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Remarks and Instructions

The complete manual, revision packages, and individual chapters can be accessed at www.wsdot.wa.gov/publications/manuals/m22-01.htm.

For updating printed manuals, page numbers indicating portions of the manual that are to be removed and replaced are shown below.

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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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Approved By

Signature

Washington State
Department of Transportation

Local Agency Guidelines

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Local Programs
Engineering Services

Americans with Disabilities Act (ADA) Information

Materials can be made available in an alternate format by emailing the WSDOT Diversity/ADA Affairs Team at wsdotada@wsdot.wa.gov or by calling toll free, 855-362-4ADA (4232). Persons who are deaf or hard of hearing may make a request by calling the Washington State Relay at 711.

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Abbreviations and Glossary. 1

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 audits. FHWA funds may be expended only after WSDOT notifies the agency of federal authorization. FHWA funds are not eligible for lobbying efforts (2 CFR Part 200.450).

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), in order for projects to be eligible for FHWA funds, roadways must be functionally classified routes.

In addition, specific programs require that in order to be eligible, roadways must be identified as part of the National Highway System (NHS) or the Interstate System, which is a component of the NHS.

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.

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.

.12 FHWA Funding Programs – FHWA reimburses eligible costs for transportation projects from the following programs (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, cooperative and comprehensive statewide and metropolitan multimodal transportation planning process. This process involves:

- Metropolitan Planning Organization (MPO) long-range transportation plans.
- MPO transportation improvement programs (MTIPs).
- A statewide long-range transportation plan.
- A Statewide Transportation Improvement Program (STIP).

The statewide planning process establishes a cooperative, continuous and comprehensive (referred to as 3C) 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 tribal nations, 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 Local Agency Transportation Programs – The local agency transportation program is a listing of prioritized projects that a local agency expects to begin during the next six years. Projects in the local agency transportation program are all FHWA, Federal Transit Administration (FTA), and regionally significant projects regardless of funding source. All cities, towns, counties, tribal nations, and transit agencies are required to prepare and adopt their individual transportation programs annually.

- Cities and towns are required to prepare and adopt a six-year Transportation Program 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 transportation program 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).
- Tribal Nations are required to prepare a Tribal Transportation Improvement Program (TTIP) and forward to Bureau of Indian Affairs (BIA). (25 CFR 170.400).
- Transit agencies are required to prepare a six-year transit development plan by September 1st 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).
- WSDOT prepares a 6-year project delivery plan based on identified system deficiencies and priorities by July 1 annually and makes the plan available for use in consulting with communities, metropolitan and non-metropolitan local officials.

Once the agency's transportation programs are adopted, federally funded and regionally significant projects are submitted to MPOs for inclusion in the Regional TIP. County Lead agencies and rural cities can submit directly to WSDOT or the RTPO for inclusion in the STIP based on an agreed upon process.

WSDOT developed a web-based system for agencies to prepare their six-year transportation 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 the policy board of an organization designated to carry out the metropolitan transportation planning process for an urbanized area with 50,000 or more population. (23 USC 134 (2) and 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 MTIP.
- Develop a congestion management process.
- 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 MTIP, 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.
  - Follows a documented public participation plan that provides reasonable opportunities for involvement in the metropolitan transportation planning process by interested parties.
  - 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 MTIP 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 state legislature authorized the creation of RTPOs (RCW 47.80). RTPOs are voluntary organizations composed of local governments within a county, or within geographically contiguous counties, whose purpose is to coordinate transportation planning on a regional basis and to develop a regional transportation plan as applicable. Some RTPO responsibilities may include:

- 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 RTIP 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 transportation programs 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, submit to WSDOT through the web-based system. Only the first four years of the RTPO TIP, County Lead agency and rural city transportation programs are included in the STIP.

A list of MPOs and RTPOs is at:
www.wsdot.wa.gov/nr/rdonlyres/91717186-9193-4054-807d-3b229d016fe8/0/mportpowsdotdirectory021113.pdf

A map of MPOs and RTPOs is at:
www.wsdot.wa.gov/nr/rdonlyres/cf5ead4f-f9c9-46f9-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 boundaries. 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 tribal nations 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 transportation program. Upon adoption of the agency's transportation program, it is submitted for inclusion in the STIP. Each county lead agency works with their jurisdictions to ensure process 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 rural transportation programs, RTIPs and MTIPs that have been found consistent with Regional and Metropolitan Transportation 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.
- The first four years of all RTPO transportation improvement programs.
- The first four years of rural transportation programs for agencies not in an RTPO.
- Involvement of:
  - Local Agencies
  - Regional Transportation Planning Organizations
  - Transportation Management Areas
  - Metropolitan Planning Organizations
  - WSDOT
  - Transit Agencies
  - Tribal Nations
  - 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.
- An estimate of the total project cost (all phases, all funding sources).
- The 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 transportation programs.

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

Agencies within a RTPO and/or County Lead agency verify with the applicable agency the process regarding project submittals 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.

Annual STIP Timeline	
Deadline	**Description**
June 30	Cities and towns six-year transportation programs adopted.
July	Agencies & WSDOT submit projects for inclusion in the STIP to MPO's & RTPO's, as applicable
July 31	Adopted transportation programs due to WSDOT.
August/September	MPOs assemble regional TIPs and prepare analysis for conformity finding (as applicable).
August	WSDOT reviews draft MPO TIPs. As requested WSDOT reviews draft RTPO TIPs, County Lead and city transportation programs.
September 1	Transit agencies six year plans due.
September/October	WSDOT, FHWA and FTA review MTIPs for air quality conformity.
October 15	All MPO and RTPO TIPs due to WSDOT.
November	WSDOT approves MPO TIPs. FHWA and FTA issue Regional Air Quality Conformity finding. Draft STIP available for public review.
December	WSDOT submits the STIP to FHWA and FTA for approval.
December	Counties adopt annual budgets and six-year programs.
January	FHWA and FTA approve the STIP.

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.

.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.

.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.

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:

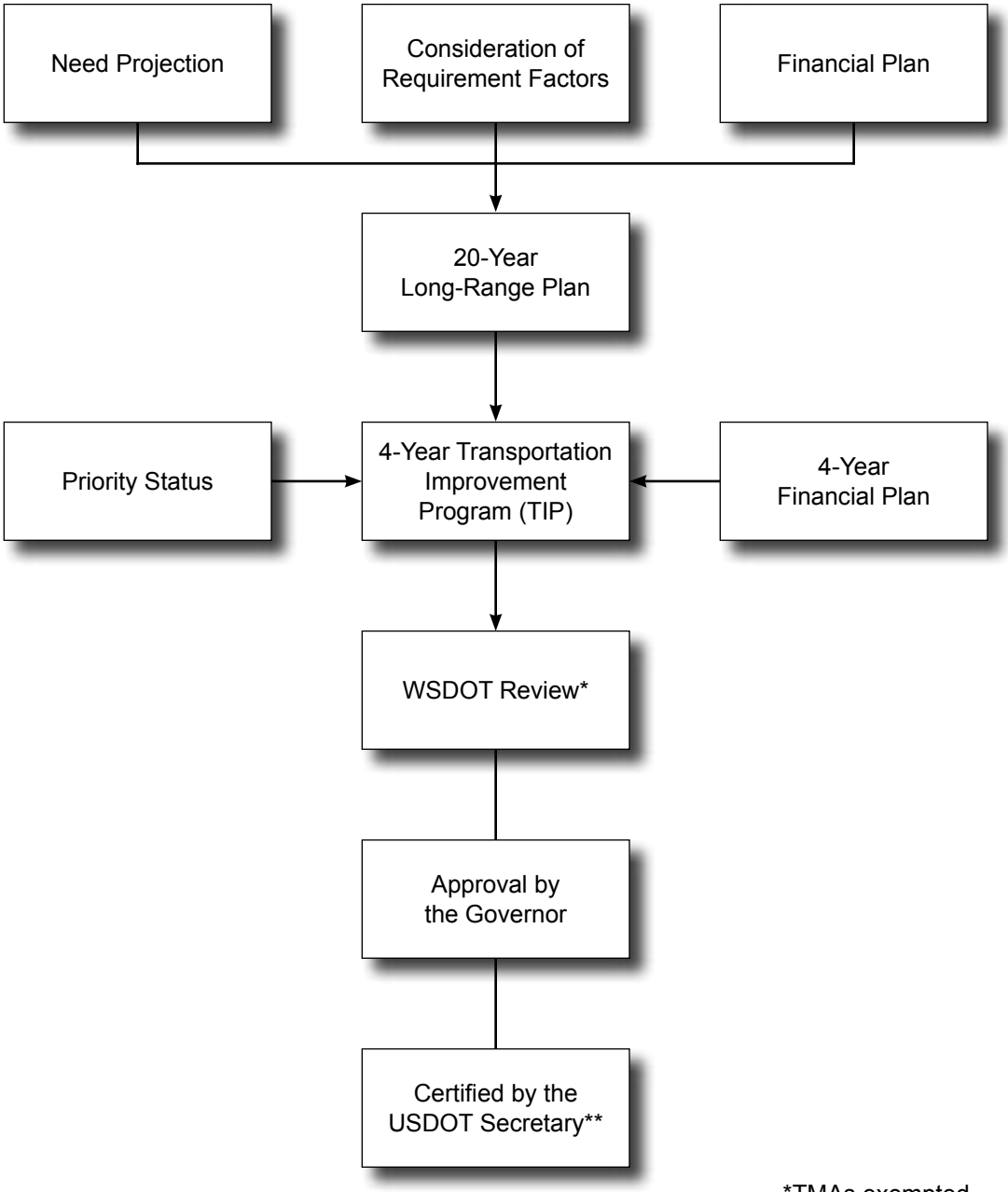
	FTA	FHWA
Transit Rolling Stock	X	
Park and Ride Lots	X	X
Pedestrian Ways	X	X
Refueling Bus	X	
Carpool and Vanpool	X	X
Regional Rideshare	X	X
Commute Trip Reduction	X	X
Bikeways		X
Intermodal Station	X	
Bus and Signal Priority		X
Transit Maintenance and Operations	X	
Ferry Terminals	X	X
Passenger Ferry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

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 though 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



*TMAs exempted.
**TMAs only.

Regional Planning and Programming Process
(Simplified Chart for MPOs)

Adams County
Asotin County
Benton-Franklin Council of Governments
Chelan County
Clallam Long Range Transportation Planning Office
Columbia County
Cowlitz-Wahkiakum Council of Governments
Douglas County
Ferry County
Franklin County
Garfield County
Grant County
Grays Harbor Council of Governments
Island County
Jefferson County
Kittitas County
Klickitat County
Lewis County
Lincoln County
Mason County
Okanogan County
Pacific County
Pend Orielle County
Puget Sound Regional Council
San Juan County
Skagit Council of Governments
Skamania County
Southwest Washington Regional Transportation Council
Spokane Regional Transportation Council
Stevens County
Thurston Regional Planning Council
Wahkiakim County
Walla Walla County
Wenatchee Valley Transportation Council
Whatcom Council of Governments
Whitman County
Yakima Valley Conference of Governments

Chapter 14 Developing Projects Using the Local Agency Guidelines

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 any phase of a project (PE, RW, CN) within the scope of a NEPA document is awarded using Federal–aid funding then the Buy America provisions will apply to all construction phases 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. (See also "Determining Whether or Not Land or Property Rights or interest are Needed" flowchart in Appendix 25.174.)

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.

Documentation Requirements When Utilizing FHWA Funds	**PE Phase:** FHWA Funds in PE Phase Only[1]	**R/W Phase:** FHWA Funds in the R/W Phase[2]	**CN Phase:** FHWA Funds in the Construction Phase[3]
Required Documentation			
STIP	x	x	x
Approved NEPA	x[4]	x[4]	x[4]
Approved Relocation Plan (if applicable)		x	
Project Funding Estimate		x	
Approved R/W Plan		x	
WSDOT Approved Right of Way Certification		x	x
DBE/Training Goals			x
Design per LAG Manual			x
Environmental per LAG Manual	x	x	x
R/W Acquisition per LAG Manual	x	x	x
Construction per LAG Manual			x
Intelligent Transportation Systems Information Form (Appendix 41.53)			x

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

[2]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.

[3]Local Agency must provide documentation after completion of the CN phase as documented in this manual.

[4]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.

[5]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).
   e. Right of way Project Funding Estimate or True-Cost estimate (Chapter 25).

f. Evidence of STIP inclusion.

g. Updated Quarterly Project Report, if required.

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. Updated project prospectus. To ensure utility and railroad work is adequately addressed (23 CFR 635.309(b)) local agencies are required to provide an updated, signed project prospectus at time of construction phase authorization.

   f. Engineer's Estimate.

   g. Evidence of assignment of DBE/training goals.

   h. 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.

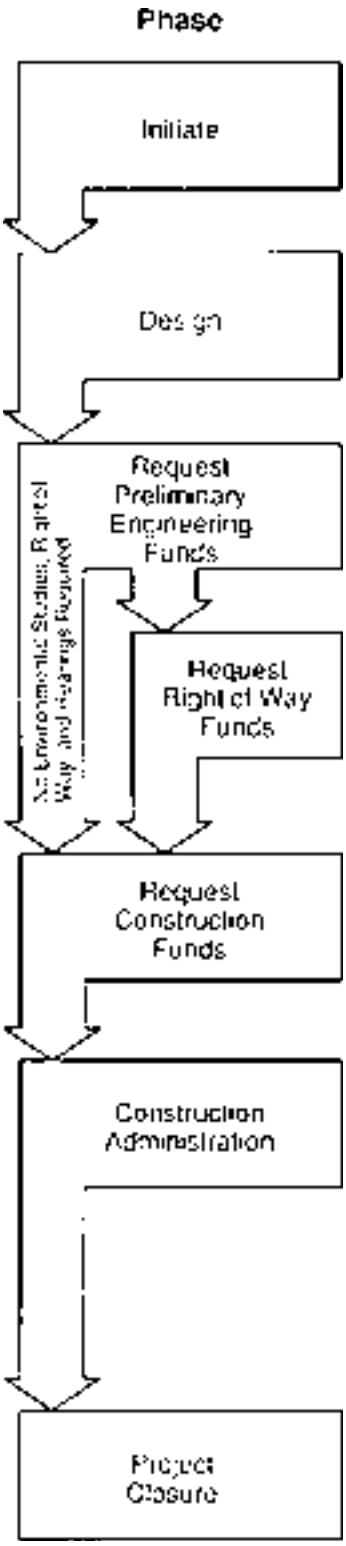
It is recommended that a copy of the checklist be inserted in the project file and used to initiate and document the activities necessary to complete a project.

14.5 Appendices

14.51 Project Development Process Flowchart

14.52 Project Development Checklist

Project Development Process Flowchart



	Process Activities	Chapter Reference
00	Project Development Checklist	12 and 14
00	Included in STIP	or
00	Project Development Checklist	
00	Prepare Project Prospectus-Design Report	21 and 43
00	If Applicable, Engage Consultant	31
00	Make Environmental Determination	24
00	If Applicable, Request Design Deviation	41
00	Project Development Checklist	
00	Project Prospectus	21
00	Local Agency Agreement	22
00	If Applicable, Request Design Deviation	41
00	Project Development Checklist	
00	Location/Design, Public Hearing, and Approval	43
00	Complete Environmental Action	24
00	Develop Right of Way Plans and Estimate	25
00	Complete Relocation Plan	25
00	Supplement to Local Agency Agreement	22
00	Project Development Checklist	
00	Relocation and Right of Way Certification and Project Analysis	25
00	DBE Goals Set	26
00	PS&E Approval	44
00	Supplement to Local Agency Agreement	22
00	For State Ad and Award, Financial Responsibility Letter	44
00	Project Development Checklist	
00	Contract Number From the Region Local Programs Engineer	46
00	Notice to Minority Contractors Association (see Region Local Programs for Distribution Centers)	26
00	Advertise for Bids	46
00	For Certified Agency (CA), Approve Award and Notify Region Local Programs Engineer	46
00	For WSDOT Administered Contracts, Award by WSDOT	45
00	Award Data to Region Local Programs Engineer	46
00	Preconstruction Conference	52
00	Construction Administration (*Construction Manual* M 41-01)	52
00	Project Development Checklist	
00	Construction Completion Notice to Region Local Programs Engineer	53
00	Final Acceptance by FHWA	53
00	Final Billing and Cost Report to Region Local Programs Engineer	23 and 53
00	Complete DBE Form	26
00	Final Records	53
00	Audit	53

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.

Initials	Date or N/A	Project Initiation (Chapter 12)
		Project in STIP
		Federal aid program form (Sheet 1 of Prospectus) to: ☐ Metropolitan planning organization ☐ Or WSDOT (Region Local Programs) ☐ Nondiscrimination Agreement
		Program of project approved by appropriate agency

Initials	Date or N/A	Project Prospectus (Chapters 21, 24, 42, and ECS Guidebook)
		Sheet 1 ☐ Project information, local agency project number ☐ Description of proposed work and existing facility ☐ Cost estimate of all phases ☐ Proposed obligation date ☐ Environmental determination (CE, EIS, EA) ☐ Request species listing from USFWS, NMFS, DNR, and WDFW ☐ Signature block
		Sheet 2 ☐ Geometric design data ☐ Environmental considerations ☐ Performance of work
		Sheet 3 ☐ Right of way relocation ☐ Utility relocations ☐ FAA Involvement ☐ Signature ☐ Local Agency Design Matrix Checklist, Appendix 42.101
		Prospectus Submittal Checklist, Appendix 21.41

Initials	Date or N/A	Local Agency Agreement (Chapters 22 and 23)
		Billing address ☐ Description of work matches prospectus ☐ Check math on agreement ☐ Federal aid matching percentage ☐ Method of financing ☐ Agreement signed by approving authority

Initials	Date or N/A	Request Preliminary Engineering Funds (Chapter 14)
		Project programmed
		Project application package to Region Local Programs Engineer: ☐ Project prospectus with attachments (including Roadway Section if applicable) ☐ Local Agency Agreement ☐ Prospectus Submittal Checklist completed
		PE funds authorized by Local Programs
		Evaluate if WSDOT Access Permits are required

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

Initials	Date or N/A	Consultant Administration (Chapter 31)
		Oversee the consultant's work and billings to ensure compliance with the agreement
		Prepare diary to record discussions and visitation with the consultant
		Check consultant billings regarding employee classification, wage rate, actual invoices for direct non salary costs, etc.
		Enter consultant payment on ledger system
		Conduct consultant employee interviews
		Establish and maintain a tracking system to monitor consultant agreement expiration dates

Initials	Date or N/A	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

Initials	Date or N/A	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 -or-
		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
		Concurrence 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

Initials	Date or N/A	Right of Way Funding and Acquisition Funding (Chapters 14 and 25)
		Project in STIP
		Complete design hearing requirements
		Approve right of way plan
		Submit right of way relocation plan (if required) to Region Local Programs Engineer
		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
		Receive authorization to acquire R/W from the Director of Local Programs

Initials	Date or N/A	Acquisition (Chapter 25)
		Acquisition procedures approved by the Director of Local Programs
		Acquisition procedures current
		Set up documentation file for each parcel
		Set up commitment file
Appraisal		
		Appraisal reviewer approved by WSDOT
		Give landowner opportunity to accompany appraiser
		Signed appraiser certification in file
Appraisal Review		
		Appraisal reviewer approved by WSDOT
		Date of value determination precedes commencement of negotiations
		Just compensation set by agency
		Signed review appraiser certification in file
Negotiations		
		Prepare diary of all owner contacts
		Give owner written statement of just compensation (Offer Letter)
		Ensure that settlement contains construction clauses
		Obtain evidence of clear title
		Negotiator disclaimer statement in file
Relocation Plan		
		Approved by WSDOT
		Work with WSDOT relocation staff on all relocations
Project Completion		
		Complete relocation
		Complete acquisition
		Complete administrative settlement documentation
		Place a copy of deeds in file, include proof of payment in file
Send		
		Letter of certification sent from local agency to Region Local Programs Eng.
		LPA coordinator conducts certification review
		WSDOT's certification by Real Estate Services, Assistant Director Local Agency Projects

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)

Initials	Date or N/A	Plans, Specifications, and Estimates (Chapters 24, 26, 27, 44, and ESC Guidebook)
		☐ Form FHWA-1273 and latest amendment included ☐ Log of test borings ☐ Training requirements ☐ EEO requirement clauses ☐ For steel, included Buy America requirement ☐ Traffic control special provisions ☐ Specialty items ☐ General special provisions and amendments arranged in order and indexed ☐ Project proposal ☐ Noncollusion Declaration ☐ Contract ☐ DBE Utilization Certification ☐ Engineer's estimate complete ☐ Documentation for each item in engineer's estimate ☐ Justification for nonparticipating items ☐ Detailed documentation for lump sum items available in project files ☐ Estimate to Region Local Programs Engineer ☐ Training goal set by Local Programs ☐ DBE goal set by Local Programs ☐ Approval of local agency supplied materials ☐ Sources approved by approving authority ☐ 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) ☐ Distribution of preliminary plans as determined by local agency
		Field review of PS&E (State Ad and Award only)
		Tied bids – Approval from WSDOT
		For State Ad and Award, financial responsibility letter with PS&E documents sent to Region Local Programs Engineer
		PS&E approved by approving authority
		Plans, contract specifications and estimate stamped, signed, and dated, and on file in the local agency office
		State and federal wage rates added to ad plans
		PS&E sent to Region Local Programs Engineer

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

Initials	Date or N/A	Award of Contract (Chapter 46)
		Establish contract award date _____
		Sent "Award Letter" to successful low bidder Sent request for a DBE Utilization Certification breakdown if a DBE goal was set
		Sent "Condition of Award" to successful low bidder if DBE goals are set in the contract
		Notify all unsuccessful bidders
		Return bid bonds
		Notify second and third bidders of holding bid bonds until execution
		Sent award data to the Region Local Programs Engineer: ☐ Tabulation of bids ☐ Engineer's estimate ☐ Actual versus estimated costs shown in Local Agency Agreement ☐ Award letter ☐ DBE Utilization Certification, DOT Form 272-056A EF (if applicable) ☐ DBE Written Confirmation Document, DOT Form 422-031 EF (if applicable) ☐ Estimated date of contract completion or number of working days for the contract ☐ Names and addresses of all firms that submitted a quote to the successful low bidder
Date of Award is Cutoff for Charging to Preliminary Engineering		

Initials	Date or N/A	Construction Administration Execution of Contract (Chapter 46)
		Sent contract and contract bond papers to contractor for signature
		"Certificate of Insurance" received from contractor
		Approving authority executed contract documents
		Notified the contractor by phone of the execution of the contract
		Executed a copy of the contract to contractor
		Sent notice to proceed to contractor, with cc to Region Local Programs Engineer
		Returned bid bonds to second and third bidders

Initials	Date or N/A	Preconstruction Conference (Chapter 51)
		Notice of preconstruction conference to: ☐ Contractor ☐ Region Local Programs Engineer ☐ Affected utility companies ☐ Police department ☐ Fire department ☐ Hospital ☐ Ambulance service ☐ Post Office ☐ Others _____ ☐ _____ ☐ _____
		Preconstruction conference agenda prepared
		Preconstruction conference held
		Minutes of meeting to: ☐ Contractor ☐ Subcontractors ☐ Region Local Programs Engineer ☐ Other attending persons ☐ Invited but not represented agencies ☐ Project file
		"Training Program": ☐ Received from contractor ☐ Approved by agency
		"Apprentice/Trainee": ☐ Approval request from contractor ☐ Approved by agency

Initials	Date or N/A	Construction Documentation (Chapter 52)
		"Record of Material" received from WSDOT Materials Laboratory
		Contractor provides copies of permits obtained from other agencies and/or property owners: ☐ Washington State Department of Wildlife/Fisheries-Hydraulic Permit ☐ Washington State Department of Ecology ☐ Irrigation Regionals ☐ Burlington Northern Railroad ☐ Union Pacific Railroad ☐ Air Pollution Control Authority ☐ _____ ☐ _____ ☐ _____
		Temporary water pollution control plan approved

Initials	Date or N/A	Construction Documentation (Chapter 52)
		Agency requests updated ESA species listing every six months
		Approved contractor's progress schedule
		Received railroad insurance from contractor
		Construction diary started
		Inspector's diary started
		"Certification of Materials Origin" received from contractor
		Material source approval received
		Plans for falsework and forms: ☐ Received from contractor ☐ Approved by agency
		Required job site posters placed by contractor: ☐ 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) ☐ FHWA-1022 – Notice Federal Aid Project (project engineer to fill in contact information on the form prior to supplying to the contractor) ☐ EEOC-P/E-1 – Equal Employment Opportunity IS THE Law ☐ Whistleblower (ARRA projects only) ☐ WHD Publication 1088 – Employee Rights Under the Fair Labor Standards Act ☐ WHD Publication 1420 – Employee Rights and Responsibilities Under the Family and Medical Leave Act ☐ WHD 1462 – Employee Polygraph Protection Act ☐ WISHA F416-081-909 – Job Safety and Health Law ☐ F242-191-909 – Notice to Employees (L&I) ☐ F700-074-909 – Your Rights as a Worker in Washington State ☐ EMS 9874 – Unemployment Benefits If federal funds are involved, all of these posters are required, except that the Whistleblower poster is required only for ARRA funded projects.
		Daily construction signing records started (checked twice daily and recorded)
		Weekly statement of working days started
		Material acceptance sampler appointed
		Material independent assurance sampler appointed
		Appointed office engineer for progress estimates and final records
		Obtain a copy of the scale certifications
		Daily scale check
		Received FHWA Form 1391 for each July from contractor and subcontractors
		FHWA Form 1392 prepared and sent to Region Local Programs
		Received "Request to Sublet Work" and "Subcontractor or Agent Certification" from contractor
		Approved request to sublet (subject to 70 percent limit)
		Received "Intent to Pay Prevailing Wages" from contractor, subcontractors, and agents
		Received approved "Intent to Pay Prevailing Wages" from Labor and Industries (required before first payment)
		Checked first certified payroll from contractor and subcontractors to ensure

Initials	Date or N/A	Construction Documentation (Chapter 52)
		payment of prevailing wages
		Conducted random check of each successive payroll
		Wage rate interviews conducted
		Checked employee interview wage rate against certified payroll and Labor and Industries approved prevailing rate
		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

Initials	Date or N/A	Project Completion (Chapter 52)
		Prefinal inspection by local agency and contractor completed
		Final inspection by local construction agency and contractor completed
		Report of Non-American Made Material (GSP 0605.GR1) received from contractor
		Notice of completion sent to contractor
		Extension of time request with justification received from contractor
		Extension of time granted, _____ days
		Extension of time refused, _____ days _____ liquidated damages
		Letter sent notifying contractor of assessed liquidated damages
		Copy of completion notice requesting inspection and acceptance by Region
		Local Programs
		Contractor submitted claim
		No claim submitted
		Notice of completion to: _____
		Department of Labor and Industries
		Department of Revenue
		Received "Affidavit of Wages Paid" from contractor and subcontractors
		Received ESA species listing for the project every six months
		Received "Quarterly Report of Amounts Credited as DBE Participation" from contractor
		Release received from Department of Labor and Industries
		Release received from Department of Revenue
		Comparison of preliminary and final quantities sent to approving authority
		Material certification form sent to approving authority
		Completed "Report of Contractor's Performance" for prime contractor
		As built plan completed (to be retained indefinitely)
		Final record book #1 completed
		Final estimate approved by the approving authority
		Final estimate received from contractor
		Paid final estimate
		Released retained percentage from escrow or mailed check to contractor

Initials	Date or N/A	Project Closure (Chapters 32 and 53)
		Completion letter sent to Region Local Programs Engineer (within 15 days after project is completed)
		Final billing sent to Region Local Programs Engineer (within 90 days after completion)
		Completed final field inspection by the Region Local Programs Engineer. Deficiencies (if any) will be noted on DOT Form 140-500 EF.
		Resolve deficiencies found during the above field inspection
		Informed by Region Local Programs Engineer of WSDOT final billing approval

Chapter 21 The Project Prospectus

21.1 General Discussion

The Project Prospectus is the description of the proposed improvement which serves as the support document for Federal Highway Administration (FHWA) authorization of federal funds. The prospectus also provides a schedule which tells when the local agency anticipates obligating federal funds.

The Project Prospectus is one of the main items contained in the project authorization package discussed in this chapter. Other items in this package include the Local Agency Agreement (see Chapter 22) and the items of supporting data listed in the Prospectus Submittal Checklist (Appendix 21.41).

21.2 Procedure for Submitting the Planning Authorization Package

Local agencies must submit the following to the Region Local Programs Engineer for authorization:

- One copy of the completed Federal Aid Project Prospectus Planning Scope of Work.
- Original and one copy of the Local Agency Agreement signed by the approving authority (Chapter 22).
- Documented cost estimate (Chapter 22).
- STIP documentation.
- Vicinity map, if applicable.

21.3 Procedure for Compiling the Project Authorization Package

Local agencies must submit the following to the Region Local Programs Engineer for authorization:

- Prospectus Submittal Checklist.
- Original of the completed Project Prospectus.
- Original and one copy of the Local Agency Agreement signed by the approving authority (Chapter 22).
- Documented cost estimate (Chapter 22).
- Supporting data listed in the Prospectus Submittal Checklist (Appendix 21.41).
- Original of the Environmental Classification Summary Form (Chapter 24).

A given project may not require all of the items in the checklist; however, the local agency must include all items that are relevant. Identify those items included with an "x" in the right column of the checklist. Many of the items listed in the checklist take place during the course of project development and are not complete at the time the prospectus is submitted. An agency may note such items on the checklist and submit them when they are completed. The latest point at which each item may be submitted is noted in Appendix 21.42 describing the item in detail.

Incomplete, incorrect, or missing items will delay project authorization.

The first item in the project authorization package is the checklist.

The next item is the three-page Federal Aid Project Prospectus itself, which must be filled out with the current project information. The Federal Aid Project Prospectus is used for FHWA federal aid programming purposes along with providing the state and FHWA needed information about the proposed project, such as design and accident data. Appendix 21.43 contains instructions for completing the prospectus. Agency codes and numbers are provided in Appendices 21.44 through 21.46.

21.4 Appendices

21.41 Prospectus Submittal Checklist
21.42 Project Authorization Transmittal Items – Instructions
21.43 Project Prospectus – Instructions
21.44 County Code and WSDOT Region Numbers
21.45 City Code Numbers
21.46 Urban Area Numbers
21.47 Local Agency Federal Aid Project Prospectus
21.48 Puget Sound Legislative Districts
21.49 Statewide Legislative Districts
21.50 Washington State Congressional Districts

21.5 Forms

Federal-Aid Project Prospectus Planning Scope of Work

Prospectus Submittal Checklist

Agency: Click here to enter text.

Project Title: Click here to enter text.

Use this sheet as a cover sheet to the project prospectus package. Place an "X" in the right column to denote items included.

If not applicable, state N/A. Include in the cover letter a comment explaining the action taken on each item as appropriate.

Note later with an "L" if the information will be supplied at a future date.

Application	
1. Project Prospectus (Chapter 21)	
2. Vicinity Map	
3. Typical Roadway or Pathway Section	
4. Typical Bridge Section	
5. Local Agency Agreement (Chapter 22)	
6. Documented Cost Estimate (Chapter 22)	
7. TIP/STIP Inclusion (MPO/County/Agency, selected/limited to $)	
Supporting Data	
8. Local Agency Design Matrix Checklist (Appendix 42.101)	
9. Photos (Railroad Crossing, ER event sites, as required)	
10. Deviation Analysis Format (Appendix 41.51)	
11. Environmental Considerations (Chapter 24)	
a. Class II Categorically Excluded (CE) - Environmental Classification Summary (ECS)	
b. Class III Environmental Assessment (EA)	
c. Class I Environmental Impact Statement (EIS)	
d. SEPA Checklist	
e. NEPA/SEPA/Section 404 Interagency Working Agreement	
f. Evolutionarily Significant Unit (ESU) Determination of Effect Concurrence	
g. Value Engineering Study (where applicable)	
12. Right of Way Requirements (Chapter 25)	
a. Relocation Plan	
b. Approved Right of Way Plans	
c. Right of Way Project Funding Estimate or True Cost Estimate	
d. Request Right of Way Fund Authorization	
13. Right of Way Certification (Appendix 25.179)	
14. Agreements/Easements with Railroads, Utilities, and Other Agencies (Chapter 32 & 25)	
15. Design Approval (Chapter 43)	
16. Tied Bids (Chapter 44)	
17. Nondiscrimination Agreement	

Remarks:

Click here to enter text.

The authorization package shall include:

1. **Project Prospectus** – (Attach completed prospectus submittal checklist.) To be included with original submittal, at time of construction phase authorization, and whenever there is a change in the scope of work, termini, right of way, or environmental classification. For planning projects, use the Project Prospectus Planning Scope of Work.

   To ensure utility and railroad work is adequately addressed (23 CFR 635.309(b)) local agencies are required to provide an updated, signed project prospectus at the time construction phase authorization is requested.

2. **Vicinity Map** – A vicinity map of the project with the termini clearly marked must be submitted with the Project Prospectus. The map should be 8.5 inches (212.5 mm) by 11 inches (275 mm), and of a scale such that a reviewer can identify the project area in the field. Show the agency name, project title, project termini, north arrow, map scale, and nearest city or distance to the nearest city/town, or major road intersection.

3. **Typical Roadway or Pathway Section** – Attach a sketch of the proposed roadway or pathway section showing all data pertaining to the section, including side slopes and limits of right of way. Also indicate stationing and note any variations of the section throughout the stationing. If the design does not conform to the design standards (see Section 41.6), a request for deviation from these standards with complete justification is required.

4. **Typical Bridge Section (if necessary)** – Attach a sketch of the proposed bridge section showing all dimensions and type of construction and Structure ID #.

   On bridge projects where approaches are to be included in the contract, include roadway section and length of the approaches. In cases where the structure consists of a main span and approach spans, the length of the approach spans should be indicated, if known.

5. **Local Agency Agreement** – This agreement is necessary on all projects. It must be submitted with the Project Prospectus. See Chapter 22 for instructions on completing the agreement.

6. **Documented Cost Estimate** – All funds shown on the Local Agency Agreement must be supported by a documented cost estimate that is based on an agency's best estimate of cost. See Chapter 22 for further explanation.

7. **STIP Documentation** – Attach copy of the page of the current STIP that shows your project.

8. **Design Matrix Checklist** – See Appendix 42.101.

9. **Photos** – As required for ER sites and Railroad Crossings.

10. **Deviation Request** – See Appendix 41.51.

11. **Environmental Considerations** – See Chapter 24.

12. **Right of Way Requirements**

    a. No right of way needed. Mark appropriate box on prospectus. This serves as the agency's right of way certification.

    b. Right of way needed. Mark appropriate box on prospectus and refer to Chapter 25 for further instructions.

    Note: Right of Way is required if the project cannot be constructed within the exiting limits. This includes property rights whether temporary or permanent is needed to construct, operate and maintain the proposed project including any early/ advanced acquisition. For assistance in determining whether or not ROW is needed refer to Appendix 25.174.

13. **Right of Way Certification** – Required on all projects where right of way was acquired. Refer to Chapter 25 for further explanation.

14. **Agreements/Easements With Railroads** – Refer to Chapter 32 for instructions.

15. **Location and Design Approval** – For most projects, the Project Prospectus along with the data satisfying items 1 to 14 of this transmittal pavement design criteria and geometric de-sign will be considered sufficient for the location and design report. For complicated projects requiring a more detailed location and design report, refer to Chapter 43.

16. **Tied Bids** – If the project has tied bids (see Chapter 44), indicate the approval date. If the project is tied to another federally funded project, include the federal aid project number of the project, along with other information outlined in Section 44.

Federal Aid Project Number **Code the PREFIX and ROUTE number as outlined below:**
(Do not fill in ( ) to be used by WSDOT)

Prefix Code	Description
STPUL	STP Urban Funds, population greater than 200,000 (Seattle/Tacoma, Spokane, Vancouver, Kennewick/Pasco)
STPUS	STP Urban Funds, population 5,000 to 200,000
STPR	STP Rural Funds, population less than 5,000
STPE	Enhancement Program
STPF	Flex Program
CM	Congestion Mitigation/Air Quality Program Nonattainment Areas, population greater than 200,000
STPX	Safety program, elimination of rail-highway hazards on federal aid system
STPXP	Safety program, installation of rail-highway protective devices
HSIP	Safety program, hazard elimination program
BRS	Bridge replacement project on rural system, financed with Bridge Replacement Funds
BHS	Bridge rehabilitation project on rural system, financed with Bridge Replacement Funds
BRM	Bridge replacement project on urban system financed with Bridge Replacement Funds
BHM	Bridge rehabilitation project on urban system financed with Bridge Replacement Funds
BROS	Bridge replacement project not on the federal aid system but financed with Bridge Replacement Funds
BHOS	Bridge rehabilitation project not on the federal aid system but financed with Bridge Replacement Funds
ER	Project financed with Emergency Relief Funds
TAP	Transportation Alternatives Program

Route Code	Federal Aid Project Route Number	
Description	**Single Route**	**Multiple Routes**
Seattle, Everett Metropolitan Area	4-digit federal route number	Number is 9999
STPUS/STPUL	4-digit federal route number	Number is 99 followed by county number
STPR	4-digit federal route number	Number is Z9 followed by county number
HSIP	4-digit federal route number	Number is 000S
STPE	4-digit federal route number	Number is 99 followed by county number
TAP	4-digit federal route number	Number is 99 followed by county number
STPF	WSDOT to assign	WSDOT to assign
STPX/STPXP On-System Urban	4-digit federal route number	N/A
STPX/STPXP On-System Rural	4-digit federal route number	N/A
STPX/STPXP Off-System Urban	Number is city number	N/A
STPX/STPXP Off-System Rural	Number is 20 followed by county number	N/A
ER	Feds to assign	Feds to assign
BRS/BHS	4-digit federal route number	Number is Z9 followed by county number
BRM/BHM	4-digit federal route number	Number is 99 followed by county number
BROS/BHOS	Use off-system rules	Same as single routes
Off-System County	Number is 20 followed by county number	Same as single routes
Off-System City	Number is city number	Same as single routes

Date Form is filled out.

Federal Aid Project Number Number assigned by Local Programs to each federal aid project.

DUNS# Required. Enter your agency's Dun & Bradstreet provided DUNS number.

Local Agency Project Number Alpha/numeric characters that your agency identifies.

Federal Employer Tax ID Number Required. Indicate the agency's tax identification number.

Agency Required. This is your agency's name.

CA agency	Check Yes or No as applicable.
Federal Program Title	Check 20.205 Highway Planning and Construction or Other Most local agency projects are 20.205.
Project Title	Write the project's title, as shown in TIP/STIP.
Project Latitude and Longitude	Enter the project start and end latitude and longitude in the format below: Latitude N XX-XX-XX.XX Longitude W XXX-XX-XX.XX
Project Termini	Indicate the beginning and ending limits of the section to be improved. For railway/highway grade crossing projects, show the name of the railroad involved. For intersection projects write the name of the crossroad.
City Name	Name of the nearest city to where the work is to be performed. For projects that span more than one jurisdiction, list the city where most of the work will be done.
ZIP Code	5 plus 4 digit Zip Code of the location where the majority of the work will be done. (Not necessarily the same city named above.)
Begin Mile Post	Indicate your projects beginning MP.
End Mile Post	Indicate your projects ending MP.
Length of Project	Project's length in miles.
Award Type	Mark the appropriate type.
Project Route ID	Enter your projects Linear Reference System - Route ID number. (For future use).
Begin Mile Point	Enter your projects Linear Reference System Route Beginning Mile Point. (For future use).
End Mile Point	Enter your projects Linear Reference System Route Ending Mile Point. (For future use).
City Number	For a city project, write the city number from Appendix 21.45.
County Number	Write your county number from Appendix 21.44.
County Name	Write the county the project is in.
WSDOT Region	Locate your WSDOT region number from Appendix 21.44 or 21.45.
Legislative District	Indicate the number of the legislative district or districts in which this project is located.
Congressional District	Indicate the number of the congressional district or districts in which this project.
Urban Area Number	For projects inside urban areas, locate the appropriate urban area number from Appendix 21.46.
Total Estimated Cost	Required for each phase of the project; estimate to the nearest hundred dollars.
Local Agency Funding	Required for each phase of the project; estimate to the nearest hundred dollars.
Federal Funds	Required for each phase of the project; estimate to the nearest hundred dollars.

Phase Start Date

Enter the month and year which authorization for the phase will happen.

Description of Existing Facility

In one or two paragraphs, give a detailed description of the existing facility including but not limited to: (1) type, pavement, lane and shoulder width, horizontal and vertical alignment; and (2) condition of existing surfacing and roadway within project limits, and on adjacent sections at each end of the project. Note any substandard existing alignment and grade or other project deficiencies.

Description of Proposed Work

Explain the nature of the improvement proposed such as widening of existing roadway for additional lanes or left-turn channelization; or to provide signalization to an intersection. Give the purpose of the improvement, such as upgrade facility to current standards, or to remedy a hazardous situation, or reduce congestion. Indicate the major work involved, such as grading, surfacing, bridge construction, drainage, etc. Give a contact person for the project in case there are questions.

Project Prospectus Approval

The project prospectus will be reviewed and approved by the agency. If the agency has CA status the designated authority per the agreement on file will sign the form. If the agency does not have CA status the Region Local Program Engineer will review and approve the prospectus and the agency will sign the form.

The agency shall submit a revised project prospectus at construction phase authorization and any time the project termini, scope, right of way, or environmental classification is revised or modified.

Type of Proposed Work

Check whether the project is new construction, 3-R, 2-R, etc., as described in Chapter 42. Enter the Roadway Width and Number of Lanes.

Geometric Design Data

Refer to design report data and/or Chapter 42.

Performance of Work

PE: Indicate who will be performing the work and the percentage of the work they will do.

CN: Indicate if work is to be done by contract and/or local forces and the percentage to be done by each.

Environmental Classification

Mark the appropriate NEPA class of the project as defined in Chapter 24.

Class I, if the nature of the proposed improvement is likely to have a significant impact on the environment and an "Environmental Impact Statement" (EIS) is required. Check the box pertaining to the NEPA/SEPA/Section 404 Interagency Agreement if the project requires an individual permit from the U.S. Corps of Engineers.*

Class II, if the project is not expected to have a significant impact on the environment and a "Categorical Exclusion" (CE) is determined. Completion of the Environmental Classification Summary (ESC) is required.*

Class III, when the significance of the impact on the environment is not clearly established and an "Environmental Assessment" (EA) will be required. Check the box pertaining to the NEPA/SEPA/Section 404 Interagency Agreement if the project requires an individual permit from the U.S. Corps of Engineers.*

***This includes a biological assessment effect determination for each project.**

Environmental Considerations

If the box for either a Class I or Class III category action is checked under the Environmental Classification section, make reference to the enclosed Environmental Classification Summary Form marked preliminary. If the project is a Class II "Projects That Require Documentation and FHWA Approval," make reference to the enclosed Environmental Classification Summary Form, if available at this time, or in a brief narrative, describe the environmental impact of the proposed project.

Right of Way Requirements

a. No right of way needed. Projects need only check no right of way.

b. Right of way needed. A Right of Way Project Funding Estimate or True Cost Estimate, an approved Right of Way Plan, and a Relocation Plan (if required).

Refer to Appendix 25.174 for assistance in determining whether or not Right of Way is needed. If right of way acquisition becomes necessary on a job previously submitted as having no right of way, a Project Funding Estimate or True Cost Estimate would need to be submitted to the Region Local Programs Engineer.

Utility Statement

Check the box next to the statement that best fits your project.

Railroad Statement

Check the box next to the statement that best fits your project.

Description of Utility Relocation or Adjustments and Existing Major Structures Involved

Indicate the agency responsible for any relocation and/or adjustments.

a. Existing utilities-type of utility, publicly or privately owned, and other pertinent information.

b. Existing major structures – number, year built, overall length and conditions, roadway width, estimated or posted capacity, and proposed treatment of any substandard structures to remain in place.

County Name	WSDOT Region	County Code Number
*Adams	EAST	01
Asotin	SC	02
Benton	SC	03
Chelan	NC	04
Clallam	OLY	05
Clark	SW	06
*Columbia	SC	07
Cowlitz	SW	08
Douglas	NC	09
*Ferry	EAST	10
Franklin	SC	11
*Garfield	SC	12
Grant	NC	13
Grays Harbor	OLY	14
Island	NW	15
Jefferson	OLY	16
King	NW	17
Kitsap	OLY	18
Kittitas	SC	19
*Klickitat	SW	20
Lewis	SW	21
*Lincoln	EAST	22
Mason	OLY	23
*Okanogan	NC	24
*Pacific	SW	25
*Pend Oreille	EAST	26
Pierce	OLY	27
*San Juan	NW	28
Skagit	NW	29
*Skamania	SW	30
Snohomish	NW	31
Spokane	EAST	32
*Stevens	EAST	33
Thurston	OLY	34
*Wahkiakum	SW	35
Walla Walla	SC	36
Whatcom	NW	37
Whitman	EAST	38
Yakima	SC	39

**Counties without urban areas since 1980.*

City	County Code Number	WSDOT Region	City Code Number
Aberdeen	14	OLY	0005
Airway Heights	32	EAST	0010
Albion	38	EAST	0015
Algona	17	NW	0020
Almira	22	EAST	0025
Anacortes	29	NW	0030
Arlington	31	NW	0045
Asotin	02	SC	0050
Auburn	17	NW	0055
Bainbridge Island	18	OLY	0058
Battleground	06	SW	0060
Beaux Arts	17	NW	0070
Bellevue	17	NW	0075
Bellingham	37	NW	0080
Benton City	03	SC	0085
Bingen	20	SW	0090
Black Diamond	17	NW	0095
Blaine	37	NW	0100
Bonney Lake	27	OLY	0105
Bothell	17, 31	NW	0110
Bremerton	18	OLY	0115
Brewster	24	NC	0120
Bridgeport	09	NC	0125
Brier	31	NW	0127
Buckley	27	OLY	0130
Bucoda	34	OLY	0135
Burien	17	NW	0138
Burlington	29	NW	0140
Camas	06	SW	0145
Carbonado	27	OLY	0150
Carnation	17	NW	0155
Cashmere	04	NC	0165
Castle Rock	08	SW	0170
Cathlamet	35	SW	0175
Centralia	21	SW	0180
Chehalis	21	SW	0190
Chelan	04	NC	0195
Cheney	32	EAST	0200
Chewelah	33	EAST	0205
Clarkston	02	SC	0215
Cle Elum	19	SC	0220
Clyde Hill	17	NW	0225
Colfax	38	EAST	0230
College Place	36	SC	0235
Colton	38	EAST	0240

City	County Code Number	WSDOT Region	City Code Number
Colville	33	EAST	0250
Conconully	24	NC	0255
Concrete	29	NW	0260
Connell	11	SC	0265
Cosmopolis	14	OLY	0270
Coulee City	13	NC	0275
Coulee Dam	24	NC	0280
Coupeville	15	NW	0290
Covington	17	NW	0293
Creston	22	EAST	0295
Cusick	26	EAST	0300
Darrington	31	NW	0305
Davenport	22	EAST	0310
Dayton	07	SC	0315
Deer Park	32	EAST	0320
Des Moines	17	NW	0325
Dupont	27	OLY	0330
Duvall	17	NW	0335
East Wenatchee	09	NC	0350
Eatonville	27	OLY	0360
Edgewood	27	OLY	0362
Edmonds	31	NW	0365
Electric City	13	NC	0375
Ellensburg	19	SC	0380
Elma	14	OLY	0385
Elmer City	24	NC	0390
Endicott	38	EAST	0395
Entiat	04	NC	0405
Enumclaw	17	NW	0410
Ephrata	13	NC	0415
Everett	31	NW	0420
Everson	37	NW	0425
Fairfield	32	EAST	0430
Farmington	38	EAST	0440
Federal Way	17	NW	0443
Ferndale	37	NW	0445
Fife	27	OLY	0450
Fircrest	27	OLY	0455
Forks	05	OLY	0465
Friday Harbor	28	NW	0470
Garfield	38	EAST	0480
George	13	NC	0488
Gig Harbor	27	OLY	0490
Gold Bar	31	NW	0495

City	County Code Number	WSDOT Region	City Code Number
Goldendale	20	SW	0500
Grand Coulee	13	NC	0510
Grandview	39	SC	0515
Granger	39	SC	0520
Granite Falls	31	NW	0525
Hamilton	29	NW	0535
Harrah	39	SC	0540
Harrington	22	EAST	0545
Hartline	13	NC	0550
Hatton	01	EAST	0555
Hoquiam	14	OLY	0560
Hunts Point	17	NW	0570
Ilwaco	25	SW	0575
Index	31	NW	0580
Ione	26	EAST	0585
Issaquah	17	NW	0590
Kahlotus	11	SC	0595
Kalama	08	SW	0600
Kelso	08	SW	0605
Kenmore	17	NW	0609
Kennewick	03	SC	0610
Kent	17	NW	0615
Kettle Falls	33	EAST	0620
Kirkland	17	NW	0625
Kittitas	19	SC	0630
Krupp	13	NC	0635
La Center	06	SW	0640
La Conner	29	NW	0650
La Crosse	38	EAST	0655
Lacey	34	OLY	0643
Lake Forest Park	17	NW	0658
Lake Stevens	31	NW	0660
Lakewood	27	OLY	0665
Lamont	38	EAST	0668
Langley	15	NW	0670
Latah	32	EAST	0675
Leavenworth	04	NC	0680
Lind	01	EAST	0685
Long Beach	25	SW	0690
Longview	08	SW	0695
Lyman	29	NW	0705
Lynden	37	NW	0710
Lynnwood	31	NW	0715
Mabton	39	SC	0725
Malden	38	EAST	0730
Mansfield	09	NC	0735
Maple Valley	17	NW	0739
Marcus	33	EAST	0740

City	County Code Number	WSDOT Region	City Code Number
Marysville	31	NW	0745
Mattawa	13	NC	0750
McCleary	34	OLY	0720
Medical Lake	32	EAST	0755
Medina	17	NW	0760
Mercer Island	17	NW	0757
Mesa	11	SC	0765
Metaline	26	EAST	0770
Metaline Falls	26	EAST	0775
Mill Creek	31	NW	0778
Millwood	32	EAST	0780
Milton	17, 27	OLY	0785
Monroe	31	NW	0790
Montesano	14	OLY	0795
Morton	21	SW	0800
Moses Lake	13	NC	0805
Mossyrock	21	SW	0810
Mount Vernon	29	NW	0820
Mountlake Terrace	31	NW	0815
Moxee City	39	SC	0825
Mukilteo	31	NW	0830
Naches	39	SC	0835
Napavine	21	SW	0840
Nespelem	24	NC	0855
New Castle	17	NW	0858
Newport	26	EAST	0860
Newport Hills	17	NW	0863
Nooksack	37	NW	0865
Normandy Park	17	NW	0870
North Bend	17	NW	0875
North Bonneville	30	SW	0880
Northport	33	EAST	0885
Oak Harbor	15	NW	0895
Oakesdale	38	EAST	0890
Oakville	14	OLY	0900
Ocean Shores	14	OLY	0907
Odessa	22	EAST	0910
Okanogan	24	NC	0915
Olympia	34	OLY	0920
Omak	24	NC	0925
Oroville	24	NC	0935
Orting	27	OLY	0940
Othello	01	NC	0945
Pacific	17	NW	0950
Palouse	38	EAST	0955
Pasco	11	SC	0960
Pateros	24	NC	0970
PeEll	21	SW	0975
Pomeroy	12	SC	0985
Port Angeles	05	OLY	0990

City	County Code Number	WSDOT Region	City Code Number
Port Orchard	18	OLY	1000
Port Townsend	16	OLY	1005
Poulsbo	18	OLY	1010
Prescott	36	SC	1015
Prosser	03	SC	1020
Pullman	38	EAST	1025
Puyallup	27	OLY	1030
Quincy	13	NC	1040
Rainier	34	OLY	1050
Raymond	25	SW	1055
Reardan	22	EAST	1060
Redmond	17	NW	1065
Renton	17	NW	1070
Republic	10	EAST	1075
Richland	03	SC	1080
Ridgefield	06	SW	1085
Ritzville	01	EAST	1090
Riverside	24	NC	1095
Rock Island	09	NC	1105
Rockford	32	EAST	1100
Rosalia	38	EAST	1115
Roslyn	19	SC	1120
Roy	27	OLY	1125
Royal City	13	NC	1127
Ruston	27	OLY	1130
St. John	38	EAST	1135
Sammammish	17	NW	1136
SeaTac	17	NW	1139
Seattle	17	NW	1140
Sedro Woolley	29	NW	1150
Selah	39	SC	1155
Sequim	05	OLY	1160
Shelton	23	OLY	1165
Shoreline	17	NW	1169
Skykomish	17	NW	1175
Snohomish	31	NW	1180
Snoqualmie	17	NW	1185
Soap Lake	13	NC	1190
South Bend	25	SW	1195
South Cle Elum	19	SC	1205
South Prairie	27	OLY	1210
Spangle	32	EAST	1215
Spokane	32	EAST	1220
Spokane Valley	32	EAST	1223
Sprague	22	EAST	1225
Springdale	33	EAST	1230
Stanwood	31	NW	1235
Starbuck	07	SC	1240
Steilacoom	27	OLY	1245

City	County Code Number	WSDOT Region	City Code Number
Stevenson	30	SW	1250
Sultan	31	NW	1255
Sumas	37	NW	1265
Sumner	27	OLY	1270
Sunnyside	39	SC	1275
Tacoma	27	OLY	1280
Tekoa	38	EAST	1285
Tenino	34	OLY	1290
Tieton	39	SC	1295
Toledo	21	SW	1300
Tonasket	24	NC	1305
Toppenish	39	SC	1310
Tukwila	17	NW	1320
Tumwater	34	OLY	1325
Twisp	24	NC	1330
Union Gap	39	SC	1335
Uniontown	38	EAST	1340
University Place	27	OLY	1343
Vader	21	SW	1345
Vancouver	06	SW	1350
Waitsburg	36	SC	1360
Walla Walla	36	SC	1365
Wapato	39	SC	1375
Warden	13	NC	1380
Washougal	06	SW	1385
Washtucna	01	EAST	1390
Waterville	09	NC	1395
Waverly	32	EAST	1400
Wenatchee	04	NC	1405
West Richland	03	SC	1425
Westport	14	OLY	1420
White Salmon	20	SW	1435
Wilbur	22	EAST	1440
Wilkeson	27	OLY	1445
Wilson Creek	13	NC	1450
Winlock	21	SW	1455
Winslow	18	OLY	1460
Winthrop	24	NC	1465
Woodinville	17	NW	1468
Woodland	08	SW	1470
Woodway	31	NW	1475
Yacolt	06	SW	1480
Yakima	39	SC	1485
Yarrow Point	17	NW	1490
Yelm	34	OLY	1495
Zillah	39	SC	1500

1. Seattle and Everett
2. Spokane
3. Vancouver
4. Pasco, Kennewick, Richland
5. Yakima, Union Gap, Selah
6. Olympia, Lacey, Tumwater
7. Bremerton, Port Orchard
8. Bellingham
9. Kelso, Longview
10. Aberdeen, Cosmpolis, Hoquiam
11. Walla Walla, College Place
12. Pullman
13. Wenatchee, East Wenatchee
14. Port Angeles
15. Centralia, Chehalis
16. Camas, Washougal
17. Ellensburg
18. Moses Lake, Grant County
19. Oak Harbor
20. Shelton
21. Anacortes
22. Mount Vernon, Burlington
23. Cheney
24. Sunnyside
25. Ephrata
26. Clarkston
27. Toppenish
28. Port Townsend
29. Tacoma
30. Sedro Woolley
31. Grandview
32. Enumclaw
33. Ferndale
34. Lynden
35. Otis Orchards

Washington State Department of Transportation

Local Agency Federal Aid Project Prospectus

	Prefix	Route	( )
Federal Aid Project Number			
Local Agency Project Number			(WSDOT Use Only)

Date	
DUNS Number	
Federal Employer Tax ID Number	

Agency	CA Agency ☐ Yes ☐ No	Federal Program Title ☐ 20.205 ☐ Other
Project Title	Start Latitude N / End Latitude N	Start Longitude W / End Longitude W
Project Termini From - To	Nearest City Name	Project Zip Code (+ 4)

Begin Mile Post	End Mile Post	Length of Project	Award Type ☐ Local ☐ Local Forces ☐ State ☐ Railroad

Route ID	Begin Mile Point	End Mile Point	City Number	County Number	County Name

WSDOT Region	Legislative District(s)	Congressional District(s)	Urban Area Number

Phase	Total Estimated Cost (Nearest Hundred Dollar)	Local Agency Funding (Nearest Hundred Dollar)	Federal Funds (Nearest Hundred Dollar)	Phase Start Date Month Year
P.E.				
R/W				
Const.				
Total				

Description of Existing Facility (Existing Design and Present Condition)

Roadway Width	Number of Lanes

Description of Proposed Work

Description of Proposed Work (Attach additional sheet(s) if necessary)

Local Agency Contact Person	Title		Phone
Mailing Address	City	State WA	Zip Code

Project Prospectus Approval

By _____
Approving Authority

Title _____ Date _____

DOT Form 140-101
Revised 04/2015

◆ Previous Editions Obsolete ◆

Page 1

Agency	Project Title	Date

Type of Proposed Work

Project Type (Check all that Apply)			Roadway Width	Number of Lanes
☐ New Construction	☐ Path / Trail	☐ 3-R		
☐ Reconstruction	☐ Pedestrian / Facilities	☐ 2-R		
☐ Railroad	☐ Parking	☐ Other		
☐ Bridge				

Geometric Design Data

Description	Through Route	Crossroad
Federal Functional Classification	☐ Urban ☐ Rural ☐ NHS ☐ Principal Arterial ☐ Minor Arterial ☐ Collector ☐ Major Collector ☐ Minor Collector ☐ Local Access	☐ Urban ☐ Rural ☐ NHS ☐ Principal Arterial ☐ Minor Arterial ☐ Collector ☐ Major Collector ☐ Minor Collector ☐ Local Access
Terrain	☐ Flat ☐ Roll ☐ Mountain	☐ Flat ☐ Roll ☐ Mountain
Posted Speed		
Design Speed		
Existing ADT		
Design Year ADT		
Design Year		
Design Hourly Volume (DHV)		

Performance of Work

Preliminary Engineering Will Be Performed By	Others %	Agency %
Construction Will Be Performed By	Contract %	Agency %

Environmental Classification

☐ Class I - Environmental Impact Statement (EIS)
- ☐ Project Involves NEPA/SEPA Section 404 Interagency Agreement

☐ Class II - Categorically Excluded (CE)
- ☐ Projects Requiring Documentation (Documented CE)

☐ Class III - Environmental Assessment (EA)
- ☐ Project Involves NEPA/SEPA Section 404 Interagency Agreement

Environmental Considerations

DOT Form 140-101
Revised 04/2015

◆ **Previous Editions Obsolete** ◆

Page 2

Agency	Project Title	Date

Right of Way

☐ No Right of Way Needed * All construction required by the contract can be accomplished within the existing right of way.	☐ Right of Way Needed ☐ No Relocation	☐ Relocation Required

Utilities	Railroad
☐ No utility work required	☐ No railroad work required
☐ All utility work will be completed prior to the start of the construction contract	☐ All railroad work will be completed prior to the start of the construction contract
☐ All utility work will be completed in coordination with the construction contract	☐ All railroad work will be completed in coordination with the construction contract

Description of Utility Relocation or Adjustments and Existing Major Structures Involved in the Project

FAA Involvement
Is any airport located within 3.2 kilometers (2 miles) of the proposed project? ☐ Yes ☐ No

Remarks

This project has been reviewed by the legislative body of the administration agency or agencies, or it's designee, and is not inconsistent with the agency's comprehensive plan for community development.

Agency _____

Date _____ By _____
Mayor/Chairperson

DOT Form 140-101 EF
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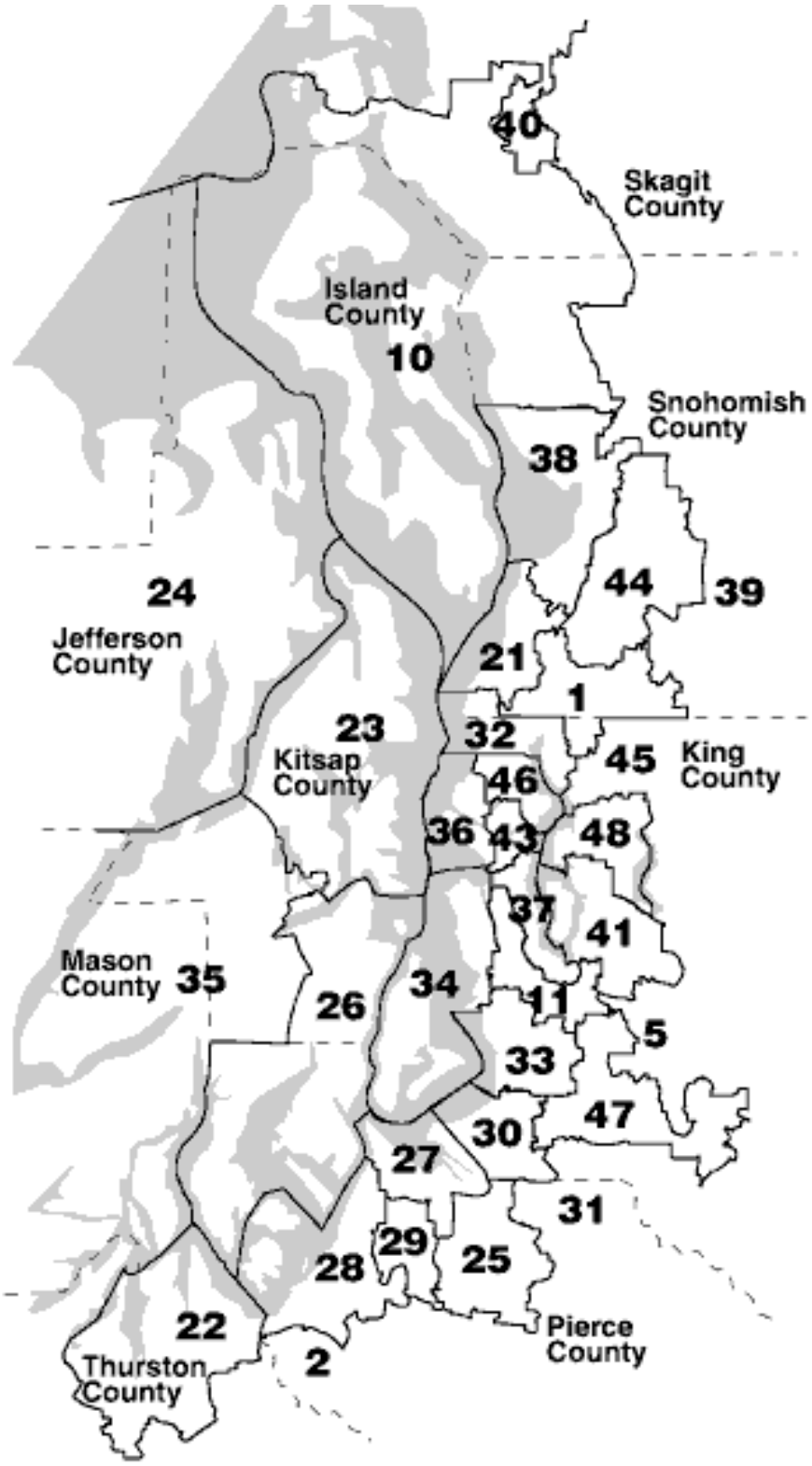
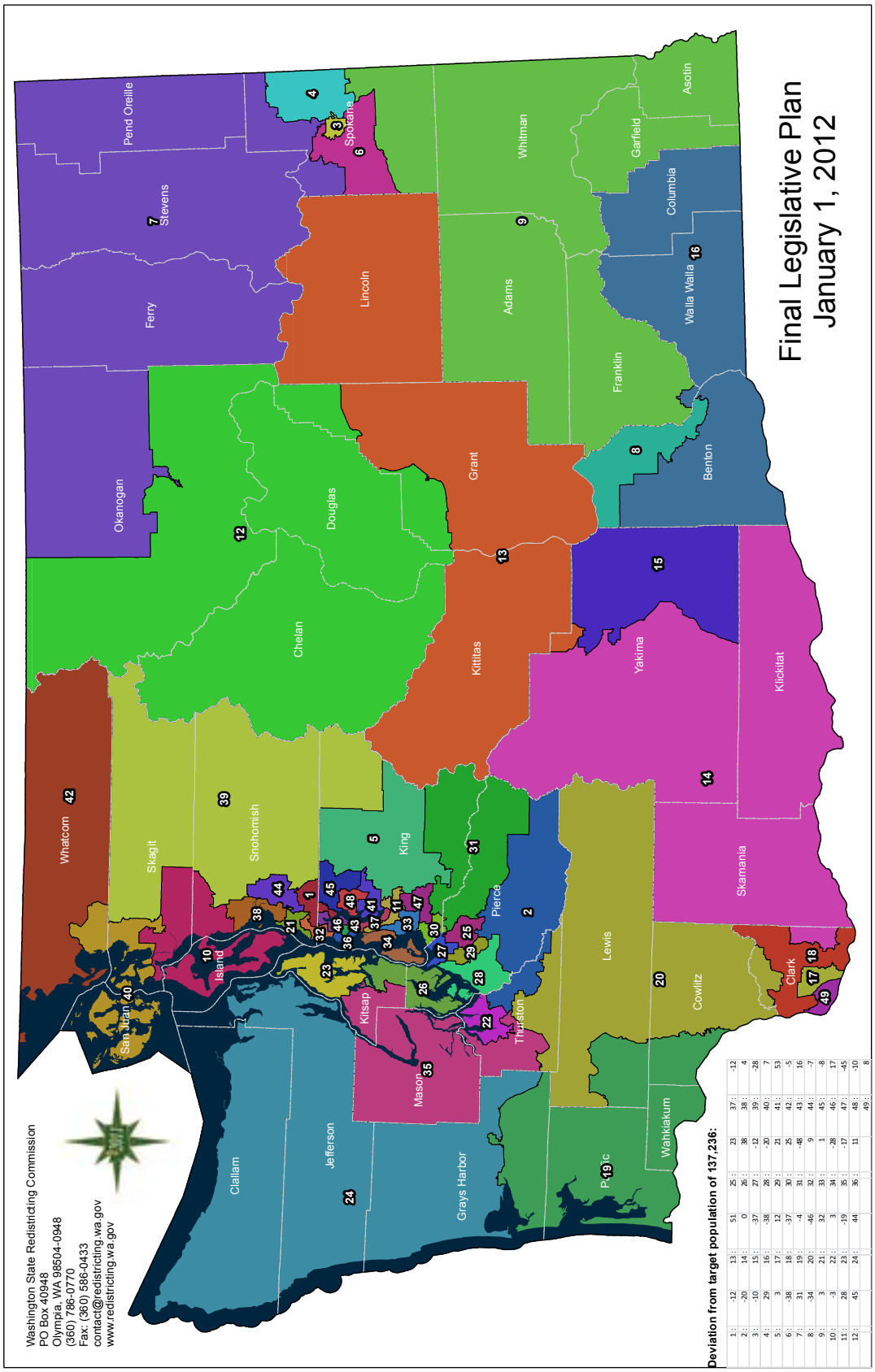
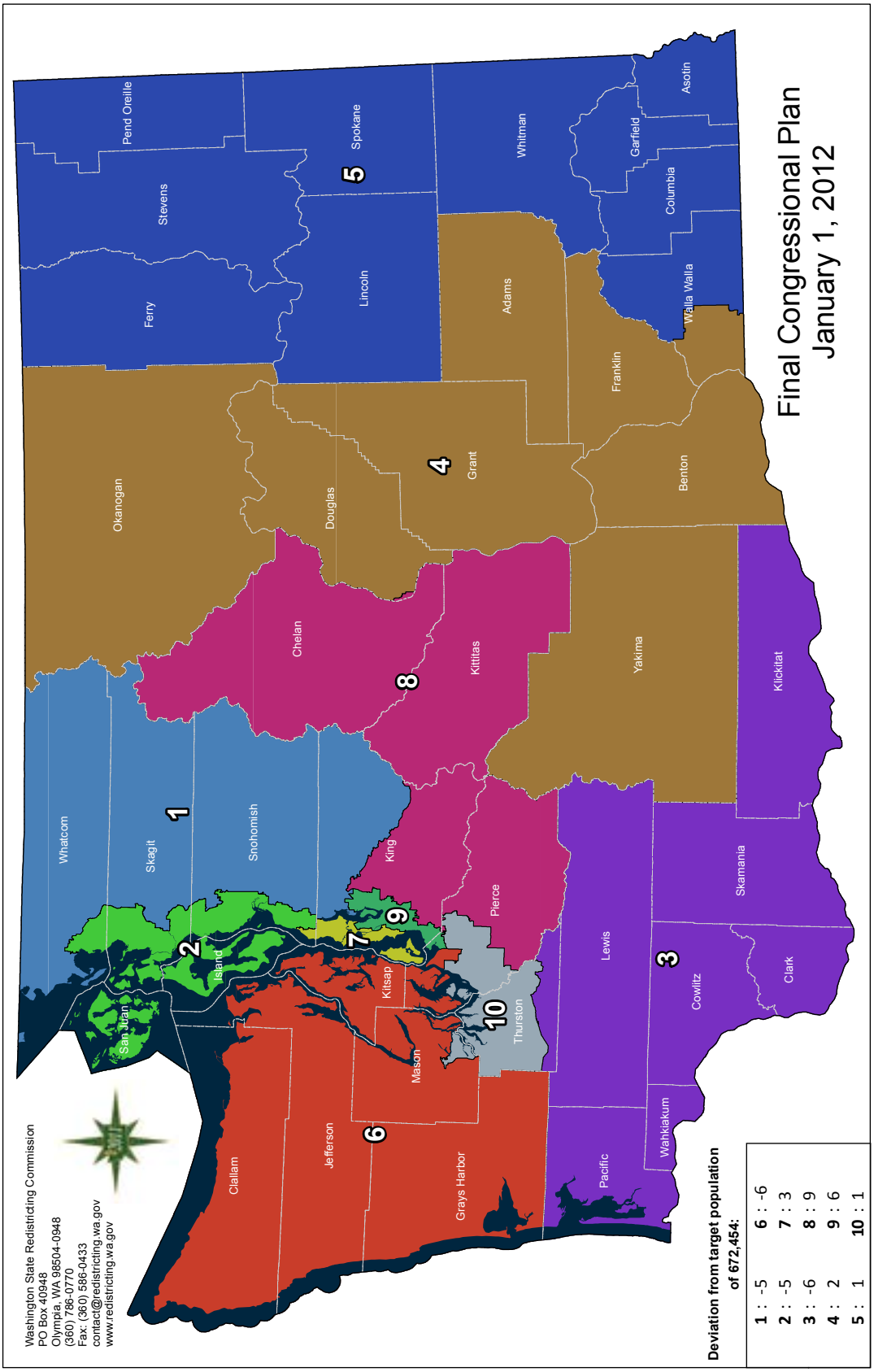
Page 3


40
Skagit County
Island County
10
Snohomish County
38
24
44
39
Jefferson County
21
1
23
32
Kitsap County
45
King County
46
36
43
48
37
41
Mason County
35
26
34
11
5
33
47
30
27
31
29
28
25
22
Pierce County
Thurston County
2



Deviation from target population of 137,236:

1:	-12	13:	51	25:	23	37:	-12				
2:	-20	14:	0	26:	38	38:	4				
3:	-10	15:	-37	27:	-12	39:	-28				
4:	29	16:	-38	28:	-20	40:	7				
5:	3	17:	12	29:	21	41:	53				
6:	-38	18:	-37	30:	25	42:	-5				
7:	31	19:	-4	31:	-48	43:	16				
8:	-34	20:	-46	32:	9	44:	-7				
9:	3	21:	32	33:	1	45:	-8				
10:	-3	22:	3	34:	-28	46:	17				
11:	28	23:	-19	35:	-17	47:	-45				
12:	45	24:	44	36:	11	48:	-10				
						49:	8				


Final Congressional Plan
January 1, 2012
Washington State Redistricting Commission
PO Box 40948
Olympia, WA 98504-0948
(360) 786-0770
Fax: (360) 586-0433
contact@redistricting.wa.gov
www.redistricting.wa.gov
Pend Oreille
Stevens
Ferry
Spokane
Lincoln
Whitman
Garfield
Asotin
Columbia
Walla Walla
Adams
Franklin
Okanogan
Douglas
Grant
Benton
Chelan
Kittitas
Yakima
Klickitat
Whatcom
Skagit
Snohomish
King
Pierce
Skamania
Lewis
Cowlitz
Clark
San Juan
Island
Kitsap
Thurston
Mason
Clallam
Jefferson
Grays Harbor
Pacific
Wahkiakum
1
2
3
4
5
6
7
8
9
10
Deviation from target population of 672,454:
1 : -5
2 : -5
3 : -6
4 : 2
5 : 1
6 : -6
7 : 3
8 : 9
9 : 6
10 : 1

Washington State Department of Transportation

Federal-Aid Prospectus
Planning Scope of Work

Agency	Federal Aid Project Number
Project Title	
Federal Funding Program	Amount
Matching Funds	Total Amount

Project Area

Background

Type of Study (check all that apply)

☐ Region ☐ Area ☐ Corridor ☐ Intersection ☐ Design ☐ Feasibility ☐ Modeling ☐ Other _____

DOT Form 272-090
Revised 04/2015

Scope of Work

Public Involvement Plan

DOT Form 272-090
Revised 04/2015

Environmental Considerations

TDM/TSM and Transit alternatives to be considered

DOT Form 272-090
Revised 04/2015

Land Use Implications

Project Schedule

Project Agreement End Date _____

DOT Form 272-090
Revised 04/2015

Cost Breakdown By Task

Deliverable Final Products

DOT Form 272-090
Revised 04/2015

Chapter 22 Local Agency Agreement

22.1 General Discussion

A Local Agency Agreement is an agreement between a local agency and the Washington State Department of Transportation (WSDOT). An agreement is prepared for each federal aid project, and it covers all phases of work involved in the project (preliminary engineering, right of way acquisition, construction). Its purpose is to ensure that the federal funds in the agreed-upon amount are spent in accordance with all applicable state and federal laws and regulations. The agreement also specifies the procedure for payment and reimbursement on the project.

If the federal aid participation ratio entered in the agreement is not the maximum rate allowed by the Federal Highway Administration (FHWA), then the participation ratio entered becomes the maximum rate allowed.

No costs are eligible for federal aid reimbursement until authorized in writing by WSDOT. This authorization is separate from the agreement

The total cost of a project (including federal, state, agency, and private funds) must be shown on the Local Agency Agreement for each phase of work that includes federal or state funds. At the time of each phase authorization, all funds necessary to complete the scope of work for that phase must be secured.

Project Agreement End Date – All projects are now required to have a Period of Performance which includes both a begin date and an end date. A project's begin date is the date of FHWA authorization. Local agencies will be required to supply an estimated Project Agreement End Date for each federally authorized phase of a project. To ensure adequate time for the delivery of local projects, which are subject to state environmental requirements, substantial community involvement, eminent domain, and coordination with other local projects, WSDOT recommends when establishing the "Project Agreement End Date" local agencies consider:

- For **Planning Only** projects – WSDOT recommends local agencies estimate the end of the project's period of performance and add one year.
- For **Preliminary Engineering** (PE – design) and **Right of Way** (RW) – WSDOT recommends local agencies estimate when each phase will be completed and add one year to each, due to the complications that may arise with environmental requirements and approvals and negotiating right of way with property owners and railroads.
- For **Construction** (CN) – WSDOT recommends local agencies estimate when construction will be completed and add two years, to provide adequate time to acquire all the necessary paperwork, releases, and negotiate any claims for closure of the project.

Note: Any costs incurred after the "Project Agreement End Date" are NOT eligible for federal reimbursement.

When authorizing construction, the agency's proposed advertisement date must be noted on the supplemental Local Agency Agreement, or the original LAA if construction is the first phase authorized. Local Agencies are expected to go to ad within six weeks of construction authorization.

All funds shown on the Local Agency Agreement must be supported by a documented cost estimate (23 CFR Part 630) that is based on an Agency's best estimate of costs. The cost estimate must demonstrate how the funds shown on the LAA were determined, and what information was used in the calculation.

22.2 Preparation Procedure

An original Local Agency Agreement signed by the approving authority must be submitted by the local agency to the Region Local Programs Engineer when the Project Prospectus (Chapter 21) is submitted. This agreement form will be retained by WSDOT. It is the responsibility of the local agency to submit an additional agreement form or a copy if they need an executed agreement for their files. To allow sufficient time for WSDOT review and execution, these documents should be submitted a minimum of 4 weeks prior to the time when federal reimbursement is desired.

Agreements containing errors will be returned to the local agency for correction. Any changes must be initialed by the approving authority (Chapter 13). To avoid this delay, the agency should check all figures prior to submittal, and if in doubt, request assistance from the Region Local Programs Engineer.

An agreement form (DOT Form 140-039 EF) is contained in Appendix 22.51, with instructions for completing it in Appendix 22.52. Local agency cost estimates for each phase of a project are entered on the form, as well as the project name, length, termini, description, Project Agreement End Date, Proposed Advertisement Date (required for construction phase) and method of construction financing. These methods are described in Appendix 22.52.

Local agency resolutions or ordinances that may be needed are discussed in Appendix 22.52.

22.3 Supplemental Agreement

Funds requested beyond the amount set forth in a Local Agency Agreement, supplementing for the next phase of the project and/or a change to the Project Agreement End Date will require execution of a Supplemental Agreement.

Changes to the project funding must be made in accordance with this manual (see Chapter 12) and must be accompanied by documented cost estimates for phases already authorized or seeking authorization (23 CFR Part 630).

All projects shall submit a supplemental agreement to revise the federal funds obligated within 90 days after it is determined that the estimated federal share of project costs has decreased by $250,000 or more (23 CFR Part 630.106(4) Subpart A).

The Project Agreement End Date may be changed during a phase, through a supplement, if:

- a project has a change in the terms and conditions of the federal award (e.g., significant cost change or scope change); or

- adequate justification is provided for project schedule revision or other circumstances (e.g., litigation) and there is no change to the terms and conditions of the Federal project.

Note: Requests for reimbursement after the Project Agreement End Date are NOT eligible for federal reimbursement.

A Supplemental Agreement form (DOT Form 140-041 EF) is shown in Appendix 22.53, and instructions for completing it are given in Appendix 22.54. Like the original agreement form, the Supplemental Agreement form requires information about the project's name, length, termini, description, schedule and funding.

22.4 Documented Cost Estimate

A documented cost estimate is an itemized estimate of costs broken down by phase for a project. Preliminary engineering estimates can be based on a percentage of historical construction costs, or based on historical labor and equipment needs used to complete similar design efforts. Right of way estimates will be the right of way project funding estimate (Appendix 25.172) or true cost estimate (Appendix 25.173). Construction estimates will be the engineer's estimate, including construction engineering costs. Bid tabulations, or award data may be used to justify increases when completing Supplemental Agreements.

Acceptable references for building a documented estimate may be historical construction costs, estimates from recent similar work, WSDOT Unit Bid Analysis, or other estimating methods. A cost estimate must be provided for each phase shown on the Local Agency Agreement, including preliminary engineering. Estimates for the Construction Phase should include funds for construction engineering in addition to the Engineer's Estimate.

When submitting a cost estimate with a Supplemental Agreement please provide a brief statement explaining what costs changed since the original Local Agency Agreement was created. Bid tabulations or award data may be used to justify Supplemental Agreement increases for construction phases of a project.

22.5 Appendices

22.51 Local Agency Agreement
22.52 Local Agency Agreement – Instructions
22.53 Local Agency Agreement Supplement
22.54 Local Agency Agreement Supplement – Instructions
22.55 Vacant
22.56 Documented Cost Estimates – Example

22.6 Forms

DOT 140-039 EF Local Agency Agreement – Example
DOT 140-041 EF Local Agency Agreement Supplement – Example

Washington State Department of Transportation

Local Agency Agreement

Agency _____

Address _____

_____

_____

CFDA No. 20.205
(Catalog of Federal Domestic Assistance)

Project No. _____

Agreement No. _____

For OSC WSDOT Use Only

The Local Agency having complied, or hereby agreeing to comply, with the terms and conditions set forth in (1) Title 23, U.S. Code Highways, (2) the regulations issued pursuant thereto, (3) 2 CFR Part 200, (4) the policies and procedures promulgated by the Washington State Department of Transportation, and (5) the federal aid project agreement entered into between the State and Federal Government, relative to the above project, the Washington State Department of Transportation will authorize the Local Agency to proceed on the project by a separate notification. Federal funds which are to be obligated for the project may not exceed the amount shown herein on line r, column 3, without written authority by the State, subject to the approval of the Federal Highway Administration. All project costs not reimbursed by the Federal Government shall be the responsibility of the Local Agency.

Project Description

Name _____ Length _____

Termini _____

Description of Work

Project Agreement End Date: _____

Proposed Advertisement Date: _____

Claiming Indirect Cost Rate
☐ Yes ☐ No

Type of Work		Estimate of Funding (1) Estimated Total Project Funds	(2) Estimated Agency Funds	(3) Estimated Federal Funds
PE	a. Agency			
_____ %	b. Other			
	c. Other			
Federal Aid Participation Ratio for PE	d. State			
	e. Total PE Cost Estimate (a+b+c+d)			
Right of Way	f. Agency			
_____ %	g. Other			
	h. Other			
Federal Aid Participation Ratio for RW	i. State			
	j. Total R/W Cost Estimate (f+g+h+i)			
Construction	k. Contract			
	l. Other			
	m. Other			
	n. Other			
_____ %	o. Agency			
Federal Aid Participation Ratio for CN	p. State			
	q. Total CN Cost Estimate (k+l+m+n+o+p)			
	r. Total Project Cost Estimate (e+j+q)			

Agency Official

By _____

Title _____

_____

Washington State Department of Transportation

By _____

Director, Local Programs

Date Executed _____

DOT Form 140-039
Revised 04/2015

Page 1

Construction Method of Financing *(Check Method Selected)*

State Ad and Award

☐ Method A - Advance Payment - Agency Share of total construction cost (based on contract award)

☐ Method B - Withhold from gas tax the Agency's share of total construction cost (line 4, column 2) in the amount of

$ _____ at $ _____ per month for _____ months.

Local Force or Local Ad and Award

☐ Method C - Agency cost incurred with partial reimbursement

The Local Agency further stipulates that pursuant to said Title 23, regulations and policies and procedures, and as a condition to payment of the federal funds obligated, it accepts and will comply with the applicable provisions set forth below. Adopted by official action on

_____ , _____, Resolution/Ordinance No. _____

Provisions

I. Scope of Work

The Agency shall provide all the work, labor, materials, and services necessary to perform the project which is described and set forth in detail in the "Project Description" and "Type of Work."

When the State acts for and on behalf of the Agency, the State shall be deemed an agent of the Agency and shall perform the services described and indicated in "Type of Work" on the face of this agreement, in accordance with plans and specifications as proposed by the Agency and approved by the State and the Federal Highway Administration.

When the State acts for the Agency but is not subject to the right of control by the Agency, the State shall have the right to perform the work subject to the ordinary procedures of the State and Federal Highway Administration.

II. Delegation of Authority

The State is willing to fulfill the responsibilities to the Federal Government by the administration of this project. The Agency agrees that the State shall have the full authority to carry out this administration. The State shall review, process, and approve documents required for federal aid reimbursement in accordance with federal requirements. If the State advertises and awards the contract, the State will further act for the Agency in all matters concerning the project as requested by the Agency. If the Local Agency advertises and awards the project, the State shall review the work to ensure conformity with the approved plans and specifications.

III. Project Administration

Certain types of work and services shall be provided by the State on this project as requested by the Agency and described in the Type of Work above. In addition, the State will furnish qualified personnel for the supervision and inspection of the work in progress. On Local Agency advertised and awarded projects, the supervision and inspection shall be limited to ensuring all work is in conformance with approved plans, specifications, and federal aid requirements. The salary of such engineer or other supervisor and all other salaries and costs incurred by State forces upon the project will be considered a cost thereof. All costs related to this project incurred by employees of the State in the customary manner on highway payrolls and vouchers shall be charged as costs of the project.

IV. Availability of Records

All project records in support of all costs incurred and actual expenditures kept by the Agency are to be maintained in accordance with local government accounting procedures prescribed by the Washington State Auditor's Office, the U.S. Department of Transportation, and the Washington State Department of Transportation. The records shall be open to inspection by the State and Federal Government at all reasonable times and shall be retained and made available for such inspection for a period of not less than three years from the final payment of any federal aid funds to the Agency. Copies of said records shall be furnished to the State and/or Federal Government upon request.

V. Compliance with Provisions

The Agency shall not incur any federal aid participation costs on any classification of work on this project until authorized in writing by the State for each classification. The classifications of work for projects are:

1. Preliminary engineering.
2. Right of way acquisition.
3. Project construction.

Once written authorization is given, the Agency agrees to show continuous progress through monthly billings. Failure to show continuous progress may result the Agency's project becoming inactive, as described in 23 CFR 630, and subject to de-obligation of federal aid funds and/or agreement closure.

If right of way acquisition, or actual construction of the road for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which preliminary engineering phase was authorized, the Agency will repay to the State the sum or sums of federal funds paid to the Agency under the terms of this agreement (see Section IX).

If actual construction of the road for which right of way has been purchased is not started by the close of the tenth fiscal year following the fiscal year in which the right of way phase was authorized, the Agency will repay to the State the sum or sums of federal funds paid to the Agency under the terms of this agreement (see Section IX).

The Agency agrees that all stages of construction necessary to provide the initially planned complete facility within the limits of this project will conform to at least the minimum values set by approved statewide design standards applicable to this class of highways, even though such additional work is financed without federal aid participation.

The Agency agrees that on federal aid highway construction projects, the current federal aid regulations which apply to liquidated damages relative to the basis of federal participation in the project cost shall be applicable in the event the contractor fails to complete the contract within the contract time.

VI. Payment and Partial Reimbursement

The total cost of the project, including all review and engineering costs and other expenses of the State, is to be paid by the Agency and by the Federal Government. Federal funding shall be in accordance with the Federal Transportation Act, as amended, 2 CFR Part 200. The State shall not be ultimately responsible for any of the costs of the project. The Agency shall be ultimately responsible for all costs associated with the project which are not reimbursed by the Federal Government. Nothing in this agreement shall be construed as a promise by the State as to the amount or nature of federal participation in this project.

The Agency shall bill the state for federal aid project costs incurred in conformity with applicable federal and state laws. The agency shall minimize the time elapsed between receipt of federal aid funds and subsequent payment of incurred costs. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for federal participation unless a current indirect cost plan has been prepared in accordance with the regulations outlined in 2 CFR Part 200 - Uniform Admin Requirements, Cost Principles and Audit Requirements for Federal Awards, and retained for audit.

The State will pay for State incurred costs on the project. Following payment, the State shall bill the Federal Government for reimbursement of those costs eligible for federal participation to the extent that such costs are attributable and properly allocable to this project. The State shall bill the Agency for that portion of State costs which were not reimbursed by the Federal Government (see Section IX).

1. Project Construction Costs

Project construction financing will be accomplished by one of the three methods as indicated in this agreement.

Method A – The Agency will place with the State, within (20) days after the execution of the construction contract, an advance in the amount of the Agency's share of the total construction cost based on the contract award. The State will notify the Agency of the exact amount to be deposited with the State. The State will pay all costs incurred under the contract upon presentation of progress billings from the contractor. Following such payments, the State will submit a billing to the Federal Government for the federal aid participation share of the cost. When the project is substantially completed and final actual costs of the project can be determined, the State will present the Agency with a final billing showing the amount due the State or the amount due the Agency. This billing will be cleared by either a payment from the Agency to the State or by a refund from the State to the Agency.

Method B – The Agency's share of the total construction cost as shown on the face of this agreement shall be withheld from its monthly fuel tax allotments. The face of this agreement establishes the months in which the withholding shall take place and the exact amount to be withheld each month. The extent of withholding will be confirmed by letter from the State at the time of contract award. Upon receipt of progress billings from the contractor, the State will submit such billings to the Federal Government for payment of its participating portion of such billings.

Method C – The Agency may submit vouchers to the State in the format prescribed by the State, in duplicate, not more than once per month for those costs eligible for Federal participation to the extent that such costs are directly attributable and properly allocable to this project. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for Federal participation unless claimed under a previously approved indirect cost plan.

The State shall reimburse the Agency for the Federal share of eligible project costs up to the amount shown on the face of this agreement. At the time of audit, the Agency will provide documentation of all costs incurred on the project.

The State shall bill the Agency for all costs incurred by the State relative to the project. The State shall also bill the Agency for the federal funds paid by the State to the Agency for project costs which are subsequently determined to be ineligible for federal participation (see Section IX).

VII. Audit of Federal Consultant Contracts

The Agency, if services of a consultant are required, shall be responsible for audit of the consultant's records to determine eligible federal aid costs on the project. The report of said audit shall be in the Agency's files and made available to the State and the Federal Government.

An audit shall be conducted by the WSDOT Internal Audit Office in accordance with generally accepted governmental auditing standards as issued by the United States General Accounting Office by the Comptroller General of the United States; WSDOT Manual M 27-50, Consultant Authorization, Selection, and Agreement Administration; memoranda of understanding between WSDOT and FHWA; and 2 CFR Part 200.501 - Audit Requirements.

If upon audit it is found that overpayment or participation of federal money in ineligible items of cost has occurred, the Agency shall reimburse the State for the amount of such overpayment or excess participation (see Section IX).

VIII. Single Audit Act

The Agency, as a subrecipient of federal funds, shall adhere to the federal regulations outlined in 2 CFR Part 200.501 as well as all applicable federal and state statutes and regulations. A subrecipient who expends $750,000 or more in federal awards from all sources during a given fiscal year shall have a single or program-specific audit performed for that year in accordance with the provisions of 2 CFR Part 200.501. Upon conclusion of the audit, the Agency shall be responsible for ensuring that a copy of the report is transmitted promptly to the State.

IX. Payment of Billing

The Agency agrees that if payment or arrangement for payment of any of the State's billing relative to the project (e.g., State force work, project cancellation, overpayment, cost ineligible for federal participation, etc.) is not made to the State within 45 days after the Agency has been billed, the State shall effect reimbursement of the total sum due from the regular monthly fuel tax allotments to the Agency from the Motor Vehicle Fund. No additional Federal project funding will be approved until full payment is received unless otherwise directed by the Director of Local Programs.

Project Agreement End Date - This date is based on your projects Period of Performance (2 CFR Part 200.309).

Any costs incurred after the Project Agreement End Date are NOT eligible for federal reimbursement. All eligible costs incurred prior to the Project Agreement End Date must be submitted for reimbursement within 90 days after the Project Agreement End Date or they become ineligible for federal reimbursement.

X. Traffic Control, Signing, Marking, and Roadway Maintenance

The Agency will not permit any changes to be made in the provisions for parking regulations and traffic control on this project without prior approval of the State and Federal Highway Administration. The Agency will not install or permit to be installed any signs, signals, or markings not in conformance with the standards approved by the Federal Highway Administration and MUTCD. The Agency will, at its own expense, maintain the improvement covered by this agreement.

XI. Indemnity

The Agency shall hold the Federal Government and the State harmless from and shall process and defend at its own expense all claims, demands, or suits, whether at law or equity brought against the Agency, State, or Federal Government, arising from the Agency's execution, performance, or failure to perform any of the provisions of this agreement, or of any other agreement or contract connected with this agreement, or arising by reason of the participation of the State or Federal Government in the project, PROVIDED, nothing herein shall require the Agency to reimburse the State or the Federal Government for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Federal Government or the State.

XII. Nondiscrimination Provision

No liability shall attach to the State or Federal Government except as expressly provided herein.

The Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract and/or agreement or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts and agreements. The WSDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Agency of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S. C. 3801 et seq.).

The Agency hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor in 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee or understanding pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, the required contract provisions for Federal-Aid Contracts (FHWA 1273), located in Chapter 44 of the Local Agency Guidelines.

The Agency further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or Local Government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.

The Agency also agrees:

(1) To assist and cooperate actively with the State in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and rules, regulations, and relevant orders of the Secretary of Labor.

(2) To furnish the State such information as it may require for the supervision of such compliance and that it will otherwise assist the State in the discharge of its primary responsibility for securing compliance.

(3) To refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally assisted construction contracts pursuant to the Executive Order.

(4) To carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the State, Federal Highway Administration, or the Secretary of Labor pursuant to Part II, subpart D of the Executive Order.

In addition, the Agency agrees that if it fails or refuses to comply with these undertakings, the State may take any or all of the following actions:

(a) Cancel, terminate, or suspend this agreement in whole or in part;

(b) Refrain from extending any further assistance to the Agency under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the Agency; and

(c) Refer the case to the Department of Justice for appropriate legal proceedings.

XIII. Liquidated Damages

The Agency hereby agrees that the liquidated damages provisions of 23 CFR Part 635, Subpart 127, as supplemented, relative to the amount of Federal participation in the project cost, shall be applicable in the event the contractor fails to complete the contract within the contract time. Failure to include liquidated damages provision will not relieve the Agency from reduction of federal participation in accordance with this paragraph.

XIV. Termination for Public Convenience

The Secretary of the Washington State Department of Transportation may terminate the contract in whole, or from time to time in part, whenever:

(1) The requisite federal funding becomes unavailable through failure of appropriation or otherwise.

(2) The contractor is prevented from proceeding with the work as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense, or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources.

(3) The contractor is prevented from proceeding with the work by reason of a preliminary, special, or permanent restraining order of a court of competent jurisdiction where the issuance of such order is primarily caused by the acts or omissions of persons or agencies other than the contractor.

(4) The Secretary is notified by the Federal Highway Administration that the project is inactive.

(5) The Secretary determines that such termination is in the best interests of the State.

XV. Venue for Claims and/or Causes of Action

For the convenience of the parties to this contract, it is agreed that any claims and/or causes of action which the Local Agency has against the State of Washington, growing out of this contract or the project with which it is concerned, shall be brought only in the Superior Court for Thurston County.

XVI. Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

The approving authority certifies, to the best of his or her knowledge and belief, that:

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

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

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed $100,000, and that all such subrecipients shall certify and disclose accordingly.

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 as a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

XVII. 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 the State, documenting that all programs, activities, and services will be conducted in compliance with Section 504 and the Americans with Disabilities Act (ADA).

Additional Provisions

Appendix 22.52 Local Agency Agreement – Instructions

.01 **Agency Name and Billing Address** – Enter the Agency of primary interest which will become a party to the agreement.

.02 **Project Number** – Leave blank. This number will be assigned by WSDOT.

.03 **Agreement Number** – Leave blank. This number will be assigned by WSDOT.

.04

a. **Project Description** – Enter the project name, total length of the project (in miles), and a brief description of the termini. Data entered here must be consistent with the name, length, and termini noted in the STIP and Project Prospectus.

   Example: (Name) "Regal Road", (Length) "1.2 miles", (Termini) "Smith Road to Main Street"

b. **Description of Work** – Enter a concise statement of the major items of work to be performed. Statement must be consistent with the description of work noted in the STIP and Project Prospectus.

   Example: "Asphalt overlay of Regal Road; curb, gutter, and sidewalk on the east side of the roadway; illumination; and traffic signal at the intersection of Regal Road and Dakota Avenue."

c. **Project Agreement End Date** – Enter your Project Agreement End Date. This date is based on your projects Period of Performance (2 CFR 200.309).

   For Planning Only projects – WSDOT recommends agencies estimate the end of the project's period of performance and add one year to determine the "Project Agreement End Date".

   For PE and RW – WSDOT recommends agencies estimate when the phase will be completed and add one year to determine the "Project Agreement End Date".

   For Construction – WSDOT recommends agencies estimate the end of the project's period of performance and add two years to determine the "Project Agreement End Date".

d. CN Phase Authorization Only – Enter your proposed project advertisement Date.

e. **Claiming Indirect Cost Rate** – Check the Yes box if you will be claiming indirect costs on your project. For those projects claiming indirect costs approval by your cognizant agency and supporting documentation is required to be available for review by FHWA, WSDOT and /or State Auditor. Check the No box if you will not be claiming indirect costs on your project. See section 23.5 for additional guidance.

.05 **Type of Work and Funding (Round all dollar amounts to the nearest dollar)**

a. **PE** – Lines a through d show Preliminary Engineering costs for the project by type of work.

*Federal aid participation ratio for PE – enter ratio for PE lines with amounts in column 3.

Line a – Enter the estimated amount of agency PE in columns 1 through 3.

Line b & c – Identify user, consultant, etc., and enter the estimated amounts in columns 1 through 3.

Line d – State Services. Every project must have funding for state services. Secure an estimate from the Region Local Programs Engineer and enter in columns 1 through 3.

Line e – Total of lines a + b + c + d.

b. **Right of Way** – If Right of Way is acquired on the project, the appropriate costs are shown in lines f through i.

*Federal aid participation ratio for R/W – enter ratio for R/W lines with amounts in column 3.

Line f – Enter the estimated amount of agency work in columns 1 through 3.

Line g & h – Identify user, consultant, etc., and enter the estimated amounts in columns 1 through 3.

Line i – State Services. If state services are required in the acquisition, enter the estimated amounts in columns 1 through 3.

Line j – Total of lines f + g + h + i.

c. **Construction** – Lines k through p show construction costs for the project by type of work.

*Federal aid participation ratio for CN – enter ratio for CN lines with amounts in column 3.

Line k – Enter the estimated cost of the contract.

Lines l & m & n – Enter other estimated costs such as utility and construction contracts or non-federally matched contract costs.

Line o – Enter estimated costs of all construction related agency work.

Line p – State force. Every project must have funds set up for state force work. Contact the Region Local Programs Engineer for an estimate and record in columns 1 through 3.

Line q – Total Construction Cost Estimate. Total of lines k + l + m + n + o + p.

d. **Total Project Cost Estimate**

Line r – Total Cost Estimate of the Project. Total of lines e + j + q.

*Please remember, if the federal aid participation rate entered is not the maximum rate allowed by FHWA, then the participation rate entered becomes the maximum rate allowed.

.06 **Signatures** – An authorized official of the local agency signs the agreement, and writes in their title. ***Note:*** Do **not** enter a date on the Date Executed line.

.07 **Method of Construction Financing** – Choose the method of financing for the construction portion of the project.

a. **Method "A"** is used when the state administers the contract for the agency.

b. **Method "B"** is also used when the state administers the contract for the agency.

c. **Method "C"** is used with projects administered by the local agency. The agency will submit billings monthly through the state to FHWA for all eligible costs. The billings must document the payment requests from the contractor. If state-force work, such as audit and construction engineering, is to receive federal participation, it will be billed to the agency and FHWA simultaneously at the indicated ratio. To show continuous progress agencies should bill monthly until agreement is closed.

.08 **Resolutions/Ordinances** – When someone other than the County Executive/ Chairman, County Commissioners/Mayor is authorized to sign the agreement, the agency must submit to WSDOT with the agreement a copy of the Resolution/ Ordinance designating that individual.

.09 **Parties to the Agreement** – Submit one originally signed agreement form to the Region Local Programs Engineer. It is the responsibility of the local agency to submit an additional, originally signed agreement form if they need an executed agreement for their files. The agreement is first executed by the agency official(s) authorized to enter into the agreement. It is then transmitted to the state for execution by Local Programs. The agreement is dated at the time of final execution by Local Programs.

Washington State Department of Transportation

Local Agency Agreement Supplement

Agency		Supplement Number
Federal Aid Project Number	Agreement Number	CFDA No. **20.205** (Catalog of Federal Domestic Assistance)

The Local Agency requests to supplement the agreement entered into and executed on _____.
All provisions in the basic agreement remain in effect except as modified by this supplement.
The changes to the agreement are as follows:

Project Description

Name _____ Length _____

Termini _____

Description of Work ☐ No Change

Reason for Supplement

Are you claiming indirect cost rate? ☐ Yes ☐ No Project Agreement End Date _____

Does this change require additional Right of Way or Easements? ☐ Yes ☐ No Advertisement Date: _____

Type of Work		Estimate of Funding				
		(1) Previous Agreement/Suppl.	(2) Supplement	(3) Estimated Total Project Funds	(4) Estimated Agency Funds	(5) Estimated Federal Funds
PE	a. Agency					
_____ %	b. Other					
	c. Other					
Federal Aid Participation Ratio for PE	d. State					
	e. Total PE Cost Estimate (a+b+c+d)					
Right of Way	f. Agency					
_____ %	g. Other					
Federal Aid Participation Ratio for RW	h. Other					
	i. State					
	j. Total R/W Cost Estimate (f+g+h+i)					
Construction	k. Contract					
	l. Other					
_____ %	m. Other					
	n. Other					
Federal Aid Participation Ratio for CN	o. Agency					
	p. State					
	q. Total CN Cost Estimate (k+l+m+n+o+p)					
	r. Total Project Cost Estimate (e+j+q)					

The Local Agency further stipulates that pursuant to said Title 23, regulations and policies and procedures, and as a condition to payment of the Federal funds obligated, it accepts and will comply with the applicable provisions.

Agency Official

By _____

Title _____

_____

Washington State Department of Transportation

By _____

Director, Local Programs

Date Executed _____

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Agency		Supplement Number
Federal Aid Project Number	Agreement Number	CFDA No. **20.205** (Catalog of Federal Domestic Assistance)

VI. Payment and Partial Reimbursement

The total cost of the project, including all review and engineering costs and other expenses of the State, is to be paid by the Agency and by the Federal Government. Federal funding shall be in accordance with the Federal Transportation Act, as amended, 2 CFR Part 200. The State shall not be ultimately responsible for any of the costs of the project. The Agency shall be ultimately responsible for all costs associated with the project which are not reimbursed by the Federal Government. Nothing in this agreement shall be construed as a promise by the State as to the amount or nature of federal participation in this project.

The Agency shall bill the state for federal aid project costs incurred in conformity with applicable federal and state laws. The agency shall minimize the time elapsed between receipt of federal aid funds and subsequent payment of incurred costs. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for federal participation unless a current indirect cost plan has been prepared in accordance with the regulations outlined in 2 CFR Part 200 - Uniform Admin Requirements, Cost Principles and Audit Requirements for Federal Awards, and retained for audit.

The State will pay for State incurred costs on the project. Following payment, the State shall bill the Federal Government for reimbursement of those costs eligible for federal participation to the extent that such costs are attributable and properly allocable to this project. The State shall bill the Agency for that portion of State costs which were not reimbursed by the Federal Government (see Section IX).

VII. Audit of Federal Consultant Contracts

The Agency, if services of a consultant are required, shall be responsible for audit of the consultant's records to determine eligible federal aid costs on the project. The report of said audit shall be in the Agency's files and made available to the State and the Federal Government.

An audit shall be conducted by the WSDOT Internal Audit Office in accordance with generally accepted governmental auditing standards as issued by the United States General Accounting Office by the Comptroller General of the United States; WSDOT Manual M 27-50, Consultant Authorization, Selection, and Agreement Administration; memoranda of understanding between WSDOT and FHWA; and 2 CFR Part 200.501 - Audit Requirements.

If upon audit it is found that overpayment or participation of federal money in ineligible items of cost has occurred, the Agency shall reimburse the State for the amount of such overpayment or excess participation.

VIII. Single Audit Act

The Agency, as a subrecipient of federal funds, shall adhere to the federal regulations outlined in 2 CFR Part 200.501 as well as all applicable federal and state statutes and regulations. A subrecipient who expends $750,000 or more in federal awards from all sources during a given fiscal year shall have a single or program-specific audit performed for that year in accordance with the provisions of 2 CFR Part 200.501. Upon conclusion of the audit, the Agency shall be responsible for ensuring that a copy of the report is transmitted promptly to the State.

IX. Payment of Billing

The Agency agrees that if payment or arrangement for payment of any of the State's billing relative to the project (e.g., State force work, project cancellation, overpayment, cost ineligible for federal participation, etc.) is not made to the State within 45 days after the Agency has been billed, the State shall effect reimbursement of the total sum due from the regular monthly fuel tax allotments to the Agency from the Motor Vehicle Fund. No additional Federal project funding will be approved until full payment is received unless otherwise directed by the Director of Local Programs.

Project Agreement End Date - This date is based on your projects Period of Performance (2 CFR Part 200.309).
Any costs incurred after the Project Agreement End Date are NOT eligible for federal reimbursement. All eligible costs incurred prior to the Project Agreement End Date must be submitted for reimbursement within 90 days after the Project Agreement End Date or they become ineligible for federal reimbursement.

XVII. 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 the State, documenting that all programs, activities and services will be conducted in compliance with Section 504 and the Americans with Disabilities Act (ADA).

.01 **Agency** – Enter the agency name as entered on the original agreement.

.02 **Supplemental Number** – Enter the number of the supplement. Supplement numbers will be assigned in sequence beginning with Number 1 for the first supplement.

.03 **Project Number** – Enter the federal aid project number assigned by WSDOT on the original agreement.

.04 **Agreement Number** – Enter the agreement number assigned by WSDOT on the original agreement.

.05 **Execution Date** – Enter date the original agreement was executed on.

.06 **Project Description.** Enter the project name, length, and termini.

.07 **Description of Work** – Clearly describe if there is a change in work such as the addition or deletion of work elements and/or changes to the termini. If the work has not changed, put a check mark in the "No Change" box.

.08 **Reason for Supplement** – Enter the reason for this supplement, i.e., increase PE funding to cover design changes presented in the revised prospectus; request funding of construction phase; decrease construction funding to the contract bid amount. If the supplement is authorizing a construction phase, the project's proposed advertisement date must be included in the space provided.

.09 **Claiming Indirect Cost Rate** – Check the Yes box if you will be claiming indirect costs on your project. For those projects claiming indirect costs approval by your cognizant agency and supporting documentation is required to be available for review by FHWA, WSDOT and /or State Auditor. Check the No box if you will not be claiming indirect costs on your project. See Section 23.5 for additional guidance.

.10 **Project Agreement End Date** – Enter your previously established Project Agreement End Date. If authorizing a new phase of the project determine your revised Project Agreement End Date based on the following guidance:

For PE and RW – WSDOT recommends agencies estimate when the phase will be completed and add one year to determine the "Project Agreement End Date".

For Construction – WSDOT recommends agencies estimate the end of the project's period of performance and add two years to determine the "Project Agreement End Date".

.11 **Type of Work and Funding** – Complete this section in the manner described in Appendix 22.52, Paragraph .05.

1. **Column 1** – Enter the amounts from column 1 of the original local agency agreement. If the agreement has already been supplemented, enter the amounts from column 3 of the last supplemental agreement.
2. **Column 2** – Enter additional amounts requested.
3. **Column 3** – Add the amounts in columns 1 and 2.
4. **Columns 4 and 5** – Enter the appropriate amounts based on the participation ratio recorded on the original agreement.

.12 **Signatures** – An authorized official of the local agency signs the Supplemental Agreement, and writes in their title. Submit one originally signed supplement form to the Region Local Programs Engineer. It is the responsibility of the local agency to submit an additional, originally signed agreement form if they need an executed agreement for their file.

Appendix 22.55 Vacant

Appendix 22.56 Documented Cost Estimates – Example

Documented Cost Estimate for Preliminary Engineering

Agency Cost through Dec. 31, 2008	$16,144
Additional PE Agency Cost for 2009	
• PS & E Review	3,500
• Prepare Bid Documents	2,000
• Advertisement Process	2,000
	$23,644
Agency PE Cost Estimate	$24,000
Consultant PE Cost Estimate ($53,105 per consultant agreement)	$54,000

Documented Cost Estimate for Construction

Construction Cost Estimate	$420,385
Agency Construction Engineering (25%)	$105,096
	$525,481
Agency Construction Estimate	$525,000
State Construction Engineering Estimate	$ 50,000
Total Construction Cost Estimate	$575,000

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PS&E ESTIMATE

No.	Item Description	Unit	Amt	Est. Quantity	Unit Cost	Total	% of Total
	PREPARATION						
1	Mobilization	L.S.	1 L.S.	L.S.	$ 42,000		10.0%
2	Clearing and Grubbing	L.S.		3,000	$ 3,000		0.7%
3	Remove Exist. Bridge	L.S.		30,000	$ 30,000		7.1%
	GRADING						
4	Roadway Excavation Incl. Haul	C.Y.	419	20	$ 10,475		2.5%
5	Gravel Borrow Incl. Haul	C.Y.	138	30	$ 3,070		0.5%
6	Embankment Compaction	C.Y.	20	1	$ 20.0		0.1%
	STRUCTURE						
7	Structure Excavation Class A Incl. Haul	C.Y.	172	50	$ 8,550		2.1%
8	Structure Extra Excavation Class A	L.S.	1	17,000	$ 17,000		4.0%
9	Gravel Backfill for Walls	C.Y.	10	30	$ 600		0.1%
10	Epoxy-Coated Steel Reinf. Bar for Bridge	LB	481	2.00	$ 962		0.2%
11	Steel Reinforcing Bar for Bridge	LB	6,724	2.00	$ 13,448		3.2%
12	Deformed Steel Sheet Piling Cofferdam Installation	Each	1		$		0.0%
13	Superstructure - Normal Road Bridge	L.S.	1	130,000	$ 130,000		30.9%
14	Concrete Class 4000D for Bridge	C.Y.	51	900	$ 46,500		11.0%
15	Traffic Barrier	L.F.	107	200	$ 21,400		5.1%
16	Membrane Waterproofing	S.Y.	108	50	$ 5,400		1.3%
	SURFACING						
17	Gravel Base	Ton	631	25	$ 15,850		3.8%
18	Crushed Surfacing Top Course	Ton	190	50	$ 9,500		2.3%
	HOT MIX ASPHALT						
19	Asphalt Class Pavement Cl. A	Ton	100	175	$ 17,500		4.2%
20	Asphalt Cost Price Adjustment	Ton			$		1.0%
	EROSION/WATER POLLUTION CONTROL						
21	[illegible]	[illegible]	[illegible]	[illegible]	$ [illegible]		[illegible]
22	[illegible]	[illegible]	[illegible]	[illegible]	$ [illegible]		[illegible]
23	[illegible]	[illegible]	[illegible]	[illegible]	$ [illegible]		[illegible]
24	[illegible]	[illegible]	[illegible]	[illegible]	$ [illegible]		[illegible]
	TRAFFIC						
25	[illegible]	[illegible]	[illegible]	[illegible]	$ [illegible]		[illegible]
26	[illegible]	[illegible]	[illegible]	[illegible]	$ [illegible]		[illegible]
27	[illegible]	[illegible]	[illegible]	[illegible]	$ [illegible]		[illegible]
28	[illegible]	[illegible]	[illegible]	[illegible]	$ [illegible]		[illegible]
	OTHER ITEMS						
29	[illegible]	[illegible]	[illegible]	[illegible]	$ [illegible]		[illegible]
30	[illegible]	[illegible]	[illegible]	[illegible]	$ [illegible]		[illegible]
31	[illegible]	[illegible]	[illegible]	[illegible]	$ [illegible]		[illegible]
	CONTRACT TOTAL				[illegible]		[illegible]

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ITS Improvements and Incident Management
90% Design - Engineer's Cost Estimate and Bid Items

Item No.	Item Description	Unit	Unit Price	Quantity	Total Cost
	SPCC Plan	LS	$800	1	$800
	Mobilization	LS	$3,500	1	$3,500
	Project Temporary Traffic Control	LS	$10,000	1	$10,000
	Flagging and Spotters	HR	$40	200	$8,000
	Removal of Structures and Obstructions	LS	$3,500	1	$3,500
	Temporary Water Pollution/Erosion Control	LS	$1,200	1	$1,200
	Traffic Signal Cabinet Modification - SE 7th St/SE Cheshiev Dr	LS	$15,000	1	$15,000
	Communications Equipment	LS	$50,800	1	$50,800
	Loose Tube Fiber Optic Cable (48 Fiber)	LF	$5.60	6270	$35,112
	Loose Tube Fiber Optic Cable (8 Fiber)	LF	$3.55	3770	$13,369
	Fiber Optic Connection Inside Cable Splicing	LS	$3,500	1	$3,500
	Fiber Optic and Copper Connection and Test/Alarm Integration	LS	$8,000	1	$8,000
	Trenching, Conduit, Junction Box and Alert System	LS	$114,700	1	$114,700
	Pedestrian Boxes	LS	$12,100	1	$12,100
	Variable Message Sign System	LS	$160,000	1	$160,000
				TOTAL	$442,142

CONSTRUCTION CONTRACT	$442,142
TOTAL ESTIMATED CONSTRUCTION CONTRACT	**$442,142**
Construction Engineering and Inspection	$88,428.04
State Services	$5,000.00
TOTAL ESTIMATED PROJECT COST	**$530,142**

2009 SIDEWALK IMPROVEMENTS
FEDERAL AID PROJECT NO. STP-

Preliminary Engineers Estimate of Probable Costs
Low Range of Costs

Sidewalk Improvements

No	Description of Work	Unit	Quantity	Unit Price	Total Price
	Mobilization	LS		$	$
	Type A Concrete Curb and Gutter				
	Clear & Grub Vegetation & Remove Sidewalk			$	$
	Cement Concrete Sidewalk Repair				
	Replace Concrete Sidewalk			$	$
	Remove Concrete Sidewalk and Apply Asphalt Patch				
	Every 100 Feet Along Project Length			$	$
	Asphalt Patch Sidewalk Type 2				
	Cut Intersection			$	$
	Special Asphalt Pavement				
	Asphalt Cost Adjustment			$	$
	Hot Mix Asphalt Commercial (HMA)				
	2" Thick by 2" Comp Avg Depth Cut Gutter			$	$

2009 Sidewalk Improvements

SUMMARY

Sidewalk Improvements		$
Non-Sidewalk Items		$
	Subtotal Construction Cost	$
Project Contingency		$
	TOTAL PARTIAL COST	$

Cost and Schedule Updates

Budget-Level Costs

TABLE 5 PRELIMINARY BUDGET-LEVEL COST ESTIMATE

Item No.	Description	Cost (Rounded)
M Street SE Grade Separation		
	[illegible]	[illegible]
	[illegible]	[illegible]
	[illegible]	$ 2,[illegible]
	[illegible]	[illegible]
	Construction Subtotal	$ [illegible]
	[illegible] Contingency	$ [illegible]
	Subtotal	**$ 10,600,000**
	[illegible]	[illegible]
	Subtotal	**$ 11,650,000**
	[illegible]	[illegible]
	[illegible]	[illegible]
Construction Total		**$ 15,400,000**
	[illegible]	[illegible]
	[illegible]	[illegible]
	[illegible]	[illegible]
	[illegible]	[illegible]
Total Estimated Project Cost		**$ 22,381,000**

Washington State Department of Transportation

Local Agency Agreement

Agency Clark County
Address P.O. Box 9810
Vancouver, WA 98666-9810

CFDA No. 20.205
(Catalog of Federal Domestic Assistance)
Project No. _____
Agreement No. _____
For OSC WSDOT Use Only

The Local Agency having complied, or hereby agreeing to comply, with the terms and conditions set forth in (1) Title 23, U.S. Code Highways, (2) the regulations issued pursuant thereto, (3) 2 CFR Part 200, (4) the policies and procedures promulgated by the Washington State Department of Transportation, and (5) the federal aid project agreement entered into between the State and Federal Government, relative to the above project, the Washington State Department of Transportation will authorize the Local Agency to proceed on the project by a separate notification. Federal funds which are to be obligated for the project may not exceed the amount shown herein on line r, column 3, without written authority by the State, subject to the approval of the Federal Highway Administration. All project costs not reimbursed by the Federal Government shall be the responsibility of the Local Agency.

Project Description

Name NE Ward Road Length 1.01 miles

Termini SR 500 to NE 162nd Ave.

Description of Work

Asphalt overlay of NE Ward road to include curb, gutter, and sidewalk on both sides of the roadway.

Project Agreement End Date: 4/10/16
Proposed Advertisement Date: _____

Claiming Indirect Cost Rate
☐ Yes ☒ No

Type of Work		Estimate of Funding (1) Estimated Total Project Funds	(2) Estimated Agency Funds	(3) Estimated Federal Funds
PE	a. Agency	10,000.00	1,350.00	8,650.00
86.5 %	b. Other Consultant	5,000.00	675.00	4,325.00
	c. Other			
Federal Aid Participation Ratio for PE	d. State	1,000.00	135.00	865.00
	e. Total PE Cost Estimate (a+b+c+d)	**16,000.00**	**2,160.00**	**13,840.00**
Right of Way	f. Agency			
____ %	g. Other			
	h. Other			
Federal Aid Participation Ratio for RW	i. State			
	j. Total R/W Cost Estimate (f+g+h+i)			
Construction	k. Contract			
	l. Other			
	m. Other			
	n. Other			
____ %	o. Agency			
Federal Aid Participation Ratio for CN	p. State			
	q. Total CN Cost Estimate (k+l+m+n+o+p)			
	r. Total Project Cost Estimate (e+j+q)	**16,000.00**	**2,160.00**	**13,840.00**

Agency Official

By _____

Title _____

_____

Washington State Department of Transportation

By _____

Director, Local Programs

Date Executed _____

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Revised 04/2015

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Construction Method of Financing *(Check Method Selected)*

State Ad and Award

☐ Method A - Advance Payment - Agency Share of total construction cost (based on contract award)

☐ Method B - Withhold from gas tax the Agency's share of total construction cost (line 4, column 2) in the amount of

$ _____ at $ _____ per month for _____ months.

Local Force or Local Ad and Award

☒ Method C - Agency cost incurred with partial reimbursement

The Local Agency further stipulates that pursuant to said Title 23, regulations and policies and procedures, and as a condition to payment of the federal funds obligated, it accepts and will comply with the applicable provisions set forth below. Adopted by official action on

January 1 , 2015 , Resolution/Ordinance No. 2015-01

Provisions

I. Scope of Work

The Agency shall provide all the work, labor, materials, and services necessary to perform the project which is described and set forth in detail in the "Project Description" and "Type of Work."

When the State acts for and on behalf of the Agency, the State shall be deemed an agent of the Agency and shall perform the services described and indicated in "Type of Work" on the face of this agreement, in accordance with plans and specifications as proposed by the Agency and approved by the State and the Federal Highway Administration.

When the State acts for the Agency but is not subject to the right of control by the Agency, the State shall have the right to perform the work subject to the ordinary procedures of the State and Federal Highway Administration.

II. Delegation of Authority

The State is willing to fulfill the responsibilities to the Federal Government by the administration of this project. The Agency agrees that the State shall have the full authority to carry out this administration. The State shall review, process, and approve documents required for federal aid reimbursement in accordance with federal requirements. If the State advertises and awards the contract, the State will further act for the Agency in all matters concerning the project as requested by the Agency. If the Local Agency advertises and awards the project, the State shall review the work to ensure conformity with the approved plans and specifications.

III. Project Administration

Certain types of work and services shall be provided by the State on this project as requested by the Agency and described in the Type of Work above. In addition, the State will furnish qualified personnel for the supervision and inspection of the work in progress. On Local Agency advertised and awarded projects, the supervision and inspection shall be limited to ensuring all work is in conformance with approved plans, specifications, and federal aid requirements. The salary of such engineer or other supervisor and all other salaries and costs incurred by State forces upon the project will be considered a cost thereof. All costs related to this project incurred by employees of the State in the customary manner on highway payrolls and vouchers shall be charged as costs of the project.

IV. Availability of Records

All project records in support of all costs incurred and actual expenditures kept by the Agency are to be maintained in accordance with local government accounting procedures prescribed by the Washington State Auditor's Office, the U.S. Department of Transportation, and the Washington State Department of Transportation. The records shall be open to inspection by the State and Federal Government at all reasonable times and shall be retained and made available for such inspection for a period of not less than three years from the final payment of any federal aid funds to the Agency. Copies of said records shall be furnished to the State and/or Federal Government upon request.

V. Compliance with Provisions

The Agency shall not incur any federal aid participation costs on any classification of work on this project until authorized in writing by the State for each classification. The classifications of work for projects are:

1. Preliminary engineering.
2. Right of way acquisition.
3. Project construction.

Once written authorization is given, the Agency agrees to show continuous progress through monthly billings. Failure to show continuous progress may result the Agency's project becoming inactive, as described in 23 CFR 630, and subject to de-obligation of federal aid funds and/or agreement closure.

If right of way acquisition, or actual construction of the road for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which preliminary engineering phase was authorized, the Agency will repay to the State the sum or sums of federal funds paid to the Agency under the terms of this agreement (see Section IX).

If actual construction of the road for which right of way has been purchased is not started by the close of the tenth fiscal year following the fiscal year in which the right of way phase was authorized, the Agency will repay to the State the sum or sums of federal funds paid to the Agency under the terms of this agreement (see Section IX).

The Agency agrees that all stages of construction necessary to provide the initially planned complete facility within the limits of this project will conform to at least the minimum values set by approved statewide design standards applicable to this class of highways, even though such additional work is financed without federal aid participation.

The Agency agrees that on federal aid highway construction projects, the current federal aid regulations which apply to liquidated damages relative to the basis of federal participation in the project cost shall be applicable in the event the contractor fails to complete the contract within the contract time.

VI. Payment and Partial Reimbursement

The total cost of the project, including all review and engineering costs and other expenses of the State, is to be paid by the Agency and by the Federal Government. Federal funding shall be in accordance with the Federal Transportation Act, as amended, 2 CFR Part 200. The State shall not be ultimately responsible for any of the costs of the project. The Agency shall be ultimately responsible for all costs associated with the project which are not reimbursed by the Federal Government. Nothing in this agreement shall be construed as a promise by the State as to the amount or nature of federal participation in this project.

The Agency shall bill the state for federal aid project costs incurred in conformity with applicable federal and state laws. The agency shall minimize the time elapsed between receipt of federal aid funds and subsequent payment of incurred costs. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for federal participation unless a current indirect cost plan has been prepared in accordance with the regulations outlined in 2 CFR Part 200 - Uniform Admin Requirements, Cost Principles and Audit Requirements for Federal Awards, and retained for audit.

The State will pay for State incurred costs on the project. Following payment, the State shall bill the Federal Government for reimbursement of those costs eligible for federal participation to the extent that such costs are attributable and properly allocable to this project. The State shall bill the Agency for that portion of State costs which were not reimbursed by the Federal Government (see Section IX).

1. Project Construction Costs

Project construction financing will be accomplished by one of the three methods as indicated in this agreement.

Method A – The Agency will place with the State, within (20) days after the execution of the construction contract, an advance in the amount of the Agency's share of the total construction cost based on the contract award. The State will notify the Agency of the exact amount to be deposited with the State. The State will pay all costs incurred under the contract upon presentation of progress billings from the contractor. Following such payments, the State will submit a billing to the Federal Government for the federal aid participation share of the cost. When the project is substantially completed and final actual costs of the project can be determined, the State will present the Agency with a final billing showing the amount due the State or the amount due the Agency. This billing will be cleared by either a payment from the Agency to the State or by a refund from the State to the Agency.

Method B – The Agency's share of the total construction cost as shown on the face of this agreement shall be withheld from its monthly fuel tax allotments. The face of this agreement establishes the months in which the withholding shall take place and the exact amount to be withheld each month. The extent of withholding will be confirmed by letter from the State at the time of contract award. Upon receipt of progress billings from the contractor, the State will submit such billings to the Federal Government for payment of its participating portion of such billings.

Method C – The Agency may submit vouchers to the State in the format prescribed by the State, in duplicate, not more than once per month for those costs eligible for Federal participation to the extent that such costs are directly attributable and properly allocable to this project. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for Federal participation unless claimed under a previously approved indirect cost plan.

The State shall reimburse the Agency for the Federal share of eligible project costs up to the amount shown on the face of this agreement. At the time of audit, the Agency will provide documentation of all costs incurred on the project.

The State shall bill the Agency for all costs incurred by the State relative to the project. The State shall also bill the Agency for the federal funds paid by the State to the Agency for project costs which are subsequently determined to be ineligible for federal participation (see Section IX).

VII. Audit of Federal Consultant Contracts

The Agency, if services of a consultant are required, shall be responsible for audit of the consultant's records to determine eligible federal aid costs on the project. The report of said audit shall be in the Agency's files and made available to the State and the Federal Government.

An audit shall be conducted by the WSDOT Internal Audit Office in accordance with generally accepted governmental auditing standards as issued by the United States General Accounting Office by the Comptroller General of the United States; WSDOT Manual M 27-50, Consultant Authorization, Selection, and Agreement Administration; memoranda of understanding between WSDOT and FHWA; and 2 CFR Part 200.501 - Audit Requirements.

If upon audit it is found that overpayment or participation of federal money in ineligible items of cost has occurred, the Agency shall reimburse the State for the amount of such overpayment or excess participation (see Section IX).

VIII. Single Audit Act

The Agency, as a subrecipient of federal funds, shall adhere to the federal regulations outlined in 2 CFR Part 200.501 as well as all applicable federal and state statutes and regulations. A subrecipient who expends $750,000 or more in federal awards from all sources during a given fiscal year shall have a single or program-specific audit performed for that year in accordance with the provisions of 2 CFR Part 200.501. Upon conclusion of the audit, the Agency shall be responsible for ensuring that a copy of the report is transmitted promptly to the State.

IX. Payment of Billing

The Agency agrees that if payment or arrangement for payment of any of the State's billing relative to the project (e.g., State force work, project cancellation, overpayment, cost ineligible for federal participation, etc.) is not made to the State within 45 days after the Agency has been billed, the State shall effect reimbursement of the total sum due from the regular monthly fuel tax allotments to the Agency from the Motor Vehicle Fund. No additional Federal project funding will be approved until full payment is received unless otherwise directed by the Director of Local Programs.

Project Agreement End Date - This date is based on your projects Period of Performance (2 CFR Part 200.309).

Any costs incurred after the Project Agreement End Date are NOT eligible for federal reimbursement. All eligible costs incurred prior to the Project Agreement End Date must be submitted for reimbursement within 90 days after the Project Agreement End Date or they become ineligible for federal reimbursement.

X. Traffic Control, Signing, Marking, and Roadway Maintenance

The Agency will not permit any changes to be made in the provisions for parking regulations and traffic control on this project without prior approval of the State and Federal Highway Administration. The Agency will not install or permit to be installed any signs, signals, or markings not in conformance with the standards approved by the Federal Highway Administration and MUTCD. The Agency will, at its own expense, maintain the improvement covered by this agreement.

XI. Indemnity

The Agency shall hold the Federal Government and the State harmless from and shall process and defend at its own expense all claims, demands, or suits, whether at law or equity brought against the Agency, State, or Federal Government, arising from the Agency's execution, performance, or failure to perform any of the provisions of this agreement, or of any other agreement or contract connected with this agreement, or arising by reason of the participation of the State or Federal Government in the project, PROVIDED, nothing herein shall require the Agency to reimburse the State or the Federal Government for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Federal Government or the State.

XII. Nondiscrimination Provision

No liability shall attach to the State or Federal Government except as expressly provided herein.

The Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract and/or agreement or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts and agreements. The WSDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Agency of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U. S.C. 3801 et seq.).

The Agency hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor in 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee or understanding pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, the required contract provisions for Federal-Aid Contracts (FHWA 1273), located in Chapter 44 of the Local Agency Guidelines.

The Agency further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or Local Government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.

The Agency also agrees:

(1) To assist and cooperate actively with the State in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and rules, regulations, and relevant orders of the Secretary of Labor.

(2) To furnish the State such information as it may require for the supervision of such compliance and that it will otherwise assist the State in the discharge of its primary responsibility for securing compliance.

(3) To refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally assisted construction contracts pursuant to the Executive Order.

(4) To carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the State, Federal Highway Administration, or the Secretary of Labor pursuant to Part II, subpart D of the Executive Order.

In addition, the Agency agrees that if it fails or refuses to comply with these undertakings, the State may take any or all of the following actions:

(a) Cancel, terminate, or suspend this agreement in whole or in part;

(b) Refrain from extending any further assistance to the Agency under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the Agency; and

(c) Refer the case to the Department of Justice for appropriate legal proceedings.

XIII. Liquidated Damages

The Agency hereby agrees that the liquidated damages provisions of 23 CFR Part 635, Subpart 127, as supplemented, relative to the amount of Federal participation in the project cost, shall be applicable in the event the contractor fails to complete the contract within the contract time. Failure to include liquidated damages provision will not relieve the Agency from reduction of federal participation in accordance with this paragraph.

XIV. Termination for Public Convenience

The Secretary of the Washington State Department of Transportation may terminate the contract in whole, or from time to time in part, whenever:

(1) The requisite federal funding becomes unavailable through failure of appropriation or otherwise.

(2) The contractor is prevented from proceeding with the work as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense, or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources.

(3) The contractor is prevented from proceeding with the work by reason of a preliminary, special, or permanent restraining order of a court of competent jurisdiction where the issuance of such order is primarily caused by the acts or omissions of persons or agencies other than the contractor.

(4) The Secretary is notified by the Federal Highway Administration that the project is inactive.

(5) The Secretary determines that such termination is in the best interests of the State.

XV. Venue for Claims and/or Causes of Action

For the convenience of the parties to this contract, it is agreed that any claims and/or causes of action which the Local Agency has against the State of Washington, growing out of this contract or the project with which it is concerned, shall be brought only in the Superior Court for Thurston County.

XVI. Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

The approving authority certifies, to the best of his or her knowledge and belief, that:

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

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

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed $100,000, and that all such subrecipients shall certify and disclose accordingly.

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 as a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

XVII. 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 the State, documenting that all programs, activities, and services will be conducted in compliance with Section 504 and the Americans with Disabilities Act (ADA).

Additional Provisions

Local Agency Agreement Supplement – Example

Washington State Department of Transportation

Local Agency Agreement Supplement

Agency		Supplement Number
City of Snoqualmie		1
Federal Aid Project Number	Agreement Number	CFDA No. **20.205** (Catalog of Federal Domestic Assistance)
STPUS-0202(054)	LA-7500	

The Local Agency requests to supplement the agreement entered into and executed on 7/8/11
All provisions in the basic agreement remain in effect except as modified by this supplement.
The changes to the agreement are as follows:

Project Description

Name Downtown Redevelopment Length 0.52 miles

Termini SR 202, Newton Street to Fir Street

Description of Work ☒ No Change

Reason for Supplement

Request construction phase authorization and PE phase increase to cover the cost to design additional ADA ramps within project limits.

Are you claiming indirect cost rate? ☐ Yes ☒ No Project Agreement End Date 2/28/16

Does this change require additional Right of Way or Easements? ☐ Yes ☒ No Advertisement Date: 1/28/14

Type of Work		Estimate of Funding				
		(1) Previous Agreement/Suppl.	(2) Supplement	(3) Estimated Total Project Funds	(4) Estimated Agency Funds	(5) Estimated Federal Funds
PE	a. Agency	10,000.00	2,000.00	12,000.00	1,620.00	10,380.00
86.5 %	b. Other					
	c. Other					
Federal Aid Participation Ratio for PE	d. State	1,000.00	0.00	1,000.00	135.00	865.00
	e. Total PE Cost Estimate (a+b+c+d)	**11,000.00**	**2,000.00**	**13,000.00**	**1,755.00**	**11,245.00**
Right of Way	f. Agency					
____ %	g. Other					
Federal Aid Participation Ratio for RW	h. Other					
	i. State					
	j. Total R/W Cost Estimate (f+g+h+i)					
Construction	k. Contract		100,000.00	100,000.00	13,500.00	86,500.00
	l. Other Consultant		55,000.00	55,000.00	7,425.00	47,575.00
86.5 %	m. Other					
	n. Other					
Federal Aid Participation Ratio for CN	o. Agency		10,000.00	10,000.00	1,350.00	8,650.00
	p. State		1,000.00	1,000.00	135.00	865.00
	q. Total CN Cost Estimate (k+l+m+n+o+p)		**166,000.00**	**166,000.00**	**22,410.00**	**143,590.00**
	r. Total Project Cost Estimate (e+j+q)	**11,000.00**	**168,000.00**	**179,000.00**	**24,165.00**	**154,835.00**

The Local Agency further stipulates that pursuant to said Title 23, regulations and policies and procedures, and as a condition to payment of the Federal funds obligated, it accepts and will comply with the applicable provisions.

Agency Official

By _____

Title _____

_____

Washington State Department of Transportation

By _____

Director, Local Programs

Date Executed _____

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Agency City of Snoqualmie		Supplement Number 1
Federal Aid Project Number STPUS-0202(054)	Agreement Number LA-7500	CFDA No. **20.205** (Catalog of Federal Domestic Assistance)

VI. Payment and Partial Reimbursement

The total cost of the project, including all review and engineering costs and other expenses of the State, is to be paid by the Agency and by the Federal Government. Federal funding shall be in accordance with the Federal Transportation Act, as amended, 2 CFR Part 200. The State shall not be ultimately responsible for any of the costs of the project. The Agency shall be ultimately responsible for all costs associated with the project which are not reimbursed by the Federal Government. Nothing in this agreement shall be construed as a promise by the State as to the amount or nature of federal participation in this project.

The Agency shall bill the state for federal aid project costs incurred in conformity with applicable federal and state laws. The agency shall minimize the time elapsed between receipt of federal aid funds and subsequent payment of incurred costs. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for federal participation unless a current indirect cost plan has been prepared in accordance with the regulations outlined in 2 CFR Part 200 - Uniform Admin Requirements, Cost Principles and Audit Requirements for Federal Awards, and retained for audit.

The State will pay for State incurred costs on the project. Following payment, the State shall bill the Federal Government for reimbursement of those costs eligible for federal participation to the extent that such costs are attributable and properly allocable to this project. The State shall bill the Agency for that portion of State costs which were not reimbursed by the Federal Government (see Section IX).

VII. Audit of Federal Consultant Contracts

The Agency, if services of a consultant are required, shall be responsible for audit of the consultant's records to determine eligible federal aid costs on the project. The report of said audit shall be in the Agency's files and made available to the State and the Federal Government.

An audit shall be conducted by the WSDOT Internal Audit Office in accordance with generally accepted governmental auditing standards as issued by the United States General Accounting Office by the Comptroller General of the United States; WSDOT Manual M 27-50, Consultant Authorization, Selection, and Agreement Administration; memoranda of understanding between WSDOT and FHWA; and 2 CFR Part 200.501 - Audit Requirements.

If upon audit it is found that overpayment or participation of federal money in ineligible items of cost has occurred, the Agency shall reimburse the State for the amount of such overpayment or excess participation.

VIII. Single Audit Act

The Agency, as a subrecipient of federal funds, shall adhere to the federal regulations outlined in 2 CFR Part 200.501 as well as all applicable federal and state statutes and regulations. A subrecipient who expends $750,000 or more in federal awards from all sources during a given fiscal year shall have a single or program-specific audit performed for that year in accordance with the provisions of 2 CFR Part 200.501. Upon conclusion of the audit, the Agency shall be responsible for ensuring that a copy of the report is transmitted promptly to the State.

IX. Payment of Billing

The Agency agrees that if payment or arrangement for payment of any of the State's billing relative to the project (e.g., State force work, project cancellation, overpayment, cost ineligible for federal participation, etc.) is not made to the State within 45 days after the Agency has been billed, the State shall effect reimbursement of the total sum due from the regular monthly fuel tax allotments to the Agency from the Motor Vehicle Fund. No additional Federal project funding will be approved until full payment is received unless otherwise directed by the Director of Local Programs.

Project Agreement End Date - This date is based on your projects Period of Performance (2 CFR Part 200.309).
Any costs incurred after the Project Agreement End Date are NOT eligible for federal reimbursement. All eligible costs incurred prior to the Project Agreement End Date must be submitted for reimbursement within 90 days after the Project Agreement End Date or they become ineligible for federal reimbursement.

XVII. 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 the State, documenting that all programs, activities and services will be conducted in compliance with Section 504 and the Americans with Disabilities Act (ADA).

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Chapter 23 Progress Billing (Reimbursement Costs)

23.1 General Discussion

All progress billings shall be submitted monthly to the Region Local Programs Engineer by the local agency in accordance with the terms of the Local Agency Agreement (Chapter 22). Billings will not be accepted before the Local Agency Agreement is executed and authorization in writing has been received from the Washington State Department of Transportation (WSDOT).

The execution of the Local Agency Agreement does not constitute approval of federal funds. This authorization from WSDOT is separate from the Local Agency Agreement.

Once written authorization is provided the Agency agrees to show continuous progress through monthly billings. Failure to show continuous progress may result in your project becoming inactive, as described in 23 CFR 630.106 and subject to de-obligation of federal aid funds and/or agreement closure.

The Local Agency Agreement, when completed, establishes a work order account which permits billing to the project. The Work Order Accounting Plan (WOAP) and the work order ledger may be seen at the region office where the Region Local Programs Engineer can answer questions pertaining to these items.

WSDOT assigns a contract number on all federal aid construction projects. This number identifies the project. It should be used in addition to the federal aid project number when corresponding with WSDOT.

23.2 Billing Procedures for Local Agency Ad and Award and Agency Force Work

Once Local Programs has executed the Local Agency Agreement and WSDOT has given the local agency written authority to proceed, the agency submits progress billings monthly for each phase of work. Any work that is performed before the official authorization date does not qualify for federal participation. Progress billings are submitted as follows:

1. Local Programs sends the local agency the original fund authorization letter.
2. The agency submits a progress billing to the Region Local Programs Engineer in accordance with the Local Agency Agreement. The first federal aid request for payment (Appendix 23.71) must include the first date expenditures were actually incurred on the project.

   All progress billings must be substantiated by the required standard documentation established in this manual, the *Construction Manual* M 41-01, requirements of the contract documents, and as defined by FHWA and must be available for review.

   Construction costs are not eligible for reimbursement until after the contract has been awarded. Exceptions may include contract advertisement, staking, etc. However, **a statement explaining these costs must be included with the reimbursement request.**

All progress billings, including the final progress bill may be submitted by hard copy or electronically via email. (Contact the Region Local Program Engineer.)

- All hard copy requests for payment must have an original signature in order to be processed.
- All email requests for payment must include all of the following in order to be processed:
  1. Agency.
  2. Project title.
  3. Federal aid project number.
  4. Local agency agreement number.
  5. "Submission of this request for payment certifies that in accordance with the laws of the State of Washington and under the conditions of approval for the project identified above, actual costs claimed have been incurred and are eligible for the purposes specified; also, that no other claims have been presented to or a payment made by, the State of Washington for those costs claimed for reimbursement."

The form must be completed in accordance with the instruction outlined in Appendix 23.72.

23.3 Billing Procedures for State Ad and Award

Progress billings are submitted as follows:

- Requests for payment from contractors are submitted to the Regional Administrator in accordance with the Local Agency Agreement.
- The requests will be processed in the region using standard WSDOT procedures.

23.4 Number and Timing of Submittals

Progress billings will be numbered sequentially and submitted monthly.

If the billing is prepared properly, payment should normally be received within three weeks of submittal. If payment is not received within one month, the agency should contact the Region Local Programs Engineer.

FHWA requires WSDOT to conduct a quarterly review of local agency inactive projects. Local Programs definition of an inactive project is any project for which no expenditures have been charged against the federal project for the past 9 months. Any project the meets this definition will require evaluation and documented justification for remaining open. If a federal project remains open without acceptable justification and supporting documentation for remaining open, the project is at risk of being closed by FHWA. Examples of reasonable justification can be found in Appendix 23.73.

23.5 Identification of Federal Aid Participating and Nonparticipating Charges

Costs are eligible for Federal Highway Administration (FHWA) federal participation if claimed in accordance and in compliance with 23 CFR and 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

No costs may be claimed for reimbursement if incurred prior to FHWA authorization to proceed with the work. All work must be programmed with FHWA.

All local governments and units of local governments that claim indirect costs under federal awards must prepare an Indirect Cost Rate Proposal (ICRP) and related documentation to support those costs. The ICRP must be prepared in accordance with the instructions and regulations outlined in Appendix VII to 2 CFR Part 200 – States and Local Government and Indian Tribe Indirect Cost Proposals.

- A local government that receives more than $35 million in all direct Federal funding must submit its ICRP to its federal cognizant agency for indirect costs. The cognizant agency for indirect cost negotiations is the Federal agency providing the largest amount of direct Federal awards. A local government that has a current federally negotiated indirect cost rate approved by its cognizant agency may apply for a one-time extension of the rate for a period of up to four years as defined in 2 CFR Part 200.414, paragraph (g).
- Other local governments must develop and certify (Appendix 23.74) an ICRP in accordance with federal requirements and maintain the proposal and related supporting documentation for audit. These governmental departments or agencies are not required to submit their proposals unless they are specifically requested to do so by the cognizant agency for indirect costs.

If a local government has never received federal reimbursement for indirect costs they may be eligible to use a de minimis rate of 10% of their modified total direct costs. Eligible agencies that elect to use the de minimis rate must meet the requirements as defined in 2 CFR Part 200.414, paragraph (f).

Some costs have been deemed ineligible for federal participation. Ineligible costs include equipment purchase and repair (unless specifically approved by FHWA), future equipment replacement costs, and those costs unallowable under 2 CFR Part 200.

.51 Participating Functions – Classifications of work programmed with FHWA and eligible for federal aid:

a. **Preliminary Engineering** – The work of locating and designing, making surveys and maps, sinking test holes, making foundation investigations, preparing plans, specifications and estimates, centerline, right of way plan preparation and other related preliminary work and incidental construction staking, to the extent such staking is necessary to review construction plans, and related general engineering preparatory to the letting of a contract for construction. The work may also include traffic counts, studies undertaken to determine traffic demands, holding of public hearings, preparation of right of way cost estimates, legal, and other costs incidental to the location and design of a highway project necessitating

the acquisition of right of way thereon up to but not including the appraisal of individual parcels for acquisition purposes.

These engineering costs are generally incurred prior to the date of construction PS&E approval or the date construction plan changes are completed prior to the beginning of construction. The date of contract award is the cutoff for charging to preliminary engineering.

b. **Acquisition of Rights of Way** – The continuation of preparation of right of way plans; appraisal for parcel acquisition; review of appraisals; preparation for and trial of condemnation cases; management of properties acquired; furnishing of relocation advisory assistance; and other related labor expenses. If RW costs are claimed after the date of contract award, please provide an explanation.
   - Excess land (appraised value) including uneconomic remnants.
   - Improvements (appraised salvage value).
   - Right of way acquired after certification by the local agency that right of way necessary for a designated federal aid highway project has been acquired.
   - Judgments in condemnation cases not appealed when the attorney's closing report indicates a basis for appeal. The amount in excess of the review appraiser's determination of value is nonparticipating.
   - Landowners:
     - Attorneys' fees;
     - Witness fees;
     - Expert witness fees; or
     - Similar costs to a landowner based on value of the services rendered to him which are paid by the local agency in connection with acquisition of rights of way, regardless of whether such costs are included in court judgments or court costs in litigated condemnation cases, e.g., statutory evaluation allowance.

c. **Construction Engineering** – The work of supervising construction activities; the inspection of construction and related mechanical aspects (e.g., staking necessary to review construction plans together with those staking activities necessary for the local agency to control construction operations); testing of materials incorporated into construction, checking shop drawings and measurements for and preparations of progress and final estimates, and as-built drawings. Construction engineering costs are generally incurred only after approval of the PS&E, a contract number is issued, and also incurred prior to:
   - Completion date of the final contract pay estimate and its submission to the contractor;
   - The final date of charges for required material testing; or
   - Completion date of the separation of contract cost by code type, location, etc., whichever is applicable to that portion of the construction engineering phase involved.

d. **Highway Planning** – The orderly and continuing assembly and analysis of information about highways, such as the history of highway development and their

extent, dimensions and conditions, use, economic and social effects, costs, and future needs.

e. **Research and Development** – The search for more complete knowledge of the characteristics of the highway system and the translation of the results of research into practice.

f. **Administrative Settlement Costs-Contract Claims** – Services related to the review and defense of claims against federal aid projects.

g. **Miscellaneous Functions** – Costs incurred for other activities which are properly attributable to, and for the benefit of, federal aid projects but are not assignable to any of the previously defined functions.

h. **Construction Costs Other Than Contractor Payments**

- Royalty expenses for material furnished by the local agency that are used by the contractor.
- Temporary signs, traffic control labor, traffic control devices, and temporary illumination furnished by the local agency. The initial basic cost of traffic control devices purchased for use on the project is an authorized participating cost.
- Work performed by local forces.

.52 Standards for Selected Items of Costs – The following are standards for determining the allowability of selected items of cost. In general, costs must be reasonable, necessary, and allocable to the specific project. The allowability of the selected items of cost is subject to the general policies and principles stated above.

a. **Salaries and Wages**

1. Subject to appropriate authorization requirements, federal funds may participate in the cost of salaries, wages, and related payroll expenses incurred for periods of time public employees are actively engaged, either directly or indirectly, in project-related activities.
2. Salaries, wages, and related payroll expenses of a local agency for maintenance, general administration, supervision and other overhead are not eligible for reimbursement.

b. **Travel and Transportation**

1. Federal funds may participate in the cost of commercial transportation, privately owned automobiles, and per diem or subsistence essential to the completion of the project and is performed in accordance with prescribed procedures.
2. Reimbursement may be made for use of privately owned automobiles and per diem or subsistence incurred in conformance with the established reimbursement policy of the local agency.

c. **Employee Leave and Holidays**

1. A local agency may claim reimbursement for the costs of leave, e.g., annual, sick, military, jury, that is earned, accounted for, and used in accordance with established procedures. The cost of such leave must be a liability of the local agency, must be equitably distributed to all activities, and the pro rata costs distributed to a federal aid project must be representative of the amount that is earned and accrued while working on the project.
2. Compensatory leave granted by a local agency in lieu of payment of overtime to eligible employees may be claimed for reimbursement if accrued and granted under established policies on a uniform basis. Such leave costs must meet the criteria discussed in paragraph (a) of this section.
3. Costs for other leave of a similar nature which may be peculiar to a specific local agency may also be reimbursed provided it meets the criteria set forth in paragraph (a) of this section.

d. **Social Security, Retirement, and Other Payroll Benefits**

1. Federal funds may participate in allocable costs incurred for social security, retirement, group insurance premiums, and similar items applicable to salaries and wages of public employees engaged in work in federal aid projects.
2. The costs for such benefits must be a liability of the local agency and must meet the criteria set forth in paragraph 1 of c above.

.53 Utility Relocations, Adjustments, and Reimbursement – Federal participation is subject to the provisions of 23 CFR part 645, subpart A.

.54 Reimbursement for Railroad Work – Costs must be incurred per 23 CFR part 646, subpart B and will be reimbursed in accordance with 23 CFR part 140, subpart I.

.55 Other Costs Allowable Subject to FHWA's Approval – Although some category of expenditures are not mentioned specifically in Part 140, "Reimbursement," of 23 CFR as eligible for federal participation, should the local agency wish to seek federal participation it is allowed to request approval from the FHWA prior to billing. The expenditures that relate to the federal aid project should be well identified through proper documentation.

.56 Other Unallowable Costs – Other unallowable costs include those costs identified in 2 CFR Part 200.

23.6 Billing Reviews

Each year construction projects are selected for "Billing Reviews." These reviews are conducted at the agency and include representatives of FHWA, WSDOT Local Programs, and the local agency. One or more progress bills for the selected project will be reviewed for compliance with documentation standards established in this manual, the *Construction Manual* M 41-01, requirements of the contract documents, and as defined by FHWA. During a billing review, the agency must have all the required backup documentation necessary to support the invoice. The documentation must be available and filed in a way that is easy for the reviewers to locate.

At the conclusion of the review, a report is generated by FHWA and issued to WSDOT Local Programs. The report will include descriptions of the items reviewed, the backup documentation located in the files to support the payments, and a "Supported or Unsupported" finding for each item. Any "unsupported" payment findings are considered improper payments which may require corrective action and possible repayment of federal funds. Local Programs provides a copy of the report to the agency and identifies any findings.

23.7 Appendices

23.71 Local Programs Progress Billing – Example
23.72 Local Programs Progress Billing – Instructions
23.73 Inactive Justification Examples
23.74 Certificate of Indirect Costs

Agency
Address

Federal Tax ID No.
Agency Use:

Local Programs Progress Billing

Federal Aid Project:
Agreement Number:
Last Supplement :
Project Title:
Project End Date:

Progress Bill No: 1
Final Progress Bill? no
Billing Period from:
through:
CN Award Date

	1	2	3	4	5	6	7	8
	Total Eligible This Period	Total Eligible To Date	Participation Rate	Amount Claimed This Period *Col 1 x Col 3*	Amount Claimed Prior Periods	Total Claimed To Date *Col 4 + Col 5*	Amount Authorized Per Agreement	Remaining Federal Funds *Col 7 - Col 6*
PE								
a - Agency				0.00		0.00		0.00
b				0.00		0.00		0.00
Total Preliminary Engineering	0.00	0.00		0.00	0.00	0.00	0.00	0.00
RW								
e				0.00		0.00		0.00
f				0.00		0.00		0.00
Total Right of Way	0.00	0.00		0.00	0.00	0.00	0.00	0.00
CN								
k - Contract				0.00		0.00		0.00
l				0.00		0.00		0.00
m				0.00		0.00		0.00
n				0.00		0.00		0.00
CE								
o - Agency				0.00		0.00		0.00
p				0.00		0.00		0.00
Total Construction	0.00	0.00		0.00	0.00	0.00	0.00	0.00
TOTAL PROJECT	0.00	0.00		0.00	0.00	0.00	0.00	0.00

Submission of this request for payment certifies that in accordance with the laws of the State of Washington and under the conditions of approval for the project identified above, actual costs claimed have been incurred and are eligible for the purposes specified; also, that no other claims have been presented to, or payment made by, the State of Washington for those costs claimed for reimbursement.

Signee Title Date

Approved by Regional Local Programs Office Date

Revised 02/19/15

Return to Regional Local Programs Office

This form only reflects the amounts claimed and authorized for payment to the local agency. It does not include costs for state services.

Distribution of Form – After the Fund Authorization letter is received by the agency, a blank Local Programs Progress Billing form (Appendix 23.71) should be filled out for the first progress billing.

Funding Set Up – The amount of federal funding set up for a project is based on the local agency agreement. The funding set up for each line item is shown in column (7). Column (7) should be compared with column (6) to ensure that the amounts requested are within the funding amount set up by the local agency agreement.

Payments will not be made in excess of the amount in column (7). If the amount in column (6) exceeds the amount shown in column (7), a supplement to the local agency agreement must be submitted to reflect the revised cost before payment can be made.

Exception: Following the final settlement and closure of the agreement, a final payment may be made in excess of the amount authorized per agreement (column 7) up to, but not to exceed the total project Fund Authorization amount. Consult your Region Local Programs Engineer for specific project information. Only one billing will be accepted as final.

Data Required to Request Payment – As a minimum, only those line items for which payment is being requested need to be coded. The other lines can be left blank.

Coding Instructions – The Local Programs Progress Billing is arranged in the same manner as the local agency agreement though not all lines from the local agency agreement are shown on the Local Programs Progress Billing. The lines for state services are not included because state costs are billed separately. Since the state services are not shown, the totals for PE, R/W, and Construction shown on the Local Programs Progress Billing will not agree with those shown on the local agency agreement. The Local Programs Progress Billing totals (column 7) will reflect the total amount available to the local agency based on the local agency agreement.

The top portion of the form includes project identification information that will automatically appear on each progress billing. The agency's Federal Tax ID is always required. This information includes: Agency Information, Agreement No., Federal Aid No., Title, Progress Bill No., Project End Date, Award Date and Billing Period. The first progress billing must include the first date expenditures were actually incurred on the project. Thereafter, the billing period needs to be consecutive and if requested, documentation needs to support dates within that billing period. Indicate whether the billing represents a final progress bill. Crosscheck the billing period dates against prior bills(s). If dates overlap, please provide a statement confirming that costs are new and have not been claimed on prior bills(s).

The space provided for Agency Use is for the agency's records and is not required to receive payment. The agreement number (LA-xxx) will appear in the "Invoice Number" block on the Vendor's Remittance Advice which is transmitted to agencies receiving Electronic Fund Transfers (EFT). If an invoice is submitted with the progress billing the invoice number will be used instead of the LA number.

Details for Completing Local Programs Progress Billing Form

Line a	Agency Work for PE Eligible PE cost incurred by the local agency.
Line b-c	Other – For PE Same as shown on agreement, usually consultant cost paid by local agency.
Line e	Total PE Cost Estimate. This is the total amount claimed and authorized for payment to the local agency within the PE phase. Column (7) on this line shows the total amount of funds set up for the local agency based on the latest version of the Local Agency Agreement. It does not include (line d) state services.
Line f	Agency Work for R/W Eligible R/W cost incurred by local agency.
Line g-h	Other – R/W Same as shown on Local Agency Agreement, usually consultant (etc.) cost paid by the local agency.
Line j	Total R/W Cost Estimate. This is the total amount claimed and authorized for payment to the local agency within the R/W phase. Column (7) on this line shows the total amount of federal funds set up for the local agency based on the latest version of the Local Agency Agreement. It does not include (line i) state services.
Line k	Contract Eligible payments made to contractor. Contract Award date must be submitted before payment will be made. See exceptions in 23.2
Lines l-n	Other Other costs incurred by the local agency as indicated on the Local Agency Agreement, such as Day Labor, Agency Supplied Materials, etc.
Line o	Agency Work Eligible cost incurred by the local agency.
Line q	Total CN Cost Estimate. This is the total amount claimed and authorized for payment to the local agency within the Construction phase. Column (7) on this line shows the total amount of funds set up for the local agency based on the latest version of the Local Agency Agreement. It does not include (line p) state services.
Line r	Total Project Cost Estimate. Add the Total PE, Total R/W, and Total Construction. This is the total amount claimed and authorized for payment to the local agency. Column (7) on this line shows the total amount of federal funds for all phases of work for the local agency based on the latest version of the Local Agency Agreement. It does not include state services.
Column (1)	Total Expenditures Eligible for Federal Participation This Period. Agency must claim all eligible costs. Record the total eligible expenditures this period for each item of work.
Column (2)	Total Eligible to Date. This is the total amount previously claimed column (2) plus new eligible in column (1).
Column (3)	Percent of Participation The current participation ratio will be provided.
Column (4)	Amount Claimed This Period Column (4) can never exceed column (1) times column (3), but may be less than. Multiply column (1) by column (3) and enter in column (4). This represents the amount of funds claimed on this progress bill.

Column (5)	Amount Claimed Prior Period This represents the total amount of funds previously claimed (column (6) on the previous billing). This amount will be provided on the form.
Column (6)	Total Claimed to Date Add column (4) and column (5) and enter the total in this column. The total claimed to date for PE, R/W, and Construction cannot exceed the amount authorized shown in column (7). Refer to funding setup section.
Column (7)	Amount Authorized Per Agreement This is the total amount of funds authorized for each line item per the latest version of the Local Agency Agreement. This amount will be provided on the form.
Column (8)	Remaining Funds Subtract column (6) from column (7) and enter the difference in this column. The difference represents the remaining funds available. This column cannot be a negative value. If negative, a supplement to the Local Agency Agreement must be prepared to receive full payment. An exception may be on the final progress bill. Consult your Region Local Programs Engineer for specific project information.

Sign and date the progress billing and distribute according to the instructions located at the bottom of the form.

- All hard copy requests for payment must have an original signature in order to be processed.
- All email requests for payment must include all of the following in order to be processed:
  1. Agency.
  2. Project title.
  3. Federal aid project number.
  4. Local agency agreement number.
  5. "Submission of this request for payment certifies that in accordance with the laws of the State of Washington and under the conditions of approval for the project identified above, actual costs claimed have been incurred and are eligible for the purposes specified; also, that no other claims have been presented to or a payment made by, the State of Washington for those costs claimed for reimbursement."

If you have any questions, please contact your Region Local Programs Engineer.

Appendix 23.73 Inactive Justification Examples

Example 1

State: Washington ***FMIS Project # 0000001***

The project is for the acquisition of right of way and is considered valid remaining open for the settlement of one remaining parcel of land relative to the construction of the roadway improvement at Case Boulevard in the County. The parcel was successfully acquired through condemnation procedures, but final settlement of the last parcel remains to be adjudicated through the Superior Court. Although deposited the fair value of the property at time of taking, final cost is to be determined by the court. The balance of unexpended federal aid project funds is anticipated to be sufficient to cover the cost of the property. Final settlement date has not been established. Federal dollars may not be invoiced to FHWA until settlement has taken place; the costs remain in the file awaiting future release. We have initiated discussion with the right of way division to determine whether the cost of the final parcel should be reclassified as nonparticipating for federal aid to permit the project to progress to final acceptance and closure because of the inordinate and continuing delay in settlement.

Example 2

State: Washington ***FMIS Project # 0000002***

The project is valid because further expenditures are anticipated. The project is a Safe Routes to School sidewalk improvement administered by the local agency. The construction was completed and inspected by the state on April 24, 2012; however, the balance of the construction contract cost has not been billed under the agreement because of a contractual wage rate complaint filed on July 11, 2012. The complaint alleges the contractor failed to pay its workers the required prevailing rate of wages. There is no specified time frame for the resolution/adjudication of the complaint and payment to the contractor may be delayed for a substantial period of time. A copy of the complaint action is on file in the offices of FHWA. WSDOT will monitor the matter and update FHWA accordingly.

CERTIFICATE OF INDIRECT COSTS

This is to certify that I have reviewed the indirect cost rate proposal submitted herewith and to the best of my knowledge and belief:

1. All costs included in this proposal (identify date) to establish billing or final indirect costs rates for (identify period covered by rate) are allowable in accordance with the requirements of the Federal award(s) to which they apply and the provisions of Appendix VII to 2 CFR Part 200, Subpart D (3), Required certification. Unallowable costs have been adjusted for in allocating costs as indicated in the indirect cost proposal.
2. All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently and the Federal Government will be notified of any accounting changes that would affect the predetermined rate.

I declare that the foregoing is true and correct.

Governmental Unit: _____

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

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.
9. Emergency repairs under 23 USC 125.
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.
14. Bus and rail car rehabilitation.
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.
24. Localized geotechnical and other investigation to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.
25. Environmental restoration and pollution abatement actions to minimize or mitigate the impacts of any existing transportation facility (including retrofitting and construction of stormwater treatment systems to meet Federal and State requirements under sections 401 and 402 of the Federal Water Pollution Control Act (33 U.S.C. 1341; 1342) carried out to address water pollution or environmental degradation.
26. Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing lanes), if the action meets the constraints in paragraph (e) of this section.
27. Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, if the project meets the constraints in paragraph (e) of this section.
28. Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings, if the actions meet the constraints in paragraph (e) of this section.
29. Purchase, construction, replacement, or rehabilitation of ferry vessels (including improvements to ferry vessel safety, navigation, and security systems) that would not require a change in the function of the ferry terminals and can be accommodated by existing facilities or by new facilities which themselves are within a CE.

30. Rehabilitation or reconstruction of existing ferry facilities that occupy substantially the same geographic footprint, do not result in a change in their functional use, and do not result in a substantial increase in the existing facility's capacity. Example actions include work on pedestrian and vehicle transfer structures and associated utilities, buildings, and terminals.

b. **D-list Categorical Exclusions (d-list CE)** – 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. This section has been deleted.
2. This section has been deleted.
3. This section has been deleted.
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. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify 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.

(i) Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.

(ii) Protective acquisition is done to prevent imminent development of a parcel which may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

a. Where a pattern emerges of granting CE status for a particular type of action, the FHWA will initiate rulemaking proposing to add this type of action to the list of categorical exclusions in paragraph (c) or (d) of this section, as appropriate.

13. Actions described in paragraphs (c)(26), (c)(27), and (c)(28) of this section that do not meet the constraints in paragraph (e) of this section.

a. Actions described in (c)(26), (c)(27), and (c)(28) of this section may not be processed as CEs under paragraph (c) if they involve:

(1) An acquisition of more than a minor amount of right-of-way or that would result in any residential or nonresidential displacements;

(2) An action that needs a bridge permit from the U.S. Coast Guard, or an action that does not meet the terms and conditions of a U.S. Army Corps of Engineers nationwide or general permit under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899;

(3) A finding of "adverse effect" to historic properties under the National Historic Preservation Act, the use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (section 4(f)) except for ac-tions resulting in *de minimis* impacts, or a finding of "may affect, likely to adversely affect" threatened or endangered species or critical habitat under the Endangered Species Act;

(4) Construction of temporary access, or the closure of existing road, bridge, or ramps, that would result in major traffic disruptions;

(5) Changes in access control;

(6) A floodplain encroachment other than functionally dependent uses (*e.g.* bridges, wetlands) or actions that facilitate open space use (*e.g.*, recreational trails, bicycle and pedestrian paths); or construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.

.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

Washington State Department of Transportation

Local Agency Environmental Classification Summary

Part 1 - Project Description			
Federal Aid Project Number	Route	Date	Intent of Submittal ☐ Preliminary ☐ Final ☐ Re-Evaluate
Agency		Federal Program Title ☐ 20.205 ☐ Other	
Project Title			
Beginning MP _____ Ending MP _____ Miles _____	Township(s) _____ Range(s) _____ Section(s) _____		
County			
Project Description (Describe the proposed project, including the purpose and need for the project)			

Part 2 - Environmental Classification	
NEPA	**SEPA**
☐ Class I - Environmental Impact Statement (EIS)	☐ Categorically exempt per WAC 197-11-800
☐ Class II - Categorically Excluded (CE)	☐ Determination of Non-Significance (DNS)
CE Type (from 23 CFR 771.117) _____	☐ Environmental Impact Statement (EIS)
☐ Projects Requiring Documentation (Documented CE) (LAG 24.22)	☐ Adoption
☐ Programmatic CE MOU	☐ Addendum
☐ Class III - Environmental Assessment (EA)	☐ Supplemental (For information purpose only)

NEPA Approval Signatures

_____ Local Agency Approving Authority — _____ Date

_____ Regional Local Programs Engineer — _____ Date

_____ Local Programs Environmental Engineer — _____ Date

_____ Federal Highway Administration — _____ Date

Completed By (Print Official's Name)	Telephone (include area code)	Email Address

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Part 3 - Permits and Approvals Required

Yes	No	Permit or Approval	Yes	No	Permit or Approval
☐	☐	Corps of Engineers ☐ Sec. 10 ☐ Sec. 404 ☐ Nationwide Type _____ ☐ Individual Permit No. _____	☐	☐	Water Rights Permit
☐	☐	Coast Guard Permit	☐	☐	Water Quality Certification - Sec. 401 Issued by _____
☐	☐	Coastal Zone Management Certification	☐	☐	Tribal Permit(s), (If any) _____
☐	☐	Critical Areas Ordinance (CAO) Permit	☐	☐	Other Permits (List): _____
☐	☐	Forest Practices Act Permit	☐	☐	ROW acquisition required? If yes, amount needed _____
☐	☐	Hydraulic Project Approval	☐	☐	Is relocaton required?
☐	☐	Local Building or Site Development Permits	☐	☐	Has ROW already been acquired for this project? If yes, attach responses to Appendix N in the ECS Guidebook.
☐	☐	Local Clearing and Grading Permit	☐	☐	Has and offer been made or have negotiations begun to acquire ROW for this project? If yes, attach responses to Appendix N in the ECS Guidebook.
☐	☐	National Pollutant Discharge Elimination System (NPDES) Baseline General for Construction	☐	☐	Is a detour required? If yes, please attach detour information.
☐	☐	Shoreline Permit			
☐	☐	State Waste Discharge Permit			
☐	☐	TESC Plans Completed			

Part 4 - Environmental Considerations

Will the project involve work in or affect any of the following? Identify proposed mitigation. Attach additional pages or supplemental information if necessary.

1. Air Quality - Identify any anticipated air quality issues.

Is the project included in the Metropolitan Transportation Plan? ☐ Yes ☐ No

If Yes, date Metropolitan Transportation Plan was adopted. _____

Is the project located in an Air Quality Non-Attainment Area or Maintenance Area for carbon monoxide, ozone, or PM10? ☐ Yes ☐ No

Is the project exempt from Air Quality conformity requirements? ☐ Yes ☐ No

If yes, identify exemption - please refer to appendix H in the ECS Guidebook for the list of exemptions

2. Critical/Sensitive Areas - Identify any known Critical or Sensitive Areas as designated by local Growth Management Act ordinances.

a. Is this project within
an aquifer recharge area ☐ Yes ☐ No
a wellhead protection area ☐ Yes ☐ No
a sole source aquifer ☐ Yes ☐ No

If located within a sole source aquifer, is the project exempt from EPA approval?

If Yes, please list exemption _____

If No, date of EPA approval _____

b. Is this project located in a Geologically Hazardous Area? ☐ Yes ☐ No If yes, please describe

c. Will this project impact Species/Habitat other than ESA listed species? ☐ Yes ☐ No Explain your answer.

Is the project within Bald Eagle nesting territories, winter concentration areas or communal roosts?
☐ Yes ☐ No

Will blasting, pile driving, concrete saw cutting, rock drilling, or rock scaling activities occur within one mile of a Bald Eagle nesting area? ☐ Yes ☐ No

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Part 4 - Environmental Considerations (continued)

d. Are wetlands present within the project area? ☐ Yes ☐ No If Yes, estimate the impact in acres _____

Please attach a copy of the proposed mitigation plan.

3. Cultural Resources/Historic Structures - Identify any historic, archaeological, or cultural resources present within the project's Area of Potential Effects.

Does the project fit into any of the exempt types of projects listed in Appendix J of the ECS Guidebook
☐ Yes ☐ No If Yes, note exemption below.

If No: Date of DAHP concurrence _____

Date of Tribal consultation(s) (if applicable) _____

Adverse effects on cultural/historic resources? ☐ Yes ☐ No

If Yes, date of approved Section 106 MOA _____

4. Floodplains and Floodways

Is the project located in a 100-year floodplain? ☐ Yes ☐ No

If yes, is the project located in a 100-year floodway? ☐ Yes ☐ No

Will the project impact a 100-year floodplain? ☐ Yes ☐ No If Yes, describe impacts.

5. Hazardous and Problem Waste - Identify potential sources and type(s).

Does the project require excavation below the existing ground surface? ☐ Yes ☐ No

Is this site located in an undeveloped area (*i.e.* no buildings, parking or storage areas or agriculture (other than grazing), based on historical research? ☐ Yes ☐ No

Is the project located within a one-mile radius of a site on a Confirmed or Suspected Contaminated Sites List (CSCSL) maintained by Department of Ecology? ☐ Yes ☐ No

Is this project located within a 1/2-mile radius of a site or sites listed on any of the following Department of Ecology databases? ☐ Yes ☐ No If yes, check the appropriate boxes below.

☐ Voluntary Cleanup Program (VCP)
☐ Underground Storage Tank (UST)
☐ Leaking Underground Storage Tank (LUST)

Has site reconnaissance (windshield survey) been performed? ☐ Yes ☐ No
If so identify any properties not identified in the database search that may affect the project (name, address and property use).

Based on the information above and project specific activities, is there a potential for the project to generate contaminated soils or groundwater? ☐ Yes ☐ No
Please explain

If you responded Yes to any of the above question, contact your Region LPE for assistance before continuing with this form.

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Part 4 - Environmental Considerations (continued)

6. Noise

Does this project involve constructing a new roadway? ☐ Yes ☐ No

Is there a change in the vertical or horizontal alignment of the existing roadway? ☐ Yes ☐ No

Does this project increase the number of through traffic lanes on an existing roadway? ☐ Yes ☐ No

Is there change in the topography? ☐ Yes ☐ No

Are there auxiliary lanes extending 1-1/2 miles or longer being constructed as part of this project? ☐ Yes ☐ No

If you answered Yes to any of the preceding questions, identify and describe any potential noise receptors within the project area and subsequent impacts to those noise receptors. Please attach a copy of the noise analysis if required.

If impacts are identified, describe proposed mitigation measures.

7. Parks, Recreation Areas, Wildlife Refuges, Historic Properties, Wild and Scenic Rivers/Scenic Byways, or 4 (f)/6 (f).

a. Please Identify any 4(f) properties within the project limits and areas of impacts.

b. Please Identify any 6(f) properties within the project limits and areas of impact.

c. Please list any Wild Scenic Rivers and Scenic Byways within the project limits.

8. Resource Lands - Identify any of the following resource lands within 300 feet of the project limits and those otherwise impacted by the project.

a. Agricultural Lands ☐ Yes ☐ No If yes, please describe all impacts.

If present, is resource considered to be prime and unique farmland? ☐ Yes ☐ No

If Yes, date of project review by Natural Resource Conservation Service (NRCS) _____

b. Forest/Timber ☐ Yes ☐ No If yes, please describe all impacts.

c. Mineral ☐ Yes ☐ No If yes, please describe all impacts.

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Part 4 - Environmental Considerations (continued)

9. Rivers, Streams (Continuous, Intermittent), or Tidal Waters

a. Identify all waterbodies within 300 feet of the project limits or that will otherwise be impacted.

Fisheries WA Stream No. _____ (if known)

Ecology 303d Report No. _____

Reason for 303d listing _____

Date of Report _____

Waterbody common name _____

b. Identify stream crossing structures by type.

c. Water Resource Inventory Area (WRIA) No. & Name: _____, _____

10. Tribal Lands - Identify whether the project will impact any Tribal lands, including reservation, trust and fee lands.

11. Visual Quality

Will the project impact roadside classification or visual aspects such as aesthetics, light, glare or night sky

☐ Yes ☐ No If Yes, please identify all impacts.

12. Water Quality/Storm Water

Has NPDES municipal general permit been issued for this WRIA? ☐ Yes ☐ No

Amount of existing impervious surface within project limits _____

Net new impervious surface to be created as a result of project _____

Will this project's proposed stormwater treatment facility be consistent with the guidelines provided by either WSDOT's HRM, DOE's western or eastern Washington stormwater manual, or a local agency equivalent manual?

☐ Yes ☐ No

If no, explain proposed water quality/quantity treatment for the new and any existing impervious surface associated with the proposed project.

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Part 4 - Environmental Considerations (continued)

13. Commitments

a. Environmental Commitments

- Describe existing environmental commitments that may affect or be affected by the project - If any.

b. Long-Term Maintenance Commitments

- Identify the agency and/or department responsible for implementing maintenance commitments associated with this project.

14. Environmental Justice

Does the project meet any of the exemptions, as noted in Appendix L of the ECS Guidebook ☐ Yes ☐ No
If Yes, please note the exemption and appropriate justification in the space below.

If No, are minority or low-income populations located within the limits of the project's potential impacts?
☐ Yes ☐ No If no, attach appropriate data to support findings. If yes, describe impacts and attach appropriate supporting documentation. Findings should be confirmed using at least two information sources. Please refer to ESC Guidebook for more information.

Part 5 - Biological Assessment and EFH Evaluations

1. Do any listed species potentially occur in the project's action area and/or is any designated critical habitat present within the project's action area? ☐ Yes ☐ No **Please attach species listings.**

Affected ESA Listed Species	2. Will any construction work occur within 0.5 miles of any of the following?	3. Does the project involve blasting, pile driving, concrete sawing, rock drilling, or rock scaling activities within one mile of any of the following?
Oregon Spotted Frog proposed critical habitat or suitable habitat?	☐ Yes ☐ No	☐ Yes ☐ No
Yellow-billed Cuckoo suitable habitat?	☐ Yes ☐ No	☐ Yes ☐ No
Spotted Owl management areas, designated critical habitat or suitable habitat?	☐ Yes ☐ No	☐ Yes ☐ No
Marbled Murrelet nest or occupied stand, designated critical habitat or suitable habitat?	☐ Yes ☐ No	☐ Yes ☐ No
Western Snowy Plover designated critical habitat?	☐ Yes ☐ No	☐ Yes ☐ No
Is the project within 0.5 miles of marine waters? If Yes explain potential effects on Killer Whales and on Marbled Murrelet foraging areas.	☐ Yes ☐ No	☐ Yes ☐ No
Killer Whale designated critical habitat?	☐ Yes ☐ No	☐ Yes ☐ No
Grizzly bear suitable habitat?	☐ Yes ☐ No	☐ Yes ☐ No

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Part 5 - Biological Assessment and EFH Evaluations (continued)		
Gray Wolf suitable habitat?	☐ Yes ☐ No	☐ Yes ☐ No
Canada Lynx habitat	☐ Yes ☐ No	☐ Yes ☐ No
Columbia White-tailed Deer suitable habitat?	☐ Yes ☐ No	☐ Yes ☐ No
Woodland Caribou habitat?	☐ Yes ☐ No	☐ Yes ☐ No
Streaked Horned Lark designated critical habitat or suitable habitat?	☐ Yes ☐ No	☐ Yes ☐ No
Taylor's Checkerspot designated critical habitat or suitable habitat?	☐ Yes ☐ No	☐ Yes ☐ No
Mazama Pocket Gopher designated critical habitat or suitable habitat?	☐ Yes ☐ No	☐ Yes ☐ No
Eulachon proposed designated critical habitat or suitable habitat?	☐ Yes ☐ No	☐ Yes ☐ No
Rockfish proposed critical habitat or suitable habitat?	☐ Yes ☐ No	☐ Yes ☐ No
A mature coniferous or mixed forest stand?	☐ Yes ☐ No	☐ Yes ☐ No

4. Will the project involve any in-water work? ☐ Yes ☐ No
5. Will any construction work occur within 300 feet of any perennial or intermittent waterbody that supports or drains to to waterbody supporting listed fish? ☐ Yes ☐ No
6. Will any construction work occur within 300 feet of any wetland, pond, or lake that is connected to **any** permanent or intermittent waterbody? ☐ Yes ☐ No
7. Does the action have the potential to directly or indirectly impact designated critical habitat for salmonids (including adjacent riparian zones)? ☐ Yes ☐ No
8. Will the project discharge treated or untreated stormwater runoff or utilize water from a waterbody that supports or drains into a listed fish-supporting waterbody, wetland, or waterbody? ☐ Yes ☐ No
9. Will construction work occur outside the existing pavement? If Yes, go to 9a. ☐ Yes ☐ No

9a. Will construction activities occurring outside the existing pavement involve clearing, grading, filling, or modifications of vegetation or tree cutting? ☐ Yes ☐ No

10. Are there any Federal listed, Threatened or Endangered plant species located within the project limits? ☐ Yes ☐ No
If yes, please attach a list of plant species within the action area.
11. Does a mature coniferous or mixed forest stand occur within 200' of the project site? ☐ Yes ☐ No

Effect Determinations for ESA and EFH

If each of the questions in the preceding section resulted in a "No" response or if any of the questions were checked "Yes", but adequate justification can be provided to support a "no effect" determination, then check "No Effect" below. If this checklist cannot be used for Section 7 compliance (i.e., adequate justification cannot be provided or a "may affect" determination is anticipated), a separate biological assessment document is required.

	NOAA Fisheries	USFWS
☐ No Effect	_____	_____
☐ NLTAA Date of Concurrence	_____	_____
☐ LTAA Date BO Issued	_____	_____
☐ RRMP 4(d)	_____	

Essential Fish Habitat Determination:

☐ No Adverse Effect

☐ Adverse Effect. Date of NMFS's concurrence

_____

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Analysis for No Effects Determination - If there are any Yes answers to questions in Part 5, additional analysis is required. Please attach additional sheets if needed.

Analysis for RRMP ESA 4(d) determination for NMFS

- **Maintenance Category** (check all that apply)

☐ 1. Roadway Surface	☐ 6. Stream Crossings	☐ 11. Emergency Slide/Washout Repair
☐ 2. Enclosed Drainage Systems	☐ 7. Gravel Shoulders	☐ 12. Concrete
☐ 3. Cleaning Enclosed Drainage Systems	☐ 8. Street Surface Cleaning	☐ 13. Sewer Systems
☐ 4. Open Drainage Systems	☐ 9. Bridge Maintenance	☐ 14. Water Systems
☐ 5. Watercourses and Streams	☐ 10. Snow and Ice Control	☐ 15. Vegetation

- **Describe how the project fits in the RRMP 4 (d) Program:**

Part 6 FHWA Comments

Use supplement sheet if additional space is required to complete this section.

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Chapter 25 Right of Way Procedures

25.1 General Discussion

The Real Estate Services website is located at www.wsdot.wa.gov/realestate.

Neither the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) nor its implementing regulations at 49 CFR Part 24 allow the certification of right of way (R/W) to be sub-delegated to any agency or any agency with Certification Acceptance (CA) status. The Washington State Department of Transportation (WSDOT) has overall responsibility to the Federal Highway Administration (FHWA) for the acquisition of R/W on all FHWA funded transportation projects in the state.

If there is federal funding on ANY phase of the project (P.E., R/W, or construction), R/W must be acquired in accordance with the requirements of this manual, in order for the project to be eligible for federal funding (49 CFR 24.101). R/W acquired prior to July 1, 1971, is exempt. Projects that do not use FHWA funding on any phase may choose not to follow the requirements of this chapter as outlined in RCW 8.26.010(2).

The acquisition process is regulated by Chapter 8.26 RCW and WAC 468-100.

WSDOT may, by written agreement, use the services of land acquisition organizations of counties, municipalities, or other state or local governmental agencies for acquiring rights of way for FHWA projects. Any such organization may be used only if it is adequately staffed, equipped, and organized to provide such services, and if its practices and procedures are in substantial conformity with WSDOT accepted procedures.

It is the responsibility of WSDOT to fully inform political subdivisions of their responsibilities in connection with federally-assisted transportation projects and to provide training to the local agencies. It is the local agencies' responsibility to comply with the requirements of this chapter, the URA, and 49 CFR Part 24. The local agency will assess their staff's level of expertise with the requirements stated above. If the local agency determines their staff does not fully understand these requirements, it is their responsibility to request assistance and/or training to ensure the acquisition process is followed correctly.

It is essential that local agencies and WSDOT communicate freely and work closely together during the entire acquisition process to expedite projects and to assure that all federal and state requirements are met. Early notification to the Region Local Agency Coordinator is required for projects with right of way acquisition when there are federal funds in any phase of the project (23 CFR 710.201 (h)). It is suggested that the ROW Phase Questionnaire (Form LPA-002) be completed during finalization of design, Guidance is provided in the *Right of Way Manual* M 26-01.

.11 Use of WSDOT Property – The Region Local Agency Coordinator (LAC) should be contacted immediately when it is determined that the local agency project requires the use of WSDOT's property. The LAC will advise the local agency of the process and timeline needed to acquire sufficient legal rights to construct and operate on WSDOT property.

.12 WSDOT Services – WSDOT is committed to an ongoing program which will provide effective assistance and guidance to local acquiring agencies. To this end, WSDOT will designate a LAC for each region to provide information and establish appropriate state staff contacts, provide training and educational opportunities for local agencies through workshops and acquisition course offerings, and provide mutually acceptable technical and advisory services as necessary to accomplish acquisition and relocation activities. These services are reimbursable to WSDOT either through a Local Agency Agreement or "J" Agreement.

WSDOT will consult and advise the local agency concerning real property interests' acquisition activities to ensure that R/W is acquired in accordance with provisions of state and federal laws and FHWA directives.

At the earliest possible date, the local agency should notify the LAC of upcoming federal-aid projects which have R/W acquisition. In addition, the local agency should advise the LAC of the need for WSDOT assistance.

.13 Consultant Services – When the local agency does not have adequate staff to perform appraisal, negotiation, or relocation functions, it may contract for these services and obtain federal participation in the costs.

The local agency should contact the Region Local Programs Engineer for assistance in preparing any contract for services to assure FHWA participation in the contract. FHWA has determined that the consultant agreements for R/W services must meet the consultant contracting requirements as described in Chapter 31. See Chapter 31 appendices for consultant agreements for appraisal and negotiation examples.

25.2 Right of Way Acquisition Procedures

Before requesting authority to acquire R/W, the local agency must have secured approval of acquisition procedures (Form LPA-001). Acquisition procedures are submitted on local agency letterhead to the Region Local Programs Engineer for review prior to final execution by the local agency. Region Local Programs forwards the procedures through the LAC for approval. The local agency will be approved to acquire R/W based upon the submitted procedures.

The level at which an agency will be approved will depend on the agency's staff qualifications. Qualifications should be specific to the right of way function for which the staff is listed. An agency with minimal staff may be approved to acquire a single project with direct supervision by the Region LAC. Local Program's notifies the local agency of the approval with a copy to the Region LAC. Periodic reviews of procedures will be conducted by the LAC on agencies acquiring R/W on federal aid projects. If through these periodic reviews it is determined that the local agency acquisition practices are not in full compliance, WSDOT may request a change to the approved procedures.

Approved procedures will designate the title of the position. When staff changes or additions occur, the agency will submit the person's right of way experience and qualifications to the LAC.

Procedures shall include the following:

1. Agreement to comply with state and federal laws and FHWA regulations. The agency should agree to follow this manual and the *Right of Way Manual* M 26-01 or the agency's own manual if they have a WSDOT approved R/W manual.
2. A listing of the agency's positions performing the separate functions of program administration, appraisal, appraisal review, acquisition, relocation, and property management. All agency positions that perform any of these separate functions should be listed. ***Note:*** Agency personnel such as administrators and members of the executive branch who might participate in the acquisition of R/W for federal aid projects need to be aware that their actions must conform to the Uniform Act and 49 CFR Part 24.
3. A listing of all current staff filling the agency's position(s) specified to perform each function, and a brief statement of their qualifications pertaining to the function they are performing. (See minimum qualifications for appraisal, appraisal review, and acquisition in this chapter.)
4. Appraisal waiver procedure (see Subsection 25.52, and Form LPA-003).
5. A procedure for handling administrative settlements including the approving authority(s) and process (see Subsection 25.11).

   Local Agencies must have a relocation appeal procedure in place, prior to starting relocation activities for any projects involving relocation assistance, as required by 49 CFR 24.10.

Note: Local Agencies need to submit FHWA Annual ROW Statistical Report for active federal aid projects by October 25 each year. The data provided is for ROW activities from October 1 through September 30.

.21 Determining Whether or Not Right of Way (Acquisition) is Needed (See Chapter 21) – See Appendix 25,174 and 25.175

1. **R/W (acquisition) Needed** is defined as land or property rights necessary for construction, operation and/or maintenance of the proposed project, or any prior (advanced/early) acquisition that was acquired specifically for the current project. This includes temporary rights required to complete the construction as shown on the PS&E (such as placing personnel, materials, equipment and machinery outside of existing R/W). If the agency, either through early acquisition (Section 25.43) or through transfer of property acquired for another use or purpose not associated with the current project, incorporates this land or property rights into the project, the agency will provide adequate documentation in the ECS showing when and why the property was purchased. If the property was purchased for use on the project (e.g. advanced/early acquisition), then the R/W must have been acquired in accordance with the requirements of this manual.

   Advanced/early acquisition is defined as prior land acquisition that was completed specifically for the current project. This does not include properties within the existing R/W that were purchased as part of a previous project. Regardless of the funding source, advanced/early R/W acquisition parcels must be included in the R/W Certificate. Contact the LAC if you have questions.

- If it is later determined that R/W is required, either a R/W Project Funding Estimate (PFE) or a True Cost Estimate, as applicable, a Right of Way Plan, and a Relocation Plan (if required) must be prepared and submitted to the Region Local Programs Engineer who will notify the Region LAC (who is responsible for review and approval). There are significant differences between the two forms of estimates and care must be used when selecting either the PFE or True Cost Estimate process. The Region LAC should be consulted when this decision is to be made. See Subsection 25.41 for explanations and requirements of the PFE and the True Cost Estimate.

2. No R/W (acquisition) Needed means that the proposed project can be built entirely within the existing roadway facility (the facility may be something other than roadway for projects under the Transportation Alternative Program). Existing R/W is defined as land already incorporated into the roadway facility or land previously certified under a previous federal aid project. Leases, permits and easements for construction activities, slopes, drainage, etc., whether temporary or permanent, are generally considered R/W acquisition.

   If it can be documented that the land or property rights were purchased for a purpose other than the transportation related project being certified, and that the land/property rights are no longer required for the original purpose, then the Uniform Act and 49 CFR Part 24 requirements do not apply. This would be considered existing right of way.

.22 Acquiring Right of Way – Acquisition of R/W may be performed by the following entities:

- By a local agency that is adequately staffed, equipped, and organized to discharge its R/W responsibilities and has R/W procedures approved by WSDOT. Staff may consist of qualified contract personnel and/or licensed private Real Estate Brokers (see RCW 18.85 in addition to or in lieu of regular employees of the agency).
- By another local agency that meets the requirements above.

.23 Acquiring Sufficient Property Rights – A local agency must acquire real property interests that are adequate for the construction, operation, and maintenance of the project (23 CFR 1.23 and 710.201(e)). The preference is for local agencies to purchase fee rights or temporary and permanent easements. However, there are circumstances when other real property interests can be considered. The details of these circumstances should be discussed with the LAC prior to submitting the Right of Way Plan for approval.

If the local agency is considering acquiring something other than fee or permanent easement real property interests, then they must provide documentation establishing how the real property interests they are purchasing satisfy the requirement for sufficient property rights. FHWA must be assured that their investment in the project is in the public interest and will last for a reasonable amount of time that is commensurate with the level of investment. There are no set guidelines that describe the appropriate term length, but 20 years is the absolute minimum term that should be considered. Longer terms may be required, and the higher the federal investment, the longer the term expected by FHWA. An analysis of the design life of the improvement must be done and the minimum term must equal the design life. Unless leases are with public

agencies, leases should be considered only under rare and unusual circumstances since they typically have termination clauses that could require the removal of improvements with little notice, and possibly without cause. Things to consider include:

- Is the term of the real property interest at least as long as the life cycle of the improvement? When will major maintenance be required and does the property interest term extend to when the first major maintenance is expected?
- What is the likelihood for renewal of the term of the real property interest, or invocation of any provision for its termination?
- Can a rational explanation of why the project is a good investment for FHWA under such circumstances be provided?
- If the rights acquired are from a governmental agency, is there anything in their regulations that prevent them from granting the rights requested?

Note: If FHWA does not accept the local agency's justification, they must be prepared for FHWA to either make a finding that they have not acquired sufficient property rights (which would preclude ROW certification) or FHWA may consider a conditional approval that would require the local agency to either repay the project funding or reestablish a replacement improvement in a new location with their own funds (and the right of way for the new location must have been acquired in accordance with the Uniform Act).

The following two situations are considered to be sufficient, and do not require the agency to complete a justification to be submitted for FHWA approval:

- DNR aquatic lands-DNR typically only grants term easements for uses of state-owned aquatic lands. The term of an easement will normally not exceed 30 years and is not renewable by policy. A new easement may be applied for one year in advance of the current easement agreement term expiration.
- BPA-typically only grants revocable permits (Land Use Agreement Fee) for uses under their power lines.

.24 Determining Acquisition of Property and/or (Sufficient) Property Rights- See Appendix 25.175

Fee – Fee title should be acquired when the agency needs the exclusive use and occupancy of the property for itself. Fee simple is the unqualified ownership and power of disposition of property; all rights to control, use and transfer the property at will are acquired.

Easements – An easement is a transfer of an interest in land from one party to another providing a right or privilege to enjoy the property or a part of it for a particular, specific purpose that is not inconsistent with the owner's use and enjoyment. Easements can be temporary, permanent, or for a specified term.

Permanent Easements – A permanent (perpetual) easement may be acquired when the agency needs a non-exclusive right to enter upon the property of another. A permanent easement for road, street, or highway purposes should include, but not be limited to, the right to occupy, construct, control, operate, maintain, and reconstruct the facility.

Non-Permanent Easements – An easement that has a defined term and expiration date. Some property owners, including state/federal agencies, are unwilling to grant permanent easements. Term easements may be acceptable provided the term equals the design life (see .23 above).

Temporary Easements – A temporary easement is used when the agency requires a property right which is temporary in nature, but are not part of the permanent right-of-way. Temporary rights expire by the terms in each individual temporary easement.

Permits – A permit or right of entry is not an interest in land. It only provides basic permission to enter upon property to a named entity for a specific purpose, usually for a specific period of time. It cannot be transferred and can be terminated or revoked by the owner at will. In most situations, permits are used when no other property rights are to be acquired from the same ownership as part of the same project, and are normally obtained without the payment of compensation (mutual benefit). Permits can be used with other agencies to perform work on their property, such as tying into another roadway. Permits are generally not considered sufficient to construct, operate or maintain proposed projects. When considering the use of permits or other property rights such as leases, rights of entry, land use licenses, etc. consult with the LAC.

All rights acquired for the project, including advanced/early acquisitions (see Appendices 25.174 and 25.175), must be shown on the right of way plan (see Section 25.4-.41). See also *Right of Way Manual* M 26-01 Section 6-5.

25.3 Voluntary Acquisition

A process called "Voluntary Acquisition," under 49 CFR 24.101(b)(1), which differs from "Donations and Willing Seller Transactions," may on rare occasion be appropriate for acquisition of property, but only if all of the following circumstances apply:

- No specific site or property needs to be acquired, although the agency may limit its search for alternative sites to a general geographic area. Where an agency wishes to purchase more than one site within a general geographic area on this basis, all owners are to be treated similarly. (See Appendix A, §24.101(b)(1)(i).)
- The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.
- The agency will not acquire the property if negotiations fail to result in an amicable agreement, and the owner is so informed in writing.
- The agency will inform the owner in writing of what it believes to be the market value of the property.

Since most acquisitions are for property needed for roadway projects, the only occasion where a voluntary acquisition may normally apply is to mitigation sites, and **only** if it can be shown that there are other viable mitigation sites being considered for acquisition. Trail projects typically do not meet the voluntary acquisition requirements. If local agency would like to treat any acquisitions for trails as voluntary, please contact your LAC for guidance.

If these circumstances appear to apply to a project, the Voluntary Acquisition process may apply, but **must** be approved by the LAC with Headquarters Real Estate Services

before any steps are taken to initiate the acquisition process. If approved, steps to follow for voluntary acquisition are governed by WAC 468-100-101 and shall include:

1. Clearly advise the property owner, in writing, prior to making any offers that the agency will be unable to acquire the property in the event that negotiations fail.
2. Provide the owner with an estimate of the fair market value of the property.
3. Provide relocation assistance to any tenants upon mutual acceptance by the acquiring agency and property owner.

If approved, the local agency must work closely with the LAC on all steps of the voluntary acquisition process.

Note: Real estate transactions using this process are subject to real estate excise tax. Also, the statutory evaluation allowance (RCW 8.25.020) will not be reimbursable, as it is only required for acquisitions made under threat of eminent domain (see Subsection 25.96).

25.4 Right of Way Acquisition

When there is federal participation in **any** phase of a project (PE, RW and/or CN), federal regulations **must** be followed. A checklist of Federal Aid Requirements is included in Appendix 25.178, with useful reminders and should be used as guidance to ensure compliance.

.41 Acquisition With Federal Funds – Prior to the authorization of federal funds for R/W, the following requirements must be met: compliance with Chapter 14, FHWA approval of environmental (NEPA) documents, and the submittal of the following documents to the Region Local Programs Engineer.

- Local Agency Agreement Supplement.
- Estimate of probable R/W costs and expenses broken down by parcel. There are two types of estimates:
  - **Project Funding Estimate** (PFE) is a detailed parcel-by-parcel estimate of total expected right of way acquisition costs and is used to obtain authorization and funding for the project. A PFE is based on market transactions (sales) that reflect the current real estate market. Ideally, it is completed by an appraiser, an appraisal reviewer, and a relocation expert. Other R/W staff with appropriate experience, including qualified consultants, may also prepare a PFE.
    1. A Project Funding Estimate (PFE) is prepared for every project where right of way will be acquired, unless all properties to be acquired are to be appraised or donated.
    2. As a minimum, the PFE contains the following information.
       a. A parcel-by-parcel list of right of way costs with project summary totals reported on the Right of Way Project Estimate and Cost Breakdown.
       b. A project data package including sales, sales map, neighborhood and project description, scope of sales search and, if applicable, damage studies, cost to cure documentation, and Assumptions and Limiting Conditions.

          Note: The PFE Parcel Worksheet is included in the data package.

The Agent/appraiser assigned to do the PFE completes the estimate as follows:

1. Inspect the project and becomes familiar with the engineering features of the plan.
2. View individual parcels to determine the effects of acquisition.
3. Prepares a Neighborhood and Project Description which defines existing uses, zoning, trends, transportation and utilities, economic influences, a synopsis of the project and its effect on parcels, and any changes in the aforementioned likely to be caused by the project.
4. Gathers sufficient comparable land sales and listings for the various types of parcels and remainders within the project. All sales shall be inspected, photos taken and written up on Market Data Sheets (Form RES-210). (If the sales are to be used exclusively on parcels where the Agency has determined to waive the appraisal, the sales must be confirmed. In all other cases, a reasonable effort shall be made to confirm all sales. Unconfirmed sales will contain an explanation of the confirmation effort including the parties' names and phone numbers where attempts to make contact were unsuccessful.)
5. Prepares project and sales vicinity map.
6. Prepares PFE Parcel Worksheet for each parcel on the project.
7. Includes any applicable damage studies.
8. Includes cost-to-cure documentation for estimates and/or bids.
9. Includes applicable Assumptions and Limiting Conditions if data Package will be referred to in the preparation of Abbreviated Appraisals.

See Appendix 25.172 for a sample estimate summary and a sample neighborhood analysis and Form LPA-215 PFE Parcel Worksheet. See also *Right of Way Manual* Section 4-2 for the requirements for a PFE (42.1, paragraphs E, F, and G do not apply to local agencies).

– **True Cost Estimate** can be used only when all parcels are to be appraised or donated. The R/W PFE **must** be used if the agency wishes to make use of the appraisal waiver procedure (see Subsection 25.52). A True Cost Estimate is a parcel-by-parcel estimate of total expected right of way acquisition costs drawn from the County Assessor's records, from replacement cost schedules for minor site improvements or estimates from local vendors, and is used to obtain authorization and funding for the project; therefore, the level of expertise required for its preparation may be less stringent than for a PFE.

  A True Cost Estimate consists of three parts: a worksheet for each parcel to be acquired, a table summarizing all estimated acquisition costs, and a neighborhood/project description. They should generally conform to the examples provided in Appendix 25.173.

- Approved R/W plan (part of Approved Design Documentation-Appendix 43.62).
- WSDOT approved relocation plan (if relocation is required, contact the LAC for assistance).

A R/W Plan indicating the property required to build and maintain the transportation project is required. A right of way plan is a valuable visual-aid tool for negotiators, appraisers, and attorneys involved in acquisition transactions. It also helps property owners understand why and how their properties are being acquired.

The Agency's approved* R/W plan shall contain essential data needed for appraisal, negotiation, and right of way certification activities, and illustrate the following information:

- Survey line or centerline for the alignment. Please contact the Local Agency Coordinator if other acceptable survey practices are proposed to establish the alignment.
- Sufficient information for preparation of legal descriptions of the affected properties and types of property interests to be acquired.
- Design features, width of the new highway (alignment), grade changes, and other detail of the construction.
- The property lines and owner's names for each affected property, in its entirety, along with all contiguous parcels to the property being acquired and owned by the same owner. the parcel identification number; the calculated area(s) of the parcel(s) to be acquired, including any easement areas; the calculated area(s) of the remainder parcel(s).
- The seal and signature of a registered Professional Engineer or Professional Land Surveyor in accordance with RCW 18.43.070 and RCW 58.09. (*considered as Agency approval.)

It is advised that a draft of the R/W plan be submitted to the LAC for review and comment prior to its approval by the Agency.

As a "best practice" it is recommended R/W plans illustrate the following additional information:

- For affected parcels, improvements within 100' feet of the existing R/W, including those improvements that may be damaged by the project (i.e. residences, commercial structures, signs, septic systems including reserve area, wells, driveways, fencing, irrigation systems).
- Vicinity Map showing the project limits.

Once FHWA approval has been obtained for the obligation of funds for the R/W Phase, Local Programs will notify the local agency of authorization to proceed with R/W acquisition. No acquisition costs are eligible prior to this authorization.

.42 R/W Phase With Local Agency Funds Only – If federal funds are to be used in any part of the project, or the property is later incorporated into a federally funded project, federal guidelines for acquisition of the R/W must be followed. The local agency must also follow the local agency's approved procedures, which typically requires the LAC to review all offers and supporting data before they are presented to the property owner. The R/W Map requirements in Section 25.41 also apply if federal funds are in PE or Construction phases.

NOTE: A PFE is not required unless the local agency intends to use the appraisal waiver process for the preparation of Administrative Offer Summaries (AOSs). The AOSs must be based on the PFE. A True Cost Estimate cannot substitute for a PFE when preparing appraisal waivers.

In order to minimize potential problems which may surface during the certification process, the local agency submits a copy of the R/W plan and Relocation Plan (if applicable) for review/approval before starting the acquisition process. A copy of the R/W plan must be made available at the time of certification.

.43 Acquisition in Advance of NEPA Project Clearance – *There are three circumstances under which R/W can be acquired in advance of NEPA clearance.* In each case, federal guidelines must be followed in the acquisition process. The Agency should place copies of any documentation pertaining to early acquisition approval in the parcel acquisition file if it is required as described below. In addition, note the date and actions pertaining to such approval in the parcel acquisition diary.

1. **Agency Funded Early Acquisition** – An agency may use its own funds to purchase R/W prior to NEPA clearance. Refer to the Environmental Classification Summary (ECS) Guidebook's Appendix F for documentation requirements.

   a. An agency may apply market value (or if donated, the current appraised value) toward their share of project costs, as long as they meet the requirements of 23 CFR 710.501(b). The acquisition of advance R/W must not influence the environmental assessment for the project. Properties with a 4(f) Resource may not be purchased if the agency wants to apply the market value toward their share of project costs. The agency cannot be reimbursed for the cost of the appraisal or any other documentation necessary to meet the requirements of 23 CFR 710.501(b).

   Procedures for Local Agency-Funded Acquisition in Advance of Project NEPA Decision (With Match) – If the local agency establishes that the parcel is to be acquired early (in advance), then standard acquisition procedures are followed.

   Eminent domain will not be used.

   When the project is funded and credit is sought, the local agency must provide documentation determining the following:

   1. The property was lawfully obtained by the agency.
   2. The property was not land described in 23 USC 138 (a.k.a. 4(f)).
   3. The property was acquired in accordance with the provisions of 49 CFR Part 24 (a.k.a. Uniform Act).
   4. The agency complied with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4).
   5. The agency determined and FHWA concurs that the action taken did not influence the environmental assessment for the project, including:
      a. The decision on need to construct the project.
      b. The other options that were considered and an explanation of why they were rejected in favor of the one that was selected.
      c. The selection of the design or location.
   6. The property will be incorporated into a federal aid project.

7. The original project agreement covering the project was executed on or after June 9, 1998.

The documentation shall be completed as part of the NEPA documentation (DCE/ECS, FONSI, ROD). The local agency will provide documentation to meet the requirements (1) through (7) above. By signing the ECS, WSDOT and FHWA concur with the local agency's determination, and that the market value of the property can be used as match.

Use the fair market value (FMV) from the time of purchase of the property (historic acquisition costs) toward the match. Any settlement amounts above the FMV, relocation costs, appraisal fees, etc., are not eligible for match. Current fair market value (based on a new appraisal) may be used in those instances where: (1) there has been a significant lapse in time since the property was acquired, or (2) there has been a significant change in market conditions (not caused by the project) since the property was acquired. This would require FHWA approval. If multiple parcels are used as match, the same method for determining Fair market Value must be used on all parcels.

All documentation shall be retained as required by Section 25.16.

b. The agency may purchase property without requesting the market value toward their share of the project costs as long as they meet 23 CFR 771.113(d)(4) requirements. Under this option the agency may purchase property with a 4(f) resource.

Procedures for Locally-Funded Acquisition in Advance of Project NEPA Decision (Without Match) – If the local agency establishes that the parcel is to be acquired early (in advance), then standard acquisition procedures are followed.

Eminent domain will not be used.

The documentation required as detailed in the ECS (see Chapter 24) shall be completed as part of the NEPA (DCE/ECS, FONSI, ROD). The local agency will provide justification establishing that all of the documentation requirements for 40 CFR 1506.1 have been met.

All documentation shall be retained as required by Section 25.16.

2. **Protective Buying/Hardship Acquisition** – An agency may purchase R/W prior to project NEPA clearance under the federally funded protective buying and hardship acquisition provisions, as per 23 CFR 710.503. Note, however, that while these purchases are in advance of formal NEPA clearance of the project, individual clearance via a Categorical Exclusion is required. Consequently, although the project has not yet been cleared, the individual parcels have been cleared.

To use protective buying, the agency will have to provide documentation showing that development of the property is imminent and that the development would limit future transportation choices.

To use hardship acquisition, the agency must have a property owner's written submission providing justification that remaining on the property poses undue hardship compared to others. Furthermore, the property owner must provide

written documentation showing their inability to sell the property. This process is described in greater detail in *Right of Way Manual* Section 6.3-3.

The agency must work with the LAC from the outset if they are proposing to use protective buying or hardship acquisition. **FHWA approval is required for protective buying and hardship acquisition.**

3. **Federally Funded Early Acquisition** – An agency may request to use federal funds for parcel acquisitions prior to Project NEPA clearance. This federally-funded early acquisition must be treated as a stand-alone project. Prior to requesting funding authorization, the Acquisition Project must be in the STIP. Furthermore, NEPA for the parcel must be complete.

   Procedures for Federally-Funded Acquisition in Advance of Project NEPA Decision – Prior to starting acquisition of right of way using federal funds under the advance acquisition process there are certain steps that must be completed in addition to standard activities. These additional steps are as follows:

   - Verify that the project for which the right of way is being acquired for is funded for construction and that the early acquisition project meets all requirements for inclusion in the TIP/STIP.
   - Submit project information for inclusion in the TIP/STIP to the appropriate MPO/RTPO to create the stand alone project.
   - Complete the parcel level NEPA document.
   - The acquisition cannot be done under the threat of eminent domain.
   - The acquisition will not result in the reduction of relocation benefits or assistance to displaced persons.
   - The Agency cannot demolish any improvements on the acquired property.

   Once the above three steps are completed, submit the LA agreement through Local Programs for approval. Local Programs on behalf of the local agency will certify that all requirements will be met.

   Local Programs will obtain FHWA concurrence in the advance acquisition through approval of the federal aid project.

   The early acquisition documentation required as detailed in the ECS (see Chapter 24) Appendix F shall be completed as part of the Project NEPA (DCE/ECS, FONSI, ROD), not the Acquisition NEPA.

   All documentation shall be retained as required by Section 25.16.

25.5 Appraisal/Appraisal Waiver – Administrative Offer Summary (AOS)

Per 49 CFR 24.102(n)(3), negotiators cannot supervise appraisers, review appraisers, or waiver valuation preparers, unless FHWA approves a waiver of this requirement, and appraisers, review appraisers, or waiver valuation preparers shall not have any interest, direct or indirect, in the property being valued.

.51 Appraisal – The requirements pertaining to the appraisal of property to be acquired are given in *Right of Way Manual* Chapter 4. If desired, a listing of WSDOT approved fee appraisers and appraisal reviewers is available from the Region LAC or via a link on the WSDOT Real Estate Services website at www.wsdot.wa.gov/realestate.

The appraiser shall be an experienced, qualified appraiser. At a minimum, an appraiser should have a college degree or four years of active experience in the real estate field leading to a basic knowledge of real property interest valuation, or any combination of such experience and college study to provide a total of four years beyond high school graduation. An appraiser who is qualified under WSDOT criteria and on WSDOT's approved appraiser list will be considered qualified for FHWA projects.

The appraiser shall prepare an appraisal report which is a written document containing among other elements, the following:

1. The purpose of the appraisal which includes a statement of the estimated value and the rights or interests being appraised.
2. The estimate of just compensation for the acquisition. In the case of a partial acquisition, allocate the estimate of just compensation for the property to be acquired and for damages to remaining property in either the report or a separate statement.
3. The data and analyses (or reference to same) to explain, substantiate, and document the estimate of just compensation.

A complete explanation of requirements for an acceptable appraisal report can be found in *Right of Way Manual* Chapter 4.

Appraiser/Owner Contact – The appraiser shall document in the appraisal report his or her attempts to contact the property owner, which shall include an attempt to contact the property owner either by phone or in person.

.52 Appraisal Waiver (commonly referred to as Administrative Offer Summary (AOS)) – In accordance with 49 CFR 24.102(c)(2)(ii), an appraisal and appraisal review can be waived in certain cases. To qualify, the just compensation, based on the R/W Project Funding Estimate, must be no greater than the appraisal waiver limit as defined in the agency's approved R/W procedures (typically $25,000), the acquisition **must be uncomplicated**, and the only damages will be minor cost to cure items. The combined estimate of the just compensation plus the cost to cure(s) cannot exceed the agency's approved waiver limits. The PFE must be based on confirmed comparable sales and must reflect the current market.

For example, if the agency plans to acquire a strip of land that they estimate is worth $12,000, but the acquisition will change/limit the owner's ability to develop their property at some point in the future, the appraisal waiver procedure **cannot** be used because it is no longer uncomplicated and an appraisal must be prepared by a qualified appraiser.

In such instances where the appraisal is waived, just compensation should be based on current comparable sales. All data used to arrive at an estimate of just compensation must be included in the project file. When the waiver procedure is used, it is important that the local agency determines that the offer being made is fair and equitable.

In March 2013, WSDOT updated its AOS policy. The local agency must update their Appraisal Waiver Procedure (Form LPA-003), to reflect the new policy. Otherwise, the agency must continue to offer an appraisal for all AOS's regardless of the amount, as specified in their procedures under the prior policy. Any project were acquisitions were initiated under a prior AOS policy must continue with that prior policy until completion of the project's right of way phase.

If the LPA has updated their Appraisal Waiver Procedure to reflect the new policy the following applies:

- If the AOS is $10,000 or less, the offer must state that an administrative offer is being made and an appraisal has not been completed.
- If the AOS is $10,001 or greater, the offer must state that an administrative offer is being made, that an appraisal has not been completed and an appraisal will be prepared if requested by the property owner.

Appraisal Waiver (AOS) Value Limits	
Condition A: $10,000 or Less	**Condition B: $10,001 to $25,000**
No requirement to offer to provide property owner with an appraisal.	Offer letter must include provision that the agency will provide an appraisal at the property owner's request.

Under Condition B, if the owner requests an appraisal, the local agency **is required** to provide and pay for one that meets the standards outlined in Subsection 25.51. See also Form LPA-003 Appraisal Waiver Procedure.

25.6 Appraisal Review

The requirements pertaining to appraisal review of the property to be acquired is provided in *Right of Way Manual* Chapter 5.

The reviewing appraiser should be knowledgeable of the property values in the project area. The depth of review should be in direct relationship to the difficulty of the particular appraisal. The reviewing appraiser must be either a WSDOT review appraiser, on the approved list of review appraisers maintained by WSDOT, or an employee of the acquiring agency, who is authorized by their approved R/W procedures to review appraisals. To qualify as an agency review appraiser, an individual must, at a minimum, be a Certified General Appraiser with the Washington State Department of Licensing and have successfully completed at least one appraisal review training class approved by WSDOT.

The reviewing appraiser should field inspect the property appraised as well as the comparable sales which the appraiser(s) considered in arriving at the fair market value of the whole property and of the remainder(s), if any. If a field inspection is not made, the file shall contain the reason(s) why it was not made.

The reviewing appraiser shall examine the appraisal reports to determine that they:

1. Are complete in accordance with this manual and contain the criteria required by *Right of Way Manual,* Chapter 4, Appendix 4-1, Appraisal Guide.
2. Follow accepted appraisal principles and techniques in the valuation of real property interest in accordance with existing state law.
3. Include consideration of compensable items, damage, and benefits, but do not include compensation for items non-compensable under state law.

The reviewing appraiser shall place in the parcel file a signed and dated statement (Form LPA-214b Local Agency Certification of Value) setting forth:

1. An estimate of just compensation including, where appropriate, the allocation of compensation for the property acquired and for damages to remaining property.
2. A listing of the buildings, structures, fixtures, and other improvements on the land which were considered part of the property to be acquired.
3. If applicable, a statement that there is an uneconomic remnant/remainder, and the value of the remainder.
4. A statement that the reviewing appraiser has no direct or indirect present or future interest in such property or in any monetary benefit from its acquisition.
5. A statement that the estimate has been reached independently, without collaboration or direction, and is based on appraisals and other factual data.

.61 Uneconomic Remainders – An uneconomic remainder is defined as a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and which the agency has determined has little or no value or utility to the owner (49 CFR Part 24.2(27)).

For partial acquisitions, the review appraiser determines (if staff) or recommends (if fee) whether the remainder is uneconomic. If the remainder will no longer have utility to the owner, and the **local agency determines** that it is uneconomic, the agency must offer to purchase the remainder from the property owner.

See *Right of Way Manual* Section 5-5.2 for detailed instructions regarding the review appraiser's responsibilities for reporting and documenting uneconomic remainders.

25.7 Agency Concurrence for Setting Just Compensation

In conformance with 49 CFR 24.102(d), it is the responsibility of the **agency** to set just compensation. This can be done by adding a line to the bottom of the review appraiser's certificate as shown on Form LPA-214b Local Agency Certificate of Value, to the bottom of the Administrative Offer Summary (AOS), or by stating the same information in a separate memo. In either case, the statement must be signed and dated by an employee of the agency who has approving authority **prior** to the time the offer is made. When a right of way plan revision occurs, a new AOS, appraisal and/or Certificate of Value may be required.

Before initiating negotiations for the acquisition of real property interests, the **agency** shall establish the just compensation which **shall not** be less than the approved appraisal of the property and shall make a written offer to acquire in that amount. Appraisals are not required if an AOS has been prepared or if the owner has indicated a willingness to donate the R/W after being informed of their right to receive just compensation. If an appraisal waiver was used to set just compensation, the negotiator must notify the property owner that they can request an appraisal be prepared in accordance with the agency's approved Appraisal Waiver Procedure. (The threshold for offering an appraisal depends on the Agency's approved Appraisal Waiver Procedure in place at the time of the offer). The local agency is responsible for providing and paying for this appraisal.

25.8 Title

The agency will acquire evidence of the condition of title for all properties from which real property interest rights are to be acquired. It is suggested that a title report be ordered from a title company and the title to the property acquired cleared so that a policy of title insurance can be issued showing title vested in the agency subject only to those exceptions which can reasonably be accepted. If a title company is not used to provide this information, the acquisition file must include sufficient documentation to validate the signatories on the instruments and show that the interest acquired is free from unreasonable encumbrances.

Special care should be taken to insure that the parties shown as the vested owners by the title evidence are named correctly in the conveyance instruments, and that the parties signing are the same or have authority to sign. The notary acknowledgement form (jurat) should be appropriate for the status of the granting party. See Chapter 8 of the ROW Manual for guidance.

In general, the elements necessary to acquire the needed real property interest(s) are:

1. Acquisition instruments signed by all parties with an interest in the fee title.
2. Releases from mortgages and deeds of trust. If the local agency determines that it wants to accept title subject to a monetary lien, the local agency should look to Chapter 8 of the ROW Manual for guidance as to informing the owner of their potential risks.
3. Releases of encumbrances, such as easements, which adversely impact the rights being acquired.
4. Releases of priority liens, such as materialman's liens, judgments, state tax liens, and federal tax liens.

25.9 Negotiations

Various requirements in negotiating an acquisition of property are found in *Right of Way Manual* Section 3-4.1C.

.91 Qualifications – If a local agency uses a consultant fee negotiator, the negotiator must meet the applicable state licensing requirements (verify with the Department of Licensing).

For local agency staff to be approved to acquire property without direct supervision by the LAC, they must have either an Associate Degree in real estate or a Bachelor Degree or equivalent experience. In addition, they must have two years full-time experience in real estate acquisition, sales leasing, appraisal, title, escrow, or property management. One year of experience must be in eminent domain acquisition performed according to the provisions of the Uniform Act. Additional experience in eminent domain acquisition can replace education on a year-for-year basis.

Local agencies using staff to negotiate who do not have the necessary qualifications must work closely with the LAC as explained in the Procedures Approval letter.

.92 Separation of Functions – A separation of functions maintains the integrity of the acquiring agency's transactions. Thus, the appraisal, appraisal review, and negotiations for a parcel are performed by three different persons. It is recognized that the use of two separate individuals as appraiser and negotiator on a low-value acquisition can be both difficult and expensive. The use of a single qualified individual to both, appraise (or prepare an AOS) and negotiate a parcel is permitted where the value of the acquisition is $10,000 or less if stated in the local agency's Approved Procedures. It should be noted that the appraisal shall be reviewed prior to negotiations, and the review appraiser shall be neither the appraiser nor the negotiator.

.93 Offer/Summary Statement – Upon initiation of negotiations, the agency shall provide the owner of real property and/or property rights to be acquired with a summary of the appraisal (they can provide the appraisal to fulfill this requirement), or if an Administrative Offer Summary (AOS) a copy of the comparable sales data, a written offer letter, including a summary of the basis for the amount it has established as just compensation for the proposed acquisition. At a minimum the offer letter shall include the following:

1. The amount established as just compensation.
2. A statement explaining that the offer is based either on an appraisal made by a qualified appraiser and reviewed by a qualified Review Appraiser, or an Administrative Offer Summary (AOS) under the Appraisal Waiver Procedure). The LPA's current approved Appraisal Waiver Procedure will determine the agency's obligations for offering an appraisal if one was not performed.
3. Identification of the real property to be acquired, including the estate or interest being acquired.
4. Identification of improvements and fixtures considered to be part of the real property to be acquired.
5. The amount of just compensation for the real property to be acquired and any amount included for damages to remaining real property shall be separately stated.

When a right of way plan revision occurs, a new AOS, appraisal and/or Certificate of Value may be required, especially if the acquisition area or the property interests to be acquired changes.

For an AOS offer letter template, see LPA-350. It should be noted, the local agency should review their current approved Appraisal Waiver Procedure to confirm that the correct language is being used in the offer letter.

.94 Donation (see Also Section 25.10 Donated Property) – A donation may be accepted only after the owner has waived, in writing, their right to just compensation and has released the local agency from its obligation to have the property appraised (see sample donation letter in Appendix 25.177). This applies to individuals, businesses, corporations, and other private entities. Donations from government agencies are exempt from these requirements. If a donation is accepted in advance of NEPA clearance, additional documentation will be needed in the ECS form.

.95 Dedication – R/W obtained through normal zoning, subdivision, or building permit procedures may be incorporated into a federal aid project without jeopardizing participation in other project costs, provided such dedication does not constitute an unconstitutional taking. Dedicated land incorporated into the roadway facility is considered part of the existing ROW (as defined in Subsection 25.22 item 2.). As such, dedicated land is not required to be included in a right of way certification.

.96 Statutory Evaluation Allowance (SEA) – The agency must notify the property owner of the availability of a statutory evaluation allowance not to exceed $750 to help defray the owner's expenses actually incurred in evaluating the agency's offer (RCW 8.25.020). This statutory requirement only applies to offers made under the threat of eminent domain. Therefore, when an agency's offer is NOT under threat of eminent domain, either by choice or regulation (such as early/advance or voluntary acquisitions), the agency does NOT have to notify the owner of the $750 SEA. An agency is not prohibited from offering the $750 SEA on non-eminent domain offers; however, FHWA will not participate in the cost. Agencies must be consistent in their policy to offer (or not offer) the $750 SEA to property owners, and apply it uniformly.

.97 Documentation – A diary or negotiator's log must be maintained for each parcel wherein each individual involved in a negotiation, a relocation, or a property management function shall enter and initial a suitable description of each contact and other information concerning that function. See Section 25.15 for additional direction on preparing diaries. Upon request, the Region LAC will provide explanations and examples of adequate records.

When negotiations are complete, the negotiator shall keep in the project file a signed statement for each parcel that:

1. The written agreement embodies all considerations agreed to by the negotiator and the property owner.
2. The negotiator understands that the acquired property is for use in connection with a federal aid transportation project.
3. The negotiator has no direct or indirect interest in the property or in any monetary benefit from its acquisition, at present or in the future.
4. The agreement has been reached without any type of coercion.

.98 Negotiations by Mail – If no relocation is involved, the local agency may conduct R/W negotiations as follows:

1. Mail to the owner the fair-offer letter, a summary statement (explains nature of acquisition, conditions affecting remainder after construction, and other pertinent details which would have been explained in a face-to-face meeting with owner), the document of acquisition (deed, easement, or other document required for

signature), property plat or sketch showing acquisition limits and effects on any remainder, and a copy of an acquisition brochure. For an AOS offer letter sample, see LPA-350.

2. Within a reasonable period of time, typically about two weeks, make a follow-up phone call (documented in the diary). Answer questions or, if owner requests it, make an appointment for personal contact.
3. Follow normal procedures for further negotiations.

.99 Acquisition of Contaminated Properties – The agency should take reasonable care to determine if properties needed for a project are contaminated. In the case where properties being acquired by the agency will become part of a state highway, the agency must involve WSDOT in the acquisition process as early as possible to ensure that the property will be in an acceptable condition for WSDOT to accept the transfer of ownership. The local agency should contact the LAC if they are considering acquisition of contaminated properties.

.100 Global Settlements – A global settlement is the combining of just compensation and relocation benefits into a lump sum settlement.

Because global settlements could compromise the entire project's federal aid eligibility, FHWA will not accept a project R/W certification if it includes a global settlement. The local agency should contact the LAC if they are considering global settlements.

.101 Functional Replacements – When publicly-owned real property, including land and/or facilities, is to be acquired for a federal aid highway project, in lieu of paying the fair market value for the real property interest, the local agency may provide compensation by replacing the publicly-owned real property with another facility which will provide equivalent utility.

The local agency must contact the LAC if they are considering a functional replacement. **FHWA will be involved in this process and will have final approval.**

25.10 Donated Property

Donations of right of way can be accepted only after the owner has been fully informed by the local agency of their rights to receive just compensation and has released the local agency from its obligation to have the property appraised (49CFR 24B, Sec.24.108). A copy of the notice issued to the property owner informing them of their rights available and the donation statement signed by the owner must be included in each parcel file (Appendix 25.177). The donation statement from the owner might also be accomplished by having language similar to that found in Appendix 25.177 included in the conveyance instrument or agreement, or in an email to the property owner to which the property owner has replied affirming their understanding of their right and releasing the local agency of its obligation. Section 323 of 23 USC provides for using the value of donated lands as part of the match against an agency's contribution to the project. Certain conditions need be met:

- The credit may only be applied to a federal aid project if federal financial assistance was not used in any form to acquire the land. Credit to the matching share may not exceed the matching share of costs for that project and excess costs may not be utilized on other projects.

- The donation must be related to the project requiring the donated land.
- Donations of privately-owned real estate made after April 2, 1987, and subsequent to NEPA clearance, are eligible for credit purposes. If a donation is accepted in advance of NEPA clearance, additional documentation will be needed in the ECS form. The value of publicly-owned real estate donated after June 8, 1998, is eligible for match credit.

For donation letter examples, see Appendix 25.177.

25.11 Administrative Settlements

The Uniform Act requires that "The head of a federal agency shall make every reasonable effort to expeditiously acquire real property interests by negotiation." Negotiation implies an honest effort by the acquiring agency to resolve differences with property owners. Additionally, the legislative history of the Uniform Act indicates that offers can be flexible, and there is no requirement that they reflect a "take it or leave it position." Negotiations should recognize the inexact nature of the process by which just compensation is determined. Further, the law requires an attempt by agencies to expedite the acquisition of real property interests by agreements with owners and to avoid litigation and relieve congestion in the courts.

In addition to the mandates of the Uniform Act, there are significant cost savings which can be realized through an increased use of administrative and legal settlements. Cost savings are in the areas of salaries, witness fees, travel, per diem, court costs, etc.

FHWA and WSDOT encourage local agencies to carefully consider and maximize use of administrative settlements in appropriate situations.

An administrative settlement or stipulated settlement is a negotiated settlement of a R/W acquisition case in which the agency has administratively approved payment in excess of fair market value as shown on the agency's approved just compensation. Since relocation benefits by regulation cannot be waived, care should be taken not to include "relocation" in a blanket settlement as the agency may still be required to pay additional benefits as part of the relocation program. This is sometimes called a global settlement (see Subsection 25.100).

1. **Any administrative settlement which exceeds the fair market value must be documented, thoroughly justified, and the rationale set forth in writing in order to be eligible for federal aid funds.** The extent of written explanation is a matter of judgment and should be consistent with the circumstances and the amount of money involved. If the local agency has any doubt as to eligibility, it should obtain prior approval from WSDOT through the Region LAC.
2. The local agency shall document the following and make it available for review by WSDOT if it is not already part of the agency's approved procedures:
   a. Identify the responsible official who has the authority to approve administrative settlements.
   b. Describe the procedure for handling administrative settlements.
3. The designated local agency representative may approve an administrative settlement when it is determined that such action is in the public interest. In arriving at a determination to approve an administrative settlement, the designated

official must give full consideration to all pertinent information. The settlement justification must include an analysis of the circumstances of each individual parcel that convince the agency that an administrative settlement is in the agency's and public's best interest. This documentation shall be completed and approved by the designated local agency official prior to payment(s) being made. The list below is a sample of items to be considered for an administrative settlement, and should not be used as a template.

- The negotiator's recorded information, including parcel details, estimates, bids, research information, all available appraisals, including the owner's and the owner's rationale for increased compensation. This is the most important part of the justification.
- Recent trends in court awards in cases involving similar acquisition and appraisal problems and the length of time it takes to get on the court's schedule.
- A statement can be made that condemnation will take additional time and money, but do not attach a dollar amount to the statement since it would be speculative. You should include items such as updating the appraisal for trial, pretrial, conference, staking of right of way, attorney's expenses, and witness fees (appraisers, consultants, etc.) will be additional incurred costs. You should not speculate about increased project costs resulting from a delay. You could try to quantify your administrative costs resulting from condemnation proceedings such as additional staff time.
- Describe the trial risks based on experience in the particular jurisdiction (e.g., county, city).

Note: Specific information about the parcel, including copies of appraisals, estimates, bids, research information, etc., **must** carry the most weight in the justification.

For additional guidance, reference *Right of Way Manual* Section 6-12.

25.12 Relocation

The regulations governing relocation assistance are covered in 49 CFR Part 24.

Those agencies that have trained staff and are approved by WSDOT through the procedures process to provide relocation services may do so. All other agencies should contact their Region LAC for advice on contracting with private consultants. WSDOT does not maintain a list of qualified relocation consultants.

If a project includes relocation, the local agency must submit a relocation plan to WSDOT for approval **prior** to starting the acquisition process. If there are federal funds in the R/W Phase, the relocation plan must be approved before R/W funding can be authorized.

To maintain a project's federal aid eligibility, a relocation plan needs to be submitted and approved prior to starting acquisition activities, even if there are no federal funds in a R/W Phase. **This is also true in the case of advanced acquisition** (see Subsection 25.43).

You may contact WSDOT for sample relocation plans or refer to *Right of Way Manual* Chapter 12 for guidance. Contact the Region LAC for assistance in preparing relocation plans and carrying out relocation activities.

25.13 Right of Way Certification

Prior to R/W certification, the local agency must ensure that the R/W plans were reviewed and approved as part of the design approval, and are consistent with the PS&E (see Appendix 43.62).

After R/W acquisition has been completed and about one month before the federal aid project is to be advertised for contract, the R/W certification on agency letterhead must be submitted to the Region Local Programs Engineer. FHWA does not formally approve Certificates 1 and 2. For Certificates 1 and 2, the actual certification date for federal aid projects is the date on the WSDOT Certification Concurrence Letter sent to FHWA. WSDOT Concurrence is required prior to advertisement. For Certificate 3s, the actual certification date is the FHWA approval letter date. ROW certification is a requirement for construction authorization. Since local agencies are expected to go to ad within six weeks of construction authorization (See Chapter 22, Section 22.1), ROW certification should not occur too far in advance of the anticipated ad date.

The certification provides the following information and assurances.

1. Sufficient property rights to construct, operate, and maintain the facility as shown on PS&E has been acquired.
2. Right of way has been acquired in accordance with Uniform Act requirements.
3. Relocation assistance has been completed in accordance with the Uniform Act and meets the requirements of *Right of Way Manual* Chapter 12.
4. Properties acquired in advance of NEPA Clearance (including donations) shall be identified by parcel number. (This information could take the form of an address or a county tax ID if parcel numbers are not assigned.)

For specifics on certification procedures, requirements, and examples, see *Right of Way Manual* Chapter 17.

25.14 Property Management

If using FHWA funding, the acquiring agency shall establish property management policies and procedures that will assure control and administration of R/W, excess lands, and improvements acquired. These procedures shall establish:

1. Property records showing:
   a. An inventory of all improvements acquired as a part of the R/W.
   b. An accounting of excess properties acquired with FHWA funding.
   c. An accounting of the property management expenses and the rental payments received.
   d. An accounting of the disposition of improvements and the recovery payments received.
2. Methods for accomplishing the clearing of R/W when such clearance is performed separately from the control for the physical construction of the project.
3. The methods for managing the rodent control program.

4. The methods for employing private firms or public agencies for the management of real property interests.
5. The methods for accomplishing the disposition of improvements through resale, salvage, owner retention, or other means.

If the agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the agency on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

Property management activities shall be handled in a manner consistent with the public interest and designed to reflect the maximum long-range public benefit.

The agency is responsible for the preservation of the improvements and for reasonable safety measures when it has acquired ownership and possession of the property.

Should rights of way, including uneconomic remnants, acquired with FHWA funds become excess, they may be disposed of only with the approval of WSDOT. If the disposal is to a private party, the agency must determine fair market value (either through the appraisal process or by public sale). FHWA will either be credited for its share of the net proceeds of the sale or lease payment, or the agency may use the federal share of the net proceeds for activities eligible for funding under Title 23 of the United States Code for transportation purposes. A disposal may be made to a governmental agency for a continued public highway use without charge, and no credit to FHWA is required; however, a reversionary clause is required in the deed per 23 CFR 710.403

FHWA approval is required for disposal of any rights of way or uneconomic remnants sold at less than fair market value.

Federal regulations provide for the use of airspace for non-highway purposes above, at, or below the highway's established gradeline, lying within the approved R/W limits. Allowing an airspace lease for recreational activities could result in the parcel becoming a protected 4(f) resource, costs associated with mitigating impacts to these resources will not be eligible for federal aid participation. The airspace may be put to various public and private uses, such as parks, play areas, parking, trails, etc., as long as it does not interfere with the roadway operations and does not create a safety hazard to the traveling public. Any such lease will need to describe what activities are allowed on the land.

Where an acquiring agency has acquired sufficient legal right, title, and interest in the R/W of a highway on a federal aid system to permit the use of certain airspace, the right to temporary or permanent occupancy or use of such airspace may be granted by the state subject to prior FHWA approval. If the use of airspace is contemplated, the Region LAC should be contacted for more detailed policies and procedures that must be considered.

Upon disposal of R/W by deed, license, lease, permit, easement or similar instrument, the local agency shall include the required Title VI lease/deed provisions, as outlined in Chapter 28 (Exhibit 2C).

25.15 Diaries

.151 General – The diary (also can be referred to as a negotiator's log) is one of the most important elements of an acquisition or relocation file. It is crucial that it be accurate and complete, for it is frequently the only document in a file that explains how a difficult or complex real property interest transaction proceeded. Diaries are also often the only written documentation that is available to show that R/W transactions were done in compliance with the Uniform Act and 49 CFR Part 24. Therefore, diaries need to provide a complete record of the transaction. They need to be well organized and factual, and they should be written to be understandable by someone unfamiliar with the transaction. Also, they should reference any appropriate documents in the file such as brochures provided to property owners or estimates obtained to support an administrative record.

Each diary entry shall clearly show the month, day, and year of the contact; the name of the individual who made such a contact; how the contact was made (i.e., in person or by phone) and the name(s) of the individual(s) contacted. Each diary entry shall provide a summary of the contact. It is not sufficient to enter a simple posting of events as they occurred. For example, merely recording that the agent presented an offer or that "discussions were held" on a given date is not sufficient. The entry should indicate, at the least, where the event took place, what questions the owner asked and what answers the agent supplied. These elements are at the very heart of the negotiation process, and when an acquisition becomes difficult or negotiations break down, a well written diary may be the most important document protecting the acquiring agency's interests.

Multiple contacts should not be combined into one diary entry. These entries need to be made as soon as possible to ensure accuracy. Upon completion of activity entry, the specialist should initial each entry. Electronic diaries are recommended. Once a diary is complete, it must be dated and signed at the end.

Diary entries need to be limited to a recitation of the facts because the diary is subject to the rights of discovery by all parties in any court proceeding or appeal case. **All persons** who participate in negotiations with a property owner to acquire real property interests, whether a staff or consultant agent/negotiator, a member of an agency's administrative or executive branch, or an agency's attorney, shall maintain an appropriate diary or log of such activities and discussions with the property owner.

A collection of emails pertaining to the acquisition of a parcel does not constitute a diary. Information taken directly from email correspondence often contributes to a good diary, but care should be taken to exclude extraneous information.

Diaries are further discussed in *Right of Way Manual* Chapters 3, 6, 8, 9, 12 and 15.

25.16 Document Retention

The acquiring agency shall maintain all records of its R/W activities for at least three years after payment of the final voucher for the project, not per parcel, to demonstrate compliance with 23 CFR 710.201(f).

25.17 Appendices

Cautionary Note: Please contact your LAC prior to changing any templates in the appendices.

25.171 Vacant

25.172 Sample Right of Way Project Funding Estimate Summary and Description

25.173 Sample True Cost Estimate

25.174 Determining Whether or Not Land or Property Rights or Interest are Needed

25.175 Determining the Type of Property Rights Necessary

25.176 Vacant

25.177 Donation Statements – Sample

25.178 Federal Aid Requirement Checklist

25.179 Acquisition Process Flowchart

25.180 Local Agency Forms & Brochures

Appendix 25.171 Vacant

Appendix 25.172 Sample Right of Way Project Funding Estimate Summary and Description

Right of Way Project Funding Estimate Summary

Project: Click here to enter text. **Date:** Click here to enter text. **FA #:** Click here to enter text.

1	2	3	4	5	6	7	8	9	10	11
Parcel Number	Just Compen (Offer)	Appraisal Fee Costs	Appraisal Review Fee Costs	Negotiation Fee Costs	Title, Escrow Costs	Prop. Mgmt. Service Costs	Relocation Service Costs	Relocation Payments	Condemn. and Incid. Costs	Total Parcel Costs
									Total R/W Costs	

Appendix 25.172 Right of Way Project Funding Estimate Summary
Revised 4/30/2014

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SAMPLE
NEIGHBORHOOD DESCRIPTION
FOR PROJECT: YAKIMA COUNTY: SUNSET HILL ROAD WIDENING No. 311

Date: October 21, 1986

The project vicinity is rural Yakima County lying about 25 miles (40 km) westerly of Yakima city limits in an area commonly called Sunset Hill. The county road connecting the area to the city of Yakima is the Sunset Hill Road, which is currently a two-lane arterial. The area is primarily devoted to agricultural uses, such as cattle raising and forest products, but also is developing with single family lot subdivisions and ranchette residential uses. This part of the county is becoming a bedroom area for commuters to Yakima and several commercial uses have developed along the Sunset Hill Road. Zoning here is Agricultural (AG) minimum 20 acres (8 ha), with areas bordering the Sunset Hill Road zoned Single Family Residential (SR 13), minimum 13,000 square feet (1210 square meters) per site, and a strip along said arterial between Henderson Road and White Bluff Boulevard being zoned for commercial and/or office uses (CPD), with a minmum area required of 15,000 square feet (1 395 square meters) per site. Utilities available along Sunset Hill Road are Puget Power, West Yakima Water (Community System), PNB telephone, and sewers are by individual septic systems (soils percolate adequately). There appears to be minimal demand for new commercial development along Sunset Hill Road.

Traffic along the Sunset Hill Road is heavy during the rush hour. Hence, the proposed project is to widen this arterial to four traffic lanes with a dual-left turn lane in the center. A traffic light is planned at the intersection of Henderson Road. The project will be at present grade and will include curbing. Access ponts will be controlled at existing locations. The right of way needed is a 20-foot (6-meter) strip of fee land from each side of Sunset Hill Road between Henderson Road and White Bluff Boulevard.

Eleven parcels will be affected: seven homes, a tree farm (2,000 acres (810 ha) in size), one convenience store, a small wholesale lumber mill, and a new professional (medical) office complex. One of the residences is partially in the take and possibly will require relocating the owner-occupant family. A machine shed on the lumber mill site is partially in the take and it contains tenant-owned equipment. The convenience store's gasoline dispensers and canopy are partially in the take. About 10 of the 40 parking stalls for the medical office are in the taking, possibly resulting in loss of one tenant. The project should generally benefit the neighborhood by improving traffic flow during the rush hour. The neighborhood should continue to moderately change from agricultural to single family uses, with no major zoning changes immediately foreseeable, since neighborhood commercial services should remain adequate for the next five or more years.

True Cost Parcel Worksheet

Project: Click here to enter text. Parcel # Click here to enter text.

Notes: Click here to enter text.

Assessor's Tax Parcel Number(s): Click here to enter text.

Zone Size Min. = Click here to enter text. Assessed Value Land = Click here to enter text.

A.V. Bldg.#1 = Click here to enter text. Bldg.#2 = Click here to enter text. Bldg.#3 = Click here to enter text.

Bldg.#4 = Click here to enter text. Total Property Assessed Value = Click here to enter text.

R/W Map Info

Before Area = Click here to enter text. Fee Take = Click here to enter text. After Area = Click here to enter text.

Permanent Esmt Take = Click here to enter text. Temporary Esmt Take = Click here to enter text.

Property Costs:

Total Take = Click here to enter text. (total property A.V. x 1.20)	= $ Click here to enter text.
Or	**Or**
Partial Take:	
Fee Land = Click here to enter text. @ $Click here to enter text. (A.V. land per unit) x 1.20	= $ Click here to enter text.
Yard/Site Improvements in Take @ Administrative Lump Sum	= $ Click here to enter text.
Major Building in Take @ (A.V. of Bldg. # Click here to enter text.) x 1.20	= $ Click here to enter text.
Perm. Esmt. = Click here to enter text. @ $ Click here to enter text. (A.V. land per unit)	= $ Click here to enter text.
Temp. Esmt. = Click here to enter text. @ $ Click here to enter text.(A.V. land per unit) x 10%	= $ Click here to enter text.
TOTAL PROPERTY COSTS (put in column 2 of True Cost)	= $ Click here to enter text.

Administrative Costs (put in respective columns of True Cost):

1. Appraisal Fee = Click here to enter text.
2. Appraisal Review Fee = Click here to enter text.
3. Negotiation Fee = Click here to enter text.
4. Title and Escrow Fee = Click here to enter text.
5. Prop. Mgmt. Services = Click here to enter text.
6. Relocation Services = Click here to enter text.
7. Relocation Payments = Click here to enter text.
8. Condemn & Incidentals = Click here to enter text.

True Cost Estimate

Project: Click here to enter text. **Date:** Click here to enter text. **FA #:** Click here to enter text.

1	2	3	4	5	6	7	8	9	10	11
Parcel Number	Just Compen (Offer)	Appraisal Fee Costs	Appraisal Review Fee Costs	Negotiation Fee Costs	Title, Escrow Costs	Prop. Mgmt. Service Costs	Relocation Service Costs	Relocation Payments	Condemn. and Incid. Costs	Total Parcel Costs
									Total R/W Costs	

Appendix 25.172 Right of Way Project Funding Estimate Summary
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S A M P L E
NEIGHBORHOOD DESCRIPTION
FOR PROJECT: YAKIMA COUNTY: SUNSET HILL ROAD WIDENING No. 311

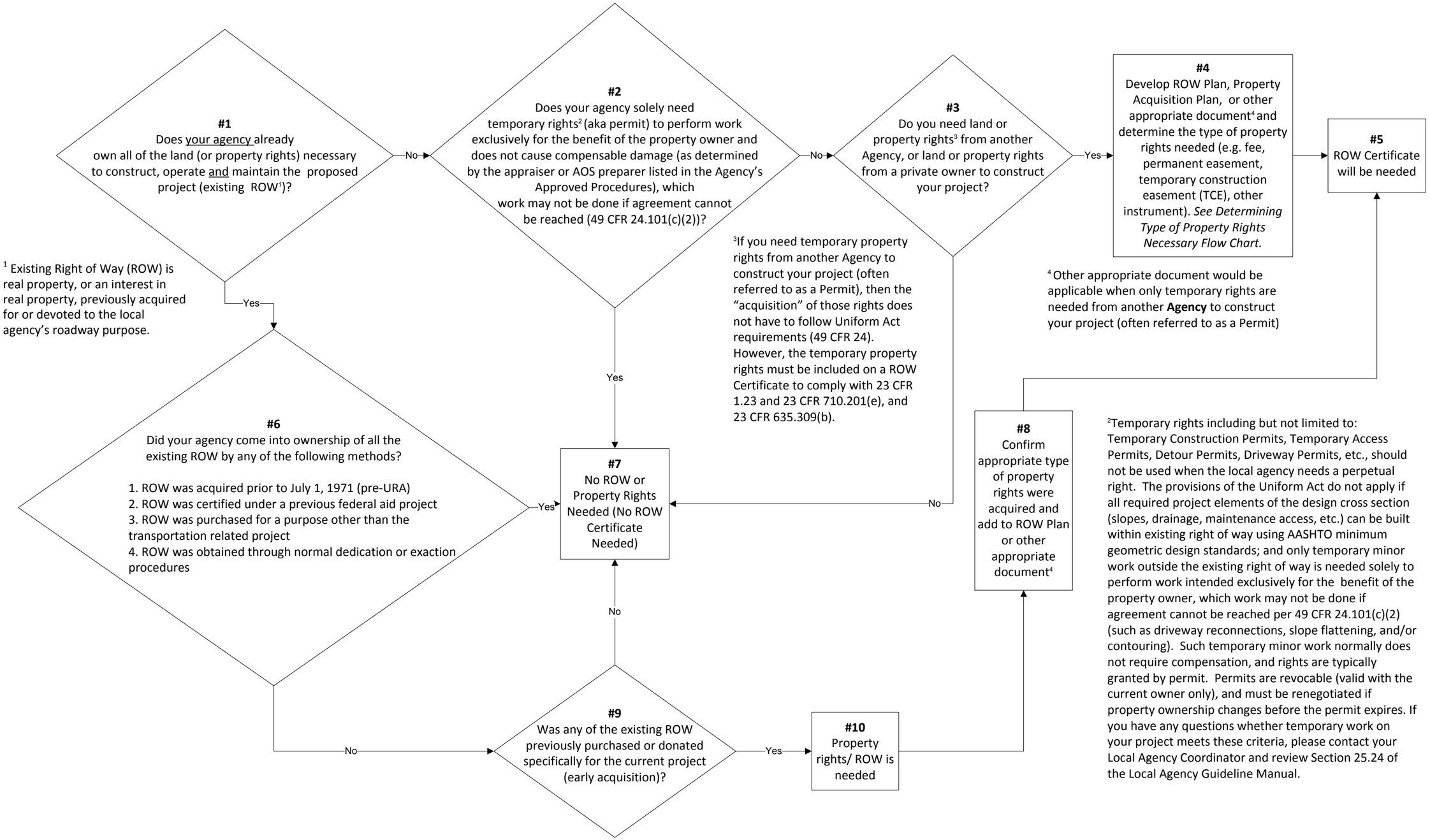
Date: October 21, 1986

The project vicinity is rural Yakima County lying about 40 km (25 miles) westerly of Yakima city limits in an area commonly called Sunset Hill. The county road connecting the area to the city of Yakima is the Sunset Hill Road, which is currently a two-lane arterial. The area is primarily devoted to agricultural uses, such as cattle raising and forest products, but also is developing with single family lot subdivisions and ranchette residential uses. This part of the county is becoming a bedroom area for commuters to Yakima and several commercial uses have developed along the Sunset Hill Road. Zoning here is Agricultural (AG) minimum 8 ha (20 acres), with areas bordering the Sunset Hill Road zoned Single Family Residential (SR 13), minimum 1 210 square meters (13,000 square feet) per site, and a strip along said arterial between Henderson Road and White Bluff Boulevard being zoned for commercial and/or office uses (CPD), with a minimum area required of 1 395 square meters (15,000 square feet) per site. Utilities available along Sunset Hill Road are Puget Power, West Yakima Water (Community System), PNB telephone, and sewers are by individual septic systems (soils percolate adequately). There appears to be minimal demand for new commercial development along Sunset Hill Road.

Traffic along the Sunset Hill Road is heavy during the rush hour. Hence, the proposed project is to widen this arterial to four traffic lanes with a dual-left turn lane in the center. A traffic light is planned at the intersection of Henderson Road. The project will be at present grade and will include curbing. Access points will be controlled at existing locations. The right of way needed is a 6-meter (20-foot) strip of fee land from each side of Sunset Hill Road between Henderson Road and White Bluff Boulevard.

Eleven parcels will be affected: seven homes, a tree farm (810 ha (2,000 acres) in size), one convenience store, a small wholesale lumber mill, and a new professional (medical) office complex. One of the residences is partially in the take and possibly will require relocating the owner-occupant family. A machine shed on the lumber mill site is partially in the take and it contains tenant-owned equipment. The convenience store's gasoline dispensers and canopy are partially in the take. About 10 of the 40 parking stalls for the medical office are in the taking, possibly resulting in loss of one tenant. The project should generally benefit the neighborhood by improving traffic flow during the rush hour. The neighborhood should continue to moderately change from agricultural to single family uses, with no major zoning changes immediately foreseeable, since neighborhood commercial services should remain adequate for the next five or more years.

3/23/15



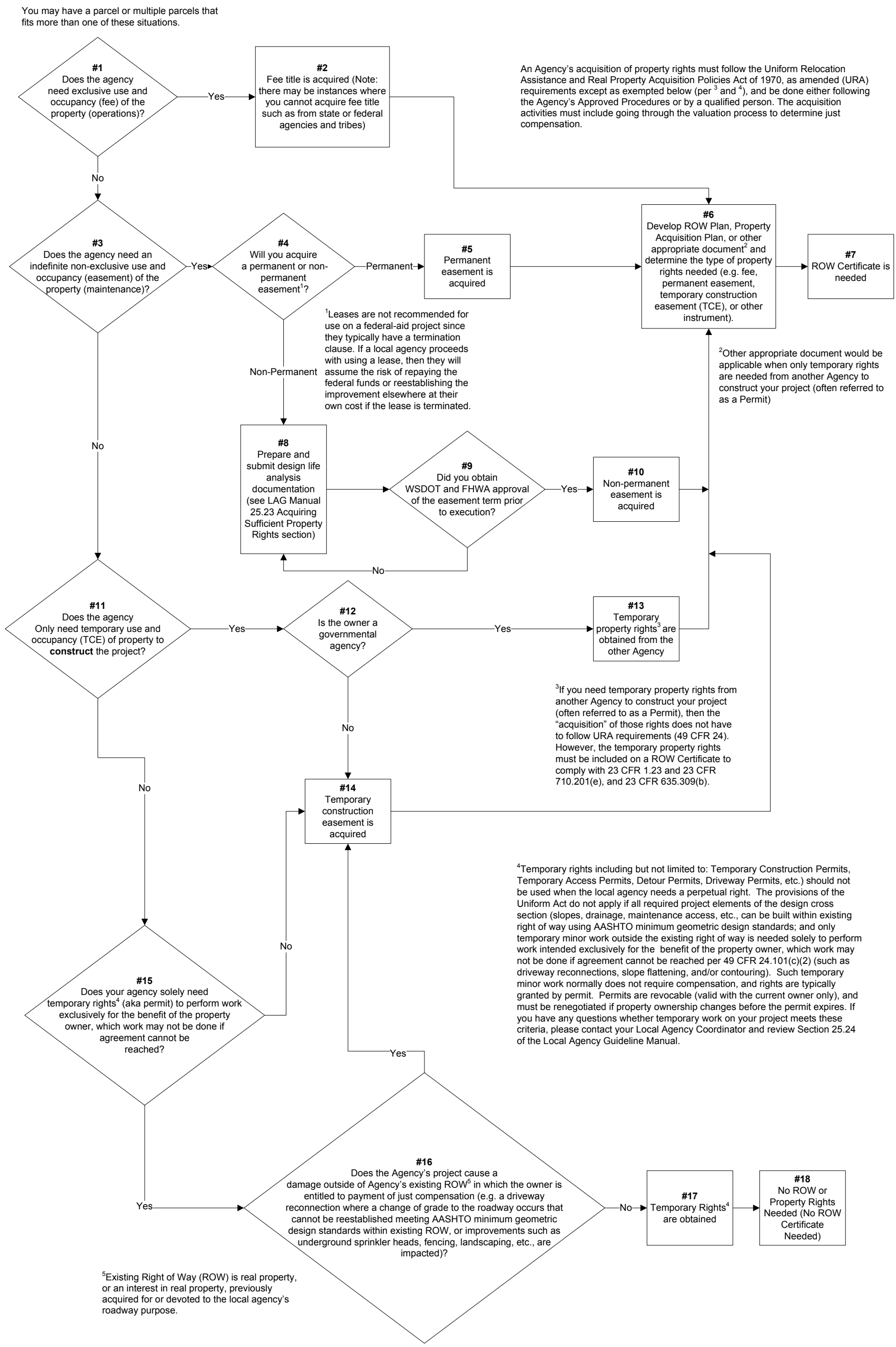
[1] Existing Right of Way (ROW) is real property, or an interest in real property, previously acquired for or devoted to the local agency's roadway purpose.

[3] If you need temporary property rights from another Agency to construct your project (often referred to as a Permit), then the "acquisition" of those rights does not have to follow Uniform Act requirements (49 CFR 24). However, the temporary property rights must be included on a ROW Certificate to comply with 23 CFR 1.23 and 23 CFR 710.201(e), and 23 CFR 635.309(b).

[4] Other appropriate document would be applicable when only temporary rights are needed from another **Agency** to construct your project (often referred to as a Permit)

[2] Temporary rights including but not limited to: Temporary Construction Permits, Temporary Access Permits, Detour Permits, Driveway Permits, etc., should not be used when the local agency needs a perpetual right. The provisions of the Uniform Act do not apply if all required project elements of the design cross section (slopes, drainage, maintenance access, etc.) can be built within existing right of way using AASHTO minimum geometric design standards; and only temporary minor work outside the existing right of way is needed solely to perform work intended exclusively for the benefit of the property owner, which work may not be done if agreement cannot be reached per 49 CFR 24.101(c)(2) (such as driveway reconnections, slope flattening, and/or contouring). Such temporary minor work normally does not require compensation, and rights are typically granted by permit. Permits are revocable (valid with the current owner only), and must be renegotiated if property ownership changes before the permit expires. If you have any questions whether temporary work on your project meets these criteria, please contact your Local Agency Coordinator and review Section 25.24 of the Local Agency Guideline Manual.

3/23/15


You may have a parcel or multiple parcels that fits more than one of these situations.
#1 Does the agency need exclusive use and occupancy (fee) of the property (operations)?
Yes
#2 Fee title is acquired (Note: there may be instances where you cannot acquire fee title such as from state or federal agencies and tribes)
An Agency's acquisition of property rights must follow the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) requirements except as exempted below (per 3 and 4), and be done either following the Agency's Approved Procedures or by a qualified person. The acquisition activities must include going through the valuation process to determine just compensation.
No
#3 Does the agency need an indefinite non-exclusive use and occupancy (easement) of the property (maintenance)?
Yes
#4 Will you acquire a permanent or non-permanent easement1?
Permanent
#5 Permanent easement is acquired
#6 Develop ROW Plan, Property Acquisition Plan, or other appropriate document2 and determine the type of property rights needed (e.g. fee, permanent easement, temporary construction easement (TCE), or other instrument).
#7 ROW Certificate is needed
1Leases are not recommended for use on a federal-aid project since they typically have a termination clause. If a local agency proceeds with using a lease, then they will assume the risk of repaying the federal funds or reestablishing the improvement elsewhere at their own cost if the lease is terminated.
2Other appropriate document would be applicable when only temporary rights are needed from another Agency to construct your project (often referred to as a Permit)
Non-Permanent
#8 Prepare and submit design life analysis documentation (see LAG Manual 25.23 Acquiring Sufficient Property Rights section)
#9 Did you obtain WSDOT and FHWA approval of the easement term prior to execution?
Yes
#10 Non-permanent easement is acquired
No
No
#11 Does the agency Only need temporary use and occupancy (TCE) of property to construct the project?
Yes
#12 Is the owner a governmental agency?
Yes
#13 Temporary property rights3 are obtained from the other Agency
3If you need temporary property rights from another Agency to construct your project (often referred to as a Permit), then the "acquisition" of those rights does not have to follow URA requirements (49 CFR 24). However, the temporary property rights must be included on a ROW Certificate to comply with 23 CFR 1.23 and 23 CFR 710.201(e), and 23 CFR 635.309(b).
No
No
#14 Temporary construction easement is acquired
4Temporary rights including but not limited to: Temporary Construction Permits, Temporary Access Permits, Detour Permits, Driveway Permits, etc.) should not be used when the local agency needs a perpetual right. The provisions of the Uniform Act do not apply if all required project elements of the design cross section (slopes, drainage, maintenance access, etc., can be built within existing right of way using AASHTO minimum geometric design standards; and only temporary minor work outside the existing right of way is needed solely to perform work intended exclusively for the benefit of the property owner, which work may not be done if agreement cannot be reached per 49 CFR 24.101(c)(2) (such as driveway reconnections, slope flattening, and/or contouring). Such temporary minor work normally does not require compensation, and rights are typically granted by permit. Permits are revocable (valid with the current owner only), and must be renegotiated if property ownership changes before the permit expires. If you have any questions whether temporary work on your project meets these criteria, please contact your Local Agency Coordinator and review Section 25.24 of the Local Agency Guideline Manual.
No
#15 Does your agency solely need temporary rights4 (aka permit) to perform work exclusively for the benefit of the property owner, which work may not be done if agreement cannot be reached?
Yes
Yes
#16 Does the Agency's project cause a damage outside of Agency's existing ROW5 in which the owner is entitled to payment of just compensation (e.g. a driveway reconnection where a change of grade to the roadway occurs that cannot be reestablished meeting AASHTO minimum geometric design standards within existing ROW, or improvements such as underground sprinkler heads, fencing, landscaping, etc., are impacted)?
No
#17 Temporary Rights4 are obtained
#18 No ROW or Property Rights Needed (No ROW Certificate Needed)
5Existing Right of Way (ROW) is real property, or an interest in real property, previously acquired for or devoted to the local agency's roadway purpose.

Appendix 25.176 Vacant

Date

_____

_____

_____

Subject: Project Title
Parcel Number

Sirs:

(My/Our) donation of (parcel number or property description) to the (name of local agency) for highway/transportation purposes is made voluntary and with full knowledge of (my/our) entitlement to receive just compensation therefore. (I/We) hereby release the (name of local agency) from obtaining an appraisal of the acquired property.

Sincerely,

_____

Proposed Donation Letter (Through Local Agency)

Date

Regional Administrator/Chief Right of Way Agent
Washington State Department of Transportation
Transportation Building
Olympia, WA 98504

Subject: (Project Title)
(Federal Aid Number)
Parcel Number _____

Sirs:

The attached instrument for donation of right of way to the agency is in compliance with the provisions of *_____.

Sincerely,

_____	_____
Concur and Approve	Accept and Approval
_____	_____
Title	State of Washington Department of Transportation

(Local Agency)

*(Typical language)
City/County Commission Resolution No. 111
City/County Ordinance No. 111
City/County Conditional Use Permit No. 111
City/County Building Permit No. 111

(For use when a local agency project is adjacent to WSDOT right of way and WSDOT does not have an active project at this location.)

Federal Aid Requirement Checklist

Informational Only

Agency: Click here to enter text. Region: Click here to enter text. Date: Click here to enter text.

Project Federal Aid Number: Click here to enter text.

Project Name: Click here to enter text.

Federal Funds Will Be Used For:

PE: Click here to enter text. R/W: Click here to enter text. CONST.: Click here to enter text.

Persons Will Be Displaced: Yes ☐ No☐

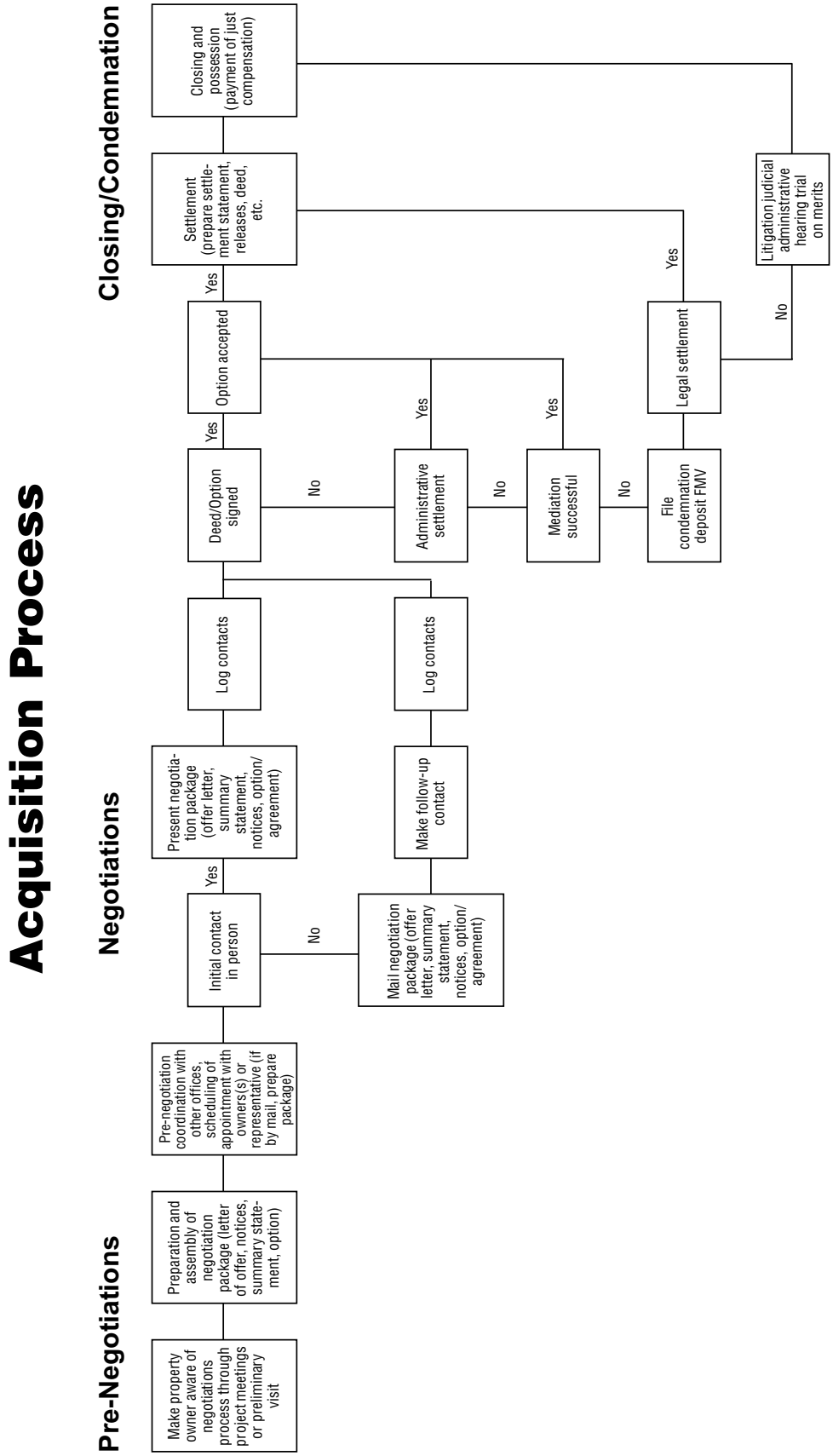
Right of Way Acquired for This Project: Yes ☐ No☐

Reminders	Comments
1. Real property must be appraised before initiation of negotiations with the owner, per 49 CFR 24.102(c) and 24.108.	
2. Owners must be given an opportunity to accompany each appraiser during his inspection of the property, per 49 CFR 24.102(c).	
3. The acquiring agency must establish just compensation before initiation of negotiations with the owners, per 49 CFR 24.102(d).	
4. No increase or decrease in the FMV due to the project except physical deterioration, is to be considered in the valuation of the property, per 49 CFR 24.103(d).	
5. Appraisals are not to give consideration nor include any allowance for relocation assistance benefits.	
6. The owner is not to be left with an uneconomic remnant that the acquiring agency did not offer to acquire, per 49 CFR 24.102(k).	
7. The owner is to be given a written statement of the amount offered as just compensation, and where appropriate, the compensation for real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated in the written statement, per 49 CFR 24.102(e).	

8. No owner shall be required to surrender possession before the agreed purchase price has been paid or the approved amount of compensation has been paid into the court, per 49 CFR 24.102(j).	
9. No lawful occupant shall be required to move unless the occupant has been given at least 90 days advance written notice of the earliest date by which the occupant may be required to move, per 49 CFR 24.203(c).	
10. The rental amount charged to owners and/or tenants permitted to occupy the property subsequent to acquisition must not exceed the fair rental value for such occupancy, per 49 CFR 24.102(m).	
11. No action must be taken to advance condemnation, defer negotiations or condemnation or taken any other action coercive in nature in order to compel an agreement on the price to be paid for the property, per 49 CFR 24.102(h).	
12. The acquiring agency must acquire an equal interest in all buildings, etc., located upon the real property acquired, per 49 CFR 24.105.	
13. The acquiring agency must pay recording fees, transfer taxes, etc.; penalty costs for pre-payment of a pre-existing mortgage and the pro rata share of real property taxes paid subsequent to vesting title in the acquiring agency, per 49 CFR 24.106.	
14. No property owner can voluntarily donate his property prior to being informed of his right to receive just compensation.	
15. Provisions have been made for rodent control should it be necessary.	
16. No owner was intentionally required to institute legal proceedings to prove the fact of the taking of his real property.	

Prepared by: Click here to enter text.

Title: Click here to enter text.


Acquisition Process
Pre-Negotiations
Negotiations
Closing/Condemnation
Make property owner aware of negotiations process through project meetings or preliminary visit
Preparation and assembly of negotiation package (letter of offer, notices, summary statement, option)
Pre-negotiation coordination with other offices, scheduling of appointment with owners(s) or representative (if by mail, prepare package)
Initial contact in person
Yes
No
Present negotiation package (offer letter, summary statement, notices, option/ agreement)
Mail negotiation package (offer letter, summary statement, notices, option/ agreement)
Make follow-up contact
Log contacts
Log contacts
Deed/Option signed
Yes
No
Administrative settlement
Yes
No
Mediation successful
Yes
No
File condemnation deposit FMV
Option accepted
Yes
Legal settlement
Yes
No
Settlement (prepare settlement statement, releases, deed, etc.
Litigation judicial administrative hearing trial on merits
Closing and possession (payment of just compensation)

LPA Brochures

Transportation Property Needs LPA Generic
Non-Residential Relocation LPA Generic
Personal Property Only Relocation LPA Generic
Residential Relocation LPA Generic

LPA General Forms

LPA-001 Right of Way Procedures
LPA-002 Initial ROW Questionnaire
LPA-003 Waiver of Appraisal Procedure

LPA Appraisal Forms

LPA-205 Certificate of Appraisal
LPA-210 Market Data Sheet
LPA-214b Certificate of Value
LPA-215 PFE Parcel Worksheet
LPA-215b True Cost Estimate Parcel Worksheet
LPA-216 Administrative Offer Summary (AOS)

LPA Acquisition Forms

LPA-300 Recording Cover Sheet
LPA-301 Diary
LPA-302 Warranty Deed
LPA-303 Special Warranty Deed
LPA-305 Warranty Deed (Access Rights Only)
LPA-306 Quitclaim Deed
LPA-307 Quitclaim Deed (Access Rights Only)
LPA-308 Partial Release of Mortgage
LPA-309 Partial Release of Mortgage (Access Rights Only)
LPA-310 Request for Partial Reconveyance
LPA-311 Partial Reconveyance
LPA-312 Partial Release of Lease
LPA-313 Release of Lease
LPA-316 Partial Release of Judgment
LPA-317 Possession and Use Agreement
LPA-321 Real Property Voucher (Excel)
LPA-323 Consent to Change of Grade
LPA-324 Easement
LPA-325 Temporary Easement
LPA-326 Permit
LPA-330 Bill of Sale
LPA-333 Request to Accept Mortgage (deed of trust) Encumbrance
LPA-333a Letter to Owner-Agree to Pay Mortgage (deed of trust) Encumbrance
LPA-350 Offer Letter
LPA-351 Revised Offer Letter
LPA-355 Quitclaim Deed (Release Easement)

LPA-356 Quitclaim Deed (Access Use for Easement)
LPA-362 Agency Payment Letter
LPA-365 Individual Notary
LPA-366 Corporate Notary
LPA-367 Attorney in Fact Notary
LPA-368 Self and Attorney in Fact Notary
LPA-369 Guardian, Executor, Administrator Notary
LPA-370 Mayor City Commissioners Notary
LPA-371 County Commissioners Notary
LPA-372 School District Notary
LPA-373 Signature by Mark Notary
LPA-374 Partnership Notary
LPA-375 Trustee Notary
LPA 376 Limited Liability Company Notary
LPA-377 Director RES Notary
LPA-382 Relocation Eligibility Report

LPA Certification Forms

LPA-383 No Right of Way Certificate
LPA-384 Certificate 1, No Relocation
LPA-385 Certificate 1, Residential Relocation
LPA-386 Certificate 1, Non-Residential Relocation
LPA-387 Certificate 1, Combination of Relocation Types
LPA-388 Certificate 2, No Relocation
LPA-389 Certificate 2, Residential Relocation
LPA-390 Certificate 2, Non-Residential Relocation
LPA-391 Certificate 2, Combination of Relocation Types
LPA-392 Certificate 3, No Relocation
LPA-393 Certificate 3, Residential Relocation
LPA-394 Certificate 3, Non-Residential Relocation
LPA-395 Certificate 3, Combination of Relocation Types
LPA-396 Certificate 3, Design Build Phased – Under Construction
LPA-397 Certification Worksheet
LPA-398 Certification Worksheet – Design Build
LPA-399 WSDOT Local Agency Certification Concurrence Letter (WSDOT Use Only)

LPA Property Management Forms

LPA-407 Disposal Approval Request

LPA Relocation Forms

LPA-501	General Notice of Relocation Rights (Non-Residential)
LPA-502	General Notice of Relocation Rights (Landlord)
LPA-503	General Notice of Relocation Rights (Personal Property)
LPA-504	General Notice of Relocation Rights (Residential)
LPA-505	Notice of Eligibility, Entitlements, and 90-Day Assurance (Non-Residential)
LPA-505a	Notice of Eligibility, Entitlements, and 90-Day Assurance (Non-Residential Fixed Payment)
LPA-507	Notice of Eligibility, Entitlements, and 90-Day Assurance (Residential Owner)
LPA-507a	Notice of Revised Price Differential (Residential Owner)
LPA-507b	Notice of Eligibility – Non DSS (Residential Owner)
LPA-507c	Notice of Eligibility w/Carve Out Language (Residential Owner)
LPA-508	Notice of Eligibility, Entitlements, and 90-Day Assurance (Residential Tenant)
LPA-508a	Notice of Eligibility – Non DSS (Residential Tenant)
LPA-509	Notice of Eligibility, Entitlements, and 90-Day Assurance (Landlord)
LPA-510	Notice of Eligibility, Entitlements, and 90-Day Assurance (Personal Property)
LPA-511a	Notice of Eligibility, Entitlements, and 90-/Day Assurance (Mobile Homes – Own Mobile Home, Rent Site)
LPA-511b	Notice of Eligibility, Entitlements, and 90-/Day Assurance (Mobile Homes – Own Mobile Home, Own Site)
LPA-511c	Notice of Eligibility, Entitlements, and 90-/Day Assurance (Mobile Homes – Rent Mobile Home, Rent Site)
LPA-512	Notice of Intent to Acquire
LPA-513	Mortgage Interest Differential Payment (MIDP)
LPA-514	Incidental Purchase Expense Work Sheet
LPA-515	Documentation of Living Expenses
LPA-516	Price Differential Entitlement Instructions
LPA-516a	Down Payment Assistance Entitlement Instructions
LPA-517	Vacate Inspection
LPA-518	Agreement for Provisional Replacement Housing Payment
LPA-519	Fixed Payment (In-Lieu) Work Sheet – Non-Residential
LPA-520	Request for Moving Bid Cover Letter
LPA-521	Request for Proposal and Moving Specification Format
LPA-522	Replacement Site Search Log
LPA-523	Application for Reestablishment Expenses – Non-Residential
LPA-524	Eligibility Report
LPA-525	(DSS) Replacement Dwelling Inspection Report
LPA-526	Loss of Tangibles/Substitute Personal Property Bid Form
LPA-527	Loss of Tangibles Computation
LPA-528	Substitute Personal Property Computation
LPA-529	Residential Checklist
LPA-530	Non-Residential Checklist
LPA-531	Personal Property Checklist
LPA-532	Residential Occupancy Survey

LPA-533 Non-Residential Occupancy Survey
LPA-533a Non-Residential (Landlord) Occupancy Survey
LPA-534 Personal Property Only Occupancy Survey
LPA-535 Pre Move Inventory – Non-Residential
LPA-536 Final Claim Letter – Non-Residential
LPA-536a Final Claim Letter – Residential
LPA-537 Relocation Assistance Voucher
LPA-538 Application for Fixed Payment – Non-Residential
LPA-539 Monthly Income Verification
LPA-540 Move Expense Agreement – Residential
LPA-540a Move Expense Agreement – Non-Residential
LPA-541 Housing Comparison Work Sheet
LPA-542 Price Differential Report
LPA-543 Rent Supplement Report
LPA-544 Notice of Relocation Non-eligibility
LPA-545 Non-Residential Obsolete Printed Items
LPA-546 Mobile Home Move Cost – Personal Property
LPA-547 Lawfully Present in the United States Certification
LPA-548 Transfer of Ownership – Non-Residential
LPA-549 Claim Determination Letter

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 and USDOT's official interpretations (i.e. Questions and Answers), 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 49 CFR Part 26 and 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 con-tractor to carry out these requirements is a material breach of this contractor which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) With-holding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages, or (4) Disqualifying the contractor from future bidding as non-responsible.*

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/directory-of-certified-firms/ or by calling 360-664-9770 or toll free (866) 208-1064.

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), and DOT Form 422-031A EF, DBE Written Confirmation Document 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 and the DBE Written Confirmation Document forms are 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 and Written Confirmation 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. 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 360-664-9770 or toll free (866) 208-1064 or their website at www.omwbe.wa.gov/directory-of-certified-firms/ 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/offer or 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 local agency for every DBE contractor or consultant performing work on the project. See Appendix 26.34 for the form and instructions for Construction Subcontractors/Regular Dealers/Manufacturers and Appendix 26.35 for Architect & Engineering/Professional Services Firms.

    - 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

26.31	Local Agency Quarterly Report of Amounts Credited as DBE Participation
26.32	Disadvantaged Business Enterprise Utilization Certification
26.33	DBE Written Confirmation Document
26.34	DBE On-Site Review for Construction Subcontractors/Regular Dealers/Manufactures
26.35	Project Office DBE On-Site Review for Architect & Engineers/ Professional Service Firms

Washington State Department of Transportation

Local Agency Quarterly Report of Amounts Credited as DBE Participation

Check appropriate reporting period and enter reporting year.

☐ 1st Quarter - January (Oct. - Dec.)
☐ 2nd Quarter - April (Jan. - Mar.)
☐ 3rd Quarter - July (April - June)
☐ 4th Quarter - October (July - Sept.)
☐ Final
Reporting Year _____

Federal Aid Number

Federal Employer I.D. Number

Contractor

Agency

DBE Participant Name and Federal Employer I.D. Number	Contract Type	Date of Payment	*Dollar Credit Amount

Contract Type:
S = Subcontractor
M = Manufacturer
J = Joint Venture
A = Agent
R = Regular Dealer
V = Service Provider

I, the undersigned, do hereby certify that in connection with all work on the project for which this statement is submitted, each DBE participant contracted by me has been paid on the dates shown. *Further, I certify that the amounts shown under "Dollar Credit Amount" are in accordance with the "**DBE Eligibility**" portion of the DBE Special Provision.

Signature_____ Title _____

This form is due on the 20th of the month following the end of the respective Quarter (January, April, July, October).

DOT Form 422-103 EF
Revised 2/2006

Local Agency Disadvantaged Business Enterprise Utilization Certification

To be eligible for award of this contract the bidder must fill out and submit, as part of its bid proposal, the following Disadvantaged Business Enterprise Utilization Certification relating to Disadvantaged Business Enterprise (DBE) requirements. The Contracting Agency shall consider as non-responsive and shall reject any bid proposal that does not contain a DBE Certification which properly demonstrates that the bidder will meet the DBE participation requirements in one of the manners provided for in the proposed contract. The Bidder must submit good faith effort documentation ***only in the event*** the bidder's efforts to solicit sufficient DBE participation has been unsuccessful. The successful bidder's Disadvantage Business Enterprise Utilization Certification shall be deemed a part of the resulting contract. Information on certified firms is available from OMWBE online at: http://omwbe.wa.gov/directory-of-certified-firms/

_____ certifies that the Disadvantaged Business Enterprise (DBE)
(Box 1) Name of Bidder

Firms listed below have been contacted regarding participation on this project. If this bidder is successful on this project and is awarded the contract, it shall assure that subcontracts or supply agreements are executed with those firms where an "Amount to be Applied Towards Goal" is listed. (If necessary, use additional sheet.)

Column 1 **Name of DBE Certificate Number**	Column 2 * **Project Role (Prime, Joint Venture, Subcontractor, Manufacturer, Regular Dealer)**	Column 3 **Description of Work**	Column 4 ** **Amount to be Applied Towards Goal**
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

Disadvantaged Business Enterprise Subcontracting Goal: _____ (Box 2) DBE Total $ _____ *** (Box 3)

* Regular Dealer status must be approved prior to bid submittal by the Office of Equal Opportunity, Wash. State Dept. of Transportation, on each contract.

** See the section "Crediting DBE Participation Toward Meeting the Goal" in the Contract Document.

*** The Contracting Agency will utilize this amount to determine whether or not the bidder has met the goal. In the event of an arithmetic difference between this total and the sum of the individual amounts listed above, then the sum of the amounts listed shall prevail and the total will be revised accordingly. Participation in excess of the goal amount will be considered voluntary or race-neutral participation.

SR

DOT Form 272-056A
2/2015

Local Agency Disadvantaged Business Enterprise (DBE) Written Confirmation Document

As an authorized representative of the Disadvantaged Business Enterprise (DBE), I confirm that we have been contacted by the referenced bidder with regard to the referenced project and if the bidder is awarded the contract we will enter into an agreement with the bidder to participate in the project consistent with the information provided in the bidder's Disadvantaged Business Enterprise Utilization Certification.

Contract Title: _____

Bidder's Business Name: _____

DBE's Business Name: _____

DBE Signature: _____

DBE's Title: _____

Date: _____

The entries must be consistent with what is shown on the bidder's Disadvantaged Business Enterprise Utilization Certification. Failure to do so will result in bid rejection. See contract provision; *Disavantaged Business Enterprise Condition of Award Participation.*

Description of Work: _____

Amount to be Applied Towards Goal: _____

SR

DOT Form 422-031A EF
07/2011

Washington State Department of Transportation

DBE On-Site Review for Construction Subcontractors/ Regular Dealers/ Manufacturers

This document provides guidelines for reviewing Construction Subcontractors Disadvantaged Business Enterprise (DBE) firms to verify compliance with the Commercially Useful Function (CUF) requirements of 49 CFR 26.55 which states in part:

> "A DBE performs a CUF when it is responsible for execution of the work of the contract and is carrying-out its responsibilities by actually performing, managing, and supervising the work involved…A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project thru which funds are passed in order to obtain the appearance of DBE participation…"

WSDOT/Local Agency will perform DBE Onsite Reviews on DBE construction subcontractors. Project owner staff is required to perform a minimum of one review for each DBE firm for each project, for each construction season, and for each primary scope of work.

1. Prime Contractor/Consultant:	2. Federal Aid Number:
3. DBE Subcontractor/ Regular Dealer/ Manufacturer:	4. Contract Number:
5. Project Engineer	6. Region/Local Agency
7. Project Title:	

Section #1 - Subcontractors

Per the DBE subcontract, indicate the DBE work observed this date (note partial items)

8. Bid Item Number	9. DOT Item Approximate % Complete	10. Item Description (Note partial items)	11. Force Account Yes or No	12. DBE Dollar Amount
			☐ Yes ☐ No	
			☐ Yes ☐ No	
			☐ Yes ☐ No	
			☐ Yes ☐ No	
			☐ Yes ☐ No	

13. Have you checked the Office of Minority & Women's Business Enterprises Website (www.omwbe.wa.gov) to ensure firm is certified in the above work? If no, please explain: ☐ Yes ☐ No

14. DBE Subcontractor's Start Date	15. Contract Percent Complete	16. DBE Anticipated Completion Date

DBE Interviewee

17(a). First Name	17(b). Last Name	17(c). Phone Number

18. Who does the DBE's Site Supervisor report to within his/her organization?

Name: Title:

19. Is the DBE Interviewee exclusively employed by the DBE? If no, please explain: ☐ Yes ☐ No

20. Is the DBE Interviewee shown on the DBE Payroll? (Review payroll) ☐ Yes ☐ No

DOT Form 272-052 EF
Revised 03-2015

21. List names and crafts of the DBE's crew as observed (Use additional sheets, if needed)	
Name	Craft

22. Are any DBE crew members on the prime or any other project subcontractor's payroll(s)? If yes, please explain: ☐ Yes ☐ No

23 . List the DBE's Major Equipment (self-propelled). Use additional sheets if necessary

Make/Model/Year	Owned/Leased	Condition	Logo Markings Yes/No
			☐ Yes ☐ No
			☐ Yes ☐ No
			☐ Yes ☐ No
			☐ Yes ☐ No
			☐ Yes ☐ No

24. If the equipment is leased, is there a formal agreement identifying the terms and parties? ☐ Yes ☐ No
If no, please explain:

Performance

25. Does the DBE effectively manage the job site (their work) without interference from the prime contractor or other subcontracts? If no, please explain: ☐ Yes ☐ No

26. Does the DBE have adequate personnel, equipment, and resources to perform the work on this project? If no, please explain: ☐ Yes ☐ No

27. Do DBE personnel appear to have adequate knowledge and skills related to the work they are performing? If no, please explain: ☐ Yes ☐ No

28. Has another contractor performed, work for the DBE? If yes, please explain? ☐ Yes ☐ No

29. Has the DBE Owner been present on the Job Site? If yes, how often? ☐ Yes ☐ No

30. Are the personnel and equipment under direct supervision of the DBE Site Supervisor? ☐ Yes ☐ No

DOT Form 272-052 EF
Revised 03-2015

Section #2 - Regular Dealers/ Manufacturers

31. Per the DBE sub-contract, indicate the project specific materials/equipment being provided.

Material Name	Material Quantity	Material Costs

32 For Regular Dealers, have you checked with the WSDOT Office of Equal Opportunity Regular Dealer List to ensure the firm is listed as an approved Regular Dealer specifically to this project? ☐ Yes ☐ No

33. If the material being supplied is a bulk item (i.e., aggregates, petroleum, etc.) does the DBE have its own distribution equipment? If no, please explain: ☐ Yes ☐ No

34. Has the project office validated that only 60% of the total material cost is being counted as participation? If no, please explain: ☐ Yes ☐ No

35. Has a copy of the material invoice been provided to the project office? If no, please explain: ☐ Yes ☐ No

Trucking Companies Only

36. How many DBE truck(s) are on the Job Site, including other DBE firms working under subject firm scope?

37. Do all DBE truck(s) have company markings? ☐ Yes ☐ No

38. How many DBE truck(s) are subcontracted, leased, owner operators, or another company? (Trucks not owned by subject firm)

39. Who is supervising the subject firm DBE truck operators?

Name: Firm:

40. Additional comments/observations

Note: Attach any documents important to the review, i.e., Invoices, Photos, Daily Reports, Correspondence, etc.

41. Review Conducted By (Print Name)	42. Title (Print)
43. Signature	44. Date of This Review

45. Date Project Engineer approved Request to Sublet:

This form must be completed in its entirety and submitted to WSDOT Office of Equal Opportunity within two (2) weeks of its completion. If the form is submitted with missing/incomplete information, it will be returned to the PE Office for completion.

Distribution: Region EEO Officer, WSDOT Office of Equal Opportunity

DOT Form 272-052 EF
Revised 03-2015

Washington State Department of Transportation

Project Office DBE On-Site Review for Architect & Engineering/Professional Services Firms

This document provides guidelines for reviewing Architect & Engineering (A & E)/Professional Services Disadvantage Business Enterprise (DBE) firms to verify compliance with the Commercially Useful Function (CUF) requirements of 49 CFR 26.55 which states in part:

"A DBE performs a CUF when it is responsible for execution of the work of the contract and is carrying-out its responsibilities by actually performing, managing, and supervising the work involved…A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project thru which funds are passed in order to obtain the appearance of DBE participation…."

WSDOT/Local Agency will perform onsite reviews on DBE A & E Consultants, and Professional Services firms. Project owner staff are required to perform a minimum of one review for each DBE for each project, for each construction season (Calendar Year) and for each primary scope of work.

NOTE: If the DBE firm is not located on the project site or is out of state, then this review needs to be accomplished by telephone.

1. Prime Contractor/Consultant:	2. Federal Aid Number:
3. DBE Firm:	4. Contract Agreement Number:
5. WSDOT Project Engineer:	6. WSDOT Region/Local Agency:
7. Project Title:	

Indicate the DBE work observed this date

8. Scope of Work	9. Approximate % Complete	10. Item Description/Scope Description. *If more lines are needed use a continuation sheet*	11. DBE Dollar Amount

12. Have you checked the Office of Minority & Women's Business Enterprises Website (www.omwbe.wa.gov) to ensure firm is certified in the above work? If no, please explain: ☐ Yes ☐ No

13. DBE Firm's Start Date:	14. WSDOT Contract Percent Complete:	15. DBE Anticipated Completion Date:

DBE PROJECT MANAGER/SUPERVISOR

16. First Name:	17. Last Name:	18. Phone Number:

19. Is the DBE Project Manager/Site Supervisor exclusively employed by the DBE? If no, please explain: ☐ Yes ☐ No

20. Is the DBE Project Manager/Site Supervisor shown on the monthly invoice or Certified Payroll? ☐ Yes ☐ No

21. Is the DBE Project Manager/Site Supervisor shown on any other firms invoice? If yes, please explain: ☐ Yes ☐ No

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22. Who does the DBE's Project Manager/Site Supervisor report to within his/her organization? Name: Title:	
23. Does the work described in block #10 match the type of work listed on the executed contract/agreement?	☐ Yes ☐ No
24. Who is paying this DBE firm?	
24(a). What are the negotiated rates?	
25. Are any of the DBE firm's employees assigned to this project working for any other firm's on this project? If yes, please explain:	☐ Yes ☐ No
26. Has another firm performed work in place of the DBE for the scope of work identified exclusively for the DBE? If yes, please explain:	☐ Yes ☐ No
27. Is the DBE owner personally involved in the day to day operations of the company?	☐ Yes ☐ No
28. Does the DBE firm appear to have control over their contracted scope of work?	☐ Yes ☐ No
29. Review Conducted By (Print Name):	30. Title (Print):
31. Signature	32. Date of This Review:
This form must be completed in its entirety and submitted to WSDOT Office of Equal Opportunity within two (2) weeks of its completion. If the form is submitted with missing/incomplete information, it will be returned to the PE Office for completion.	

Distribution: Region EEO Officer, WSDOT Office of Equal Opportunity

DOT Form 272-051
Revised 03/2015

Chapter 28 Title VI Program

28.1 General Discussion

Agencies serving a population of 100,000 or more are required to have a Title VI Plan. Agencies serving a population less than 100,000 may use an abbreviated Title VI Plan, a Nondiscrimination Agreement.

Title VI of the Civil Rights Act of 1964 and other Federal Nondiscrimination statutes prohibit discrimination based on race, color, national origin and sex (gender) in the provision of benefits and services in programs and activities receiving Federal funds. The U.S. Department of Transportation's implementing regulations are contained in 49 CFR Part 21 and 23 CFR 200. These regulations require:

- Affirmative action.
- Recipients to execute Title VI Assurances as a condition of federal aid.

These federal regulations require WSDOT to ensure that all local agencies receiving United States Department of Transportation (USDOT) funds administered by WSDOT are in compliance with these regulations (23 CFR 200.9(b)(7), 49 CFR 21.3, 49 CFR 21.7).

The Civil Rights Restoration Act of 1987 broadened the scope of Title VI coverage by expanding the definition of the terms "programs and activities" to include all programs and activities of Federal aid recipients, subrecipients, and contractors, whether such programs and activities are federally funded or not.

The Federal Highway Administration (FHWA) requires each local agency that receives Federal funds through WSDOT to establish a Title VI Program to prevent discrimination in the provision of benefits and services on federally funded transportation programs and activities. This Title VI Program is a system of policies and procedures designed to monitor agency (and subrecipient agency) compliance, address complaints, and eliminate discrimination when found to exist.

The policies and procedures to address nondiscrimination must be included in the local agency's Title VI Plan. Their Plan for implementing Title VI must be presented to WSDOT's Office of Equal Opportunity (OEO) for review and approval.

28.2 Title VI Plan Development

A Title VI Plan is a legal document that imposes individual legal liabilities to the signatory agency that are not transferable. Each local agency must develop a Title VI compliance document that reflects its individual Federal aid transportation program structure. WSDOT will provide each local agency the technical support it needs to develop a Title VI Plan or a Title VI Plan in the form of a Nondiscrimination Agreement, for agencies with populations of less than 100,000.

1. **Plan Scope** – The Title VI Plan describes how recipients of federal financial assistance will develop and implement their Title VI Program.
2. **Plan Format** – A specific format is not prescribed. Sample formats are contained in Appendix 28.71 and 28.72.

Appendix 28.71 has an example Title VI Plan for large agencies serving a population of 100,000 or more. Large local agencies should use this example to prepare their plan that is to contain the categories listed in item C below (Key Points to Consider in Developing Plan).

Appendix 28.72 has a boilerplate for small agencies serving a population of less than 100,000 to use in developing their Abbreviated Title VI Plan/ Nondiscrimination Agreement.

If there are questions on these examples, please contact your Region Local Programs Engineer.

Larger agencies (populations greater than 100,000) having a Title VI Plan already approved for a different federally funded program, have the option to submit the existing Title VI Plan for approval or create a new one. Agencies can submit their plans through the Region Local Program Engineer for review by WSDOT's OEO. The WSDOT OEO will review the plan in accordance with Federal Requirements. If necessary, supplemental information will be requested prior to approval.

3. **Key Points to Consider In Developing a Plan** – These points are incorporated in the Nondiscrimination Agreement shown in Appendix 28.72 for cities under 100,000 population.

   a. **Policy Statement** – The policy statement reflects the agency's commitment to Title VI compliance, including all related Federal laws and regulations, and is signed by the agency's Chief Executive Officer (CEO).

   b. **Authorities** – This section cites all relevant Federal statutes, regulations, executive orders and other legislation.

   c. **Organization and Staffing** – This section identifies the Title VI Coordinator and program area Title VI Specialists within the organization directly responsible for the management and administration of the Title VI Program. The Plan is to include an organization chart that describes the reporting relationship between the designated Title VI Specialists within each program emphasis area and the designated agency Title VI Coordinator.

   d. **Program Emphasis Areas** – This section describes the federal aid transportation program areas (i.e., Planning, Research, Design, Education and Training, Right of Way, Construction, Maintenance), the areas' legal/ operational authorities, and assigns Title VI compliance monitoring responsibilities to each area.

   e. **Title VI Standard Assurances and Its Appendices (DOT 1050.2)** – The USDOT 1050.2 Standard Title VI Assurances of Appendix 28.71 and its Exhibits are placed by reference in every contract, grant, or property regardless of its funding source. For consultant contracts, see Exhibit H of Appendix 31.79. The agency's CEO signs these assurances.

   f. **Complaint Procedures** – This section outlines the process for filing complaints and the investigative process. It also identifies the agency staff positions responsible for this process, and the time limits for the submission of complaints and completion of investigations (60 days per 23 CFR 200.9(b)(3)).

g. **Table of Contents** – This section enables the reader to quickly locate particular sections of the Plan.

28.3 Reporting Requirements

Local agencies are to provide the following reports and/or data to WSDOT related to their transportation program:

Annual Title VI Update and Accomplishment Report

All agencies with approved Title VI Plans or Nondiscrimination Agreements are to annually prepare a report of their Title VI Program implementation compliance activities. This report is due one year from the date of approval of the Title VI plan and then annually on that same date. This is to describe the transportation activities that occurred during the year. This Annual Title VI Update and Accomplishment Report is to be completed by each agency and forwarded to the Region Local Programs Engineer, who will forward it to Local Programs for transmittal to WSDOT's OEO for review and approval.

Examples of Annual Reports are outlined in Appendix 28.74 for agencies over 100,000 population and Appendix 28.75 for agencies with population under 100,000.

Revisions to the Local Agency's Title VI Plan or Nondiscrimination Agreement

The Plan is to contain current information on names of staff and any other needed revisions. Agencies must submit substantial revisions to their Title VI Plan or Nondiscrimination Agreement to the Region Local Programs Engineer for transmittal to Local Programs for submittal to WSDOT's OEO as soon as they occur for review and approval. Substantial revisions may be the filing of the agency's new CEO signature, administrative changes in the agency's Title VI Program administrative structure and staffing, or changes to the plan's complaint procedures, etc.

Local agencies only need to submit a revised Title VI document when program changes such as the ones described above take place.

28.4 Title VI Complaint Investigations

The local agency is responsible for investigating all Title VI discrimination complaints occurring within the federal aid transportation program or its activities, unless the complaint filed is against the local agency. Complaints naming a local agency as a respondent shall be forwarded to the Region Local Programs Engineer, who will in turn forward it to Local Programs. WSDOT's OEO will investigate these complaints. Each local agency's Title VI Plan will have External Complaint Procedures to assist them in conducting a timely, fair and impartial investigation.

All Title VI investigations are to be completed within 60 days of acceptance of a complaint.

An annual Log of Complaints must be maintained by each agency. The Log of Complaints must contain the following information for each complaint filed:

- The name and address of the person filing the complaint.
- The date of the complaint.
- The basis of the complaint.

- The disposition of the complaint.
- The status of the complaint.

A Log of Complaints is shown in Appendix 28.76.

Only qualified, well-trained investigators should conduct these investigations. No agency is allowed to investigate a complaint against itself.

All findings from state or local investigations are preliminary and subject to the concurrence of FHWA Headquarters Civil Rights (HCR). FHWA HRC will render final decisions in all cases including those investigated by WSDOT. There are no administrative appeal forums in Title VI complaints. Once FHWA HCR issues its final agency decision (FAD), a complainant in disagreement with such determination may file an appeal with the appropriate US District Court.

28.5 Title VI Compliance Reviews

WSDOT/FHWA will conduct periodic reviews of compliance with Federal Title VI regulations as follows:

1. **Compliance Review** – The WSDOT Title VI Coordinator will notify Local Programs and work through the Region Local Programs Engineers to make arrangements to conduct periodic compliance reviews of local agencies with approved Title VI Plans. The compliance review will focus on how effectively the local agency has implemented its approved Title VI Plan. Documentation is gathered and individuals with Title VI responsibilities are interviewed as part of the review process. The local agency will be notified in writing of the scheduled date and the documents that will be required for the on-site review.
2. **Local Agency Found in Compliance** – If no deficiencies are found during the on-site review, the local agency will be told at the conclusion of the review and be notified in writing that it is in compliance.
3. **Local Agency Found in Noncompliance** – If deficiencies are identified during the review, the local agency will be apprised of them at the conclusion of the review and be given 90 days to correct them. After an agency corrects deficiencies, it will be notified in writing that it is in compliance.

   If a local agency does not correct Title VI Program deficiencies identified by WSDOT or FHWA, it may be subject to sanctions including the suspension of FHWA funding.
4. **Local Agency Responsibilities** – Local agencies administering federal aid contracts are required to conduct on-site compliance reviews of prime contractors and subcontractors. Agencies needing assistance in conducting on-site reviews should contact their Region Local Programs Engineer.

28.6 Other Nondiscrimination Statutes Related to Title VI

Limited English Proficiency – LEP (Executive Order 13166) – As noted above, one of the bases covered under Title VI is national origin. One type of national origin discrimination is discrimination based on a person's inability to speak, read, write, or understand English. The federal government and those receiving federal financial assistance (recipients, subrecipients, contractors) must take reasonable steps to ensure that LEP persons have meaningful access to the programs, services, and information those entities provide. This may require providing written and/or oral communications in a language other than English. More information regarding LEP responsibilities can be found at www.lep.gov/recipbroch.html and at www.usdoj.gov/crt/cor/lep/dotlep.htm.

Environmental Justice (Executive Order 12898) – Procedures for addressing environmental justice may be found in Chapter 24 of this manual, as well as Chapter 458 of the *Environmental Procedures Manual* M 31-11.

28.7 Appendices

28.71 Title VI Plan for Agencies Over 100,000 Population
28.72 Nondiscrimination Agreement Population Under 100,000
28.73 FHWA Title VI Annual Update of Accomplishments Report
28.74 Annual Report for Agency With Population Over 100,000 – Example
28.75 NDA Annual Report Population Under 100,000 – Example
28.76 Title VI Complaint Log
28.77 Title VI Compliance Review Questionnaire for Local Agencies

Title VI Plan for Agencies Over 100,000 Population

_____ Agency
Federally Funded Transportation Program
TITLE VI PLAN

_____ **Agency Commissioners**

_____

_____

_____

_____
Agency Administrator

_____
Public Works Director

Prepared by: _____
Grants & Compliance Manager
(Title VI Coordinator)
Office of Budget and Information Services

Appendix III Lease/Deed Provisions 18

I. Policy Statement, Authorities, and Citations

A. **Policy of Nondiscrimination** – _____ Agency assures that no person shall on the grounds of race, color, national origin, or sex as provided by Title VI of the Civil Rights Act of 1964, and the Civil Rights Restoration Act of 1987 (P.L. 100.259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any Agency sponsored program or activity. _____ Agency further assures every effort will be made to ensure non-discrimination in all of its programs and activities, whether those programs and activities are federally funded or not.

In the event _____ Agency distributes federal aid funds to another entity, _____ Agency will include Title VI language in all written agreements and will monitor for compliance.

Title VI compliance is a condition of receipt for federal funds. Assurance of compliance, therefore, falls under the proper authority of the Board of Agency Commissioners pursuant to its budgetary authority and responsibility. The Agency Administrator and Title VI Coordinator are authorized to ensure compliance with provisions of this policy and with the law, including the requirements of 23 Code of Federal Regulation (CFR) 200 and 49 CFR 21.

_____ _____
Agency Administrator Date

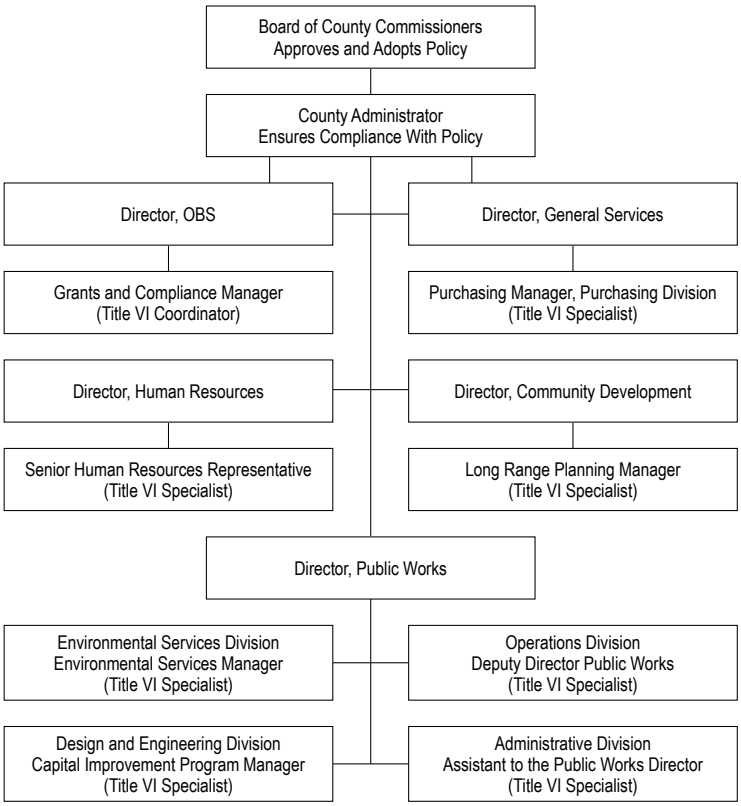
B. **Authorities** – Title VI of the 1964 Civil Rights Act provides that no person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

The Civil Rights Restoration Act of 1987 broadened the scope of Title VI coverage by expanding the definition of terms "programs or activities" to include all programs or activities of federal aid recipients, subrecipients, and contractors, whether such programs and activities are federally assisted or not (Public Law 100-259 [S. 557] March 22, 1988).

C. **Additional Citations** – Title VI of the Civil Rights Act of 1964; 42 USC 2000d to 2000d-4; 42 USC 4601 to 4655; 23 USC 109(h); 23 USC 324; DOT Order 1050.2; EO 12250; EO 12898; 28 CFR 50.3

II. Organization, Staffing, and Structure

A. Organizational Chart – Reporting Relationships



B. Staffing and Structure

Agency Administrator – The Agency Administrator is authorized to ensure compliance with provisions of the Agency's policy of nondiscrimination and with the law, including the requirements of 23 CFR Part 200 and 49 CFR Part 21. The Agency's grants compliance function and Title VI coordination shall be performed under the authority of the Agency Administrator.

Title VI Coordinator – _____ Agency has created a position of Grants and Compliance Manager to perform the duties of the Title VI Coordinator (Coordinator) and ensure implementation of the Agency's Title VI Federally Funded Transportation Program. The Grants and Compliance Manager has other duties and responsibilities in addition to Title VI. Although the Grants and Compliance Manager reports to the Director of the Office of Budget and Information Services (OBIS), their direct supervisor, this position shall have an indirect reporting relationship and access to the Agency Administrator.

Title VI Specialists – Additionally, the Agency has designated Title VI Specialists (Specialists) in departmental special emphasis program areas. The Specialists, designated below, shall work in concert with the Title VI Coordinator. These key programs or department areas are subject to receiving federal assistance through grants or other types of transportation related funding, or are responsible for implementing Agency directives and policies to ensure civil rights compliance and equal opportunity. The Specialists will work with the Coordinator to ensure their respective departments and programs comply with Title VI regulations and assurances, meet the objectives of the Title VI Plan, meet federal and state reporting requirements, and provide adequate training opportunities for applicable staff.

Title VI Specialists will work with the Coordinator to ascertain Title VI compliance by contractors, subcontractors, consultants, suppliers and other subrecipients under federally funded projects or programs. Specialists will ensure applicable Title VI provisions and requirements are included in contractual agreements to prime contractors and subrecipients. Specialists will work with the Coordinator to obtain statistical data on race, color, national origin, handicap/disability, age and sex of participants in, and beneficiaries of federally funded _____ Agency transportation programs. Each of the Specialists will maintain data relative to their respective special emphasis program area, designated below. The Coordinator shall use the data to complete annual Title VI reports and for other administrative needs.

Public Works Design and Engineering – Capital Improvement Program Manager

Environmental Services Environmental Services Manager

Operations – Deputy Director Public Works

Administration – Assistant to the Public Works Director

Community Development – Long Range Planning Manager

Human Resources – Senior Human Resources Representatives

General Services Purchasing – Purchasing Manager

III. Title VI Plan Implementation and Program Administration

Title VI Coordinator's Responsibilities and Program Administration – As authorized by the Agency Administrator, the Title VI Coordinator is responsible for initiating, monitoring, and ensuring _____ Agency's compliance with Title VI requirements as follows:

A. **Program Administration** – Administer the Title VI program and coordinate implementation of the plan. Ensure compliance with the assurances, policy, and program objectives. Perform Title VI program reviews to assess administrative procedures, staffing, and resources; provide recommendations as required to the Agency Administrator and Director of OBIS.

B. **Complaints** – Review written Title VI complaints that may be received by _____ Agency following the adopted procedural guidelines (see Section V – Complaint Procedures). Ensure every effort is made to resolve complaints informally at the local or regional level.

C. **Data Collection** – Review the statistical data gathering process performed by Title VI Specialists periodically to ensure sufficiency of data for meeting the requirements of Title VI program administration. (See Section VII – Special Emphasis Program Areas.)

D. **Environmental Impact Statements** – Ensure that available census data are included as a part of all Environmental Impact Statements/Assessments (EIS/EIA) conducted by Public Works (PW) for projects receiving Federal Highway Administration or other federal assistance.

E. **Training Programs** – Conduct or facilitate training programs on Title VI issues and regulations for Agency employees; and facilitate Title VI training for appropriate staff, contractors and subrecipients. A summary of training conducted will be reported in the annual update.

F. **Title VI Plan Update** – Review and update the _____ Agency Transportation Program, Title VI Plan as needed or required. Present updated plan to the Agency Administrator for approval; submit amended Plan to WSDOT.

G. **Annual Accomplishment Report** – Prepare an annual report of Title VI accomplishments and changes to the program in the preceding federal fiscal year; identify goals and objectives for the upcoming year as required; and submit by October 15.

H. **Public Dissemination** – Work with Agency staff to develop and disseminate Title VI program information to _____ Agency employees and subrecipients, including contractors, subcontractors, consultants, and subconsultants and beneficiaries, as well as the general public. Public dissemination may include postings of official statements, inclusion of Title VI language in contracts or other agreements, website postings, and annual publication of the Agency's Title VI Policy Statement in newspaper(s) having a general circulation, and informational brochures. Ensure public service announcements or notices are posted of proposed projects, hearings, meetings, or formation of public advisory boards, in newspapers or other media reaching the affected community. Ensure the full utilization of available minority publications or media; and, where appropriate, provide written or verbal information in languages other than English.

I. **Elimination of Discrimination** – Work with the Public Works Department, Human Resources, and other Agency offices to establish procedures for promptly resolving deficiencies, as needed. Recommend procedures to identify and eliminate discrimination that may be discovered in any Agency processes.

J. **Maintain Legislative and Procedural Information** – Federal laws, rules, and regulations, WSDOT guidelines, the current _____ Agency Title VI Plan, Annual Accomplishment Reports, and other resource information pertaining to the implementation and administration of the Agency's Title VI program will be maintained and updated by the Coordinator. Information will be made available to other Agency departments or the public as requested or required.

IV. NHI Education and Title VI Training

In keeping with adopted _____ Agency policy of nondiscrimination, departmental procedures will be established or followed for Public Works employees to have equal access to applicable educational and training opportunities. Public Works staff will maintain program administration documentation and data necessary for preparation of annual Title VI reports, and will routinely supply the necessary data to the Title VI Coordinator.

A. **National Highway Institute (NHI) Education** – The Coordinator will be notified when training for the National Highway Institute courses or workshops become available to Agency Public Works employees. The Director of the Department of Public Works will establish policy for the selection of participants interested in taking part in the National Highway Institute Training workshops to ensure that no one is denied participation or subjected to discrimination on the basis of race, color, national origin or sex. A report will be completed and forwarded to the Coordinator upon completion of each educational seminar or course throughout the course of the year, which shall include the name of each participant, their title, division, sex and ethnicity for use in completing the annual Title VI accomplishment report.

B. **Title VI Training** – The Coordinator is responsible for overall Title VI related training and staff development for Title VI Specialists and other Agency employees. The Coordinator will organize or conduct a minimum of one internal Title VI training session annually. The Coordinator will organize and facilitate the provision of Title VI training sessions for consultants, contractors, and subcontractors periodically. WSDOT's Office of Equal Opportunity Internal and External Civil Rights Branch and the Contract Compliance Office may be asked to provide applicable training.

C. **Selection of Instructors** – The Coordinator will collaborate with the Agency's Purchasing Division to ensure Agency policy is followed in the selection of instructors for _____ Agency Public Works training courses/ workshops, and ensure equal opportunity in the selection process for all training contracts. Per adopted policy, the Agency will provide accessibility to Minority/Women/Disadvantage Business Enterprise consulting and training firms to compete for training contracts.

V. Complaint Procedures – Allegations of Discrimination in Federally-Assisted Programs or Activities

A. **Overview** – These procedures cover all complaints filed under Title VI of the Civil Rights Act of 1964 as amended, Section 504 of the Rehabilitation Act of 1973, Civil Rights Restoration Act of 1987, and the Americans with Disabilities Act of 1990, relating to any program or activity administered by _____ Agency, as well as to subrecipients, consultants, and contractors. Intimidation or retaliation of any kind is prohibited by law.

The procedures do not deny the right of the complainant to file formal complaints with other state or federal agencies or to seek private counsel for complaints alleging discrimination. Every effort will be made to resolve complaints informally at the Agency and subrecipient level. The option of informal mediation meeting(s) between the affected parties and a designated mediator may be utilized for resolution.

B. **Procedures**

1. Any individual, group of individuals, or entity that believes they have been subjected to discrimination prohibited by nondiscrimination requirements may file a written complaint with _____ Agency Human Resources, Public Works or Board of Agency Commissioners. A formal complaint must be filed within 180 calendar days of the alleged occurrence. The Agency will not officially act or respond to complaints made verbally.
2. Upon receiving the written complaint, _____ Agency will determine its jurisdiction, acceptability, need for additional information, and the investigative merit of the complaint. In some situations, the Agency may request the Washington State Department of Transportation (WSDOT) Office of Equal Opportunity conduct the investigation. In the event WSDOT handles the investigation, they will follow their adopted procedures for investigating discrimination complaints, per their current State Title VI Plan.
3. If the complaint is against a subrecipient, consultant, or contractor, under contract with the Agency the appropriate division and/or agency shall be notified of the complaint, within 15 calendar days.
4. Once the Agency decides its course of action, the complainant and the respondent will be notified in writing of such determination within five calendar days. The complaint will be logged into the records of the Title VI Coordinator, and the basis for the allegation identified including race, color, national origin, handicap/disability, age, or sex.
5. In cases where _____ Agency assumes investigation of the complaint, the Agency will provide the respondent with the opportunity to respond to the allegations in writing. The respondent will have ten calendar days upon receipt, to furnish the Agency with his/her response to the allegations.

6. Within 60 days of receipt of the complaint, the Coordinator or WSDOT investigator will prepare a written investigative report for the Agency Engineer and Agency Administrator. The report shall include a narrative description of the incident, identification of persons interviewed, findings and recommendations for disposition.
7. The recommendation shall be reviewed by the Prosecuting Attorney's office (PA). The PA may discuss the report and recommendations with the Coordinator and other appropriate departmental staff. The report will be modified as needed and made final for its release to the parties.
8. Once the investigative report becomes final, briefings will be scheduled with each party within 15 days. Both the complainant and the respondent shall receive a copy of the investigative report during the briefings and will be notified of their respective appeal rights.
9. A copy of the complaint and _____ Agency's investigative report will be issue to WSDOT's External Civil Rights Branch (or the appropriate oversight agency) within 60 calendar days of the receipt of the complaint.
10. If the complainant or respondent is not satisfied with the results of the investigation of the alleged discriminatory practice(s) he or she shall be advised of their rights to appeal the agency's decision to WSDOT, U.S. Department of Transportation or U.S. Department of Justice. The complainant has 180 calendar days after the appropriate agency's final resolution to appeal to USDOT. Unless new facts not previously considered come to light, reconsideration of the final determination by the investigating agency will not be available.
11. An annual Log of Complaints must be maintained by each agency. The Log of Complaints must contain the following information for each complaint filed:
    - The name and address of the person filing the complaint.
    - The date of the complaint.
    - The basis of the complaint.
    - The disposition of the complaint.
    - The status of the complaint.

    Only qualified, well-trained investigators should conduct these investigations. No agency is allowed to investigate a complaint against itself.

VI. Subrecipient Review and Remedial Action Procedures

A. **Title VI Review of Subrecipients of Federal Aid Highway Funds** – Public Works Specialists and the Coordinator will assist WSDOT to periodically conduct Title VI compliance reviews. Title VI Specialists and Public Works staff will review select recipients of federal aid highway or other federal funds, to ensure adherence to Title VI requirements (see Section VII). The Coordinator and Specialists will work cooperatively to periodically confirm operational guidelines provided to consultants, contractors, and subrecipients, including Title VI language, provisions, and related requirements, as applicable.

B. **Post-Grant Reviews** – The Coordinator will collaborate with Specialists and Public Works staff to conduct periodic post grant reviews of select recipients of federal highway funds or other federal funds, for roads, sidewalks, bridges, municipal construction, etc. to ensure adherence to Title VI requirements (see Section VII). Appropriate staff will periodically confirm that operational guidelines provided to consultants, contractors and subrecipients include Title VI language and provisions and related requirements, where applicable.

C. **Remedial Action** – When irregularities occur in the administration of federal aid highway programs at either the Agency or subrecipient levels, corrective action will be taken to resolve identified Title VI issues. _____ Agency will seek the cooperation of the consultant, contractor or other subrecipient in correcting deficiencies found during periodic reviews. _____ Agency will provide technical assistance and guidance, upon request, to support voluntarily compliance by the subrecipient. When conducting Title VI compliance reviews, the Agency will reduce to writing any recommended remedial action agreed upon by the Agency and subrecipient, and provide a copy of the letter within a period not to exceed 45 days.

   Subrecipients placed in a deficiency status will be given a reasonable time, not to exceed 90 days after receipt of the deficiency letter, to voluntarily correct deficiencies. When a subrecipient fails or refuses to voluntarily comply with requirements within the allotted time frame, _____ Agency will submit to WSDOT and FHWA copies of the case file and a recommendation that the subrecipient be found in noncompliance.

   A follow-up review will be conducted within 180 days of the initial review to ascertain if the subrecipient has complied with the Title VI Program requirements in correcting deficiencies previously identified. If the subrecipient refuses to comply, _____ Agency and WSDOT may, with FHWA's concurrence, initiate sanctions per 49 CFR 21.

VII. Title VI Implementation Activities in Special Emphasis Program Areas

A. **Planning and Location Activities**

1. **Planning Process** – The Agency Engineer has responsibility for providing long-range planning (through a service agreement with Community Development), program development, and capital programming necessary to provide efficient transportation services to Agency citizens. The Agency Engineer annually updates and coordinates _____ Agency's six-year plan for transportation improvement programs and projects. The update also informs other _____ Agency jurisdictions of the current planning direction for transportation needs. Projects included in the update are the result of evaluation and prioritization of needs in various transportation areas. The evaluation process includes input from various divisions in the department, cities, local jurisdictions and organizations, citizen groups, and private individuals. All six-year plans must be consistent with the adopted Comprehensive Plan approved under the State's Growth Management Act.

2. **Authorities** – _____ Agency Code; 23 CFR 450; RCW 35.77; RCW 36; RCW 47.06; RCW 47.80

3. **Public Involvement in Planning Activities and Title VI**

   a. Invite participation of a cross section of the populace from social, economic, and ethnic groups in the planning process by disseminating written program information to minority media and ethnic organizations, and providing public service announcements for all local media, when forming citizen advisory committees or planning board, and requesting involvement.

   b. Public Works staff will obtain demographic statistics at applicable community meetings and public hearings involving transportation planning sessions. Data will be gathered through use of a voluntary self-reporting form which includes race, gender, and national origin. Copies of the completed forms will be provided to Title VI Coordinator after each meeting.

   c. To ensure access to public meetings, evening meetings will be conducted in a variety of community buildings throughout the Agency, including those along transit routes, ensure translation services are available if anticipated, and ensure public meetings are held in predominantly minority communities when transportation projects will specifically impact those communities.

B. **Consultant Contracts Activities**

1. **Consultant Contracts Administration** – The D&E Division is responsible for recommending consultant firms to the Agency Engineer for final selection, negotiation and award. The Division administers awarded consultant contracts.

2. **Authorities** – _____ Agency Ordinance 90-81; WSDOT *Local Agency Guidelines*; 48 CFR 31; 23 CFR 172

3. **Consultant Selection Process** – Public Works staff will request qualifications from consulting engineering firms specializing in various aspects of civil engineering which may relate to public works projects and the development of construction plans and special provisions for roads and bridges, design work associated with structures, performing environmental studies or preparing NEPA or SEPA documents for public works projects.

   Consultant selection from the certified list maintained by the Purchasing Division adheres to Washington State regulations (RCWs) and is consistent with _____ Agency vendor policies.

4. **Title VI Assurances and Provisions**

   a. Include applicable Disadvantaged Business Enterprise (DBE) goals in designated projects, and seek to proactively achieve the goal(s).

   b. Include Title VI assurance and provision language in all federally funded consultant contracts. Periodically review documents and language to ensure compliance with current laws and regulations. Provide a copy of the form of the contract to the Coordinator, and any amendments or updates that may occur over time.

   c. A Public Works Specialist will maintain updated demographic data on the utilization of women-and minority-owned consulting firms. As they occur, a copy of the award letter will be provided to the Coordinator for use in preparing the Annual Update Accomplishment Report.

C. **Design and Engineering/Environmental Activities**

1. The Public Works Design and Engineering Division is responsible for the Capital Improvement Program (CIP) and environmental permitting for projects. Studies are performed to assess various environmental factors as they relate to the implementation of the Agency's Annual Road Program, including evaluating demographic data.

2. **Authorities** – _____ Agency Ordinance; WSDOT *Local Agency Guidelines*; *Standard Plans* WSDOT/APWA - M 21-01; Title 23, USC 109(d), 14(a), 217, 315 and 402(a); 23 CFR 1204.4; 23 CFR 771; EO 12898; 49 CFR 1.48(b)(33) and 1.48(c)(2; National Environmental Policy Act of 1969, 42 USC 4321; 40 CFR Part 1500; 49 CFR Part 622; *Environmental Procedures Manual* M 31-11; EO 12898

3. **Design/Environmental Review Process and Title VI**
   a. Depending on the scope, complexity, and impacts of a project, a National Environmental Policy Act (NEPA), NEPA Categorical Exclusion, NEPA Environmental Assessment, State Environmental Policy Act (SEPA) checklist, SEPA Determination of Non Significance, or NEPA and/or SEPA Environmental Impact Statement will be completed.
   b. Monitor compliance with Title VI requirements in all aspects of conducting Environmental Impact Statements or Assessments. Provide a comprehensive summary of the demographic and environmental data elements to be considered by the EIS/EIA process to the Coordinator; including updated summary lists as applicable. Incorporate into the review process, adequate.
   c. Time for the Coordinator to review and comment, as applicable, on the draft EIS/EIA to ensure there are no violations of the Federal Civil Rights Act, as amended, as a result of the agency's federal aid highway activities.
   d. In order to ensure dissemination of information and foster participation from affected populations, the Public Works staff will place public notices in applicable general and minority media; select accessible locations and times for public hearings or meetings, and arrange for translation services as needed; particularly in projects impacting predominantly minority communities. Ensure the public has information pertaining to their rights to call or write the department to view plans and discuss environmental problems.
   e. Public Works staff will obtain demographic data at community meetings and public hearings pertaining to the transportation design phase. Data will be gathered through use of a voluntary sign-up form which includes race, gender, and national origin. Copies of the voluntary self-reporting forms will be provided to the Coordinator after each meeting.
   f. Public Works staff shall provide a copy of the Annual Construction Report to the Title VI Coordinator in or around April of each year. The Coordinator shall work with the Agency GIS Department to generate a map of the federally funded transportation projects to include demographic data of the neighborhoods affected by the projects.

D. **Right of Way Activities**
   1. **Real Property Services** – The Real Estate Services Office manages and coordinates the appraisal and acquisition of real property and relocation assistance services for public works projects. The right of way acquisition process entails appraisal of property, negotiation of terms and conditions for acquisition, and assistance in the relocation of displaced individuals, businesses, farm operations, nonprofit organizations, and property management. The Real Estate Services Office is located in the Development Division.
   2. **Authorities** – *Right of Way Manual* M 26-01; 23 CFR 130; 49 CFR 24; RCW 47; WAC 468-100

3. **Right of Way Activities and Title VI**
   a. Ensure equal opportunity in all aspects of procuring real estate service contracting and appraisal agreements. Follow adopted Agency vendor procurement policies in the acquisition of contracted services.
   b. Utilize current OMWBE directories identifying fee appraiser organizations and the Washington State Department of Transportation's list of certified fee appraisers when seeking services. Maintain data on awards to minority and female appraisers, and provide data to the Title VI Coordinator on a quarterly basis.
   c. Follow the guidelines in the *Right of Way Manual* M 26-01 for property acquisition as well as applicable laws and regulations, including Title VI and Section 504.
   d. Adhere to departmental policy of apprising affected property owners, tenants, and others involved in right of way acquisition of their rights and options regarding negotiation, relocation, condemnation and other aspects of the acquisition process. Provide copies of relocation
   e. Assistance literature produced by WSDOT and a copy of the _____ Agency Title VI Compliance brochure to all affected parties.
   f. Incorporate Title VI language and assurance statements in all surveys of property owners and tenants after the conclusion of all business. Coordinate the preparation of deeds, permits and leases to ensure the inclusion of the appropriate clauses, including Title VI Assurances.
   g. Ensure that appraised values and communications associated with the appraisal and negotiation operations result in equitable treatment.
   h. Ensure comparable replacement dwellings are available and assistance is given to all displaced persons and entities by the property acquisition process.
   i. Maintain statistical data including race, color, national origin, and sex on all relocatees affected by federally funded projects, and provide detailed demographic data quarterly to the Title VI Coordinator.

E. **Construction and Maintenance Activities**
   1. **Construction Management Section** – This section is located in the Design and Engineering Division, and is responsible for administration of all new construction contracts and inspecting bridges. The D&E Division is responsible for oversight and the administration of transportation construction projects, as set forth by policy decisions and supervision of the Agency Engineer.
   2. **Authorities** – *Construction Manual* M 41-01; *Maintenance Manual* M 51-01; *Local Agency Guidelines* M 36-63; *Standard Specifications for Road, Bridge, and Municipal Construction* M 41-10.

3. **Maintenance** – The Operations Division is responsible for the efficient program for maintaining Agency roads, bridges, and parks/grounds by economically utilizing the resources of contractors, equipment, and materials.
4. **Authorities** – *Maintenance Manual* M 51-01; *Construction Manual* M 41-01; *Standard Specifications for Road, Bridge and Municipal Construction* M 41-10; Clark Agency Road Standards
5. **Construction and Maintenance Activities and Title VI**
   a. Review all federally funded projects for application of DBE goals. As appropriate, include DBE provisions in those projects with designated goals. Include Title VI language in bid announcements and applicable construction documents, as stipulated in the Agency's Title VI Policy Statement (p. 2) and Assurances (Addendum 2, p. 14-15) herein.
   b. Award construction contracts on the basis of lowest responsive bidder, as well as meeting DBE requirements. Include Title VI language in prime contract award letters to encourage utilization of DBE subcontracts and vendors.
   c. Ensure that prime contractors with DBE requirements award contracted work to qualified DBEs which perform commercially useful functions.
   d. Monitor all maintenance and construction operations to ensure nondiscrimination throughout all operations.
   e. Coordinate the gathering of maintenance and construction information regarding DBE participation for the Annual Title VI Report; and provide to the Coordinator.

Exhibit 1 – _____ Agency Title VI Notice to the Public

_____ Agency hereby gives public notice that it is the Agency's policy to assure full compliance with Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987, and related statutes and regulations in all programs and activities. Title VI requires that no person shall, on the grounds of race, color, sex, or national origin be excluded from the participation in, be denied the benefits of, or be otherwise subjected to discrimination under any Federal Aid Highway program or other activity for which _____ Agency receives federal financial assistance.

Any person who believes they have been aggrieved by an unlawful discriminatory practice under Title VI has a right to file a formal complaint with _____ Agency. Any such complaint must be in writing and filed with the _____ Agency Title VI Coordinator within one hundred, eighty (180) days following the date of the alleged discriminatory occurrence. Title VI Discrimination Complaint Forms may be obtained from the Human Resources office at no cost to the complainant by calling xxx-xxx-xxxx.

Exhibit 2 – _____ Agency Title VI Assurances

The Agency of _____ in the State of Washington, (hereinafter referred to as the "Recipient"), HEREBY AGREES THAT as a condition to receiving any federal financial assistance from the U.S. Department of Transportation will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 USC 2000d--42 USC 2000d--4 (hereinafter referred to as the Act), and all requirements imposed by or pursuant to 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--Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Regulations), and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient receives federal financial assistance through the Washington State Department of Transportation, including the U.S. Department of Transportation and Federal Highway Administration, and HEREBY GIVES ASSURANCE THAT it will promptly take any measures necessary to effectuate this agreement. This Assurance is required by Subsection 21.7(a)(1) of the Regulations.

More specifically and without limiting the above general assurance, the Recipient hereby gives the following specific assurances to its Federal Aid Highway Program:

1. That the Recipient agrees that each "program" and each "facility" as defined in Subsections 21.23(e) and 21.23(b) of the Regulations, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the Regulations.
2. That the Recipient shall insert the following notification in all solicitations for bids for work or material subject to the Regulations made in connection with the Federal Aid Highway Program, and in adapted form in all proposals for negotiated agreements:

   _____ Agency in accordance with Title VI of the Civil Rights Act of 1964 and 78 Stat. 252, 42 USC 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 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.
3. That the Recipient shall insert the clauses of Appendix 1 of this Assurance in every contract subject to the Act and the Regulations.

4. That the Recipient shall insert the clauses of Appendix 2 of this Assurance, as a covenant running with the land, in any deed from the United States effecting a transfer of real property, structures, or improvements thereon, or interest therein.
5. That where the Recipient receives federal financial assistance to construct a facility, or part of a facility, the Assurance shall extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives federal financial assistance in the form, or for the acquisition of real property, or an interest in real property, the Assurance shall extend rights to space on, over or under such property.
7. That the Recipient shall include the appropriate clauses set forth in Appendix 3 of this Assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the Recipient with other parties: (a) for the subsequent transfer of real property acquired or improved under the Federal Aid Highway Program; and (b) for the construction or use of or access to space on, over or under real property acquired, or improved under the Federal Aid Highway Program.
8. That this Assurance obligates the Recipient for the period during which federal financial assistance is extended to the program, or is in the form of, personal property, or real property or interest therein or structures or improvements thereon, in which case the Assurance obligates the Recipient or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which the federal financial assistance is extended, of for another purpose involving the provision of similar services or benefits; or (b) the period during which the Recipient retains ownership or possession of the property.
9. The Recipient shall provide for such methods of administration for the program as are found by the Secretary of Transportation, or the official to whom s/he delegates specific authority to give reasonable guarantee that it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed or pursuant to the Act, the Regulations, and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial endorsement with regard to any matter arising under the Act, the Regulations, and this Assurance.

    THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts, property, discounts or other federal financial assistance extended after the date hereof to the Recipient by the U.S. Department of Transportation under the Federal Aid Highway Program and is binding on it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest and other participants in the Federal Aid Highway Program. The person whose signature appears below is authorized to sign this Assurance on behalf of the Recipient.

Exhibit 2A – _____, _____
Agency Administrator Date

1 – Title VI Assurances For Consultants, Contractors, Subcontractors, Suppliers, and Manufacturers

_____ Agency will insert or add the following clauses into every contract subject to the Act and Regulations associated with the receipt of federal financial assistance:

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

1. **Compliance With Regulations** – The contractor shall comply with the Regulations Relative to Nondiscrimination in Federally-Assisted Programs of the Department of Transportation (hereinafter DOT), 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 contract.
2. **Nondiscrimination** – The contractor, with regard to the work performed during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontracts, including Procurement of Materials and Equipment** – In all solicitations either by competitive bidding or negotiations made by the contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color, sex, or national origin.
4. **Information and Reports** – The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by _____ Agency or the Washington State Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to _____ Agency, or the Washington State Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance** – In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, _____ Agency and the Washington State Department of Transportation shall impose such contract sanctions as it, or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

   a. Withholding of payments to the contractor under the contract until the contractor complies, and/or;

   b. Cancellation, termination, or suspension of the contract, in whole or in part.

6. **Incorporation of Provisions** – The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontractor or procurement as _____ Agency or the U.S. Department of Transportation, Federal Highway Administration, may direct as a means of enforcing such provisions including sanctions for noncompliance.

   Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request _____ Agency enter into such litigation to protect the interests of the Agency and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Exhibit 2B – Granting and Habendum Clauses

When _____ Agency is the recipient of real property, structures or improvements thereon, or interest therein from the United States, the following clauses shall be included in any and all deeds affecting or recording the transfer of property:

GRANTING CLAUSE

NOW, THEREFORE, _____ Agency, as authorized by law, will accept title to the lands and maintain the project constructed thereon, in accordance with Title 23, United States Code, the Regulations for the Administration of Federal Aid for Highways and the policies and procedures prescribed by the Federal Highway Administration of the Department of Transportation and, also in accordance with and in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination in Federally-Assisted Programs of the Department of Transportation (hereinafter referred to as the Regulations) pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252:42 USC 2000d to 2000d--4) does hereby remise, release, quitclaim, and convey unto _____ Agency all the right, title, and interest of the Department of Transportation in and to said land described in Exhibit A attached hereto and made a part thereof.

HABENDUM CLAUSE

TO HAVE AND TO HOLD said lands and interests therein unto _____ Agency, and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on _____ Agency, its successors, and assigns.

_____ Agency, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person shall on the grounds of race, color, sex, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed (,) (and)[1]1 (2) that _____ Agency, shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination of Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended (,) and (3) that in the event of breach of any of the above mentioned nondiscrimination conditions, the Agency shall have a right to reenter said lands and facilities on said land, and the above described land and facilities shall thereon revert to and vest in and become the absolute property of the Department of Transportation and its assigns as such interest existed prior to this instruction.

[1] Reverter Clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of Civil Rights Act of 1964.

Exhibit 2C – Lease/Deed Provisions

Upon receipt of federal financial assistance to construct a facility or part of a facility, the Recipient agrees to include these clauses in all future deeds, licenses, leases, permits, or similar instruments entered into by _____ Agency pursuant to the provisions of Title VI Assurances, item 7:

The LESSEE, for himself or herself, his or her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this lease, for a purpose for which a US Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the LESSEE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination in Federally-Assisted Programs of the U.S. Department of Transportation--Effectuation of Title VI of the Civil Rights Act of 1964, as said Regulations may be amended.

That in the event of breach of any of the above nondiscrimination covenants, the Agency shall have the right to terminate the lease, and to reenter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by _____ Agency pursuant to the provisions of Title VI Assurances, Item 7.

The LESSEE, for himself or herself, his or her personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person, on the grounds of race, color, sex, or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and furnishing of services thereon, no person on the grounds of race, color, sex, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the LESSEE shall use the premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination in Federally-Assisted Programs of the U.S. Department of Transportation--Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That in the event of breach of any of the above nondiscrimination covenants, the Agency shall have the right to terminate the lease, and to re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.

Nondiscrimination Agreement Population Under 100,000

Washington State Department of Transportation and Name of Recipient Policy Statement

The (Name of Recipient), hereinafter referred to as the "Recipient" assures that no person shall on the grounds of race, color, national origin, or sex, as provided by Title VI of the Civil Rights Act of 1964, and the Civil Rights Restoration Act of 1987 (P.L. 100.259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity. The Recipient further assures every effort will be made to ensure nondiscrimination in all of its programs and activities, whether those programs and activities are federally funded or not.

The Civil Rights Restoration Act of 1987, broadened the scope of Title VI coverage by expanding the definition of terms "programs or activities" to include all programs or activities of federal aid recipients, sub-recipients, and contractors/consultants, whether such programs and activities are federally assisted or not (Public Law 100259 [S.557] March 22, 1988).

In the event the Recipient distributes federal aid funds to a sub-recipient, the Recipient will include Title VI language in all written agreements and will monitor for compliance.

The Recipient's (Name of person/division), is responsible for initiating and monitoring Title VI activities, preparing reports and other responsibilities as required by 23 Code of Federal Regulation(CFR) 200 and 49 Code of Federal Regulation 21.

_____
Signature

_____
Title

_____
Date

Title VI Program

Organization and Staffing

Pursuant to 23 CFR 200, (Name of Recipient) has designated a Title VI Coordinator who is responsible for Attachment 1, which describes the hierarchy for (Name of Recipient)'s Title VI Program, including an organization's chart illustrating the level and placement of Title VI responsibilities.

Assurances
49 CFR Part 21.7

The (Name of the Recipient), hereby gives assurances:

1. That no person shall on the grounds of race, color, national origin, and sex, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity conducted by the recipient regardless of whether those programs and activities are federally funded or not. Activities and programs which the recipient hereby agrees to carry out in compliance with Title VI and related statutes include but are not limited to:
   - List all major Transportation programs and activities of the recipient and Title VI responsibilities for each one of them. Include information as Attachment 2 to this Nondiscrimination Agreement.
2. That it will promptly take any measures necessary to effectuate this agreement.
3. That each Transportation program, activity, and facility (i.e., lands change to roadways, park and ride lots, etc.) as defined at 49 CFR 21.23(b) and (e), and the Civil Rights Restoration Act of 1987 will be (with regard to a program or activity) conducted, or will be (with regard to a facility) operated in compliance with the nondiscriminatory requirements imposed by, or pursuant to, this agreement.
4. That these assurances are given in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts, property, discounts or other federal financial assistance extended after the date hereof to the recipient by the Washington State Department of Transportation (WSDOT) under the federally-funded program and is binding on it, other recipients, subgrantees, contractors, sub-contractors, transferees, successors in interest and other participants. The person or persons whose signatures appear below are authorized to sign these assurances on behalf of the Recipient.
5. That the Recipient shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and made in connection with all federally-funded programs and, in all proposals for negotiated agreements.

   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.

6. That the Recipient shall insert the clauses of Appendix 1 of this Agreement in every contract subject to the Act and the Regulations.
7. That the Recipient shall insert the clauses of Appendix 2 of this Agreement, as a covenant running with the land, in any deed from the United States effecting a transfer of real property, structures, or improvements thereon, or interest therein.
8. That the Recipient shall include the appropriate clauses set forth in Appendix 3 of this Agreement, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the Recipient with other parties: (a) for the subsequent transfer of real property acquired or improved under a federal aid program; and (b) for the construction or use of or access to space on, over or under real property acquired, or improved under a federal aid program.
9. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this agreement.

Implementation Procedures

This agreement shall serve as the recipient's Title VI plan pursuant to 23 CFR 200 and 49 CFR 21.

For the purpose of this agreement, "Federal Assistance" shall include:

1. Grants and loans of federal funds.
2. The grant or donation of federal property and interest in property.
3. The detail of federal personnel.
4. The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient.
5. Any federal agreement, arrangement, or other contract which has as one of its purposes, the provision of assistance.

The recipient shall:

1. Issue a policy statement, signed by the head of the recipient, which expresses its commitment to the nondiscrimination provisions of Title VI. The policy statement shall be circulated throughout the recipient's organization and to the general public. Such information shall be published where appropriate in languages other than English.
2. Take affirmative action to correct any deficiencies found by WSDOT or the United States Department of Transportation (USDOT) within a reasonable time period, not to exceed 90 days, in order to implement Title VI compliance in accordance with this agreement. The head of the recipient shall be held responsible for implementing Title VI requirements.

3. Designate a civil rights coordinator who has a responsible position in the organization and easy access to the head of the recipient. The civil rights coordinator shall be responsible for initiating and monitoring Title VI activities and preparing required reports.
4. The civil rights coordinator shall adequately implement the civil rights requirements.
5. Process complaints of discrimination consistent with the provisions contained in this agreement. Investigations shall be conducted by civil rights personnel trained in discrimination complaint investigation. Identify each complainant by race, color, national origin or sex, the nature of the complaint, the date the complaint was filed, the date the investigation was completed, the disposition, the date of the disposition, and other pertinent information. A copy of the complaint, together with a copy of the recipient's report of investigation, will be forwarded to WSDOT's Office of Equal Opportunity (OEO) within 10 days of the date the complaint was received by the recipient.
6. Collect statistical data (race, color, national origin, sex) of participants in, and beneficiaries of the Transportation programs and activities conducted by the recipient.
7. Conduct Title VI reviews of the recipient and sub-recipient contractor/consultant program areas and activities. Revise where applicable, policies, procedures and directives to include Title VI requirements.
8. Attend training programs on Title VI and related statutes conducted by WSDOT OEO.
9. Prepare a yearly report of Title VI accomplishments for the last year and goals for the next year. This report is due one year from the date of approval of the Nondiscrimination Agreement and then annually on the same date.
    a. Annual Work Plan – Outline Title VI monitoring and review activities planned for the coming year; state by which each activity will be accomplished and target date for completion.
    b. Accomplishment Report – List major accomplishments made regarding Title VI activities. Include instances where Title VI issues were identified and discrimination was prevented. Indicate activities and efforts the Title VI Coordinator and program area personnel have undertaken in monitoring Title VI. Include a description of the scope and conclusions of any special reviews (internal or external) conducted by the Title VI Coordinator. List any major problem(s) identified and corrective action taken. Include a summary and status report on any Title VI complaints filed with the recipient.

Discrimination Complaint Procedure

1. Any person who believes that he or she, individually, as a member of any specific class, or in connection with any disadvantaged business enterprise, has been subjected to discrimination prohibited by Title VI of the Civil Rights Act of 1964, the American with Disabilities Act of 1990, Section 504 of the Vocational Rehabilitation Act of 1973 and the Civil Rights Restoration Act of 1987, as amended, may file a complaint with the recipient. A complaint may also be filed by a representative on behalf of such a person. All complaints will be referred to the recipient's Title VI Coordinator for review and action.
2. In order to have the complaint consideration under this procedure, the complainant must file the complaint no later than 180 days after:
   a. The date of alleged act of discrimination; or
   b. Where there has been a continuing course of conduct, the date on which that conduct was discontinued.

   In either case, the recipient or his/her designee may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reason for so doing.
3. Complaints shall be in writing and shall be signed by the complainant and/or the complainant's representative. Complaints shall set forth as fully as possible the facts and circumstances surrounding the claimed discrimination. In the event that a person makes a verbal complaint of discrimination to an officer or employee of the recipient, the person shall be interviewed by the Title VI Coordinator. If necessary, the Title VI Coordinator will assist the person in reducing the complaint to writing and submit the written version of the complaint to the person for signature. The complaint shall then be handled according to the recipient's investigative procedures.
4. Within 10 days, the Title VI Coordinator will acknowledge receipt of the allegation, inform the complainant of action taken or proposed action to process the allegation, and advise the complainant of other avenues of redress available, such as WSDOT and USDOT.
5. The recipient will advise WSDOT within 10 days of receipt of the allegations. Generally, the following information will be included in every notification to WSDOT:
   a. Name, address, and phone number of the complainant.
   b. Name(s) and address(es) of alleged discriminating official(s).
   c. Basis of complaint (i.e., race, color, national origin, or sex)
   d. Date of alleged discriminatory act(s).
   e. Date of complaint received by the recipient.
   f. A statement of the complaint.
   g. Other agencies (state, local, or federal) where the complaint has been filed.
   h. An explanation of the actions the recipient has taken or proposed to resolve the issue raised in the complaint.

6. Within 60 days, the Title VI Coordinator will conduct an investigation of the allegation and based on the information obtained, will render a recommendation for action in a report of findings to the head of the recipient. The complaint should be resolved by informal means whenever possible. Such informal attempts and their results will be summarized in the report of findings.
7. Within 90 days of receipt of the complaint, the head of the recipient will notify the complainant in writing of the final decision reached, including the proposed disposition of the matter. The notification will advise the complainant of his/her appeal rights with WSDOT, or USDOT, if they are dissatisfied with the final decision rendered by the Recipient. The Title VI Coordinator will also provide WSDOT with a copy of this decision and summary of findings upon completion of the investigation.
8. Contacts for the different Title VI administrative jurisdictions are as follows:

   Washington State Department of Transportation
   Office of Equal Opportunity, Title VI Program
   PO Box 47314
   Olympia, WA 98466
   360-705-7098

   Federal Highway Administration
   Washington Division Office
   711 Capitol Way South, Suite 501
   Olympia, WA 98501
   360-534-9325

Sanctions

In the event the recipient fails or refuses to comply with the terms of this agreement, WSDOT may take any or all of the following actions:

1. Cancel, terminate, or suspend this agreement in whole or in part;
2. Refrain from extending any further assistance to the recipient under the program from which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the recipient.
3. Take such other action that may be deemed appropriate under the circumstances, until compliance or remedial action has been accomplished by the recipient.
4. Refer the case to the Department of Justice for appropriate legal proceedings.

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION:

_____
Signature

Director of the Office of Equal Opportunity
Title

_____
Date

NAME OF RECIPIENT:

_____
Signature

_____
Title

_____
Date

Appendix 1

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

1. C**ompliance With Regulations** – The contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of United States Department of Transportation (USDOT), 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 contract.
2. **Nondiscrimination** – The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of sub-contractors, including procurement of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontracts, Including Procurement of Materials and Equipment** – In all solicitations either by competitive bidding or negotiations made by the contractor for work to be performed under a sub-contract, including procurement of materials or leases of equipment, each potential sub-contractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.
4. **Information and Reports** – The contractor 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 contracting agency or the appropriate federal agency to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to WSDOT or the USDOT as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance** – In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the contracting agency shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to:
   - Withholding of payments to the contractor under the contract until the contractor complies, and/or;
   - Cancellation, termination, or suspension of the contract, in whole or in part

6. **Incorporation of Provisions** – The contractor 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 contractor shall take such action with respect to any sub-contractor or procurement as the contracting agency or USDOT may direct as a means of enforcing such provisions including sanctions for noncompliance.

   Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a sub-contractor or supplier as a result of such direction, the contractor may request WSDOT enter into such litigation to protect the interests of the state and, in addition, the contractor may request the USDOT enter into such litigation to protect the interests of the United States.

Appendix 2

The following clauses shall be included in any and all deeds affecting or recording the transfer of real property, structures or improvements thereon, or interest therein from the United States.

GRANTING CLAUSE

NOW THEREFORE, Department of Transportation, as authorized by law, and upon the condition that the state of Washington will accept title to the lands and maintain the project constructed thereon, in accordance with Title 23, United States Code, the Regulations for the Administration of Federal Aid for Highways and the policies and procedures prescribed by the United States Department of Transportation and, also in accordance with and in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, the Department of Transportation WSDOT (hereinafter referred to as the Regulations) pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252: 42 USC 2000d to 2000d - 4) does hereby remise, release, quitclaim, and convey unto the state of Washington all the right, title, and interest of the Department of Transportation in and to said land described in Exhibit A attached hereto and made a part thereof.

HABENDUM CLAUSE

TO HAVE AND TO HOLD said lands and interests therein unto the state of Washington, and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which the federal financial assistance is extended or for another purpose involving the provisions of similar services or benefits and shall be binding on the state of Washington, its successors, and assigns.

The state of Washington, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person shall on the grounds of race, color, sex or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed (,)(and)* (2) that the state of Washington, shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination of Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended (,) and (3) that in the event of breach of any of the above mentioned nondiscrimination conditions, the department shall have a right to reenter said lands and facilities on said land, and the above described land and facilities shall thereon revert to and vest in and become the absolute property of the Department of Transportation and its assigns as such interest existed prior to this instruction.

Appendix 3

The following clauses shall be included in all transportation related deeds, licenses, leases, permits, or similar instruments entered into by (Recipient) pursuant to the provisions of Assurance 8.

The LESSEE, for himself or herself, his or her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this lease, for a purpose of which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the LESSEE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 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--Effectuation of Title VI of the Civil Rights Act of 1964, as said Regulations may be amended.

That in the event of breach of any of the above nondiscrimination covenants, the STATE shall have the right to terminate the lease, and to reenter and repossess said land and the facilities thereon, and hold the same as if said lease has never been made or issued.

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by the Washington State Department of Transportation pursuant to the provisions of Assurance 8.

The LESSEE, or himself or herself, his or her personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person, on the grounds of race, color, sex, or national origin, shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and furnishing of services thereon, no person on the grounds of race, color, sex, and national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the LESSEE shall use the premises in compliance with all requirements imposed by or pursuant to 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--Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That in the event of breach of any of the above nondiscrimination covenants, the STATE shall have the right to terminate the lease, and to reenter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.

[1] Reverter Clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purpose of Title VI of the Civil Rights Act of 1964.

FHWA Title VI Annual Update of Accomplishments Report

Title VI Annual Update of Accomplishments Report for FY 2003-2004 for the Washington State Department of Transportation

This Report describes Click here to enter text.'s Title VI activities for the federal fiscal year 2003-2004 (October 1, 2003-September 30, 2004), provides information regarding the Click here to enter text.'s Title VI accomplishments, and describes any changes in Title VI program implementation during the reporting period.

The Title VI Coordinator function has been delegated to the Click here to enter text. within the Department. Title VI responsibilities pertaining to contract compliance and minority and women's businesses are handled primarily by the Business Development and Contract Compliance Office (BDCC) in the Office of Business Relations and Economic Development (BRED). Both (your agency's divisions) are within the Executive branch of Click here to enter text.'s government. The Click here to enter text. Title VI Plan has been revised this year. The Plan is available from the Title VI Coordinator upon request.

The Click here to enter text. continues to provide contract-specific services to the Road Services Division in the Click here to enter text. Department of Transportation. They are involved in DBE goal setting, pre-contract administration, monitoring, contract compliance reviews and reporting.

Click here to enter text., is the designated Title VI Coordinator and reports directly to the Click here to enter text. on Title VI issues. The Office of Civil Rights strives to eliminate discrimination through education, mediation and enforcement that is responsive to the needs of a diverse Click here to enter text.. The Click here to enter text. implements specific programs to eliminate discrimination in employment, housing, public accommodations, contracting and assists Click here to enter text. government in complying with Title VI and disability access laws.

Last year, Click here to enter text. developed a new training curriculum for the Special Emphasis Area liaisons and interested others. This year, Click here to enter text. revised and expanded its Compliance Review Questions. Click here to enter text. used the questions in compliance review/training meetings with Special Emphasis Area liaisons. Click here to enter text. also presented its training curriculum with the Environmental unit of the Click here to enter text. Division. Click here to enter text. facilitated a session at the AASHTO National Civil Rights Conference and shared its training curriculum with attendees.

Title VI Annual Update Report for FY 2003-2004 for the Washington State Department of Transportation

The report includes an updated version of Title VI Implementation Plan (Appendix D).

This report is a joint effort between Click here to enter text. Click here to enter text. Department of Executive Services/Office of Civil Rights and Click here to enter text. Click here to enter text. Department of Transportation/Road Services Division, with assistance provided by the Executive's Office/Business Development and Contract Compliance. We thank all of those who assisted us in gathering the necessary information and in ensuring the accuracy of the report!

Agency Responsible for this Report Sign In This Area.

Click here to enter text. Click here to enter text. , through the Office of the Title VI Coordinator of

the Office of Civil Rights, Department of Executive Services and the Department of Transportation, Road Services Division, consistent with the requirements of Title VI of the Civil Right Act of 1964, and the Civil Rights Restoration Act of 1987, hereby, formulates and submits its FY 2003-2004 Title VI Update Report this 29th day of September, 2004.

Section I Policy Statement

A copy of _____ _____'s Title VI Policy Statement is attached in Appendix E of this report.

Section II Organization, Staffing, and Structure

A. Organization

The Manager of the Office of Civil Rights has responsibility for the overall administration and management of the _____'s Title VI Program. The individual designated as the Title VI Specialist in this Update Report provides assistance in Title VI program implementation by work _____ to address issues regarding program implementation, compliance monitoring, education and reporting within _____ departments.

The Title VI Coordinator continues to report directly to the Click here to enter text. Click here to enter text. Executive on Title VI issues (please refer to the enclosed organizational chart located in this report, Appendix G).

B. Staffing

Table II.B.1 depicts the name of the Title VI Specialist who reports directly to the Title VI Coordinator and is located in the Office of the Title VI Coordinator.

Table II.B.1 – Title VI Specialist			
Name	**Race/Gender**	**Title**	**Duties**

C. Structure

Table II.C.1 shows Title VI Special Emphasis Program Area Liaisons within Click here to enter text. Click here to enter text.. For this update, program area elements include planning, location, design, environmental services, real estate services (right of way), construction, and education and training. The program area liaisons work directly with the Title VI Specialist in the Office of the Title VI Coordinator. All liaison positions have been filled at this time.

Table II.C.1 – Title VI Special Emphasis Program Area Liaisons			
Name	**Gender/Ethnicity**	**Title**	**Program**

**Responsible for identifying training and educational needs for staff within their respective sections/units and for securing the necessary training.

Staff within the Office of the Title VI Coordinator assists these work groups by providing guidance and instruction on each unit's roles and responsibilities in fully implementing the Title VI provisions as needed.

Section III Title VI Monitoring and Review Process

A. Actions to Promote Internal and External Compliance With Title VI

Click here to enter text. Click here to enter text. utilizes liaisons in the Department of Transportation Road Services Division (Special Emphasis Areas as described above) and throughout all departments in the Click here to enter text. to assist in assuring compliance with Title VI. As the office of the Title VI Coordinator, Click here to enter text. provided training to liaisons and others responsible for compliance throughout Click here to enter text. Click here to enter text. government. Click here to enter text. also provided information to the public, including contractors, on Click here to enter text. Click here to enter text.'s Title VI compliance program.

In 2002, Title VI Coordinators from around the state began to meet twice a year. In FY 2003-2004 they met once in Vancouver and discussed issues raised by WSDOT. They shared common experiences, best practices and challenges in implementing Title VI. This effort will continue. Between meetings the coordinators share information via email.

Internal – The Title VI Plan has been updated this year along with the Title VI Update Report. Both were circulated to the Special Emphasis Area Liaisons in the Road Services Division of the Click here to enter text. Department of Transportation as a part of the update process.

Last year, Click here to enter text. developed a new training curriculum for the Special Emphasis Area Liaisons and interested others. José Rivera, Title VI Coordinator, Office of Equal Opportunity, Washington Department of Transportation, provided valuable input. The training curriculum covers all Special Emphasis areas, along with environmental justice and serving persons who have limited English proficiency. The training will help liaisons take preventative measures and actions to address issues of discrimination, when found to exist. The curriculum was circulated to Title VI Coordinators statewide for comment and use.

Click here to enter text. has pursued opportunities to incorporate Title VI issues in Click here to enter text. policies and manuals. Click here to enter text. provided input to the development and completion of a new Project Management and Design Manual by identifying and commenting on areas where Title VI issues may occur in these processes. The Title VI Training curriculum outline is included as a reference to project designers and managers.

In April of 2004 the Title VI Coordinator and Click here to enter text. division staff provided comments to Kathleen McKinney, WSDOT regarding her development of an Environmental Justice web page pilot. The layout of the web page was useful and informative.

In May 2004 the Title VI Coordinator met with Click here to enter text. to discuss recent requirements for the Title VI Update Report from the FHWA/WSDOT. Later, in May Click here to enter text. and Click here to enter text. DOT met with Jose Rivera, WSDOT Title VI Specialist, to discuss ways of including Environmental Justice and Limited English Proficiency data into the Title VI Plan and Update Report.

In June 2004 Click here to enter text. Department of Transportation personnel and Click here to enter text. staff attended a WSDOT sponsored course: *A Model for Conducting Environmental Justice Analysis.* In part, this course explains Title VI responsibilities associated with environmental justice and receiving federal aid.

In 2004, Click here to enter text. developed an expanded compliance review questionnaire. In August and September 2004, Click here to enter text. utilized this questionnaire to conduct reviews and training with special emphasis area liaisons.

In September 2004, Click here to enter text. presented a separate focused training to staff in Environmental Services, Department of Transportation, concentrating on Environmental Justice, Limited English Proficiency and environmental processes. The training utilized the training curriculum developed last year.

External – Click here to enter text. discussed Title VI compliance at the Regional Contracting Forum in February 2004 co-sponsored by a variety of governments including Click here to enter text. Click here to enter text. Additionally, Click here to enter text.'s Title VI Specialist facilitated a workshop at the American Association of Transportation Officials (AASHTO) 2004 National Transportation Civil Rights Conference in San Diego, California in September 2004. The workshop entitled, Effective Team Building with State DOT and Sub-Recipient Partners: Cities and Counties was well received.

B. Title VI Compliance Reviews During This Report Period

Click here to enter text. Click here to enter text. conducted six Title VI Compliance Reviews during the reporting period:

- 5/17/04 – Planning, Public Involvement (Reviewer's Name)
- 7/21/04 – Planning, Design (Reviewer's Name)
- 8/9/04 – Environmental Services (Reviewer's Name)
- 8/26/04 – Real estate services (ROW) – (Reviewer's Name)
- 9/10/04 – Construction and Consulting (Reviewer's Name)
- 9/14/04 – Training (Reviewer's Name)

Section IV Title VI Complaints During This Report Period

Click here to enter text. received no complaints involving Department of Transportation Road Services Division in 2003-2004. Click here to enter text. received two complaints involving the Click here to enter text. Click here to enter text. Department of Transportation, Transit Division in 2003-2004.

The two complaints alleged one incident of denial of bus services by the Department of Transportation Transit Division. The complaints alleged discrimination based on race. Click here to enter text. resolved these cases.

Section V Accomplishment Report for Each Program Area

The following information describes the location of the major program functions within Click here to enter text. Click here to enter text. and identifies accomplishments, applicable operational guidelines, process, and responsibilities of the various sections.

Appendix B lists staff summarized by gender and race for the following Special Emphasis areas: Planning, Design, Construction, and Maintenance Services and Environmental.

A. Planning

The Road Services Division is responsible for developing short and long-range plans that provide efficient transportation services to the citizens of Click here to enter text. Click here to enter text.

Division staff coordinates with other government agencies, private groups, and the public to develop comprehensive plans that meet the transportation needs of Click here to enter text. Click here to enter text. . The Division provides staff and technical assistance to regional transportation groups and serves as KCDOT liaison for planning with the Puget Sound Regional Council.

A.1 Number of Consultant Projects for Planning Awarded During This Reporting Period and Dollar Value – No consultant contracts for planning were awarded during FY 2004.

A.2 Efforts Made to Utilize Minority and Female Consultants and Subconsultants in Federally-Assisted Contracts – It is the policy of Click here to enter text. Click here to enter text. to comply with 49 Code of Federal Regulations, Part 26, to ensure that Disadvantaged Businesses, including minorities and women, have an equal opportunity to receive and participate in federally assisted contracts. Click here to enter text. Click here to enter text. does not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate in connection with the award or performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin. Efforts made to use minority and female consultants during FY 2004 include the following outreach activities:

- **Disadvantaged Business Enterprise (DBE) Goals** – As part of Click here to enter text. Click here to enter text.'s outreach efforts to use minority and female consultants, when appropriate, proposals include a Disadvantaged Business Enterprise (DBE) goal. Certified DBE firms can encompass small, minority and women-owned firms. As a condition of award, the successful bidder must make good faith efforts to meet this DBE goal. The proposer establishes good faith efforts when it documents that it has obtained enough DBE participation to meet the DBE goal; or documents that it has made adequate efforts to do so although unsuccessful.
- **Consultants Selection Procedures** – Consultants are selected according to the procedures outlined in the RCW, Click here to enter text. Click here to enter text. Codes, and *Local Agency Guidelines* procedures for federally assisted projects. Click here to enter text. Click here to enter text. encourages all consultant firms that are registered in Washington State to conduct business and who possess the requisite professional license(s) to present their qualifications for highway design projects.

  The Click here to enter text. Click here to enter text. Professional and Contract Services Section solicits firms for inclusion on the Click here to enter text.'s Architecture and Engineering, Professional Services, and the Construction Small Works Rosters in accordance with RCW 39.80 and Click here to enter text. Click here to enter text. practices. Click here to enter text. Click here to enter text. places an advertisement in various news media to include the Seattle Times, Seattle Daily Journal of Commerce and various minority newspapers that have existing contracts with the Click here to enter text. Advertisement is conducted a least twice during a year to encourage consultant firms to apply for placement on the rosters. In addition, Click here to enter text. Click here to enter text.'s Procurement website contains year-round information on how to apply for the rosters and an application that can be downloaded from the following website address:

  Click here to enter text. Click here to enter text. complements the annual roster advertisements with continuous outreach efforts conducted by the Business Development and Contract Compliance Section. These activities include an annual Regional Contracting Forum that provides advance information on upcoming public procurements, networking and one-on-one meetings with public procurement officials. Click here to enter text. Click here to enter text. provides the leadership and coordination for this annual event. The Business Development and Contract Compliance Section also produces a newsletter that provides a listing of upcoming

contracts that is distributed to small, minority and women-owned businesses, The Focus.

- **Public Pre-Proposal Meetings** – Other outreach efforts to support the use of minority and female consultants include conducting public pre-proposal meetings to provide information concerning the scope of work and available subcontracting opportunities associated with projects. These meetings are open to all interested parties.

A.3 Studies Conducted Which Provide Data Relative to Minority Persons, Neighborhoods, Income Levels, Physical Environments, and Travel Habits – The Click here to enter text. will continue to review all proposed projects for their potential to have a disproportionate impact on low-income and minority populations that are subject to additional consideration in accordance with applicable Title VI and Environmental Justice provisions. Click here to enter text. Click here to enter text.'s unincorporated areas do not typically require substantial analysis to determine that the potentially affected areas do not meet thresholds for consideration as low-income or minority communities. However, some projects, do require such analysis.

A.4 Hearings Held During the Report Period and Efforts Utilized to Ensure Citizen Participation, Particularly Minorities, and Women – The Number of These Individuals and the Capacity of Their Participation – No hearings were conducted in FFY 2004. There were seven community advisory group meetings and one other public meeting conducted.

Click here to enter text. Click here to enter text. continues to use the Washington State Department of Transportation (WSDOT) form for collecting data on public hearing and public meeting attendees for Title VI reporting requirements, per Title 23, Code of Federal Regulations, Part 200.9(b)(4). See Appendix Click here to enter text. for a copy of the form used by Click here to enter text. Click here to enter text. at its public meetings. Appendix F summarizes the forms collected during FFY 2004.

B. Location

Click here to enter text. Click here to enter text.'s emphasis over the past several years has been the improvement of existing Rights of Way and corridors. There has been no activity in the Click here to enter text.'s Location Program. When future corridors are considered, the Location Program will be one of the tools used by the Click here to enter text. to help determine their feasibility.

B.1 Number of Complaints Filed – None during this report period.

B.2 Identification of Titles, Ethnicity, and Gender of Employees in the Location Program – Not applicable this reporting period. Click here to enter text. Click here to enter text. currently has no staff currently assigned to location duties since there has been no activity in that area.

B.3 Number of Environmental Impact Statements Reviewed During the Report Period, Including a Summary of Comments on EIS Where Minority, Handicapped, Elderly, Etc., Communities Were Adversely Impacted – None during this report period.

B.4 Number of Consultants Contracts Involving Project Development Activities – None during this report period.

B.5 Number of Public Hearings Held During the Report Period Concerning Location of a Project, Including How the Hearings Were Advertised and Notification to Minorities – None during this report period.

B.6 Encouragement of Minority Leaders to Provide Suggestions and Ask Questions on Location of Highways – Not applicable during this report period. No new highways were located during this report period.

B.7 Need to Use Bilingual Advertisements, Announcements, Notices, Etc., During the Report Period – None during this report period.

C. Design

Design activities are performed by two sections of the Road Services Division. The Engineering Services Section designs safe and cost effective roads and bridges, according to all governing laws and regulations, including those that protect the environment. The Traffic Engineering Section designs traffic signalization and interconnect systems, roadway channelization, performs traffic analysis in support of road and bridge projects and is also responsible for the preservation and upkeep of Click here to enter text. traffic systems. A SEPA review is completed for every project. SEPA checklists are prepared for most projects and Environmental Impact Statements are done for large complex projects if they have a significant impact to the environment, built or natural.

C.1 Number of Consulting Firms With Design Contracts, Including the Number of These Contracts Held by Minority Firms and Women-Owned Firms/Dollar Value – For FFY 2004, twenty-three consulting firms were engaged in design contracts. For reporting purposes, work order and task order contracts that have multiple awards are considered contracts awarded. The accompanying tables summarize the number of contracts awarded, including work order and task order contracts, and the sum of those contract awards by prime and subconsultant.

Table V.C.1 provides the number of contracts and total dollar value awarded to minority firms and women-owned firms as prime consultants with design contracts.

Table V.C.1 – Design Contracts-Prime

Name of Firm	Certification Status	Ethnicity	# Contracts Awarded (includes work and task orders)	Sum of Contract Awards (rounded to nearest thousand)
Name of Firm	WBE	White	2	$64,000
Name of Firm	MBE/DBE	Asian	1	$23,000
Name of Firm	WBE/DBE	White	1	$7,000

Table V.C.2 contains information on the number of minority firms and women-owned firms who currently have subcontracts, their certification status, ethnicity, and sum of contract awarded dollar value.

Table V.C.2 – Minority, Women-Owned Firms With Consultant Subcontracts

Name of Firm	Certification Status	Ethnicity	# Contracts Awarded (includes work and task orders)	Sum of Contract Awards (rounded to nearest thousand)
Name of Firm	WBE/DBE	White	2	$48,000
Name of Firm	MWBE/DBE	Black	2	$17,000
Name of Firm	WBE/DBE	White	1	$3,000
Name of Firm	WBE	White	1	$12,000
Name of Firm	MBE/DBE	Hispanic	3	$50,000

Name of Firm	MBE/DBE	Asian	1	$27,000
Name of Firm	MBE/DBE	Asian	1	$18,000
Name of Firm	MBE/DBE	Asian	2	$32,000
Name of Firm	MWBE/DBE	Asian	1	$16,000
Name of Firm	MBE/DBE	Asian	1	$2,000
Name of Firm	MBE/DBE	Asian	2	$57,000
Name of Firm	WBE/DBE	White	3	$23,000
Name of Firm	WBE/DBE	White	1	$18,000
Name of Firm	MWBE/DBE	Asian	1	$18,000
Name of Firm	MWBE/DBE	Asian	1	$18,000
Name of Firm	WBE/DBE	White	1	$17,000
Name of Firm	WBE/DBE	White	2	$15,000
Name of Firm	MBE/DBE	Hispanic	1	$14,000
Name of Firm	WBE/DBE	White	1	$42,000
Name of Firm	MBE/DBE	Asian	2	$18,000

C.2 Efforts to Increase Minority and Female Participation in Obtaining Consultant Contracts

- **Procurement Information System** – Click here to enter text. Click here to enter text.'s Procurement Information System, through the Department of Transportation, Click here to enter text. Services Division requests Letters of Interest, Statement of Qualifications and Proposals from all firms qualified and interested in providing professional services for contracts awarded by the Click here to enter text. Click here to enter text. Click here to enter text. posts information on current Requests for Proposals on its Internet website. Proposals identify the types of sub consulting opportunities that may be available on the project for informational purposes.
- **Advertisement in Local Papers and** Click here to enter text. Click here to enter text. **Procurement Website –** Click here to enter text. Click here to enter text. advertises Requests for Proposals for consulting services in local papers and on its Procurement website. The scope, size and duration of these contracts vary in size to promote diversity in the number and size of firms competing for these awards. Some contracts are for complete design services on a single project. Others may be for environmental reviews, traffic analysis, mediators or a wide range of professional services. Click here to enter text. Click here to enter text. solicits some small A&E contracts (under $150K) from Consultants using its A&E Roster.
- **Advance Information on Upcoming Contract Opportunities** – During Federal Fiscal Year 2004, Click here to enter text. Click here to enter text.'s efforts to use minority and female consultants included providing advance information on upcoming contract opportunities to DBE's to include small, minority and women-owned businesses.

Click here to enter text. Click here to enter text. also provided the leadership for a Regional Contracting Forum held in February, 2004 with sponsorship from several local agencies and the State of Washington Office of Minority and Women's Business Enterprises. Outreach efforts for this event targeted small businesses, including minority and women-owned businesses in all contracting categories. The event provided a forum for networking between large and small firms, and provided information on public contract opportunities totaling greater than $800 million. The Forum provided access to public procurement officials for participants seeking contracts. More than 700 business representatives attended the Forum and several public agencies shared information on economic opportunities with their organizations.

- **Newsletter Distribution** – During FY 2004, Click here to enter text. Click here to enter text. produced, distributed 1,500 copies and targeted mailings of its newsletter, The Focus, to small businesses, including minority and female consulting firms in its market area.
- **Grassroots Level Outreach Efforts** – During FY 2004, Click here to enter text. Click here to enter text. supplemented its outreach to include a grassroots level approach to meet one-on-one with small economically disadvantaged businesses, including minority and women-owned businesses. These efforts include informing and helping these firms to take advantage of economic development initiatives underway. These outreach efforts support other existing activities to identify small businesses and provide incentives for prime contractors and proposers to use of these firms in Click here to enter text. contracting opportunities.
- **Office of Business Relations and Economic Development** – Click here to enter text. Click here to enter text.'s Office of Business Relations and Economic Development is a catalyst in the Click here to enter text. and Central Puget Sound region for economic development. One objective of the office is the development of small businesses that includes collaboration among colleges, cities, chambers of commerce, and the business community and government economic development agencies. The office has two primary goals: to retain, expand and grow economically viable businesses in the Puget Sound Region and to nurture a well-trained workforce to support those businesses.
- **Collaboration With Other Local Governments** – Click here to enter text. Click here to enter text. provides the leadership for a regional partnership group that includes the (other local groups working on transportation issues). Monthly meetings serve to address, identify and implement strategies to promote and encourage the broader inclusion of small disadvantaged businesses, including minority and women-owned businesses in the contracting opportunities of these agencies. Meetings facilitate collaboration and information sharing among group members.

C.3 Public Hearings Held During the Design Phase of Any Highway – No public hearings were conducted in FFY 2004; however Click here to enter text. Click here to enter text. did conduct public outreach for projects and pre-proposal meetings for consultant contracts.

Click here to enter text. Click here to enter text. conducted a number of public meetings during FFY 2004. The Click here to enter text. widely distributes advance information to every household and business in the project area notifying them of the meeting. During FFY 2004, there were seven community advisory group meetings, and one project public meeting conducted.

Pre-proposal meetings open to the public are held to benefit prospective proposers for design contracts. The proposal requirements are explained and project information is presented. In addition these meetings afford networking opportunities for D/M/WBE firms to build teaming relationships. Minority, women, and disadvantaged businesses are active participants in these

meetings. A Click here to enter text. Click here to enter text. Business Development Specialist attends many of these meetings to discuss any D/M/WBE or Civil Rights requirements and to answer questions. During FY 2004, no pre-proposal meetings were held for design contracts.

C.4 Employees in the Design Program Area, Including Ethnicity and Sex, Including Efforts to Increase Minority and Female Representation Where Low – See Appendix B for information on employees.

Click here to enter text. Click here to enter text. uses various recruitment approaches to identify minorities and women in the Design Program area. These include advertisements in regional and local publications, contacts with state, Click here to enter text. and city agencies and professional associations, i.e., American Society of Civil Engineers (ASCE), Society of Women Engineers (SWE), American Public Works Association (APWA), National Society of Black Engineers (NASB), American Indian Science and Engineering Society, Society of Hispanic Professional Engineers (SHPE) Association of Filipino Engineers of Washington (AFEW) and Click here to enter text. Road Administration Board (CRAB).

During this report period, recruitment staff in the Design area actively participated in the following job fairs and forums: ANEW (Apprenticeship for Nontraditional Employment for Women) Women in Trades Fair, and Professional and Technical Diversity Network.

C.5 Complaints Filed in the Design Program Area – None during this report period.

C.6 Significant Problem Areas, Accomplishments, and Actions to Take During the Ensuing Year – No significant problem areas were identified during this report period.

D. Environmental Unit

The Environmental Unit of the Road Services Division, Engineering Services Section, works to ensure the promotion of environmental integrity in the design, construction and maintenance of transportation systems that serve the needs of the Click here to enter text.'s various communities. This section responds to the requirements of the National Environmental Policy Act (NEPA) and the State Environmental Policy Act (SEPA) to ensure that projects undertaken by Click here to enter text. Click here to enter text. meet these provisions, as required by Washington State and the Federal Government.

Click here to enter text. Click here to enter text.'s unincorporated areas do not typically require substantial analysis to determine that the potentially affected areas do not meet thresholds for consideration as low-income or minority communities.

During FFY 2004, the Click here to enter text.'s Road Services Division, Engineering Services Section conducted seven NEPA and 30 SEPA environmental reviews. The completed environmental reviews did not identify impacts to minority or economically disadvantaged communities. As we reported previously, Title VI/Environmental Justice issues have been a significant aspect of the EIS that is currently being prepared for the Click here to enter text. Bridge project. The Click here to enter text. Bridge Project EIS was initiated in February 20 Click here to enter text. and there have been ongoing efforts to address and comply with Title VI/Environmental Justice considerations from the outset. During FYE 2003 staff from Click here to enter text. Click here to enter text. and WSDOT completed the technical studies pertaining to socio-economic impacts and Title VI/Environmental Justice considerations. The results from those studies have been incorporated into the draft review versions of the Draft EIS. Those initial drafts have been revised to clarify Title VI/Environmental Justice information and address specific comments from WSDOT. Following its approval by WSDOT and FHWA, Click here to enter text. Click here to enter text. anticipates issuing the Draft EIS in 2005.

See Appendix C for the list of names for each project that was subject to an environmental review during FY 2004. A copy of the SEPA exemption determination and determination of nonsignificance is included for each project.

E. Real Estate Services (Right of Way)

Click here to enter text. Click here to enter text.'s Department of Executive Services, Facilities Management Division, Real Estate Services Section manages and coordinates the appraisal and acquisition of real property for the Click here to enter text.'s Department of Transportation, Road Services Division. This section's scope of responsibilities also includes the management of excess properties and relocation services.

The property acquisition process follows the *Right of Way Manual* M 26-01 and all applicable laws and regulations, including Title VI and Section 504. The acquisition process includes appraisal of property, negotiation of terms and conditions for acquisition, and relocation assistance, as well as property management.

E.1 Civil Rights Complaints in the Following Real Estate Services (Right of Way) Areas

E.1.a. **Appraisals** – None during this report period.
E.1.b. **Negotiations** – None during this report period.
E.1.c. **Relocation Assistance and Payments** – None during this report period.
E.1.d. **Property Management** – None during this report period.

E.2 Number of Appraisers Utilized During the Reporting Period – During FFY 2004, four appraisers were utilized, two females, two males and no minorities. The appraisers are Click here to enter text. Click here to enter text. employees. Decisions to obtain new appraisers are based on need and vacancies. There are no vacancies at this time. There were no contracts for appraisers during this reporting period.

E.3 Number of Negotiations During the Report Period and Disparity in Contract Negotiations Between Minorities and Non-Minorities – There were 80 negotiations during this report period. No disparity in contract negotiations was noted.

E.4 Concerns Raised by Minorities or Women Regarding Their Options in the Negotiation Phase – None during this report period. Reported concerns are directed to the Property Services Acquisition Supervisor for resolution. Concerns reported to the Click here to enter text. Executive or Click here to enter text. Council are directed to the Facilities Management Director or Property Services Manager, and then assigned to the Acquisition Supervisor for resolution with the complainant. Correspondence and outcomes are documented in the specific property file and the project general file.

E.5 Number of Relocations During the Report Period – There were no relocations during FFY 2004.

E.6 Concerns Raised by Minorities or Women on Replacement Housing, Referral Housing, and Advisory Services – None.

E.7 Opportunities for Minorities and Women to Obtain Contracts Awarded for Providing Relocation Assistance – In-house relocation assistance services are conducted according to the rules guidelines of the federal Uniform Relocation Act (CFR24), RCW 8.26, and the WSDOT relocation manual and LAG agreement. Staff attend project open houses to present relocation services and benefits, and later meet individually with affected relocatees to negotiate and finalize benefit awards.

F. Construction and Maintenance Services

The Construction Services Group provides guidance and oversight for the administration of transportation construction projects. The Click here to enter text.'s Road Maintenance Operations Section is responsible for the preservation and upkeep of Click here to enter text. roads and bridges.

F.1 Civil Right Complaints Involving Competitive Bidding Procedures – There were no complaints involving competitive bidding procedures during the reporting period.

F.2 Summary of Efforts Made by the Title VI Coordinator to Encourage the Use of Minority Individuals, Firms, or Agencies to Obtain Maintenance Agreements or Contracts – Contract Specialists located in the Business Development and Contract Compliance Section review the scope of work for all advertised solicitations on a contract-by-contract basis. These reviews identify potential subcontracting opportunities to breakdown scopes of the work for the participation of smaller firms. Outcomes of these reviews include the establishment of goals, when applicable, for the participation of Disadvantaged Business Enterprises, including minority and women-owned firms.

For advertised procurements, Click here to enter text. Project Managers complete and submit a Subcontracting/Apprenticeship Availability Analysis Worksheet to the Business Development and Contract Compliance Section. The advertisement identifies the specific scopes of work that are available as subcontracting opportunities. The Title VI requirements are included in the bid/proposal specifications as FHWA form 1273. This form identifies and defines the Title VI requirements which are made a part of the contract documents. The specifications include a requirement for these provisions to be made a part of all lower tier subcontracts entered into by the successful contractor.

F.3 Procedures Reviewed to Assure Subcontract Agreements, First and Second Tier, Material Supply, and Equipment Lease Agreements During the Report Period – Staff in the Business Development and Contract Compliance Section work with Click here to enter text. Departments throughout the life of the project, beginning with the construction planning phase through physical completion, the final contract closeout, and final release of retainage to the contractor.

Title VI requirements are included in all contract documents, including all lower tier contracts, amendments and supplements entered into by the contractor. The nondiscrimination/affirmative action language in Click here to enter text. contracting documents is identical to WSDOT General Special Provisions 1-07.11 (1050.2 language).

After contract execution, the contractor is responsible for reporting requirements outlined in the contract, including all affirmative action and nondiscrimination submittals for its subcontractors in accordance with Click here to enter text. Click here to enter text. Code.

During performance of the contract, neither the contractor nor any party subcontracting under the authority of the contract is permitted to discriminate or tolerate harassment in employment, administration, delivery of services or any other benefits under the Contract. Click here to enter text. Click here to enter text. Code Chapters 12.16 and 12.17 are incorporated by reference into the contract terms and conditions. Click here to enter text. Click here to enter text. will not execute any contract without prior receipt of the nondiscrimination or affirmative action documents specified in the contract terms and conditions.

Click here to enter text. Click here to enter text. performs on-site compliance reviews to establish with reasonable certainty contractors' compliance with Affirmative Action requirements, as

required by federal, state, and local laws.

At contract end, contractors must submit to the Click here to enter text. a copy of the Affidavit of Wages Paid Form for each subcontractor that performed work on the contract. The Washington State Department of Labor and Industries approves this form. Staff within the Business Development and Contract Compliance Section receives the Final Affidavit of Amounts and approves the final payment to the contractor after verification that the contractor has fulfilled its reporting requirements.

F.4 Significant Accomplishments and/or Action Items for the Ensuing Year – Continue monitoring disadvantaged, minority, women, and small business participation in Click here to enter text. Road construction contracting.

G. Education and Training

G.1 During the Reporting Period, Efforts Made to Encourage Participation by Minorities and Women in the NHI's Educational Program – All staff is encouraged to participate in educational and training programs relating to their jobs. Training announcements are mailed to Click here to enter text. departments and are distributed accordingly and maintained in a training notebook or on a shared drive for ready employee access. In addition, staff members who have information on training, or who receive information from vendor training mailing lists, can submit this information to the training coordinators for each section within the Road Services Division and they distribute accordingly. The Click here to enter text. advertises NHI classes to all relevant staff. Staff are encouraged to participate in courses offered by WSDOT, National Highway Institute, and other agencies. Historically, all staff who indicate a desire to attend are approved for training.

G.2 Types of NHI Sponsored Programs and Number of Click here to enter text. **Participants, Including Minorities and Women** – During 2004, there were no NHI sponsored or co-sponsored programs that Road Services Division employees participated in or attended. A number of employees attended WSDOT sponsored training, unrelated to Title VI. Information regarding attendees is available upon request.

In June 2004, Jim Sussex, Click here to enter text. Click here to enter text. Department of Transportation Road Services Division, and Maurice Alexander, Click here to enter text. Click here to enter text. Office of Civil Rights, attended a WSDOT sponsored course: *A Model for Conducting Environmental Justice Analysis.* In part, this course explained Title VI responsibilities associated with environmental justice and receiving federal aid.

G.3 Identify Staff Responsible for Training by Job Title, Ethnicity, and Gender – Staff within Click here to enter text. Click here to enter text.'s Office of Civil Rights (Click here to enter text.) provides guidance to departments on their responsibilities and reporting requirements for Title VI.

Table V.G.1 shows Click here to enter text. staff responsible for Title VI training to departments by job title, ethnicity, and gender.

Table V.G.1 – Title VI Training Staff Within the Office of the Title VI Coordinator

Name	Job Title	Ethnicity	Gender
de longh, Bailey	Title VI Coordinator	Caucasian	Female
Alexander, Maurice	Civil Rights Specialist	African American	Male

G.4 Civil Rights Complaints Filed Concerning Training and Educational Opportunities and Any Corrective Actions Taken – No complaints were filed during this reporting period.

H. Administration

H.1 List of Employees by Ethnicity and Gender in Each of the Title VI Program Areas – Please refer Appendix B for a summarization of the ethnicity and gender of employees in the respective program areas.

H.2 Summarize All Activities Undertaken During the Reporting Period Which Provide for Assurances of Title VI Compliance With Contractors, and by Contractors (i.e., are Title VI compliance included in all contracts and consultant agreements; were reviews made to ensure contractors and consultants are adhering to Title VI requirements; are contractors and/or consultants appraised of Title VI implications and issues) – The following is a summary of activities undertaken during the reporting period that provide for assurances of Title VI compliance with contractors, and by contractors.

- **Title VI Training –** Click here to enter text. Click here to enter text.'s Office of the Title VI Coordinator has developed and presented training for Click here to enter text. Click here to enter text. staff so they are aware of Title VI requirements. See section H.3. below.
- **Dissemination of** Click here to enter text. Click here to enter text.**'s Title VI Policy Statement –** Click here to enter text. Click here to enter text.'s Title VI Policy Statement is included in a post award packet of informational materials that the Business Development and Contract Compliance Office send to the Click here to enter text.'s prime contractors. The post award packet includes information on the Click here to enter text.'s reporting requirements and is sent to all prime contractors for each contract that has been publicly bid and advertised.
- **Title VI Provisions in All** Click here to enter text. Click here to enter text. **Federally Funded Contracts –** All federally funded contracts administered by Click here to enter text. Click here to enter text. contain Title VI provisions (FHWA form 1273).
- **Analysis Worksheet Reviews for All Advertised Construction Bids and Proposals –** Contract Compliance Specialists located in the Business Development and Contract Compliance Office receive and review Subcontracting/Apprenticeship Availability Analysis Worksheets for projects advertised for construction bids. The worksheet identifies the specific scopes of work, if any, which may be available for performance by subcontractors. Specifications (FHWA form 1273) defining Title VI requirements are included in the contract documents with a requirement that these provisions be included in all amendments, supplements and lower tier contracts entered into by the contractor. (Contract documents also include GSP 01-07.11 language relating to the Requirements for Nondiscrimination.) Goals are established for the participation of Disadvantaged Business Enterprises, where applicable.
- **Public Pre-Proposal Meetings –** No public pre-proposal meetings were held during this reporting period. A Click here to enter text. Click here to enter text. Business Development Specialist may attend these meetings to discuss any D/M/WBE or Civil Rights requirements and to answer any questions, including any about Title VI requirements.
- **Inclusion of Goals on Federally-Assisted Contracts –** Staff in the Business Development and Contract Compliance Office review federally assisted contracts for DBE goals.
- **Nondiscrimination Provisions in Contracts –** All Click here to enter text. contracts, including federally assisted contracts, contain nondiscrimination provisions to ensure and heighten awareness that Click here to enter text. Click here to enter text. will not tolerate

discriminatory practices.

H.3 Title VI Training During the Period – Table V.H.3 lists the FFY 2004 Title VI training/meetings and attendees

Table V.H.3 – Title VI Trainings/Meetings		
Date	**Type of Training**	**Audience**
2/18/04	Title VI – Sound Transit Regional Contracting Forum	Regional governments, contractors and vendors
5/17/04	Title VI – FHWA/WSDOT	Caroline McShane, Betty Gulledge-Bennett, Bailey de Iongh, Maurice Alexander
7/21/04	Title VI – Training/Compliance Review – Planning, Design	Mark Melroy, Bailey de Iongh, Maurice Alexander
8/9/04	Title VI – Training/Compliance Review – Environmental	Wally Archuleta, Bailey de Iongh, Maurice Alexander
8/26/04	Title VI – Training/Compliance Review – Real Estate Services (ROW)	Harold McNelly, Bailey de Iongh, Maurice Alexander
9/1/04	Title VI – Training/Compliance Review – Environmental Justice, Limited English Proficiency	Ronda Strauch, Wally Archuleta, Gail Sullivan, Karen Webster, Jennifer Naas, Ron Melnikoff, Katherine Merrill, Manuela Winter, Tina Morehead
9/7/04	Title VI – Effective Team Building AASHTO	National civil rights practitioners involved in DOT work
9/10/04	Title VI – Training/Compliance Review Construction, Consult	Jim Eagan, Lance Hulin, Matt Nolan
9/14/04	Title VI – Training/Compliance Review	Mike Mendoza, Bill Blackburn, Sue Ziegman, Elvira Iwatani, Alan Momohara, Jay Osborne, Chuck Davis

Appendix A

Form – Title VI Compliance Statement for Use in Public Meetings/Hearings Voluntary Title VI Public Involvement

Title VI of the Civil Rights Act of 1964 requires Click here to enter text. Click here to enter text. to gather statistical data on participants and beneficiaries of the agency's federal aid highway programs and activities. Click here to enter text. Click here to enter text. collects information on race, color, national origin and gender of the attendees to this public meeting to ensure the inclusion of all segments of the population affected by a proposed project.

Click here to enter text. Click here to enter text. wishes to clarify that this information gathering

process is completely voluntary and that you are not required to disclose the statistical data requested in order to participate in this meeting. This form is a public document.

The completed forms will be held on file in Click here to enter text. Click here to enter text. Department of Transportation. For further information regarding this process, please contact the Title VI Coordinator by phone at 206-296-7592 or e-mail at Click here to enter text.@metrokc.gov.

Please respond to the following questions:

Please respond to the following questions:

Project Name	Date
Meeting Location	

Name (please print)	Gender ☐ Male ☐ Female
General ethnic identification categories (check one): ☐ Caucasian ☐ Hispanic American ☐ American Indian/Alaskan Native ☐ African American ☐ Asian/Pacific Islander ☐ Other _____	
Color	National Origin

After you complete this form, please fold it and place it inside the designated box on the registration table.

Thank you for your cooperation!

Appendix B

The following table summarizes staff gender and race by the respective program areas.

Special Emphasis Area	Race	Gender	
		Female	Male
Design	Asian	15	17
	Black	3	1
	Caucasian	13	42
	Filipino	1	2
	Hispanic	2	2
	Other	1	
Design Total		**35**	**64**
Environmental Services Unit	Black	2	
	Caucasian	9	5
	Hispanic		1
Environmental Services Unit Total		**11**	**6**
Planning	Asian	2	5
	Black		1
	Caucasian	6	10
Planning Total		**8**	**16**
Construction and Maintenance Services	Asian	2	6
	Black		2
	Caucasian	6	12
Construction and Maintenance Services Total		**8**	**20**
Grand Total		**62**	**106**

Appendix C

State Environmental Project Assessments (SEPA) Exemption Determinations and Determinations of Nonsignificance

Project Number	Project Name	NEPA/SEPA Type*
XXYY	Project Name	SCE

*Type: NCE=NEPA Categorical Exclusion; EA=Environmental Assessment; NEIS=NEPA Environmental Impact Statement; SCE=SEPA Categorical Exemption; ECL=Environmental Checklist; SEIS=SEPA Environmental Impact Statement

Appendix D

Click here to enter text. Click here to enter text. Title Vi Implementation Plan
Revised September 2004

1. **Internal Dissemination Goal** – To complete internal dissemination of Click here to enter text. Click here to enter text.'s revised Title VI Plan and FFY 2004 Title VI Update Report before December 1, 2004.

   Click here to enter text. Click here to enter text.'s Title VI Coordinator has distributed copies of its original Title VI Plan and assurances to Click here to enter text. departments, Click here to enter text. Click here to enter text. Council, Click here to enter text. Click here to enter text. Civil Rights Commission, Department of Transportation Division Managers and the Office of the Prosecuting Attorney. Such distribution occurred on or before December 2000. The updated Plan dated September 2002 was disseminated in December 2002. The Plan as revised in 2004, along with the FFY 2004 Title VI Update Report will be circulated by December 1, 2004.

   The Title VI Specialist and Special Emphasis Area Liaisons (as defined in the plan) received copies of the original plan and will receive copies of the updates promptly for incorporation into operational manuals, guidelines, and procedures.

2. **External Dissemination Goal** – Public notification of Click here to enter text. Click here to enter text.'s Title VI Plan will be on going.

   A. Click here to enter text. Click here to enter text. will publicize Click here to enter text. Click here to enter text.'s policy statement, as included in the Title VI Plan, in local minority and community-based newspapers. The Click here to enter text.'s Title VI Plan will be made available to the public upon request. Additionally, the Click here to enter text. Click here to enter text. Title VI Policy Statement and Complaint procedure may be found on the internet at www.metrokc.gov/dias/_____e/titlevi.htm.

   B. The Click here to enter text. will continue to distribute copies of the Title VI Plan to contractor organizations upon request. Additionally, the Click here to enter text. will make copies of the plan available to all prime contractors, subcontractors, consultants and suppliers currently participating on Click here to enter text. Click here to enter text. public works projects receiving federal financial aid upon request. The Click here to enter text. will also make copies available to other firms providing goods and services to Click here to enter text. Click here to enter text. upon their request.

   C. The Click here to enter text. will include the appropriate Title VI nondiscrimination language and any implementing requirements FHWA may issue in all solicitations for competitive bidding or negotiated procurements with federal aid for construction, professional services and purchase of materials or equipment.

3. **Training Goal** – To ensure that Click here to enter text. employees involved in the project management and the contracting practice are knowledgeable on potential Title VI issues (ongoing).

   A. Title VI Specialists and Liaisons are strongly encouraged to participate in training programs and workshops offered through Washington State Department of Transportation and others. Additionally, the Title VI Coordinator, in communicating with the Title VI Liaisons and Specialists, informs Click here to enter text. employees of any new training opportunities upon notification from other external agencies.

B. Additionally, Click here to enter text. Staff in conjunction with staff in the Click here to enter text. Department of Transportation, Road Division, will continue to develop new training for _____ staff.

C. The Click here to enter text.'s Title VI Coordinator shall oversee training to include staff involved in Click here to enter text. Click here to enter text.'s contracting processes. The Title VI Specialist will conduct the training. Training will occur throughout the year and will be specific to the Road Services and Contracting Divisions of Click here to enter text. Click here to enter text. initially. This training will include information on:

- The role of Click here to enter text. as the Title VI Coordinating agency.
- Technical Assistance on Title VI matters.
- Title VI reviews of program areas.
- Procedures for the prompt processing of complaints of discrimination.
- The necessity of updating the Title VI Plan to reflect organizational policy or implementation changes.

The Click here to enter text.'s Title VI Coordinator will request Department Directors and Managers to inform employees of new training opportunities upon notification from the Coordinator's office. Such opportunities may include courses offered by WSDOT, as well as from other outside agencies.

D. The Click here to enter text. will provide a training schedule to the Washington State Department of Transportation's Office of Equal Opportunity Title VI Coordinator.

E. The Click here to enter text.'s Title VI Coordinator shall maintain information gathered from training records for inclusion in annual report updates.

4. **Information Collection for Annual Updates Goal** – To establish and implement processes and procedures for collection of information required for inclusion in annual update report.

A. The Title VI Specialist and Liaisons will assist the Title VI Coordinator in gathering and maintaining information on specific program areas and affected Click here to enter text. departments.

B. Click here to enter text. will work with Liaisons and a designated Data Coordinator to collect and report on the information required by WSDOT for the Title VI Annual Update.

C. Information for reports will be obtained from sources such as on-site compliance reviews (internal and external), checklists, review guides, questionnaires, public meeting sign in sheets, personnel inventory and employment utilization forms and inquires from the public. The Office of the Title VI Coordinator will compile this information for inclusion in the annual update reports as required.

5. **Complaint Resolution Goal** – To ensure that complaints are resolved in a professional and timely manner.

The Click here to enter text.'s Title VI Coordinator will investigate all complaints of Title VI violations as appropriate. The Click here to enter text. will use procedures outlined in the Title VI Plan to investigate such complaints. The objective of the investigation will be to determine whether prohibited discrimination has occurred or could occur, and to take steps to remedy the situation. To accomplish this, the Title VI Coordinator shall coordinate the following:

A. Identification of the basis for the complaint.

B. Identification of sources of information.

C. Fact finding interviews with aggrieved persons, witnesses and the alleged violator.

D. Development of a statement of finding-of-facts and information relevant to the issue/basis for the complaint.

E. Informal dispute resolution.

F. Report of findings in a manner that includes a conclusion and determination of future actions to take.

G. Provision for possible appeal of the decision to the FHWA.

The Click here to enter text.'s Title VI Coordinator will consult with WSDOT before commencing investigations to determine which agency should properly investigate.

6. **Annual Title VI Update Report Goal** – To provide detailed information on activities performed in implementing Click here to enter text. __ Click here to enter text.'s Title VI Plan and to document accomplishments.

The Annual Title VI Update Report will include detailed information regarding the implementation activities related to Click here to enter text. Click here to enter text.'s Title VI Plan and the Click here to enter text.'s accomplishments. Specific areas that will be covered in the Annual Report include, but may not be limited to the following:

A. Organization and Staff Profile

B. Title VI Monitoring and Review Process

C. Complaints and Investigations

D. Special Emphasis Program Area Activities and Accomplishments

E. Title VI Administration

F. Training

G. Accomplishments Report for Current Year

Appendix E

Click here to enter text. Click here to enter text. Title VI Policy Statement

Click here to enter text. Click here to enter text. assures that no person shall on the grounds of race, color, national origin, or sex, as provided by Title VI of the Civil Rights Act of 1964 and as amended, and the Civil Rights Restoration Act of 1987 (P.I. 100.259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance from the Washington State Department of Transportation.

Click here to enter text. Click here to enter text. further assures every effort will be made to ensure nondiscrimination in all of its programs and activities, whether those programs or activities are federally funded or not.

In the event Click here to enter text. Click here to enter text. distributes federal aid funds to another governmental entity or other sub-recipient, Click here to enter text. Click here to enter text. will include Title VI language in all written agreements and will monitor for compliance.

Click here to enter text. Click here to enter text.'s Office of the Title VI Coordinator is responsible

for initiating and monitoring Title VI activities, preparing required reports and other Click here to enter text. Click here to enter text. responsibilities as required by 23 CFR 200 and 49 CFR 21.

Executive

Date

Appendix F

Title VI Forms

Click here to enter text. Click here to enter text. provides Title VI forms to participants at public meetings (See Appendix A). In 2004 two forms were completed and turned in by participants.

Title VI Public Involvement forms were made available at the Click here to enter text. Bridge EIS Community Advisory Group meetings on Click here to enter text. / Click here to enter text. /2004 at the Elementary School Library, and two forms were submitted.

These forms are kept on file in the Department of Transportation and in the Office of the Title VI Coordinator.

Appendix G

Organizational Chart

Annual Report for Agency With Population Over 100,000 – Example

Section I Policy Statement

A copy of Title VI Policy Statement is attached in Appendix of this report.

Section II Organization, Staffing, and Structure

A. Organization

Outline your organization and how it works with your Title VI Policy.

B. Staffing

Describe your agency staff and how they interact in the program.

C. Structure

Describe the Structure of your program, the following is an example only. Your agency may have a different approach.

Table II.C.1 shows Title VI Special Emphasis Program Area Liaisons within XYZ Agency. For this update, program area elements include planning, location, design, environmental services, real estate services (right of way), construction, and education and training. The program area liaisons work directly with the Title VI Specialist in the Office of the Title VI Coordinator. All liaison positions have been filled at this time.

Table II.C.1 – Title VI Special Emphasis Program Area Liaisons

Name	Gender/ Ethnicity	Title	Program
John Smith	Male/Caucasian (example only)	Managing Engineer	Engineering/Planning/Design and Construction
Mary Ramirez	Female/Hispanic (example)	Project/Program Manager III	Education/Training for Construction
		Program Analyst IV	Education/Training for Administration
		Program Analyst IV	Education/Training for Maintenance
		Project/Program Manager III	Education/Training for Construction
		Program Analyst IV	Education/Training for Administration

Section III Title VI Monitoring and Review Process

A. Actions to Promote Internal and External Compliance With Title VI

List actions, meetings, scheduled events, etc., that help your agency promote both internal and external compliance with Title VI program.

Internal – In detail explain your agency's activities and interaction within your organization in this area.

External – Detailed explanation of your agency's activities outside the agency that promote your Title VI program.

B. Title VI Compliance Reviews During This Report Period

- List and bullet reviews conducted during the past year, name the reviewers and dates of the reviews.

Section IV Title VI Complaints During This Report Period

Either: "Received no complaints against the (Agency Name and Division) in the fiscal year 2003-2004."

OR something like: "The two complaints alleged one incident of denial of bus services by the (Agency Name and Division). The complaints alleged discrimination based on race. (Agency Name) resolved these cases.

Section V Accomplishment Report for Each Program Area

The following information describes the location of the major program functions within (Your Agency Name) and identifies accomplishments, applicable operational guidelines, process, and responsibilities of the various sections.

Appendix lists staff summarized by gender and race for the following Special Emphasis areas: Planning, Design, Construction, Maintenance Services, and Environmental.

A. Planning

Example – The Road Services Division is responsible for developing short and long-range plans that provide efficient transportation services to the citizens of (Agency Name).

Division staff coordinates with other government agencies, private groups, and the public to develop comprehensive plans that meet the transportation needs of (Agency Name). The Division provides staff and technical assistance to regional transportation groups and serves as liaison for planning with the Puget Sound Regional Council.

A.1 Number of Consultant Projects for Planning Awarded During This Reporting Period and Dollar Value – No consultant contracts for planning were awarded during FY 2004.

A.2 Efforts Made to Utilize Minority and Female Consultants and Subconsultants in Federally-Assisted Contracts – It is the policy of (Agency Name) to comply with 49 Code of Federal Regulations, Part 26, to ensure that Disadvantaged Businesses, including minorities and women, have an equal opportunity to receive and participate in federally-assisted contracts. (Agency) does not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate in connection with the award or performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin. Efforts made to use minority and female consultants during FY 2004 include the following outreach activities:

- **Disadvantaged Business Enterprise (DBE) Goals** – As part of (Agency Name) outreach efforts to use minority and female consultants, when appropriate, proposals include a Disadvantaged Business Enterprise (DBE) goal. Certified DBE firms can encompass small, minority and women-owned firms. As a condition of award, the successful bidder must make good faith efforts to meet this DBE goal. The proposer establishes good faith efforts when it documents that it has obtained enough DBE participation to meet the DBE goal; or documents that it has made adequate efforts to do so although unsuccessful.
- **Consultants Selection Procedures** – Consultants are selected according to the procedures outlined in the RCW, and *Local Agency Guidelines* procedures for federally-assisted projects. (Agency Name) encourages all consultant firms that are registered in Washington State to conduct business and who possess the requisite professional license(s) to present their qualifications for highway design projects.

  The (Agency Name) solicits firms for inclusion on the Architecture and Engineering, Professional Services, and the Construction Small Works Rosters in accordance with RCW 39.80 and (Agency Name) practices. (Agency Name) places an advertisement in various news media to include the (Names of Publications) and various minority newspapers that have existing contracts with the Agency. Advertisement is conducted a least twice during a year to encourage consultant firms to apply for placement on the rosters.
- **Public Pre-Proposal Meetings** – Other outreach efforts to support the use of minority and female consultants include conducting public pre-proposal meetings to provide information concerning the scope of work and available subcontracting opportunities associated with projects. These meetings are open to all interested parties.

A.3 Studies Conducted Which Provide Data Relative to Minority Persons, Neighborhoods, Income Levels, Physical Environments, and Travel Habits – The agency will continue to review all proposed projects for their potential to have a disproportionate impact on low-income and minority populations that are subject to additional consideration in accordance with applicable Title VI and Environmental Justice provisions. (Agency Name) unincorporated areas do not typically require substantial analysis to determine that the potentially affected areas do not meet thresholds for consideration as low-income or minority communities. However, (Specific Project name if applicable), does require such analysis.

A.4 Hearings Held During the Report Period and Efforts Utilized to Ensure Citizen Participation, Particularly Minorities, and Women – The Number of These Individuals and the Capacity of Their Participation – No hearings were conducted in FFY 2004. There were seven community advisory group meetings and one other public meeting conducted.

(Agency Name) continues to use the Washington State Department of Transportation (WSDOT) form for collecting data on public hearing and public meeting attendees for Title VI reporting requirements, per Title 23, Code of Federal Regulations, Part 200.9(b)(4). See Appendix for a copy of the form used by (Agency Name) at its public meetings. Appendix summarizes the forms collected during FFY 2004.

B. Location

(Agency Name) emphasis over the past several years has been the improvement of existing Rights of Way and corridors. There has been no activity in the (Agency Name)'s Location Program. When future corridors are considered, the Location Program will be one of the tools used by the (Agency Name) to help determine their feasibility.

B.1 Number of Complaints Filed – None during this report period.

B.2 Identification of Titles, Ethnicity, and Gender of Employees in the Location Program – Not applicable this reporting period. Agency Name currently has no staff assigned to location duties since there has been no activity in that area.

B.3 Number of Environmental Impact Statements Reviewed During the Report Period, Including a Summary of Comments on EIS Where Minority, Handicapped, Elderly, Etc., Communities Were Adversely Impacted – None during this report period.

B.4 Number of Consultants Contracts Involving Project Development Activities – None during this report period.

B.5 Number of Public Hearings Held During the Report Period Concerning Location of a Project, Including How the Hearings Were Advertised and Notification to Minorities – None during this report period.

B.6 Encouragement of Minority Leaders to Provide Suggestions and Ask Questions on Location of Highways – Not applicable during this report period. No new highways were located during this report period.

B.7 Need to Use Bilingual Advertisements, Announcements, Notices, Etc., During the Report Period – None during this report period.

C. Design

Design activities are performed by (fill in appropriate information about your design process.

C.1 Number of Consulting Firms With Design Contracts, Including the Number of These Contracts Held by Minority Firms and Women-Owned Firms/Dollar Value – For FFY 2004, 23 consulting firms were engaged in design contracts. For reporting purposes, work order and task order contracts that have multiple awards are considered contracts awarded. The accompanying tables summarize the number of contracts awarded, including work order and task order contracts, and the sum of those contract awards by prime and subconsultant.

Table V.C.1 provides the number of contracts and total dollar value awarded to minority firms and women-owned firms as prime consultants with design contracts.

Table V.C.1 – Design Contracts-Prime				
Name of Firm	Certification Status	Ethnicity	# Contracts Awarded (includes work and task orders)	Sum of Contract Awards (rounded to nearest thousand)

Table V.C.2 contains information on the number of minority firms and women-owned firms who currently have subcontracts, their certification status, ethnicity, and sum of contract awarded dollar value.

Table V.C.2 – Minority, Women-Owned Firms With Consultant Subcontracts				
Name of Firm	Certification Status	Ethnicity	# Contracts Awarded (includes work and task orders)	Sum of Contract Awards (rounded to nearest thousand)

C.2 Efforts to Increase Minority and Female Participation in Obtaining Consultant Contracts

- **Procurement Information System** – (Agency Name) requests Letters of Interest, Statement of Qualifications and Proposals from all firms qualified and interested in providing professional services for contracts awarded by the (Agency Name). (Agency Name) posts information on current Requests for Proposals on its Internet Website. Proposals identify the types of sub consulting opportunities that may be available on the project for informational purposes.
- **Advertisement in Local Papers and Agency Procurement Website** – (Agency Name) advertises Requests for Proposals for consulting services in local papers and on its Procurement Website. The scope, size and duration of these contracts vary in size to promote diversity in the number and size of firms competing for these awards. Some contracts are for complete design services on a single project. Others may be for environmental reviews, traffic analysis, mediators or a wide range of professional services. (Agency Name) solicits some small A&E contracts (under $150K) from Consultants using its A&E Roster.
- **Advance Information on Upcoming Contract Opportunities** – During Federal Fiscal Year 2004, (Agency Name) efforts to use minority and female consultants included providing advance information on upcoming contract opportunities to DBE's to include small, minority and women-owned businesses.

  Describe Agency involvement in this area.
- **Newsletter Distribution** – Describe activities that may pertain to this type of information.
- **Grassroots Level Outreach Efforts** – Describe any activities that your agency has conducted in this arena.
- **Office of Business Relations and Economic Development** – Describe any activity this type of division may undertake in your community.
- **Collaboration With Other Local Governments** – Description of activity.

C.3 Public Hearings Held During the Design Phase of Any Highway – Description of any activity in this area.

C.4 Employees in the Design Program Area, including Ethnicity and Sex, Including Efforts to Increase Minority and Female Representation Where (low, high?) – See Appendix for information on employees.

During this report period, recruitment staff in the Design area actively participated in the following job fairs and forums: List participation if relevant.

C.5 Complaints Filed in the Design Program Area – None during this report period.

C.6 Significant Problem Areas, Accomplishments, and Actions to Take During the Ensuing Year – No significant problem areas were identified during this report period.

D. Environmental Unit

The Environmental Unit of the (Agency Name) works to ensure the promotion of environmental integrity in the design, construction, and maintenance of transportation systems that serve the needs of the Agency's various communities. This section responds to the requirements of the

National Environmental Policy Act (NEPA) and the State Environmental Policy Act (SEPA) to ensure that projects undertaken by (Agency Name) meet these provisions, as required by Washington State and the Federal Government.

During FFY 2004, the (Agency Name, Division, Section) conducted ( ) NEPA and ( ) SEPA environmental reviews. The completed environmental reviews did not identify impacts to minority or economically disadvantaged communities. During FYE 2003 staff from (Agency Name) and WSDOT completed the technical studies pertaining to socio-economic impacts and Title VI/Environmental Justice considerations. The results from those studies have been incorporated into the draft review versions of the Draft EIS. Those initial drafts have been revised to clarify Title VI/Environmental Justice information and address specific comments from WSDOT. Following its approval by WSDOT and FHWA, (Agency Name) anticipates issuing the Draft EIS in 2005.

See Appendix for the list of names for each project that was subject to an environmental review during FY 2004. A copy of the SEPA exemption determination and determination of nonsignificance is included for each project.

E. Real Estate Services (Right of Way)

Describe your Agency Real Estate Services Responsibility in the Title VI Plan.

The property acquisition process follows the *Right of Way Manual* M 26-01 and all applicable laws and regulations, including Title VI and Section 504. The acquisition process includes appraisal of property, negotiation of terms and conditions for acquisition, and relocation assistance, as well as property management.

E.1 Civil Rights Complaints in the following Real Estate Services (Right of Way) Areas

E.1.a. **Appraisals** – None during this report period.
E.1.b. **Negotiations** – None during this report period.
E.1.c. **Relocation Assistance and Payments** – None during this report period.
E.1.d. **Property Management** – None during this report period.

E.2 Number of Appraisers Utilized During the Reporting Period – During FFY 2004, four appraisers were utilized, two females, two males and no minorities. The appraisers are (Firm Name or Agency Name) employees. Decisions to obtain new appraisers are based on need and vacancies. There are no vacancies at this time. There were no contracts for appraisers during this reporting period.

E.3 Number of Negotiations During the Report Period and Disparity in Contract Negotiations Between Minorities and Non-Minorities – There were negotiations during this report period. No disparity in contract negotiations was noted.

E.4 Concerns Raised by Minorities or Women Regarding Their Options in the Negotiation Phase – None during this report period.

E.5 Number of Relocations During the Report Period – There were no relocations during FFY 2004.

E.6 Concerns Raised by Minorities or Women on Replacement Housing, Referral Housing, and Advisory Services – None.

E.7 Opportunities for Minorities and Women to Obtain Contracts Awarded for Providing Relocation Assistance – In-house relocation assistance services are conducted according to the rules guidelines of the federal Uniform Relocation Act (CFR24), RCW 8.26, and the WSDOT

relocation manual and LAG agreement. Staff attend project open houses to present relocation services and benefits, and later meet individually with affected relocatees to negotiate and finalize benefit awards.

F. Construction and Maintenance Services

The Construction Services Group provides guidance and oversight for the administration of transportation construction projects. The (Agency Name) Road Maintenance Operations Section is responsible for the preservation and upkeep of roads and bridges.

F.1 Civil Right Complaints Involving Competitive Bidding Procedures – There were no complaints involving competitive bidding procedures during the reporting period.

F.2 Summary of Efforts Made by the Title VI Coordinator to Encourage the Use of Minority Individuals, Firms, or Agencies to Obtain Maintenance Agreements or Contracts – Summarize your Agency's effort in this area.

F.3 Procedures Reviewed to Assure Subcontract Agreements, First and Second Tier, Material Supply and Equipment Lease Agreements During the Report Period – Description of your Agency procedures.

F.4 Significant Accomplishments and/or Action Items for the Ensuing Year – Continue monitoring disadvantaged, minority, women, and small business participation in (Agency Name) Road construction contracting.

G. Education and Training

G.1 During the Reporting Period, Efforts Made to Encourage Participation by Minorities and Women in the NHI's Educational Program – Description of this activity, if applicable

G.2 Types of NHI Sponsored Programs and Number of (Agency Name) Participants, Including Minorities and Women – Description of activity in this area by your Agency.

G.3 Identify Staff Responsible for Training by Job Title, Ethnicity, and Gender – Staff within (Agency Name) Office of Civil Rights (Agency Name) provides guidance to departments on their responsibilities and reporting requirements for Title VI.

Table V.G.1 shows staff responsible for Title VI training to departments by job title, ethnicity, and gender.

Table V.G.1 – Title VI Training Staff Within the Office of the Title VI Coordinator

Name	Job Title	Ethnicity	Gender
	Title VI Coordinator	Caucasian	Female
	Civil Rights Specialist	African-American	Male

G.4 Civil Rights Complaints Filed Concerning Training and Educational Opportunities and any Corrective Actions Taken – No complaints were filed during this reporting period.

H. Administration

H.1 List of Employees by Ethnicity and Gender in Each of the Title VI Program Areas – Please refer Appendix for a summarization of the ethnicity and gender of employees in the respective program areas.

H.2 Summarize All Activities Undertaken During the Reporting Period Which Provide for

Assurances of Title VI Compliance With Contractors, and by Contractors (i.e., are Title VI compliance included in all contracts and consultant agreements; were reviews made to ensure contractors and consultants are adhering to Title VI requirements; are contractors and/or consultants appraised of Title VI implications and issues) – The following is a summary of activities undertaken during the reporting period that provide for assurances of Title VI compliance with contractors, and by contractors.

- **Title VI Training**
- **Dissemination of (Agency Name) Title VI Policy Statement** – (Agency Name) Title VI Policy Statement is included in a post award packet of informational materials that the Agency Name sends to prime contractors. The post award packet includes information on the (Agency Name) reporting requirements and is sent to all prime contractors for each contract that has been publicly bid and advertised.
- **Title VI Provisions in All (Agency Name) Federally Funded Contracts** – All federally funded contracts administered by (Agency Name) contain Title VI provisions (FHWA form 1273).
- **Analysis Worksheet Reviews for All Advertised Construction Bids and Proposals** – SAMPLE: "Contract Compliance Specialists located in the Business Development and Contract Compliance Office receive and review Subcontracting/Apprenticeship Availability Analysis Worksheets for projects advertised for construction bids. The worksheet identifies the specific scopes of work, if any, which may be available for performance by subcontractors. Specifications (FHWA form 1273) defining Title VI requirements are included in the contract documents with a requirement that these provisions be included in all amendments, supplements and lower tier contracts entered into by the contractor. (Contract documents also include GSP 01-07.11 language relating to the Requirements for Nondiscrimination.) Goals are established for the participation of Disadvantaged Business Enterprises, where applicable."
- **Public Pre-Proposal Meetings** – No public pre-proposal meetings were held during this reporting period.
- **Inclusion of Goals on Federally-Assisted Contracts** – Staff in the (Section of your Agency) review federally-assisted contracts for DBE goals.
- **Nondiscrimination Provisions in Contracts** – All (Agency Name) contracts, including federally-assisted contracts, contain nondiscrimination provisions to ensure and heighten awareness that (Agency Name) will not tolerate discriminatory practices.

H.3 Title VI Training During the Period – Table V.H.3 lists the FFY 2004 Title VI training/meetings and attendees.

Table V. H.3 – Title VI Trainings/Meetings

Date	Type of Training	Audience

Appendix A

Form – Title VI Compliance Statement for use in public meetings/hearings Voluntary Title VI Public Involvement

Title VI of the Civil Rights Act of 1964 requires (Agency Name) to gather statistical data on participants and beneficiaries of the agency's federal aid highway programs and activities. (Agency Name) collects information on race, color, national origin and gender of the attendees to this public meeting to ensure the inclusion of all segments of the population affected by a proposed project.

(Agency Name) wishes to clarify that this information gathering process is completely voluntary and that you are not required to disclose the statistical data requested in order to participate in this meeting. This form is a public document.

The completed forms will be held on file in (Agency Name) Department of Transportation. For further information regarding this process, please contact the Title VI Coordinator by phone at or email at .

Please respond to the following questions:

Project Name	Date
Meeting Location	

Name (please print)	Gender ☐ Male ☐ Female
General ethnic identification categories (check one): ☐ Caucasian ☐ Hispanic American ☐ American Indian/Alaskan Native ☐ African American ☐ Asian/Pacific Islander ☐ Other _____	
Color	National Origin

After you complete this form, please fold it and place it inside the designated box on the registration table.

Thank you for your cooperation!

Appendix B

The following table summarizes staff gender and race by the respective program areas.

Special Emphasis Area	Race	Gender	
		Female	Male
Design	Asian	15	17
	Black	3	1
	Caucasian	13	42
	Filipino	1	2
	Hispanic	2	2
	Other	1	
Design Total		**35**	**64**
Environmental Services Unit	Black	2	
	Caucasian	9	5
	Hispanic		1
Environmental Services Unit Total		**11**	**6**
Planning	Asian	2	5
	Black		1
	Caucasian	6	10
Planning Total		**8**	**16**
Construction and Maintenance Services	Asian	2	6
	Black		2
	Caucasian	6	12
Construction and Maintenance Services Total		**8**	**20**
Grand Total		**62**	**106**

Appendix C

State Environmental Project Assessments (Sepa) Exemption Determinations and Determinations of Nonsignificance

Project Number	Project Name	NEPA/SEPA Type*
		SCE
		SCE
		SCE/NCE
		SCE/NCE
		SCE
		SCE
		SCE
		SCE
		SCE
		SCE
		SCE
		SCE
		SCE/NCE
		ECL/NCE
		SCE
		SCE/NCE
		SCE
		SCE

*Type: NCE=NEPA Categorical Exclusion; EA=Environmental Assessment; NEIS=NEPA Environmental Impact Statement; SCE=SEPA Categorical Exemption; ECL=Environmental Checklist; SEIS=SEPA Environmental Impact Statement

Appendix D

(Agency Name) Title VI Implementation Plan
Revised September 2004

1. **Internal Dissemination Goal** – To complete internal dissemination of (Agency Name)'s revised Title VI Plan and FFY 2004 Title VI Update Report before December 1, 2004.

   (Agency Name)'s Title VI Coordinator has distributed copies of its original Title VI Plan and assurances to Agency departments, (Agency Name) Council, (Agency Name) Civil Rights Commission, Department of Transportation Division Managers and the Office of the Prosecuting Attorney. Such distribution occurred on or before December 2000. The updated Plan dated September 2002 was disseminated in December 2002. The Plan as revised in 2004, along with the FFY 2004 Title VI Update Report will be circulated by December 1, 2004.

   The Title VI Specialist and Special Emphasis Area Liaisons (as defined in the plan) received copies of the original plan and will receive copies of the updates promptly for incorporation into operational manuals, guidelines, and procedures.

2. **External Dissemination Goal** – Public notification of (Agency Name)'s Title VI Plan will be on going.

   A. (Agency Name) will publicize (Agency Name)'s policy statement, as included in the Title VI Plan, in local minority and community-based newspapers. The (Agency Name)'s Title VI Plan will be made available to the public upon request. Additionally, the (Agency Name) Title VI Policy Statement and Complaint procedure may be found on the internet at .

   B. The (Agency Name) will continue to distribute copies of the Title VI Plan to contractor organizations upon request. Additionally, the (Agency Name) will make copies of the plan available to all prime contractors, subcontractors, consultants and suppliers currently participating on (Agency Name) public works projects receiving federal financial aid upon request. The (Agency Name) will also make copies available to other firms providing goods and services to (Agency Name) upon their request.

   C. The (Agency Name) will include the appropriate Title VI nondiscrimination language and any implementing requirements FHWA may issue in all solicitations for competitive bidding or negotiated procurements with federal aid for construction, professional services and purchase of materials or equipment.

3. **Training Goal** – To ensure that (Agency Name) employees involved in the project management and the contracting practice are knowledgeable on potential Title VI issues (ongoing).

   A. Title VI Specialists and Liaisons are strongly encouraged to participate in training programs and workshops offered through Washington State Department of Transportation and others. Additionally, the Title VI Coordinator, in communicating with the Title VI Liaisons and Specialists, informs (Agency Name) employees of any new training opportunities upon notification from other external agencies.

   B. Additionally, Staff in conjunction with staff in the (Agency Name) Department of Transportation, Road Division, will continue to develop new training for (Agency Name) staff.

C. The (Agency Name)'s Title VI Coordinator shall oversee training to include staff involved in (Agency Name)'s contracting processes. The Title VI Specialist will conduct the training. Training will occur throughout the year and will be specific to the Road Services and Contracting Divisions of (Agency Name) initially. This training will include information on:

- The role of as the Title VI Coordinating agency.
- Technical Assistance on Title VI matters.
- Title VI reviews of program areas.
- Procedures for the prompt processing of complaints of discrimination.
- The necessity of updating the Title VI Plan to reflect organizational policy or implementation changes.

The (Agency Name)'s Title VI Coordinator will request Department Directors and Managers to inform employees of new training opportunities upon notification from the Coordinator's office. Such opportunities may include courses offered by WSDOT, as well as from other outside agencies.

D. The (Agency Name) will provide a training schedule to the Washington State Department of Transportation's Office of Equal Opportunity Title VI Coordinator.

E. The (Agency Name)'s Title VI Coordinator shall maintain information gathered from training records for inclusion in annual report updates.

4. **Information Collection for Annual Updates Goal** – To establish and implement processes and procedures for collection of information required for inclusion in annual update report.

A. The Title VI Specialist and Liaisons will assist the Title VI Coordinator in gathering and maintaining information on specific program areas and affected (Agency Name) departments.

B. (Agency Name) will work with Liaisons and a designated Data Coordinator to collect and report on the information required by WSDOT for the Title VI Annual Update.

C. Information for reports will be obtained from sources such as on-site compliance reviews (internal and external), checklists, review guides, questionnaires, public meeting sign in sheets, personnel inventory and employment utilization forms and inquires from the public. The Office of the Title VI Coordinator will compile this information for inclusion in the annual update reports as required.

5. **Complaint Resolution Goal** – To ensure that complaints are resolved in a professional and timely manner.

The (Agency Name)'s Title VI Coordinator will investigate all complaints of Title VI violations as appropriate. The (Agency Name) will use procedures outlined in the Title VI Plan to investigate such complaints. The objective of the investigation will be to determine whether prohibited discrimination has occurred or could occur, and to take steps to remedy the situation. To accomplish this, the Title VI Coordinator shall coordinate the following:

A. Identification of the basis for the complaint.

B. Identification of sources of information.

C. Fact finding interviews with aggrieved persons, witnesses and the alleged violator.

D. Development of a statement of finding-of-facts and information relevant to the issue/basis for the complaint.

E. Informal dispute resolution.

F. Report of findings in a manner that includes a conclusion and determination of future actions to take.

G. Provision for possible appeal of the decision to the FHWA. The (Agency Name)'s Title VI Coordinator will consult with WSDOT before commencing investigations to determine which agency should properly investigate.

6. **Annual Title VI Update Report Goal** – To provide detailed information on activities performed in implementing (Agency Name)'s Title VI Plan and to document accomplishments.

   The Annual Title VI Update Report will include detailed information regarding the implementation activities related to (Agency Name)'s Title VI Plan and the (Agency Name)'s accomplishments. Specific areas that will be covered in the Annual Report include, but may not be limited to the following:

   A. Organization and Staff Profile

   B. Title VI Monitoring and Review Process

   C. Complaints and Investigations

   D. Special Emphasis Program Area Activities and Accomplishments

   E. Title VI Administration

   F. Training

   H. Accomplishments Report for Current Year

Appendix E

(Agency Name) Title VI Policy Statement

(Agency Name) assures that no person shall on the grounds of race, color, national origin, or sex, as provided by Title VI of the Civil Rights Act of 1964 and as amended, and the Civil Rights Restoration Act of 1987 (P.I. 100.259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Washington State Department of Transportation.

(Agency Name) further assures every effort will be made to ensure nondiscrimination in all of its programs and activities, whether those programs or activities are federally funded or not.

In the event (Agency Name) distributes federal aid funds to another governmental entity or other sub-recipient, (Agency Name) will include Title VI language in all written agreements and will monitor for compliance.

(Agency Name)'s Office of the Title VI Coordinator is responsible for initiating and monitoring Title VI activities, preparing required reports and other (Agency Name) responsibilities as required by 23 CFR 200 and 49 CFR 21.

(Agency Name) Executive Date

Appendix F

Title VI Forms

(Agency Name) provides Title VI forms to participants at public meetings (see Appendix A). In 2004 two forms were completed and turned in by participants.

Title VI Public Involvement forms were made available at the (fill in appropriate information).

Title VI Public Involvement forms were made available at the Sth Park Bridge EIS Community Advisory Group meetings on April 6, April 20, and May 4, 2004 at the Concord Elementary School Library, 723 S. Concord Street in Seattle, but no forms were submitted.

Title VI Public Involvement forms were made available at the (Fill in the Name) on (Fill in the Date) at (Fill in location), but no forms were submitted. (OR: Two forms were submitted according to actual circumstance.)

Title VI Public Involvement forms were made available at the (Fill in the Name) on (Fill in the Date) at (Fill in location), but no forms were submitted. (OR: Two forms were submitted according to actual circumstance.)

Title VI Public Involvement forms were made available at the (Fill in the Name) on (Fill in the Date) at (Fill in location), but no forms were submitted. (OR: Two forms were submitted according to actual circumstance.)

These forms are kept on file in the (Section of your Agency) and in the Office of the Title VI Coordinator.

Appendix G

Sample Organizational Chart

1. Report any changes in the organizational structure since the last reporting period.

   Example: New Title VI Coordinator, new planning or public works directors, etc.
   - Report should identify the changes in the racial/gender composition of those persons involved in the transportation decision making, including planning and advisory staff.
   - If no changes have been made, please indicate that accordingly.
2. Using the most current data available (through Census or Washington State Office of Financial Management), describe the demographics within your jurisdiction.
   a. Describe any required Title VI activities and/or studies conducted that provided data relative to minority persons, neighborhoods, income levels, physical environment, and travel habits.
   b. How was the information utilized or Title VI provisions and needs applied in each study or activity?
3. List any Public outreach activities during the reporting period such as:

   Public announcements and/or communications for meetings, hearings, project notices. Include the following:
   a. How were special language needs assessed? List the special language needs assessments conducted.
   b. What outreach efforts did you utilize to ensure that minority, women, low-income, and LEP population groups were provided equal opportunity to participate in those outreach activities. (Examples: Provided materials in other languages, met with local social services agencies, advertised in a minority publications.)
   c. List the special language services provided. Note the professional language service provided including the name of the service, date provided, number of persons served, and any other relevant information.
   d. List any costs incurred for translations and interpreters for each activity.
4. List all the transportation related contracts (federal and others) that were executed during the reporting period. (Please include construction, consultant agreements for planning, design, engineering, environmental, research, maintenance, etc.)
   - Include dollar value of each.
   - Other than advertising in your local legal publication, what outreach was made to the DMWBE firms that a contracting opportunity existed within your agency?
   - Identify the DMWBE contracts that were awarded and their dollar amount.
   - Is there a Title VI Nondiscrimination statement included in all contracts and public notices?
   - How did your organization ensure that minority, women and disadvantaged firms were provided equal opportunity to participate in the contracting arena?

5. Summarize any transportation projects that identify potential impacts to minority and/or low-income Environmental Justice (EJ) populations, i.e., impacts such as displacements, increased noise, bisecting neighborhoods. Note the following:
   - How impacts were minimized/mitigated.
   - Also include a statement, if applicable, on projects that specifically benefit community cohesion such as: adding sidewalks, improving access to properties that improve access for EJ populations.
6. If ROW has been acquired for a transportation project, please describe:
   - Identify the number of minority, low-income, elderly and disabled persons affected.
   - The efforts that were made to address Limited English Proficiency issues (including use and cost of translators, outreach efforts for each reported activity).
   - Describe any concerns raised by minorities and women regarding appraisals, negotiations, relocation assistance and payments. What actions were taken to resolve those issues?
7. List and describe any Title VI related complaints, as a result of transportation activities and projects. Include:

   What was the allegation or concern?
   - Procedures used.
   - Action taken.
   - Resolution.

Title VI Complaint Log

Case Number	Complainant/ Address	Filing Date	Basis	Status	Disposition

Compliance Review Questionnaire for Local Agencies

Local Agency: Click here to enter text. **Date:** Click here to enter text.

Name/Title: Click here to enter text.

1. **Administration**
   a. Staff Composition and Program Administration
      i. Provide breakdown of your administrative staff by race, color, national origin, sex, and their positions.
      Click here to enter text.
      ii. How many federally funded projects have you managed during the last two years? Dollar amount?
      Click here to enter text.
      iii. Have you designated an EEO Officer or Title VI Coordinator? Provide name and time in the position.
      Click here to enter text.
      iv. Do you have a Title VI Policy, Assurances and Plan in place? Provide proof of public dissemination of your Title VI policy.
      Click here to enter text.
   b. Complaint Procedure
      i. Do you have a Title VI complaint procedure for external discrimination complaints?
      If so, please provide a copy. To what extent is the community aware of it?
      Click here to enter text.
      ii. Have you received any Title VI related complaints during the past two years? If so, how many? What were the outcomes? Where there any Title VI complaint lodged by beneficiaries or participants? If so, explain the issues involved.
      Click here to enter text.
      iii. Do you have a Title VI Notice to Public? If so, please provide copy.
      Click here to enter text.
   c. Training
      i. Has your staff received any training (formal or informal) regarding Title VI?
      Click here to enter text.
      ii. Are you considering scheduling Title VI training sometime soon? If so, when and who will present it?
      Click here to enter text.
2. **Planning Activities**
   a. Public Involvement
      i. Are minority members of the community invited to participate in public hearings?
      Click here to enter text.

ii. How do you go about doing that?
Click here to enter text.

iii. Were accessible location, adequate time, and translation services considered or provided during the coordination of hearings?
Click here to enter text.

iv. Is the Hearing Coordinator keeping records in attendance? Is the information broken down by race, color, national origin, and sex (by visual identification)?
Click here to enter text.

v. Have planning manuals, directives, guidelines, and policies been reviewed for Title VI compliance purposes?
Click here to enter text.

3. **Consultant Contracts Activities**

a. Are Title VI assurances and provisions included on consultant contracts?
Click here to enter text.

b. Are DBE goals being included and met for consultant contracts? If not, what provisions have been taken to meet them?
Click here to enter text.

c. Have directives, operational procedures, guidelines, and policies been reviewed for Title VI compliance purposes?
Click here to enter text.

4. **Design/Environmental Activities**

a. Are minority members of the community invited to participate in public hearings?
Click here to enter text.

b. How do you go about doing that?
Click here to enter text.

c. Are accessibility of locations, adequate time, and translation services considered during the coordination of hearings? Was any other effort made to promote maximum attendance by those affected by the project, including member of minority communities?
Click here to enter text.

d. Is the Hearing Coordinator keeping records in attendance? Is the information broken down by race, color, national origin, sex, (by visual identification)?
Click here to enter text.

e. Have location and design manuals, directives, operational procedures, -guidelines, and policies been reviewed for Title VI compliance purposes?
Click here to enter text.

f. Is statistical data being collected on race, color, national origin, and sex on communities affected by a construction project?
Click here to enter text.

5. **Right of Way Activities**

   a. Are DBE goals for real estate appraisers being met? If not, what provisions have been taken to help reach these goals?
   Click here to enter text.

   b. Is Title VI language being incorporated in all acquisition, negotiation, property management communications, and contracts?
   Click here to enter text.

   c. Are Title VI language and assurance statements being included in all surveys for property owners and tenants after the conclusion of all business?
   Click here to enter text.

   d. Are all values and communications associated with appraisals conducted in an equitable fashion?
   Click here to enter text.

   e. Do deeds, permits, and leases contain Title VI compliance clauses?
   Click here to enter text.

   f. Is statistical data being gathered on race, color, national origin, and sex for all relocates?
   Click here to enter text.

g. Construction and Maintenance Activities

   a. Have contractor selection procedures been reviewed to determine uniformity in their application to minority and nonminority contractors?
   Click here to enter text.

   b. Are minority contractors and subcontractors being informed about contracting opportunities with your organization?
   Click here to enter text.

   c. Are construction rules and regulations being applied in an equitable fashion?
   Click here to enter text.

   d. Have you received any complaints within the last two years?
   Click here to enter text.

   e. Are Title VI assurances being included in all contracts, subcontracts, and material supply agreements?
   Click here to enter text.

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 that are required to be performed or approved by a person licensed, registered, or certified to provide the service needed.
- 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 perform services, including but not limited to studies, investigations, surveying and mapping, value engineering, construction phase services, soils engineering, and other related services.

This chapter also covers Professional Service agreements.

Examples of professional services typically include, but are not limited to:

- Material testing (as long as the consultant is delivering test results only, not performing an analysis or producing a discipline report).
- 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.
6. Execute the contract (Agreement, Exhibits, and Supplements – see appendices).

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.

.11 Determine the Need for A&E Consultant Services – Before an Agency advertises for A&E consultant services, Agencies 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.

Selection of the most qualified consultant firm is based on evaluations, therefore Agencies 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 three 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 (See Section 31.14).

   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.

   Agencies may also publish an announcement for emergent need contracts. There are four disciplines in which an agency may advertise for and award contracts to multiple firms to assist agencies if unexpected needs arise during construction. These disciplines include:

   - Geotechnical – Investigations include the assessment of the risk to humans, property and the environment from natural hazards such as earthquakes, landslides, sinkholes, soil liquefaction, debris flows and rockfalls.
   - Hydraulics – These activities include roadways threatened by a river and /or the occurrence of scour.
   - Archeological – Investigations include surveying the construction site and analyzing any findings if construction activities caused disturbance to potential cultural resources or human skeletal remains.
   - Environmental – These activities involve contacting resource agencies, documenting all construction activities that may require mitigation and monitoring in-water work activities

   Agencies would award contracts to several firms that meet the required criteria. Agencies will then rotate work through all of the firms selected. These agreements will be for a **one year** period of time and will include a "not to exceed" dollar amount. An agency may extend the agreement for one additional year provided the original dollar amount was not exceeded.

.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 date.
2. The scope and nature of the project, including technical requirements 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 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."
10. Response due date.
11. Publication dates.

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

.13 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."

When using the "On-Call Roster", the federal aid project must be identified prior to the consultant selection process. 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 ensure 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. Firms with applications on file will be required to update their information after one year, either through the 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.
6. Environmental considerations.
7. Survey and geotechnical testing requirements.
8. Inspection services during construction.
9. Quality control during construction.
10. Preparation of forms, letters, and documents.
11. Property map preparation.

.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) Overruns 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 payments are 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. Lump Sum contracts cannot be supplemented.

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:

   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** – 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** – The rate of pay is established 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).

Prime consultants cannot markup subconsultants contracts, however the fee (profit) should be negotiated to reflect a percentage of subcontracting relative to the percentage of work by the prime consultant. Subcontracting is then one of several considerations when determining a reasonable profit. Justification for the profit should be included in the record of contract negotiations.

.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 (including supplements) 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 consultant 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 Consultant 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 XII of the Consultant 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 consultant 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 H. This exhibit is not needed if the consultant 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 H 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 Indirect Cost Rate Pilot 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/SafeHarbor.htm).

Consulting firms that use the Safe Harbor Rate will still be required to have an accounting system capable of accumulating and tracking direct labor and other direct costs by contract, segregating indirect costs, and removing unallowable costs. These basic accounting system functions are essential for accurate billing of costs under a cost-reimbursement contract. Additionally, the expectation will be for the firm to establish a cost history for the eventual development of a FAR compliant indirect cost rate for the firm, based on actual cost data.

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 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/SafeHarbor.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.

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

31.71	Local Agency A&E Professional Services Cost Plus Fixed Fee Consultant Agreement
31.72	Local Agency A&E Professional Services Negotiated Hourly Rate Consultant Agreement
31.73	Local Agency A&E Professional Services Lump Sum Consultant Agreement
31.74	Local Agency Professional Services Cost Plus Fixed Fee Consultant Agreement
31.75	Local Agency Professional Services Negotiated Hourly Rate Consultant Agreement
31.76	Local Agency Professional Services Lump Sum Consultant Agreement
31.77	Supplemental Agreement
31.78	Advertisement – Example
31.79(a)	Submittal Information Form (Prime)
31.79(b)	Submittal Information Form (Subconsultant)
31.80	Request for Sole Source Consultant Services
31.81	Independent Estimate for Consulting Services
31.82	Record of Negotiations – Example
31.83	Performance Evaluation Consultant Services

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

Agreement Number:

Firm/Organization Legal Name (do not use dba's):	
Address	Federal Aid Number
UBI Number	Federal TIN or SSN Number
Execution Date	Completion Date
1099 Form Required ☐ Yes ☐ No	Federal Participation ☐ Yes ☐ No
Project Title	
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

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

IV. Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY. All work under this AGREEMENT shall 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 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.

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

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

VI. Sub-Contracting

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

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

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

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

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

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

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

VII. Employment and Organizational Conflict of Interest

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

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

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

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

VIII. Nondiscrimination

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

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

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

IX. Termination of Agreement

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

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

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

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

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

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

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

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

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

X. Changes of Work

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

XI. Disputes

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

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XII. Legal Relations

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

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

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

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

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

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

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

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

Insurance Coverage

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

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

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

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

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

Name:
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.

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

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

XIII. Extra Work

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

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

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

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

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

XIV. Endorsement of Plans

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

XV. Federal Review

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

XVI. Certification of the Consultant and the Agency

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

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XVII. Complete Agreement

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

XVIII. Execution and Acceptance

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

XIX. Protection of Confidential Information

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

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

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

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

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

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

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

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

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

XX. Records Maintenance

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

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

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 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.

Agreement Number:

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 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:

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:

WSDOT Form 140-089 EF Exhibit G *Page 1 of 1*
Revised 10/30/2014

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)

_____ _____

Signature (Authorized Official of Consultant) Date

Agreement Number:

WSDOT Form 140-089 EF Exhibit G *Page 1 of 1*
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 manger 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 Pubic 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 Negotiated Hourly Rate Consultant Agreement

Agreement Number:

Firm/Organization Legal Name (do not use dba's):	
Address	Federal Aid Number
UBI Number	Federal TIN or SSN Number
Execution Date	Completion Date
1099 Form Required ☐ Yes ☐ No	Federal Participation ☐ Yes ☐ No
Project Title	
Description of Work	
☐ Yes ☐ No DBE Participation ☐ Yes ☐ No MBE Participation ☐ Yes ☐ No WBE Participation ☐ Yes ☐ No SBE Participation	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
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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.

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

IV. Time for Beginning and Completion

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

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

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V. Payment Provisions

The CONSULTANT shall be paid by the AGENCY for completed SERVICES rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for SERVICES performed or SERVICES rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete SERVICES. 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.

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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 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.

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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.

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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

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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 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.

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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.

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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.

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

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

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

XX. Records Maintenance

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

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

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

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:

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.

Agreement Number:

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 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:

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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

Agreement Number:

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Revised 10/30/2014

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)

_____ _____

Signature (Authorized Official of Consultant) Date

Agreement Number:

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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 manger 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 Pubic 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:

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

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Exhibit A Scope of Work
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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:			If to CONSULTANT:		
Name:			Name:		
Agency:			Agency:		
Address:			Address:		
City:	State:	Zip:	City:	State:	Zip:
Email:			Email:		
Phone:			Phone:		
Facsimile:			Facsimile:		

IV. Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY. All work under this AGREEMENT shall 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). 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)
- Federal-aid Highway Act of 1973 (23 U.S.C. Chapter 3 § 324)
- Rehabilitation Act of 1973 (29 U.S.C. Chapter 16 Subchapter V § 794)
- Age Discrimination Act of 1975 (42 U.S.C. Chapter 76 § 6101 *et. seq.*)
- Civil Rights Restoration Act of 1987 (Public Law 100-259)
- American with Disabilities Act of 1990 (42 U.S.C. Chapter 126 § 12101 *et. seq.*)
- 23 CFR Part 200
- 49 CFR Part 21
- 49 CFR Part 26
- RCW 49.60.180

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

IX. Termination of Agreement

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

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

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

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

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

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.

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 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. "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.

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

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:

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.

Agreement Number:

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 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 *Page 1 of 1*
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:

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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:

WSDOT Form 140-089 EF Exhibit G *Page 1 of 1*
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 manger 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 Pubic 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 Professional Services
Cost Plus Fixed Fee Consultant Agreement

Agreement Number: Does this Require DES filing? ☐ Yes ☐ No

Firm/Organization Legal Name (do not use dba's):	
Address	Federal Aid Number
UBI Number	Federal TIN or SSN Number
Execution Date	Completion Date
1099 Form Required ☐ Yes ☐ No	Federal Participation ☐ Yes ☐ No
Project Title	
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
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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:			If to CONSULTANT:		
Name:			Name:		
Agency:			Agency:		
Address:			Address:		
City:	State:	Zip:	City:	State:	Zip:
Email:			Email:		
Phone:			Phone:		
Facsimile:			Facsimile:		

IV. Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY. 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.

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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 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.

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

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

VI. Sub-Contracting

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

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

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

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

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

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

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

VII. Employment and Organizational Conflict of Interest

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

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

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

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

VIII. Nondiscrimination

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

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

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

IX. Termination of Agreement

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

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

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

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

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

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

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

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

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

X. Changes of Work

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

XI. Disputes

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

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XII. Legal Relations

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

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

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

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

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

Insurance Coverage

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

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

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

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

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

Name:
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.

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

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

XIII. Extra Work

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

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

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

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

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

XIV. Endorsement of Plans

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

XV. Federal Review

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

XVI. Certification of the Consultant and the AGENCY

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

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XVII. Complete Agreement

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

XVIII. Execution and Acceptance

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

XIX. Protection of Confidential Information

The CONSULTANT acknowledges that some of the material and information that may come into its possession or knowledge in connection with this AGREEMENT or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other local, state or federal statutes ("State's Confidential Information"). The "State's Confidential Information" includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records (or any other information identifiable to an individual), STATE and AGENCY source code or object code, STATE and AGENCY security data, non-public Specifications, STATE and AGENCY non-publicly available data, proprietary software, STATE 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. "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,

Agreement Number:

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:

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 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.

Agreement Number:

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 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 *Page 1 of 1*
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:

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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:

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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 manger 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 Pubic 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 Professional Services
Negotiated Hourly Rate Consultant Agreement

Agreement Number: Does this Require DES filing? ☐ Yes ☐ No

Firm/Organization Legal Name (do not use dba's):	
Address	Federal Aid Number
UBI Number	Federal TIN or SSN Number
Execution Date	Completion Date
1099 Form Required ☐ Yes ☐ No	Federal Participation ☐ Yes ☐ No
Project Title	
Description of Work	
☐ Yes % ☐ No DBE Participation ☐ Yes % ☐ No MBE Participation ☐ Yes % ☐ No WBE Participation ☐ Yes % ☐ No SBE Participation	Maximum Amount Payable:

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

IV. Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY. 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. 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.

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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.

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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.

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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

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, 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, 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 CONSULT ANT 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.

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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.

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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.

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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. "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.

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

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:

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.

Agreement Number:

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 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:

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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

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 *Page 1 of 1*
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:

WSDOT Form 140-089 EF Exhibit G *Page 1 of 1*
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 manger 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:

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

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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 manger 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 Pubic 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 Professional Services Lump Sum Consultant Agreement

Agreement Number: Does this Require DES filing? ☐ Yes ☐ No

Firm/Organization Legal Name (do not use dba's):	
Address	Federal Aid Number
UBI Number	Federal TIN or SSN Number
Execution Date	Completion Date
1099 Form Required ☐ Yes ☐ No	Federal Participation ☐ Yes ☐ No
Project Title	
Description of Work	
☐ Yes % ☐ No DBE Participation ☐ Yes % ☐ No MBE Participation ☐ Yes % ☐ No WBE Participation ☐ Yes % ☐ No SBE Participation	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:			If to CONSULTANT:		
Name:			Name:		
Agency:			Agency:		
Address:			Address:		
City:	State:	Zip:	City:	State:	Zip:
Email:			Email:		
Phone:			Phone:		
Facsimile:			Facsimile:		

IV. Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY. 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.

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). 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.

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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 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.

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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

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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 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.

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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.

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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.

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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. "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.

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

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:

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.

Agreement Number:

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 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:

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:

WSDOT Form 140-089 EF Exhibit G *Page 1 of 1*
Revised 10/30/2014

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)

_____ _____

Signature (Authorized Official of Consultant) Date

Agreement Number:

WSDOT Form 140-089 EF Exhibit G *Page 1 of 1*
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 manger 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 Pubic 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:

Washington State Department of Transportation

Supplemental Agreement Number _____	Organization and Address Phone:	
Original Agreement Number		
Project Number	Execution Date	Completion Date
Project Title	New Maximum Amount Payable $	
Description of Work		

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

_____ Date

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 Engineering Design. This agreement will be for approximately (*TIME FRAME*) in duration with the option for the (*AGENCY NAME*) to extend it for additional time and money if necessary. Consultants will be considered for the following project.

The (*AGENCY NAME*) reserves the right to amend terms of this "Request for Qualifications" (RFQ) to circulate various addenda, or to withdraw the RFQ at any time, regardless of how much time and effort consultants have spent on their responses.

Project Description

The work to be performed by the CONSULTANT consists of preparing preliminary engineering design for improvements to 36th Street East to Rainier 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 documentation 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.

The (*AGENCY NAME*) reserves the right to retain the services of the successful firm(s) for any subsequent phases (R/W, CN) associated with this/these project(s).

Evaluation Criteria

Submittals will be evaluated and ranked based on the following criteria:

1) Qualification of Proposed Project Manager

2) Qualifications/Expertise of Firm

3) Ability to meet schedule

4) Approach to project

5) Familiarity with WSDOT/FHWA standards

6) Past Performance/References.

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.

Please submit FOUR copies of your Statement of Qualifications to: (*AGENCY NAME, ADDRESS, and CONTACT PERSON*) no later than10:00 a.m. on June 28, 2015. Submittals will not be accepted after that time and date. Any questions regarding this project should be directed to (*AGENCY CONTACT PERSON*), at (*AGENCY PHONE*).

Americans with Disabilities Act (ADA) Information

This material can be made available in an alternate format by emailing (*AGENCY CONTACT PERSON*) at (*EMAIL ADDRESS*) or by calling collect (*AGENCY PHONE*).

Title VI Statement

The (*AGENCY NAME*) 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."

Dates of publication in the (*NEWSPAPER of RECORD*): June 7, 2015, and June 14, 2015.

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

☐ 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.

Submittal Information Form (Sub-consultant)

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:

Agency: Click here to enter text. Date: Click here to enter text.

Project Title: Click here to enter text. Federal-Aid Number: Click here to enter text.

1. Checklist for a Supplement to an Existing Agreement

   Description of the Existing Project:

Initials	Date or N/A	Checklist Items for a Supplement to an Existing Agreement
		Date the project was originally advertised.
		Date the original Agreement was executed.
		Completion date of the original Agreement.
		Total dollar amount of the original Agreement Click here to enter text..
		Date Supplemental Agreement Number 1 was executed.
		Completion date of Supplemental Agreement Number 1.
		Total dollar amount of Supplemental Agreement Number 1.
		Describe the reason(s) for Supplemental Agreement Number 1.

   (***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

Initials	Date or N/A	Checklist Items – New and Supplements to Agreements
		Describe the proposed project for the Sole Source Agreement: Click here to enter text.
		State the specific intended purpose of the Agreement and describe the services and/or deliverables that are needed: (***Note:*** If two or more phases of work are anticipated, describe each phase separately.) Click here to enter text.
		Date that the sole source consulting services are desired. Click here to enter text.
		Duration of work/phase 1 of work Click here to enter text.

Initials	Date or N/A	Checklist Items – New and Supplements to Agreements
		(Repeat this line for each phase of work, numbering them sequentially.) Describe the funding sources of the project (including participation percentages): Click here to enter text.
		Provide the estimated cost of the services that will be performed by the sole source consultant": Click here to enter text.
		Provide the estimated cost of services to be provided by a subconsultant: Click here to enter text.
		Describe the work to be performed by a subconsultant: Click here to enter text.
		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: Click here to enter text.
		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): Click here to enter text.
		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. Click here to enter text.
		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): Click here to enter text.
		Disadvantaged Business Enterprise (DBE) goals may apply on a federally funded project. Explain reason(s) for waiving DBE participation goals: Click here to enter text.

Agency

Signature of Agency Official	Date

Recommended Approval

Region Local Programs Engineer	Date

Approval

Local Programs	Date

Washington State Department of Transportation

Independent Estimate For Consulting Services

Direct Salary Cost (Composite) :			
Breakdown Of Work	Manhours	Average Rate Of Pay	Estimated Cost
Totals			

Overhead Cost (including payroll additives) _____ % $ _____

Fixed Fee _____ % $ _____

Reimbursable

A. Travel and Per Diem $ _____

B. Reproduction Expenses $ _____

C. Computer Expense $ _____

D. Communication $ _____

E. Sampling and Testing $ _____

F. Outside Consultants $ _____

G. Other (Specify) $ _____

Total $ _____

Sub-total $ _____

Contingencies _____ % *Contingencies $ _____

Grand Total $ _____

* Use only on cost plus net fee type of payment

Agency	File No.	Project No.
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)

Action	Date
1. Consulting firm of Acme Consulting selected.	2/15/99
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, & NEPA/SEPA documentation.	2/25/99
3. Meeting held with consultant to ensure thorough understanding of the scope of work.	2/20/99
4. Consultant provided scope of work; request for proposal solicited.	2/15/99
5. Consultant submitted proposal in the amount of $1,203,000.00.	2/27/99
6. Agency compared proposal with independent estimate and negotiation objectives were established	3/3/99
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). **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*	3/5/99
8. Agency revised detailed cost estimate based on negotiations.**	3/15/99
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.*	3/20/99
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.*	3/23/99
11. *(or alternately) Agency could not agree to final proposal and notified the consultant in writing of this fact.*	3/23/99

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.

Washington State Department of Transportation

Performance Evaluation Consultant Services

Consultant Name	Evaluation Type ☐ Interim ☐ Subconsultant ☐ Final
Consultant Address	Project Title
	Agreement Number
Type of Work ☐ Study ☐ Design ☐ R/W ☐ PS&E ☐ Other (Specify Below):	Type of Agreement ☐ Lump Sum ☐ Hourly Rate ☐ Cost Plus Fixed Fee ☐ Other
Complexity of Work ☐ Difficult ☐ Routine Date Agreement Approved	

Amount of Original Agreement $	Total Amount Modifications $	Total Amount Agreement $
Completion Date Including Extensions	Actual Completion Date	Actual Total Paid $

Type and Extent of Subcontracting

Performance Rating Scale (From Average Score Below)

10 9	8 7	6 5	4 3	2 1
Superior	Above Reqmnts	Meets Reqmnts	Below Reqmnts	Poor

Criteria	Comment	Score
1. Negotiations Cooperative and responsive.		
2. Cost / Budget Complete within agreement budget including supplements.		
3. Schedule Complete within agreement schedule including supplements.		
4. Technical Quality Met Standards.		
5. Communications Clear, Concise Communication (Oral, written, drawings).		
6. Management Team player. Managed subs. Accurate, timely invoices. Appropriate, periodic, accurate progress reports		
Total Score		
Average Score (Total Score / Number of criteria rated)		

Rated By (Project Manager Name and Title)	Project Manager Signature	Date
Rated By (Area Consultant Liaison Name and Title)	Area Consultant Liaison Signature	Date
Executive Review (Name and Title)	Executive Signature	Date

DOT Form 272-019 EF
Revised 3/2002

Distribution: Original: Consultant
Copies: Project Manager - Area Consultant Liaison - Consultant Services Office

Performance Evaluation Instructions

How

- Form should be reviewed and discussed with the Consultant prior to contract negotiations. Establish your expectations.
- Supplementary forms are available form 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.

DOT Form 272-019 EF Instructions
Revised 1/99

Washington State Department of Transportation

Consultant Services Evaluation Supplement

Consultant Name	Evaluation Type ☐ Interim ☐ Subconsultant ☐ Final
Consultant Address	Project Title
	Agreement Number

Performance Rating Scale (From Average Scores)

10 9	8 7	6 5	4 3	2 1
Superior	Above Reqmnts	Meets Reqmnts	Below Reqmnts	Poor

Negotiation and Cost / Budget Criteria

1. Negotiations

Sub-Criteria	Score
A. Adhered to WSDOT guidelines on fee.	
B. Met negotiation schedule.	
C. Open and honest communications.	
D. Willingness to compromise.	
E.	
F.	
Total Score	
Average Score (Total Score / Number of sub-criteria rated)	

Comments

2. Cost / Budget

Sub-Criteria	Score
A. Finished within budget, including all supplements.	
B. Appropriate level of effort.	
C. Reasonable direct, non-salary expenses.	
D.	
E.	
F.	
Total Score	
Average Score (Total Score / Number of sub-criteria rated)	

Comments

DOT Form 272-019 EF Supplement
Revised 3/2002

Page 2 of 4

Schedule and Technical Quality Criteria

Consultant Name	Agreement Number

3. Schedule	
Sub-Criteria	**Score**
A. Achieved schedule (Including all supplements).	
B. Prompt response to review comments.	
C. Adapted to changes by WSDOT.	
D. Notified WSDOT early regarding schedule "impactors."	
E.	
F.	
Total Score	
Average Score (Total Score / Number of sub-criteria rated)	
Comments:	

4. Technical Quality	
Sub-Criteria	**Score**
A. Work products meet standards; where "practical."	
B. Performed appropriate quality control.	
C. Responds to review comments in subsequent submission.	
D. Sought opportunities to incorporate innovative designs.	
E. Delivered "compatible" electronic files.	
F. Implemented procedures to control construction costs.	
G.	
H.	
Total Score	
Average Score (Total Score / Number of sub-criteria rated)	
Comments:	

Page 3 of 4

Comunication and Management Criteria

Consultant Name	Agreement Number

5. Communications	
Sub-Criteria	**Score**
A. Produced clear, concise oral and written communication.	
B. Demonstrates an understanding of oral and written instructions.	
C. Communicated at intervals appropriate for the work.	
D. Respects and uses lines of communications.	
E.	
F.	
G.	
Total Score	
Average Score (Total Score / Number of sub-criteria rated)	
Comments:	

6. Management	
Sub-Criteria	**Score**
A. Provided creative cost control measures / ideas.	
B. Submitted appropriate, periodic, accurate progress reports.	
C. Accurate and timely invoicing.	
D. Conducted meetings efficiently.	
E. Limited the number of consultant-initiated contract modifications / supplements.	
F. Coordinated with WSDOT effectively; was a “team player.”	
G. Responsive	
H. Managed subconsultants effectively.	
I.	
J.	
Total Score	
Average Score (Total Score / Number of sub-criteria rated)	
Comments:	

Page 4 of 4

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.

R/W Requirements for Railroads are discussed in Chapter 25.

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 visability 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:

Terrel A. Anderson	Richard W. Wagner
Manager Industry & Public Projects	BNSF Railway Mgr. Public Projects for WA.
9451 Atkinson Street	2454 Occidental Avenue South Ste 2D
Roseville, CA 95747	Seattle, WA 98134
Office: 916-789-5134	Office: 206-625-6152

A list of Short Line Railroad contacts is located on the website located at 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

34.1 General Discussion

The primary objective of the Federal Highway Bridge Program (HBP) is to ensure public safety through inspection, rehabilitation, and replacement of bridges that meet the requirements for inclusion in the National Bridge Inventory (NBI) as defined by the National Bridge Inspection Standards (NBIS). The bridges that would be eligible for rehabilitation and or replacement using federal funds are described in Section 34.41.

This chapter describes the national requirements for bridge inspection programs and for selecting bridge projects to be funded using federal funds.

34.2 Bridge Condition Inspection Program

A methodical Bridge Inspection Program is required for agencies that want to qualify for HBP funds.

The Federal Highway Administration (FHWA) has set the national standards for the proper safety inspection and evaluation of bridges in a document called the National Bridge Inspection Standards (NBIS). These standards are located in the Code of Federal Regulations, Title 23 Highways Part 650, Subpart C. The latest electronic version of the NBIS can be found online at www.fhwa.dot.gov/bridge/. Information and guidance on bridge condition inspection in Washington State is located in the *Washington State Bridge Inspection Manual* (WSBIM) M 36-64. Reference these documents for additional information on the following subjects. In the event of conflicting information or requirements between the WSBIM and Sections 34.2 and 34.3 of this manual, the WSBIM will govern.

.21 Delegation of Bridge Program Manager Status – Each State Transportation Department is required to have an Inspection Organization responsible to inspect, or cause to be inspected, all highway bridges located on public roads that are fully or partially within the State's boundaries, except for bridges owned by Federal agencies. The WSDOT Local Agency Bridge Engineer has been delegated as the Program Manager for county and city owned bridges. The NBIS contains provisions to allow further delegation of bridge program functions identified in §650.307(c)(2) to qualified Local Agency bridge program personnel. See Appendix 34.54.

.22 Bridge Inspection Types and Frequencies – Each structure in the National Bridge Inventory (NBI) shall receive a routine inspection at intervals not to exceed 24 months except as provided in the NBIS.

Inspection frequency requirements are listed in Section §650.311 of the NBIS. These requirements are also outlined in the flowchart in Appendix 34.52 and are detailed in the WSBIM. The Local Programs Bridge Inventory Engineer will perform quarterly reviews of the Local Agency Bridge Inventory to ensure that bridge inspections are being performed on time. Local Agencies will be provided with lists of bridges and the projected inspection dates to cross check with their own inspection list to ensure concurrence and identify any omissions. Bridges shall be inspected in the calendar

month that is the result of the current inspection month plus the assigned inspection frequency in months. This usually means the inspection will happen in the same calendar month for future inspection years. The inspection update should be entered in Bridge Works within 30 days. This allows Local Programs to monitor inspection progress and provides a record of inspection date compliance. Once inspections are performed, Local Agencies have 90 days to finish the inspections report and have the data released to the Local Agency Bridge Inventory.

Local Agencies will be notified of bridge records that do not have current inspection dates because the field inspection has not been done or because the information has not been released to the Local Agency Bridge Inventory. This notification will be first in the form of email or other correspondence with the Local Programs Bridge Office. If corrections are not made within 30 days of notification, the second notification will be a formal letter of noncompliance from the Local Programs Engineering Services Manager with a corrective action plan. Finally, failure to carry out the corrective action plan will result in formal notification from the Director of Local Programs that federal funds may be restricted until compliance is met.

.23 Qualification of Bridge Inspection Personnel – Federal regulations specify the requirements for two positions within a Bridge Inspection organization:

- Bridge Program Manager – hereafter Program Manager
- Bridge Inspection Team Leader – hereafter Team Leader

The Program Manager is the individual charged with managing a specific bridge program and who has been delegated the duties of ensuring timely bridge inspection and reporting and that bridge records are current and valid. The Program Manager provides overall leadership and guidance to bridge program personnel.

Minimum Qualifications for Program Manager are:

- Registered Professional Engineer or 120 months of bridge inspection experience
- Successful completion of FHWA approved Comprehensive Bridge Inspection Training Course

The **Team Leader** is the individual in charge of an inspection team and is responsible for planning, preparing, and performing bridge inspections. The Team Leader is required to be onsite for all condition inspection activities on NBI bridges, and is responsible for inspection reporting and for accurate inventory coding. Qualified Team Leaders are certified by WSDOT and are issued an inspector identification number. Noncertified bridge inspectors are not allowed to submit bridge inspection data for NBI bridges to the Local Agency Bridge Inventory.

Minimum Qualifications for Team Leader are:

- Qualified Program Manager
- Or, 60 months of bridge inspection experience and successful completion of FHWA approved Comprehensive Bridge Inspection Training Course
- Or, Certified Level III or IV NICET bridge safety inspector and successful completion of FHWA approved Comprehensive Bridge Inspection Training Course

- Or, BS degree in engineering, and successfully passed EIT, and 24 months Bridge Inspection experience, and successful completion of FHWA approved Comprehensive Bridge Inspection Training Course
- Or, Associates degree in engineering, and 48 months bridge inspection experience, and successful completion of FHWA approved Comprehensive Bridge Inspection Training Course

Program Manager and Team Leader qualification requirements are listed in Section §650.309 of the NBIS and are outlined in the flowchart in Appendix 34.51. The time requirements listed for qualification are measured by the actual time spent performing the designated activity or related tasks not by calendar years.

All applications for Program Manager delegation and Team Leader certification will be reviewed and approved by Local Programs. Program Manager delegation is issued to an individual within a specific agency that meets the qualifications, not to the agency (see Appendix 34.54 to review the Bridge Program Manager Agreement). If a Bridge Program Manager leaves agency employment, and the agency desires delegation of another Program Manager, delegation to another qualified person within the agency is required (see Section 34.21). Certification of Bridge Program Manager status will be sent by hard copy letter. Bridge Inspector Team Leader certification will be acknowledged through an email response and by activation of Certified Bridge Inspector privileges in the Bridge Works Bridge Inspection Software. Any bridge certification will become part of the "Staff Qualification" file required for all bridge program personnel and which will be checked on an annual basis and during Quality Assurance (QA) reviews.

WSDOT maintains a list of qualified inspection service consultants which is available through Local Programs. Private consultants wanting to provide in-service bridge inspection services must have bridge inspectors that have been certified by WSDOT staff.

.24 Continued Certification of Bridge Inspection Personnel – Each Program Manager and Team Leader must participate in a 40 hour continuing education program to maintain certification. This program requires the following during a five-year period:

- 40 hours of bridge related training including WSDOT sponsored bridge training, bridge conferences, and other NHI Bridge Training courses.
- An approved Bridge Inspector Refresher Training course.
- Field evaluation performed by WSDOT Local Programs during QA reviews or by an agency's Bridge Program Manager with the approval of the WSDOT Local Programs Bridge Engineer (see Section 34.3).

The expiration date of Program Managers and Team Leaders privileges are listed under Bridge Works account settings and is updated by Local Programs after verification that the continuing education requirements have been met. Qualification reviews are performed annually and as well as the formal process during the file review during the QA process outlined under Section 34.3.

Visit the Local Programs Bridge Services website at www.wsdot.wa.gov/localprograms/bridge/training.htm for bridge training opportunities which count toward the 40 hours of continuing education.

.25 Bridge Inspection Records and File Requirements – Bridge owners are required to maintain a complete and current official bridge file for each structure included in the NBI. This file is to be maintained throughout the life of the bridge. Chapter 2 of the WSBIM and Appendix 34.55 list the requirements for each official bridge file and detailed guidance on what to include. In addition, the latest version of the *American Association of State Highway and Transportation Officials (AASHTO) Manual for Bridge Evaluation*, has been incorporated by reference in the NBIS. See NBIS Section §650.313(d).

Agencies must identify bridges requiring special attention and must keep these Master Lists with the official bridge files. Lists of bridges that require special inspections such as, Fracture Critical Member Inspections, Underwater Inspections, and Complex Bridge Inspections or are singled out for deficiencies such as Load Posting or having been determined Scour Critical should be included on Master Lists.

Additionally, each local agency is required to maintain a current file on each member of the Inspection staff detailing their experience and training.

.26 Bridge Load Ratings – All NBI bridges, including new structures, require load ratings which must be stamped and signed by the Professional Engineer charged with overall responsibility for the analysis. These ratings must be placed in the official bridge file as discussed in Section 34.25. If the current load rating is suspect because of condition changes or added dead load, a new rating shall be performed and the bridge inventory updated within 90 days of the inspection. Bridges must be posted or restricted when the maximum load carrying capacity drops below the maximum unrestricted legal load. Additional load rating requirements are available in Chapter 5 of the WSBIM. Once it has been determined that an in-service bridge can no longer carry legal loads, load restriction signs shall be installed within 30 days including an update to the Local Agency Bridge Inventory with correct coding that reflects the diminished bridge capacity. The inventory update shall include a photo of the posting for confirmation purposes. Load ratings for new bridges are eligible for HBP funds and should be included in the contract for bridges funded under this program. Load Ratings shall be available for inclusion in the bridge inventory record no later than 90 days from the time the bridge is put in service.

.27 Bridge Scour Analysis – A scour evaluation is required for each bridge over water. Chapter 5 of the WSBIM provides guidance on performing this evaluation. The scour analysis must also yield the federal scour code as detailed in Chapter 2 of the WSBIM under the Washington State Bridge Inventory System (WSBIS) WB76-80 card. This evaluation becomes part of the official bridge file discussed in Section 34.25.

Plans of action for monitoring as well as scour repair plans are required for all bridges determined to be "scour critical" or to have unknown foundations. A plan of action (POA) has these primary components:

1. Development and implementation of a monitoring program.
2. Instructions regarding the type and frequency of inspections to be made at the bridge.
3. A schedule for the timely design, and construction of scour countermeasures (e.g., riprap).

Each documented plan of action should address each of these components and explain why the preferred actions were chosen. (See Chapter 5 of the WSBIM for more detailed information on what should be included in each POA).

.28 Critical Damage Bridge Repair Reports – A Critical Damage Bridge Repair Report must be completed whenever a bridge is identified as having significant structural damage causing emergency load restrictions, lane closure, bridge closure, or if a bridge has failed.

The WSDOT Local Programs Bridge Engineer must be notified by telephone or email within one working day of identification of a problem. This notification starts a series of reports that are ultimately forwarded to FHWA. This series of reports allows the local agency, Local Programs, and FHWA to track the status of critically damaged bridges until the damage is resolved by repair or replacement of the bridge. See Chapter 6 of the WSBIM for contact information, timelines, forms and procedures.

34.3 Quality Assurance and Quality Control Reviews

Local Programs conducts Quality Assurance and Quality Control (QA/QC) reviews of local agency bridge programs statewide to:

- Verify that local agency bridge inspection programs maintain a high degree of accuracy and consistency.
- Identify future training needs.
- Ensure compliance with the NBIS.

Quality Assurance (QA) is defined per 23 CFR 650.305 as "the use of sampling and other measures to assure the adequacy of quality control procedures in order to verify or measure the quality level of the entire bridge inspection and load rating program." A QA review must be done by someone outside the work group.

Quality Control (QC) is defined as "procedures that are intended to maintain the quality of a bridge inspection and load rating at or above a specified level."

The Local Programs Bridge Inventory Engineer continually performs routine Quality Control reviews on the data contained in the Local Agency Bridge Inventory. Queries are run on all bridge inventory data for verification of data consistency and correct data field correlation. In addition, updated bridge inspection data prepared by the bridge owners receives an in-depth review and corrections are made before releasing new data to the bridge inventory. The remote aspect of the QC review process is extended to incorporate additional bridge file components as they become available electronically through the bridge inspection software. This process produces a more efficient and complete review of the Agency's program during the actual field visits.

Quality Assurance reviews are a formal review that is conducted a minimum of once every five years. This formal review consists of both a bridge file review and the field review as detailed below. See Appendix 34.57 for a copy of the checklist used by Local Programs for this review.

The detailed documented policies and procedures used by Local Programs for the QA/QC reviews are located in Chapter 7 of the WSBIM.

Local Agency Quality Control – Each agency that has been delegated Program Manager Responsibilities by WSDOT shall have written quality control procedures in

place to ensure that data submitted to the Local Agency Bridge Inventory is accurate and complete. The agency's quality control procedures must be on file and, at a minimum, comply with the QC requirements outlined in Chapter 7 of the WSBIM and be approved by the FHWA Washington Division Bridge Engineer.

34.4 Local Bridge Program Call for Projects

Counties and cities are invited to submit bridge projects to Local Programs in response to the Local Bridge Program Call for Projects. These bridge projects must meet the federal eligibility requirements in Section 34.41.

The specific application requirements may vary from biennium to biennium and will be outlined in the actual Call for Projects.

.41 Local Bridge Program Eligibility – A bridge project must fulfill the following federal criteria to be eligible for funding:

1. The bridge must be more than 20 feet in length measured along the centerline.
2. It must be recorded in the Washington State Bridge Inventory System (WSBIS).
3. For replacement and rehabilitation, the bridge must be structurally deficient (SD) or functionally obsolete (FO) with sufficiency ratings as follow:
   a. For Replacement: less than 50
   b. For Rehabilitation: 80 or less
4. Seismic-Paint-Scour – Eligible activities may be funded for bridges regardless of sufficiency rating. However, bridges must be scour critical or have unknown foundations to be eligible for scour projects. Routine maintenance is not eligible for funding.
5. No replacement or rehabilitation projects can have been performed using funds in the past 10 years. There is no moratorium following Seismic-Paint-Scour projects, however, the intent of this funding is for the repair to last at least 10 years.
6. Bridges with structurally deficient decks (Deck Overall codes of 4 or less) are eligible for rehabilitation regardless of sufficiency rating. The 10-year moratorium will not disqualify the candidate. However, once the deck has been replaced or rehabilitated, the 10-year rule will apply.

The Federal Highway Administration (FHWA) has developed a formula that calculates sufficiency ratings and assigns SD or FO designations. This computation is performed by the WSBIS using inventory and inspection data submitted by state and local agency bridge inspectors. The sufficiency rating is based on four factors: structural adequacy and safety, serviceability and functional obsolescence, essentiality for public use, and special reductions. Ratings can range from 0 (worst) to 100 (best). Deteriorated bridges that are in poor condition are considered Structurally Deficient (SD) and bridges with geometric configurations that are below current standards for the route they serve are considered Functionally Obsolete (FO). A further explanation of sufficiency rating and criteria for structural deficiency and functional obsolescence can be found at www.wsdot.wa.gov/localprograms/bridge/resources.htm under a link labeled "Bridge Analysis." A sufficiency rating generator is included as part of the

Bridge Works Bridge Inspection software which is available for download at www.wsdot.wa.gov/localprograms/bridge/bridgeworks.htm.

.42 Bridge Replacement Design Standards – Bridges shall be designed in accordance with Chapter 42 and the following criteria:

1. **Live Load** – Load and Resistance Factor Design (LRFD) HL 93.
2. **Vertical Clearances** – Clearance over roadways is a minimum 16.5 feet. Clearance over railroads is a minimum 23.5 feet.
3. **Design-Year ADT** – Will be determined per Section 43.21.
4. **Bridge Length** – The length of the replacement bridge can be affected by one or both of the following factors:
   a. The bottom of the superstructure will be 3 feet above the 100 year flood or as determined by field review.
   b. The abutment and pier locations(s) of a new bridge generally reduce the existing backwater elevation. In fish bearing waters, acceptable rise in the backwater elevation is 0.2 foot above the existing conditions, as referenced in WAC 220-110-070(1)(h). For non-fish bearing waters, the acceptable rise in the backwater elevation is 1 foot above the existing conditions.
5. **Bridge Type** – The bridge type selected will be the most economical type for the span length needed, based on sound engineering judgment and/or economics.
6. **Bridge Foundation Type** – The type and depth of the foundation elements will depend on the results of the geotechnical and hydraulic analyses and shall be considered scour safe (WB76-80 coded 8 or 9).

Both a load rating and a scour analysis for a new bridge shall be provided for the official bridge file. The scour analysis will consist of a summary of the hydraulic design as justification for the scour safe code.

.43 Bridge Rehabilitation Criteria – To qualify as a rehabilitation project, the total rehabilitation costs shall not exceed 70 percent of the replacement costs. Rehabilitation projects will be subject to the following requirements:

1. Structural deficiencies will be removed.
2. Structure will be brought up to current standards.
3. Completed bridge must load rate at or above an H-15 inventory rating.

.44 Seismic-Paint-Scour – Project eligibility and priority ranking is based on the Washington State Bridge Management System (BMS) element data. See Chapter 4 of the WSBIM for BMS information.

.45 Eligible Bridge Costs – The following are eligible bridge costs:

1. **Bridge Construction** – All items typically detailed by bridge designers (concrete, rebar, piling, barriers, expansion dams, etc.).
2. **Bridge Aesthetics** – Limited to the treatment required in the approved NEPA documents. Typically, paints or pigmented sealers and fractured fin finishes on concrete structures will not be approved.

3. **Demolition** of existing structure(s).
4. **Detour** – All work items required to accommodate the construction of the new bridge.
5. **Traffic Control for the Work Zone** – Prorated by costs of bridge vs. approach work.
6. **Structural Excavation and Backfill for Bridge** – Includes abutments, wing walls, footings, cofferdams, etc.
7. **Riprap Protecting Bridge Structure Within the Right of Way** – Riprap placed within the right of way to protect the structure can be considered a bridge item.
8. **Approach Slab** – The approach slab is a reinforced concrete element that protects the bridge and abutments from impacts and can be considered a bridge item.
9. **Approach Guardrail Transition Section** – Approach guardrail systems are installed in accordance with Standard Plans and are considered a bridge item provided site conditions do not require unusually long transitions.
10. **Retaining Walls** (up to 20 feet maximum distance from the abutment) – Retaining walls are structural elements that serve the same functions as the standard bridge wing walls and are designed by bridge designers. Retaining walls beyond these limits would not be considered bridge items.
11. **Bridge Drainage** – Including components necessary to carry water from the structure.
12. **Environmental Mitigation** – Prorated for the bridge, demolition of existing structure, and/or detours.
13. **Mobilization** – Prorated by costs of bridge and approach work.

Approach costs will be limited to 15 percent of the above items.

.46 On-Site Field Review of Candidates – The on-site field review team verifies the condition of the bridge, review site information, and possibly requests updated or additional information. The field review is also an opportunity for the bridge owner to provide additional information related to up-front project scoping and analysis done prior to the call for projects.

a. **Field Review Team** – The Field Review Team consists of the WSDOT Local Programs Bridge Engineer (Review Team leader), a local agency bridge owner representative, the Region Local Programs Engineer, and FHWA Division Bridge Engineer whenever possible. On non-CA agency bridges, the Field Review Team will also have a representative from the agency providing CA services for the nonCA agency. The Local Programs Bridge Engineer may add other representatives as deemed appropriate for specialized conditions.

b. **Review Procedures**

1. The Field Review Team conducts an on-site review of proposed bridge projects. The Field Review Team may use results of a previous review for a bridge submitted but not funded, provided the review was conducted within the past three years.
2. The Bridge Inspection Report is reviewed at the site. The Field Review Team looks for inconsistencies between condition codes, load ratings, postings, ADT, and other factors. The WSDOT Local Programs Bridge Engineer calculates an independent sufficiency rating based on codes agreed to by the review team. The final sufficiency rating may change again based on information requested by the team but not available during the field review.
3. The items submitted with the application are reviewed at the site. The Field Review Team reviews the site in detail and recommends which of three funding program best fits the condition of the bridge.
   a. Replacement projects.
   b. Rehabilitation projects.
   c. Seismic-Paint-Scour.
4. A consensus is reached on the appropriate funding program and estimated scope of work for the project.
5. The project cost estimate submitted by the agency is discussed in detail and revised as appropriate.

.47 Bridge Selection – A local bridge advisory committee convenes after the on-site field reviews are completed with the local agencies. A prioritized list of bridge projects are presented to the committee in order of sufficiency rating, results of the field review, review team recommendations, and other pertinent information. The committee reviews all of the projects and adds comments based on a statewide approach.

The Director of Local Programs approves the final list of bridge projects based upon funding levels, delivery schedules, bridge sufficiency and committee comments. Counties and cities will receive a funding notification letter informing them that their bridge project has been approved for funding. The letter will identify the anticipated federal funding level and asks the agency to submit their request for funds through their Region Local Programs Engineer. This letter will also identify the percentage for bridge approach cost participation and any other requirements specific to the project.

The committee is comprised of seven voting members and two alternates. The committee includes four county representatives, four city representatives, with the Local Programs Engineering Services Manager serving as Chair. Alternates initially serve one year as a non-voting member then for three more years as a voting member. Alternates for either city or county may participate in the event a voting member from their respective association is absent.

.48 Project Management and Funding – The level of funding available for the bridge program falls short of meeting all of the needs on the local roadway system. With this limited funding, it is critical that the initial scope, schedule, and budget for each project be as accurate as possible. Identification of changes to the scope, schedule or budget during project delivery need to be communicated to Local Programs, the quarterly project report is the vehicle for this communication.

Updates to the project scope schedule and budget are required for all bridge replacement and rehabilitation projects and all other projects that exceed $2.0 million are required at 30 percent and 60 percent design.

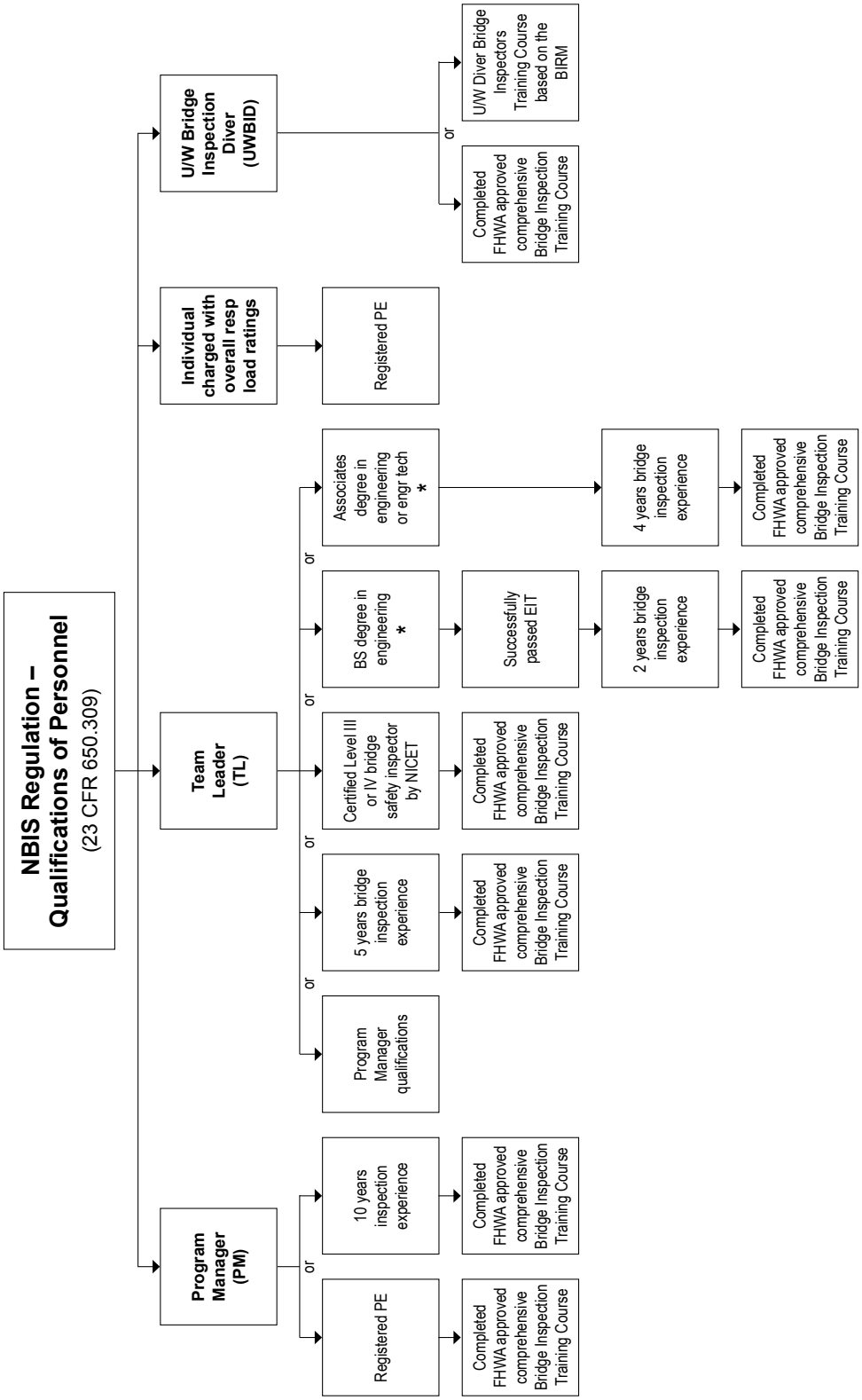
There are two situations when an agency can request additional funding.

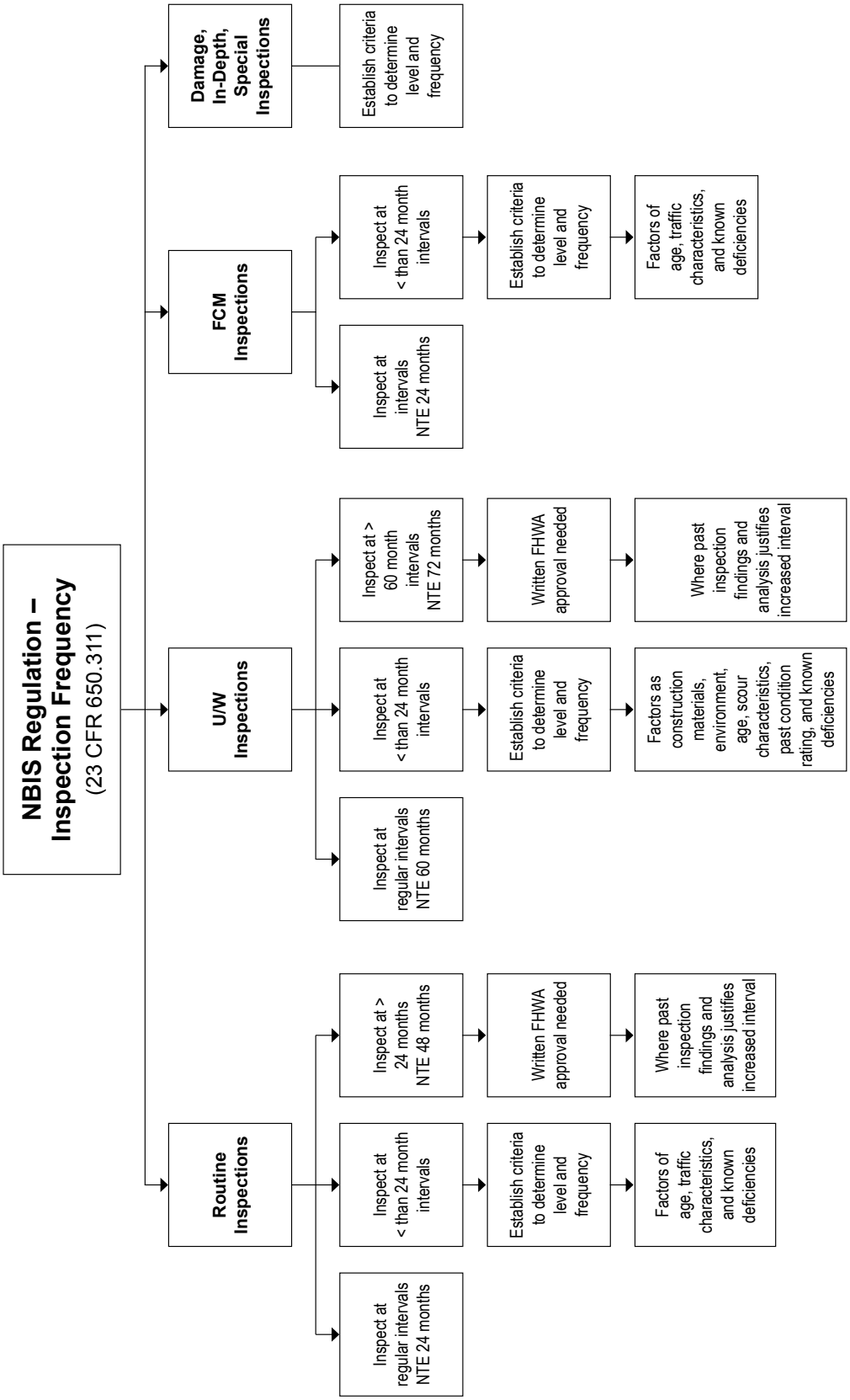
1. **Prior to Construction Obligation/Authorization** – Prior to construction authorization, the agency is required to have all necessary funding secured. If the current engineer's estimate exceeds the amount of funding approved for the project, the agency may submit a request to increase federal funding. Approval for the increase in funding must be received prior to construction authorization or all costs above the original amount approved for the project will be the responsibility of the agency.
2. **After Advertisement But Before Award** – If all bids received exceed the amount of funding approved for the project, the agency may submit a request to increase federal funding.

Approval for the increase in funds must be received prior to awarding the project contract or all costs above the original amount approved for the project will be the responsibility of the agency. Local Programs will send a letter to the agency approving or denying the proposed increase. If approved, the local agency must then prepare, sign, and submit a Supplemental Agreement and update the TIP/STIP and Prospectus as applicable to the Region Local Programs Engineer for further processing.

34.5 Appendices

34.51 NBIS Regulation – Qualifications of Personnel
34.52 NBIS Regulation – Inspection Frequency
34.53 Bridge Inspector Experience and Training Record
34.54 Bridge Program Manager Agreement
34.55 Bridge Records
34.56 Individual Bridge Record
34.57 Local Agency Bridge Program Quality Assurance Checklist


NBIS Regulation – Qualifications of Personnel
(23 CFR 650.309)
Program Manager (PM)
Registered PE
or
10 years inspection experience
Completed FHWA approved comprehensive Bridge Inspection Training Course
Completed FHWA approved comprehensive Bridge Inspection Training Course
Team Leader (TL)
Program Manager qualifications
or
5 years bridge inspection experience
Completed FHWA approved comprehensive Bridge Inspection Training Course
or
Certified Level III or IV bridge safety inspector by NICET
Completed FHWA approved comprehensive Bridge Inspection Training Course
or
BS degree in engineering *
Successfully passed EIT
2 years bridge inspection experience
Completed FHWA approved comprehensive Bridge Inspection Training Course
or
Associates degree in engineering or engr tech *
4 years bridge inspection experience
Completed FHWA approved comprehensive Bridge Inspection Training Course
Individual charged with overall resp load ratings
Registered PE
U/W Bridge Inspection Diver (UWBID)
Completed FHWA approved comprehensive Bridge Inspection Training Course
or
U/W Diver Bridge Inspectors Training Course based on the BIRM
* An accredited Board for engineering and technology or determined substantially equivalent.


NBIS Regulation – Inspection Frequency
(23 CFR 650.311)
Routine Inspections
Inspect at regular intervals NTE 24 months
Inspect at < than 24 month intervals
Establish criteria to determine level and frequency
Factors of age, traffic characteristics, and known deficiencies
Inspect at > 24 months NTE 48 months
Written FHWA approval needed
Where past inspection findings and analysis justifies increased interval
U/W Inspections
Inspect at regular intervals NTE 60 months
Inspect at < than 24 month intervals
Establish criteria to determine level and frequency
Factors as construction materials, environment, age, scour characteristics, past condition rating, and known deficiencies
Inspect at > 60 month intervals NTE 72 months
Written FHWA approval needed
Where past inspection findings and analysis justifies increased interval
FCM Inspections
Inspect at intervals NTE 24 months
Inspect at < than 24 month intervals
Establish criteria to determine level and frequency
Factors of age, traffic characteristics, and known deficiencies
Damage, In-Depth, Special Inspections
Establish criteria to determine level and frequency
Key:
NTE = Not to Exceed
FCM = Fracture Critical Member
UW = Under Water

Washington State Department of Transportation

Bridge Inspector Experience and Training Record

Applicant for Bridge Inspector Certification	Date

Organization

Education

Institution	Major	Years	Degree

Professional Registration

State	Branch/Agency	Registration Number

Bridge Inspection Training

Course	Hours	Sponsor	Dates

Special Technical Course

Course	Hours	Sponsor	Dates

Bridge Inspection Experience

Organization	Bridge Duties	Years

To the best of my knowledge, the above information is true and accurate.

Applicant's Signature _____ Date _____

Having reviewed the above information, I conclude that this individual meets the minimum qualifications for a bridge inspection team leader as specified in the current National Bridge Inspection Standards.

Team Leader's Signature _____ Date _____

Team Leader's Name (Print)_____ Title _____

DOT Form 234-100 EF
Revised 08/2012

Washington State
Department of Transportation

Lynn Peterson
Secretary of Transportation

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Agency: Click here to enter text. Agency No.: Click here to enter text.

In accordance with Title 23, Code of Federal Regulations, Part 650 - Bridges, Structures, and Hydraulics, Subpart C – The National Bridge Inspection Standards (NBIS) the Washington State Department of Transportation (WSDOT) in its role as the Washington State Bridge Inspection Organization is responsible to inspect, or to cause to be inspected, all highway bridges located on public roads that are fully or partially within the State's boundaries, except for bridges owned by Federal agencies. The NBIS contains provisions to allow delegation of bridge program functions identified in §650.307(c)(2).

The individual in charge of the bridge program as defined in the NBIS is the Bridge Program Manager. The overall Program Manager for Local Agency owned bridges in Washington State is the WSDOT Local Agency Bridge Engineer. The individual delegated Program Manager status within an agency and deemed in charge of the Agency Bridge Program for that agency is the Agency Bridge Program Manager. While delegation of Program Manager is allowed, such delegation does not relieve WSDOT of any of its responsibilities under the NBIS.

Agency Bridge Program Manager status is assigned to a specific qualified individual within a specific agency. Any change of employment of the Agency Bridge Program Manager requires re-delegation by the WSDOT Local Agency Bridge Engineer of Bridge Program Manager status to another qualified person within that specific agency.

A qualified person within a Local Agency who accepts Bridge Program Manager status agrees to:

- Adhere to the Washington State Bridge Inspection Manual M 36-64 and all policies and procedures promulgated by the Washington State Department of Transportation (WSDOT) which accomplish the policies and objectives set forth in NBIS.
- Provide overall leadership and be available to the inspection team leaders to provide guidance.
- Supervise or provide Bridge Program quality control to ensure that the requirements of the NBIS are met. This includes review of inspection reports and approval of the Team Leaders work, overseeing bridge inspection schedules, ensuring that all analysis, reporting, and inventory requirements are met, and critical deficiencies are addressed in a timely manner. Support staff may be Private Consultant or State Services.

The qualified person within a Local Agency who accepts Bridge Program Manager Status:

Bridge Program Manager (Name)	Bridge Inspector Cert. No.
Mayor or Chairman	Date

Washington State Department of Transportation

Approved By:

Local Programs Engineering Services Manager	Date

A 34.55.1 General

The on-site inspection of each bridge is important for gathering information about the bridge's structural condition and adequacy. This information must be stored as a permanent bridge record. Such a record provides a useful and accurate history. It also contains information on previous repairs and provides others with ready access to information.

Each agency is responsible for maintaining a bridge file for each bridge within its jurisdiction. A detailed list of information that should be in the bridge file is listed and described in Chapter 2 of the *Washington State Bridge Inspection Manual* (WSBIM) M 36-64. Another reference for a detailed list of the information that should be included in the bridge file can be found in American Association of State Highway and Transportation Officials (AASHTO). The Manual for Bridge Evaluation, Second Edition, 2011. When inclusion of this information in the bridge file is not possible or impractical, reference to the location where it can be found will suffice.

In addition, agencies are required to maintain a record of other general information. This information may be requested during the quality assurance review of the bridge inspection program. The following general information should be on file:

- An experience and training record for each lead inspector.
- A master list of all bridges within the agency's jurisdiction. This list should identify bridges that have fracture critical members, require underwater inspection, and/or warrant special inspection because of their design features, location, or strategic importance.

A 34.55.2 Individual Bridge Records

A permanent record on each bridge must be maintained. This record provides a history of the bridge's condition, maintenance, and inventory data. This information must be kept current.

1. **Washington State Bridge Inventory System (WSBIS) Inventory Coding Form** – A copy of the completed WSBIS Inventory Coding Form must be in the bridge file as a ready source of the current bridge information. The procedures for establishing, maintaining, and updating the inventory information is described in detail in WSBIM Chapter 2.

2. **Bridge Inspection Reports** – Copies of all on-site inspection reports must be kept in the individual bridge file and must be signed by the Team Leader responsible for the inspection. The reports provide specific details about the bridge's condition, how conditions have changed over time, and any previous repairs or maintenance performed. This information is reviewed prior to each bridge on-site visit to prepare the inspector for the conditions or problems they may encounter. Procedures for completing bridge inspection reports are covered in WSBIM Chapter 3 and in the Federal Highway Administration (FHWA) *Bridge Inspector Reference Manual* (BIRM).

3. **Critical Damage Bridge Repair Report** – A copy of the Critical Damage Bridge Repair Report must be kept in the bridge file. This report provides evidence that formal recommendations to correct major bridge damage were made and acted upon in a timely manner, ensuring the safety of the public. See WSBIM Chapter 6 for more information.

4. **Photographs** – Labeled and dated copies of elevation and deck photographs of the bridge must be kept in the bridge file. The label should include the structure ID, bridge name, bridge number, inspector's initials, and a description including orientation. Whenever the bridge's condition changes, new photographs should be taken and added to the file. An agency may also keep on file photographs of problems or deficiencies discovered at the bridge (e.g., section loss in a deteriorating piling or significant spalling on a bridge deck). These photographs can provide documentation of existing or developing problems that could lead to repairs. Deterioration requiring a repair should be documented with a photo. The photo is then referenced in the note describing the deterioration and in the repair note initiating the repair. Once the repair is complete, a follow up photo is taken as part of the repair verification procedure.

5. **Plans** – Most bridges will have detailed design plans used for the construction of the bridge and final drawings reflecting the as-built condition of the bridge. These plans should be kept in the bridge file or a note should be included with location of any plans that are too bulky to fit in the file itself. If these plans are not available, a detailed sketch of the bridge needs to be made showing bridge length, width, span length, clearances, and a typical section with bridge materials and dimensions.

6. **Load Rating and Scour Calculations** – Bridge calculations necessary for inclusion in the bridge file are detailed in WSBIM Chapter 5.

   A copy of the stamped, signed, and dated load rating must be kept in the bridge file. Include a note in the bridge file with location of any load rating that is too bulky to fit in the file itself. Load test data should be included for any field load tests.

   Scour elevations must also be included in the bridge file. The scour evaluation must include the code entered in WB76 - 80 and a Plan of Action for high water events if a bridge is determined to be scour critical.

7. **Correspondence** – All letters regarding the inspection, maintenance, or ownership of the bridge should be kept in the bridge file. This may include correspondence from FHWA, WSDOT, other agencies, and/or individuals.

8. **Inspection Procedures** – Each agency is required to develop and maintain procedures that address the special features of a bridge. Special features include fracture critical members, underwater elements, or any other feature requiring special inspection due to location, strategic importance, or special design features.

   The members that require an underwater inspection shall be identified and the inspection procedures specified. Waters deeper than 4 feet will normally require a diver that is trained in bridge inspections. Wading types of inspections can usually be performed by regular bridge inspection teams as part of the structural inspection. Detailed procedures for conducting these inspections are in WSBIM Chapter 3.

9. **Other Information** – All other information gathered about the bridge should be kept on file. This includes details about maintenance work performed, special reports or studies, heat straightening, damage, and paint reports.

A 34.55.3 Master List

The purpose of a master list is to assist in the management of non-routine inspections, bridges needing special inspection and/or inspection equipment. Each agency is required to maintain a master list of:

- Bridges with fracture critical members.
- Bridges requiring underwater diving inspections.
- Bridges with special features (e.g., segmental bridges).

It is recommended that each agency maintain a master list of:

- Bridges that are scour critical.
- Load posted bridges.
- Bridges requiring an Under Bridge Inspection Truck to inspect limited access members.
- Short span bridges.
- Bridges needing repairs.
- Bridges needing traffic control for routine inspections.
- Fatigue cracked bridges.
- Environmentally sensitive bridges.
- Bridges needing deck replacement.
- Bridges that are seismic vulnerable.
- Bridges needing painting.

This information can be used to plan, schedule, and monitor the special inspections. At a minimum, the following information must be included for each bridge:

- Bridge type and location.
- Type and frequency of inspection required.
- Location of particular members to be inspected.
- Inspection procedures to be used.
- Type of special equipment required.
- Previous inspection dates.
- Most recent inspection findings.
- Any follow-up action taken as a result of the most recent inspection findings.

Bridges are added to the master list when they are identified as needing an underwater, fracture critical, or special features inspections. As these inspections are performed, the master list is updated with the most current information. Bridges are kept on the master list throughout their service life, unless the bridge's category (e.g., fracture critical, special features) changes.

A 34.55.4 Bridge Construction Files

Bridge construction files should include the following:

- Construction Plans
- As-built Drawings
- Specifications
- Shop and Working Drawings
- Material Certification
- Material Test Data

A 34.55.5 Short Span Bridges

Short span bridges (see WSBIM Chapter 3) are bridges or multiple culverts having an opening of 20 feet or less. The short span bridges are generally not reported to the Federal Highway Administration. Washington State encourages the reporting of short span bridge information because of concerns about their condition and possible maintenance repairs required.

A 34.55.6 Inspector Qualifications

The NBIS outline the minimum training and experience required for the head of the bridge inspection organization or Program Manager and the lead bridge inspector or Team Leader. Each agency is required to maintain a record of qualifications for each of its bridge inspection personnel. The agency needs to include the names and qualifications of each individual performing bridge inspections.

The Bridge Inspector Experience and Training Record Form was developed for this purpose. The form is completed by the head of the bridge inspection organization who verifies that lead inspectors meet the qualifications. The completed form is sent to the WSDOT Local Agencies Bridge Engineer for review and the issuance of a bridge inspector identification number. This number is required on the inspection reports. A copy of the completed form is kept on file with the agency.

Each agency is responsible for keeping this information current. During the quality assurance review process, agencies may be asked to verify the qualifications of their inspectors.

Bridge Program Files (Chapter 34)
Washington State Bridge Inspection Manual (WSBIM) Chapter 2

Individual Bridge Record

Bridge Name: _____

Bridge Number: _____ Structure I.D. _____

Initials	Date or N/A	
_____	_____	Current Washington State Bridge Inventory Coding Form (WSBIS)
	_____	Inspection date is current
	_____	Data is complete and correct (WSBIM Chapter 2)
_____	_____	Bridge Condition Inspection Report History
	_____	Reports signed and dated by qualified Team Leader
	_____	Team Leader qualification and training file up-to-date
	_____	History complete according to inspection frequency
_____	_____	Critical Finding (WSBIM Chapter 6)
	_____	Critical Damage Bridge Repair Report
	_____	Follow-up information (Inspection/Design/Repair)
	_____	Conclusion (Bridge reopened or permanently closed)
_____	_____	Photographs (deck and elevation at a minimum)
	_____	Date, description, orientation, inspector's initials
	_____	Location if not in individual bridge file
_____	_____	Bridge plans or detailed drawings
	_____	Plans do not exist
	_____	Location if not in individual bridge file
_____	_____	Scour Analysis (WSBIM Chapter 5)
	_____	Bridge is not over water
	_____	Analysis defines the WB76-80 Scour Code
_____	_____	If Scour Critical
	_____	Action plan
	_____	Bridge is included on Scour Critical Master List

Initials	Date or N/A	
_____	_____	Load Rating (WSBIM Chapter 5)
	_____	_____ Stamped, signed, and dated by Professional Engineer
	_____	_____ WB72-93 coded correctly per load rating
	_____	_____ Bridge is posted if necessary
	_____	_____ Bridge is included on master list of posted bridges
	_____	_____ WB76-60 coded correctly
	_____	_____ WB75-51 through WB77-55 correctly coded
	_____	_____ Location if not in individual bridge file
_____	_____	General Correspondence
_____	_____	Inspection Procedures (WSBIM Chapter 3)
	_____	_____ Bridge is Fracture Critical
	_____	_____ Bridge is on Fracture Critical Master List
	_____	_____ Fracture Critical procedures
	_____	_____ Bridge requires underwater inspection
	_____	_____ Bridge is on Under Water Inspection Master list
	_____	_____ Underwater Inspection procedures
	_____	_____ Bridge is Complex
	_____	_____ Bridge is Complex Bridge Master List
	_____	_____ Complex Bridge Inspection Procedures
_____	_____	Maintenance Records
	_____	_____ Maintenance recommendations on inspection report
	_____	_____ Maintenance initiation (signed, dated)
	_____	_____ Maintenance completed (signed, dated, description)
_____	_____	Other Information
	_____	_____ Special reports

Local Agency Bridge Program Quality Assurance Checklist

Agency: Click here to enter text.

Date: Click here to enter text.

Program Manager:

Name: Click here to enter text.

Experience: Click here to enter text.

Refresher Training: Click here to enter text.

Team Leader(s):

Name: Click here to enter text.

Experience: Click here to enter text.

Refresher Training: Click here to enter text.

Name: Click here to enter text.

Experience: Click here to enter text.

Refresher Training: Click here to enter text.

Team Member(s):

Name: Click here to enter text.

Experience: Click here to enter text.

Training: Click here to enter text.

Name: Click here to enter text.

Experience: Click here to enter text.

Training: Click here to enter text.

Bridge Master List Information:

Number of Bridges in the Agencies Inventory: Click here to enter text.

Number of NBIS Bridges: Click here to enter text.

Number of NBI Bridges (on/under): Click here to enter text.

Number and Types of Specialty Inspections: Click here to enter text.

Number of Bridges Over Water: Click here to enter text.

Type of Inspection	No. Bridges	Notes
Fracture Critical		
Underwater		
Complex Bridge (Not F/C)		
Increased Frequency		
Special Access		
SD		
FO		
Valid Load Ratings		
Load Posted		
Scour Critical		
Unknown Foundation		
High Water POA's		

Bridge Inspection Procedures: See attached Bridge File Checklist for each structure reviewed.

Is a Laptop Used in the Field? Click here to enter text.

Are Manuals Available in Field? Click here to enter text.

Bridge SID	**1)**	**2)**	**3)**	**4)**	**5)**	**6)**
Coding Accuracy						
WSBIS Accuracy						
Notes						
Sketches (in BW?)						
Procedures (in BW?)						
Photos (in BW?)						
Repairs/Maint.						
Load Posting/Codes/Photo						
LR Summary (In BW?)						
Scour Codes/Justification						
POA's (in BW?)						

Are Consultant inspectors used for any Bridge inspections? Click here to enter text.

Are 2-man inspection teams scheduled? Click here to enter text.

Is the Bridge Program Manager involved in the Quality Control of Bridge Inspections? Click here to enter text.

Inspection Equipment:

Equipment	**Agency Owned/Rented**	**Availability**
Ladder		
Manlift		
UBIT/Under Bridge Platform		
Boat		
Climbing Gear		
NDT		

Inspection Finding Follow-up:

Does inspection team have ability to immediately close a bridge if necessary? Click here to enter text.

What is process for closing a bridge because of a Critical Finding? Click here to enter text.

Is the repair list tab up-to-date in Bridge Works? Click here to enter text.

Do notes referencing maintenance progress exist in inspection report? Click here to enter text.

How is maintenance funded? Click here to enter text.

How is maintenance scheduled/closed out? Click here to enter text.

How are required signs inventoried/ verified? Click here to enter text.

General Notes:

Click here to enter text.

Chapter 41 General Project Types

41.1 General Discussion

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.

Facility	Design Standards	Deviation Approval	Design Approval
Interstate			
New/Reconstruction	WSDOT *Design Manual*	WSDOT/FHWA	WSDOT/FHWA
ITS Over $1,000,000	WSDOT *Design Manual*	WSDOT HQ	WSDOT HQ
All Other	WSDOT *Design Manual*	WSDOT HQ	WSDOT Region
National Highway System (NHS)			
State Highways outside of incorporated cities, or on a limited access highway	WSDOT *Design Manual*	WSDOT HQ	WSDOT Region
State Highways within incorporated cities between back of curb to back of curb	WSDOT *Design Manual*	WSDOT HQ	WSDOT Region
State Highways within incorporated cities beyond curb line	*City and County Design Standards See Chapter 42	WSDOT Local Programs	City
City Streets (non-State highways)	*City and County Design Standards See Chapter 42	WSDOT Local Programs	City
County Roads	*City and County Design Standards See Chapter 42	WSDOT Local Programs	County

Facility	Design Standards	Deviation Approval	Design Approval
Non-National Highway Systems (Non-NHS)			
State Highways outside of incorporated cities, or on a limited access highway	WSDOT *Design Manual*	WSDOT HQ	WSDOT Region
State Highways within incorporated cities between back of curb to back of curb	WSDOT *Design Manual*	WSDOT HQ	WSDOT Region
State Highways within incorporated cities beyond curb line	*City and County Design Standards See Chapter 42	WSDOT Local Programs	City
City Streets (non-State Highways)	*City and County Design Standards See Chapter 42	WSDOT Local Programs	City
County Roads	*City and County Design Standards See Chapter 42	WSDOT Local Programs	County

*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.

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 Adaptive Signal Control Technology Projects (ASCT) using the latest edition of the USDOT *Model Systems Engineering Documents for Adaptive Signal Control Technology (ASCT) Systems*, FHWA-HOP-11-027, August 2012, is required.

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
- USDOT/ CalTrans' Systems Engineering Guidebook for Intelligent Transportation Systems, Version 3, November 2009
- USDOT's Model Systems Engineering Documents for Adaptive Signal Control Technology (ASCT) Systems, FHWA HOP-11-027, August 2012

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:

	Standard Cost	Deviation Cost	Discussion
Roadway			
Structure			
Other			

5. Reasons standard cannot be achieved at this time: Click here to enter text.
6. Certification: Click here to enter text.

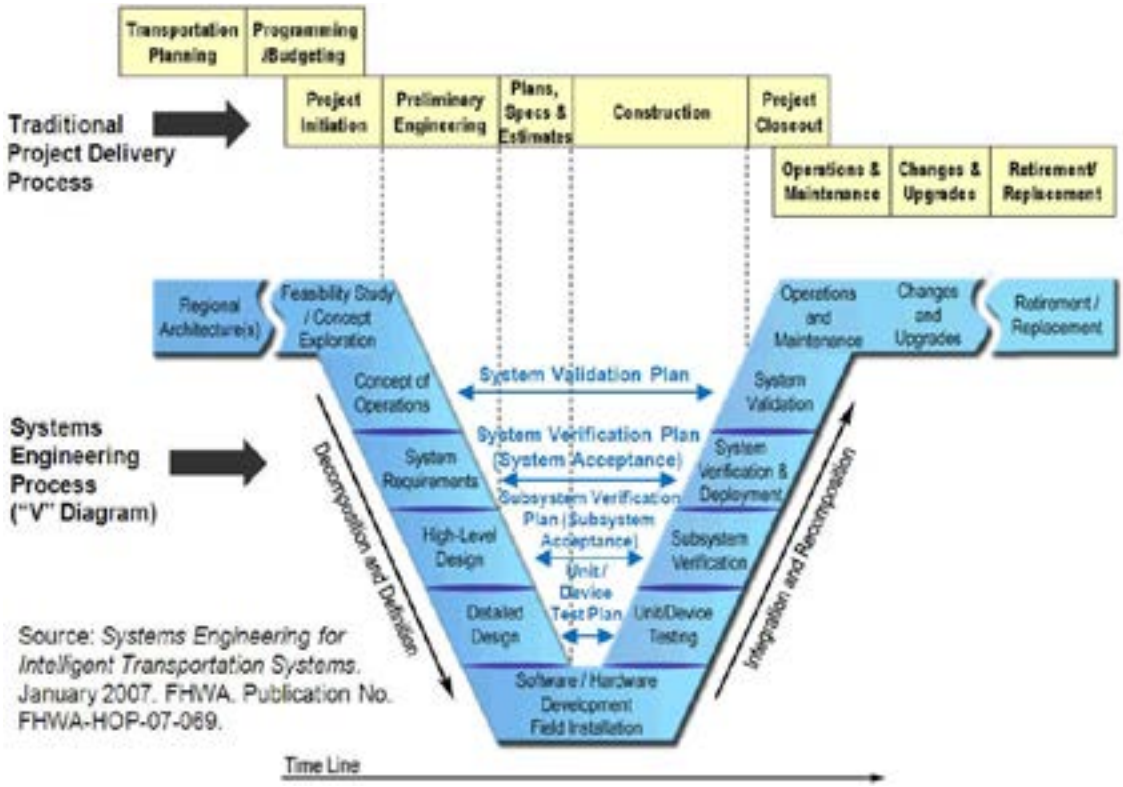
I have examined this deviation request and believe it to be in the best public interest that it be granted.

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.



Systems Engineering Process ("V" Diagram)

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 spreadsheet, 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 answered 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**.**

Project Risk Level	Total Project Cost for ITS Elements	
	Less than $1,000,000[3]	Equal or Greater than $1,000,000[3]
High Risk ITS	Additional systems engineering documents (Concept of Operations, System Requirements, Verification Plan, and Validation Plan)[2] are recommended.[1]	Additional systems engineering documents (Concept of Operations, System Requirements, Verification Plan, and Validation Plan)[2] are required.

Notes:
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.
2. See definitions in Section 41.3.
3. Use the amount from question 4.

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.

Appendix 41.54 FHWA Washington Division ITS Project Contracting Guidance September 2012

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.

ITS Project Type	Description	Examples
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 are 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

Chapter 42 City and County Design Standards for All Routes

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

City Design Standards Committee RCW 35.78.020	County Design Standards Committee RCW 43.32.010	Other Participants
Jim Parvey, PE Senior Principal Engineer City of Tacoma jparvey@cityoftacoma.org	Jim Whitbread, PE County Engineer Stevens County jwhitbre@co.stevens.wa.us	Alison Hellberg Association of Washington Cities alisonh@awcnet.org
Dan Handa, PE Development Services City of Puyallup dhanda@ci.puyallup.wa.us	Bryan Thorp, PLS Design and Construction Manager Benton County bryan.thorp@co.benton.wa.us	Randy Hart, PE County Road Administration Board randy@crab.wa.gov
Mike Johnson, PE Design Engineering and Construction Advisor City of Seattle mike.johnson@seattle.gov	Vacant	Greg Armstrong, PE Chief Engineer Transportation Improvement Board grega@tib.wa.gov
Mike Taylor, PE City Engineer City of Spokane mtaylor@spokanecity.org	Jon Brand, PE Assistant Director of Roads and Engineering Kitsap County jbrand@co.kitsap.wa.us	John Donahue WSDOT Design donahjo@wsdot@wa.gov
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Michael Pawlak City Engineer City of Pasco pawlakm@pasco-wa.gov	Ramiro Chavez, PE Public Works Director Thurston County chavezr@co.thurston.wa.us	Mike Horton Operations Mgr. for Transportation AECOM michael.horton@aecom.com

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 – Design elements are the principal elements of design that are common to projects. The following elements are shown on the Design Matrix.

- 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	Roadways														
Design Elements ⇨	Horiz. Align.	Vert. Align.	Lane Width	Shldr Width	Lane & Shldr Taper	Pedestrian Facilities	Cross Slope Lane	Cross Slope Shldr	Fill/ Ditch Slopes	Safety Improvements	Shared Bike/Ped Facilities	Turn Radii	I/S Sight Dist	I/S Angle	Guardrail & Barrier
New Construction	D	D	D	D	D	1	D	D	D	A	1	A	D	A	A
Re-Construction	A	A	A	A	A	1	A	A	A	A	1	A	A	A	A
3R	AE	AE	AE	AE	AE	1	AE	AE	AE	2	1	AE	AE	AE	1
2R							AE	AE		2	1				1
Railroad (If roadway work included, use 3R line)										AE	1		AE		1
Bridge Rehabilitation, Paint, Seismic, Scour, etc.															
Trails	1	1	1	1			1	1	1	1	1	1		1	
Pedestrian Facility Improvement Projects						1					1				
Other, Interpretive Centers, etc.	1	1	1	1	1	1	1	1	1	A	1	1	1	1	1
Parking Facilities	A	A	A	A	A	1	A	A	A	A	1	A	A	A	1

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

⇩ Project Type	Cross Roads						
Design Elements ⇨	Horiz. Align	Vert. Align	Lane Width	Shldr Width	Fill/ Ditch Slopes	Safety Improve-ments	Shared Bike/Ped Facilities
New Construction	AE	AE	AE	AE	AE	2	1
Re-Construction	AE	AE	AE	AE	AE	2	1
3R	AE	AE	AE	AE	AE	2	1
2R							1
Railroad (If roadway work included, use 3R line)							
Bridge Rehabilitation, Paint, Seismic, etc.							
Trails							
Pedestrian Facility Improvement Projects							
Other, Interpretive Centers, etc.	1	1	1	1	1	1	1
Parking Facilities	A	A	A	A	A	1	1

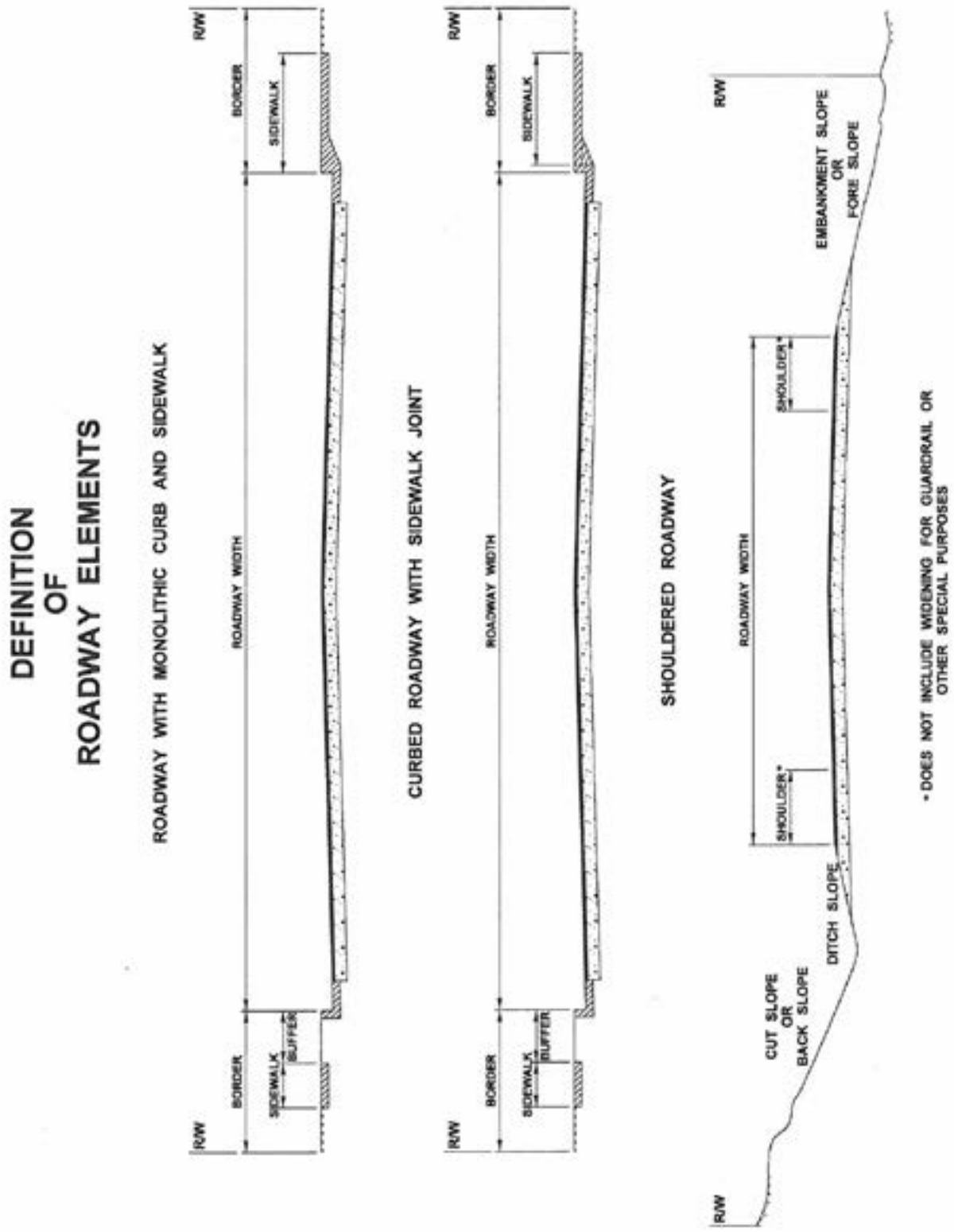
D Design Level D
A Design Level A
AE Agency Evaluate to Design Level A

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 1.2

⇩ Project Type	Bridges				
Design Elements ⇨	Lane Width	Shldr Width	Vertical Clearance	Structural Capacity	Bridge Rail
New Construction	D	D	D	D	D
Re-Construction	A	A	D	D	D
3R	AE	AE	AE	AE	1
2R			AE	AE	1
Railroad (If roadway work included, use 3R line)					1
Bridge Rehabilitation, Paint, Seismic, etc.					
Trails	1	1	1	1	1
Pedestrian Facility Improvement Projects					
Other, Interpretive Centers, etc.	1	1	1	1	1
Parking Facilities	A	A	AE	AE	1

Local Agency Design Matrix
Table 1.3



Cross Section

42.5 Design Level D Standards for Two Way Roads and Streets

Design Standards	Arterial							Collector				
	Principal			Minor								
	Curbed(4)	Shouldered		Curbed(4)	Shouldered			Curbed(4)	Shouldered			
	DHV All	DHV Below 200	DHV 200 and Over	DHV All	DHV Below 100	DHV 100 to 200	DHV 201 and Over	DHV 400 and Over	ADT 400 to 750	ADT 751 to 1000	DHV 100 to 200	DHV 201 and Over
Right of Way	Not less than required for all design elements.											
Roadway Width(1)(2)(7)(9)	24ft	36ft	40ft	24ft	32ft	36ft	40ft	24ft	26ft	28ft	34ft	40ft
Lane width:												
1. Exterior(2)(7)	12ft	12ft	12ft	12ft	12ft	12ft	12ft	12ft	10ft	10ft	11ft	12ft
2. Interior Thru(2)	11ft	11ft	11ft	11ft	11ft	11ft	11ft	11ft	10ft	10ft	11ft	11ft
3. Two Way Left Turn(2)	11ft	11ft	11ft	11ft	11ft	11ft	11ft	11ft	10ft	10ft	11ft	11ft
4. Exclusive Turn(2)	11ft	11ft	11ft	11ft	11ft	11ft	11ft	11ft	10ft	10ft	11ft	11ft
5. Parking(2)	10ft(3)			10ft(3)					(5)			
Shoulder Width(6)(7)(9)(2)		6ft	8ft		4ft	6ft	8ft		3ft	4ft	6ft	8ft
Clear Zone/Side Slopes	AASHTO(10)											
Ditch Slope (in slope)	Slopes steeper than 4:1 should only be used when achieving a 4:1 slope is impractical.											

(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 consistant 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

Design Elements	References
Bridge Width	The minimum bridge width for two-way structures is the greater of: (1) the design roadway width, or (2) the existing roadway width.
Loading	HL 93 (for federally funded projects), others may use HS 20-44.
Vehicular Railing	AASHTO Crash Tested Rail, or Approved NCHRP 350 Crash Tested Rail.
Pedestrian Railing	AASHTO, NCHRP 350.
Approach Railing	AASHTO Crash Tested Rail, or Approved NCHRP 350 Crash Tested Rail.
Vertical Clearance	16.5 feet minimum.

.62 Other Standards

Design Elements	References
Bicycle	AASHTO Guide for the Development of Bicycle Facilities (RCW 35.75.060 and 36.82.145) and/or standards submitted by the local agency which have been approved by Local Programs.
Signing	MUTCD, as modified by the Washington State Transportation Commission per RCW 47.36.030.
Americans with Disabilities Act – 1990 ADA	Code of Federal Regulations 28 CFR Part 35, Interim Final Rules U.S. Department of Justice. The Architectural and Transportation Barriers Compliance Board WSDOT/ Standard F40 Series Current International Building Code, and Washington State Amendments.
Sidewalks	AASHTO Guide for Planning, Design, and Operation of Pedestrian Facilities
Low Volume Roads	2001 AASHTO Geometric Design of Very Low Volume Local Roads (ADT < 400)

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

- 28 CFR Part 35, 28 CFR Part 36, Appendix A, and the Access Board's Proposed Public Right of Way Guidelines
- 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

- *A Guidebook for Residential Traffic Management*, Final Report, December 1994, WSDOT Local Programs Division, Washington State Technology Transfer Center.

.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/

MUTCD
http://mutcd.fhwa.dot.gov/ser-pubs.htm

ADA
Office of the General Counsel Architectural and Transportation Barriers Compliance Board
1331 F Street NW, Suite 1000
Washington, DC 20004-1111
www.access.board.gov

National Assoication of City Transportation Officials (NACTO)
Urban Bikeway Design Guide

- http://nacto.org/cities-for-cycling/design-guide

Urban Street Design Guide

- http://nacto.org/usdg

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. Agencies that perform a Type, Size, and Location (TS&L) for bridge projects, as the first order of work after being selected, must receive approval from Local Programs. (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.)
3. 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 – Refer to Section 34.5.

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

- *Value Engineering Guide for Cities and Counties,* Kempter-Rossman International.
- *Operating Tip — Value Engineering,* NWT2 Center, October 1985.
- *Value Engineering Contract Provisions on Federal Aid Highway Construction Projects,* Report No. 7584217, FHWA, December 1984.
- *Pavement and Shoulder Maintenance Performance Guide*, Report No. TS-84-208, FHWA, August 1984 (Developed in conjunction with Arkansas, Colorado, Iowa, New Mexico, North Dakota, South Dakota, Utah, and Washington).
- *Value Engineering for Highways,* prepared for FHWA by Kempler-Rossman International, revised October 1983.
- *Value Engineering Conference Summary Report,* Report No. TS-80-246, FHWA, August 7, 1980.
- *Value Engineering — A Systematic Approach,* Arthur E. Mudge, McGraw-Hill, New York, 1971.
- *Value Engineering in the Construction Industry,* Alphonse J. Dell'isola, Construction Publishing Co., Inc., New York, 1974.
- *Guidelines for Value Engineering (VE)*, subcommittee on New Highway Materials, AASHTO-AGC-ARTBA Joint Cooperative Committee. Reprinted by USDOT/ FHWA February 1983.
- 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

a. **Form FHWA-1273** – Each set of contract documents shall include Form FHWA-1273, Required Contract Provisions Federal-Aid Construction Contracts. Copies of FHWA-1273 are available from the Region Local Programs Engineer.

b. **Affirmative Action** – See Chapter 27, Equal Employment Opportunity and Training.

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. **K Plans used as a reference are no longer allowed. Agencies must develop contract specific traffic control plans for each contract.**

   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:

A utility agreement is being established and the utility company supplies the material at no cost. This includes 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. The material must still comply with the Buy America requirements.

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).

.33 Quality Assurance Program for Qualified Testers – For work on an NHS Highway System local agencies must develop a quality assurance program which will assure that the materials and workmanship incorporated into each federal-aid highway construction project is in conformity with the requirements of the approved plans and specifications, including approved changes. The program must meet the criteria in FHWA regulation for *Quality Assurance Procedures for Construction* (23 CFR 637).

The Quality Assurance Program includes the following:

- Qualified Tester Program
- Equipment Calibration/Standardization/Check and Maintenance Program
- Qualified Laboratory Program
- Independent Assurances (IA) Program

There are three ways an agency can meet the IA on-site evaluation requirements. They are as follows:

- Contract with WSDOT 's Region Materials Lab
- Contract with a qualified local agency
- Contract with a qualified testing firm.

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
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

*See *Standard Specifications* Section 9-06.5.

**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.

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

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/ 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
   a. *Manual on Uniform Traffic Control Devices* will control signing.
   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.
   b. Standard Specifications/Special Provisions.
   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

	Yes	No	N/A	
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 *Construction Manual* or alternative procedures authorized by LAG Appendix 52.107.
2.	☐	☐	☐	All preliminary samples requested by or for approval of source were submitted and approved or an alternate approval material or product was used.
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.
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 *Construction Manual* or alternative procedures authorized by LAG Appendix 52.107.
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.
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).
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 *Construction Manual* or alternative procedures authorized by LAG Appendix 52.107.

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

WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION
WEEKLY STATEMENT OF WORKING DAYS

Page : of :

CONTRACT NO.
CONTRACTOR:

FEDERAL AID NO:

CONTRACT TITLE:
STATEMENT NO:

STATEMENT DATE:

This statement shows the number of working days charged to your contract for the week ending:

DATE	WEATHER	PHASE		PHASE		REASON
		WORK	UNWORK	WORK	UNWORK	
Sun		0.00	0.00	0.00	0.00	
Mon		0.00	0.00	0.00	0.00	
Tues		0.00	0.00	0.00	0.00	
Wed		0.00	0.00	0.00	0.00	
Thurs		0.00	0.00	0.00	0.00	
Fri		0.00	0.00	0.00	0.00	
Sat		0.00	0.00	0.00	0.00	
Days This Week:		0.00	0.00	0.00	0.00	
Days Work Suspended:			0.00		0.00	
Days Previously Reported:		.00	0.00	0.00	0.00	
Total Days To Date:		.00	0.00	0.00	0.00	

CURRENT STATUS:

Days Specified In Contract:	.00	0.00
Approved Extension of Time:	.00	0.00
Total Authorized Time of Contract:	.00	0.00
Less Workable Days Charged:	.00	0.00
Working Days Remaining:	.00	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.

Washington State Department of Transportation

Change Order

Contract Number	Contract Title	Federal Aid Number
Change Order Number	Change Description	Date
Prime Contractor / Design-Builder		

☐ Ordered by Engineer under the terms of Section 1-04.4 of the Standard Specifications

☐ Change proposed by Contractor/ Design-Builder

Change Description

Verbal Approval Date		Working Days +/-	
Original Contract Amount $	Current Contract Amount $	Est.Net Change This C.O. $	Est. Contract Amount $

☐ Approval Recommended ☐ Approved Project Engineer Date	Approved Approving Authority per C.A. Agreement Date
☐ Approval Recommended By Prime Contractor Date	Other Approval As Required Signature Date Representing

DOT Form 140-005 EF
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Washington State Department of Transportation

Change Order

Contract Number	Contract Title	Change Order Number

Change Description Cont.

Justification of Cost and Added Working Days

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Checklist

Change Order

Question	Yes	No	N/A
1. Does the change order alter the termini, character, or scope of the work?	☐	☐	☐
If yes, you must have H & LP approval to be eligible for federal funds.	☐	☐	☐
If yes, you must submit a revised Page 1 of the prospectus.	☐	☐	☐
2. Is the Change Order over $7,500.00 and outside the scope of work?	☐	☐	☐
If yes, the change cannot be a change order and must be an independent work.	☐	☐	☐
3. Does the Change Order detail all items involved with the change?	☐	☐	☐
4. Does the Change Order include an adjustment in working days?	☐	☐	☐
If yes, the time extension must be stated in the Change Order.	☐	☐	☐
If yes, an independent engineer's estimate of time must be included to document the extension.	☐	☐	☐
If no, that must be stated in the Change Order.	☐	☐	☐
5. Does the Change Order alter the DBE Condition of Award?	☐	☐	☐
If yes, you must obtain concurrence form Local Programs.	☐	☐	☐
If yes, you must obtain the DBE's signature on the Change Order.	☐	☐	☐
6. Does the Change Order involve a material substitution?	☐	☐	☐
If yes, you must determine if a material credit is appropriate.	☐	☐	☐
7. If Change Order work started prior to it's execution, prior verbal approval by the Approving Authority must be granted and documented.	☐	☐	☐
8. Has the Change Order been signed by the contractor?	☐	☐	☐
9. Has the Change Order been executed by the Approving Authority?	☐	☐	☐
If you are a "non CA Agency", you must have the acting CA Authority's approval.	☐	☐	☐
10. Has an independent engineer's estimate justifying the costs and time extensions been completed and documented?	☐	☐	☐
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?	☐	☐	☐

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)
  - Sign Inspection (Manufacturer's Certificate of Compliance is required)
  - Concrete Curing (**for non-structural items only**)
- 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.

Test	Normal Range of Deviation	Maximum Range of Deviation
Sand Equivalent	±8 points	±15 points
Fracture	±5 percent	±10 percent
Asphalt Content (HMA and ATB)	±0.3 percent	±0.6 percent
Sieve Analysis – All Items: No. 4 (4.75 mm) sieve and larger	±5 percent	±8 percent
No. 6 (3.35 mm) sieve to No. 80 (0.180 mm) sieve	±3 percent	±6 percent
No 100 (0.150 mm) and No. 200 (0.075 mm) sieve	±2 percent	±4 percent

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

Item	Test	Assurance Sample
Gravel Borrow	Grading & SE	1 – 20,000 Ton
Select Borrow	Grading & SE	1 – 20,000 Ton
Sand Drainage Blanket	Grading	1 – 20,000 Ton
Gravel Base	Grading, SE & Dust Ratio	1 – 20,000 Ton
CSTC	Grading, SE & Fracture	1 – 10,000 Ton
CSBC Grading	SE & Fracture	1 – 10,000 Ton
Maintenance Rock	Grading, SE & Fracture	1 – 10,000 Ton
Ballast Grading	SE & Dust Ratio	1 – 10,000 Ton
Shoulder Ballast	Grading & Fracture	1 – 10,000 Ton
Backfill for Sand Drains	Grading	1 – 10,000 Ton
Crushed Coverstone	Grading, SE & Fracture	1 – 5,000 Ton
Crushed Screening		
5/8 – 1/4	Grading & Fracture	1 – 5,000 Ton
1/2 – 1/4	Grading & Fracture	1 – 5,000 Ton
1/4 – 0	Grading & Fracture	1 – 5,000 Ton
Gravel Backfill for Foundations	Grading, SE & Dust Ratio	1 – 5,000 Ton
Walls	Grading, SE & Dust Ratio	1 – 5,000 Ton
Pipe Bedding	Grading, SE & Dust Ratio	1 – 5,000 Ton
Drains	Grading	1 – 5,000 Ton
PCC Paving		
Coarse Aggregate	Grading	1 – 10,000 Ton
Fine Aggregate	Grading	1 – 5,000 Ton
Completed Mix		
Consistency	Slump	1 – 25,000 SY
Air Content	Air	1 – 25,000 SY
Yield	Cement Factor	1 – 25,000 SY
Test Beam	Flexural Strength	1 – 25,000 SY
PCC Structures		
Coarse Aggregate	Grading	1 – 5,000 Ton
Fine Aggregate	Grading	1 – 2,500 Ton
Consistency	Slump	1 – 1,000 CY
Air Content	Air	1 – 1,000 CY
Cylinders (28-day)	Compressive Strength	1 – 1,000 CY
Yield	Cement Factor	1 – 1,000 CY
Cement	Chemical and Physical Certification (Verification Sample)	1 – 1,000 Ton
Asphalt Materials		Verification
Paving Asphalt (AR, AC, PBA)		1 qt. every 3rd shipment
Liquid Asphalt (Cutback, Emulsion)		1 qt. every other shipment
Emulsion for ACP Tack Coat		None required

Appendix 52.108 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.

All Local Agency Agreements are required to have a Project Agreement End Date (2 CFR 200.309). Any costs incurred after the Project Agreement End Date are NOT eligible for federal reimbursement. All eligible costs incurred prior to the Project Agreement End Date must be submitted for reimbursement within 90 days after the Project Agreement End Date or they become ineligible for federal reimbursement.

.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 Single Audit – The local agency is responsible for ensuring that a federal single audit is performed in accordance with 2 CFR Part 200.501 – Audit Requirements. WSDOT is also responsible for ensuring that FHWA funds are properly expended. The State Auditor will therefore audit each local agency.

.42 Project Audit – A project audit by WSDOT Local Programs 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 notifies Local Programs upon completion of a formal audit report. If findings on a particular audit arise, Local Programs contacts the agency to confirm the findings and coordinate resolution. Audit findings must be resolved within six months of the date that the audit report is issued. Upon resolution, Local Programs issues a Management Review letter to the agency and provides copies to the FHWA. 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

Washington State Department of Transportation

Local Agency Project Management Review Checklist

Agency	Date
Project Title	
Federal Aid Project Number	Contract Number
Reviewers	
Prime Contractor	

Table of Organization and CA Agreement Review (Approving Authority)

Design Approval _____

PS&E Approval _____

Contract Award _____

ContractAdministration _____

Preliminary Engineering

Design approved by _____ PS&E approved by _____

Commitment File		☐ Yes	☐ No
NEPA approval		☐ Yes	☐ No
Were wage rates included in the contract		☐ Yes	☐ No
Was a Value Engineering Study completed		☐ Yes	☐ No
Public Interest Findings (PIF)			
Patented/Proprietary items	☐ Yes ☐ No	If yes, approved by: _____	
Mandatory use of borrow or disposal site	☐ Yes ☐ No	If yes, approved by: _____	
Agency supplied material	☐ Yes ☐ No	If yes, approved by: _____	
Agency supplied equipment	☐ Yes ☐ No	If yes, approved by: _____	
Local Agency Force work	☐ Yes ☐ No	If yes, approved by: _____	
Two-week advertisement	☐ Yes ☐ No	If yes, approved by: _____	
Tied bids	☐ Yes ☐ No	If yes, approved by: _____	

Right of Way

25	Right of Way acquired	☐ Yes	☐ No
	Project Right of Way certification	Date _____	

Consultant Agreements

31	Agreement renewed prior to expiration date	☐ Yes	☐ No
	Fee type _____		
	Advertisements on file	☐ Yes	☐ No
	Did advertisement include Title VI language	☐ Yes	☐ No
	Selection process on file	☐ Yes	☐ No

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Advertising and Award

46.21	FHWA construction authorization	Date _____	
46.24	Advertising Dates _____ to _____		
46.24	Three week advertising period	☐ Yes	☐ No
46.25	Affidavits of publication in file	☐ Yes	☐ No
	Did publication include Title VI language	☐ Yes	☐ No
46.25	Bid opening	Date _____	
	Were bid analysis conducted prior to award on unbalanced Bid Items	☐ Yes	☐ No
	If yes, is justification on file	☐ Yes	☐ No
46.27	Award	Date _____	
46.26	Award to lowest bidder If not, explain: _____	☐ Yes	☐ No

26 DBE Compliance and SBE Compliance

26.2	DBE goal set % _____	☐ Yes	☐ No	
26.2	DBE condition of award amount $ _____			
26.2	Is there concurrence to award from WSDOT/FHWA prior to a ward (projects containing DBE goal and full oversight projects only)	☐ Yes	☐ No	
52.5	Did change orders affect DBE's	☐ Yes	☐ No	
	If so, explain: _____			
26.2	DBE goal changes approved by WSDOT LP	☐ Yes	☐ No	
26.2	Were quarterly report of a mounts credited as DBE participation sent to region local programs engineer	☐ Yes	☐ No	
	Complaints regarding DBE's or from DBE	☐ Yes	☐ No	
	If yes, were the complaints submitted to WSDOT	☐ Yes	☐ No	
	Were complaints received from subcontractors for prime's failure to pay promptly or return retainage	☐ Yes	☐ No	
	Did Prime Contractor submit a Small Business Enterprise Plan	☐ Yes	☐ No	☐ N/A

Training

Training goal set: Hours _____	☐ Yes	☐ No
Training plan approved by agency	☐ Yes	☐ No
Non-union training plan approved by FHWA	☐ Yes	☐ No
Training goal met: Hours _____	☐ Yes	☐ No
Comments: _____		
Were trainee interviews conducted	☐ Yes	☐ No
Comments: _____		
Training start date _____ Training end date _____		
Were good faith efforts provided when minority/female were not submitted	☐ Yes	☐ No
If yes, is there documentation in the file	☐ Yes	☐ No

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Contract Administration

52.101	First working day _____ Number of working days _____		
	Number of working days complete _____		
	Were liquidated damages assessed	☐ Yes	☐ No
	Preconstruction conference minutes review	☐ Yes	☐ No
	Meeting held	☐ Yes	☐ No
	Meeting documented	☐ Yes	☐ No
	Do the minutes reflect discussion regarding DBE & EEO requirements	☐ Yes	☐ No
	Were there changes		
	Scope	☐ Yes	☐ No
	Project Limits	☐ Yes	☐ No
	Cost	☐ Yes	☐ No
	If yes,is the NEPA still valid	☐ Yes	☐ No
	If yes, is the design still in compliance with ADA requirements	☐ Yes	☐ No
52.51	Were any claims settled by administrative settlement	☐ Yes	☐ No
	If yes, were claims submitted to local programs engineer	☐ Yes	☐ No
	Comments _____		
52.1	Project diaries and inspector's daily reports signed and reviewed	☐ Yes	☐ No
44.22e	TCP in contract	☐ Yes	☐ No
	Adopted by contractor	☐ Yes	☐ No
44.22e	Detour included in contract	☐ Yes	☐ No
44.22e	If yes, agreements included in contract	☐ Yes	☐ No
27.32	PR-1391 on file and PR1392 sent to region local programs	☐ Yes	☐ No
	Comments _____		

Contract Completion

52.83 End of project materials certification from project engineer to approving authority Date _____

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Local Agency Project
Prime & Subcontractor Information

Agency Name	Federal ID Number	Contact	Date

Project Title

	Name	Amount	Date of Request to Sublet 421-012	DBE	Fed. Aid Certification 420-004	Statement of Intent to Pay Prev. Wages F700-029-000	Wage Rate Interview 424-003	DBE Review 272-051	Affidavit of Wages Paid F700-007-000	Payroll
Prime										
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
12										
13										
14										
15										
Total Amount Sublet $			% of Contract Sublet = (Maximum 70%) _____							

Payroll: Certified by the contractor ☐ Yes ☐ No Checked and initialed by the agency ☐ Yes ☐ No

How often were payrolls reviewed _____

Notes

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Local Agency Project
Construction Contract Administration (Change Orders)

Federal ID Number			Project Title			
CO #	Verbal App. Date	Written App. Date	Major Items Involved	Cost Change +/-	W/D +/-	Agency Justified Independently

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Electrical

Agency	Date
Project Title	Federal Aid Project Number
Reviewed By	
Bid Item	Material

CMO ☐ Yes ☐ No Plan Quantity _____
Breakdown Lamp Sum ☐ Yes ☐ No Revised Quantity _____
Paid Quantity _____

Field Note Record Date	Quantity on Field Note Record	Field Note Record Verified

Comments

Acceptable ☐ Deficiency as Needed ☐

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Metal

Agency	Date
Project Title	Federal Aid Project Number
Reviewed By	
Bid Item	Material

Visual Inspection	☐ Yes	☐ No	☐ N/A
Lag Exception Noted	☐ Yes	☐ No	
ROM Maintained	☐ Yes	☐ No	
Certificate of Material Origin	☐ Yes	☐ No	
Qualified Products List	☐ Yes	☐ No	☐ N/A
Shop Drawing	☐ Yes	☐ No	☐ N/A
Mfg. Certificate	☐ Yes	☐ No	☐ N/A
Test Report	☐ Yes	☐ No	☐ N/A
Approved for Shipment	☐ Yes	☐ No	☐ N/A
Bill of Lading	☐ Yes	☐ No	☐ N/A
Fabrication Approved	☐ Yes	☐ No	☐ N/A
Approved Source	☐ Yes	☐ No	☐ N/A
Sign Acceptance Report	☐ Yes	☐ No	☐ N/A

Plan Quantity _____
Revised Quantity _____
Paid Quantity _____
RAM# _____
Codes _____

Field Note Record Date	Quantity on Field Note Record	Field Note Record Verified

Comments

Acceptable ☐ Deficiency as Needed ☐

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Aggregate Item

Agency	Date
Project Title	Federal Aid Project Number
Reviewed By	
Bid Item	Material

Small Quantity	☐ Yes	☐ No	☐ N/A
Certified Ticket	☐ Yes	☐ No	☐ N/A
Lag Exception Noted	☐ Yes	☐ No	☐ N/A
ROM Maintained	☐ Yes	☐ No	☐ N/A
Visual Inspection	☐ Yes	☐ No	☐ N/A
Scale Certification	☐ Yes	☐ No	☐ N/A
Maximum Density Curve	☐ Yes	☐ No	☐ N/A
Scaleman's Daily Report	☐ Yes	☐ No	☐ N/A
Preliminary Sample	☐ Yes	☐ No	☐ N/A
Acceptance Test	☐ Yes	☐ No	☐ N/A
Compaction Test	☐ Yes	☐ No	☐ N/A

Plan Quantity _____
Revised Quantity _____
Paid Quantity _____
RAM# _____
Codes _____
Approved Source-Pit # _____

Field Note Record Date	Quantity on Field Note Record	Field Note Record Verified

Comments

Acceptable ☐ Deficiency as Needed ☐

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Asphalt

Agency	Date
Project Title	Federal Aid Project Number
Reviewed By	
Bid Item	Material

Lag Exception Noted	☐ Yes	☐ No	☐ N/A
ROM Maintained	☐ Yes	☐ No	☐ N/A
Scale Certification	☐ Yes	☐ No	☐ N/A
Visual Inspection	☐ Yes	☐ No	☐ N/A
Scaleman's Daily Report	☐ Yes	☐ No	☐ N/A
Prelim. Sample-Agg.	☐ Yes	☐ No	☐ N/A
Acceptance Test-Agg.	☐ Yes	☐ No	☐ N/A
Verified Mix Design Number	_____		
Qualified Products List	☐ Yes	☐ No	☐ N/A
Compaction Test	☐ Yes	☐ No	☐ N/A
Field Note Record	☐ Yes	☐ No	☐ N/A
Bill of Landing-Emulsified Asphalt	☐ Yes	☐ No	☐ N/A
Bill of Landing-Asphalt Binder	☐ Yes	☐ No	☐ N/A
Certified Ticket	☐ Yes	☐ No	☐ N/A
Small Quantity	☐ Yes	☐ No	☐ N/A

Plan Quantity _____
Revised Quantity _____
Paid Quantity _____
RAM# _____
Codes _____
Approved Source-Pit #/Agg _____

Field Note Record Date	Quantity on Field Note Record	Field Note Record Verified

Is this project on an NHS Route ☐ Yes ☐ No
If so, provide tester certification:

Comments

Acceptable ☐ Deficiency as Needed ☐

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Concrete

Agency	Date
Project Title	Federal Aid Project Number
Reviewed By	
Bid Item	Material

Lag Exception Noted	☐ Yes	☐ No	
ROM Maintained	☐ Yes	☐ No	
Conc. Pipe Acc. Report	☐ Yes	☐ No	☐ N/A
Small Quantity	☐ Yes	☐ No	
Certified Ticket	☐ Yes	☐ No	
WSDOT Inspected	☐ Yes	☐ No	☐ N/A
Acceptance Test-Agg.	☐ Yes	☐ No	
Prelim. Sample-Agg.	☐ Yes	☐ No	☐ N/A
Cylinder	☐ Yes	☐ No	☐ N/A
Plant Certificate	☐ Yes	☐ No	
Qualified Products List	☐ Yes	☐ No	☐ N/A
Cert. of Material Origin	☐ Yes	☐ No	☐ N/A
Visual Inspection	☐ Yes	☐ No	

Plan Quantity _____
Revised Quantity _____
Paid Quantity _____
RAM# _____
Codes _____
Mix Design # _____
Mill Test Report-Bulk PC _____
Approved Source-Pit #/Agg. _____

Field Note Record Date	Quantity on Field Note Record	Field Note Record Verified

Is this project on an NHS Route ☐ Yes ☐ No
If so, provide tester certification:

Comments

Acceptable ☐ Deficiency as Needed ☐

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Mobilization

Agency	Date
Project Title	Federal Aid Project Number

Standard Specification 1-09.7

Contract Bid Amount _____ Mobilization Bid Amount _____

5% of Contract Bid Amount _____ 50% of Mobilization Bid Amount _____

10% of Contract Bid Amount _____

Mobilization Paid on Estimate No. _____

Contract Items Paid That Estimate _____ Mobilization Paid That Estimate _____

Contract Items Paid To Date _____

Mobilization Paid on Estimate No. _____

Contract Items Paid That Estimate _____ Mobilization Paid That Estimate _____

Contract Items Paid To Date _____

Mobilization Paid on Estimate No. _____

Contract Items Paid That Estimate _____ Mobilization Paid That Estimate _____

Contract Items Paid To Date _____

Mobilization Paid After Substantial Completion _____

Notes:

1. When 5 percent of the total original contract amount is earned from other contract items, excluding amounts paid for materials on hand, 50 percent of the amount bid for mobilization, or 5 percent of the total original contract amount, whichever is the least, will be paid.
2. When 10 percent of the total original contract amount is earned from other contract items, excluding amounts paid for materials on hand, 100 percent of the amount bid for mobilization, or 10 percent of the total original contract amount, whichever is the least, will be paid.
3. When the substantial completion date has been established for the project, payment of any amount bid for mobilization in excess of 10 percent of the total original contract amount.

Acceptable ☐ Corrections Needed ☐

WSDOT Form 272-024
Revised 04/2015

Page 11 of 12

PMR Summary

Project Title	Federal Aid Project Number
Reviewers	
PMR Conducted At	PMR Conducted Date
The following documents were not located during the review	
Discussion Items	

Per the LAG Manual, Section 53.31, your agency has 30 days to locate the missing documents. Items not located within the 30 day "grace period" will be considered findings in the Project Management Review and may affect the agency's Certification Acceptance (CA) status, federal funding, or require corrective action.

Agency Representative _____ Date _____

LP Representative _____ Date _____

Region LPE Representative _____ Date _____

WSDOT Form 272-024
Revised 04/2015

Page 12 of 12

Washington State Department of Transportation

Final Inspection of Federal Aid Project
Constructed Under 23 U.S.C. 117

Project Title		
Federal Aid Number	Contract Number	Agency
Date of Inspection	Inspection Made By	

Compliance

Marking and signing in conformance with MUTCD? ☐ Yes ☐ No
Clear Zone requirements met? ☐ Yes ☐ No
NEPA requirements met? ☐ Yes ☐ No
ADA requirements met? ☐ Yes ☐ No

Comments:

Notable Items (i.e., labor disputes, changed conditions, environmental, shutdowns, etc.):

☐ This project has been completed in substantial conformance with the project prospectus and contract plans.

Signature of Local Programs Engineer	Date

DOT Form 140-500 EF
Revised 5/05

Washington State Department of Transportation

Local Agency Quarterly Report of Amounts Credited as DBE Participation

Check appropriate reporting period and enter reporting year.

☐ 1st Quarter - January (Oct. - Dec.)
☐ 2nd Quarter - April (Jan. - Mar.)
☐ 3rd Quarter - July (April - June)
☐ 4th Quarter - October (July - Sept.)
☐ Final
Reporting Year _____

Federal Aid Number

Federal Employer I.D. Number

Contractor

Agency

DBE Participant Name and Federal Employer I.D. Number	Contract Type	Date of Payment	*Dollar Credit Amount

Contract Type:
S = Subcontractor
M = Manufacturer
J = Joint Venture
A = Agent
R = Regular Dealer
V = Service Provider

I, the undersigned, do hereby certify that in connection with all work on the project for which this statement is submitted, each DBE participant contracted by me has been paid on the dates shown. *Further, I certify that the amounts shown under "Dollar Credit Amount" are in accordance with the "**DBE Eligibility**" portion of the DBE Special Provision.

Signature_____ Title _____

This form is due on the 20th of the month following the end of the respective Quarter (January, April, July, October).

DOT Form 422-103 EF
Revised 2/2006

U.S. Department of Labor
Wage and Hour Division

U.S. Wage and Hour Division
Rev. Dec. 2008
OMB No.: 1235-0008
Expires: 03/28/2018

PAYROLL

(For Contractor's Optional Use; See Instructions at www.dol.gov/whd/forms/wh347instr.htm)

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

NAME OF CONTRACTOR ☐ OR SUBCONTRACTOR ☐

PAYROLL NO. FOR WEEK ENDING PROJECT AND LOCATION PROJECT OR CONTRACT NO.

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS						(9) NET WAGES PAID FOR WEEK
													FICA	WITH-HOLDING TAX			OTHER	TOTAL DEDUCTIONS	
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HOURS WORKED EACH DAY

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that it will take an average of 60 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20210

(over)

Date _____

I, _____ _____
(Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

_____ on the
(Contractor or Subcontractor)

_____; that during the payroll period commencing on the
(Building or Work)

_____ day of _____, _____, and ending the _____ day of _____, _____, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

_____ from the full
(Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 79 Stat. 357; 40 U.S.C. § 3145), and described below:

_____

_____

_____

_____

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

☐ – In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ – Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE	SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.