

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.
202501002

Originating Department:	Public Works
Division/Program: <i>(i.e. Dept. Division and Program)</i>	Stormwater/BBWARM - 907690
Contract or Grant Administrator:	Cody Swan
Contractor's / Agency Name:	Birch Bay Leisure Park Association

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? Contract _____

Yes No If yes, RFP and Bid number(s): _____ Cost Center: 19141905 wo 19799

Is this agreement excluded from E-Verify? No Yes If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:

Professional services agreement for certified/licensed professional. Goods and services provided due to an emergency

Contract work is for less than \$100,000. Contract for Commercial off the shelf items (COTS).

Contract work is for less than 120 days. Work related subcontract less than \$25,000.

Interlocal Agreement (between Governments). Public Works - Local Agency/Federally Funded FHWA.

<p>Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>0</u></p> <p>This Amendment Amount: \$ <u>0</u></p> <p>Total Amended Amount: \$ <u>0</u></p> <p>Summary of Scope:</p>	<p>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:</p> <ol style="list-style-type: none"> 1. Exercising an option contained in a contract previously approved by the council. 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. 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.
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This collaboration will enable the projects to be bid as one, reducing the community impacts associated with constructing them separately. Additionally, bundling the projects will allow bidders to assess the efficiencies of completing both projects together, potentially leading to cost savings and streamlined construction efforts.

Term of Contract: N/A	Expiration Date: Until Fulfillment
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Contract Routing:	1. Prepared by: <u>Cody Swan</u>	Date: <u>1/2/2025</u>
	2. Attorney signoff: <u>Brandon Waldron (via email)</u>	Date: <u>1/2/2025</u>
	3. AS Finance reviewed: <u>Brad Bennett (via email)</u>	Date: <u>1/2/2025</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Executive contract review: _____	Date: _____
	7. Council approved, if necessary: <u>AB2025-033</u>	Date: <u>01/14/2025</u>
	8. Executive signed: _____	Date: _____
	9. Original to Council: _____	Date: _____

**COST SHARING AGREEMENT FOR
CAPITAL PROJECT COORDINATION WITHIN THE BIRCH BAY COMMUNITY**

between

WHATCOM COUNTY (“County”), a political subdivision of the State of Washington, and the BIRCH BAY LEISURE PARK ASSOCIATION (“BBLPA”), subdivision of the Whatcom County.

WHEREAS, the County and BBLPA desire to improve the drainage that migrates from the upland basin containing the BBLPA property to Terrell Creek through a culvert below Birch Bay Drive; and

WHEREAS, the Lora Lane Drainage and Tide Gate Modifications (“Project”) has appeared on the County’s Water Resources Improvement Plan (“WRIP”) and Transportation Improvement Plan (“TIP”); and

WHEREAS, this agreement serves as the mechanism for the County and BBLPA to share and assign costs and responsibilities associated with the Project; and

WHEREAS, BBLPA will grant easements to the County to complete the design and construction of the Project; and

WHEREAS, the County has contracted Tetra Tech to perform the design of the County portion of the Project; and

WHEREAS, the BBLPA contributes approximately 10% of the annual revenue to the Birch Bay Watershed and Aquatic Resources Management (“BBWARM”) fund; and

WHEREAS, using Tetra Tech as their design consultant, the BBLPA has completed 90% design of the portion of the Project outside of the right of way and situated on their property; and

WHEREAS, the culvert draining upland runoff extends approximately 190 linear feet east of the right of way onto BBLPA property; and

WHEREAS, the County will act as the lead on the Project on behalf of both the County and BBLPA upon execution of this agreement; and

WHEREAS, the Project will be subject to public works codes and statutes associated with public work; and

WHEREAS, the Project will be divided into two schedules: (1) the Lora Lane culvert replacement and (2) the Leisure Park open channel improvements; and

WHEREAS, the County will provide BBLPA with all products produced by the design Consultant for the County segment of the design. This will likely include, but is not limited to, the

following: i.e. topo base map & points, wetland delineation data & reports, Geotech report and CAD files for the design, permit applications (SEPA).

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the County and the BBLPA agree as follows:

I. PURPOSE

The purpose of this Agreement is to coordinate the design and construction cost sharing through the phases of the Project and to identify the responsibilities of the County and the BBLPA to the Project.

- II. ADMINISTRATION.** The parties do not intend to create any new or separate legal or administrative entity by this agreement but, rather, intend for this mutual Agreement to govern the BBLPA financial commitment to support the project. The terms and conditions contained herein reflect the voluntary participation of the parties. This agreement shall be in effect until both parties mutually agree to dissolve the agreement.

III. COUNTY'S RESPONSIBILITIES

3.1 The County shall serve as the lead in the administration of the Project's design, including but not limited to consultant selection, acquiring permits required for the design phase, contract scope, fee negotiations, and contract administration, including as set forth in this Section 3. The County shall comply with all applicable laws, rules and regulations relating to the consultant selection, and associated contract.

3.2 The County shall work with Tetra Tech and BBLPA to develop two (2) construction bid schedules to define work of two (2) independent contracts that both the County and BBLPA shall be financially responsible for pursuant to Article V (County's Financial Contribution) and Article VI (BBLPA's Financial Contribution) of this Agreement.

3.3 The County shall be responsible for managing the design contract, provided that the County shall involve the BBLPA in developing a design acceptable to both parties and that incorporates the BBLPA current design. At a minimum, the County will review the proposed design work at the 30, 60, 90, and 100 percent design completion stages, and allow the BBLPA one week to review and comment at each stage of the design work as it pertains to BBLPA's portion of the Project. An updated design cost estimate will be provided with each 30, 60 and 90, and 100 percent submittal. The County shall make available knowledgeable personnel to answer design questions and manage possible design problems regarding the Project.

3.4 The County shall be responsible for the advertising, bidding and awarding of the Project as defined in Whatcom County Code 3.08.090.

3.5 The County shall require the construction contractor who is ultimately awarded the contract to provide the County and the BBLPA with a certificate of insurance and endorsement specifically naming the County and the BBLPA as additional insureds prior to the contractor commencing work on the construction project.

3.6 The County shall manage and administer both construction contracts for the entirety of the term of the contracts, including but not limited to, construction oversight, contractor coordination, material acceptance, material testing, progress payments and project

closeout. The County shall supply all consultant invoices, progress payments, change orders, minor changes and all other items that utilize BBLPA budget for the work.

- 3.7** The County shall own the stormwater water culvert and tide gate installed as part of the Project. The County shall provide or pay for the operation, inspection, maintenance and repair of all facilities installed by the County, as described in the Operations and Maintenance Manual provide by Tetra Tech.
- 3.8** The County shall be responsible for all costs of the Project defined in Article V County's Financial Contribution of this Agreement.
- 3.9** The County shall work with BBLPA to create an escrow account to hold BBLPA's required financial contribution as defined in Section VI herein. The County shall supply available balances upon request and will reimburse BBLPA any remaining balance amounts after physical completion and record drawings have been completed.

IV. BBLPA'S RESPONSIBILITIES

- 4.1** The BBLPA shall create an escrow account with the County as an authorized signer. This escrow account will be used for progress payments related to costs associated with the Tetra Tech design contract and the construction contract related to BBLPA's responsible costs.
- 4.2** The BBLPA shall manage their existing design consultant contract and be responsible for any related costs until the bid set of plans, specifications and the estimate are ready to advertise for bids. This work shall include local permitting requirements and addressing associated variances.
- 4.3** The BBLPA shall promptly review and comment upon all items submitted to BBLPA by the County under Section III above and shall work with the County in good faith to approve the design of the Project in a timely manner.
- 4.4** The BBLPA shall grant all rights-of-way and easements deemed reasonably necessary by the County for the Project.
- 4.5** The BBLPA will manage their proposed new drainage conveyance systems as a component of stormwater conveyance facilities constructed under this agreement in a manner as described in the Operations and Maintenance Manual provide by Tetra Tech. Upon notification by the County, BBLPA will address conditions that do not adhere to the aforementioned manual.
- 4.6** The BBLPA shall be responsible for all costs of the Project pursuant to Article VI (BBLPA's Financial Contribution of this Agreement).
- 4.7** The BBLPA shall deposit the estimated amount deemed the responsibility of BBLPA in Tetra Tech contract budget estimate into the escrow account, that was created by BBLPA and that established the County as an authorized signer, within 10 days following the execution of the contract by the County. All work associated with BBLPA's portion of this County initiated consulting contract will be separated on the invoices by Tetra Tech and issued to the County. These invoices will then be reviewed by the County and tasks associated with BBLPA's portion will be presented to BBLPA for approval.

4.8 Following the opening of bids, BBLPA shall deposit the bid amount total of their bid schedule into the BBLP- held escrow account within 5 days of the bid opening. The County will compile all progress payments associated with the construction contract's scope of work, per Section III. These progress payments will be reviewed internally by the County and presented to BBLPA for approval. The County will utilize the escrow account to reimburse the contractor for work completed under the bid schedule that details BBLPA's project obligations.

V. COUNTY'S FINANCIAL CONTRIBUTION

5.1 The County shall manage and be financially responsible for the portion of the County-initiated contract with Tetra Tech, attached as Exhibit A, that is for the development of the plans, specifications and estimates associated with the County's portion of the Project..

5.2 All salaries and benefits for County personnel assigned to this Project will be provided by the County.

5.3 The County will be responsible for any costs associated with changes to the plans as a result of unforeseen conditions and shall reimburse the contractor for such costs by a change order, force account or minor changes documentation. The County will review and approve all documentation associated with said changes prior to authorization of the work.

5.4 The County will be responsible for the costs associated with the construction bid schedule for the County's portion of the project, including any unanticipated archaeological monitoring, surveying or mitigation.

VI. BBPLA'S FINANCIAL CONTRIBUTION

6.1 Costs for the portion of the County-initiated contract with Tetra Tech, attached as Exhibit A, that is for the coordination and combination of BBLPA design and work associated with this Tetra Tech contract shall be the financial responsibility of the BBLPA. This work shall be reviewed and approved by BBLPA.

6.2 The BBLPA will be responsible for the cost of the contract that they entered into as a result of the bids relating to the BBLPA schedule of work, including any unanticipated archaeological monitoring, surveying or mitigation costs.

6.3 The BBLPA will be responsible for any costs associated with changes to the plans, requests for information (RFI), and any other construction engineering work that will need to be performed by Tetra Tech. The BBLPA will review and approve all documentation associated said changes prior to authorization of the work within a five (5) working day period.

6.4 The BBLPA will be responsible for any costs associated with changes to the scope of work as a result of unforeseen conditions and that would be owed to the contractor through a change order, force account or minor changes documentation. The BBLPA will review and approve all documentation associated said changes prior to authorization of the work within a five (5) working day period.

VII. TERM OF AGREEMENT

This Agreement shall be effective on the date of the signature of the last party to sign ("Effective Date") and shall, unless terminated as otherwise provided herein, remain in full force until the purpose and County/BBLPA responsibilities herein described are completed.

VIII. TERMINATION

8.1 Termination for Expense. The County may terminate this Agreement if, during the course of the design phase, at the 30, 60, or 90 percent design completion checkpoints, design cost estimates for Project completion exceed the amount of the County contribution.

8.2 Termination for Convenience. Either the County or BBLPA may terminate this agreement, without cause, upon 30 days written notice to the non-terminating party subject to the following limitation: Termination for convenience may not occur until the completion of any pending or active commitments defined herein under Articles II, III, IV and V.

IX. DISPUTE RESOLUTION

9.1 Arbitration. The parties mutually covenant to work cooperatively to timely resolve any dispute that may arise between the parties concerning this agreement. However, if the Parties cannot mutually settle a dispute, the dispute or claim shall be submitted to binding arbitration. The Parties agree that the arbitration shall be governed by the rules and procedures outlined in RCW 7.04 et seq. and the Whatcom County Mandatory Arbitration Rules, and that the Parties will jointly stipulate to an arbitrator. The prevailing party shall be entitled to reasonable attorneys' fees and costs.

9.2 Governing Law and Venue. The Parties agree that any dispute shall be governed by the law of the State of Washington and shall be brought for resolution in Whatcom County.

X. MODIFICATION OF AGREEMENT

Any changes, additions or other modifications to this agreement shall not be valid or binding upon either party unless such changes, additions or other modifications are in writing and executed by an authorized representative of the parties hereto.

XI. PROJECT COORDINATORS

11.1 The Project Coordinator for the County is Cody Swan, Project Engineer, or designee (360) 815-3803

11.2 The Project Coordinator for the BBLPA is Lisa Fisher, General Manager, or designee (360) 371-7122

11.3 The Project Coordinator for Tetra Tech is Jerry Scheller P.E., Design Engineer, or designee (206) 883-9414

XII. MISCELLANEOUS PROVISIONS

12.1 Severability. If any provision of this agreement is held to be invalid, illegal or unenforceable for whatever reason, that shall not affect or impair, in any manner, the validity, legality or enforceability of the remainder of this agreement.

12.2 Status of Employees. Neither the County nor the BBLPA shall assume any liability for the direct payment of any salary, wages, or other compensation to any of the other party's personnel performing services hereunder or for any other liability not expressly assumed herein. No agent, employee or other representative of the Parties shall be deemed an employee of the other Party for any reason.

12.3 Status of Agreement. This Agreement is in addition to, and is not intended to replace, substitute, modify or otherwise amend any other agreement between the County and the BBLPA. Those other agreements continue in effect according to the terms of those agreements.

12.4 Rights and Remedies. The rights and remedies provided in this agreement are in addition to any other rights and remedies that may be provided by law.

Entire Agreement. This document is the complete and exclusive agreement between the Parties. It supersedes all oral or written proposals and/or other communications between the Parties regarding the project.

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.

FOR THE BIRCH BAY LEISURE PARK ASSOCIATION

DATED this _____ day of _____, 2024.

Jennifer Timmreck, BBLPA Assistant Manager

DATED this _____ day of _____, 2024,

Frank Costanzo, BBLPA President Board of Commissioners

Approved as to form:

Kirsten Barron, Attorney for BBLPA

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

Firm/Organization Legal Name (do not use dba's): Tetra Tech, Inc.	
Address 2003 Western Avenue, Suite 700 Seattle, WA 98121	Project Number Project #SWBB23-06
UBI Number 601077148	Federal TIN 95-4148514
Execution Date [DATE OF EXECUTIVE SIGNATURE] 11/7/2024	Completion Date March 31, 2026
Federal Participation Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Maximum Amount Payable: \$309,647.00
Project Title Lora Lane Drainage and Tide Gate Modifications.	
Description of Work Replace existing 48" culvert and gate under Birch Bay Drive near Lora Lane with fish passable structure and replace failing tide gate. Replace upstream 48" pipeline with open channel conveyance connected to new Birch Bay Drive culvert. Remove bulkhead along right bank of downstream channel and reshape bank to a stable slope.	

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

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THIS AGREEMENT, made and entered into as shown in the “Execution Date” box on page one (1) of this AGREEMENT, between the 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

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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: Cody Swan
 Agency: Whatcom County
 Address: 322 N. Commercial St. Ste.401
 City: Bellingham State:WA Zip:98225
 Email:cswan@co.whatcom.wa.us
 Phone:360.778.6265
 Facsimile:

If to CONSULTANT:

Name: Jerry Scheller
 Agency: Tetra Tech, Inc.
 Address: 1420 Fifth Avenue, Ste. 550
 City:SeattleState:WA Zip:98101
 Email:Jerry.Scheller@tetratech.com
 Phone:206.883.9414
 Facsimile:

IV. Time for Beginning and Completion

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

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

V. Payment Provisions

The CONSULTANT shall be paid by the AGENCY for completed SERVICES rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for SERVICES performed or SERVICES rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete SERVICES. The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31 (www.ecfr.gov).

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

EXHIBIT A, PG. 4 OF 50

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.

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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

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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

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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.

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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

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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, 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 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 tier, 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 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, 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

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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 with a limit of two million dollars (\$2,000,000) each claim and three million dollars (\$3,000,000) in the aggregate.

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

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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 above Section III
 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.

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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-

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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

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same business or businesses as the CONSULTANT.

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

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

XX. Records Maintenance

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

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

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,

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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.

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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.

CONSULTANT:

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.

DocuSigned by:
Tetra Tech, Inc.
Gerard Scheller 10/31/2024
940BE48EF2EB4E1...
Gerard Scheller, Senior Engineer/Senior Project Manager

WHATCOM COUNTY:

Recommended for Approval:

DocuSigned by:
Elizabeth Kosa 10/31/2024
870E242DD70C406...
Elizabeth Kosa Date
Public Works Director

Approved as to form:

Signed by:
Christopher Quinn 11/7/2024
EC466EF5C88B4FD
Christopher Quinn Date
Chief Civil Deputy Prosecuting Attorney

Approved:

Accepted for Whatcom County Flood Control Zone District:

DocuSigned by:
Satpal Sidhu 11/7/2024
By: 1192C7C18B664E3...
Satpal Singh Sidhu, Whatcom County Executive

Exhibit A Scope of Work

Whatcom County and Birch Bay Leisure Park Association (BBLPA) jointly own a corrugated metal pipe at Lora Lane that conveys streamflow under the BBLPA drive and Birch Bay Drive to Birch Bay through a large tide gate structure. The Lora Lane storm drain pipeline is a 48" diameter corrugated metal pipe that collects streamflow in an open channel about 200 feet east of Birch Bay Drive and conveys it to a large marine tide gate structure and discharges to Birch Bay at the mouth of Terrell Creek. This pipeline is the primary conveyance for surface water flow from a 1,500 acre watershed that extends from Birch Bay Drive to Kickerville Road and includes Birch Bay Leisure Park. The *Birch Bay Central South Subwatershed Master Plan* (Tetra Tech, 2014) reported that the marine tide gate is not able to completely close during high tide events. The pipeline collapsed at the inlet during a large storm event in 2022 and a temporary repair was put in place by the Birch Bay Leisure Park Association. Hydraulic analysis performed as part of the *Lora Lane Drainage and Tide Gate Modifications Technical Memorandum* (Tetra Tech, 2019) showed that replacing the Lora Lane pipeline would provide a cost-effective solution for reducing flood risk in the Birch Bay Leisure Park Recreation Park. The *Lora Lane Tide Gate Replacement Project* (Tetra Tech, 2020) identified a preliminary design concept for a fish passable culvert with a tide gate at the downstream end of the pipeline.

Tetra Tech recently completed the Channel Improvements project for Birch Bay Leisure Park which will remove the upstream pipeline on Birch Bay Leisure Park property and replace with a natural open channel. Construction of this project was delayed to align with the County project to minimize disturbance to the public and take advantage of a more favorable bid process.

This scope of work describes the tasks and subtasks associated with updating the concept design to optimize pipe size, evaluate options of the headwall/tide gate replacement, and prepare a preliminary (30%) and final design of the replacement culvert. Final design will include plans, specifications and engineer's estimate and will integrate a design of the upstream channel in Birch Bay Leisure Park. This project is planned for construction beginning in late Summer 2025.

The following tasks include a description of the work involved and the associated deliverable(s) for that task. All tasks are assigned to Tetra Tech unless specifically noted otherwise.

Task 1 Project Management

The focus of this task is to maintain effective communication with the County's Project Manager and County staff, manage the project budget, and coordinate the timing of all tasks within the project to ensure completion within the project schedule.

- Conduct an internal project start-up meeting involving key team members at Tetra Tech offices.
- Tetra Tech will send the County a design schedule within 3 weeks after the notice to proceed on this contract that will show milestone dates and submittal dates to the County. Bi-weekly calls with Whatcom County for three months.
- Ongoing project management and coordination with the project team. Management functions including coordinating labor, meeting key scheduling milestones, and maintaining budget occurs within this task.
- Preparation of monthly progress reports which include a summary table comparing amount expended and remaining budget.

Task 1 Assumptions:

- Twelve-month project duration is assumed for design development.
- The Task 1 effort is assumed to be split 90/10 between Whatcom County and BBLPA.

Task 1 Deliverables:

- Monthly invoices and progress reports (Assume a total of 12 reports)
- Design Schedule.

Task 2 Community Outreach

Tetra Tech will participate in public outreach for the project. The project team will perform the following tasks:

- Attend a neighborhood meeting after preliminary design is complete.
- Attend a meeting with the BBLPA board to provide an update on the project.

Task 2 Assumptions:

- Whatcom County will arrange for a meeting site and will advertise the meeting in advance.
- BBLPA board meeting will be held at the Brier Center.
- Community meeting will be attended by two consultant team members.
- Presentation graphics will consist of the Task 4 preliminary design drawings. No new graphics will be created.
- The Task 2 effort is assumed to be split 51/49 between Whatcom County and BBLPA.

Task 2 Deliverables:

- Attendance at a community meeting
- Attendance at a BBPLA board meeting

Task 3 Geotechnical Evaluation (Aspect Consulting)

Aspect Consulting will perform a geotechnical evaluation to support Task 3 Preliminary Design and Task 4 Final Design. Geotechnical evaluation task will include:

Task 3.1 Geotechnical Investigation

- Perform a desktop study of existing site data, geologic and topographic mapping, and project concepts.
- Conduct a site reconnaissance to note surface conditions, and any challenges the site may have regarding to subsurface investigation. Locations of drilled borings will be marked during the site visit.
- Prepare an exploration plan to be distributed and reviewed by the County following the desktop study and site reconnaissance. Once approved, Aspect will continue with geotechnical investigation tasks.
- Plan, coordinate, and execute a one-day field investigation consisting of two machine-drilled geotechnical exploration borings, at least one in the paved right-of-way of the Birch Bay Drive, and the second along the gravel pathway north of the culvert, if feasible.
 - Aspect will obtain a right-of-way (ROW) permit to perform the subsurface investigations on County property.
 - Aspect will subcontract a state-licensed geotechnical driller for the subsurface investigation.
 - The borings will be advanced using hollow-stem auger, and disturbed samples will be obtained 2.5-foot and 5-foot intervals, in accordance with Standard Penetration Test methods.
 - An Aspect geotechnical engineer or field geologist will monitor the geotechnical drilling, log all explorations, and collect soil samples from selected intervals as described above for further examination and laboratory testing.
 - Each boring will be drilled and sampled to a final depth of 30 feet below existing ground surface. Drilling spoils will be placed in drums and removed from the Site, and boreholes backfilled with bentonite chips and capped with quick-curing cement dyed black.
 - Temporary lane closure(s) will be required during drilling activities. Aspect will subcontract a state-licensed traffic control company to produce traffic control plans and provide traffic control and safety including flagging and signage during our field investigations.
 - Aspect will utilize the Washington 811 public one-call utility locating service at least one week prior to the investigation program. Additionally, we will subcontract a private utility locator to clear the exploration locations of buried utilities prior to drilling activities.

Task 3.2 Geotechnical Laboratory Testing, Analysis and Report

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- Soil samples collected from the drilled borings will be returned to Aspect's laboratory for further examination and visual/manual soil classifications. Select samples will be submitted for geotechnical testing of index and engineering properties.
 - Laboratory testing may include natural moisture content, grain size distribution, and Atterberg limit tests.
 - Aspect will subcontract with a local licensed and accredited laboratory consultant to perform the soil materials testing.
- Aspect will perform geotechnical engineering analyses for design of the new culvert including: foundation bearing capacity and settlement; assessment of seismic hazards including soil liquefaction lateral earth pressures on the culvert and wing walls; suitability of re-use of existing Site soil as structural backfill; embankment grading and sloping with checks for slope stability as necessary.
- Aspect will participate in up to three meetings throughout design with the project team.
- Aspect will submit a draft geotechnical engineering report which includes all field and laboratory data, geotechnical engineering analyses results, and conclusions and recommendations for the geotechnical project elements.
- After receipt of any review comments from Tetra Tech and the County, Aspect will issue a final geotechnical engineering report, stamped by a licensed professional civil engineer.

Task 3.3 PS&E Support

- Aspect will review the 60% PS&E documents (developed by Tetra Tech) and provide input to the geotechnical elements.

Task 3 Assumptions:

- Aspect assumes that all site access permissions and any required permits to perform our subsurface investigations will be acquired by others, at no cost to Aspect.
- Aspect will rely on utility locate marks to be provided by the Washington Utility Notification Center (811) service and will also subcontract a private utility locator to check public utility markings where traffic allows. Aspect will take reasonable precautions to reduce the potential for damage to utilities. No work hour restrictions are assumed for the geotechnical investigation.
- The geotechnical investigation will be completed over the course of one day.
- A right-of-way permit will not be required for the geotechnical field investigation.
- Whatcom County will provide archaeological monitoring for the geotechnical field investigation and will coordinate with the Lummi Tribe..
- Geocoastal analysis and reporting are not included in this scope of services.
- Pavement design (and materials testing related to pavement design) are not included in this scope of services.
- It is assumed that design of the new culvert will generally follow Whatcom County, American Association of State Highway and Transportation Officials (AASHTO) and Washington State Department of Transportation (WSDOT) design guidance.
- The culvert will be a three or four-sided grade-supported box culvert with a span of less than 20 feet and will not be designed for seismic hazards. Seismic hazards will not be considered for design and deep foundations, ground improvement, or other measures will not be necessary to mitigate these hazards.
- Aspect assumes meetings will be one hour long attended by two Aspect team members.
- One round of consolidated review comments from Whatcom County will be provided to Aspect.
- PS&E documents will be generated by Tetra Tech.

Task 3 Deliverables:

- Geotechnical Exploration Plan
- Draft and Final Geotechnical Engineering Report
- The Task 3 effort solely to support culvert design and is assumed to be 100 percent to Whatcom County.

Task 4 Environmental Review and Permitting (All4)

All4 will perform permitting assistance for the Birch Bay Drive culvert replacement. Permit assistance will include:

Task 4.1 Permit Coordination

- Develop a permitting plan and associated schedule (i.e., Gantt Chart) for the length of the Project.
- Perform a desktop review of available information related to existing site conditions
- Conduct up to three site visits to meet with regulatory agencies or Project stakeholders.

Task 4.2: State Permitting

- Determine if the Project is eligible to utilize the Washington State Department of Ecology (Ecology) Fish Habitat Enhancement Project (FHEP) streamlined permitting path. The level of effort included in this scope of work has been prepared to accomplish project permitting even if the Project does not qualify for FHEP and the standard permitting process is utilized. If the Project is able to utilize the FHEP permitting path, Whatcom County permitting activities outlined below may not be applicable or required for the Project.
- Prepare Standard Hydraulic Project Approval (HPA) application materials for submittal to the Washington State Department of Fish and Wildlife for the proposed Birch Bay Drive Culvert. HPA materials will be submitted using the required Aquatic Protection Permitting System (APPS) website.

Task 4.3: Federal Permitting

- Update the Joint Aquatic Resources Permit Application (JARPA) packet for submittal to U.S. Army Corps of Engineers (USACE) for Section 404/Section 10 Nationwide Permit (NWP) to include the proposed Birch Bay Drive Culvert.
- Prepare Washington State Department of Ecology for Section 401 Water Quality Certification and Coastal Zone Management Consistency review.

Task 4.4: Whatcom County Planning & Development Services Permitting

- Prepare a Pre-Application Meeting Request Packet for submittal to Whatcom County Planning & Development Services (Whatcom County).
- Coordinate and attend a pre-application meeting with Whatcom County and BBLPA.
- The following tasks will be performed if WDFW determines this project does not qualify for the FHEP streamlined permit:
 - Update and resubmit the State Environmental Policy Act (SEPA) Checklist for submittal to Whatcom County to include proposed Birch Bay Drive culvert.
 - Update and resubmit the Shoreline Substantial Development Exemption Permit Application for submittal to Whatcom County to include proposed Birch Bay Drive culvert.
 - Update and resubmit the Land Fill and Grade Permit Application for submittal to Whatcom County to include proposed Birch Bay Drive culvert and modifications to the BBLPA channel design.

Task 4.5: Post Submittal Support

Provide up to 40 hours of post-submittal support to respond to agency or Whatcom County questions about the application materials listed above.

Task 4 Assumptions:

- Draft versions of application materials will be provided to the Client for review and comment. One round of Client comments will be incorporated as appropriate and final copies of the applications will be provided for submittal to regulatory agencies by the Client.

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- This project is considered exempt from the Shorelines Substantial Development permit as *normal maintenance and repair and/or improvement to fish passage* per the Whatcom County Shoreline Management Program. It is assumed that a critical areas report is not required with this exemption.
- The existing archeology and geotechnical studies prepared for the Birch Bay Leisure Park Association and Birch Bay Berm will be submitted to regulatory agencies for this Project. Whatcom County will be responsible any additional archaeology studies needed for this project.
- This scope of work only covers studies expressly stated in this scope of work. Additional studies requested by regulatory agencies would be considered additional services and will require a modification to the contract.
- Site visits or meetings are assumed to be four hours in duration and will be attended by two Consultant staff.
- Submittal fees are not included and will be paid directly by Whatcom County.
- USACE will review the application as an NWP and will not require an Individual Permit to be obtained for this work.
- Whatcom County will approve the SEPA Checklist with a Determination of Non-Significance.
- Whatcom County will provide all necessary Cultural Resources reporting/compliance.
- A Salish Sea Nearshore Programmatic Biological Opinion compliance memo will be sufficient to demonstrate ESA compliance for the project. The Services will not require a Biological Evaluation or Biological Assessment to be prepared.
- This scope of work does not include work related to permit appeals. Should support for permit appeals be required, Tetra Tech will discuss a path forward with Whatcom County, and a separate scope of work would need to be developed.
- One set of comments will be provided from each agency that reviews the application. Agency comments on the permit application materials will be minor and will not result in additional data gathering or substantial new evaluations.
- Tetra Tech or AII4 shall not be responsible for delays in permitting due to actions (or inaction) of Whatcom County or permit agencies.
- The Task 4 effort is assumed to be split 82/18 between Whatcom County and BBLPA. BBLPA effort will primarily be to update the Whatcom County permits and post submittal coordination.

Task 4 Deliverables:

- Permit Plan and Schedule
- Draft and final SEPA Checklist
- Draft and final JARPA
- Draft and Final Shoreline Substantial Development Exemption permit application
- Draft and final Land Fill and Grade Application
- On-line HPA application
- Agency meeting notes and correspondence

Task 5 Preliminary Design

The preliminary design will be based on the 2020 preliminary culvert replacement design concept for the Birch Bay drive culvert and the 2024 Birch Bay Leisure Park Channel Improvements design. Tetra Tech will prepare a 30% design level based on the revised project configuration. Preliminary design tasks will include:

- Conduct a 6-hour site visit to review site conditions and identify potential design considerations for the project. Site visit attended by 2 Tetra Tech staff.

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- Evaluate culvert for fish passage using the hydraulic design option from the 2013 Water Crossing Guidelines (WDFW), to optimize the structure size. Culvert analysis will be performed using the hydraulic model prepared for the 2020 preliminary design. Impacts to the upstream wetlands will also be evaluated.
- Identify utility and traffic clear zone conflicts for the preliminary design based on base mapping and observed during site visit.
- Evaluate two tide gate installation options, one with a side-hinge tide gate at the upstream end of the culvert and one with a side-hinge tide gate at the downstream end of the culvert.
- Prepare preliminary design concept sketches of two tide gate installation options.
- Conduct a 2-hour meeting with Whatcom County to solicit feedback and perform a qualitative assessment of the concepts. This meeting will select a concept to be progressed into preliminary design. The meeting will be a remote meeting conducted in a web-based video conference or conference call. Notes will be provided summarizing the discussion of concepts and the rationale for selecting the preferred option.
- Prepare preliminary design (30%) drawings and Engineer's Estimate of Probable Construction Cost for selected concept.
- Quality assurance review conducted by a senior Tetra Tech engineer not associated with this project to review the technical content of the product.
- Prepare concept exhibit for permanent easement from BBLPA.

Task 5 Assumptions:

- Tetra Tech shall rely upon any information, data and documentation concerning the Project provided by Client or other parties or that is generally available, as well as any statements and representations made by Client concerning the Project or the Services. In relying on such information, Tetra Tech shall have no obligation to investigate or independently verify the accuracy or completeness of such information.
- There are no restrictions to access to the project site.
- Most of the effort for this task is to develop and evaluate the tide gate concept so Task 5 effort is assumed to be split 95/5 between Whatcom County and BBLPA.

Task 5 Deliverables:

- Concept design sketches.
- Meeting notes documenting the selection of the design concept.
- Preliminary design drawings (30%) and Engineer's Estimate of Probable Construction Cost.

Task 6 Final Design

Tetra Tech will prepare final contract documents to construct the Lora Lane Drainage and Tidegate Replacement project using accepted engineering practices, and Whatcom County engineering guidance and standards. Final design will be based on the Preliminary Design developed under Task 5. The preliminary drawing list is described in Table 1. Plan-set scales have been selected based on using full size drawings for construction. Tetra Tech will prepare the special provisions required for project construction identified in the design process. Tetra Tech will prepare a bid ready package, including standard contract specifications, Division 1 provisions, Special Provisions, and bid forms. Design submittals will be prepared using AutoCAD 2023. Whatcom County will provide Tetra Tech a boiler plate contract documents, Division 1 and Bid Proposal for review and modifications to be specific to this project. Project elements are assumed to consist of the following components:

- Replace existing 48" diameter corrugated metal pipe with counter-sunk concrete box structure, 80 to 90 feet long, 7 foot wide by 6 foot high (nominal).
- Replace existing swing tide gate and headwall with the preferred tide gate concept.
- Stabilize eroding bank along headwall.
- Remove bulkhead on the north bank of the outfall channel and regrade bank slope to a stable angle.
- Remove existing 48" diameter corrugated metal pipe and excavate stream channel through Birch Bay Leisure Park. Connect Birch Bay Drive culvert to existing Birch Bay Leisure Park open channel.

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TABLE 1 DRAWING LIST
Title Sheet / Drawing Index (1 sheet)
Legend, Notes, and Abbreviations (1 sheet)
Existing Conditions and Survey Control (Basemap) (2 sheet)
Site Prep Plan (1"=10') (2 sheet)
Erosion and Sediment Control and Temporary Bypass Plan (1"=10') (2 sheets)
Culvert and Channel Plan and Profile (1"=10') (2 sheet)
Channel Sections (1 sheet)
Culvert Details (2 sheets)
Tide Gate Details (2 sheets)
Traffic Control Plan (1 sheet)
Total Number of Drawings = 16

Task 6.1 Sixty percent (60%) PS&E

Tetra Tech will prepare the 60-percent PS&E for Whatcom County review:

- Evaluate stability of streambed material in culvert channel.
- Prepare 60% design plans representing the primary project components.
- Prepare list of special provisions for items of work not covered by the Washington State Department of Transportation (WSDOT) Standard Specifications.
- Identify WSDOT standard details for inclusion in the contract documents.
- Prepare bid items, quantities and backup calculations, and construction cost estimate.
- Identify utilities that will need to be relocated.
- Provide engineering support and exhibits for permit submittal as needed.
- Submit 60% PS&E to Whatcom County for comment.
- Identify size of permanent or temporary easements needed. Whatcom County to obtain all easements necessary.
- Identify and prepare up to two variances to Whatcom County design standards.

Task 6.2 Ninety percent (90%) PS&E

Through the following subtasks, Whatcom County comments will be incorporated from the previous task and 90-percent PS&E will be prepared for Whatcom County review. Tasks will include the following:

- Participate in-person meeting with Whatcom County staff for a design coordination review of comments of the 60-percent plan submittal followed by a site visit.
- Prepare draft special provisions for items of work not covered by the WSDOT Standard Specifications.
- Prepare draft bid item description.
- Prepare 90% design plans incorporating review comments received from Whatcom County.
- Prepare bid items, quantities and a construction cost estimate.
- Submit 90% PS&E to Whatcom County for comment.

Task 6.3 Design Report

Tetra Tech will prepare a Stormwater Design Report containing the information listed in the Department of Ecology (Ecology) 2024 Stormwater Management Manual for Western Washington and Whatcom County Development Standards, Chapter 2 Stormwater Management. Hydrologic and hydraulic analysis for design is included in this task. The design report will also identify items that do not follow Whatcom County Development Standards. Culvert and tide gate design for fish passage and stability of the rock lining for the channel will be documented in the design report. The design report will be submitted with the 90% design submittal (Task 6.2).

Task 6.4 Final Contract Documents:

Through the following subtasks, using the 90-percent PS&E, County comments, and associated materials from the previous tasks, the final bid documents will be prepared:

- Participate in a telephone conference meeting with Whatcom County staff for design coordination review of comments on the 90% submittal.
- Prepare draft contract documents (includes final special provision specifications) and submit check copy to Whatcom County.
- Prepare final plans which include horizontal and vertical layout information sufficient for field staking from the plans and submit a check copy for Whatcom County staff final approval.
- Submit final bid items, bid descriptors, quantities and a construction cost estimate.
- Incorporate final County comments and submit final stamped and signed bid documents and plan originals for copying by the County.
- Prepare electronic submittal containing copies of documents, drawings, spreadsheets and hydrologic & hydraulic models developed in association with this project.

Task 6.5 Integrate Whatcom County and Leisure Park Projects:

Tetra Tech provided engineering services for the Leisure Park Channel Improvements project for the removal of the pipeline along the south Leisure Park property line and east of the Birch Bay Drive culvert. The project work included removing the pipe and excavating an 8- to 9-foot-deep channel with gravity block walls located on the left and right bank of the excavated channel, and reconfiguring the entrance drive to Leisure Park. This work was progressed to the final design level. As Whatcom County and Birch Bay Leisure Park have entered into an agreement to jointly construct channel improvements and Birch Bay Drive culvert replacement, under this contract Tetra Tech will perform the following work:

- Integrate the previous work for the new stream channel into the contract documents by incorporating the previous design effort into a single, cohesive plan set. This effort will include integrating the TESC Plan to prevent construction activities, access, or staging from conflicting with the previous work.
- Integrate the previous project specifications into the 60% specifications outline (headings only) and the 90% specifications package (full specifications).
- Integrate the construction previous cost estimate into the project construction cost estimate at 60% design, including unit price updates.

Task 6 Items Furnished by Whatcom County

Whatcom County will furnish Tetra Tech copies of documents available to Whatcom County that will facilitate the preparation of the plans, specifications, estimates and reports. These include the following:

- Utility locates (potholing) for identified crossings as needed. Whatcom County will provide measure down information to top and bottom of utility, material type and size. Potholed object's location and elevation will be incorporated into the design.
- All other necessary right-of-way acquisition efforts including additional title reports, appraisals, right of entry for fieldwork, negotiations, right-of-way/easement cost estimates, deed preparation.
- Printing and distribution of plans and specifications for bidding.
- Boundary resolutions for the purposes of locating property line for construction.

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- Topographic survey and base map information required for the design drawings. Topo survey will be provided in AutoCAD format Horizontal Datum NAD83 Washington State Plane (North Zone), Vertical Datum NAVD88, US-Foot.
- Boiler plate Division 1 and Bid Proposal.
- Utility relocation efforts (if needed) will be coordinated by Whatcom County.

Task 6 Assumptions:

- No design improvements for the ditch downstream of Birch Bay Drive are included in this scope of work.
- The selected tide gate will be an off-the-shelf product and will require minimal consultant mechanical engineering design services.
- Construction specifications according to *WSDOT Standard Specifications for Road, Bridge, and Municipal Construction, 2024 Edition*
- Standard drainage details according to *WSDOT Standard Plans, September 2024*
- Stormwater infrastructure designed according to the Washington State Department of Ecology 2024 *Stormwater Management Manual for Western Washington* and *Whatcom County Development Standards, Chapter 2, Stormwater Management*
- No curb and gutter or driveway profiling will be prepared; driveways and roadways will be replaced in-kind.
- Tetra Tech will prepare the bid package, including standard contract specifications and bid forms.
- Two bid schedules will be prepared. One schedule will cover work performed inside the County right of way including work performed within the boundaries of permanent easements granted to the County. The second bid schedule will cover work performed on Birch Bay Leisure Park property exclusive of permanent easements granted to the County.
- The bank reshaping on the right bank of the downstream channel will be based on restoration concepts provided with the recent berm project constructed along the shore immediately north of the tide gate location.
- Design submittals will be prepared using AutoCAD 2023.
- Full access to the project area for site visits will be provided on regular business days.
- Project data will be expressed relative to the Washington State Plane (North Zone) NAD83 horizontal coordinate system and the NAVD88 vertical datum, as monumented by Whatcom County during its recent control network along Birch Bay Drive.
- In providing opinions of cost, financial analyses, economic feasibility projections, for the project, Tetra Tech has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by operating personnel or third parties; and other economic and operational factors that may materially affect the ultimate project cost or schedule. Therefore, Tetra Tech makes no warranty that Client's actual project costs, financial aspects, economic feasibility, will not vary from Tetra Tech's opinions, analyses, projections, or estimates.
- Task 6 effort is assumed to be split 87/13 between Whatcom County and BBLPA. The BBLPA effort is primarily to design the channel connection between the current channel design and the proposed culvert inlet.

Task 6 Deliverables:

- CAD drawing of easement lines
- 60% PS&E
- Two variances
- Design Report
- 90% PS&E
- Check Set
- Final PS&E
- Bid package

Task 7 Assistance during Bidding

Tetra Tech will provide engineering assistance during bidding.

- Respond to contractor questions during bidding process. Budget assumes four hours allocated to response.
- Assistance with two addendums to the contract.

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

Autodesk Civil 3D 2019 release compatible (DXF; DWG; XML); Adobe (PDF); Basic text file (TXT)

B. Roadway Design Files

Autodesk Civil 3D 2019 release compatible (DXF; DWG; XML); Adobe (PDF); Basic text file (TXT)

C. Computer Aided Drafting Files

Autodesk Civil 3D 2019 release compatible (DXF; DWG; XML)

County will provide consultant 22"x34" title block template files required for use in producing plan sheets.

Consultant may utilize their own CAD templates, styles and drafting methodology for drawing production.

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

The County has the right to receive and review digital CAD files, stormwater modeling (hydrologic, hydraulic) and other electronically produced data related to the project upon request.

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

See Exhibit A – Scope of Work specified assumptions and deliverables.

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

See Exhibit A – Scope of Work specified assumptions and deliverables.

II. Any Other Electronic Files to Be Provided

See Exhibit A – Scope of Work specified assumptions and deliverables.

III. Methods to Electronically Exchange Data

Email; Consultant provided FTP or cloud storage website; or physical storage media (USB flash drive)

Agency software suite:

Microsoft Outlook

Microsoft Office Professional 2019 (Word, Excel)

Autodesk Civil 3D 2019 release

WWHM 2012; EPA SWMM 5.2; HSPF3.1

Exhibit C Prime Consultant Cost Computations

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

Total Amount Authorized	0
Management Reserve Fund	0
Maximum Amount Payable	0

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Actuals Not To Exceed Table (ANTE)

Lora Lane Culvert and Tide Gate Replacement Project

Tetra Tech, Inc.

2003 Western Avenue, Suite 700

Seattle, WA 98121

Job Classifications	Direct Labor Rate NTE	Direct Labor Rate NTE	Overhead NTE	Fixed Fee NTE	All Inclusive Hourly Billing Rate NTE
	2024	Escalated 2025	171.25%	31.26%	
Senior Project Manager	\$95.00	\$99.75	\$170.82	\$31.18	\$301.75
Project Manager	\$82.00	\$86.10	\$147.45	\$26.91	\$260.46
Senior Civil Engineer II	\$82.00	\$86.10	\$147.45	\$26.91	\$260.46
Senior Civil Engineer I	\$79.00	\$82.95	\$142.05	\$25.93	\$250.93
Civil Engineer VI	\$75.00	\$78.75	\$134.86	\$24.62	\$238.23
Civil Engineer V	\$66.00	\$69.30	\$118.68	\$21.66	\$209.64
Civil Engineer IV	\$54.00	\$56.70	\$97.10	\$17.72	\$171.52
Civil Engineer III	\$50.00	\$52.50	\$89.91	\$16.41	\$158.82
Civil Engineer II	\$45.00	\$47.25	\$80.92	\$14.77	\$142.94
Civil Engineer I	\$37.00	\$38.85	\$66.53	\$12.14	\$117.53
Senior Structural Engineer II	\$108.00	\$113.40	\$194.20	\$35.45	\$343.05
Senior Structural Engineer I	\$99.00	\$103.95	\$178.01	\$32.49	\$314.46
Structural Engineer VI	\$76.00	\$79.80	\$136.66	\$24.95	\$241.40
Structural Engineer V	\$72.00	\$75.60	\$129.47	\$23.63	\$228.70
Structural Engineer IV	\$55.00	\$57.75	\$98.90	\$18.05	\$174.70
Structural Engineer III	\$50.00	\$52.50	\$89.91	\$16.41	\$158.82
Structural Engineer II	\$41.00	\$43.05	\$73.72	\$13.46	\$130.23
Structural Engineer I	\$37.00	\$38.85	\$66.53	\$12.14	\$117.53
Mechanical Engineer V	\$63.00	\$66.15	\$113.28	\$20.68	\$200.11
Mechanical Engineer IV	\$51.00	\$53.55	\$91.70	\$16.74	\$161.99
Mechanical Engineer I	\$34.00	\$35.70	\$61.14	\$11.16	\$108.00
CAD Manager	\$62.00	\$65.10	\$111.48	\$20.35	\$196.93
CAD Designer	\$58.00	\$60.90	\$104.29	\$19.04	\$184.23
CAD Drafter	\$40.00	\$42.00	\$71.93	\$13.13	\$127.05
Admin III	\$55.00	\$57.75	\$98.90	\$18.05	\$174.70
Admin II	\$38.00	\$39.90	\$68.33	\$12.47	\$120.70
Admin I	\$31.00	\$32.55	\$55.74	\$10.18	\$98.47



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

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February 20, 2024

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2003 Western Ave, Suite 700
Seattle, WA 98121

Subject: Acceptance FYE 2023 ICR – CPA Report

Dear Erin Walton:

We have accepted your firms FYE 2023 Indirect Cost Rate (ICR) of 171.25% of direct labor (rate includes 0.05% Facilities Capital Cost of Money) based on the “Independent CPA Report,” prepared by Mayer Hoffman McCann. 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 consultanrates@wsdot.wa.gov.

Regards,

Schatzie Harvey

Schatzie Harvey (Feb 29, 2024 12:02 PST)

SCHATZIE HARVEY, CPA
Contract Services Manager

SH:HK

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.



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

July 11, 2024

Geosyntec Consultants, Inc.
900 Broken Sound Pkwy NW, Suite 200
Boca Raton, FL 33487

Subject: Acceptance FYE 2023 ICR – CPA Report

Dear Anastasia Bystrov:

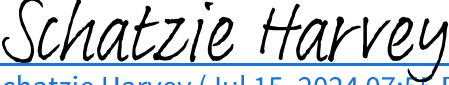
We have accepted your firm's FYE 2023 Indirect Cost Rate (ICR) of 208.20% based on the "Independent CPA Report" prepared by Grant Thornton, LLP. This rate will be applicable for WSDOT Agreements and Local Agency Contracts in Washington only. This rate may be subject to additional review if considered 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 \(Jul 15, 2024 07:55 PDT\)](mailto:Schatzie_Harvey@wsdot.wa.gov)
SCHATZIE HARVEY, CPA
Contract Services Manager

SH: sms

EXHIBIT A, PG. 35 OF 50

September 16, 2024

Cody Swan
Whatcom County Public Works
322 N. Commercial St., Suite 301,
Bellingham, WA 98225

Re: Actual Not to Exceed Billing Rates for ALL4 LLC

Dear Mr. Swan:

Attached please find ALL4 LLC's (ALL4's) Actual Not to Exceed (ANTE) Billing Rates and supporting documentation for development of the Indirect Cost Rate (ICR) used to establish these rates. These rates are being submitted as ALL4 will be a subcontractor to Tetra Tech Inc. who was awarded a project to provide environmental permitting support for the culvert removal and culvert upgrade project proposed for the Birch Bay Leisure Park, located at 7704 Birch Bay Drive (Project). The Project is being undertaken jointly by the Whatcom County Stormwater Division and the Birch Bay Leisure Park Association.

The ICR was established based on ALL4's last complete audited fiscal year (January 1, 2023 to December 31, 2023). Please note that, while ALL4 has audited financials, our accounting system is not set up to automatically track and classify allowable and nonallowable expenses in accordance with Federal Acquisition Regulations (FAR). However, we have reviewed our expenses and made our best estimates of those that would be nonallowable in developing the proposed ICR used to establish the ANTE rates included herein.

Should you have any questions about this submittal, please feel free to contact Kevin Hickey at 610-422-1111 or via email at khickey@all4inc.com.

Sincerely,
ALL4 LLC

Kevin J. Hickey
COO

cc: Erin Walton (Tetrattech)
Jerry Scheller (Tetra Tech)
Dan Heimbigner (ALL4)

Attachments: ALL4 ANTE Rates and ICR Backup

EXHIBIT A, PG. 36 OF 50

ALL4 LLC
Actuals Not to Exceed (ANTE) Rate Table

Job Classification	Direct Labor	ICR NTE	Fixed Fee NTE	Billing Rate
	Hourly Rate NTE	234.56%	30%	
Technical Director	\$ 88.93	\$ 208.59	\$ 26.68	\$ 324.20
Managing Consultant	\$ 56.41	\$ 132.31	\$ 16.92	\$ 205.64
Technical Manager	\$ 49.76	\$ 116.71	\$ 14.93	\$ 181.39
Consulting Scientist	\$ 44.37	\$ 104.07	\$ 13.31	\$ 161.75
Project Scientist	\$ 38.94	\$ 91.34	\$ 11.68	\$ 141.97
Staff Scientist	\$ 36.06	\$ 84.57	\$ 10.82	\$ 131.45
Technician	\$ 32.00	\$ 75.06	\$ 9.60	\$ 116.66
Administrative	\$ 34.61	\$ 81.18	\$ 10.38	\$ 126.17

EXHIBIT A, PG. 37 OF 50

ALL4 LLC
Indirect Cost Rate Schedule
For the Year Ended December 31, 2023

GL Code	Description	Financial Statement Amount	ALL4 Adjustment	Ref.	WSDOT Adj.	Accepted Amount	%
602	Direct Labor- Employees	11,053,691				11,053,691	100.00%
Indirect Costs:							
Fringe Benefits							
621	Travel and Lodging	3,301				3,301	0.03%
621.01	Meals	314				314	0.00%
621.03	Auto Expense - Mileage	753				753	0.01%
625	Postage/ Shipping/ Delivery	29				29	0.00%
629	Misc. Direct Expenses	4,250				4,250	0.04%
651	Bad Debt Expense	3,683				3,683	0.03%
701.01	Indirect Payroll- B	2,747,682	(42,675)	C		2,705,007	24.47%
702	Indirect Labor- Employees	10,554,232				10,554,232	95.48%
717	Professional Development	95,837				95,837	0.87%
718	Business Development	1,358				1,358	0.01%
720	Payroll Taxes	1,804,487				1,804,487	16.32%
723	Independence Administrators	781,078				781,078	7.07%
724	Workers' Compensation	63,007				63,007	0.57%
725	Contribution	24,545				24,545	0.22%
729	Misc. Payroll Expenses	99,723				99,723	0.90%
731	Health Care Insurance	992,518				992,518	8.98%
732	Life Insurance	11,900	(11,900)	A		-	0.00%
733	Disability Income Insurance	7,752	(7,752)	A		-	0.00%
735	401K Reimbursement	826,512				826,512	7.48%
Total Fringe Benefits		18,022,960	(62,327)			17,960,634	162.49%
General Overhead							
736	Education & Seminars	67,161				67,161	0.61%
737	Professional Dues	3,386				3,386	0.03%
738	Conference Fees	149,257				149,257	1.35%
739	Dues & Subscriptions	276,052				276,052	2.50%
740	Licenses and Permits	21,090				21,090	0.19%
741	Rent & CAM	1,093,090				1,093,090	9.89%
742	Utilities	56,587				56,587	0.51%
743	Office Supplies	83,560				83,560	0.76%
745	Postage/ Shipping/ Delivery	29,112				29,112	0.26%
746	Advertising	27,666				27,666	0.25%
747	Repairs & Maintenance	27,056				27,056	0.24%
749	Office Expenses	194,342				194,342	1.76%
749.01	Office Expenses-Building Services	84,471				84,471	0.76%
749.02	Office Expenses- Internal Event	303,982				303,982	2.75%
751	Professional Services	555,494				555,494	5.03%
751.01	Prof Services Legal	158,044	(10,863)	D		147,181	1.33%
751.02	Prof Services Accounting	323,585				323,585	2.93%
751.03	Prof Services Mgmt Fees	633,085				633,085	5.73%
751.04	Prof Services Consultants	72,641				72,641	0.66%
754	Interest Expense	(5,969)				(5,969)	-0.05%
755	Insurance	(353)				(353)	0.00%
755.01	Prof Liability Insurance	71,682				71,682	0.65%
755.02	Insurance Other	19,495				19,495	0.18%
755.03	Management Liability	15,975				15,975	0.14%
755.04	Property & General Liability	15,121				15,121	0.14%
755.05	Umbrella	41,314				41,314	0.37%
755.06	Inland Marine	1,763				1,763	0.02%
755.07	Auto Insurance	5,869				5,869	0.05%
757	Taxes	50,663				50,663	0.46%

EXHIBIT A, PG. 38 OF 50

ALL4 LLC
Indirect Cost Rate Schedule
For the Year Ended December 31, 2023

GL Code	Description	Financial Statement Amount	ALL4 Adjustment	Ref.	WSDOT Adj.	Accepted Amount	%
757.01	Taxes State Franchise	182				182	0.00%
757.02	Taxes Personal Property	1,140				1,140	0.01%
757.03	Taxes Other	143				143	0.00%
758	Misc Expenses	10,869				10,869	0.10%
759	Bad Debt Expense	159,909				159,909	1.45%
760	Bank Fees	24,738				24,738	0.22%
761	Auto Expense	2,460				2,460	0.02%
761.01	Auto Expense-Mileage	62,295				62,295	0.56%
761.02	Auto Expense-Car Allowance	37,200	(37,200)	B		-	0.00%
763	Outside Service	247,917				247,917	2.24%
764	Travel	447,254				447,254	4.05%
765	Lodging	279,050				279,050	2.52%
766	Meals and Entertainment	61,959				61,959	0.56%
771	Depreciation	173,708				173,708	1.57%
771.01	Depreciation Furn and Fix	12,573				12,573	0.11%
772	Amortization Goodwill	1,271,942	(1,271,942)	E		-	0.00%
780	IT Consulting Services	1,116				1,116	0.01%
782	IT Hardware	66,845				66,845	0.60%
783	IT Software	733,923				733,923	6.64%
784	Internet/Fiber/Telephony	63,298				63,298	0.57%
784.01	CTR	215,515				215,515	1.95%
784.02	Phone Service	44,206				44,206	0.40%
786	IT Infrastructure	20,288				20,288	0.18%
799.02	Closing Costs - WES	128,765				128,765	1.16%
805	Interest Expense	821,630				821,630	7.43%
805.01	Interest Expense - Sellers Note	2,500				2,500	0.02%
821.01	Gain Loss on FX Translation-Unrealized	19,768				19,768	0.18%
	Total General Overhead	9,286,415	(1,320,004)			7,966,411	72.07%
	Total Indirect Costs & Overhead	27,309,375	(1,382,331)			25,927,044	234.56%
	Indirect Cost Rate	247.06%	234.56%			234.56%	

References

- A \$19,651.68 Adjustment for key person life insurance unallowable per 48 CFR 31.205-19(e)(2)(v)
- B \$37,200.00 Adjustment for Auto Allowance unallowable per 48 CFR 31.205-6(m)(2)
- C \$42,675.00 Adjustment for Bonus payments unsupported and not performance based unallowable per 48 CFR 31.205-6
- D \$10,862.50 Adjustment for legal costs in relation to litigation unallowable per 48 CFR 31.205-47(f)(5)
- E \$1,271,941.65 Adjustment for amortization of goodwill unallowable per 48 CFR 31.205-49

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
Tetra Tech

whose address is
2003 Western Avenue Seattle WA

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.

Tetra Tech, Inc.

Consultant (Firm Name)

DocuSigned by:

Gerard Scheller

10/31/2024

940BE18FF2EB4E1...
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 statues or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - D. Have not within a three (3) year period preceding this application / proposal had one or more public transactions (Federal, State and local) terminated for cause or default.
- II. Where the prospective primary participant is unable to certify to any of the statements in this certification such prospective participant shall attach an explanation to this proposal.

Tetra Tech, Inc.

Consultant (Firm Name)

DocuSigned by:

Gerard Scheller

10/31/2024

940BE18EF2EB4E1

Signature (Authorized Official of Consultant)

Date

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

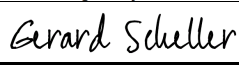
Exhibit “F-3” is required only in AGREEMENT’s over one hundred thousand dollars (\$100,000.00)

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, Tetra Tech, 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.

<small>DocuSigned by:</small>	
	10/31/2024
<small>940BE18EF2EB4E1</small>	
Signature (Authorized Official of Contractor)	Date

Gerard Scheller, Senior Project Manager

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.

EXHIBIT A, PG. 46 OF 50

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.