

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No. _____

Originating Department:		
Division/Program: (i.e. Dept. Division and Program)		
Contract or Grant Administrator:		
Contractor's / Agency Name:		
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes No		
Yes No If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:		_____
Does contract require Council Approval? Yes No If No, include WCC:		_____
Already approved? Council Approved Date: _____		(Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)
Is this a grant agreement?		
Yes No If yes, grantor agency contract number(s): _____		CFDA#: _____
Is this contract grant funded?		
Yes No If yes, Whatcom County grant contract number(s): _____		
Is this contract the result of a RFP or Bid process?		
Yes No If yes, RFP and Bid number(s): _____		Contract Cost Center: _____
Is this agreement excluded from E-Verify? No Yes If no, include Attachment D Contractor Declaration form.		
If YES, indicate exclusion(s) below:		
<input type="checkbox"/> Professional services agreement for certified/licensed professional. Goods and services provided due to an emergency <input type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). <input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Work related subcontract less than \$25,000. <input type="checkbox"/> Interlocal Agreement (between Governments). <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.		
Contract Amount:(sum of original contract amount and any prior amendments): \$ _____	Council approval required for; all property leases, contracts or bid awards exceeding \$40,000 , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, except when:	
This Amendment Amount: \$ _____	1. Exercising an option contained in a contract previously approved by the council.	
Total Amended Amount: \$ _____	2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance.	
Summary of Scope:		
3. Bid or award is for supplies.		
4. Equipment is included in Exhibit "B" of the Budget Ordinance.		
5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.		
Term of Contract:		Expiration Date:

- Contract Routing:**
- | | |
|--|-------------|
| 1. Prepared by: _____ | Date: _____ |
| 2. Attorney signoff: _____ | Date: _____ |
| 3. AS Finance reviewed: _____ | Date: _____ |
| 4. IT reviewed (if IT related): _____ | Date: _____ |
| 5. Contractor signed: _____ | Date: _____ |
| 6. Executive contract review: _____ | Date: _____ |
| 7. Council approved, if necessary: _____ | Date: _____ |
| 8. Executive signed: _____ | Date: _____ |
| 9. Original to Council: _____ | Date: _____ |

Whatcom County A&E Professional Services Negotiated Hourly Rate Consultant Agreement

Firm/Organization Legal Name: Osborn Consulting, Inc.	
Address: 1800 112 th Ave NE Suite 220E Bellevue, WA 98004	Project Number: SWBB23-05
UBI Number 602 446 858	Federal TIN 20-1896054
Execution Date:	Completion Date:
Federal Participation Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Maximum Amount Payable: \$250,149.53
Project Title: Normar Place Stormwater Improvements	
<p>Description of Work: This scope of work (scope) provides design through construction documents and bid support for drainage improvements near the primary outfall at the southern end of Normar Place.</p> <p>This project involves upsizing pipes, replacing catch basins and installing an outfall pipe over the bluff with an energy dissipater at Normar Place to reduce roadway flooding, scour and sediment transport.</p>	

Index of Exhibits

- Exhibit A Scope of Work
- Exhibit B Preparation and Delivery of Electronic Engineering and Other Data
- Exhibit C Prime Consultant Cost Computations
- Exhibit D Sub-consultant Cost Computations
- Exhibit E County Ordinance on Nondiscrimination
- Exhibit F Certification Documents
- Exhibit G Granting Agency Provisions
- Exhibit H Alleged Consultant Design Error Procedures
- Exhibit I Consultant Claim Procedures

THIS AGREEMENT, made and entered into as shown in the “Execution Date” box on page one (1) of this AGREEMENT, between the Whatcom County, 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, this AGREEMENT is partially or fully funded by N/A, herein after referred to as the “GRANTING AGENCY”; and

WHEREAS, if there is no outside GRANTING AGENCY involvement, then any reference to GRANTING AGENCY herein shall be interpreted to mean the AGENCY; and

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

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

I. General Description of Work

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

II. General Scope of Work

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

III. General Requirements

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

The CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, which will outline in written and graphical form the various phases and the order

of performance of the SERVICES in sufficient detail so that the progress of the SERVICES can easily be evaluated.

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

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 "B – 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: Loni Patterson
Agency: Whatcom County Public Works
Address: 322 N. Commercial St
City: Bellingham State: WA Zip: 98225
Email: lpatters@co.whatcom.wa.us
Phone: 360.788.6303
Facsimile: NA

If to CONSULTANT:

Name: Tarelle Osborn, PE CPESC
Agency: Osborn Consulting, Inc.
Address: 1800 112th Ave NE Ste 220-E
City: Bellevue State: WA Zip: 98004
Email: tarelle@osbornconsulting.com
Phone: 425.451.4009
Facsimile: NA

IV. Time for Beginning and Completion

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

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

V. Payment Provisions

The CONSULTANT shall be paid by the AGENCY for completed SERVICES rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for SERVICES performed or SERVICES rendered and for all labor, materials, supplies,

equipment, and incidentals necessary to complete SERVICES. The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31 (www.ecfr.gov).

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

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

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

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

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

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

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

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the AGENCY within thirty (30) calendar days of notice of the overpayment. Such refund shall not constitute a

waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment. Per WSDOT's "Audit Guide for Consultants," Chapter 23 "Resolution Procedures," the CONSULTANT has twenty (20) working days after receipt of the final Post Audit to begin the appeal process to the AGENCY for audit findings

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

VI. Sub-Contracting

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

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

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

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

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

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

The CONSULTANT, sub-recipient, or sub-consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of 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 GRANTING AGENCY or the AGENCY, except regularly retired employees, without written consent of the public employer of such person if he/she will be working on this AGREEMENT for the CONSULTANT.

VIII. Nondiscrimination

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

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. Chapter 21 Subchapter V § 2000d through 2000d-4a)
- Federal-aid Highway Act of 1973 (23 U.S.C. Chapter 3 § 324)
- Rehabilitation Act of 1973 (29 U.S.C. Chapter 16 Subchapter V § 794)
- Age Discrimination Act of 1975 (42 U.S.C. Chapter 76 § 6101 *et. seq.*)
- Civil Rights Restoration Act of 1987 (Public Law 100-259)
- 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 "E" attached hereto and by this reference made part of this AGREEMENT, and shall include the attached Exhibit "E" in every sub-contract, including procurement of materials

and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

IX. Termination of Agreement

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

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

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

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

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

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

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

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

Payment for any part of the SERVICES by the AGENCY shall not constitute a waiver by the

AGENCY of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform SERVICES required of it by the AGENCY.

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

X. Changes of Work

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

XI. Disputes

Any disputed issue not resolved pursuant to the terms of this AGREEMENT shall be submitted in writing within 10 days to the Director of Public Works or AGENCY Engineer, whose decision in the matter shall be final and binding on the parties of this AGREEMENT; provided however, that if an action is brought challenging the Director of Public Works or AGENCY Engineer's decision, that decision shall be subject to judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in Exhibit "H". 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 and GRANTING 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 GRANTING AGENCY and the AGENCY and their officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the negligence of, or the breach of any obligation under this AGREEMENT by, the CONSULTANT or the CONSULTANT's agents, employees, sub consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable; provided that nothing herein shall require a CONSULTANT to defend or indemnify the GRANTING AGENCY and the AGENCY and their officers and employees against and hold harmless the GRANTING AGENCY 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 GRANTING AGENCY and the

AGENCY, their agents, officers, employees, sub-consultants, subcontractors or vendors, of any tie, or any other persons for whom the GRANTING AGENCY 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 GRANTING AGENCY and/or AGENCY, their agents, officers, employees, sub-consultants, subcontractors and or vendors, of any tier, or any other persons for whom the GRANTING AGENCY 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 GRANTING AGENCY 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 GRANTING AGENCY 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 GRANTING AGENCY and/or AGENCY's, their agents', officers and employees' failure to comply with specific written instructions regarding use provided to GRANTING AGENCY 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 GRANTING AGENCY and/or the AGENCY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW. The Parties have mutually negotiated this waiver.

Unless otherwise specified in this AGREEMENT, the AGENCY shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of a new sole source, or an acceptable supplemental AGREEMENT, the CONSULTANT shall provide On-Call assistance to the AGENCY during contract administration. By providing

such assistance, the CONSULTANT shall assume no responsibility for proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

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

Insurance Coverage

- A. Worker's compensation and employer's liability insurance as required by the State of Washington (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.
- D. Professional Liability.

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance, the GRANTING AGENCY 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: Same as Section III General Requirements
Agency: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone: _____
Email: _____

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. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

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

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

XIII. Extra Work

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

XIV. Endorsement of Plans

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

XV. Granting Agency Review

The GRANTING AGENCY 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 "F-1" is the Certification of the CONSULTANT and the AGENCY, Exhibit "F-2" Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions, Exhibit "F-3" Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying and Exhibit "F-4" Certificate of Current Cost or Pricing Data. Exhibit "F-3" is required only in AGREEMENT's over one hundred thousand dollars

(\$100,000.00) and Exhibit “F-4” is required only in AGREEMENT’s over five hundred thousand dollars (\$500,000.00.) These Exhibits must be executed by the CONSULTANT, and submitted with the master AGREEMENT, and returned to the AGENCY at the address listed in section III “General Requirements” prior to its performance of any SERVICES under this AGREEMENT.

XVII. Complete Agreement

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

XVIII. Execution and Acceptance

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

XIX. Protection of Confidential Information

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

Immediately upon expiration or termination of this AGREEMENT, the CONSULTANT shall, at the AGENCY’s option: (i) certify to the AGENCY that the CONSULTANT has destroyed

all of the State's Confidential Information; or (ii) returned all of the State's Confidential Information to the AGENCY; or (iii) take whatever other steps the AGENCY requires of the CONSULTANT to protect the State's Confidential Information.

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

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

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

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

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

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

The CONSULTANT agrees to notify the sub-consultant of any AGENCY communication regarding disclosure that may include a sub-consultant's proprietary and/or confidential information. The CONSULTANT notification to the sub-consultant will include the date that such records will be released by the AGENCY to the requester and state that unless the sub-

consultant obtains a court order from a court of competent jurisdiction enjoining that disclosure the AGENCY will release the requested information. If the CONSULTANT and/or sub-consultant fail to obtain a court order or other judicial relief enjoining the AGENCY by the release date, the CONSULTANT shall waive and release and shall hold harmless and indemnify the AGENCY from all claims of actual or alleged damages, liabilities, or costs associated with the AGENCY's said disclosure of sub-consultants' information.

XX. Records Maintenance

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

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

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

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

The CONSULTANT shall include this section XX "Records Maintenance" in every subcontract it enters into in relation to this AGREEMENT and bind the sub-consultant to its terms, unless

expressly agreed to otherwise in writing by the AGENCY prior to the execution of such subcontract.

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

Each signatory below to this Contract warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and to bind the party thereto.

CONSULTANT:

Osborn Consulting, Inc.

Tarelle Osborn, PE, CPESC

Address:
1800 112th Ave NE Ste 220-E
Bellevue, WA 98004

Mailing Address:
Same as Above

Each signatory below to this Contract warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and to bind the party thereto.

WHATCOM COUNTY:

Recommended for Approval:

Elizabeth Kosa Date
Public Works Director

Approved as to form:

Christopher Quinn Date
Senior Deputy Prosecuting Attorney-Civil Division

Approved:

Accepted for Whatcom County Flood Control Zone District:

By: _____
Carol Frazey Date
Executive Pro Tempore on behalf of the Executive

Exhibit A Scope of Work

The AGENCY has established a Management Reserve Fund in this Scope of Work to provide for flexibility to authorize additional funds to the Agreement for allowable unforeseen costs, or reimbursing the Consultant for additional work beyond that already defined in this Agreement. Such Authorization(s) shall be in writing and shall not exceed the amount included in the Management Reserve Fund as shown in Exhibit C. This fund may not be replenished. Any changes requiring additional costs in excess of the Management Reserve Fund shall require a contract amendment.

EXHIBIT A

SCOPE OF WORK

Project Name:	Normar Place Stormwater Improvements
Client:	Whatcom County
Prime Consultant:	Osborn Consulting, Inc.
Contract Number:	

BACKGROUND

Whatcom County (County) manages multiple stormwater outfalls near Birch Point. Along Normar Place there are several privately owned drainage systems and outfalls that discharge over the steep bluff to the Strait of Georgia. Two of these outfalls convey water from County-maintained drainage systems along Semiahmoo Drive. Osborn Consulting, Inc. (Consultant) has been selected to support the County in designing stormwater improvements for the conveyance and bluff outfall that drain from Semiahmoo Drive along Normar Place.

This scope of work (scope) provides design through construction documents and bid support for drainage improvements near the primary outfall at the southern end of Normar Place. Redirection of runoff from the second, northern outfall, along Normar Place will be evaluated with this project as part of the alternatives analysis. The summary of hours and project budget is provided in Exhibit C.

This scope of work includes the following elements:

Task 1 Project Management

The Project Management scope will include management of the Normar Place Stormwater Improvements through design and bid support. This will include monitoring and communicating the status of the scope, schedule, and budget for this work assignment and providing monthly reporting to the County.

Consultant Services

- Prepare the Project Management Plan:
 - Develop and manage Project Schedule with key milestones and tasks.
 - Identify communication protocols and issue/action tracking.
 - Complete within two weeks of the executed contract.
- Prepare monthly status reports describing the following:
 - Services completed during the month.
 - Outstanding issues (if any).
 - Status of scope/schedule/budget.
 - A financial summary if invoiced.
- Attend one (1) project kickoff meeting with County staff to confirm project goals, design criteria, and constraints.
- Attend one (1) project closure/post construction review meeting with County staff.

- Attend up to four (4) design review meetings after receiving submittal comments.
- Bi-weekly Project Manager check-ins via web/phone during the design stage of the project.
- Manage Issue Log for County and all team members.
- Manage Risk Register to identify and document project risks and mitigation strategies.
- Submit monthly invoices.

Whatcom County's Responsibilities

- Attend project kickoff and closure meetings (in person or via teleconference).
- Review and approve invoices.
- Review and comment on design submittals within the schedule.

Assumptions

- Project duration for design through construction support will be approximately 24 months (mid-September 2023 through October 2025).
- There will be one (1) project kickoff meeting attended by up to two (2) Consultant Team members and County staff.
- There will be one (1) project closure meeting attended by up to two (2) Consultant Team members and County staff.
- There will be four (4) design review meetings attended by up to two (2) Consultant Team members and County staff; each meeting will be up to two (2) hours long. Review meetings will be held after comments are received for:
 - Alternatives Analysis
 - 30% Design
 - 60% Design
 - 90% Design
- Project meetings will be held by teleconference or in-person.

Deliverables

- Project kickoff meeting and closure meeting, with meeting minutes.
- Four (4) design review meetings with meeting minutes.
- Project Management Plan.
- Project schedule, update to be provided with monthly status reports.
- Issue Log and Risk Register to be updated and provided at each deliverable.
- Bi-weekly check-in (as necessary and determined by County Project Manager prior to each week).
- Monthly status reports regardless of invoicing.

Task 2 Data Review and Alternatives Analysis

For this task the Consultant will evaluate available site data, complete a site visit, delineate contributing drainage basins to the project outfalls, and complete an alternatives analysis of proposed improvements.

The Consultant will review site data, include existing reports, GIS data, and topographic survey, which will be provided by the County. The basin delineations will be based on GIS data, site survey, and site observation and available Lidar maps.

Based on the site data, field findings, and topographic survey, the Consultant will complete an Alternatives Analysis for the proposed improvements. The evaluated alternatives will be compiled into a single design memorandum. Elements included in the alternatives analysis will include:

- Outfall construction options to limit in-water work and U.S. Army Corp of Engineers permit.
- Location for new upsized outfall along existing bluff and long-term maintenance approach including adjustment of outfall due to expected erosion of the bluff.
- Planning level cost estimates.
- The delineation of the Ordinary High Water Mark (OHWM) will be completed based on published highest astronomical tide (HAT) elevations and confirmed per topographic survey and site review.

Whatcom County's Responsibilities

- The County will provide available data in electronic format.
- Existing buried utilities located by paint mark will be provided with the County-provided topographic survey.
- The County will confirm the preferred design alternative to develop into construction documents.

Assumptions

- Basin delineations will be limited to the contributing drainage areas to the two outfalls along Normar Place.
- One (1) site visit will be completed with this task for up to 6 hours by two (2) staff members.
- The alternative analysis exhibits will be plan-view layouts completed using PDF editors.
- Utility potholes to confirm depth of buried utilities, as needed after 60% submittal, will be completed by the County.
- Planning level costs estimates will be completed for up to two alternatives.
- No more than two alternative outfall locations will need to be evaluated.

Deliverables

- Alternatives Analysis Memorandum (Draft, Final)

Task 3 Geotechnical Analysis

The Consultant will coordinate and provide geotechnical investigations for the project. Geotechnical review and investigations will be provided by a Subconsultant, Aspect Consulting, Inc. (Aspect).

Subtask 3.1 Reconnaissance Level Input to Alternative Analysis

Aspect will begin with a desktop review of existing aerial photos, geological maps, LiDAR imagery, and available stormwater data provided by Whatcom County. Aspect will then complete a half-day geologic site reconnaissance to observe and assess the existing outfall and surface conditions including landslide features, erosion, or overflow issues. Reconnaissance will be completed with Consultant and select Whatcom County team members. In collaboration with the Consultant team, Aspect will determine what steps should be taken to inform the geotechnical engineering and engineering geology elements of the project design. Aspect will provide geotechnical input to alternatives that may be considered.

Assumptions

- Soils and ground water are not contaminated.
- Whatcom County will coordinate notification to private property owners of work occurring outside of the public right-of-way.

Deliverables

- Technical memorandum of reconnaissance level findings, conclusions, and recommendations by Aspect (PDF).

Subtask 3.2 Geotechnical Engineering Investigation Supporting the Final Design

Once the final alternative is selected, and design and construction details are better understood, the formal geotechnical engineering exploration program will be finalized, which may involve test pits or exploratory borings, soil sampling, laboratory testing, engineering analysis, and formal report writing. The details of this scope will depend on the final alternative, what kinds of structures are needed, and the extent of unstable slopes that need to be addressed.

Assumptions

- Soil and ground water are not contaminated.
- The County will coordinate notification to private property owners of work occurring outside of the public right-of-way.
- The consultant will obtain all permitting required for geotechnical investigations.
- The County will provide coordination for access to private parcels.
- Geotechnical report will include any soil stability special specifications required based on geotechnical site review.

Deliverables

- Geotechnical engineering report in support of the final design, draft and final by Aspect (PDF).

Task 4 Project Permitting and Stakeholder Outreach

The Permit Coordination and Stakeholder Outreach task will include the following:

Subtask 4.1 Permitting

The Consultant with subconsultant Northwest Environmental Consulting (NVEC) will develop the following permit applications and reports, as well as provide design quantities, and participate in permit review meetings with review agencies as needed.

The following environmental permits and reports are anticipated for this project with estimated hours by Osborn and NVEC staff:

1. Cultural Resource Report (By County) (up to 2 staff hours)
2. Critical Area Study (No Net Loss) (up to 34 staff hours)
3. Hydraulic Project Approval (HPA) – WDFW (up to 38 staff hours)
4. Joint Aquatic Resource Permit Application (JARPA) – USACE (up to 40 staff hours)
5. Biological Evaluation – USACE (up to 39 staff hours)
6. SEPA Checklist (up to 12 staff hours)

Whatcom County's Responsibilities

- The County will lead the cultural resource review and documentation.
- The County will participate in permit review meetings and provide review of pre-meeting materials.
- Whatcom County will review and approve all permit applications. Consultant will provide draft permits for County review and approval.

Assumptions

- Up to six meeting will be required for permit coordination with two staff.
- Up to three (3) virtual meeting will be held with permit review agencies with two staff.
- Up to one (1) meeting will be held on site for HPA coordination with up to three staff.
- Joint Aquatic Resource Permit Application (JARPA) plans will be based on 60% design layout in 11 by 17-inch format.
- Endangered Species Act Compliance will not be required for this project.
- Drainage conveyance is not associated with a listed stream.
- Wetland site evaluations will not be required.
- Coordination with Department of Natural Resources (DNR) will not be required.
- Associated permit fees will be paid by the County.

Deliverables

- JARPA Plans
- Permit applications, Draft, Final (PDF)

- JARPA, HPA, SEPA
- Environmental Reports, Draft, Final (PDF)
 - Cultural Resource APE and Report comments
 - Critical Area Study, Biological Evaluation

Subtask 4.2 Stakeholder Outreach

The Consultant will assist the County with the preparation of stakeholder outreach documents to inform local property owners about the proposed improvements of this project. The Consultant will also participate in up to one site meetings with County staff and key stakeholders.

Whatcom County's Responsibilities

- The County will be the main contact for public outreach.
- The County will be responsible for distributing/mailing project information.
- The County will take first pass at responding to resident's questions.
- The County will notify the Consultant when stakeholder coordination is needed.

Assumptions

- Up to two (2) Consultant staff members will accompany County staff for up to one meeting with key stakeholders after 60% design submittal.
- Stakeholder meetings will be held onsite or at County offices.
- Up to thirteen (13) staff hours are included for public outreach support.

Deliverables

- Project exhibits, Draft, Final (PDF)

Task 5 Design Development

The Consultant will develop the selected preferred alternative design in Task 2 through plan, specification, and cost estimates (PS&E) to final construction document. Construction plans will be submitted at the 30%, 60%, 90%, and Final (Bid Ready) stages. The project specifications and cost estimates will be included with the 60% and later submittals. The cost estimate will identify bid items that will require special provisions. Constructability and Quality Management review will be completed at each stage prior to submittal.

Whatcom County's Responsibilities

- The County will provide input and review comments on the design submittals within the agreed upon schedule.
- The County will provide a consolidated list or redlined set of review comments using Bluebeam within the timeframe shown on the agreed upon project schedule.

Assumptions

- The following sheets are expected to be included:
 - Cover sheet and general notes (two [2] sheets)
 - Existing conditions survey sheets (seven [7] sheets)
 - Site Preparation with temporary erosion and sediment control (TESC) sheets (seven [7] sheets)
 - Drainage Plan and profile sheets (seven [7] sheets)
 - Traffic Control (three [3] sheets)
 - Details (two [2] sheets)
- The 30% submittal will include plans, excluding Traffic Control, TESC and detail sheets. Project special provisions for Division 2 through 9 will be included with the 60% submittal. Full project specifications with Traffic Control sheets will be included with the 90% and Final submittal.
- The Consultant will develop site-specific traffic control plans.
- Hydraulic and hydrological modeling will be based on Western Washington Hydrology Model (WWHM) and full-flow pipe analysis.
- One new stormwater outfall will be installed with this project.
- Modification of the stormwater system along Normar Place will be designed to connect into the new outfall
- Standard details will be included as an appendix to the specifications.
- Edits to the County's Special Provisions will be based on Washington State Department of Transportation (WSDOT) Standard Specifications, 2024 Edition.
- There will only be minor changes to the project design after the 90% submittal, provided Consultant has adequately addressed previous review comments provided by the County.
- Utility conflicts can be resolved at the point of conflict with simple adjustment of the utilities or storm drainage locations. Relocating of existing utilities is not included.
- Property easements with boundary descriptions will be developed by the County and surveyor based on schematic layouts provided by the Consultant.
- Surface restoration will match existing conditions; additional roadway or pedestrian improvements are not included.
- New pedestrian sidewalks or ramp improvements will not be required.

Deliverables

- 30% Plans, up to nine (9) plan sheets
- 60% PS&E (full size PDF, Word file for special provisions)
- 90% PS&E (full size PDF, Word file for project specifications)
- Final Bid-Ready Submittal PS&E (CAD files and one [1] full-size PDF copy)
- Stormwater Site Plan, Draft (60%) and Final (90%) (PDF)

Task 6 Bid Support (2025 Construction)

When requested by the County, the Consultant will provide limited engineering services during bid process. These services may include:

- Prepare and issue addenda to clarify the construction documents, if necessary
- Response to bidders' Requests for Information (RFIs) up to three or upon request.

Whatcom County's Responsibilities

- Bid advertisement, coordination and award will be handled by the County.
- The County will provide initial review of all Contractor requests.
- The County will provide on-site inspection and will lead the administration and management of construction documents and communications with the Contractor.

Assumptions

- Up to twenty-six (26) staff hours are included for bid support.
- No geotechnical support would be required.
- Review responses will be provided within 24 hours or less.

Deliverables

- As requested

Task 7 Management Reserve – Contingency Fund

To provide additional services which may be required to complete this project, and which are requested and authorized by the County. The Consultant will provide the County with a scope and budget for the additional services which the County will review prior to the Consultant beginning work. The County will provide Consultant with written authorization to proceed with any additional services.

Subtask 7.1 Management Reserve

Work may include, but is not limited to, addressing additional efforts required for defined tasks when authorized by the County Project Manager. The fee estimated from the original contract will remain unchanged.

GENERAL ASSUMPTIONS

- All coordination with property owners will be handled by the County.
- The County will provide latest County title block and other County CAD standards.
- The County will provide latest County design standards or performance requirements.
- The County's current Division 0 and 1 template in Word-format will be provided to the Consultant to incorporate into the project documents.
- The current County of Whatcom Special Provisions Division 2 through 9 in Word format will be provided to the Consultant.
- New project impervious areas will be limited and will not require the design of flow control or water quality treatment systems.

- On-Site Stormwater Management best management practices (BMPs) will not be required for this project.
- Any existing encroachments in the right-of-way will be resolved by the County.
- Writing of legal descriptions and legal exhibits for additional easements will be provided by the County.
- The proposed improvements will not require stream or wetland field investigations.
- Cultural Resource documentation will be provided by the County.
- Project construction funding will be provided by the County; additional grant support will not be required.

Exhibit B Preparation and Delivery of Electronic Engineering and Other Data

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

- I. Surveying, Roadway Design & Plans Preparation Section
 - A. Survey Data
.dxf, .txt, .dwg, .pdf
 - B. Roadway Design Files
.dxf, .txt, .dwg
 - C. Computer Aided Drafting Files
.dxf, .txt, .dwg
 - D. Specify the Agency's Right to Review Product with the Consultant
N/A
 - E. Specify the Electronic Deliverables to Be Provided to the Agency
.pdf, MicroSoft Word
 - F. Specify What Agency Furnished Services and Information Is to Be Provided
Exhibit A- Assumptions
- II. Any Other Electronic Files to Be Provided
N/A
- III. Methods to Electronically Exchange Data
 - A. Email
 - B. Consultant supplied FTP

Exhibit C Prime Consultant Cost Computations

The AGENCY has established a Management Reserve Fund for this AGREEMENT as follows:

Total Amount Authorized	\$0.00
Management Reserve Fund	\$22,740.87
Maximum Amount Payable	\$22,740.87

Management Reserve Fund will be requested by the Consultant and the Contracting Agency will provide written approval on a case by case basis.

Contract Cost Normar PI Stormwater Improvements

Firm	Osborn Consulting								NVEC (Permitting)			Aspect (Geotechnical)													
Classification	PIC	PM/ Sr. QC	Project Engineer	Design Engineer	Land. Arch.	CADD Mgr	CADD	Account/ Admin	Expense	Cost Estimate	Prof. Staff \$150.00	Expenses	Cost Estimate	Principal 1 \$267.45	Project Engineer 2 \$161.30	Project Geologist 1 \$151.28	Staff Engineer 3 \$133.76	Sr. CAD \$151.28	Coordinator 2 \$136.23	Expenses	Estimate	Cost Estimate			
Hourly Rate - 2023	\$ 259.27	\$ 220.30	\$ 186.55	\$ 131.74	\$ 158.09	\$ 180.22	\$ 109.79	\$ 117.10																	
Project Tasks	Hours Estimate								Expense	Cost Estimate	Hours Estimate	Expenses	Cost Estimate	Hours Estimate						Expenses	Estimate	Cost Estimate			
Task 1: Project Management																									
Total Hours	14	50	20	0	0	0	0	26	\$ -	\$ 21,420.38			\$ -	\$ -	\$ -								\$ 0.00	\$ 21,420.38	
Task 2: Data Review and Alternatives Analysis																									
Total Hours	10	50	66	66	0	0	8	0	\$ 46.00	\$ 35,539.16			\$ -	\$ -	\$ -								\$ 0.00	\$ 35,539.16	
Task 3: Geotechnical Analysis																									
Total Hours	0	8	12	0	0	0	0	0	\$ 46.00	\$ 4,047.00			\$ -	15	27	40	42	6	5.5	\$ 8,250	\$ 29,943.07		\$ 0.00	\$ 33,990.07	
Task 4: Project Permitting and Stakeholder Outreach																									
Total Hours	0	31	34	22	0	0	16	0	\$ 92.00	\$ 17,918.92	108	\$ 289.00	\$ 16,489.00	\$ -	\$ -								\$ 0.00	\$ 34,407.92	
Task 5: Design Development																									
Total Hours	26	76	152	220	0	8	127	4	\$ -	\$ 96,675.71			\$ -	\$ -	\$ -								\$ 0.00	\$ 96,675.71	
Task 6: Bid Support																									
Total Hours	2	12	8	0	0	4	0	0	\$ -	\$ 5,375.42			\$ -	\$ -	\$ -								\$ 0.00	\$ 5,375.42	
Task 7: Management Reserve - Contingency Fund Management Reserve (10%)									\$ 22,740.87																
Total Hours	0	0	0	0	0	0	0	0	\$ 22,740.87	\$ 22,740.87			\$ -	\$ -	\$ -								\$ 0.00	\$ 22,740.87	
	Firm Subtotal: \$203,717.46										Firm Subtotal: \$ 16,489.00									Firm Subtotal: \$ 29,943.07					
	% of total budget: 81%										% of total budget: 7%									% of total budget: 12%					
																				Total without Reserve \$227,408.66					
																				Total Budget: \$250,149.53					

Osborn Consulting- Normar PI Stormwater Improvements

Firm	Osborn Consulting										
Classification	PIC	PM/ Sr. QC	Project Engineer	Design Engineer	Land. Arch.	CADD Mgr	CADD	Account/ Admin			
Hourly Rate - 2023	\$ 259.27	\$ 220.30	\$ 186.55	\$ 131.74	\$ 158.09	\$ 180.22	\$ 109.79	\$ 117.10			
Project Tasks	Hours Estimate								Expense	Cost Estimate	
Task 1: Project Management											
Total Hours	14	50	20	0	0	0	0	26	\$ -	\$ 21,420.38	
Task 2: Data Review and Alternatives Analysis											
Total Hours	10	50	66	66	0	0	8	0	\$ 46.00	\$ 35,539.16	
Task 3: Geotechnical Analysis											
Total Hours	0	8	12	0	0	0	0	0	\$ 46.00	\$ 4,047.00	
Task 4: Project Permitting and Stakeholder Outreach											
Total Hours	0	31	34	22	0	0	16	0	\$ 92.00	\$ 17,918.92	
Task 5: Design Development											
Total Hours	26	76	152	220	0	8	127	4	\$ -	\$ 96,675.71	
Task 6: Bid Support											
Total Hours	2	12	8	0	0	4	0	0	\$ -	\$ 5,375.42	
Task 7: Management Reserve - Contingency Fund Management Reserve (10%)									\$ 22,740.87		
Total Hours	0	0	0	0	0	0	0	0	\$ 22,740.87	\$ 22,740.87	
									Firm Subtotal:	\$203,717.46	
									% of total budget:	81%	

EXHIBIT C

20-230001 Whatcom County - Normar Place Stormwater Improvements Osborn Consulting, Inc. Rate Sheet

OH Rate: 1.6637

Fee Rate: 0.30

Classification	NTE			Calculated Billing Rate
	Direct Rate	OH	Fee	
Principal	\$ 88.56	\$ 147.34	\$ 26.57	\$ 262.47
Senior Engineer II	\$ 83.43	\$ 138.80	\$ 25.03	\$ 247.26
Senior Project Manager / QC	\$ 75.25	\$ 125.19	\$ 22.58	\$ 223.02
Senior Engineer I	\$ 69.12	\$ 114.99	\$ 20.74	\$ 204.85
Senior Landscape Architect	\$ 67.00	\$ 111.47	\$ 20.10	\$ 198.57
Project Engineer II	\$ 63.72	\$ 106.01	\$ 19.12	\$ 188.85
Civil Tech Manager	\$ 61.56	\$ 102.42	\$ 18.47	\$ 182.45
Senior Civil Designer	\$ 58.80	\$ 97.83	\$ 17.64	\$ 174.27
Project Engineer I	\$ 57.50	\$ 95.66	\$ 17.25	\$ 170.41
Engineer IV	\$ 55.00	\$ 91.50	\$ 16.50	\$ 163.00
Project Landscape Architect II	\$ 54.00	\$ 89.84	\$ 16.20	\$ 160.04
Senior Project Accountant	\$ 54.00	\$ 89.84	\$ 16.20	\$ 160.04
Technical Editor	\$ 51.50	\$ 85.68	\$ 15.45	\$ 152.63
Civil Tech III	\$ 49.00	\$ 81.52	\$ 14.70	\$ 145.22
Engineer III	\$ 45.00	\$ 74.87	\$ 13.50	\$ 133.37
Project Landscape Architect I	\$ 45.50	\$ 75.70	\$ 13.65	\$ 134.85
Engineer II	\$ 38.50	\$ 64.05	\$ 11.55	\$ 114.10
Project Accountant	\$ 40.00	\$ 66.55	\$ 12.00	\$ 118.55
Civil Tech II	\$ 37.50	\$ 62.39	\$ 11.25	\$ 111.14
Engineer I	\$ 34.00	\$ 56.57	\$ 10.20	\$ 100.77
Civil Tech I	\$ 32.00	\$ 53.24	\$ 9.60	\$ 94.84
Landscape Designer	\$ 35.50	\$ 59.06	\$ 10.65	\$ 105.21
Administration	\$ 34.00	\$ 56.57	\$ 10.20	\$ 100.77
Intern Engineer	\$ 24.00	\$ 39.93	\$ 7.20	\$ 71.13



**Washington State
Department of Transportation**

Development Division
Contract Services Office
PO Box 47408
Olympia, WA 98504-7408
7345 Linderson Way SW
Tumwater, WA 98501-6504

TTY: 1-800-833-6388
www.wsdot.wa.gov

May 31, 2023

Osborn Consulting Inc.
1800 112th Ave NE Ste 220-E
Bellevue, WA 98004

Subject: Acceptance FYE 2022 ICR – CPA Report

Dear Afsoun Mehrabkhani:

We have accepted your firms FYE 2022 Indirect Cost Rate (ICR) of 162.76% of direct labor (rate includes 0.07% Facilities Capital Cost of Money), based on the “Independent CPA Report,” prepared by DL Purvine CPA, PLLC. This rate will be applicable for WSDOT Agreements and Local Agency Contracts in Washington only. This rate may be subject to additional review if considered necessary by WSDOT. Your ICR must be updated on an annual basis.

Costs billed to agreements/contracts will still be subject to audit of actual costs, based on the terms and conditions of the respective agreement/contract.

This was not a cognizant review. Any other entity contracting with the firm is responsible for determining the acceptability of the ICR.

If you have any questions, feel free to contact our office at **(360) 704-6397** or via email consultantrates@wsdot.wa.gov.

Regards;

Schatzie Harvey

[Schatzie Harvey \(Jun 1, 2023 05:57 PDT\)](#)

SCHATZIE HARVEY, CPA
Contract Services Manager

Jun 1, 2023

SH:BJO

Exhibit D Sub-consultant Cost Computations

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.

NVEC- Normar PI Stormwater Improvements

Firm	NVEC (Permitting)		
Classification	Prof. Staff		
Hourly Rate - 2023	\$150.00		
Project Tasks	Hours Estimate	Expenses	Cost Estimate
Task 1: Project Management			
Total Hours			\$ -
Task 2: Data Review and Alternatives Analysis			
Total Hours			\$ -
Task 3: Geotechnical Analysis			
Total Hours			\$ -
Task 4: Project Permitting and Stakeholder Outreach			
Total Hours	108	\$ 289.00	\$ 16,489.00
Task 5: Design Development			
Total Hours			\$ -
Task 6: Bid Support			
Total Hours			\$ -
	Firm Subtotal:		\$ 16,489.00
	% of total budget:		7%

September 28, 2023

Erika Costelloe, Contracts Administrator
Osborn Consulting
1800 112th Avenue NE, Suite 220-E
Bellevue, WA 98004

Re: Whatcom County Normar Place project - Northwest Environmental Consulting Rates

Dear Erika:

We are a small company of 2 people. We do not have an audited overhead rate and use a fully burdened rate for invoicing. Our rate sheet is attached.

My company is registered as an S-Corp with the Internal Revenue Service and the Tax Identification Number for Northwest Environmental Consulting is 71-1014635.

If you have any questions or would like additional information, please don't hesitate to call me at (206) 234-2520.

Sincerely,



Brad Thiele
President
Northwest Environmental Consulting, LLC



Staff Rates

Sr. Professional Staff	\$150 / hour
Admin	\$ 75 / hour

OTHER*

Mileage	current IRS rate
CAD/computer	\$142 / hour

*Other allowable expenses will be billed at actual cost plus 10%

EXHIBIT D

20-230001 Whatcom County - Normar Place Stormwater Improvements Aspect Consulting, Inc. Rate Sheet

OH Rate: 2.1770

Fee Rate: 0.30

Classification	NTE			Calculated Billing Rate
	Direct Rate	OH	Fee	
Principal 1	\$ 76.92	\$ 167.45	\$ 23.08	\$ 267.45
Project Engineer 2	\$ 46.39	\$ 100.99	\$ 13.92	\$ 161.30
Project Geologist 1	\$ 43.51	\$ 94.72	\$ 13.05	\$ 151.28
Staff Engineer 3	\$ 38.47	\$ 83.75	\$ 11.54	\$ 133.76
Sr. CAD	\$ 43.51	\$ 94.72	\$ 13.05	\$ 151.28
Coordinator 2	\$ 39.18	\$ 85.29	\$ 11.75	\$ 136.23

Aspect- Normar PI Stormwater Improvements

Firm	Aspect (Geotechnical)							
Classification Hourly Rate - 2023 Project Tasks	Principal 1	Project Engineer 2	Project Geologist 1	Staff Engineer 3	Sr. CAD	Coordinator 2		
	\$267.45	\$161.30	\$151.28	\$133.76	\$151.28	\$136.23		
	Hours Estimate						Expenses	Estimate
Task 1: Project Management								
Total Hours	\$ -	\$ -						\$0.00
Task 2: Data Review and Alternatives Analysis								
Total Hours	\$ -	\$ -						\$0.00
Task 3: Geotechnical Analysis								
Total Hours	15	27	40	42	6	5.5	\$ 8,250	\$29,943.07
Task 4: Project Permitting and Stakeholder Outreach								
Total Hours	\$ -	\$ -						\$0.00
Task 5: Design Development								
Total Hours	\$ -	\$ -						\$0.00
Task 6: Bid Support								
Total Hours	\$ -	\$ -						\$0.00
							Firm Subtotal:	\$ 29,943.07
							% of total budget:	12%

Certification of Final Indirect Costs

Firm Name: Aspect Consulting LLC

Indirect Cost Rate Proposal: 217.70

Date of Proposal Preparation (mm/dd/yyyy): June 30, 2022

Fiscal Period Covered (mm/dd/yyyy to mm/dd/yyyy): January 1, 2021 to December 31, 2021

I, the undersigned, certify that I have reviewed the proposal to establish final indirect cost rates for the fiscal period as specified above and to the best of my knowledge and belief:

1.) All costs included in this proposal to establish final indirect cost rates are allowable in accordance with the cost principles of the Federal Acquisition Regulations (FAR) of title 48, Code of Federal Regulations (CFR), part 31.

2.) This proposal does not include any costs which are expressly unallowable under the cost principles of the FAR of 48 CFR 31.

All known material transactions or events that have occurred affecting the firm's ownership, organization and indirect cost rates have been disclosed.

Signature:  _____

Name of Certifying Official* (Print): Patricia Klimek

Title: Director of Finance

Date of Certification (mm/dd/yyyy): July 7, 2022

*The "Certifying Official" must be an individual executive or financial officer of the firm at a level no lower than a Vice President or Chief Financial Officer, or equivalent, who has the authority to represent the financial information utilized to establish the indirect cost rate for use under Agency contracts.

Ref. FHWA Directive 4470.1A available on line at:
<http://www.fhwa.dot.gov/legsregs/directives/orders/44701a.htm>

Exhibit E County Ordinance on Nondiscrimination

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

WHATCOM COUNTY ORDINANCE 2021-016

1. Non-Discrimination in Employment:

The County's policy is to provide equal opportunity in all terms, conditions and privileges of employment for all qualified applicants and employees without regard to race, color, creed, religion, national origin, sex, sexual orientation (including gender identity), age, marital status, disability, or veteran status. The Contractor shall comply with all laws prohibiting discrimination against any employee or applicant for employment on the grounds of race, color, creed, religion, national origin, sex, sexual orientation (including gender identity), age, marital status, disability, political affiliation, or veteran status, except where such constitutes a bona fide occupational qualification.

Furthermore, in those cases in which the Contractor is governed by such laws, the Contractor shall take affirmative action to insure that applicants are employed, and treated during employment, without regard to their race, color, creed, religion, national origin, sex, age, marital status, sexual orientation (including gender identity), disability, or veteran status, except where such constitutes a bona fide occupational qualification. Such action shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations, rate of pay or other forms of compensation benefits, selection for training including apprenticeship, and participation in recreational and educational activities. In all solicitations or advertisements for employees placed by them or on their behalf, the Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

The foregoing provisions shall also be binding upon any subcontractor, provided that the foregoing provision shall not apply to contracts or subcontractors for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

2. Non-Discrimination in Client Services:

The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation (including gender identity), disability, or veteran status; or deny an individual or business any service or benefits under this Agreement unless otherwise allowed by applicable law; or subject an individual or business to segregation or separate treatment in any manner related to his/her/its receipt any service or services or other benefits provided under this Agreement unless otherwise allowed by applicable law; or deny an individual or business an opportunity to participate in any program provided by this Agreement unless otherwise allowed by applicable law.

Exhibit F Certification Documents

- Exhibit F-1 Certification of Consultant
- Exhibit F-2 Certification Regarding Debarment, Suspension and other Responsibility Matters
– Primary Covered Transactions
- Exhibit F-3 Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying
- Exhibit F-4 Certificate of Current Cost or Pricing Data

Exhibit F-1 Certification of Consultant

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

Tarelle Osborn, P.E. CPESC

whose address is

1800 112th Ave NE, Suite 220-E, Bellevue, WA 98004

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 Whatcom County in connection with this AGREEMENT involving participation of federal or state funds, and is subject to applicable State and Federal laws, both criminal and civil.

Consultant (Firm Name)

Signature (Authorized Official of Consultant)

Date

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

This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

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

Consultant (Firm Name)

Signature (Authorized Official of Consultant)

Date

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

Exhibit "F-3" is required only in AGREEMENT's over one hundred thousand dollars (\$100,000.00)

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or 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.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

The Contractor, Osborn Consulting, Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature (Authorized Official of Contractor)

Date

Name and Title of Contractor's Authorized Official (printed)

Exhibit F-4 Certification of Current Cost or Pricing Data

Exhibit "F-4" is required only in AGREEMENT's over five hundred thousand dollars (\$500,000.00.)

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

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

Firm: _____

Signature

Title

Date of Execution: _____ ***

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

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

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

Exhibit G Granting Agency Provisions

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

1. EQUAL EMPLOYMENT OPPORTUNITY

Compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. SECTION 504 OF THE REHABILITATION ACT, 1973, AS AMENDED (29 U.S.C. 794).

Compliance with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits or be subjected to discrimination under any program or activity receiving federal assistance funds.

3. PUBLIC LAW 88-352, TITLE VI OF THE CIVIL RIGHTS ACT OF 1964(42 U.S.C. 2000d et seq.)

Compliance with the provisions of "Public Law 88-352," which refers to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.). The law provides that no person in the United States shall, on the grounds of race, color or national origin, be denied the benefits of, be excluded from participation in, or be subjected to discrimination under any program or activity receiving federal financial assistance. Implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.

4. LAW AGAINST DISCRIMINATION, CHAPTER 49.60 RCW.

Compliance with the provisions of Chapter 49.60 RCW in all activities relating to this Grant Agreement.

5. CONTRACTING WITH SMALL MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISE AND LABOR SURPLUS AREA FIRMS.

In accordance 44 CFR 13.36(e), CONTRACTOR shall: (1) take all necessary affirmative steps to assure that minority firms, women's enterprises and labor surplus area firms are used when possible. (2) Affirmative steps shall include: (i) Placing qualified small and minority businesses, and women's business enterprises on solicitation lists; (ii) Assuring that small and minority enterprises are solicited whenever they are potential sources; (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises; (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

6. DHS SEAL, LOGO, AND FLAGS

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or

likenesses of DHS agency officials without specific FEMA pre-approval.

7. CLEAN AIR ACT

The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

The contractor agrees to report each violation to the AGENCY and understands and agrees that the AGENCY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

8. NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

9. FRAUD AND FALSE STATEMENTS

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

Should a direct conflict exist between a GRANTING AGENCY provision and another CONTRACT provision, the CONSULTANT shall follow the more restrictive requirement.

Exhibit H Alleged Consultant Design Error Procedures

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

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

At the first indication of potential consultant design error(s), the first step in the process is for the Agency's project manager to notify the Director of Public Works or Agency Engineer regarding the potential design error(s). For grant funded projects, the granting agency's representative 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 the granting agency 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 Granting Agency

As required by GRANTING AGENCY, all available information, including costs, may be required to be forwarded the GRANTING AGENCY for their review and consultation

Exhibit I 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) total a \$1,000 or less, it would not be cost effective to proceed through the outlined steps. It is suggested that the Director of Public Works or Agency Engineer negotiate a fair and reasonable price for the consultant's claim(s) that total \$1,000 or less.

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

Step 1 Consultant Files a Claim with the Agency Project Manager

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

The consultant's claim must outline the following:

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

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

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

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

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

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

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

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

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

The Director of Public Works or Agency Engineer shall review and administratively approve or disapprove the claim, or portions thereof, which may include getting Agency Council or Commission approval (as appropriate to agency dispute resolution procedures). If the project involves grant participation, obtain concurrence from the Granting Agency's representative regarding final settlement of the claim. If the claim is not eligible for grant 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.