksheet
41.54 ITS Project Contracting Guidance
Deviation Analysis Format

Agency: Click here to enter text.
Project Title: Click here to enter text.
Project Number: Click here to enter text.

1. Posted Speed Limit: Click here to enter text.
2. Physical Comparison:
   a. Standard Geometrics: Click here to enter text.
   b. Deviation Geometrics: Click here to enter text.
   c. Discussion: Click here to enter text.
3. Safety Issues:
   a. Collision History: Click here to enter text.
   b. Risk of future collisions: Click here to enter text.
   c. Discussion: Click here to enter text.
4. Cost Comparison:

<table>
<thead>
<tr>
<th>Standard Cost</th>
<th>Deviation Cost</th>
<th>Discussion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roadway</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Structure</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

5. Reasons standard cannot be achieved at this time: Click here to enter text.
6. Certification: Click here to enter text.

I have examined this deviation request and believe it to be in the best public interest that it be granted.

Local Agency Engineer __________________________ Date __________________________
The systems engineering process contains a number of steps that are not included in a traditional project delivery process. The systems engineering process is often referred to as the “V” diagram, shown below. An ITS project begins on the left side of the “V” and progresses down the left side of the “V” and then up the right side. Then the project is evaluated by validating and verifying the elements on the right side of the “V” with the elements on the left side.

The Federal Highway Administration (FHWA) and WSDOT are in agreement that for project development and delivery, the most critical portions of the systems engineering process are the Concept of Operations, System Requirements, System Verification, and System Validation. As a result, the Intelligent Transportation Systems (ITS) Systems Engineering Analysis Worksheet in Appendix 41.53 is focused on these core areas.
Intelligent Transportation Systems (ITS) Systems Engineering Analysis Worksheet

This worksheet, or a document with the same information, must be completed for all federal aid projects that include Intelligent Transportation Systems (ITS) elements. This worksheet must be completed prior to submitting a construction authorization request and must be kept in the project file for the entire document retention period of the project. If Concept of Operations, System Requirements, Verification Plan, and Validation Plan documents are required for the project, as determined by this worksheet, these documents must be submitted for review prior to submitting a construction authorization request and must be kept in the project file for the entire document retention period.

1. Project Name: Click here to enter text.
2. Project Number (if known): Click here to enter text.
3. Total project cost (includes preliminary engineering/design, right of way, and construction phases): Click here to enter text.
4. Amount of total project cost for ITS elements: Click here to enter text.
5. Will this project implement a new or expand an existing adaptive signal control technology (ASCT) system?
   - [ ] Yes FHWA and WSDOT consider the project to be high risk. Four additional systems engineering documents (Concept of Operations, System Requirements, Verification Plan, and Validation Plan) are required. See definitions in Section 41.3. These documents must be produced using the latest edition of the USDOT’s Model Systems Engineering Documents for Adaptive Signal Control Technology (ASCT) Systems, FHWA-HOP-11-027, August 2012. Please skip questions 6 and 7.
   - [ ] No
6. Select which of the following items, if any, apply to this project:
   - [ ] The project includes new and unproven hardware and/or communications technology that is considered “cutting edge” or not in common use. This could include custom developed or unproven commercial-off-the-shelf (COTS) technology that has not been used by the agency previously. Please explain why you selected or did not select this item. Click here to enter text.
   - [ ] The project will add new software that will be custom developed for this project or will make major modifications to existing custom developed software. Please explain why you selected or did not select this item. Click here to enter text.
   - [ ] The project will add new interfaces to systems operated or maintained by other agencies. Please explain why you selected or did not select this item. Click here to enter text.
☐ The project will develop new system requirements or require revisions to existing system requirements that are not well understood within the agency and/or well documented at this time. These system requirements will be included in a request for proposal, or plans, specifications, and estimate bid document package. Therefore it will require significant stakeholder involvement and/or technical expertise to develop these items during the project delivery process. Please explain why you selected or did not select this item.

Click here to enter text.

☐ Multiple agencies will be responsible for one or more aspects of the project design, construction, deployment, and/or the ongoing operations and maintenance of the system. Please explain why you selected or did not select this item.

Click here to enter text.

7. If you selected yes to any of the items in question 6, FHWA and WSDOT consider the project to be high risk. Please see the following table for additional requirements.

<table>
<thead>
<tr>
<th>Project Risk Level</th>
<th>Total Project Cost for ITS Elements</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>High Risk ITS</td>
<td>Less than $1,000,000²</td>
<td>1. A decision to not complete the additional systems engineering documents for high risk projects that have less than $1,000,000 of ITS elements requires FHWA concurrence prior to submitting a construction authorization request.</td>
</tr>
<tr>
<td></td>
<td>Equal or Greater than $1,000,000³</td>
<td>2. See definitions in Section 41.3.</td>
</tr>
<tr>
<td></td>
<td>Additional systems engineering documents (Concept of Operations, System Requirements, Verification Plan, and Validation Plan)² are recommended.¹</td>
<td>3. Use the amount from question 4.</td>
</tr>
<tr>
<td></td>
<td>Additional systems engineering documents (Concept of Operations, System Requirements, Verification Plan, and Validation Plan)³ are required.</td>
<td></td>
</tr>
</tbody>
</table>

8. What is the name of the regional ITS architecture and which portions of the architecture will be implemented? Is the project consistent with the architecture? Are revisions to the architecture required? Also, which user services, physical subsystem elements, information flows, and market/service packages will be completed, and how will these pieces be part of the architecture?

Click here to enter text.

9. Identify the participating agencies, their roles and responsibilities, and the concept of operations. For the elements and market/service packages to be implemented, define the high-level operations of the system. This includes where the system will be used, its performance parameters, its life cycle, and who will operate and maintain it. Discuss the established requirements or agreements on information sharing and traffic device control responsibilities. The regional ITS architecture operational concept is a good starting point for discussion.

If this is a high risk project and a more extensive Concept of Operations document is being prepared for this project (see question 7, this answer can be a simple reference to that document.

Click here to enter text.

10. Define the system requirements. Based on the concept of operations, define the “what” and not the “how” of the system. Define the detailed requirements for eventual detailed design. The applicable high-level functional requirements from the regional architecture are a good starting point for discussion. A review of the requirements by the project stakeholders is recommended.
If this is a high risk project and a more extensive System Requirements document is being prepared for this project (see question 7), this answer can be a simple reference to that document.

Click here to enter text.

11. Provide an analysis of alternative system configurations and technology options to meet requirements. This analysis should outline the strengths and weaknesses, technical feasibility, institutional compatibility, and life cycle costs of each alternative. The project stakeholders should have had input in choosing the preferred solution.

Click here to enter text.

12. Identify procurement/contracting options. Since there are different procurement methods for different types of projects, the decision regarding the best procurement option should consider the level of agency participation, compatibility with existing procurement methods, the role of the system integrator, and life cycle costs. Some options to consider include: consultant design/low-bid contractor, systems manager, systems integrator, task order, and design/build.

If the ITS portions of the project significantly meet the definition of construction, then construction by low-bid contract would be used. Non-construction ITS portions of the project, such as services for software development, systems integration, systems deployment, systems management, or design, will be either engineering or service contracts. In these cases, a qualifications-based selection (QBS) or best value procurement may be more appropriate. For guidance on procurement options for ASCT systems, refer to Pages 15-20 of USDOT’s Model Systems Engineering Documents for Adaptive Signal Control Technology (ASCT) Systems, FHWA-HOP-11-027, August 2012.

Click here to enter text.

13. Identify the applicable ITS standards and testing procedures. Include documentation on which standards will be incorporated into the system design. Also include justification for any applicable standards not incorporated. The standards discussion in the regional architecture is a good starting point for discussion.

Click here to enter text.

14. Outline the procedures and resources necessary for operations and management of the system. In addition to the concept of operations, document any internal policies or procedures necessary to recognize and incorporate the new system into the current operations and decision-making processes. Also, resources necessary to support continued operations, including staffing and training must be recognized early and be provided for. Such resources must also be provided to support necessary maintenance and upkeep to ensure continued system viability.

Click here to enter text.
Purpose

The purpose of this document is to provide basic guidance related to the procurement and administration of Federal-Aid Intelligent Transportation System (ITS) contracts.

Scope

This document is intended to be used by the Federal Highway Administration (FHWA) Washington Division Office, Washington State Department of Transportation (WSDOT), and local agencies as a guide on the proper types of procurement methods for various types of ITS projects. This guidance is not all encompassing as ITS projects can vary significantly in scope; however, it should provide adequate information to address a majority of situations. Specific questions about an individual ITS project should be directed to the Washington Division Office.

Construction vs. Non-construction

ITS improvements may be incorporated as part of a traditional federal-aid construction contract, or the contracting agency may elect to procure ITS services under a separate contract (i.e., stand-alone ITS projects). When procured as a separate contract, the scope of an ITS contract will determine the applicability of Federal procurement requirements. Title 23 United States Code Section 101(a)(3) provides a broad definition for construction for Federal-Aid eligibility purposes. FHWA generally interprets the definition broadly resulting in many types projects being classified as construction. Very simply, a contract that incurs costs incidental to the construction or reconstruction of a highway, including improvements that directly facilitate and control traffic flow (e.g., traffic control systems) are by definition construction contracts. This includes rehabilitation of an existing physical ITS infrastructure. Construction contracts must follow the regulatory requirements of 23 CFR 635 or 23 CFR 636 in the case of Design Build.

Non-construction type ITS contracts will be either Engineering Contracts or Service Contracts. Engineering is defined as professional services of an engineering nature as defined by state law. If the ITS contract primarily involves engineering then qualifications-based selection (QBS) procedures in compliance with the Brooks Act, must be followed. Service contracts (non-construction, non-engineering in nature) are to be procured in accordance with the Common Rule for Grants and Cooperative Agreements to States and Local Governments found at 49 CFR 18.36.

Types of ITS Projects

Stand-alone ITS projects can generally be categorized into one of the following types of ITS projects: 1) planning/research, 2) preliminary engineering/project development, 3) software development/system integration, 4) system deployments, 5) traditional construction, and 6) operations and maintenance. All Federal-Aid ITS projects in 23 CFR 940, regardless of the type, are directed to follow a Systems Engineering process. Refer to WSDOT Design Manual Chapter 1050 and WSDOT LAG Manual Chapter 41.
The following table provides further information about each of these ITS project types.

<table>
<thead>
<tr>
<th>ITS Project Type</th>
<th>Description</th>
<th>Examples</th>
</tr>
</thead>
</table>
| Planning/ Research | Generally, involves studies that research new concepts or develop plans or procedures at a broader agency- or region-wide level. These are generally not construction and often done by agency personnel. | • Regional ITS Architecture development and maintenance  
• Regional Concept of Operation  
• Traffic incident management planning  
• Standards testing and specification development  
• Public outreach and communication |
| Preliminary Engineering/ Project Development | Generally, a project or phase of a larger project, that leads to some type of ITS deployment/ construction. Typically involve some type of service or engineering contact, or work done by agency personnel and are generally not considered construction. | • Scoping/field surveys  
• Project-level Concept of Operation  
• Environmental Review  
• Development of RFPs  
• Development of PS&Es  
• Evaluation of technology, networking, system architecture alternatives |
| Software Development/ System Integration | Generally, involves projects that develop new or upgraded ITS-related software or involve integrating ITS services and equipment. These are typically not construction and often fall under a service contract. | • Traffic Management Center (TMC) central software design, development, installation  
• Modifying existing central system software to communicate with new field equipment  
• Incorporation of device control software into central systems  
• Acceptance testing and configuration management |
| System Deployments | Generally, includes total system implementation involving design, equipment, computer systems, telecommunications, and integration. Contracts are often non-construction in nature depending on the amount and type of field work relative to the overall project. These types of projects will often be the least cut and dry in terms of the appropriate contracting method. | • Road-weather information systems (RWIS)  
• Surveillance camera procurement and installation on existing poles (non-construction when limited in scope)  
• Non-intrusive sensor procurement and installation on existing poles (non-construction when limited in scope)  
• Adaptive Signal Control Systems |
| Traditional Construction | Typical construction projects involving considerable installation of equipment or work in the field. Design-Bid-Build (low bid) or Design-Build contracting appropriate for this type of work. | • Installation of variable message signs  
• Installation of poles, controller cabinets, foundations, guardrail, gantries  
• Installation of radio towers and civil infrastructure for wireless systems  
• Installation of tolling field equipment (e.g. tag readers, video cameras, etc.)  
• Installation of underground infrastructure (trenching, cable installation, etc.) |
| Operations/ Maintenance | On-going operations and/or maintenance of ITS services, software, and equipment. Typically a service contract (non-construction) | • Operating costs for traffic monitoring, management, control systems (e.g., rent, communications, labor, utilities)  
• Preventative maintenance |
42.1 Introduction

The City Design Standards Committee and the County Design Standards Committee, in accordance with RCW 35.78.030 and 43.32.020, meet on a regular basis to review and update the city and county design standards for all facilities (NHS and Non-NHS).

The Local Agency Engineer may approve use of the minimum AASHTO and related standards as contained in the references. Design deviations must have the approval of the Washington State Department of Transportation (WSDOT) Local Programs in accordance with RCW 35.78.040 or RCW 36.86.080 as appropriate. When AASHTO and/or related design standards as contained in the references are updated and published, agencies must incorporate the new design standards for all projects no later than two years after of the publication date.

All projects are subject to Americans with Disabilities Act (ADA) requirements for accessibility. For guidance on ADA standards, please see Design Manual M 22-01 Chapter 1510 and the Local Agency ADA Planning and Design Resource web page at www.wsdot.wa.gov/LocalPrograms/Planning/ada.htm.

These standards apply to new construction and reconstruction projects, 3R and 2R projects, and low volume road and street projects on all routes which are classified as Principal Arterials, Minor Arterials, or Collectors. These standards are applicable to new or reconstructed bridges on rural minor collectors, local roads, and local streets.

Included in the standards are the Local Agency Design Matrices. The matrices are used to standardize design element requirements based on project type for all facilities. The Local Agency Design Matrices Checklists may serve as design documentation for decisions made.

In adopting these standards, the committees seek to encourage standardization of road design elements where necessary for consistency and to assure that motoring, bicycling, and pedestrian public safety needs are met. Considerations include safety, convenience, context sensitive solutions, proper drainage, and economical maintenance. The committees recognize that cities and counties must have the flexibility to carry out the general duty to provide streets, roads, and highways for the diverse and changing needs of the traveling public.

These standards cannot provide for all situations. They are intended to assist, but not to substitute for, competent work by design professionals. It is expected that land surveyors, engineers, and architects will bring to each project the best skills from their respective disciplines. These standards are also not intended to limit any innovative or creative effort, which could result in better quality, better cost savings, or both. An agency may adopt higher standards to fit local conditions. Special funding programs may also have varying standards.

The decision to use a particular road design element at a particular location should be made on the basis of an engineering analysis of the location. Thus, while this document provides design standards, it is not a substitute for engineering judgment.
Engineers should take into account all available information, including available funding, and use the professional judgment that comes from training and experience to make the final design determination. There shall be a record, of the matters considered during the design process that justify decisions made regarding the final project design. The project design must be approved by the approving authority as outlined on the agency’s Certification Acceptance Agreement or the acting designated authority for a Non-Certification Acceptance agency. See Chapter 43 and Appendix 43.62.

### 42.2 Committee Membership

<table>
<thead>
<tr>
<th>City Design Standards Committee</th>
<th>County Design Standards Committee</th>
<th>Other Participants</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>City Design Standards Committee</strong></td>
<td><strong>County Design Standards Committee</strong></td>
<td><strong>Other Participants</strong></td>
</tr>
<tr>
<td>RCW 35.78.020</td>
<td>RCW 43.32.010</td>
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</tr>
<tr>
<td><strong>Jim Parvey, PE</strong></td>
<td><strong>Jim Whitbread, PE</strong></td>
<td><strong>Alison Hellberg</strong></td>
</tr>
<tr>
<td>Senior Principal Engineer</td>
<td>County Engineer</td>
<td>Association of Washington Cities</td>
</tr>
<tr>
<td>City of Tacoma</td>
<td>Stevens County</td>
<td><a href="mailto:alisonh@awcnet.org">alisonh@awcnet.org</a></td>
</tr>
<tr>
<td><a href="mailto:jparvey@cityoftacoma.org">jparvey@cityoftacoma.org</a></td>
<td><a href="mailto:jwhitbre@co.stevens.wa.us">jwhitbre@co.stevens.wa.us</a></td>
<td></td>
</tr>
<tr>
<td><strong>Dan Handa, PE</strong></td>
<td><strong>Bryan Thorp, PLS</strong></td>
<td><strong>Randy Hart, PE</strong></td>
</tr>
<tr>
<td>Development Services</td>
<td>Design and Construction Manager</td>
<td>County Road</td>
</tr>
<tr>
<td>City of Puyallup</td>
<td>Benton County</td>
<td>Administration Board</td>
</tr>
<tr>
<td><a href="mailto:dhanda@ci.puyallup.wa.us">dhanda@ci.puyallup.wa.us</a></td>
<td><a href="mailto:bryan.thorp@co.benton.wa.us">bryan.thorp@co.benton.wa.us</a></td>
<td><a href="mailto:randy@crab.wa.gov">randy@crab.wa.gov</a></td>
</tr>
<tr>
<td><strong>Mike Johnson, PE</strong></td>
<td><strong>Vacant</strong></td>
<td><strong>Greg Armstrong, PE</strong></td>
</tr>
<tr>
<td>Design Engineering and Construction Advisor</td>
<td></td>
<td>Chief Engineer</td>
</tr>
<tr>
<td>City of Seattle</td>
<td></td>
<td>Transportation Improvement Board</td>
</tr>
<tr>
<td><a href="mailto:mike.johnson@seattle.gov">mike.johnson@seattle.gov</a></td>
<td></td>
<td><a href="mailto:grega@tib.wa.gov">grega@tib.wa.gov</a></td>
</tr>
<tr>
<td><strong>Mike Taylor, PE</strong></td>
<td><strong>Jon Brand, PE</strong></td>
<td><strong>John Donahue</strong></td>
</tr>
<tr>
<td>City Engineer</td>
<td>Assistant Director of Roads and Engineering</td>
<td>WSDOT Design</td>
</tr>
<tr>
<td>City of Spokane</td>
<td>Kitsap County</td>
<td>donahjo@<a href="mailto:wsdot@wa.gov">wsdot@wa.gov</a></td>
</tr>
<tr>
<td><a href="mailto:mtaylor@spokanecity.org">mtaylor@spokanecity.org</a></td>
<td><a href="mailto:jbrand@co.kitsap.wa.us">jbrand@co.kitsap.wa.us</a></td>
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</tr>
<tr>
<td><strong>Martin Hoppe, PE, PTOE</strong></td>
<td><strong>Bob McEwen, PE</strong></td>
<td><strong>Megan Hall, PE</strong></td>
</tr>
<tr>
<td>City of Lacey</td>
<td>Program Engineer</td>
<td>Federal Highway Administration</td>
</tr>
<tr>
<td>Transportation Manager</td>
<td>Snohomish County</td>
<td><a href="mailto:megan.hall@fhwa.dot.gov">megan.hall@fhwa.dot.gov</a></td>
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<td></td>
</tr>
<tr>
<td><strong>Michael Pawlak</strong></td>
<td><strong>Ramiro Chavez, PE</strong></td>
<td><strong>Mike Horton</strong></td>
</tr>
<tr>
<td>City Engineer</td>
<td>Project Engineering Manager</td>
<td>Operations Mgr. for Transportation</td>
</tr>
<tr>
<td>City of Pasco</td>
<td>Pierce County</td>
<td>AECOM</td>
</tr>
<tr>
<td><a href="mailto:pawlakm@pasco-wa.gov">pawlakm@pasco-wa.gov</a></td>
<td><a href="mailto:rchavez@co.pierce.wa.us">rchavez@co.pierce.wa.us</a></td>
<td><a href="mailto:michael.horton@aecom.com">michael.horton@aecom.com</a></td>
</tr>
</tbody>
</table>

These design standards were developed with the approval and authorization of:

Kyle McKeon, Committee Chair  
Engineering Services Manager  
Headquarters Local Programs  
Washington State Department of Transportation
42.3 Local Agency Design Matrices

The Local Agency Design Matrices were created as part of the Local Agency Standards to assist designers in determining the design level for the geometric and safety elements of a project. The Local Agency Design Matrix Checklist may serve as documentation for design decisions made.

.31 Using the Matrices – The column headings on each of the three design matrices are design elements. They are based principally on the 13 controlling design criteria recognized by FHWA: design speed, lane width, shoulder width, bridge width, structural capacity, horizontal alignment, vertical alignment, grade, stopping sight distance, cross slope, superelevation, vertical clearance, and horizontal clearance. Within the column headings, some of the controlling criteria have been combined (for example, design speed is part of horizontal and vertical alignment). The matrices are divided into three tables, one each for Roadways, Cross Roads, and Bridges. Within the three tables the project types are identical, design elements vary depending on which elements apply.

A blank cell within the design matrix signifies that the design element need not be addressed because it is beyond the scope of the project type.

Design levels of City and County Design Standards (D), AASHTO (A), and Agency Evaluate (AE), are used in the matrix. The design level codes are noted in the cells by D, A or AE or by a number corresponding to a footnote. For roads that have volumes less than 400 ADT, AASHTO Geometric Design of Very Low Volume Roads (ADT<400) may be used.

Optional Checklists have been provided for the designer to use with the matrix. A checklist is available for each type of project in Appendix 42.101.

Matrix Cells: Each Matrix cell is either blank or has a coded design level.

.32 Design Levels – If the Design Level is D, use the Geometric Cross-Section for Two-Way Roads and Streets within the City and County Design Standards on page 12.

If the design level is A, the design standard is AASHTO (the most current edition of the AASHTO publication A Policy on Geometric Design of Highway and Streets, “Guidelines for Geometric Design of Very Low-Volume Local Roads (ADT< 400),” or as noted in the City and County Design Standards. When AASHTO and/or related design standards as contained in the references are updated and published, agencies must comply with the new design standards for all projects no later than two years after of the publication date.

When the Matrix cell has either a “D” or an “A” and the final design utilizes something less than Design Level A, a Design Deviation, approved by Headquarters Local Programs, is required.

A Blank Cell on a matrix line indicates that particular design element requires no evaluation or documentation. If the agency decides to improve or modify a blank cell design element, that element must meet Design Level A and the agency must justify in their design document files why the decision to upgrade the design element was made. Per FHWA guidelines, if an improvement in a “Blank Cell” area is made, it must meet all requirements of design level A. Or if, in the opinion of the agency’s design Engineer, Design Level A cannot be achieved, a Design Exception may be considered.
AE in a matrix cell indicates that an agency needs to determine if the existing design element is less than Design Level A. If the existing design element meets or exceeds Design Level A the agency notes that in the design documents and no further action is required. If the existing design element is less than Design Level A, the agency shall determine the impacts and cost effectiveness of upgrading the design element to Design Level A. The decision whether or not to upgrade, and its analysis and justification shall be in the agency design documentation files. If the agency upgrades, Design Level A applies. Or if, in the opinion of the agency’s design Engineer, Design Level A cannot be achieved, a Design Exception may be utilized.

A Design Exception may be utilized if, in the opinion of the local agency’s design Engineer, the existing design element is being improved but Design Level D or A cannot be achieved. For example, design standard requires a 6 foot wide shoulder for a project, the existing condition is a two foot wide shoulder but the best that can be reasonably achieved is a 4 foot wide shoulder. This is a Design Exception, improvement is being made but not to Design Level A.

### 42.4 Local Agency Design Matrix Definitions

#### .41 Design Elements

- **Horizontal Alignment** is the horizontal attributes of the roadway including horizontal curvature, superelevation, and stopping sight distance; all based on design speed.
- **Vertical Alignment** is the vertical attributes of the roadway including vertical curvature, profile grades, and stopping sight distance; all based on design speed.
- **Lane Width** is the distance between lane lines.
- **Shoulder Width** is the distance between the outside or inside edge line and the edge of in-slope, or face of barrier.
- **Lane and Shoulder Taper** (pavement transitions) are the rate and length of transition of changes in width of roadway surface.
- **Pedestrian Facility** is a facility designed to meet the needs of pedestrians in accordance with city, county, and ADA requirements concurrent with a local agency project.
- **Sidewalk Width** is the width of a sidewalk from the face of curb to the back of sidewalk.
- **Cross Slope, Lane** is the rate of elevation change across a lane. This element includes the algebraic difference in cross slope between adjacent lanes.
- **Cross Slope, Shoulder** is the rate of elevation change across a shoulder.
- **Superelevation** is the rotation of the roadway cross section in such a manner as to overcome part of the centrifugal force that acts on a vehicle traversing a curve.
- **Fill/Ditch Fore Slope** is downward slope from edge of shoulder to bottom of ditch or catch.
- **Clear Zone** is the total roadside border area, starting at the edge of the traveled lane, available for use by errant vehicles. This area may consist of a shoulder, a recoverable slope, a nonrecoverable slope, and/or a clear run-out area.
• **Safety Improvements** are the safety items listed under the “Safety Improvements” section of these standards.

• **Shared Use Bicycle and Pedestrian Facilities** are walkways, paths, or trails for shared use by both pedestrian and bicycle traffic. Effective July 1, 2012, refer to the current AASHTO bicycle design standards and/or standards submitted by the local agency which have been approved by Local Programs for any facility allowing bicycle traffic.

• **Turn Radii** is the geometric design of the intersection to allow the design vehicle for each turning movement to complete the turn without encroachment.

• **I/S (Intersection) Sight Distance** is the distance that the driver of a vehicle on the crossroad can see along the through roadway, as compared to the distance required for safe operation.

• **I/S Angle** is the angle between any two intersecting legs at the point that the center lines intersect.

• **Barriers Standard Run (Std Run)** are guardrail and other barriers excluding terminals, transitions, attenuators, and bridge rails.

• **Barriers Bridge Rail** is barrier on a bridge excluding transitions.

• **Bridge Vertical Clearance** is the minimum height between the roadway including shoulder and an overhead obstruction.

• **Bridge Structural Capacity** is the load bearing ability of a structure.

• **Terminals** are crashworthy end treatment for longitudinal barriers that is designed to reduce the potential for spearing, vaulting, rolling, or excessive deceleration of impacting vehicles from either direction of travel. Impact attenuators are considered terminals and beam guardrail terminals include anchorage.

• **Transitions** are sections of barriers used to produce a gradual stiffening of a flexible or semi-rigid barrier as it connects to a more rigid barrier or fixed objects.

### 42 Project Type Definitions

• **New Construction** involves the construction of a new roadway facility or structure where nothing of its type currently exists.

• **Reconstruction projects** may add additional travel lanes to an existing roadway or bridge and if 50 percent or more of the project length involves vertical or horizontal alignment changes, the project will be considered reconstruction.

• **3R projects** focus primarily on the preservation and extending of the service life of existing facilities and on safety enhancements. Work may include: resurfacing, pavement structural and joint repair, lane and shoulder widening, alterations to vertical grades and horizontal curves, bridge repair, removal or protection of roadside obstacles, and improving bridges to meet current standards for structural loading and to accommodate the approach roadway width.

• **2R projects** focus primarily on restoration of pavement structure, crown correction, ride quality basic safety, and spot safety. Widening shoulders for continuity with the existing roadway cross section is acceptable.
- **Railroad** is a project to reduce the accident frequency and severity at grade crossings. Project elements may include, signals, bells, signage, pavement markings gates or surfacing at the crossing. Railroad-highway grade separation projects are also in this category. If the project includes other roadway work, use 3R matrix line.

- **Bridge New/Replacement** is a new bridge or a replacement of an existing bridge.

- **Bridge Widening** is the widening of existing bridges.

- **Bridge-Other** are project types that may include, scour mitigation, painting, seismic retrofit, deck repair, strengthening, rehabilitation, and electrical mechanical repairs.

- **Paths and/or Trails** is the construction of non-motorized facilities that are independent of a roadway alignment.

- **Pedestrian Facilities** are projects with a main focus of providing pedestrian facilities for public use.

- **Other, Interpretive Centers, Etc.** projects may include, bicycle facilities, structures, bus shelters, archeology and historic preservation, and buildings.

- **Parking Facilities** are projects that construct parking facilities. Project types may include Park and Ride facilities and on-street parking.

### .43 Other Definitions

- **Average Daily Traffic (ADT)** – The general unit of measure for traffic defined as the total volume during a given time period (in whole days), greater than one day and less than one year, divided by the number of days in that time period.

- **Design Hourly Volume (DHV)** – The DHV is generally the 30th highest hourly volume (30 DHV) of the future year chosen for design. On the average rural road or arterial, DHV is about 15 percent of ADT. For urban areas, DHV is usually between 8 to 12 percent of the ADT.

- **Low Volume Roads and Streets** – For this document, a collector or lower classified road or street with an ADT of less than 400.

- **Resurfacing** – The addition of a layer or layers of paving material to provide additional structural integrity or improved serviceability and rideability.

- **Restoration** – Work performed on either pavement sections or bridge decks to render them suitable for an additional stage of construction. This may include supplementing the existing roadway by increasing surfacing and paving courses to provide structural capability and minor shoulder widening to provide roadway section continuity. Restoration will generally be performed within the existing right of way.

- **Rehabilitation** – Similar to “Restoration” except the work may include, but is not limited to, the following:
  - Reworking, strengthening, or removing and replacing the base and/or subgrade.
  - Recycling or reworking existing materials to improve their structural integrity.
  - Adding underdrains.
  - Replacing or restoring malfunctioning joints.
  - Substantial pavement under-sealing when essential for stabilization.
• Pavement grinding to restore smoothness, providing adequate structural thickness remains.
• Removing and replacing deteriorated materials.
• Crack and joint sealing but only when the required shape factor is established by routing or sawing.
• Improving or widening shoulders.

Rehabilitation may require acquisitions of additional right of way.

• **Traveled Lane** – The portion of the roadway intended for the movement of vehicles, exclusive of shoulders and lanes for parking, turning, and storage for turning.

.044 **Safety Improvements** – When using AASHTO guidance for clear zone determinations, the designer should take into account all AASHTO guidance (i.e., AASHTO Roadside Design Guide) relating to clear zone and project circumstances. See references section of this chapter.

**Mandatory Upgrades**

1. Update all delineation and signing in accordance with the current MUTCD. (This does not include replacement of sign bridges or cantilever supports.)
2. Modify substandard guardrail transitions and terminals to current standards.

**Agency Evaluate Need**

3. Adjust existing features that are affected by resurfacing, such as guardrails, monuments, catch basins, and access covers. Adjustment may include asphalt tapers as appropriate.
4. Modification of drainage structures, which present a hazard in the clear zone, e.g., beveled end sections/safety bars for both parallel and cross-drains.
5. Remove, relocate, reduce severity of hazard by providing crashworthy features, protect, or delineate roadside obstacles inside the design clear zone.
6. Restore sight distance at public road intersections and the inside of curves through low cost measures if they are available such as removal or relocation of signs and other obstructions, and cutting of vegetative matter. The local agency Engineer will determine if the measures are low cost.
### Project Type

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**D** Design Level D  
**A** Design Level A  
**AE** Agency Evaluate to Design Level A

1. When provided, must meet current applicable standards.  
2. Refer to Safety Improvements on page 7. Mandatory Upgrade items 1 and all others are AE.

**Local Agency Design Matrix**  
*Table 1.1*
### Local Agency Design Matrix

**Table 1.2**

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<tr>
<th>Project Type</th>
<th>Cross Roads</th>
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D  Design Level D  
A  Design Level A  
AE  Agency Evaluate to Design Level A

1. When provided, must meet current standards.  
2. Refer to Safety Improvements on page 7. Mandatory Upgrade items 1 and all others are AE.

### Local Agency Design Matrix

**Table 1.3**

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Local Agency Design Matrix

**Table 1.3**
### 42.5 Design Level D Standards for Two Way Roads and Streets

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<th>Design Standards</th>
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<td>Lane width:</td>
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<td>1. Exterior</td>
<td>12ft</td>
<td>12ft</td>
</tr>
<tr>
<td>2. Interior Thru</td>
<td>11ft</td>
<td>11ft</td>
</tr>
<tr>
<td>3. Two Way Left Turn</td>
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<td>4. Exclusive Turn</td>
<td>11ft</td>
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</tr>
<tr>
<td>5. Parking</td>
<td>10ft(3)</td>
<td>10ft(3)</td>
</tr>
<tr>
<td>Shoulder Width</td>
<td>6ft</td>
<td>8ft</td>
</tr>
<tr>
<td>Clear Zone/Side Slopes</td>
<td>AASHTO(10)</td>
<td></td>
</tr>
<tr>
<td>Ditch Slope (in slope)</td>
<td>Slopes steeper than 4:1 should only be used when achieving a 4:1 slope is impractical.</td>
<td></td>
</tr>
</tbody>
</table>

(1) For curbed, distance from face of curb to face of curb. For shouldered, distance from paved edge to paved edge of shoulder.

(2) May be reduced to minimum allowed by AASHTO.

(3) 8 feet may be acceptable when the lane is not likely to become a traffic lane in the foreseeable future.

(4) Curbed section is appropriate for urban setting.

(5) Industrial areas 8 feet to 10 feet. Residential areas 7 feet to 10 feet.

(6) When guardrail is necessary, provide 2 feet of widening or longer posts to ensure lateral support.

(7) For roads with traffic volumes of less than 400 ADT, the low volume road and street standards may be used.

(8) Federal functional classification defined by WSDOT.

(9) For guidance for one-way streets, see AASHTO, and the current uniform fire code.

(10) When using AASHTO guidance for clear zone determinations, the designer should take into account all AASHTO materials relating to clear zone and project circumstances. See the reference section of this publication.

**Note:** Design Hourly Volume (DHV). The DHV is generally the 30th highest hourly volume (30 DHV) of the future year chosen for design. On the average rural road or arterial, DHV is about 15 percent of ADT. For urban areas, DHV is usually between 8 to 12 percent of the ADT or AADT.

**Detectable Warnings (Truncated Domes):**

For dimensions, see WSDOT Standard Plans, F40 series. For material contrast requirements, see proposed ADA guidance from the U.S. Access Board at www.access-board.gov/ada-aba.htm

U.S. Access Board at www.access-board.gov/prowac/draft.htm

**New Sidewalks (when provided):**

- **Minimum Width** – 60 inches continuous clear width exclusive of the curb or 48 inches clear width exclusive of the curb with 60 inch by 60 inch clear passing spaces at 200-foot maximum intervals.
- **Surface** – Firm, stable, and slip resistant.
- **Crosslopes** – 1:50 (2 percent) maximum.
- **Running Slope** – When within street or highway right of way, must be consistent with the slope established by the roadway. If outside street or highway right of way, must be 5% max. unless designed as a ramp (see ADA guidance).
- **Buffer** – Separation from vehicular ways by curbs or other barriers.
42.6 Roadway Geometrics

The AASHTO publication *A Policy on Geometric Design of Highways and Streets* (Green Book) is the design standard accepted by FHWA for project funding. The designer should read all text associated with the standards and should also consider related tables and text. Additionally, design references are provided in the References for New Construction and Reconstruction, 3R, and 2R Standards and in Tables 1.1, 1.2, and 1.3 of this chapter.

.61 Bridge Standards

<table>
<thead>
<tr>
<th>Design Elements</th>
<th>References</th>
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</thead>
<tbody>
<tr>
<td>Bridge Width</td>
<td>The minimum bridge width for two-way structures is the greater of: (1) the design roadway width, or (2) the existing roadway width.</td>
</tr>
<tr>
<td>Loading</td>
<td>HL 93 (for federally funded projects), others may use HS 20-44.</td>
</tr>
<tr>
<td>Vehicular Railing</td>
<td>AASHTO Crash Tested Rail, or Approved NCHRP 350 Crash Tested Rail.</td>
</tr>
<tr>
<td>Pedestrian Railing</td>
<td>AASHTO, NCHRP 350.</td>
</tr>
<tr>
<td>Approach Railing</td>
<td>AASHTO Crash Tested Rail, or Approved NCHRP 350 Crash Tested Rail.</td>
</tr>
<tr>
<td>Vertical Clearance</td>
<td>16.5 feet minimum.</td>
</tr>
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</table>

.62 Other Standards

<table>
<thead>
<tr>
<th>Design Elements</th>
<th>References</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bicycle</td>
<td>AASHTO Guide for the Development of Bicycle Facilities <em>(RCW 35.75.060 and 36.82.145)</em> and/or standards submitted by the local agency which have been approved by Local Programs.</td>
</tr>
<tr>
<td>Signing</td>
<td>MUTCD, as modified by the Washington State Transportation Commission per <em>RCW 47.36.030</em>.</td>
</tr>
<tr>
<td>Sidewalks</td>
<td>AASHTO Guide for Planning, Design, and Operation of Pedestrian Facilities</td>
</tr>
<tr>
<td>Low Volume Roads</td>
<td>2001 AASHTO Geometric Design of Very Low Volume Local Roads <em>(ADT &lt; 400)</em></td>
</tr>
</tbody>
</table>
42.7 3R Projects

.71 General Discussion – Funding restrictions and other considerations do not always allow improvement of all existing roads and streets to the standards desirable for new construction. Therefore, when pavement condition deteriorates to the level of minimal standards, a cost-effective pavement improvement is needed.

A project becomes 3R when the proposed improvement consists of resurfacing, restoration, or rehabilitation to preserve and extend the service life of the roadway, or enhances the safety of the traveling, bicycling, and/or walking public.

3R projects primarily involve work on an existing roadway surface and/or subsurface. Their purpose includes extending the service life, providing additional pavement strength, restoring or improving the original cross-section, increasing skid resistance, decreasing noise, improving the ride of the roadway, and enhancing safety.

Many factors influence the scope of 3R projects, including:

- Roadside conditions.
- Funding constraints.
- Environmental concerns.
- Changing traffic and land use patterns.
- Deterioration rate of surfacing.
- Accidents or accident rates.

Normally, all 3R improvements are made within the existing right of way, although acquiring right of way and/or easements should be considered when and where practical.

Each 3R project should be considered in context with the entire route between logical termini and within the constraints imposed by limited funding and other considerations.

As a minimum, normally include the following for a 3R project:

- Guardrail end treatments upgraded to current standards.
- Appropriate transition and connection of approach rail to bridge rail.
- Beveled end sections for both parallel and cross-drain structures located in the clear zone.
- Relocating, protecting, or providing breakaway features for sign supports and luminaires.
- Protection for exposed bridge piers and all abutments.
- Modification of raised drop inlets that present a hazard in the clear zone.

It is desirable to provide a roadside clear of fixed objects and nontraversable obstacles. The priority for action relative to roadside obstacles is: (1) remove, (2) redesign, (3) relocate, (4) reduce severity by crashworthy features, (5) protect, or (6) delineate.

On all projects, which include structures with deficient safety features, consideration must be given to correcting the deficient features. When complete upgrading is not practical, a partial or selective upgrading and/or other improvements should be considered to mitigate the effects of the substandard elements.
42.8 2R Projects

.81 General Discussion – Funding restrictions do not always allow improvement of existing roadways to the standards desired. Therefore, when pavement condition reaches a minimal condition, cost effective pavement improvements are needed.

Resurfacing and restoration (2R) projects involve work to restore the existing roadway surface and appurtenances for safe and efficient highway operation. This type of project provides for resurfacing of the existing roadway to provide structural adequacy, to restore the roadway surface condition, and to consider making minor safety improvements.

Resurfacing of the roadway will normally be to the existing width. This should consider paving of previously unpaved shoulders. If short lengths of narrower lanes or shoulders exist within the project limits, widening should be considered to provide roadway section continuity within the project limits.

42.9 References

The designer must use the standards and rationales incorporated into the following manuals (see the following page for addresses to acquire reference materials).

AASHTO

• A Policy on Geometric Design of Highways and Streets, 2011 Edition
• Guide for Design of Pavement Structures
• Highway Drainage Guidelines
• Guide for Roadway Lighting
• Roadside Design Guide
• Geometric Design of Very Low Volume Local Roads (ADT<400)
• AASHTO Guide for the Development of Bicycle Facilities

Transportation Research Board (TRB)

• Highway Capacity Manual

Washington State Department of Transportation (WSDOT)

• Standard Specifications for Road, Bridge, and Municipal Construction M 41-10
• Supplement to MUTCD (WAC 468-95)
• Bridge Design Manual M 23-50
• Highway Hydraulics Manual
• Standard Plans for Road, Bridge, and Municipal Construction M 21-01
• Design Manual M 22-01
• Pavement Design Manual

Institute of Transportation Engineers (ITE)

• Traffic Engineering Handbook
FHWA
• Manual of Uniform Traffic Control Devices (MUTCD)
• 49 CFR Part 27 and Designing Sidewalks and Trails for Access, Part II

ADA
• Public Rights of Way Access Advisory Committee (PROWAAC) http://ite.org/accessible/prowaac/prowaac/_specialreport.pdf
• Local Agency ADA Planning and Design Resource www.wsdot.wa.gov/ta/operations/localplanning/ada.html

Roundabouts
• NCHRP Reports 572, 672, and 772
• WSDOT Design Manual M 22-01 Chapter 1300
  Chapter 1320

Traffic Calming

.91 Websites and Addresses to Acquire Reference Materials

AASHTO
AASHTO Bookstore https://bookstore.transportation.org/item_details.aspx?id=104

TRB
Transportation Research Board National Research Council
500 5th Street NW
Washington, DC 20418
www.trb.org/highways1/public/highways.aspx

WSDOT
Publications Services
PO Box 47304
Olympia, WA 98504-7304
360-705-7430
www.wsdot.wa.gov/publications/manuals

ITE
Institute of Transportation Engineers
1627 Eye Street NW, Suite 600
Washington, DC 20006
202-785-0060
202-785-0609 (fax)
http://ite.org/
42.10 Appendices

42.101 Local Agency Design Matrix Checklists
Chapter 43

Design Approval

43.1 General Discussion

On all Federal Highway Administration (FHWA) funded transportation projects, local agencies must document design approval prior to preparation of plans, specifications, and estimates (PS&E).

A project design shall not be approved until the project’s environmental documentation (NEPA) has been approved and its public hearing requirements have been met.

Value Engineering Studies (VEs) are required for all projects on the NHS receiving $50 million or more and for all bridges on the NHS receiving $40 million or more. Any project that approaches this cost limit on the preliminary estimate should also have a VE study performed in anticipation of cost increases from preliminary design to the final Plans, Specification and Estimate stage of a project. Refer to Section 43.4 for more information on Value Engineering. A VE study is not required for a Design-Build project.

When there is a subsequent change to the project design or scope, an amended location-design approval is required.

43.2 Requirements for Design Approval

All items on the appropriate design matrix are required to be addressed (see Chapter 42, Table 1.1, 1.2, and 1.3 and Appendix 42.101. In addition, items listed below are also required to be addressed (some of these are included in the Project Prospectus).

.21 Traffic Data – Design-year ADT, the average daily traffic forecast during the design year should be included. The design year for new and reconstruction projects is 20 years from the projected start of construction. All other projects may be any point within 8 to 20 years from the projected start of construction.

.22 Pavement Design Criteria – Rationale for selection of the pavement type and depth of surfacing.

.23 Cost Estimate – An updated cost estimate should be prepared. Include VE study when applicable.

.24 Environmental Document (NEPA) – Documentation, including approval.

The project design must be approved by the approving authority as outlined on the agency’s Certification Acceptance Agreement or the acting designated authority for a Non-Certification Acceptance agency. For an example, see Appendix 43.62.

.25 Right of Way – Local agencies must ensure that the R/W plans were reviewed and approved.
### 43.3 Bridge Design Approval

#### .31 Policy

1. The bridge site data should be prepared in conjunction with the Design. Extensive structural studies and the preparation of the bridge preliminary plans during the Design Report phase are not recommended. Expected changes to the roadway geometrics, project staging, construction costs, and other conceptual data will affect the structure and, therefore, impact the structural design effort.

2. For bridge projects that do not fall under categories described in c. or d. below, the local agency is the approving authority for the design.

3. Bridge projects that are required to perform a Type, Size, and Location (TS&L) as the first order of work after being selected, must receive approval from Local Programs prior to completion of the design stage. (The FHWA regulatory requirements for large or unusual bridges contained in the Federal Aid Policy Guide (FAPG) also apply to large or unusual structures, tunnels, or hydraulic facilities. The definitions and requirements for major or unusual bridges will be addressed below; for other cases, refer to the FAPG.)

4. For bridge projects on, over, or under state routes WSDOT concurrence with the design of the bridge is required.

#### .32 Definitions

- A “major bridge” is a bridge estimated to cost more than $40 million. This criterion applies to individual units of separated dual bridges.
- An “unusual bridge” is a bridge involving difficult or unusual foundation problems, new or complex designs with unusual structures or operational features, or a bridge for which the design standards or criteria might be questionable.

#### .33 Submittal of Data

Local Programs approval of TS&L is required for major or unusual bridges before the local agency may approve the design and before the local agency may begin preparing the final PS&E.

### 43.4 Value Engineering

Value Engineering Studies (VEs) are required for all NHS projects $50 million or more and for all bridges on NHS routes $40 million or more. Any project that approaches this cost limit on the preliminary estimate should also have a VE study performed in anticipation of cost increases from preliminary design to the final Plans, Specifications and Estimate stage of a project.

#### .41 Definition

- Value Engineering (VE) is the systematic application of recognized techniques by multidiscipline team(s). These techniques are:
  - Identify a product’s function or service.
  - Establish a function’s monetary value or worth.
  - Provide alternate ways, using creative techniques, to reliably accomplish necessary functions in the most effective and efficient manner.
Reducing the scope of a project, compromising the performance of an element, or simply substituting cheaper materials is not VE. VE is not just “good engineering.” It simply answers the question, “What else will accomplish the purpose of the product, service, or process we are studying?” All costs are taken into account over the entire life of the project.

.42 Why VE is Needed – The costs of highway needs far exceed the funds available for improvements. As the cost of highway construction increases, more emphasis is being placed on the maintenance and rehabilitation of existing facilities to maximize these available funds.

VE is a tool that can counteract these growing problems by providing (1) cost reduction, (2) product or process improvement, and (3) alternative means and materials for highway construction and maintenance.

.43 VE Application (General) – VE may be applied at any point in highway development, operation, and maintenance. For maximum effectiveness, however, VE should be undertaken as early as possible (during the first 30 percent of design) when decisions on life-cycle costs are being made and valid project development recommendations can be implemented. When a complex, costly project is selected as a candidate for potential cost reductions, investigations should start as soon as a preliminary estimate is in hand.

VE should be employed when the ratio of potential savings to the cost of the VE study is significant. VE can also be used in evaluating standard details that are used repetitively on many projects. The cost of VE studies in preconstruction activities may be allocated to the preliminary engineering cost of the related project.

Local agencies are also encouraged to include a VE incentive clause in their construction specifications; such clauses encourage contractors to propose changes to the contract that fulfill a project’s functional requirements at less cost.

When VE is not mandatory and the local agency staff is considering a VE, it is recommended that the local agency staff prepare a “VE Assessment Report” (Appendix 43.61). The report will address the project characteristics, cost per mile, potential savings of high cost items, and other considerations unique to the project. From this assessment, a recommendation can be developed as to whether a VE study is needed. Use the references listed in Section 43.45 when a mandatory VE study is performed.

.44 VE Study Team – The VE Study Team will be headed by a qualified facilitator. The duties and responsibilities of the facilitator will include, but are not limited to, the following:

1. Acts as chairperson at meetings of the VE Team.
2. Presents the findings and recommendations of the VE study to the local agency management and other interested agencies.
3. Provides the final VE Study Report to the local agency and WSDOT Local Programs.
The VE Team will be comprised of a minimum of five members including the facilitator. One team member should have a background in bridge design (if a bridge is part of the project) or construction. If environmental factors are part of the study process, then the team should also include a member who has expertise on environmental issues.

The VE Team will formally present their study results to local agency representatives, WSDOT Local Programs, and all other interested persons. Team findings and recommendations will then be documented in a formal report and should be provided to all interested parties soon as possible. Courtesy copies are sent to other appropriate agencies and individuals.

The local agency will evaluate the VE Team recommendations. Should their preferred alternative differ from the prospectus or if no project prospectus has been approved, the local agency submits a new or revised prospectus for their preferred alternative to the Region Local Programs Engineer. A summary of the VE study results shall be included in this transmittal as reference material. The project then proceeds as defined in this manual.

.45 Reference Materials

- WSDOT *Design Manual* M 22-01 Value Engineering (VE) section.
43.5 Additional Data Required for Special Projects

.51 Traffic Signal Projects – The local agency shall provide warrants for signalization in accordance with Part 4c of the Manual on Uniform Traffic Control Devices (MUTCD). Designs for signalization at intersections with state routes require review by WSDOT. A signal permit is required for all traffic signals on state routes. An early application to the WSDOT Region Administrator is advisable.

.52 Projects Involving State Routes – Designs for all projects involving state routes shall be submitted to WSDOT for approval. All work at intersections with state routes requires submittal of an intersection plan to WSDOT for approval. Prints of existing intersection plans are available from WSDOT. Revisions should be shown on these prints.

43.6 Appendices

43.61 VE Assessment Report
43.62 Example of Design Approval Documentation
Chapter 44  Plans, Specifications, and Estimates

44.1  General Discussion

After a project’s location and design have been approved, work begins on the final version of the plans, specifications, and cost estimates (PS&E). These documents are used to award and administer a construction contract. The PS&E must be approved as defined in Chapter 13, Becoming Certified to Administer FHWA Projects, before the project can be advertised for construction.

PS&E approval is done by the local agency as identified in the Washington State Department of Transportation (WSDOT)/Local Agency Certification Acceptance (CA) Agreement. The approving authority identified on the CA Agreement must approve the plans and specifications and document that approval, and a professional engineer licensed in the state of Washington must seal and date the plans and specifications.

The local agency should use the Project Development Checklist (Appendix 14.52) to check for completeness of the contract plans prior to approving them.

The local agency must maintain a commitment file, when applicable. This must contain a summary of all commitments made during the development of the project. The file should be reviewed to ensure that the commitments that apply to the contractor are incorporated in the PS&E. This file must also include commitments the local agency is responsible for completing, such as annual reporting to resource agencies. It is the local agency’s responsibility to ensure this file is updated to show when these commitments were completed. Commitments typically involve right of way, maintenance and/or environmental considerations.

A copy of the preliminary PS&E must be submitted to the Region Local Programs Office for concurrence prior to Advertisement. An Ad-ready copy shall also be furnished to the Region Local Programs Engineer prior to advertisement. If the local agency would like WSDOT to prepare the Record of Materials (ROM), an additional copy is also needed.

In addition, any local agency project with work on, over or below state routes or within limited access for the interstate system requires design and traffic documentation approval and PS&E concurrence from WSDOT prior to advertisement. A WSDOT general permit may also be required prior to Ad. The Region Local Programs Engineer can assist in coordinating these approvals.

On WSDOT ad-and-award projects, WSDOT will review and concur with the PS&E prior to printing contract plans and specifications. An estimate of the cost of this service can be obtained from the Region Local Programs Engineer. Refer to forms for a checklist.
44.2 PS&E Requirements

.21 Wage Rates – For information on state law requirements, contact the Municipal Research and Services Center for a listing of current laws. State and federal wage rates must be included for all Federal Highway Administration (FHWA) projects advertised by a local agency. The wage rates used will reflect the latest rates approved by the Washington State Department of Labor and Industries (L&I) and the U.S. Department of Labor. Refer to CFR 29 part 30 and RCW 39.12 and RCW 49.28.

The Federal Davis-Bacon Act predetermined minimum wage must be paid to all covered workers on federal aid projects exceeding $2,000 that are located on a route which is classified as a federal aid highway (Principal Arterial, Minor Arterial or Collector). The Davis-Bacon requirements do not apply to force account work performed by agency forces.

The applicability of Davis-Bacon to an Enhancement, Scenic Byways, or Safe Routes to School project is dependent on the relationship or linkage of the project to a federal aid highway. If the project is “linked” to a federal aid highway based on proximity or impact (i.e., without the federal aid highway the project would not exist), then Davis-Bacon requirements apply. Examples of such projects include the removal of outdoor advertising, a wetland to filter highway drainage, etc. Please contact your Region Local Programs Engineer to determine if Davis Bacon prevailing wage rates apply.

If the project is on a route classified as a rural minor collector or local access then the Davis-Bacon requirements do not apply.

Another Davis-Bacon issue is the acceptability of using volunteer labor on transportation projects. The US Department of Labor states in its Field Operations Handbook (Section 15): “There are no exceptions to Davis-Bacon coverage for volunteer labor unless an exception is specifically provided for in the particular Davis-Bacon Related Act under which the project funds are derived.” The Davis-Bacon Related Act for the Federal Aid Highway Program (23 U.S.C. Section 113) is silent on this subject. Therefore, on projects subject to Davis-Bacon coverage, a contractor or subcontractor may not use volunteer labor. On the other hand, a state highway or local government agency may use volunteer labor under its direct control as a force account effort.

Local agencies may access the Wage Rate data file at www.wsdot.wa.gov/eesc/design/projectdev/adready/combinedwage.htm. If a local agency is not “on line,” wage rates can be requested through the Region Local Programs Engineer.

The effective date for state and federal rates is determined as follows:

a. State Wage Rates – L&I will use the date that bids are due as the effective date for determining prevailing wages provided that the contract is awarded within 60 days after bids are due (RCW 39.12). If the contract is not awarded within 60 days after bids are due, L&I will determine the prevailing wage on the date the contract is awarded.
b. Federal Wage Rates – This data is received from the USDOL in a document entitled “General Wage Determinations Issued Under the Davis-Bacon and Related Acts.” Modifications are issued weekly by the USDOL. The effective date for federal wage rates is the date of notice in the Federal Register or the date on which written notice is received by WSDOT, whichever occurs first. All modifications on projects to which the determination applies are effective if published before contract award.

The following are exceptions:

• The effective date for determining state prevailing wage rates shall be the date of bid opening. For contracts awarded more than six months after the bid opening date, the effective date for determining the wage rates shall be the award date.

• The effective date for determining federal prevailing wage rates shall be ten days prior to bid opening (or less if the engineer determines an addenda can be issued prior to bid opening). For contracts awarded more than 90 days after the bid opening date, the effective date for determining the wage rates shall be the award date.

Prior to bid opening, the local agency may contact the Region Local Programs Engineer to see if wage rates have changed or are pending.

To minimize the possibility of out-of-date state and federal wage rates at the time of bid opening, the wage rates should be requested from the Region Local Programs Engineer seven days before the advertising date.

.22 Other Requirements


c. Disadvantaged Business Enterprises (DBE) – In accordance with FHWA and WSDOT efforts to increase DBE participation in FHWA projects, WSDOT has developed a management-by-objective goal-setting process for DBE participation. For additional information, see Chapter 26, Disadvantaged Business Enterprises.

d. “Buy-America” Requirements – Steel and iron that is permanently incorporated into the project shall consist of American-made materials, as outlined in the required GSP.

The local agency must include a provision containing the “Buy-America” requirements in each contract. These general special provisions are included in the WSDOT Amendments and General Special Provisions publication.

Purchase of foreign steel and iron products by local agencies for installation on a federally funded project is not allowed without an approved public interest finding from Local Programs, to the limit allowed by the “Buy America” General Special Provision.
e. **Traffic Control Plans** – Traffic Control Plans (TCP) must be included in the contract documents. TCPs shall be consistent with Part 6 of the MUTCD, low volume roads, Part 5. Detour Plans and agreements shall be included in the contract documents to demonstrate constructability.

Construction projects that impact bicycle and/or pedestrian traffic must include accommodation for all impacted modes of travel in the contract. Traffic Control Plans. Ensure these accommodations are in compliance with ADA standards.

f. A **“tied bid”** is a federal project and a non-federal project or two federal projects (otherwise separate contacts) that are advertised and bid together as a single contract. To bid the projects under a single contract, approval is required by Local Programs prior to being advertised.

g. **Sole Source Justification** – Justification for the use of agency-supplied materials must be documented by the local agency. The materials must have been produced by agency forces or acquired through competitive bidding. Material purchased from a sole source may be used only when preapproved by Local Programs. To receive approval, submit a Public Interest Finding (PIF) for approval prior to use.

h. **Warranty/Guarantee** – No warranty requirement shall be approved which may place an undue obligation on the contractor for items or conditions over which the contractor has no control. Warranties/guarantees shall not be included in federal aid projects or the bonds except as follows:

On NHS construction contracts a warranty can be included in the contract in accordance with the following: Warranty provisions shall be for a specific product or feature. Warranties for items of maintenance are not eligible for federal participation and will not be allowed. All warranty requirements and subsequent revisions shall be submitted to the WSDOT Region Local Programs Engineer and forwarded to Local Programs for advance approval.

On non-NHS construction contracts a warranty can be included in the contract in accordance with the following: Project warranty/maintenance provisions may be included in a project if a nonparticipating bid item and special provision is included in the contract. All other warranty requirements other than product or feature, and subsequent revisions, shall be submitted to Region Local Programs Engineer for advance approval.

.23 **Local Ad and Award Projects** – See Chapter 46.

.24 **State Ad and Award Projects** – See Chapter 45.
44.3 Documents Requiring Professional Stamps

The following documents require a PE stamp upon completion. The Professional Engineer with responsible charge of the project will assure that appropriate engineering reports and documents are stamped in accordance with RCW 18.43.070. If a particular “Engineering Report or Document” is not listed, it is not necessarily exempt from the requirement.

The list includes:

- Design Documents
- Right of Way Plans
- Type, Size, and Location Report
- Plans, Specifications (with appropriate Division 1 approvals as outlined in Section 44.5), and Estimates, including all plan sheets.
- Special Provisions
- Temporary Erosion and Sediment Control Plan
- Plans for Falsework and Forms, normally the contractor’s responsibility
- Bridge Design Report
- Bridge Load Ratings
- As Built Plans
- Technical Change Orders
- Value Engineering Study Report
- Standards Deviation Request
- Emergency Contracts that contain the equivalent of PS&E documents

44.4 Contract Plans

For WSDOT ad-and-award projects, the plans should be prepared in accordance with the Plans Preparation Manual M 22-31. For local ad-and-award projects, there are no federal or state requirements for plan sheet size or guidelines for preparing contract plans.

44.5 Specifications

WSDOT publishes and distributes the Standard Specifications, and the Amendments and General Special Provisions. On federal aid projects, any revision to Division 1 of the Standard Specifications or approved Division 1 revision (Amendment or WSDOT or APWA General Special Provision) requires prior approval from Local Programs. In all cases, naming conventions will clearly identify the origin, General Special Provision, APWA Special Provision, Agency Provision, or Project Provisions.

.51 Standard Specifications – All FHWA funded projects, including local agency force projects, will be constructed in conformance with the current Standard Specifications for Road, Bridge, and Municipal Construction M 41-10, and such approved amendments that modify these specifications.
.52 Amendment to the Standard Specifications – These amendments are approved changes to the Standard Specifications.

.53 General Special Provisions – These are specifications that describe special project features in common usage.

.54 APWA General Special Provisions – These are specifications unique to local agency projects. See www.wsdot.gov/partners/apwa.

.55 Special Provisions – Since Special Provisions are specifications governing matters peculiar to an individual project, they are not covered in the Standard Specifications. Their use should be held to a minimum and applicable Standard Specifications should be used instead. Issues mandated in the state and federal laws shall not be changed.

Special Provisions are required:

a. For the presentation of all features of a project not covered by the Standard Specifications and General Special Provisions.

b. Where the Standard Specifications are being amended.

c. For any deviation from the Standard Specifications with regard to materials, construction details, measurement, and payment.

d. When noted in the WSDOT Standard Item Table.

The following paragraphs discuss some pertinent aspects of special provisions.

• All nonstandard pay items shall be covered in the Special Provisions.

• The local agency is encouraged to include a value engineering incentive clause in their construction specifications encouraging the contractor to propose changes in contract requirements that will accomplish the project’s functional requirements at less cost on high cost and major projects.

• Traffic control must be in accordance with the MUTCD. A Special Provision shall be prepared outlining traffic control requirements and including any pay items.

• Neatline measurement of quantities is allowed by special provision. This specification may allow payment of the neatline measurement from the lines and grades as shown on the plans or as directed by the Engineer’s stakes on the ground. This may apply to aggregates, base course, and surfacing. On asphalt quantities, the unit price could include the cost of coring to verify density and depths. Culvert and pipeline installation may be paid by the lineal foot-in place with bedding, backfill, and compaction as incidental to the unit price. In these instances, an item should be added for extra excavation or backfill if the profile varies or is subject to change during the contract. Shoring must be paid as a separate bid item.

• Direct reference to proprietary specifications of national, regional, or local trade associations should not be included in FHWA contract specifications; such proprietary specifications are subject to change without notice to, or acceptance by, the state or FHWA. If proprietary specifications must be used, the complete text, or such parts as are applicable, should be incorporated into special provisions for the project.
Proprietary Items – Sole Source

The use of trade names in specifications and on plans should be avoided. Instead, specifications should be formulated to assure full opportunity for competition among equivalent materials, equipment, and methods. Specifying patented or proprietary material, products or processes is allowed for federal aid projects only under one of the following conditions:

Specify at Least Three Brand Names
- At least three names of acceptable materials or products, if available, are listed together with a list of the required features and specifications that will be considered equal to the listed items.

Approved Public Interest Finding
- The agency is requiring a specific material or product and a written Public Interest Finding (PIF) document has been prepared and approved by Local Programs.

Approved Experimental Feature
- The material or product has been approved through FHWA as an experimental feature.

Specify Brand Names and Allow for Approved Equals
- Specify a brand name. The agency will provide the bidder with options by naming at least two additional products or manufacturers that are acceptable and allowing for “approved equals” followed by a performance specification. When this is done, no approval is required for usage; it is not considered a proprietary item.

A good specification for brand name specifying will read as follows:

The (type of product) furnished shall be (brand name, model), (brand name, model), or an approved equal having the following features (functions):

a. (feature)
b. (functions)
c. (feature)

In order to find the two acceptable items, the agency has to be looking for certain features or functions. These features or functions need to be clearly identified in the Special Provision.

Public Interest Finding

An agency may require a specific material or product when there are other acceptable materials and products when such specific choice is approved as being in the public interest, such as traffic signal control equipment. The written (PIF) must:

Clearly show that the best interest of the public and the agency will be achieved. This is accomplished by describing any cost effectiveness and efficiency to be realized. A benefit cost analysis should be completed to support the PIF. The supporting documentation and the decision of the agency must be maintained in the project file. See Appendices 44.76 through 44.83 for detailed instructions and example.

Proprietary items must be approved by Local Programs.
A PIF is not required when:

1. The funding source is from a municipality or other entity, and is not reimbursable with federal monies, including when the contract has tied bids, and the item is only part of the locally funded project.

2. A utility agreement is being established and there are minor quantities of materials and supplies and proprietary products that are routinely used in a utility’s operation, which are essential for the maintenance of the system.

44.6 Estimates

The engineer’s estimate of a proposed project’s cost shall include the estimated quantity and estimated unit price for each proposed work item. Bridge items shall be segregated from roadway items. A tabulation for each bridge showing its applicable items shall be submitted.

If materials salvaged from the project are to be used for roadway purposes, the value of such materials should not be included in the project cost.

The estimate shall separately list the costs of nonparticipating items, local agency force work, and local agency furnished materials.

The separate cost groups shall be summarized and totaled on the first sheet of the estimate.

The Region Local Programs Engineer may be contacted for assistance in preparing the estimate. An estimate example is shown in Appendix 44.74.

44.7 Appendices

44.71 Local Agency Bid Proposal Package
44.72 City Letter of Financial Responsibility – Example
44.73 County Letter of Financial Responsibility – Example
44.74 Estimate and Grouping – Example
44.75 Local Agency Plans Preparation Checklist
44.76 Patented/Proprietary Items – PIF Instructions
44.77 Two-Week Advertisement – PIF Instructions
44.78 Mandatory Use of Borrow or Disposal Site – PIF Instructions
44.79 Agency Supplied Equipment – PIF Instructions
44.80 Agency Supplied Material – PIF Instructions
44.81 Local Agency Force Work – PIF Instructions
44.82 Tied Bids – PIF Instructions
44.83 Public Interest Finding – Example

44.8 Forms

FHWA-1273 Required Contract Provisions Federal-Aid Construction Contracts
Chapter 52  Local Administered Projects

This chapter is used for NHS and non-NHS routes by Local Agencies operating under Certification Acceptance (CA) and choosing to administer construction contracts themselves. In the sequence of project development, this follows Chapter 46.

Local Agencies whose construction contracts are administered by the Washington State Department of Transportation (WSDOT) should refer to Chapter 51.

Title 23 USC and 23 CFR provisions apply to all NHS Federal aid projects regardless of federal funding source or approval authority. State standards may be used on non-NHS projects, except for federal requirements pertaining to contracts (bid proposal content including Davis Bacon and DBE) and procurement procedures (competitive bidding and Brooks Act).

52.1  General Discussion

WSDOT is responsible for the proper expenditure of FHWA funds on Local Agency projects. Local Programs will consult and work with Local Agencies as needed and will perform systematic project management reviews to ensure that proper procedures are followed.

Except for this chapter, construction shall be administered and materials inspected, in accordance with the Construction Manual M 41-01. For exceptions to the Construction Manual, see Appendix 52.107. In case of conflicting guidelines, this chapter governs the Construction Manual. Agencies may choose to use their own forms provided the same information is included on the agency forms as is shown on the WSDOT forms used for the same purposes. For an understanding of WSDOT documentation requirements, use Chapter 10 of the Construction Manual as a guide.

All FHWA projects are subject to Disadvantaged Business Enterprise (DBE), on the Job Training (OJT) and Equal Employment Opportunity (EEO) compliance reviews by WSDOT.

The Standard Specifications for Road, Bridge, and Municipal Construction M 41-10 and APWA GSP 1-01.3 define the major elements for construction contracts.

52.2  Preconstruction Conference

After a contract is awarded, the Local Agency should arrange a conference with the contractor. The Local Agency Engineer shall notify the Region Local Programs Engineer of the time and place of the conference.

On large, complex projects, a preconstruction conference should be held before each construction phase. It may be desirable to hold separate conferences for some specialized construction items such as paving, roadside planting, or electrical work. The preconstruction conference may include a partnering session, if appropriate. For a conference agenda example, refer to Appendix 52.101.

The meeting should be documented and copies of the minutes transmitted to the Region Local Programs Engineer and each agency, organization, and firm that has involvement or interest in the project (see Appendix 52.102).
52.3 Quality Control

The quality of materials and workmanship on a project must conform to the contract specifications so that the public funds expended will have purchased a safe, economical, and fully functional transportation facility.

.31 General – The source for each type of material must be approved by the Local Agency prior to use. There are two submittal processes allowed by Standard Specifications Section 1-06.1 for material approval in Washington State, the Qualified Product List and the Request for Approval of Materials (RAM). Contractors are encouraged to use one of these tools to request material approval or, if an agency has their own process established, to follow that.

The Qualified Product List (QPL) is compiled by the WSDOT Materials Laboratory (Mats Lab) Documentation Section and can be accessed at www.wsdot.wa.gov/biz/mats/QPL/QPL.cfm.

The Request for Approval of Material (DOT Form 350-071 EF) is a form distributed by WSDOT. Contractors may use this form to submit requests for approval for materials not found in the QPL. Some agencies have a similar form that is also acceptable.

Local Agencies requesting a Record of Materials (ROM) from WSDOT’s Mats Lab should submit their request as soon as possible to avoid delaying the contractor. The average processing time is approximately four to eight weeks.

Reimbursement of FHWA funds may be denied for work done contrary to, or in disregard of, the contract documents.

Local Agencies making improvements to National Highway System (NHS) routes with federal funding must comply with the FHWA approved qualified tester program. If a Local Agency is not certified to perform the tests, they can contact a qualified testing laboratory or their Region Local Programs Engineer to make arrangements for WSDOT to perform the testing on the project.

.32 Qualified Tester Requirements – For local agencies the guidelines below apply:

1. Construction Projects on Non-NHS Highway System – There is no requirement for qualified testers on the non-NHS highway system. Construction projects that have FHWA funds must follow the requirements contained in this manual.

2. Construction Projects on the NHS Highway System With No FHWA Funds – There is no requirement for qualified testers on the NHS highway system that do not have FHWA funds in the construction phase.

3. Construction Projects on the NHS Highway System With FHWA Funds – Qualified Testers are required for construction projects that on the NHS highway system that have FHWA funds in the construction phase.

Agencies have several options for meeting the qualified tester requirements:

• Contract with WSDOT to perform the required tests.
• Local agency may pursue tester qualification through WSDOT for agency personnel.
• Agencies may use any AMRL R-18 laboratories qualified to test as defined by AASHTO test methods appropriate to the material. Employees of AMRL R-18 laboratories are considered qualified via the laboratory certification process. WAQTC testers may also work on NHS projects.

• Agencies may also use laboratories that are accredited by the Laboratory Accreditation Bureau, L-A-B for Construction Materials Testing or accredited by the Construction Materials Engineering Council’s (CMEC’s) ISO 17025 program. These laboratories are considered to meet the quality assurance requirements in 23 CFR 637.209(a) (2), (3), and (4).

HMA Testing – Qualification is required for the following test methods:
• AASHTO T 168 – Sampling Bituminous Paving Mixtures
• AASHTO T 308/ASTM D 6307 – Asphalt Content of Hot Mix Asphalt (HMA) by the Ignition Method (may substitute other AASHTO or ASTM extraction methods). Use of Ignition Method must include furnace correction factor for each mix tested.
• AASHTO T 209/ASTM D 2041 – Rice Density
• AASTHO T 27/T 11 – Sieve Analysis of Fine and Coarse Aggregates
• AASHTO T 255 – Total Evaporable Moisture Content of Aggregate by Drying
• WAQTC TM 6 – Moisture Content of HMA

HMA Density Testing – Qualification is required in the following test method:
• WAQTC TM 8 – In place Density of Bituminous Mixes Using the Nuclear Moisture-Density Gauge

Concrete testing can be performed by testers qualified by AMRL R-18 qualification in the following test methods:
• AASHTO T 23 – Making and Curing Concrete Test Specimens in the Field
• AASHTO T 119 – Standard Test Method for Slump of Hydraulic-Cement Concrete
• AASHTO T 152 – Air Content of Freshly Mixed Concrete by the Pressure Method
• AASHTO T 141/ASTM C 172 – Sampling Freshly Mixed Concrete
• AASHTO T 309 – Temperature of Freshly Mixed Portland Cement Concrete

Laboratories must meet the AASHTO Standards for Moist Cabinets, Moist Rooms, and Water Storage Tanks and be qualified to Cure, Cap, and perform compression testing of test specimens.

Testers with current ACI grade 1 Concrete Testing Certification can also perform concrete field testing on NHS projects with federal funding.

Aggregate testing can be performed by laboratories qualified by AMRL R-18 in the following test methods:
• AASHTO T 2 – Sampling of Aggregates
• AASHTO T 27/T 11 – Sieve Analysis of Fine and Coarse Aggregates
• AASHTO T 176 – Determination of the Plastic Fines in Graded Aggregate by Use of the Sand Equivalent Test
• AASHTO T 248 – Reducing Field Samples of Aggregates to Testing Size
• AASHTO T 255 – Total Moisture Content of Aggregate by Drying
• AASHTO TP 61 – Determining the Percentage of Fracture in Coarse Aggregate
Laboratories offering Embankment and Base Density field testing must be qualified to perform the following test methods:

- **AASHTO T 272** – Family of Curves – One-Point Method
- **AASHTO T 310** – In-Place Density and Moisture Content of Soil and Soil Aggregate by Nuclear Method
- **AASHTO T 99** or other approved test method of determining – Moisture Density Relations of Soils

The following is a breakdown of materials and how they will be accepted.

**List of Materials to Test**

1. Structural Concrete
   - Slump
   - Air
   - Temp
   - Compression Testing
   - Aggregate

2. Asphalt in the roadway
   - Density
   - Hot Mix
   - Aggregate

3. Surfacing under roadway and bridge approaches
   - Density
   - Gradation and SE

4. Base material under roadway, embankments, bridge approaches
   - Density
   - Gradation and SE

5. Structural Grout
   - Compression Testing

6. High Strength Nuts Bolts and Washers*
   - Manufacturer’s Certificate of Compliance
   - Certificate of Material Origin

**List of Materials to Certify**

1. Steel
   - Manufacturer’s Certificate of Compliance
   - Certificate of Material Origin*

2. Iron
   - Certificate of Material Origin*

3. Liquid Asphalt Products
   - Manufacturer’s Certificate of Compliance

4. Construction Geosynthetics
   - Manufacturer’s Certificate of Compliance

---

*See *Standard Specifications* Section 9-06.5.*
5. Guardrail Items  
   Certificate of Material Origin for steel components*
6. Bridge Bearing Assemblies that are not welded  
   Manufacturer’s Certificate of Compliance  
   Certificate of Material Origin*

**List of Material to Accept With Visual Inspection or Catalog Cut**
1. Traffic marking – paints and thermoplastics
2. Electrical items and accessories
3. Fencing
4. Landscaping or irrigation items
5. Drainage Items
6. Rebar Tie Wire
7. Backer Rod under RCS Expansion Joints
8. Rebar Chairs and Dobie Blocks
9. Temporary Items
10. Compost
11. Street furniture etc.
12. Monument Case and Cover  
   Certificate of Material Origin is required

**List of Materials That Require Fabrication Inspection**
1. Structural Steel Beams or Fabricated, Welded items
2. Structural Precast Concrete Items
3. Bridge Bearing Assemblies that are welded
4. Signs
5. Sign Bridges
6. Cantilever Sign Structures

*Agencies must document the sources of steel and iron by having a “Certification of Materials Origin” on file. For further clarification of Manufactured Products under Buy America, see Appendix 52.108.*
52.4 Progress Payments

Progress payments must be based on measurements of work performed so that the contractor can be fairly compensated and so that public funds will not be expended on work that has not yet been done.

.41 General – Progress estimates should be prepared on a pre-selected date each month and payment made to the contractor. Measurement and payment for all acceptably completed bid items of work will be in accordance with *Standard Specifications* Section 1-09. Source documents used to support payments must be complete, stand alone documents that fully support the payment being made. Documentation to support payment shall be in accordance with *Construction Manual* Chapter 10. Agencies that have integrated computer programs for Inspector Daily Reports and payment source documents shall include all the information shown on the WSDOT forms used for those purposes. Progress estimates should be prepared promptly and may be forwarded to the contractor for review and signature.

.42 Statement of Intent to Pay Prevailing Wages – The contractor and subcontractors of every tier shall submit form LI 700-29 to Washington State Department of Labor & Industries (L&I) for approval of the wage rates they intend to pay. Each statement must be accompanied by the filing fee established by L&I and required by RCW 39.12.030 and 39.12.040.

Form LI 700-29 shall be on file with the Local Agency before any payment is made to the contractor. Subcontractors of every tier shall have an approved copy of this form on file with the Local Agency before any payment can be made for their work.

52.5 Changes and Extra Work

Prior to beginning work on a contract, a Local Agency should have a written policy for the approval of change orders to ensure that appropriate procedures are followed. Without a written change order policy delegating approval authority, the designated CA Agreement approval authority must approve all change orders. See item #2, i of the Certification Agreement (Chapter 13).

It is important to distinguish between actual changes to the contract work and normal overruns and under-runs that may occur. No change order work shall be done prior to approval being given by the appropriate authority, verbal or written. Verbal approval requires written documentation including a description of work that adequately describes the extent of the change. Verbal approval must be followed by a written change order. No contract payment shall be made prior to having the written change order approved by the appropriate authority.

Changes to a Condition of Award letter shall be handled in accordance with the GSP (Changes in the Quantity of Work). All change orders affecting the work of DBEs shall be submitted to the Region Local Programs Engineer for concurrence prior to executing the change order.

When changes in the work will alter the termini, character, and scope of an approved project, approval of Local Programs is required prior to the commencement of the physical work. For further information, refer to Chapter 21. All change orders must be numbered in sequence.
Change order documentation is composed of two parts:

1. The approved change order signed by the agency and the contractor.
2. The backup documentation. The backup documentation shall include an explanation in sufficient detail so that everyone involved will understand the need for the change, and how the change will affect the overall contract. The explanation shall include a detailed justification of the cost and/or any adjustment to working days associated with the change. The detailed cost justification shall be documented independent of the contractor’s proposal to substantiate the change.

.51 Administrative Settlement Costs – Administrative settlement costs are costs related to the defense and settlement of contract claims. These will include, but are not limited to salaries of contracting officers or their authorized representatives, attorneys, or members of arbitration boards, appeal boards, etc., that are allowable to the findings and determination of contract claims, but not including administrative or overhead costs.

FHWA funds may participate in administrative settlement costs which are:

- Incurred after notice of claim.
- Properly supported.
- Directly allocable to a specific FHWA project.
- For employment of special counsel for review and defense of contract claims when recommended by the agency’s legal counsel and approved in advance by WSDOT.

When a claim is submitted, the Region Local Programs Engineer should be contacted for advice on how to proceed.

52.6 Termination of Contract

*Standard Specifications* Section 1-08.10 contains procedures and criteria for termination of a contract. Prior to termination action against a contractor or reassignment of the performance to the surety, the Local Agency must obtain Local Programs concurrence.

52.7 Compliance With Federal Contract Provisions

FHWA requires that all subcontracts at any tier be in writing, per 23 CFR, Section 635.116(b). This includes both contracts between the prime contractor and their subcontractors, and contracts between subcontractors and their agents.

Each of these subcontracts must also physically contain the following documents. None of these documents can be included by reference only.

- The general special provision (GSP) entitled “Required Federal Aid Provisions.”
- Form FHWA 1273 “Required Contract Provisions, Federal Aid Construction Contracts.”
- The minimum wage rates for the contract as required by RCW 39.12 and Title 29 of the Code of Federal Regulations (CFR).

It is the responsibility of the Local Agency to ensure full compliance with the provisions above.

Implementation of the DBE and EEO programs are also federal contract requirements. For information, refer to Chapters 26 and 27.
52.8 Physical Completion of Construction

The Local Agency will carry out the following requirements to terminate the construction contract and ready the project for acceptance by WSDOT and FHWA:

.81 Notice of Physical Completion – Within ten calendar days after physical completion of the work by the contractor, the Local Agency Project Engineer shall notify the contractor by letter that the construction is physically complete, and that the project is subject to inspection, audit, and acceptance by WSDOT. The agency shall diligently pursue closure of the contract.

.82 Final Inspection – The Local Agency Project Engineer shall send a request for WSDOT inspection and acceptance to the Region Local Programs Engineer no later than within 15 days of substantial completion of work by the contractor. A copy of the physical completion letter that is sent to the contractor should accompany the request.

.83 Final Reports – A construction project is considered complete when the items listed below have been completed. All certifications and reports shall be retained for at least three years after final acceptance of the project.

1. Final Estimate (Approving Authority File) – When the contractor has a claim pending against the Local Agency and wants to receive a final estimate, a claim must be submitted in writing, detailing the specific items and amounts. When a claim is submitted, immediately contact the Region Local Programs Engineer so that FHWA can be informed of the claim’s details at an early stage. See *Standard Specifications* Section 1-09.12(2).

2. Comparison of Preliminary and Final Quantities (Approving Authority File) – This is a listing of items that show the preliminary and final quantities.

3. Certified Final Bill for Utility Agreement, if applicable, to Region Local Programs Engineer.

4. Final Records (Approving Authority File) – The Local Agency Project Engineer must document the work performed on the contract. Documentation consists of field books, inspector’s record of field tests, Project Engineer’s and inspector’s diaries, all invoices, weigh bills, truck measurements, quantity tickets, receiving reports, field office ledgers, mass diagrams, cross-sections, computer listings, and work profiles. Photographs or video tapes before, during, and after construction could be useful, especially if care is taken to show any unusual conditions, equipment, or procedures.

Final records shall be retained by the Local Agency for at least three years following acceptance of the project by Local Programs. The Local Agency will receive the administrative review letter showing the starting and ending date of the three-year retention period from the Director of Local Programs Division (OMB Circular A-133).

5. Record of Material Samples and Tests.
6. **Materials Certification** (Appendix 52.104) – The intent of the materials certification is to assure that the quality of all materials incorporated into the project are in conformance with the plans and specifications, and thus ensure a service life equivalent to the design life.

   a. This materials certification shall be completed in accordance with *Construction Manual* Section 9-1.5 or Section 52.3 of this manual and is submitted along with the completion letter to the Region Local Programs Engineer.

7. **Affidavit of Wages Paid** – Upon completion of a contract, the prime contractor and every subcontractor or agent shall submit Form LI-700-7, Affidavit of Wages Paid, to L&I for certification of the wage rates paid on the project. Each affidavit must be accompanied by the filing fee established by L&I.

   An L&I certified copy of Form LI-700-7 from the prime contractor, and every subcontractor or agent, must be on file with the Local Agency before the bond will be released.

8. Release for the Protection of Property Owner and General Contractor. Form LI-263-83, is no longer furnished by L&I. The new process requires the agency to use the Labor and Industries website at [https://fortress.wa.gov/lni/crpsi/](https://fortress.wa.gov/lni/crpsi/) to verify that the prime contractor and all subs on the project have paid the required industrial insurance and medical-aid premiums. The UBI number for each contractor and sub is required to access the verification. The printed verification statements must be on file with the Local Agency before the retained percentage can be released.

9. **DOT Form 422-103 EF, Local Agency Quarterly Report of Amounts Credited as DBE Participation**, shall be submitted by the contractor to the Local Agency on all projects that contain DBE goals. This form should also be submitted when a qualified DBE contractor or subcontractor is employed on a project, regardless of whether that DBE is a condition of award or not. This form is submitted on a quarterly basis in January, April, July, and October. See *Chapter 26*.

**.84 Project Acceptance** – The approving authority’s approval of the final estimate will be considered as the Local Agency’s acceptance of the project.

### 52.9 Projects within Interstate Rights of Way

All construction, materials, and quality control requirements contained in the current editions of the *Standard Specifications* and *Construction Manual* must be incorporated into the contract. (See *Section 14.3* for complete guidance on work within the Interstate Rights of Way.)
52.10 Appendices

52.101 Preconstruction Conference Agenda – Example
52.102 Preconstruction Conference Minutes – Example
52.103 Letter Requesting WSDOT Project, Inspection, and Acceptance – Example
52.104 Materials Certification – Example
52.105 Weekly Statement of Working Days
52.106 Change Order
52.107 Exceptions to the WSDOT Construction Manual M 41-01
52.108 Clarification of Manufactured Products Under Buy America

52.11 Forms

See Construction Manual Chapter 11
FHWA Form WH-347
1. Order of work (Progress Schedule)

2. Utilities and Railroads
   a. Project Engineer prepare list of affected services and representative to be contacted.
   b. Underground services should be located.
   c. Notification time required by organizations.
   d. Insurance required, if any.

3. Subcontractors and Agents
   a. Request for approval must be submitted along with a Statement of Intent to Pay Prevailing Wage and Subcontractor or Agent Certification.
   b. Nature of work to be performed by each.
   c. Subcontractor’s route correspondence via prime contractor.
   d. Prime contractor must have a representative with authority on the job at all times (designated by letter).
   e. DBE subcontract work – indepth discussion including conditions of award if any.

4. Records and Reports
   a. Description of required forms and initial supply should be handed out or mailed to prime contractor.
   b. All reports must be handled through prime contractor’s office.
   c. Record of Materials should be provided and Requests for Approval of Materials Sources (RAM) should be submitted as soon as possible.
   d. Falsework plans, if required.
   e. Certified payrolls must be submitted on time and wage rate interviews will be conducted.
   f. EEO and trainee requirements – indepth discussion.
   g. DBE requirements when the contract contains DBE goals – indepth discussion.
   h. Required job site posters (provided to Prime Contractor).
   i. Davis-Bacon statement regarding the USDOL, WSDOT and local agency’s role in investigations for labor compliance.
   j. ADA requirements.
5. Traffic Control And Safety
   b. Review and discussion of Traffic Control Plan (TCP) including pedestrian and bicycle accommodations.
   c. Safety control on structures.
   d. Flagman should use standard paddle and vest and must be certified with flagman card.
   e. Speed regulation of construction equipment.
   f. Contractor and project engineer designate by name the individual responsible for construction traffic control.
   g. Safety and health requirements.
   h. Request police to report all construction zone accidents to the contracting authority.
   i. Gross legal load limits shall be adhered to.
   j. The local agency will monitor the requirements of RCW 46.61.655 as amended by Substitute House Bill No. 2455 and cooperate with law enforcement agencies in the enforcement as provided in *Standard Specifications* Section 1-07.1. Substitute House Bill No. 2455 deals with covered loads or 6 inches of freeboard.

6. Environmental Considerations
   a. Commitment files.
   c. Contractor responsibility to obtain permits.
   d. Department of Ecology requires registration of rock crushers in accordance with WAC 173-400.
   e. Temporary Erosion and Sediment Control Plan (TESCP).
   f. Spill Prevention, Control, and Containment Plan (SPCCP).

7. Dismiss Disinterested Parties (list those leaving)

8. Reopen with General Construction Discussion
   a. Contractor explains how he plans to pursue the work.
   b. Review of anticipated construction problems.
   c. Conflict resolution – need for partnering.
To: (Contractor)  

Agency:  
Project Title:  
F.A.:  
Contract Number:  

Date:  

Attention: (Contractor’s Representative)  

1. Time:  
   Location of meeting:  
2. Persons attending and organizations represented:  
3. Description of work:  
4. Discussion items:  

Prepared by:  

cc: Region Local Programs Engineer  

Each agency, organization, and firm who has involvement or interest in the project.
Date

Region Local Programs Engineer
Department of Transportation

Contract Number
Contract Name
Federal Aid Number

Dear Sir:

For your information, I am sending you a copy of the contract completion letter that was sent to the contractor. I request inspection and acceptance of the project by WSDOT.

Sincerely,

(Director of Public Works)
(County Engineer)
(City Engineer)
(Local Agency Engineer)
# Materials Certification

**Project:**

**Contract Number:**

## Checklist for Project Certification

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>N/A</th>
<th>Description</th>
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<td>☐</td>
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<td>1. Request for approval of material sources was submitted for all items listed on the record of materials and as required by Chapter 9-4 of the <em>Construction Manual</em> or alternative procedures authorized by LAG Appendix 52.107.</td>
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<td>2. All preliminary samples requested by or for approval of source were submitted and approved or an alternate approval material or product was used.</td>
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<td>3. All samples and documentation including manufacturer’s certificate of compliance, shop drawings, mill test certificates, etc., as required by the record of materials were submitted and subsequently approved.</td>
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<td>4. If job quantities differed from those listed on the record of materials, acceptance samples were taken at the frequency listed in Chapter 9-5.7 of the <em>Construction Manual</em> or alternative procedures authorized by LAG Appendix 52.107.</td>
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<td>5. All items requiring inspection at the point of fabrication were so inspected and were accepted at the jobsite by the presence of an approved stamp, sticker, tag, or mark.</td>
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<td>6. The results of the tests on acceptance samples indicate that the materials incorporated in the construction work, and the construction operations controlled by sampling and testing, were in conformity with the approved plans and specifications. Exceptions to the plans and specifications are explained on the back hereof (or on attached sheet).</td>
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<td>7. Items added by change order and not listed on the record of materials were accepted in accordance with procedures listed in Chapter 9 of the <em>Construction Manual</em> or alternative procedures authorized by LAG Appendix 52.107.</td>
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**Note:** Any “No” answers on this checklist must be fully explained and documented. Attach test reports representing nonspecification material as well as an explanation of the circumstances leading to acceptance of said material. All seven items must be completed before the project can be certified.

**Certified Signature:**

**Date:**

**Approving Authority**
## Appendix 52.105  Weekly Statement of Working Days

### Washington State Department of Transportation

#### Weekly Statement of Working Days

<table>
<thead>
<tr>
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| Days This Week: | 0.00 | 0.00 | 0.00 | 0.00 |
| Days Work Suspended: | 0.00 |        |
| Days Previously Reported: | 0.00 | 0.00 | 0.00 |
| Total Days To Date: | 0.00 | 0.00 | 0.00 | 0.00 |

### Current Status:

- Days Specified In Contract: 0.00
- Approved Extension of Time: 0.00
- Total Authorized Time of Contract: 0.00
- Less Workable Days Charged: 0.00
- Working Days Remaining: 0.00

### Summary of Weeks Activities:

### Project Engineer:

NOTE: The contractor will be allowed 10 days from the date of this report in which to protest in writing the correctness of this statement, otherwise it shall be deemed to have been accepted as correct.
# Appendix 52.106

## Change Order

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<thead>
<tr>
<th>Change Order Number</th>
<th>Change Description</th>
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<td>Prime Contractor / Design-Builder</td>
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- [ ] Ordered by Engineer under the terms of Section 1-04.4 of the Standard Specifications
- [ ] Change proposed by Contractor/ Design-Builder

### Change Description

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<th>Verbal Approval Date</th>
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- [ ] Approval Recommended  [ ] Approved

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<th>Project Engineer</th>
<th>Approving Authority per C.A. Agreement</th>
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</table>

- [ ] Approval Recommended  [ ] Other Approval As Required

<table>
<thead>
<tr>
<th>By Prime Contractor</th>
<th>Signature</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Date</th>
<th>Representing</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

DOT Form 148-005 EF
Revised 04/2012

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WSDOT Local Agency Guidelines  M 36-63.26
November 2014
<table>
<thead>
<tr>
<th>Contract Number</th>
<th>Contract Title</th>
<th>Change Order Number</th>
</tr>
</thead>
</table>

Change Description Cont.

Justification of Cost and Added Working Days
# Checklist

## Change Order

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Does the change order alter the termini, character, or scope of the work?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>If yes, you must have H &amp; LP approval to be eligible for federal funds.</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>If yes, you must submit a revised Page 1 of the prospectus.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>2. Is the Change Order over $7,500.00 and outside the scope of work?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>If yes, the change cannot be a change order and must be an independent work.</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>3. Does the Change Order detail all items involved with the change?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>4. Does the Change Order include an adjustment in working days?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>If yes, the time extension must be stated in the Change Order.</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>If yes, an independent engineer’s estimate of time must be included to document the extension.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>If no, that must be stated in the Change Order.</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>5. Does the Change Order alter the DBE Condition of Award?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>If yes, you must obtain concurrence form Local Programs.</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>If yes, you must obtain the DBE’s signature on the Change Order.</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>6. Does the Change Order involve a material substitution?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>If yes, you must determine if a material credit is appropriate.</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>7. If Change Order work started prior to it’s execution, prior verbal approval by the Approving Authority must be granted and documented.</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>8. Has the Change Order been signed by the contractor?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>9. Has the Change Order been executed by the Approving Authority?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>If you are a “non CA Agency”, you must have the acting CA Authority’s approval.</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>10. Has an independent engineer’s estimate justifying the costs and time extensions been completed and documented?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>11. Has a detailed memo outlining the chronology of events, basis of need, costs and working days been prepared and placed in the file accompanying the Change Order?</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>
Exceptions to the
Appendix 52.107 WSDOT Construction Manual M 41-01

The following exceptions to the Construction Manual M 41-01 may be used by the local agency.

- The local agency may develop their own Record of Materials (ROM), and approve manufacturers not listed on the approved WSDOT manufacturers list. The ROM is a listing of the construction items, generated by either the State Materials Laboratory or the Local Agency that has been identified from the plans and specifications for each project. The ROM identifies the types and quantities of materials, the standard acceptance methods and the number of acceptance and verification samples required for all material that will be used on the project. The ROM should always be maintained. If material quantities are increased or decreased during the construction of the project the ROM must reflect these changes. This may either increase or decrease the amount of acceptance tests needed. The ROM needs to reference the standard specification or contract provision where the material requirement is defined. The ROM also lists the acceptance requirements for materials requiring other actions, such as fabrication inspection, manufacturer’s certificate of compliance, shop drawing or catalog cuts.

- Asphalt plant inspectors and scalepersons are not required at established commercial sources. This exception does not allow the agency to eliminate acceptance sampling of the materials.

- The following items may be accepted with an approved catalogue cut and documented by visual inspection or a manufacturer’s material certification (provided manufacturer’s certification is based on actual testing):
  - Electrical items and accessories
  - Paving fabrics or construction geosynthetics
  - Fencing of any kind
  - Landscaping or irrigation items
  - Glare screens
  - Traffic buttons or pavement markings
  - Guardrail items
    (Certificate of Material Origin is required)
  - Drainage items
    (Certificate of Material Origin is required)
  - Emulsified Asphalt for HMA Tack Coat and BST (Suppliers Bill of Lading acts as Manufacturer’s Certificate of Compliance)
  - Re Bar Tie Wire
  - Backer Rod under RCS Expansion Joint
  - Rebar Chairs and Dobie Blocks
  - Temporary Items
  - Sandbags, Rope, and Wood Stakes
  - Compost, topsoil
- Monument Case and Cover (Certificate of Material Origin is required)
- PG Binder (Suppliers Bill of Lading acts as Manufacturer’s Certificate of Compliance)

• A Certificate of Material Origin is required for all steel and iron items on federally funded projects.

• Local agencies are not required to have Scaleman’s Daily Reports as long as:
  - The printed ticket contains all of the same information that is on the Scaleman’s Daily Report Form 422-027.
  - You must have an AM and PM tare weight for each truck. The tare weights must be shown on the printed ticket.
  - Local agencies are still required to collect scale certifications at 6-month intervals per Standard Specification 1-09.2(2).

• Local agencies may test their own signal cabinets.

• Local agencies may lower the density testing requirements to 90 percent of the rice density for non structural overlay pavement designs with a thickness of 1.25 to 2 inches (30 to 50 mm). This should be limited to areas or projects with documented foundation problems and on overlay of existing pavements.

• Local agencies are not required to follow the qualified testing program outlined in the Construction Manual M 41-01 if the agencies projects are not on the NHS, or are on the NHS and the project does not contain federal funding AND the acceptance sampling frequencies and test methods are done in accordance with Chapter 9 of the Construction Manual M 41-01 and the exceptions listed above.

In addition to mandatory acceptance sampling, a local agency may choose to do independent assurance sampling. If a local agency elects to do independent assurance sampling, the procedures listed shall be followed.

• Assurance sampling and testing will be done independent of acceptance testing, not utilizing the same testing equipment or performed by the same personnel. Assurance samples of aggregate may be taken by the field inspector and split two ways. One split will be tested by the inspector in the field as an acceptance sample and the other split will be an assurance sample for immediate testing and comparison with field results.

• Assurance sample testing does not reflect on the acceptability of the material involved. Acceptance under the contract is determined by the acceptance testing process. Assurance testing is performed to obtain an independent verification of proper testing procedure and equipment.
Comparison of Assurance and Acceptance Test Results – Assurance sample results will be compared with the acceptance test results of the companion samples.

Reports of the comparison of results will be placed in the project file. The degree of conformance will be determined according to the deviation ranges noted below. Gradation test results will be compared only on specification screens.

<table>
<thead>
<tr>
<th>Test</th>
<th>Normal Range of Deviation</th>
<th>Maximum Range of Deviation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sand Equivalent</td>
<td>±8 points</td>
<td>±15 points</td>
</tr>
<tr>
<td>Fracture</td>
<td>±5 percent</td>
<td>±10 percent</td>
</tr>
<tr>
<td>Asphalt Content (HMA and ATB)</td>
<td>±0.3 percent</td>
<td>±0.6 percent</td>
</tr>
<tr>
<td>Sieve Analysis – All Items: No. 4 (4.75 mm) sieve and larger</td>
<td>±5 percent</td>
<td>±8 percent</td>
</tr>
<tr>
<td>No. 6 (3.35 mm) sieve to No. 80 (0.180 mm) sieve</td>
<td>±3 percent</td>
<td>±6 percent</td>
</tr>
<tr>
<td>No 100 (0.150 mm) and No. 200 (0.075 mm) sieve</td>
<td>±2 percent</td>
<td>±4 percent</td>
</tr>
</tbody>
</table>

In the table above, “Normal Range” indicates an acceptable range of variation between test results and no action is required. Test results which fall in this category will be so indicated by the wording “normal deviation” on the assurance test reports. Test results falling outside of the “Normal Range” but within the “Maximum Range,” will be indicated by the wording “questionable deviation” on the assurance test reports. For deviations falling into this category, the Project Engineer or a representative shall review the original test report form, advise the responsible test operator of the deviation, and review the test procedure at the next opportunity.

Test results exceeding the maximum range will be indicated by the wording “excessive deviation.” For deviations falling in the excessive category, the Project Engineer or a representative will notify the appropriate personnel for corrective action.

Corrective action will include review of sampling procedures, sample splitting procedures, testing procedures, and testing equipment. Actions and results of these investigations will be documented to the project file by a notation. These may include comments or findings by the Lab and testing personnel.
## Independent Assurance Sampling Frequency Guide

<table>
<thead>
<tr>
<th>Item</th>
<th>Test</th>
<th>Assurance Sample</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gravel Borrow</td>
<td>Grading &amp; SE</td>
<td>1 – 20,000 Ton</td>
</tr>
<tr>
<td>Select Borrow</td>
<td>Grading &amp; SE</td>
<td>1 – 20,000 Ton</td>
</tr>
<tr>
<td>Sand Drainage Blanket</td>
<td>Grading</td>
<td>1 – 20,000 Ton</td>
</tr>
<tr>
<td>Gravel Base</td>
<td>Grading, SE &amp; Dust Ratio</td>
<td>1 – 20,000 Ton</td>
</tr>
<tr>
<td>CSTC</td>
<td>Grading, SE &amp; Fracture</td>
<td>1 – 10,000 Ton</td>
</tr>
<tr>
<td>CSBC Grading</td>
<td>SE &amp; Fracture</td>
<td>1 – 10,000 Ton</td>
</tr>
<tr>
<td>Maintenance Rock</td>
<td>Grading, SE &amp; Fracture</td>
<td>1 – 10,000 Ton</td>
</tr>
<tr>
<td>Ballast Grading</td>
<td>SE &amp; Dust Ratio</td>
<td>1 – 10,000 Ton</td>
</tr>
<tr>
<td>Shoulder Ballast</td>
<td>Grading &amp; Fracture</td>
<td>1 – 10,000 Ton</td>
</tr>
<tr>
<td>Backfill for Sand Drains</td>
<td>Grading</td>
<td>1 – 10,000 Ton</td>
</tr>
<tr>
<td>Crushed Coverstone</td>
<td>Grading, SE &amp; Fracture</td>
<td>1 – 5,000 Ton</td>
</tr>
<tr>
<td>Crushed Screening</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5/8 – 1/4</td>
<td>Grading &amp; Fracture</td>
<td>1 – 5,000 Ton</td>
</tr>
<tr>
<td>1/2 – 1/4</td>
<td>Grading &amp; Fracture</td>
<td>1 – 5,000 Ton</td>
</tr>
<tr>
<td>1/4 – 0</td>
<td>Grading &amp; Fracture</td>
<td>1 – 5,000 Ton</td>
</tr>
<tr>
<td>Gravel Backfill for Foundations</td>
<td>Grading, SE &amp; Dust Ratio</td>
<td>1 – 5,000 Ton</td>
</tr>
<tr>
<td>Walls</td>
<td>Grading, SE &amp; Dust Ratio</td>
<td>1 – 5,000 Ton</td>
</tr>
<tr>
<td>Pipe Bedding</td>
<td>Grading, SE &amp; Dust Ratio</td>
<td>1 – 5,000 Ton</td>
</tr>
<tr>
<td>Drains</td>
<td>Grading</td>
<td>1 – 5,000 Ton</td>
</tr>
<tr>
<td>PCC Paving</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Coarse Aggregate</td>
<td>Grading</td>
<td>1 – 10,000 Ton</td>
</tr>
<tr>
<td>Fine Aggregate</td>
<td>Grading</td>
<td>1 – 5,000 Ton</td>
</tr>
<tr>
<td>Completed Mix</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Consistency</td>
<td>Slump</td>
<td>1 – 25,000 SY</td>
</tr>
<tr>
<td>Air Content</td>
<td>Air</td>
<td>1 – 25,000 SY</td>
</tr>
<tr>
<td>Yield</td>
<td>Cement Factor</td>
<td>1 – 25,000 SY</td>
</tr>
<tr>
<td>Test Beam</td>
<td>Flexural Strength</td>
<td>1 – 25,000 SY</td>
</tr>
<tr>
<td>PCC Structures</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Coarse Aggregate</td>
<td>Grading</td>
<td>1 – 5,000 Ton</td>
</tr>
<tr>
<td>Fine Aggregate</td>
<td>Grading</td>
<td>1 – 2,500 Ton</td>
</tr>
<tr>
<td>Consistency</td>
<td>Slump</td>
<td>1 – 1,000 CY</td>
</tr>
<tr>
<td>Air Content</td>
<td>Air</td>
<td>1 – 1,000 CY</td>
</tr>
<tr>
<td>Cylinders (28-day)</td>
<td>Compressive Strength</td>
<td>1 – 1,000 CY</td>
</tr>
<tr>
<td>Yield</td>
<td>Cement Factor</td>
<td>1 – 1,000 CY</td>
</tr>
<tr>
<td>Cement</td>
<td>Chemical and Physical Certification (Verification Sample)</td>
<td>1 – 1,000 Ton</td>
</tr>
<tr>
<td>Asphalt Materials</td>
<td></td>
<td>Verification</td>
</tr>
<tr>
<td>Paving Asphalt (AR, AC, PBA)</td>
<td></td>
<td>1 qt. every 3rd shipment</td>
</tr>
<tr>
<td>Liquid Asphalt (Cutback, Emulsion)</td>
<td></td>
<td>1 qt. every other shipment</td>
</tr>
<tr>
<td>Emulsion for ACP Tack Coat</td>
<td></td>
<td>None required</td>
</tr>
</tbody>
</table>
Clarification of Manufactured Products Under Buy America

On December 21, 2012, the FHWA sent out a memo to clarify their position with regard to application of Buy America requirements to manufactured products.

The FHWA memo reads in part as stated in italics below, clarifying statements are added in bold:

*The FHWA deems a product to be manufactured predominantly of steel and iron if the product consists of at least 90% steel or iron content when it is delivered to the job site for installation. To clarify; the 90% is a percentage of the total monetary value of the manufactured product. To determine the 90% value, divide the raw steel or iron cost by the total manufactured product cost (without taxes, shipping, handling or other fees applied), and if the percentage is equal to or greater than 90% of the final manufactured product cost then Buy America applies.*

*For purposes of applying Buy America and determining whether a product is a steel or iron manufactured product, the job site includes the sites where any precast concrete products are manufactured. To clarify; in the specific case of “precast concrete products” the casting yard is considered part of the “job site” for Buy America purposes, and therefore the iron or steel materials delivered to precast yard are subject to Buy America. (rebar, grates, etcetera)*

The memo lists several typical “miscellaneous steel or iron components,” that are exempted from Buy America. The list is not intended to be all-encompassing, but rather reinforces a concept that the myriad minor iron and steel subcomponents used to assemble products are not subject to Buy America. This exemption applies to manufactured items as well as on site fabrication.

*The miscellaneous steel or iron components, subcomponents and hardware necessary to encase, assemble and construct the above components (or manufactured products that are not predominantly steel or iron) are not subject to Buy America coverage. Examples include, but are not limited to, cabinets, covers, shelves, clamps, fittings, sleeves, washers, bolts (this does not mean high strength bolts), nuts, screws, tie wire, spacers, chairs, lifting hooks, faucets, door hinges, and etcetera.*

Typical examples:

- Steel electrical conduit installed at the site
  - 90% rule applies
    * BA criteria applies
- VMS sign
  - 90% rule applies
    * BA would typically not apply
- VMS steel supporting structure
  - Specifically called out in the bulleted list (12/21/12 Memorandum #HIPA-30)
    * BA criteria applies
• Electrical cabinets
  – Exempted as “miscellaneous steel or iron components,”
    * BA typically would not apply
• Off the shelf or special order catch basins,
  – This qualifies as “precast concrete products,”
  – “the job site includes the sites where any precast concrete products are manufactured.”
    * Materials are subject to BA criteria
• Standard nuts, bolts, fasteners for mounting signs
  – Exempted as “miscellaneous steel or iron components,”
    * BA typically would not apply
• High strength bolts/anchor bolts,
  * BA criteria applies
• Bridge Expansion Joint,
  – Nuts, bolts fasteners
    * Exempted as “miscellaneous steel or iron components,”
      ◦ BA typically would not apply
  – 90% rule applies as it is delivered to the site
    * BA may or may not apply
• Walls, regardless of type
  – Nuts, bolts fasteners
    * Exempted as “miscellaneous steel or iron components,”
      ◦ BA typically would not apply
  – MSE straps or equivalent
    * BA criteria applies
  – Precast elements
    * See “precast concrete products” criteria
      ◦ Materials are subject to BA
  – Assembled on site
    * Materials as they are delivered to the jobsite,
      ◦ BA criteria applies
• Computers for ITS and Signal Installation
  – 90% rule applies as it is delivered to the site
    * BA typically would not apply
• Street Furniture
  – 90% rule applies
    * BA criteria would typically apply
• Pumps and Motors
  – BA criteria applies
• Steel Beams in Building Construction
  – BA criteria applies
• Bicycle Purchases (bicycles with aluminum frames)
  – 90% rule applies
  * BA criteria typically would not apply

The 90 percent rule applies to items that are manufactured offsite and delivered to the jobsite as a unit (except in the case of precast concrete where the point of manufacture is considered the jobsite.) Walls that are assembled on site are not considered a manufactured item and therefore are not subject to the 90 percent rule as a unit. The individual materials must meet buy America when they are delivered to the job site.

This FHWA memo does not require any change to current specification language concerning Buy America. This memo does not impact the requirement for materials permanently incorporated beyond the exemption of the noted minor items.

You may apply this clarification of the Buy America requirements to your current contracts. Consistent determinations of the application of Buy America are critical to our ability to enforce this requirement statewide. Therefore, if you have unusual items that do not lend themselves to the criteria, contact your Local Programs Engineer for a determination.

Refer to the WSDOT Construction Manual M 41-01 Chapter 9-4, Specific Requirements for Each Material, which will address the Buy America documentation requirements for material acceptance.
Chapter 53  

Project Closure

53.1 General Discussion

After substantial completion of the work, the agency shall diligently pursue contract completion. In cases where the contractor is not diligently pursuing completion, the agency shall impose liquidating damages penalties, completion of remaining work with local forces or unilateral closure and claims against the contractor.

After the construction phase of a FHWA transportation project, done either by competitive bidding or by local agency forces, specific procedures are carried out to terminate the project’s finances and review project performance. These procedures are necessary in order to settle any outstanding contract obligations, and to ensure that funds were expended properly.

This chapter lists requirements for closing the project accounts at WSDOT and FHWA and discusses project management reviews and project audits.

53.2 Closure

After the construction contract is complete, a 90-day project closure period begins. This closure period is initiated upon receipt of either a completion letter from the local agency or a final inspection of the project from the Region Local Programs Office. During this period, the local agency must complete the requirements described below.

No further payment will be made after the date indicated on the 90-day closure letter without the approval of Local Programs.

The local agency may request, however, that the 90-day closure period be extended. In this case, the local agency shall submit a written request to Local Programs justifying an extended closure period.

.21 WSDOT Project Review – The Region Local Programs Engineer will conduct the final field inspection. It is suggested that the Region Local Programs Engineer be invited to the final project inspection with the contractor. If the final inspection reveals items that must be corrected or resolved before the project can be closed, these will be noted in the final inspection report. The Region Local Programs Engineer will work with the local agency to make the necessary corrections or to accomplish resolutions. If there is an unresolvable item indicating that a portion of project work is ineligible for FHWA reimbursement, WSDOT will issue a letter of notification outlining the ineligible work items and related costs.

.22 Final Billing – Within 90 calendar days of the completion date, the local agency shall submit a final bill (Form PPC2) to the Region Local Programs Engineer, clearly marked “Final Billing.”

.23 Project Closure – Once the project has been reviewed and closed by FHWA, Local Programs provides the agency with an Administrative Review letter. The letter includes a final accounting and settlement of the total project costs which may result in a payment or billing to the agency as appropriate; and provides information on records retainage.
53.3 Project Reviews

In order to be reasonably certain that local agencies are administering FHWA funds in accordance with the Local Agency Guidelines, WSDOT will perform procedural reviews on selected local agency ad-and-award projects.

These reviews will be:

- Project Management Reviews (PMR) performed by Local Programs (see Appendix 53.51 for review questions for PMR’s and Documentation Reviews).
- Documentation Reviews performed by the Region Local Programs Engineer.

The agency may lose CA status, have its delegation of authority reduced to a project or phase of a project, or be placed on probationary CA. This may be the result of:

- A PMR or Documentation Review.
- An audit by the State Auditor.
- Final project inspection.
- The qualifications and experience of the agency staff are altered.

.31 PMR Preparation – Local Programs, through the Region Local Programs Engineer, will schedule a PMR with the agency and will request that the local agency managers participate. The local agency should have all pertinent documentation ready for the scheduled review. Typical procedural review questions are listed in Appendix 53.51. Typical documents to be examined during this review are also listed in Appendix 53.51. All deficiencies will be identified for the agency at the time of the PMR. Copies of documentation not available at the time of review shall be submitted through the Region Local Programs Engineer within 30 calendar days. After the 30-day period, the final PMR letter will be sent to the agency.

.32 PMR Deficiencies – If no major deficiencies are found in the local agency’s project management methods, the local agency will be informed in writing of the review team’s findings and recommendations.

If major deficiencies exist, the local agency will be asked to take corrective action within 60 days. If the deficiencies include ineligible work, WSDOT will issue a citation letter.

If deficiencies exist in the agency’s procedures, management practices, or systems, or if specific project errors are found, WSDOT’s administrative response might be one or more of the following:

- No action against the agency.
- Joint conference with the Local Agency, Region Local Programs Engineer, and the Director of Local Programs or the director’s designee.
- Limit or withhold the agency’s future Certification Acceptance authority (Chapter 13) to the extent deemed necessary:
  
1. Allow Certification on a project-by-project basis.
2. Direct WSDOT to assign a Project Engineer to each project for supervision, inspection, and administration.
3. Contract the supervision, inspection, and administration to a consulting firm.
4. Delay project authorization until adequate supervision, inspection, and administration is available from the local agency, WSDOT, or consultants.

- Establish a repayment plan when violations to procedures make certain expenditures ineligible for federal reimbursement. Per Section VII of the Local Agency agreement, withholding of funds from the local agency’s gasoline tax distribution may be necessary if a satisfactory repayment plan is not established within 45 days.

53.4 **Financial and Compliance Audit**

.41 **By the State Auditor** – The local agency is responsible for ensuring that an audit is performed in accordance with OMB Circular A-133. WSDOT is also responsible for ensuring that FHWA funds are properly expended. The State Auditor will therefore audit each local agency.

.42 **By WSDOT** – A project audit by WSDOT Auditors is triggered by deficiencies found during:

1. A routine audit by the State Auditor, either on an FHWA project or on any other project where federal funds are involved.
2. A documentation review.
3. A project management review.

.43 **Project Records** – Project records shall be maintained in accordance with the terms of the Local Agency Agreement and shall be made available to the audit personnel upon request. It is helpful if field notes and other documentation are available in sufficient detail to facilitate the audit review.

.44 **Audit Report** – The state auditor will submit a formal audit report to the Director of Local Programs and to FHWA. If findings on a particular audit arise, Local Programs will contact the agency to confirm the findings and coordinate resolution with the agency and Local Programs. Audit findings must be resolved within six months of the date that the audit report is issued. Audits will normally include the following categories:

- Interagency Agreements
- Land Development or Land Acquisition Projects
- Tier Contracting Procedures
- Fund Management – Transactions
- Accounting Methods – Cash or Accrual
- DBE-EEO Practices
- Use of Grant Acquired Equipment

53.5 ** Appendices**

53.51 Local Agency Project Management Review Checklist (DOT Form 272-024 EF and DOT Form 272-026)
53.52 Final Inspection of Federal Aid Project
53.53 Local Agency Quarterly Report of Amounts Credited as DBE Participation
53.54 Certified Payroll Example