

Local Agency Professional Services Lump Sum Consultant Agreement

Agreement Number: OCC15/_-_()

Does this Require DES Filing? Yes No

Firm/Organization Legal Name (do not use dba's): Consultant			
Address Street, City, State Zip		Remit to Address same	
UBI Number		Federal TIN or SSN Number	
Execution Date		Completion Date 12/31/2018	
1099 Form Required <input type="checkbox"/> Yes <input type="checkbox"/> No		Federal Participation <input type="checkbox"/> Yes <input type="checkbox"/> No	
Description of Work 2015-2017 ON-CALL CONSULTANT SERVICES Right-of-Way Services (enter subcategory) <i>To accomplish numerous On-Call projects within the stated On-Call discipline whereby Snohomish County does not have sufficient staff and/or expertise to meet the required and specific needs of the County during the 2015-2017 On-Call period.</i>			
<input type="checkbox"/> Yes	%	<input type="checkbox"/> No DBE Participation	Maximum Amount Payable: Amount to be negotiated per Task Assignment, but not to exceed the total amount of \$0.00
<input type="checkbox"/> Yes	%	<input type="checkbox"/> No MBE Participation	
<input type="checkbox"/> Yes	%	<input type="checkbox"/> No WBE Participation	
<input type="checkbox"/> Yes	%	<input type="checkbox"/> No SBE Participation	

Index of Exhibits

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THIS AGREEMENT, made and entered into as shown in the "Execution Date" box on page one (1) of this AGREEMENT, between Snohomish County, a political subdivision of the State of Washington, 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 CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, which will outline in written and graphical form the various phases and the order of performance of the SERVICES in sufficient detail so that the progress of the SERVICES can easily be evaluated.

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

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

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

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

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

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

If to AGENCY:

Name: Lori White
Agency: Snohomish County
Address: 3000 Rockefeller
City: Everett State: WA Zip: 98201
Email: Lori.White@snoco.org
Phone: 425-388-3536
Facsimile: 425-388-6449

If to CONSULTANT:

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

IV. Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY. This AGREEMENT may require filing with the Department of Enterprise Services (DES) pursuant to RCW 39.26.140. If such approval is required by DES, this AGREEMENT shall not bind the AGENCY until approved by DES. If the AGREEMENT must be approved by DES, work cannot begin, nor payment made until ten (10) or more working days following the date of filing, and until approved by DES. Any subsequent SUPPLEMENTAL AGREEMENT may also be subject to filing and/or approval from DES. 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). 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 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.

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.

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 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 to

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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: Lori White
Agency: Snohomish County
Address: 3000 Rockefeller
City: Everett State: WA Zip: 98201
Email: Lori.White@snoco.org
Phone: 425-388-3536
Facsimile: 425-388-6449

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 WSDOT 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.

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

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

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

XX. Records Maintenance

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

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

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

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

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

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

Signature

Date

Signature

Date

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

**CONTRACT TEMPLATE ONLY
REVIEWED AND APPROVED:**

Rebecca J. Guadamud
Deputy Prosecuting Attorney
Date: 11/26/14

**CONTRACT TEMPLATE ONLY
REVIEWED AND APPROVED:**

Keith Mitchell
County Risk Manager
Date: 12/5/14

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SNOHOMISH COUNTY
2015-2017 ON-CALL CONSULTANT SERVICES

GENERAL SCOPE OF WORK

The objective of the AGREEMENT is to provide "On-Call" services for AGENCY projects to provide routine and/or emergency assistance when the AGENCY does not have the resources or expertise available to perform said work. The General Scope of Work within this AGREEMENT includes general requirements for the stated discipline and subcategories noted below. TASK ASSIGNMENTS issued under this AGREEMENT, shall include all services, materials, and equipment necessary to accomplish the work specific to a project.

This AGREEMENT shows a Maximum Umbrella Amount Payable of \$0.00 for this Discipline. Each consultant firm selected has been designated a separate contract number under this AGREEMENT and shall negotiate a specific amount payable per TASK ASSIGNMENT issued under this AGREEMENT.

- (1) The CONSULTANT shall provide On-Call services in the (**enter subcategory**) subcategory only within the **Right-of-Way Services** discipline on an On-Call and as needed basis as requested by the AGENCY in writing for specified projects, (per Exhibit "A-2" for each TASK ASSIGNMENT issued). The AGENCY, in entering into this AGREEMENT, does not guarantee that any services shall be requested nor guarantee any specific dollar amount of work during the term of this AGREEMENT.
- (2) The CONSULTANT shall not begin any work under the terms of a TASK ASSIGNMENT issued under this AGREEMENT until authorized in writing by the AGENCY. All TASK ASSIGNMENTS shall be completed by the date shown under "Completion Date" in the formal task assignment document as specified in the attached Exhibit "A-2". A prior written approval issued by the AGENCY is required to extend the established completion time of a TASK ASSIGNMENT issued under this AGREEMENT.
- (3) The CONSULTANT shall respond in writing within five (5) calendar days of a request for services from the AGENCY with a proposed Detailed Scope of Work, Schedule, and Cost Estimate for completing the requested services. Following receipt and approval of the foregoing, the AGENCY shall prepare a TASK ASSIGNMENT in the form specified in the attached Exhibit "A-2".
- (4) The CONSULTANT shall initiate the specified work within fifteen (15) calendar days of receipt of a written Notice to Proceed and approval of the TASK ASSIGNMENT, Detailed Scope of Work, Schedule and Cost Estimate, unless otherwise stated in the TASK ASSIGNMENT issued.
- (5) The CONSULTANT shall provide the necessary services to the level that is warranted by the specific project.
- (6) In the case of an emergency situation, the AGENCY may ask the CONSULTANT to perform emergency services. In such case, the CONSULTANT shall respond and perform in a timely manner to satisfy AGENCY needs. A written TASK ASSIGNMENT shall be issued within two working days of the commencement of emergency services under this provision.
- (7) No new work, TASK ASSIGNMENTS or TASK ASSIGNMENT amendments, may be issued after December 31, 2017, all existing TASK ASSIGNMENTS must be completed by December 31, 2018.

The CONSULTANT shall prepare such information and studies as may be pertinent or necessary, or as may be requested by the AGENCY, in order for the AGENCY to evaluate the features of the work. The CONSULTANT shall make such minor changes, amendments, or revisions in the detail of the work as may be required by the AGENCY. Such minor changes or revisions do not constitute a "Changes of Work" item as described in Section X of the AGREEMENT. When alternatives are being considered, the AGENCY shall have the right of selection.

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APPRAISAL CRITERIA:

The CONSULTANT shall furnish all services and labor necessary for a **complete appraisal in a report format** specified by the AGENCY complying with the Uniform Standards of Professional Appraisal Practice (USPAP) and other applicable Federal, State and County requirements (hereinafter Report).

Reports on parcels for which a date of value has been set are due within 90 days of receipt of a written Notice to Proceed and approval of the contract or no later than 90 days prior to trial, whichever is sooner.

Ownership and other legal matters relative to the parcel(s) are to be found in the title reports, sketches, and other data to be obtained from the AGENCY by the CONSULTANT.

The following general format should be used by the CONSULTANT:

A. IDENTIFICATION OF THE PROPERTY

1. Legal Description
2. Delineation of Title (5 years) and ostensible owner.
3. Sketch of the entire parcel, showing all frontage streets and access.
4. Photos of subject property.
5. Assessor's real estate account number.
6. Assessed Valuation. Commentary **MUST** be provided if the assessed value is more than the estimated just compensation.
7. Site address, if any.
8. Area map, showing subject's location in relation to major arterials, towns, cities and landmarks.

B. DEFINITION OF THE APPRAISAL PROBLEM

The CONSULTANT shall give a brief statement concerning the nature of appraisal problem (*i.e.*, "The purpose of the appraisal is to estimate just compensation for proposed acquisition (a portion of or entire) of the property by the AGENCY in conjunction with the project described in the scope of work.")

1. **Consistency of Terminology** In order to facilitate definition and resolution of the appraisal problem, the CONSULTANT shall maintain terminology consistent with acquisition appraising. The more significant of these are as follows:

"Larger Parcel":

That parcel which meets the test of consistency of use, ownership and contiguity. The CONSULTANT must define this parcel, which may include property interests outside of the physical confines of the area directly affected by the taking. In some cases, contiguity may be subordinated to unity of use. If no such interests exist (*i.e.*, if the property interest is confined to a single site, lot or tract), then the CONSULTANT should so state that the "Larger Parcel is confined to the immediate unit (lot, tract, etc.) to be valued. In any case, an analysis of the "Larger Parcel" issue should be included in the report.

"Subject Parcel":

Should be used to refer to the parcel as it was described in the contract scope of work. This is usually consistent with the "Larger Parcel" and the two terms are often used interchangeably. In no case should the term "subject parcel" be used to describe a fractional interest (such as the part taken or remainder) of the "Larger Parcel".

"Portion To Be Acquired":

This is the portion of the Larger Parcel proposed for acquisition by the project. In the case of a total acquisition, the Portion To Be Acquired and the Larger Parcel generally will be synonymous.

"Remainder":

This term is reserved exclusively for that portion of the Larger Parcel which remains after the portion to be acquired is deducted from the Larger Parcel.

"Just Compensation":

Unlike appraisals for financing, the objective of the acquisition appraisal is to estimate "just compensation", not "market value". The intent is to make the owner whole, which is to leave the owner in as good a position pecuniarily as he or she would be if the property had not been taken. While just compensation is based, in large part, on "market value", the two terms are not necessarily synonymous. Just Compensation includes consideration for such factors as damages and special benefits. It may also include a breakdown of improvements not used in other forms of appraising.

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“Market Value”:

Washington Pattern Instruction 150.08, gives the following definition of Market Value:

“Market Value is the amount in cash which a well-informed buyer, willing but not obliged to buy the property, would pay, and which a well-informed seller, willing but not obligated to sell it would accept, taking into consideration all uses to which the property is adapted and might in reason be applied.”

Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- buyer and seller are typically motivated;
- both parties are well informed or well advised, and acting in what they consider their best interests;
- a reasonable time is allowed for exposure in the open market;
- payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and
- the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.)

“Special Benefits and Severance Damages”:

State law provides that just compensation in an eminent domain taking is determined by considering the Market Value of the property plus Severance Damages less any Special Benefits.

“Special Benefits”:

If the CONSULTANT determines that there are special benefits, as a result of the project, the reasoning must be consistent, convincing and supported by market data. If the government takes a portion of property for an improvement and the improvement actually increases the value of the remaining land, just compensation is to be adjusted accordingly. The Dictionary of Real Estate Appraisal, Third Edition, defines special benefits as *“Specific, i.e., not general, benefits that accrue to the property remaining after a partial taking.”* These benefits may offset damages and the value of the portion proposed for acquisition.

“Damages”:

Damages, if any, accrue exclusively to the remainder and must be explained and justified in the report.

“Cost to Cure”:

Damages or diminished value of the remainder may be cured by remedial actions, but such costs cannot exceed the damages which must be arrived at first.

“Severance Damages”:

Where there is a partial taking, any loss in value caused by the partial taking is referred to as “Severance Damages”. Severance Damages are compensable if the partial taking lowers the highest and best use or otherwise limits the use of the remainder of the property. The Dictionary of Real Estate Appraisal, Third Edition, defines severance damages as *“In a partial taking, a decline in the market value of the remainder that arises as a result of the taking and/or the construction of the proposed improvement.”*

C. VALUE TO BE APPRAISED

The CONSULTANT shall clearly state the nature of the Value to Be Appraised (*i.e.*, “Just Compensation, at Highest and Best Use”). Elements of the value must be clearly delineated in the Report (*i.e.*, land value, improvements, special benefits, damages or relocation items). Potentially reimbursable costs such as plans, surveys, permits, etc., are excluded from the appraisal unless explicitly requested in the scope of work. The AGENCY usually handles such items separately from the real estate valuation.

D. PROPERTY RIGHTS TO BE APPRAISED

The CONSULTANT shall clearly state the Property Rights to be Appraised (*i.e.*, Fee Simple Title; Easements; Development Rights; etc.).

E. DATE OF VALUE

The CONSULTANT shall clearly state the Date of Value (the date the property was last inspected by the CONSULTANT) and the Date of Report. **These dates shall be as congruent as possible. It is preferred that the date of value and date of report differ by NO MORE THAN 30 days.**

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F. DESCRIPTION OF PROPERTY

The CONSULTANT shall briefly, but clearly, state the nature of the Subject Parcel including its size, shape and dimensions. All physical features which have a bearing on value shall be described in the Report. These may include, but not be limited to:

1. **Slopes:** Estimate the degree of dominant slope, or estimate the range of slopes encountered on the property.
2. **Access:** Give the distance the Subject Parcel is from the nearest frontage street. Describe the street improvements, if any.
3. **Zoning:** Briefly describe the allowed densities, setbacks, etc. and **Comprehensive Plan Designation**
4. **Utilities:** If the utilities are located off-site, give an estimate of the distances to access the various utilities. **In all instances the location of the nearest sanitary sewer system will be provided.**
5. **Soils Class and Condition:** Briefly describe the general class and nature of the soil in the subject locale. The Soils Conditions may or may not be a factor in development potential of the property. The CONSULTANT shall take necessary actions to learn if the Subject Parcel has a history of slide problems or has had portions delineated wetlands. If no slide, soils or wetland information is available and, in the opinion of the CONSULTANT, the apparent condition may affect the use of the site and the final estimate of value cannot be determined until such information is obtained, the CONSULTANT shall contact the AGENCY. The AGENCY will make the determination on further actions on the property.
6. **Environmental Factors:** The CONSULTANT shall state all observed or recorded environmental factors on, or affecting the site (*i.e.*, underground storage tanks; wetlands; past or present storage of compounds or waste; preserves or animal refuges which may or may not affect the site).
In the event that the CONSULTANT notes an environmentally sensitive condition which affects use of the property to its highest and best use, the CONSULTANT shall so note the condition in his/her Appraisal Report.
If the existence of an environmental condition prevents use of the site, or if the CONSULTANT cannot determine a final estimate of value until he/she knows the cost to cure an environmental condition, the CONSULTANT shall notify the AGENCY's Real Property Supervisor at (425) 388-6665. The CONSULTANT will subsequently be advised whether to complete the appraisal, subject to additional contribution of information from experts in the environment area, or to render the estimate, as is, subject to potential future examinations.

In no case shall the CONSULTANT hire additional expert/consultant services without the written consent from the AGENCY.

G. VALUATION

1. **Appraisal Methodology**
Describe the information considered, the appraisal procedures followed, and the reasoning that supports the analyses, opinions and conclusions. Explain and support the exclusion of any of the usual valuation approaches if not used.
2. **Assumptions, Limiting Conditions, and Certifications**
State all assumptions and limiting conditions that affect the analyses, opinions and conclusions contained in the Report. Include a signed certification in the report as required by **USPAP**.
3. **Highest and Best Use**
Describe the CONSULTANT's opinion of the highest and best use of the Subject Parcel. For improved properties, the analysis of highest and best use should reflect the subject as though bare, vacant and available as well as improved. In appraisal practice, the concept of highest and best use represents the premise upon which value is based. In the context of market value, **highest and best use is defined as:**

"The reasonable and probable use that will support the highest present value, as defined as of the appraisal effective date."

Alternatively, highest and best use is that use, from among reasonable, probable and legal alternative uses, found to be physically feasible, and which results in the highest land value. It should be recognized that in cases where a site has existing improvements on it, the highest and best use may be determined to be different from the existing use.

The appraiser's analysis of highest and best use considers the following factors:

POSSIBLE USE	To what use is the property physically suited?
PERMISSIBLE USE	What legally permissible use would be allowed, subject to zoning and deed restrictions?
FEASIBLE USE	What possible and permissible uses will produce any net return to the market (potential investor)?
PROBABLE USE	The use must be probable, not speculative or conjectural. There must be profitable demand for such use and it must return to the land the highest net return for the longest period of time.
HIGHEST & BEST USE	Among the reasonable uses, those uses which will produce the highest net return or the highest present worth.

Possible and legally permissible uses are determined primarily by the underlying zoning and Comprehensive Plan designation.

4. **Partial Acquisition**

The difference in value between the before and after situations in a partial acquisition combines the value of: the acquisition, damages to the remainder less special benefits enjoyed by the remainder. These matters must be addressed separately. In the case of partial acquisitions, the CONSULTANT should consider the entire Larger Parcel before acquisition and after. If the result of the highest and best use analysis shows that the Remainder has the same highest and best use before and after acquisition and that Damages do not exist, then the appraiser may value the part taken directly. This should be clearly discussed in the Report. It is recognized that Just Compensation is not always measurable by a before and after approach and, therefore, at times it is more appropriate to value the part taken directly.

5. **Special Benefits and Damages**

An increased value of the Remainder after acquisition is considered evidence of special benefits which require thorough discussion in the Report supported by market data. The CONSULTANT should clearly and separately state any Special Benefits or Damages to the Remainder that occur as a result of the acquisition. ***Damages and benefits should be measurable in the market.***

6. **Supporting Data and Sales**

The CONSULTANT should state the extent of the process of collecting, confirming, verifying and reporting data. All efforts shall be made to confirm a comparable sale with at least one of the parties to the transaction. All comparable sales shall be presented in the Report with photos, maps, location sketches and comparable sales data sheets (as specified in Section J below) showing all pertinent information regarding the sale and discussing the analytical comparison of the sale to the subject. The CONSULTANT shall also state how far the comparable is from the Subject Parcel. Listings may be used only when the CONSULTANT is of the opinion that they are of substantial significance in indicating subject value (*i.e.*, if a listed property is located very close to the Subject Parcel, if it is very similar in most all elements of comparability, or its reflects a very recent market, the CONSULTANT’s analysis may determine that the listing has significance). The CONSULTANT must clearly identify the comparable as a listing, not a sale.

7. **Use of Government Purchases as Comparable Sales**

The AGENCY performs due diligence to achieve Just Compensation for real property acquisitions. The nature of a government acquisition, however, makes such purchases different from market transactions which meet the standard definition of “market value”. In particular, the AGENCY does not consider its purchases to represent arm’s length transactions. CONSULTANT’s are encouraged **not to use government purchases as comparable sales** because: (1.) the seller is not always a willing seller; (2.) the seller is artificially motivated since the government acquisition need dictates the time period in which the sale occurs; (3.) the buyer (*i.e.*, Snohomish County) is empowered with the right to condemn if the seller refuses to sell; and (4.) the price paid may include considerations of aspects of the acquisition process which are not directly discernible or identifiable in the private market. While the above factors apply to all government purchases for whatever program or project, it is also recognized that the CONSULTANT cannot always ignore such sales, especially if they occurred in the immediate vicinity of the subject or are of very similar property. In such a case, the CONSULTANT might choose to discuss

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the sale. It should be noted, however, that the AGENCY takes the position that a value which rests, or appears to rest, on real estate purchases by government entities will not be accepted as an accurate reflection of "market value".

8. **Site Improvements**

The CONSULTANT should specifically identify any site improvements in the proposed acquisition area, and determine a value for the improvement. The AGENCY is obligated to compensate owners for such items in addition to land value. An example of this would be chain link fence that will remain in the acquisition area after the purchase. Improvements not impacted by a partial acquisition need not be valued but should be mentioned.

9. **Owner Contact**

The CONSULTANT is required to make reasonable efforts to contact the owner of the Subject Parcel and offer the opportunity to join in the inspection of the property. Prior to initiating the appraisal process, the AGENCY may have made contact with the owner to attempt to acquire a signed right of entry onto the Subject Parcel. The Scope of Work for the appraisal will indicate if there is no entry allowed on the subject, in which case the appraiser is relieved of the requirement to contact the owner. The purpose of this contact with the owner is to provide an opportunity for the owner to indicate any items or conditions about the Subject Parcel which might affect value. The CONSULTANT should limit discussion with the owner to the appraisal process and conditions of the Subject Parcel. Questions regarding the AGENCY's intentions or programs, or negotiations should be referred back to AGENCY staff for response. General discussions of the market or potential comparable sales are discouraged. The CONSULTANT is expressly prohibited from actions considered to be negotiating or mediating unless so directed by the Real Property Supervisor, The Senior Review Appraiser or the AGENCY's Special Deputy Prosecuting Attorney.

10. **Relocation Considerations**

The AGENCY may advise the CONSULTANT in the Scope of Work if relocation benefits apply. If they do, the CONSULTANT may be required to provide a detailed listing of the specific items which will be relocated or salvaged in place. Trade fixtures, realty and personalty are considered as potential compensable items which may need to be detailed in the Report.

H. PRESENTATION

The complete appraisal in a summary or restricted report format shall be no less than TEN pages, plus addenda. The Report should be sufficiently detailed as to provide the reader (who may not be an appraiser) with a clear understanding of the conditions of the Subject Parcel and the basis for the value conclusion.

The **cover sheet** should clearly reflect the AGENCY's project number, assigned parcel number, name of vested owner, and contract number. Reports need not be presented in binders, but shall be neatly secured for ease of handling.

A **summary page** of salient facts and conclusions should be included at the beginning of the Report.

The Report **must be signed by the specific CONSULTANT contracted for the work**. The CONSULTANT is responsible for all analysis and conclusions presented in the Report. Recognition must be given to other appraisers or participants who assisted in the Report, but only the CONSULTANT will be acknowledged as responsible for the information and analysis contained therein.

The **comp data sheets** in the sales comparison approach should provide at a minimum the information as follows:

- ADDRESS:
- LEGAL DESCRIPTION:
- TAX ACCOUNT #:
- PROPERTY DESCRIPTION:
- ACCESS:
- AF #
- PRESENT USE:
- ZONING:
- GRANTOR:
- GRANTEE:
- SIZE:
- SHAPE:
- SALE DATE:

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PRICE (total & /SF):
 DATE INSPECTED:
 CONFIRMED WITH:
 CONFIRMED BY:
 DETAILS:
 ANALYSIS:

PHONE:

The Report must also include a photograph and vicinity map of each sale. Failure to provide this information may result in rejection of the entire Report.

The **addenda** of the Report should include a copy of the title report provided by the AGENCY unless otherwise agreed to, a record of owner contact, the CONSULTANT's resume of appraisal experience, and any additional data or specialist reports that help document the appraisal process and conditions of the subject or comparable sales.

At least two copies of the final Report should be submitted directly to the AGENCY's Right of Way Supervisor.

I. SPECIFIC ASSIGNMENT INSTRUCTIONS

1. **Property to be appraised.**
 (SPECIFICS STATED FOR EACH APPRAISAL ASSIGNMENT)
2. **Procedures and Protocol.**
 (SPECIFICS STATED FOR EACH APPRAISAL ASSIGNMENT)
3. **Other Information and Instructions.**
 (SPECIFICS STATED FOR EACH APPRAISAL ASSIGNMENT)

J. APPRAISAL ELEMENTS FOR CONSIDERATION

THE FOLLOWING ITEMS MUST BE CONSIDERED IN EACH APPRAISAL, BOTH BEFORE AND AFTER THE ACQUISITION.

PLEASE CHECK EACH ITEM AFTER CONSIDERING ITS IMPACT AND INCLUDE DISCUSSION AND SUPPORTING DATA WITHIN YOUR REPORT.

ITEM	YES	NO
WITHIN UGA		
COVERED BY COMPREHENSIVE PLAN		
PRESENT ZONING IN CONTRACT WITH COMPREHENSIVE PLAN		
ASSESSED VALUE		

ITEM	CONSIDERATIONS	"X" BEFORE ACQUISITION	"X" REMAINDER
LARGER PARCEL	DOES R/W PLAN INCLUDE ALL ABUTTING PROPERTY?		
ACCESS	ACCESS CONTROL BEFORE AND AFTER? CAN DRIVEWAY BE RECONSTRUCTED?		
GRADE	ROAD GRADE AT PROP. LINE - BEFORE AND AFTER. IMPACT TO ACCESS?		
WETLANDS	ON SITE? IMPACTS TO USE? FLOOD PLAINS? REQUIRED BUFFER?		
HAZARDOUS WASTE	FUEL TANKS, ASBESTOS, PREVIOUS USES OF THE SITE?		
EASEMENTS	UTILITY, SLOPE, ACCESS. EXISTING TEMPORARY OR TO BE ADDED?		

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ITEM	CONSIDERATIONS	“X” BEFORE ACQUISITION	“X” REMAINDER
UTILITIES	WATER, POWER, WELLS, SEPTIC, SEWER? WELL, SEPTIC NEAR ACQUISITION AREA? LOCATION OF NEAREST SANITARY SYSTEM WILL ALWAYS BE PROVIDED.		
SITE IMPROVEMENTS	PAVING, FENCING, DRIVEWAYS, LANDSCAPING, “COST-TO-CURE” ISSUES.		
PRINCIPAL IMPROVEMENTS	PROXIMITY TO ROADWAY? CONSIDER OLD, NEW SETBACKS, OTHER IMPACTS.		
PERSONALTY / RELOCATION	PERSONAL PROPERTY IN ACQUISITION AREA? VERIFY WITH OWNER & TENANT.		
DAMAGES / BENEFITS	PROXIMITY, LOSS OF PARKING, COST-TO-CURE? LOSS OF UTILITY, ETC.?		
LEASES	INCLUDE IN REPORT. CHECK IF INCLUDE. OTHER PROPERTY, PERSONALTY?		
ENCROACHMENTS	BEFORE & AFTER? ON R/W OR ABUTTING PROPERTIES?		
RECENT SALES / OFFERS	LIST AND CONFIRM WITH PRINCIPALS DEVELOPMENT PROPOSALS.		
STAKING / SURVEY	IS STAKING OF ACQUISITION AREA REQUIRED?		

THE ITEMS LISTED ABOVE MUST BE CONSIDERED FOR EACH ACQUISITION PARCEL. IF THE ITEMS ARE NOT APPLICABLE, STATE “N/A” UNDER COMMENTS FOR THAT ITEM.

Exhibit A-2

Scope of Work (Task Order)

Each item of work under this AGREEMENT will be provided by task assignment. Each assignment will be individually negotiated with the CONSULTANT. The amount established for each assignment will be the maximum amount payable for that assignment unless modified in writing by the AGENCY. The AGENCY is not obligated to assign any specific number of tasks to the CONSULTANT, and the AGENCY'S and CONSULTANT'S obligations hereunder are limited to tasks assigned in writing. Task assignments may include but are not limited to, the following types of work:

RIGHT-OF-WAY SERVICES

Lead Division or Department: Public Works, Engineering Services

Description: Right-of-Way Services may be administered under three separate subcategories: (1) Appraisal Services; (2) Review Appraisal Services; and (3) Acquisition and Relocation Services.

(1) **Appraisal Services**

Services performed under the Appraisal Services subcategory may include, but not be limited to: Valuation services as well as specialists reports in support of appraisal reports. All appraisal services will be performed by professionals who are designated as Certified General Real Estate Appraisers by the State of Washington and shall be in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) and may also be required to conform with the Washington State Department of Transportation (WSDOT) Right of Way Manual Appraisal Guidelines, implementing standards stated in 49 CFR Part 24 , the Uniform Standards for Federal Land Acquisitions applicable portions which may be included in 49 CFR Part 24 and Manual 3 Acquisition Projects of the Washington State Recreation and Conservation Funding Board, Salmon Recovery Funding Board and other state and federal agencies if applicable.

(2) **Review Appraisal Services**

Services performed under the Review Appraisal Services subcategory may include, but not be limited to: Valuation services as specified in Standard 3 of the Uniform Standards of Professional Appraisal Practice (USPAP). All review appraisal services will be performed by professionals who are designated as Certified General Real Estate Appraisers by the State of Washington and shall be in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) and may also be required to conform with the Washington State Department of Transportation (WSDOT) Right of Way Manual Appraisal Guidelines, implementing standards stated in 49 CFR Part 24 , the Uniform Standards for Federal Land Acquisitions applicable portions which may be included in 49 CFR Part 24 and Manual 3 Acquisition Projects of the Washington State Recreation and Conservation Funding Board, Salmon Recovery Funding Board and other state and federal agencies if applicable.

Task assignments made by the AGENCY shall be issued in writing by a Formal Task Assignment Document similar in format to the following page of this exhibit.

An assignment shall become effective when a formal Task Assignment Document is signed by the CONSULTANT and the AGENCY, except that emergency actions requiring a 24-hour or less response can be handled by an oral authorization. Such oral authorization shall be followed up with a Formal Task Assignment Document within two working days, and any billing rates agreed to orally (for individuals, subconsultants, or organizations whose rates were not previously established in the AGREEMENT) shall be provisional and subject to final negotiation and acceptance by the AGENCY.

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Formal Task Assignment Document

2015 – 2017 SNOHOMISH COUNTY ON-CALL TASK ASSIGNMENT

Name of Project: _____
Project Number: _____
Discipline: Right-of-Way Services
Task No.: _____ Completion Date: _____

The County desires to authorize services pursuant to the AGREEMENT entered into with Consultant and executed on _____ and identified as Agreement No. OCC15/_-(___), On-Call Consultant Services for (enter subcategory).

All provisions in the AGREEMENT remain in effect except as expressly modified by this TASK ASSIGNMENT, and are incorporated herein by reference.

ATTACHED TO THIS TASK ASSIGNMENT

- Scope of Work
• Cost Estimate

The Total Amount Authorized under this TASK ASSIGNMENT, inclusive of all fees and other costs is \$_____. No other payment shall be allowed unless a TASK ASSIGNMENT Supplement for changed Scope of Work has been signed and authorized before work is performed.

All work under this TASK ASSIGNMENT shall be performed pursuant to the terms, conditions, specifications, and limitations contained in the AGREEMENT.

If you concur with this TASK ASSIGNMENT and agree to the items as stated above, please sign and date in the appropriate spaces below and return to the County for final action.

Consultant Signature

Approving Authority

Date

Date

Agreement Number: OCC15/_-(___)

Exhibit B
DBE Participation

Pursuant to Section III, General Requirements, of this AGREEMENT and per applicable TASK ASSIGNMENT issued under this AGREEMENT.

Agreement Number: OCC15/_-_()

Exhibit C

Preparation and Delivery of Electronic Engineering and Other Data

CONSULTANT shall provide documents, exhibits, electronic files, or other presentations to the AGENCY in the formats defined per applicable TASK ASSIGNMENT issued under this AGREEMENT.

Exhibit D
Prime Consultant Cost Computations

CONSULTANT shall provide cost estimates, in the format defined in the attached Exhibit K-1, per applicable TASK ASSIGNMENT issued under this AGREEMENT.

Agreement Number: OCC15/_-(__)

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. If sub-consultant participation becomes necessary, the sub-consultant shall provide cost estimates, in the format defined in the attached Exhibit K-1, per applicable TASK ASSIGNMENT issued under this AGREEMENT.

Agreement Number: OCC15/_-(__)

Exhibit F

Title VI Assurances

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

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

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

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Exhibit G

Certification Documents

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

Exhibit G-1(a) Certification of Consultant

I hereby certify that I am the and duly authorized representative of the firm of Consultant, whose address is Street, City, State Zip 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 Washington State Department of Transportation 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

Consultant (Firm Name)

Signature (Authorized Official of Consultant)

Date

Agreement Number: OCC15/_-_()

Exhibit G-1(b) Certification of Snohomish County Official

I hereby certify that I am the:

- Snohomish County Executive
- Executive Director

of Snohomish County, Washington, and that Consultant 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 Washington State Department of Transportation 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: OCC15/_-_()

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 (I)(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

Consultant (Firm Name)

Signature (Authorized Official of Consultant)

Date

Agreement Number: OCC15/_-_(__)

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

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

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

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

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

Consultant

Consultant (Firm Name)

Signature (Authorized Official of Consultant)

Date

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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 RFQ-__-__* are accurate, complete, and current as of 00/00/20__**

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

Firm: Consultant

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.

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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.

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Exhibit I

Alleged Consultant Design Error Procedures

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

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

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

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

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

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

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

Step 4 Attempt to Resolve Alleged Design Error with Consultant

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

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

Step 5 Forward Documents to Local Programs

For federally funded projects all available information, including costs, should be forwarded through the

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

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

Exhibit J

Consultant Claim Procedures

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

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

Step 1 Consultant Files a Claim with the Agency Project Manager

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

The consultant's claim must outline the following:

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

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

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

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

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

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:

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

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

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

Step 5 Informing Consultant of Decision Regarding the Claim

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

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

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

Exhibit K
Sample Consultant Documents

EXHIBIT K-1
Consultant Cost Estimate (sample)

Date: Dec 1, 2014
For: Snohomish County Public Works – Right-of-Way
Project: Puget Park Drive Extension

Parcel#	Appraisal Type / Description	Rate
1	Summary Report	\$2,500
2	Summary Report	\$2,500
3	Restricted Report	\$1,000
4	Restricted Report	\$1,000
5	Restricted Report	\$1,000
6	Restricted Report	\$1,000
7	Restricted Report	\$1,000
8	Restricted Report	\$1,000
9	Restricted Report	\$1,000
10	Restricted Report	\$1,000
11	Restricted Report	\$1,000
12	Summary Report	\$2,000
13	Restricted Report	\$2,500
14	Restricted Report	\$1,000
15	Restricted Report	\$1,000
16	Restricted Report	\$1,000
17	Restricted Report	\$1,000
18	Restricted Report	\$1,000
19	Restricted Report	\$1,000
20	Restricted Report	\$1,000
21	Restricted Report	\$1,000
	Total	\$26,500

PREPARED BY:

XYZ Company
PO Box 92-1
Everett, WA 98201

Agreement Number: OCC15/_-_()

**EXHIBIT K-2
Consultant Invoice (sample)**

XYZ Company
PO Box 92-1
Everett, WA 98201
425-XXX-XXXX

Invoice Date: January 5, 2015
Invoice Number: 1001
Project Name: Puget Park Drive Extension
Task Assignment No. TA#2
Period: 12/1 – 12/31/14

Parcel #	Description of Services Rendered	# of Hours Worked	Dates Worked	Rate
3	Site inspection and owner contact	5.0	12/2/14	\$1,000.00
4	Site inspection and owner contact	5.0	12/5/14	\$1,000.00
5	Site inspection	3.5	12/5/14	\$700.00
7	Highest and Best Use Analysis, 2 nd site inspection	5.0	12/8/14	\$1,000.00
11	Site inspection	3.5	12/15/14	\$700.00
12	Draft report	5.0	12/18/14	\$1,000.00
13	Owner contact	2.5	12/12/14	\$500.00
14	Site inspection and owner contact	5.0	12/15/14	\$1,000.00
15	Site inspection and owner contact	5.0	12/12/14	\$1,000.00
14	Site inspection	2.5	12/22/14	\$500.00
15	Site inspection	2.5	12/22/14	\$500.00

TOTAL DUE THIS INVOICE:

\$8,900.00

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