



# North Kitsap School District

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|                            |   |
|----------------------------|---|
| <b>Meeting:</b>            | May 10, 2018  |
| <b>Category:</b>           | Action  |
| <b>Subject:</b>            | Facilities Purchases and Capital Projects for summer 2018     |
| <b>Goal(s):</b>            | Effective and Efficient Operations                            |
| <b>Budget Implication:</b> | General Fund: \$237,711<br>Capital Projects Fund: \$2,708,756 |
| <b>Summary:</b>            | Recommendation for Capital Projects for summer 2018.          |

## Strategic Goals

- I. Success for All Students
  - A. Deliver instruction aligned to standards
  - B. Use instructional strategies to maximize student engagement and learning
  - C. Create safe and nurturing learning environments
  - D. Provide a variety of opportunities to meet the diverse needs of all students
- II. Stakeholder Support and Satisfaction
  - A. Optimize communication strategies which enhance transparency
  - B. Continuous district improvement based on stakeholder input
  - C. Increase stakeholder engagement
- III. Effective and Efficient Operations
  - A. Responsible allocation and expenditure of funds to meet district goals
  - B. Responsible stewardship of district assets
  - C. Clear and effective management systems

With the passage of the Capital Levy the possibility exists for us to start some Capital Projects early by making an Inter-fund Loan from the General Fund to the Capital Projects Fund. While getting projects going for this summer will be challenging, approval for some projects now will allow completions this summer. The candidate projects for this summer would include some turn-key projects that would be available to be contracted through purchasing cooperative such as KCDA, other state contracting

mechanisms, or potentially the small works roster with MRSC. Candidate Projects for this summer could include field drainage installation at NKHS baseball fields, Synthetic Turf replacements at Kingston and potentially Strawberry Field, Roofing jobs at Poulsbo Elementary, getting designs for ADA accessibility at NKHS and PMS fields.

| Project   | Quote status                              | Contracting type  | Quote     | Project Reserve | Total       |
|---|---|---|-----------|-----------------|-------------|
| NKHS Field Drainage   | Quote from GreenShield                    | KCDA  | \$198,000 | \$10,000        | \$208,000   |
| ADA access design for NKHS and PMS field                      | ROM estimate from Barker Creek Consulting | Service contract with local design                                |           |                 | \$100,000   |
| KHS Turf replacement  | Quote from Helas                          | KCDA  | \$712,475 | \$30,000        | \$742,475   |
| Strawberry turf replacement and upsize to standard size field | Quote from Helas                          | KCDA  | \$764,750 | \$40,000        | \$804,750   |
| Poulsbo Elementary Roofing                                    | Quote from Garland                        | US Communities purchasing coop                                    | \$328,826 | \$20,000        | \$348,826   |
| Suquamish partial Roof replacement                            | Quote from Garland                        | US Communities Purchasing coop                                    | \$49,705  | \$5,000         | \$54,705    |
| NKHS Gym Cooling replacement                                  | Internal ROM estimate                     |   |           |                 | \$70,000    |
| Vinland sewer   | Internal ROM estimate                     | Will need to bid or possibly use small works roster if <\$300,000 |           |                 | \$300,000   |
| Suquamish Elementary Playground                               | Internal ROM estimate                     |   |           |                 | \$80,000    |
|   |   |   |           | Total Capital   | \$2,708,756 |
|   |   |   |           |                 |             |

Replacement of synthetic turf protection mat that is used during graduation,

The Facilities department would like to replace the synthetic turf protection mat that is we currently use due to age related wear and performance issues since the product we own is over 10 years old.

The current product that we own, Event Deck 2 by Signature is over 10 years old and the majority of the “snap together” fasteners will no longer fasten or are broken off. The product is stored in preassembled 3’ x 4’ sections so they can be stacked on pallets and to save assembly time however, the majority of these sections will no longer remain together, regularly breaking into smaller sections. This continual breaking into smaller sections substantially increases the time required to lay down the product and requires staff to spend hours bending over as well as crawling on their hands and knees to reassemble the sections which increases the likelihood of generating an L&I claim. An additional issue is when the product is completely assembled it expands and contracts due to sunlight exposure. This process causes the fasteners to decouple and sections to pop out creating trip hazards. For these reasons I am recommending we purchase a different product.

Even though most all of the turf protection products satisfied some of my feature requirements, they were all fairly different. After a fair amount of research I found a product that I believe is head and shoulders above what we currently have and solves virtually all of its short comings. The product I’m recommending is, Matrax 4x4 LD Pedestrian. It comes in one 4’ x 4’ piece (so it does not break down into smaller pieces), assembles quickly, and has a positive cam lock mechanical fastener instead of a snap. These features should not only make assembly safer but should reduce the time and staff required to lay down the entire job.

We are working with the company and KCDA to set up the purchase of the product through KCDA, but should this effort fail we would like to sole source the product. The sole source justification is that the Maxtrax product provides the largest component pieces we could find which reduce installation time while being comparable in cost per square foot to other event deck products.

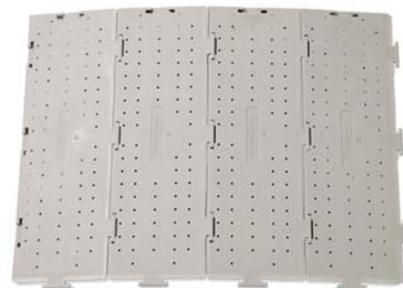
With Board approval by May I am fairly confident that I can have the product in time to use at the graduation ceremony this year.

Proposed Product - Matrax 4x4 LD Pedestrian

Current Product - Event Deck 2 by Signature

4 feet by 4 feet shown

16 inches by 12 inches shown



Quote for Maxtrax \$95,628.00 with reserve expect \$100,628. This is a general fund expense.

## HVAC work

Much of the capital levy was allocated for HVAC replacements. Until the Facility Condition Assessment is complete and we have better data for future facility plans we will not want to replace HVAC systems. However, we do have several buildings that will not require complete HVAC replacement, but are not operating efficiently. KHS, Pearson, NKHS, Suquamish all got new HVAC systems approximately 10 years ago. KHS has a recently discovered design problem with air balance and clogged heating coils. Pearson has a recently discovered problem with its system as well. By performing a retro-active commissioning of the HVAC systems that will not require a full replacement we will increase the level of service to these buildings while also likely increasing the overall system lifetime. Washington Department of Enterprise Services has a vetted commissioning contractor list. McKinstry has quoted this for \$127,073 with a \$10,000 DES fee for a total \$137,073. This is a general fund expense. The interlocal agreement for DES is attached.

# ***Interagency Agreement***

Date: May 1, 2018

*Department of Enterprise Services*

Interagency Agreement No: K5278

**Interagency Agreement Between the  
State of Washington  
Department of Enterprise Services  
and  
North Kitsap School District**

This Agreement, pursuant to Chapter 39.34 RCW, is made and entered into by and between the Department of Enterprise Services, Engineering & Architectural Services, hereinafter referred to as “DES”, and North Kitsap School District, hereinafter referred to as the “CLIENT AGENCY”.

The purpose of this Agreement is to establish a vehicle for DES to provide future Building Commissioning Oversight Services to the CLIENT AGENCY.

Now therefore, in consideration of the terms and conditions contained herein, or attached and incorporated by reference and made a part hereof, the above-named parties mutually agree as follows:

## **1. Statement of Work**

DES shall furnish the necessary personnel and services and otherwise do all things necessary for or incidental to the performance of the work set forth in Attachment “A”, attached hereto and incorporated herein by reference. Unless otherwise specified, DES shall be responsible for performing all fiscal and program responsibilities as set forth in Attachment “A”. All work shall be authorized by Amendment to this Agreement.

## **2. Terms and Conditions**

All rights and obligations of the parties to this Agreement shall be subject to and governed by the terms and conditions contained in the text of this Agreement.

## **3. Period of Performance**

Subject to its other provisions, the period of performance of this Agreement shall commence when this Agreement is properly signed, and be completed on **December 31, 2022** unless altered or amended as provided herein.

## **4. Consideration**

Compensation under this Agreement shall be by Amendment to this Agreement for each authorized project. Each Amendment will include a payment schedule for the specific project.

For Building Commissioning Oversight Services provided by DES under Attachment “A” of this Agreement, the CLIENT AGENCY will pay DES a Project Oversight Fee for services based on the total project value per Project Oversight Fees Schedule set forth in Attachment “B”.

Compensation for services provided by the Commissioning Consultant shall be paid directly to the Commissioning Consultant by the CLIENT AGENCY, after DES has reviewed, approved and sent the invoices to the CLIENT AGENCY for payment.

## **5. Billing Procedure**

DES shall submit a single invoice to the CLIENT AGENCY after the Commissioning Consultant’s fee has been determined and accepted by the CLIENT AGENCY, unless a project specifies a Special Billing Condition in the Agreement. The invoice will indicate clearly that it is for the services rendered in performance under this Agreement and shall reflect the Agreement number.

DES will invoice for any remaining services within 60 days of the termination of this Agreement.

## **6. Payment Procedure**

The CLIENT AGENCY shall pay all invoices received from DES within 90 days of receipt of properly executed invoice vouchers. The CLIENT AGENCY shall notify DES in writing if the CLIENT AGENCY cannot pay an invoice within 90 days.

## **7. Non-Discrimination**

In the performance of this Agreement, DES shall comply with the provisions of Title VI of the Civil Rights Act of 1964 (42 USC 200d), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), and Chapter 49.60 RCW, as now or hereafter amended. DES shall not discriminate on the grounds of race, color, national origin, sex, religion, marital status, age, creed, Vietnam-Era and Disabled Veterans status, or the presence of any sensory, mental, or physical disability in:

- a) Any terms or conditions of employment to include taking affirmative action necessary to accomplish the objectives of this part and
- b) Denying an individual the opportunity to participate in any program provided by this Agreement through the provision of services, or otherwise afforded others.

In the event of DES’s non-compliance or refusal to comply with the above provisions, this Agreement may be rescinded, canceled, or terminated in whole or in part, and DES declared ineligible for further Agreement with the CLIENT AGENCY. DES shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the “Disputes” procedure set forth therein.

## 8. Records Maintenance

The CLIENT AGENCY and DES shall each maintain books, records, documents, and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the services described herein. These records shall be subject to inspection, review, or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. DES will retain all books, records, documents, and other material relevant to this agreement for six years after expiration; and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

## 9. Contract Management

- a. The CLIENT AGENCY Representative on this Agreement shall be:

Bill Wilson, CFM, FMP  
Director of Facilities, Maintenance and Capital Programs  
North Kitsap School District  
1365 Finn Hill Rd. NW  
Poulsbo, WA 98370  
Telephone (360) 396-3055  
Email: [WWilson@nkschools.org](mailto:WWilson@nkschools.org)

The Representative shall be responsible for working with DES, approving billings and expenses submitted by DES, and accepting any reports from DES.

- b. The DES Project Manager on this Agreement shall be:

Joe Sullivan  
Energy Engineer  
Department of Enterprise Services  
Engineering and Architectural Services  
PO Box 41476  
Olympia, WA 98504-1476  
Telephone (360) 407-9377  
Email: [joe.sullivan@des.wa.gov](mailto:joe.sullivan@des.wa.gov)

Joe Sullivan will be the contact person for all communications regarding the conduct of work under this Agreement.

## 10. Hold Harmless

Each party to this Agreement shall be responsible for its own acts and/or omissions and those of its officers, employees and agents. No party to this Agreement shall be responsible for the acts and/or omissions of entities or individuals not a party to this Agreement.

## **11. Agreement Alterations and Amendments**

The CLIENT AGENCY and DES may mutually amend this Agreement. Such Amendments shall not be binding unless they are in writing and signed by personnel authorized to bind the CLIENT AGENCY and DES or their respective delegates.

## **12. Termination**

Except as otherwise provided in this Agreement, either party may terminate this Agreement upon thirty (30) days written notification. If this Agreement is so terminated, the terminating party shall be liable only for performance in accordance with the terms of this Agreement for performance rendered prior to the effective date of termination.

## **13. Disputes**

If a dispute arises under this Agreement, it shall be determined in the following manner: The CLIENT AGENCY shall appoint a member to the Dispute Board. The Director of DES shall appoint a member to the Dispute Board. The CLIENT AGENCY and DES shall jointly appoint a third member to the Dispute Board. The Dispute Board shall evaluate the dispute and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto.

## **14. Order of Precedence**

In the event of an inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

- a) Applicable Federal and State Statutes and Regulations
- b) Terms and Conditions
- c) Attachment "A", Project Management Scope of Work; Attachments "B", Project Management Fees, and
- d) Any other provisions of the Agreement incorporated by reference.

**15. All Writings Contained Herein**

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

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**AUTHORIZATION TO PROCEED**

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Agreed to and signed by:

**North Kitsap School District**

**Department of Enterprise Services  
Engineering & Architectural Services**

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Signature

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Signature

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Jason Rhoads

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Roger A. Wigfield, P.E.,

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Name

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Name

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Executive Director Business Finance & Op.

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Energy Program Manager

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Title

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Title

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Date

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Date

The Department of Enterprise Services provides equal access for all people without regard to race, creed, color, religion, national origin, age, gender, sex, marital status, or disability. Contract information is available in alternative formats. For more information, please call Terrie Glave at (360) 407-9330.

K5278IAAgrko

# ATTACHMENT A

## Scope of Work

### Building Commissioning Statewide Commissioning Selection No. 2017-813

DES will provide the following project management services for each specific project for the CLIENT AGENCY. Each individual project shall be authorized by Amendment to this Agreement.

1. Assist the facility representative(s) in the selection of a building commissioning consultant.
2. Manage the commissioning process.
3. Develop building commissioning scope of work with facility representative(s).
4. Negotiate commissioning fee in conjunction with the facility representative(s).
5. Attend building commissioning kick-off meeting.
6. Review and approve the commissioning plan.
7. Review functional performance test procedures.
8. Review commissioning findings.
9. Review and approve the final commissioning report.
10. Attend select commissioning meetings.
11. Review and approve Consultant invoice vouchers for payment.
12. Review other services as required to complete the oversight of the building commissioning project.

# ATTACHMENT B

2017-2019  
Fee Schedule  
For Building Commissioning Oversight Services

| <u>TOTAL COMMISSIONING<br/>PROJECT COST</u> | <u>PROJECT<br/>MANAGEMENT FEE</u> |
|---|-----------------------------------|
| \$400,000 or more                           | 3.5% of commissioning cost        |
| Below 400,000                               | \$15,000                          |
| " 200,000                                   | 13,000                            |
| " 150,000                                   | 10,000                            |
| " 100,000                                   | 9,000                             |
| " 90,000                                    | 8,600                             |
| " 80,000                                    | 8,250                             |
| " 70,000                                    | 7,900                             |
| " 60,000                                    | 7,500                             |
| " 50,000                                    | 6,750                             |
| " 40,000                                    | 6,000                             |
| " 30,000                                    | 5,000                             |
| " 20,000                                    | 4,000                             |
| " 10,000                                    | 3,000                             |

# **INTERAGENCY Amendment**

*Department of Enterprise Services*

Date: May 1, 2018  
Agreement No: K5278  
Project No.: 2018-744  
Amendment No: 1

**Interagency Agreement Between the  
State of Washington  
Department of Enterprise Services  
and  
North Kitsap School District**

The parties to this Agreement, the Department of Enterprise Services, Engineering & Architectural Services, hereinafter referred to as “DES”, and North Kitsap School District, hereinafter referred to as the “CLIENT AGENCY”, hereby amend the Agreement as follows:

## **1. Statement of Work**

DES shall furnish the necessary personnel and services and otherwise do all things necessary for or incidental to the performance of the work set forth in Attachment “A”. Unless otherwise specified, DES shall be responsible for performing all fiscal and program responsibilities as set forth in Attachment “A”.

Energy/Utility Conservation projects shall be authorized by Amendment to this Agreement.

### **1.1 Existing Buildings Commissioning outlined in the McKinstry Essention, LLC Energy Services Proposal dated April 27, 2018.**

## **4. Consideration**

Compensation under this Agreement shall be by Amendment to this Agreement for each authorized project. Each Amendment will include a payment schedule for the specific project.

For Building Commissioning Oversight Services provided by DES under Attachment “A” of this Agreement, the CLIENT AGENCY will pay DES a Project Management Fee for services based on the total commissioning project cost per Building Commissioning Oversight Services Fee Schedule set forth in Attachment “B”.

### **4.1 Commissioning Oversight Services Fee for the work described in Section 1.1 is \$10,000.00. Anticipated billing date for this Amendment is November 1, 2018.**

**The new total Agreement value is \$10,000.00.**

Compensation to the Commissioning Consultant for commissioning services shall be paid directly by the CLIENT AGENCY, after DES have reviewed and approved the Consultant's invoice for payment.

All sections above have been fully amended and are shown in their entirety.

All other terms and conditions of this Agreement remain in full force and effect. The requirements of RCW 39.34.030 are satisfied by the underlying Agreement and are incorporated by reference herein.

Each party signatory hereto, having first had the opportunity to read this Amendment and discuss the same with independent legal counsel, in execution of this document hereby mutually agree to all terms and conditions contained herein, and as incorporated by reference in the original Agreement.

**North Kitsap School District**

**Department of Enterprise Services  
Engineering & Architectural Services**

\_\_\_\_\_  
\_\_\_\_\_  
Title Date

\_\_\_\_\_  
Roger A. Wigfield, P.E.,  
Energy Program Manager  
\_\_\_\_\_  
Title Date

K5278IAAamd1ko

Interagency Agreement No. \_\_\_\_



STATE OF WASHINGTON  
DEPARTMENT OF ENTERPRISE SERVICES  
1500 Jefferson Street SE, Olympia, WA 98501

May 1, 2018

TO: Jason Rhoads, North Kitsap School District  
FROM: Terrie Glave, Contracts Specialist, (360) 407-9330  
RE: Agreement No. 2018-744 A (1)  
Existing Buildings Commissioning  
McKinstry Essention, LLC  
SUBJECT: Funding Approval

The Department of Enterprise Services, Engineering & Architectural Services, requires funding approval for the above referenced contract document. The amount required is as follows:

|                                 |                     |
|---------------------------------|---------------------|
| Basic Design Services           | \$127,073.00        |
| Additional Services             | \$ 0.00             |
| Additional Services Contingency | \$ 0.00             |
| <b>TOTAL</b>                    | <b>\$127,073.00</b> |

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**In accordance with the provisions of RCW 43.88, the signature affixed below certifies to Engineering & Architectural Services that the above identified funds are appropriated, allotted, and that the using/client agency bears the liability for any issues related to the funding for this project.**

By \_\_\_\_\_  
Name / Title Date

Please sign and return this form to E&AS. If you have any questions, please call me.

2018744Aagrfundko

**CONSULTANT SERVICES AGREEMENT**

Existing Buildings Commissioning

Agreement No. 2018-744 A (1)

North Kitsap School District

Date: May 1, 2018

The Owner and the Consultant named below do hereby enter into an Agreement under the terms described in the following Articles:

- |  |                                 |
|--|---------------------------------|
| I. Authorization to Proceed                    | IV. Compensation                |
| II. Compensation Summary                       | V. MWBE Utilization             |
| III. Scope of Work and Schedule of Performance | VI. Conditions of the Agreement |

**I. AUTHORIZATION TO PROCEED**

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Consultant:

Owner:

McKinstry Essention, LLC  
PO Box 24567  
Seattle, WA 98124  
Phone (206) 762-3311  
Fax (206) 658-1769  
E-mail address: [ContractsDept@mckinstry.com](mailto:ContractsDept@mckinstry.com)

North Kitsap School District  
Acting through the  
Department of Enterprise Services  
Engineering & Architectural Services

*I certify by signing below that my professional licenses and Washington State business licenses are current.*

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Roger A. Wigfield, P.E.,  
Title Energy Program Manager

Date \_\_\_\_\_

Date \_\_\_\_\_

UBI No. 603 259 907

Fed. Tax Id. No. 46-1563231

MWBE Certification No. \_\_\_\_\_

*A fully executed copy of this Agreement shall serve as the Consultant's official authorization to proceed with the work of this Agreement.*

**II. COMPENSATION SUMMARY**

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|                                  |                     |
|----------------------------------|---------------------|
| Basic Services Compensation      | \$127,073.00        |
| Additional Services Compensation | \$ <u>0.00</u>      |
| Not to Exceed Agreement Total    | <b>\$127,073.00</b> |

### **III. SCOPE OF WORK AND SCHEDULE OF PERFORMANCE**

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#### **A. Scope of Services for Basic Services**

Provide commissioning of HVAC systems at Hilder, Pearson and Suquamish Elementary Schools. As well as Kingston and North Kitsap High Schools per McKinstry Essention, LLC proposal dated April 27, 2018.

Consultant Selection was completed under Project No. 2017-813 B.

#### **B. Schedule of Performance**

Services provided to be complete by September 30, 2018.

#### **C. Additional Services**

Changes to the Services described above shall be considered Additional Services only when agreed to in advance by the Owner and the Consultant that such changes constitute a material addition or change to the previously authorized Services. Such additions and/or changes shall be authorized by the Owner in the form of an Amendment to this Agreement, setting forth the scope of work, schedule of performance, and compensation in accordance with Article VI, section H.

### **IV. COMPENSATION**

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#### **A. Basic Services Compensation**

Compensation for rendering Basic Services shall be \$127,073.00, which shall include all expenses the Consultant may incur on behalf of the project.

#### **B. Additional Services Compensation**

If it is agreed that the Consultant's Additional Services compensation shall be made on a time and expense, not to exceed basis rather than a lump sum, the following rates shall apply:

Principals of the Firm - Maximum rate, U.S. dollars per hour:

- |   |              |
|---|--------------|
| (a) When performing duties as principal | (a) \$200.00 |
| (b) When working on project production  | (b) \$150.00 |

Employees of the Firm - Multiplier:

- |  |         |
|--|---------|
| (a) Multiplier times employees direct salary<br>(Multiplier shall compensate the A/E for overhead and profit. Direct salary does not include fringe benefits.) | (a) 3.2 |
|--|---------|

(b) Shall not exceed (b) \$150.00

Subconsultants:

(a) A/E handling fee for subconsultants (a) 10%

The maximum Principal and Employee rates used above for the Consultant shall also apply for subconsultants.

**C. Reimbursable Expenses**

1. Travel: Travel within a 50 mile radius is not reimbursable. Travel between a 50 and 350 mile radius may be negotiated as an additional service at not greater than the approved state rate (see OFM guidelines: <http://www.ofm.wa.gov/resources/travel.asp>). Any cost reimbursement for travel beyond the 350 mile radius requires written justification and prior approval from the Owner. Per Diem Rates shall be in accordance with OFM guidelines.
2. Miscellaneous, routine overhead expenses incurred in the normal process of performing basic services or authorized additional services such as telephone costs, mail, clerical supplies, computer, copying, fax, transportation, etc. are not reimbursable.

**V. DIVERSE BUSINESS INCLUSION**

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The Consultant is required to register and create an account in the DES Diversity Compliance program (B2Gnow) at <https://des.diversitycompliance.com>.

The following diverse business participation goals have been established for this project (inclusion plan is required if fee is over \$350,000.00, <http://www.des.wa.gov/services/facilities/Construction/Forms/Pages/Forms.aspx>)

|                                    |     |
|------------------------------------|-----|
| Minority Business Enterprise (MBE) | 10% |
| Women Business Enterprise (WBE)    | 6%  |
| Washington Small Business          | 5%  |
| Veteran-owned Business             | 5%  |

Achievement of the goals is encouraged. The Consultant may contact the Office of Minority and Women’s Business Enterprises (OMWBE) at <http://omwbe.wa.gov/> to obtain information on certified firms for potential subconsultants. The Consultant may also utilize Washington Small Businesses registered in WEBS at <https://fortress.wa.gov/ga/webs/> and Veteran-owned Businesses at <http://www.dva.wa.gov/program/certified-veteran-and-servicemember-owned-businesses>.

## **VI. CONDITIONS OF THE AGREEMENT**

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### **A. Owner's Responsibilities**

1. Upon request, the Owner shall promptly furnish to the Consultant such information and documents within its control and possession to the extent the Owner agrees is necessary for the performance of the services.
2. The Owner shall designate representatives authorized to act in the Owner's behalf. References in this Agreement to "Owner" shall include the Owner's designated representative. The representatives shall examine the documents submitted by the Consultant, consult with the Consultant on problems as they may arise, coordinate the Owner's services with those of the Consultant, render decisions and advise the Consultant promptly in order to avoid any unreasonable delay in the progress of the Consultant's work.

### **B. Consultant's Basic Services**

1. The Consultant shall perform the services as expeditiously as is consistent with the orderly progress of the work and to the degree of professional skill, care and judgment commensurate with that which is normally exercised by recognized professional firms performing similar services under similar circumstances to the Services required for this Project.
2. The Consultant shall perform the services in accordance with the schedule specified in Article III. B., Schedule of Performance. It shall be the Consultant's responsibility to promptly inform the Owner of any deviations from the schedule.
3. The Consultant shall, with the Owner's concurrence, designate any Subconsultants as may be necessary to fully accomplish the Services. Upon request, the Consultant shall furnish to the Owner a copy of the Consultant's contract(s) with its Subconsultants.
4. The Consultant shall cooperate with the Owner and shall coordinate its services with related work performed by the Owner and others.
5. The Consultant shall provide sufficient numbers of copies, as requested by the Owner, of draft and complete final project documents and reports called for in Article III. A., Scope of Services. Such documents and reports shall include, but not necessarily be limited to presentation materials, surveys, studies, drawings, maps, photographs, assessments, calculations, computer program files on electronic media and any other supportive data and materials as the Owner may reasonably require.
6. In the performance of this Agreement, the Consultant shall act as an independent contractor, maintaining full and complete control and responsibility for and over the Consultant's employees.

### **C. Payments to the Consultant**

1. Payments shall be made monthly upon submittal to the Owner of the Consultant's invoice for services, in a form designated by the Owner.
2. If the Consultant and the Owner cannot agree to a sum for an additional service, the Owner reserves the right to employ other means to accomplish the work.
3. Payment for Additional Services is subject to the conditions of Article III, C.

### **D. Successors and Assigns**

The Consultant shall not sublet, or transfer this Agreement or any right or interest in this Agreement without the prior written consent of the Owner. Any such assignment made without the Owner's consent shall be void at the Owner's option.

**Assignment by Consultant.** With the prior written consent of Owner, the Consultant may assign this Agreement including the proceeds hereof, provided that such assignment shall not relieve the Consultant of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to Owner that may arise from any breach of the sections of this Contract, or warranties made herein including but not limited to, rights of setoff.

### **E. Non-Discrimination**

Except to the extent permitted by a bona fide occupational qualification, the Consultant agrees as follows:

1. The Consultant shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, marital status, sex, age or the presence of any sensory, mental, or physical handicap. The Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, national origin, marital status, sex, age or the presence of any sensory, mental, or physical handicap. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training.
2. The Consultant shall in all solicitation for employees or job orders for employees placed with any employment agency, union, or other firm or agency, state that all qualified applicants shall receive consideration for employment without regard to race, creed, color, national origin, marital status, sex, age or the presence of any sensory, mental, or physical handicap. The words "equal opportunity employer" in advertisements shall constitute compliance with this Article.
3. The Consultant shall include the provisions of the foregoing paragraphs 1 and 2 in every sub-agreement or purchase order for the goods or services which are the subject matter of this Agreement.

4. In the event of non-compliance by the Consultant with any of the non-discrimination provisions of the Agreement, the Owner shall have the right, at its option, to cancel the Agreement, in whole or in part. If the Agreement is canceled after partial performance, the Owner shall be obligated to pay fair market value or the Agreement price, whichever is lower, for goods or services which have been received and accepted.

## **F. Termination of Agreement**

1. Termination for Cause:

If, through any cause, the Consultant shall fail to fulfill in a timely and proper manner the Consultant's obligations under this Agreement, or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Agreement, the Owner may terminate this Agreement by giving written notice to the Consultant of such termination. The notice shall specify the effective date of termination and shall be given at least five (5) days before that date. Upon receipt of such notice, the Consultant shall perform no further services covered by this Agreement. Upon termination, for cause, all finished or unfinished documents, data, studies, surveys, drawings maps, models, photographs, and reports prepared by the Consultant shall, at the option of the Owner, become the Owner's property. The Consultant shall be entitled to receive just compensation for any satisfactory work completed on such documents and other materials. The Consultant shall remain liable to the Owner for any damages resulting from any breach of this Agreement by the Consultant; and the Owner may withhold reasonable amounts owed to the Consultant as setoff until the amount of damages due the Owner from the Consultant is determined.

2. Termination for Convenience of Owner:

The Owner may terminate this Agreement at any time by written notice to the Consultant. Upon termination, all finished or unfinished documents and other materials as described in paragraph 1, above, of this Article, shall, at the Owner's option, become the Owner's property. If the Agreement is terminated by the Owner under this paragraph, the Consultant shall be paid an amount which bears the same ratio of the total compensation as the services actually performed bear to the total services of the Consultant covered by this Agreement; provided, however, that if less than sixty percent (60%) of the total services covered by this Agreement have been performed upon the effective date of such termination, the Consultant shall also be reimbursed for that portion of the Consultant's actual out-of-pocket expenses (not otherwise reimbursed under this Agreement) directly attributable to the uncompleted services covered by this Agreement.

3. Termination for Convenience of Consultant:

The Consultant may terminate this Agreement at any time by written notice to the Owner. Upon termination, all finished or unfinished documents and other materials as described in paragraph 1, above, of this Article, shall, at the Owner's option, become the Owner's property. If the Agreement is terminated by the Consultant,

the Consultant's compensation shall be as negotiated between the Owner and the Consultant.

**G. Governing Law**

This contract shall be governed by the laws of the State of Washington. In the event of a lawsuit involving this contract, venue shall be proper only in Thurston County. The Consultant by execution of this contract, acknowledges the jurisdiction of the courts of the state of Washington in this matter.

**H. Other Conditions**

This Agreement represents the entire Agreement of the parties, and supersedes any and all prior agreements, with respect to the Services. No amendment or modification of any provision of this Agreement shall be valid unless set forth in a written amendment to this Agreement signed by the Owner and the Consultant.

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