

RESOLUTION NO. 1649

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES CONTRACT WITH H.W. LOCHNER, INC. FOR DESIGN AND CONSTRUCTION MANAGEMENT WORK FOR THE 70TH AVE. EAST PAVEMENT PRESERVATION PROJECT

WHEREAS, The City's 2015/2016 biennial budget includes \$1,350,000 for the design and construction of the replacement of the asphalt pavement on 70th Ave E from the Union Pacific Rail Road to 43rd Street East; and

WHEREAS, the project is supported by a \$750,000 federal grant provided by the Puget Sound Regional Council (PSRC) for construction and \$600,000 from a combination of the public safety and general fund; and

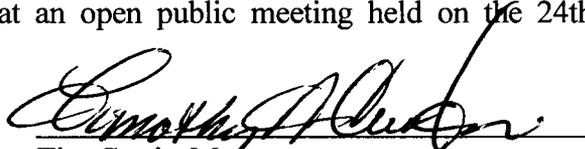
WHEREAS, the Project includes reconstruction of non-compliant curb ramps to meet ADA (Americans with Disabilities Act) standards; and

WHEREAS, City staff advertised for consultants for design construction management work for the Project and after an interview process selected H.W. Lochner, Inc. as most qualified; and

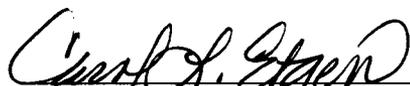
WHEREAS, City staff has negotiated a scope of work and contract terms with H.W. Lochner, Inc. for a Local Agency A & E Professional Services Cost Plus Fixed Fee Consultant Agreement, attached hereto as Exhibit A; now therefore

BE IT RESOLVED that the Fife City Council hereby authorizes the City Manager to execute the Local Agency A & E Professional Services Cost Plus Fixed Fee Consultant Agreement with H.W. Lochner, Inc. attached hereto as Exhibit A, for design and construction management work for the 70th Ave E from the Union Pacific Rail Road to 43rd Street East pavement preservation project.

ADOPTED by the City Council at an open public meeting held on the 24th day of February, 2015.


Tim Curtis, Mayor

Attest:


Carol Egen, City Clerk

Local Agency A&E Professional Services Cost Plus Fixed Fee Consultant Agreement

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Firm/Organization Legal Name (do not use dba's): H.W. Lochner, Inc.		
Address 915 118th Ave SE, Suite 130, Bellevue, WA 98005	Remit to Address 915 118th Ave SE, Suite 130, Bellevue, WA 98005	
UBI Number 600139168	Federal TIN or SSN Number 36-2338811	
Execution Date	Completion Date November 31, 2015	
1099 Form Required <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Federal Participation <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Description of Work Project Name: 70th Avenue East Preservation. The City of Fife plans to resurface 70th Avenue East by grinding the pavement, repair failed areas and then overlay with new HMA, adjustment of monuments and utilities, replacement of pavement markings, and upgrade of substandard pedestrian access ramps. The roadway is part of the National Highway System and will be designed and constructed using federal funding. and the construction will be managed by the consultant. This scope of services is for design, minor field data collection for pavement, utility locations and accessible pedestrian curb ramp design and PS&E to be incorporated into a bid set, together with construction management, documentation and observation services for the project.		
<input type="checkbox"/> Yes <input type="checkbox"/> Yes <input type="checkbox"/> Yes <input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No DBE Participation <input checked="" type="checkbox"/> No MBE Participation <input checked="" type="checkbox"/> No WBE Participation <input checked="" type="checkbox"/> No SBE Participation	Total Amount Authorized: \$192,335.00 Management Reserve Fund: \$19,200.00 Maximum Amount Payable: \$211,535.00

Index of Exhibits

Exhibit A	Scope of Work
Exhibit B	DBE Participation
Exhibit C	Preparation and Delivery of Electronic Engineering and Other Data
Exhibit D	Prime Consultant Cost Computations
Exhibit E	Sub-consultant Cost Computations
Exhibit F	Title VI Assurances
Exhibit G	Certification Documents
Exhibit H	Liability Insurance Increase
Exhibit I	Alleged Consultant Design Error Procedures
Exhibit J	Consultant Claim Procedures

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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 The City of Fife hereinafter called the "AGENCY," and the "Firm / Organization Name" referenced on page one (1) of this AGREEMENT, hereinafter called the "CONSULTANT."

WHEREAS, the AGENCY desires to accomplish the work referenced in "Description of Work" on page one (1) of this AGREEMENT and hereafter called the "SERVICES;" and does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary SERVICES; and

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

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

I. General Description of Work

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

II. General Scope of Work

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

III. General Requirements

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

The CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, which will outline in written and graphical form the various phases and the order of performance of the SERVICES in sufficient detail so that the progress of the SERVICES can easily be evaluated.

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

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

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

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

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

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

If to AGENCY:

Name: Ken Gill
Agency: City of Fife
Address: 3725 Pacific Highway East
City: Fife State: WA Zip: 98424
Email: kgill@cityoffife.org
Phone: (253) 922-2489
Facsimile: (253) 896-8651

If to CONSULTANT:

Name: Aaron Butters
Agency: H.W. Lochner, Inc.
Address: 915 118th Ave SE, Suite 130
City: Bellevue State: WA Zip: 98005
Email: abutters@hwlochner.com
Phone: (360) 438-2837
Facsimile: (425) 455-8543

IV. Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT titled "Completion Date."

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

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V. Payment Provisions

The CONSULTANT shall be paid by the AGENCY for completed SERVICES rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for SERVICES performed or SERVICES rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete SERVICES, specified in Section II, "Scope of Work". The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31 (www.ecfr.gov). The estimate in support of the Cost Plus Fixed Fee amount is attached hereto as Exhibits "D" and "E" and by this reference made part of this AGREEMENT.

- A. Actual Costs: Payment for all consulting services for this PROJECT shall be on the basis of the CONSULTANT'S actual cost plus a fixed fee. The actual cost shall include direct salary cost, indirect cost rate, and direct non-salary costs.
1. Direct (RAW) Labor Costs: The Direct (RAW) Labor Cost is the direct salary paid to principals, professional, technical, and clerical personnel for the time they are productively engaged in work necessary to fulfill the terms of this AGREEMENT. The CONSULTANT shall maintain support data to verify the direct salary costs billed to the AGENCY.
 2. Indirect Cost Rate (ICR) Costs: ICR Costs are those costs, other than direct costs, which are included as such on the books of the CONSULTANT in the normal everyday keeping of its books. Progress payments shall be made at the ICR rates shown in attached Exhibits "D" and "E" of this AGREEMENT. Total ICR payment shall be based on Actual Costs. The AGENCY agrees to reimburse the CONSULTANT the actual ICR costs verified by audit, up to the Maximum Total Amount Payable, authorized under this AGREEMENT, when accumulated with all other Actual Costs.

A summary of the CONSULTANT'S cost estimate and the ICR percentage is shown in Exhibits "D" and "E", attached hereto and by this reference made part of this AGREEMENT. The CONSULTANT (prime and all sub-consultants) will submit to the AGENCY within six (6) months after the end of each firm's fiscal year, an ICR schedule in the format required by the AGENCY (cost category, dollar expenditures, etc.) for the purpose of adjusting the ICR rate for billings received and paid during the fiscal year represented by the ICR schedule. It shall also be used for the computation of progress payments during the following year and for retroactively adjusting the previous year's ICR cost to reflect the actual rate. The ICR schedule will be sent to Email: ConsultantRates@wsdot.wa.gov.

Failure to supply this information by either the prime CONSULTANT or any of their sub-consultants shall cause the AGENCY to withhold payment of the billed ICR costs until such time as the required information is received and an overhead rate for billing purposes is approved.

The AGENCY's Project Manager and/or the Federal Government may perform an audit of the CONSULTANT'S books and records at any time during regular business hours to determine the actual ICR rate, if they so desire.

3. Direct Non-Salary Costs: Direct Non-Salary Costs will be reimbursed at the Actual Cost to the CONSULTANT. These charges may include, but are not limited to, the following items: travel, printing, long distance telephone, supplies, computer charges and fees of sub-consultants. Air or train travel will be reimbursed only to economy class levels unless otherwise approved by the AGENCY. The CONSULTANT shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance with WSDOT's Accounting Manual M 13-82, Chapter 10 – Travel Rules and Procedures, and revisions thereto. Air, train, and rental car costs shall be reimbursed in accordance with 48 Code of Federal Regulations (CFR) Part 31.205-46 "Travel Costs." The billing for Direct Non-Salary Costs shall include an itemized listing of the charges directly identifiable with the PROJECT. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the AGENCY upon request. All above charges must be necessary for the services provided under this AGREEMENT.

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4. **Fixed Fee:** The Fixed Fee, which represents the CONSULTANT'S profit, is shown in attached Exhibits "D" and "E" of this AGREEMENT. This fee is based on the Scope of Work defined in this AGREEMENT and the estimated person-hours required to perform the stated Scope of Work. In the event the CONSULTANT enters into a supplemental AGREEMENT for additional work, the supplemental AGREEMENT may include provisions for the added costs and an appropriate additional fee. The Fixed Fee will be prorated and paid monthly in proportion to the percentage of work completed by the CONSULTANT and reported in the Monthly Progress Reports accompanying the billings. Any portion of the Fixed Fee earned but not previously paid in the progress payments will be covered in the final payment, subject to the provisions of Section IX entitled "Termination of Agreement."
 5. **Management Reserve Fund (MRF):** The AGENCY may desire to establish MRF to provide the Agreement Administrator with the flexibility to authorize additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$100,000 or 10% of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the MRF is shown in the heading of this AGREEMENT. This fund may not be replenished. Any changes requiring additional costs in excess of the MRF shall be made in accordance with Section XIII, "Changes of Work."
 6. **Maximum Total Amount Payable:** The Maximum Total Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The Maximum Total Amount Payable is comprised of the Total Amount Authorized, and the MRF. The Maximum Total Amount Payable does not include payment for Extra Work as stipulated in Section XIII, "Changes of Work." No minimum amount payable is guaranteed under this AGREEMENT.
- B. **Monthly Progress Payments:** The CONSULTANT may submit billings to the AGENCY for reimbursement of Actual Costs plus the ICR and calculated fee on a monthly basis during the progress of the work. Such billings shall be in a format approved by the AGENCY and accompanied by the monthly progress reports required under Section III, "General Requirements" of this AGREEMENT. The billings will be supported by an itemized listing for each item including Direct (RAW) Labor, Direct Non-Salary, and allowable ICR Costs to which will be added the prorated Fixed Fee. To provide a means of verifying the billed Direct (RAW) Labor costs for CONSULTANT employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, Direct (RAW) Labor rates, and present duties of those employees performing work on the PROJECT at the time of the interview.
- C. **Final Payment:** Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the work under this AGREEMENT, contingent, if applicable, upon receipt of all PS&E, plans, maps, notes, reports, electronic data and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such Final Payment by the CONSULTANT shall constitute a release of all claims for payment, which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit; all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the AGENCY within thirty (30) calendar days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment. The CONSULTANT has twenty (20) working days after receipt of the final POST AUDIT to begin the appeal process to the AGENCY for audit findings.

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D. Inspection of Cost Records: The CONSULTANT and their sub-consultants shall keep available for inspection by representatives of the AGENCY and the United States, for a period of six (6) years after receipt of final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this AGREEMENT is initiated before the expiration of the six (6) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

An interim or post audit may be performed on this AGREEMENT. The audit, if any, will be performed by the State Auditor, WSDOT's Internal Audit Office and/or at the request of the AGENCY's Project Manager.

VI. Sub-Contracting

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

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

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

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

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

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

The CONSULTANT, sub-recipient, or sub-consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as the recipient deems appropriate.

VII. Employment and Organizational Conflict of Interest

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the AGENCY shall have the right to annul this AGREEMENT without liability or, in its discretion, to deduct from this AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may arise under any Workmen's

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Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full- or part-time basis, or other basis, during the period of this AGREEMENT, any professional or technical personnel who are, or have been, at any time during the period of this AGREEMENT, in the employ of the United States Department of Transportation or the AGENCY, except regularly retired employees, without written consent of the public employer of such person if he/she will be working on this AGREEMENT for the CONSULTANT.

VIII. Nondiscrimination

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

- Title VI of the Civil Rights Act of 1964
(42 U.S.C. Chapter 21 Subchapter V § 2000d through 2000d-4a)
- Federal-aid Highway Act of 1973
(23 U.S.C. Chapter 3 § 324)
- Rehabilitation Act of 1973
(29 U.S.C. Chapter 16 Subchapter V § 794)
- Age Discrimination Act of 1975
(42 U.S.C. Chapter 76 § 6101 *et. seq.*)
- Civil Rights Restoration Act of 1987
(Public Law 100-259)
- American with Disabilities Act of 1990
(42 U.S.C. Chapter 126 § 12101 *et. seq.*)
- 23 CFR Part 200
- 49 CFR Part 21
- 49 CFR Part 26
- RCW 49.60.180

In relation to Title VI of the Civil Rights Act of 1964, the CONSULTANT is bound by the provisions of Exhibit "F" attached hereto and by this reference made part of this AGREEMENT, and shall include the attached Exhibit "F" in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

IX. Termination of Agreement

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

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

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

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

In the event of a termination for default, the amount to be paid to the CONSULTANT shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing SERVICES to the date of termination, the amount of SERVICES originally required which was satisfactorily completed to

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date of termination, whether that SERVICE is in a form or a type which is usable to the AGENCY at the time of termination, the cost to the AGENCY of employing another firm to complete the SERVICES required and the time which may be required to do so, and other factors which affect the value to the AGENCY of the SERVICES performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount, which would have been made using the formula set forth in paragraph two (2) of this section.

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

The CONSULTANT shall, within 15 days, notify the AGENCY in writing, in the event of the death of any member, partner, or officer of the CONSULTANT or the death or change of any of the CONSULTANT's supervisory and/or other key personnel assigned to the project or disaffiliation of any principally involved CONSULTANT employee. The CONSULTANT shall also notify the AGENCY, in writing, in the event of the sale or transfer of 50% or more of the beneficial ownership of the CONSULTANT within 15 days of such sale or transfer occurring. The CONSULTANT shall continue to be obligated to complete the SERVICES under the terms of this AGREEMENT unless the AGENCY chooses to terminate this AGREEMENT for convenience or chooses to renegotiate any term(s) of this AGREEMENT. If termination for convenience occurs, final payment will be made to the CONSULTANT as set forth in the second and third paragraphs of this section.

Payment for any part of the SERVICES by the AGENCY shall not constitute a waiver by the AGENCY of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform SERVICES required of it by the AGENCY. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

X. Changes of Work

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

XI. Disputes

Any disputed issue not resolved pursuant to the terms of this AGREEMENT shall be submitted in writing within 10 days to the Director of Public Works or AGENCY Engineer, whose decision in the matter shall be final and binding on the parties of this AGREEMENT; provided however, that if an action is brought challenging the Director of Public Works or AGENCY Engineer's decision, that decision shall be subject to judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in Exhibit "J". In the event that either party deem it necessary to institute legal action or proceeding to enforce any right or obligation under this AGREEMENT, this action shall be initiated in the Superior Court of the State of Washington, situated in the county in which the AGENCY is located. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties have the right of appeal from such decisions of the Superior Court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, situated in the county in which the AGENCY is located.

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XII. Legal Relations

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

The CONSULTANT shall defend, indemnify, and hold The State of Washington (STATE) and the AGENCY and their officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the negligence of, or the breach of any obligation under this AGREEMENT by, the CONSULTANT or the CONSULTANT's agents, employees, sub consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable; provided that nothing herein shall require a CONSULTANT to defend or indemnify the STATE and the AGENCY and their officers and employees against and hold harmless the STATE and the AGENCY and their officers and employees from claims, demands or suits based solely upon the negligence of, or breach of any obligation under this AGREEMENT by the STATE and the AGENCY, their agents, officers, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the STATE and/or the AGENCY may be legally liable; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT or the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT is legally liable, and (b) the STATE and/or AGENCY, their agents, officers, employees, sub-consultants, subcontractors and or vendors, of any tier, or any other persons for whom the STATE and or AGENCY may be legally liable, the defense and indemnity obligation shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable. This provision shall be included in any AGREEMENT between CONSULTANT and any sub-consultant, subcontractor and vendor, of any tier.

The CONSULTANT shall also defend, indemnify, and hold the STATE and the AGENCY and their officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by the CONSULTANT or the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable, in performance of the Work under this AGREEMENT or arising out of any use in connection with the AGREEMENT of methods, processes, designs, information or other items furnished or communicated to STATE and/or the AGENCY, their agents, officers and employees pursuant to the AGREEMENT; provided that this indemnity shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from STATE and/or AGENCY's, their agents', officers' and employees' failure to comply with specific written instructions regarding use provided to STATE and/or AGENCY, their agents, officers and employees by the CONSULTANT, its agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable.

The CONSULTANT's relation to the AGENCY shall be at all times as an independent contractor.

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the AGENCY may, in its sole discretion, by written notice to the CONSULTANT terminate this AGREEMENT if it is found after due notice and examination by the AGENCY that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the CONSULTANT in the procurement of, or performance under, this AGREEMENT.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees or its agents against the STATE and /or the AGENCY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW. This waiver has been mutually negotiated between the Parties.

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Unless otherwise specified in this AGREEMENT, the AGENCY shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of a new sole source, or an acceptable supplemental AGREEMENT, the CONSULTANT shall provide On-Call assistance to the AGENCY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

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

Insurance Coverage

- A. Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability insurance written under ISO Form CG 00 01 12 04 or its equivalent with minimum limits of one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in the aggregate for each policy period.
- C. Business auto liability insurance written under ISO Form CG 00 01 10 01 or equivalent providing coverage for any "Auto" (Symbol 1) used in an amount not less than a one million dollar (\$1,000,000.00) combined single limit for each occurrence.

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance, the STATE and AGENCY, their officers, employees, and agents will be named on all policies of CONSULTANT and any sub-consultant and/or subcontractor as an additional insured (the "AIs"), with no restrictions or limitations concerning products and completed operations coverage. This coverage shall be primary coverage and non-contributory and any coverage maintained by the AIs shall be excess over, and shall not contribute with, the additional insured coverage required hereunder. The CONSULTANT's and the sub-consultant's and/or subcontractor's insurer shall waive any and all rights of subrogation against the AIs. The CONSULTANT shall furnish the AGENCY with verification of insurance and endorsements required by this AGREEMENT. The AGENCY reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Name: Ken Gill
Agency: City of Fife
Address: 3725 Pacific Highway East
City: Fife State: WA Zip: 98424
Email: kgill@cityoffife.org
Phone: (253) 922-2489
Facsimile: (253) 896-8651

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the AGENCY.

The CONSULTANT's professional liability to the AGENCY, including that which may arise in reference to section IX "Termination of Agreement" of this AGREEMENT, shall be limited to the accumulative amount of the authorized AGREEMENT amount or one million dollars (\$1,000,000.00), whichever is greater, unless the limit of liability is increased by the AGENCY pursuant to Exhibit H. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

Agreement Number:

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

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

XIII. Extra Work

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

XIV. Endorsement of Plans

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

XV. Federal Review

The Federal Highway Administration shall have the right to participate in the review or examination of the SERVICES in progress.

XVI. Certification of the Consultant and the Agency

Attached hereto as Exhibit "G-1(a and b)" are the Certifications of the CONSULTANT and the AGENCY, Exhibit "G-2" Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions, Exhibit "G-3" Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying and Exhibit "G-4" Certificate of Current Cost or Pricing Data. Exhibit "G-3" is required only in AGREEMENT's over one hundred thousand dollars (\$100,000.00) and Exhibit "G-4" is required only in AGREEMENT's over five hundred thousand dollars (\$500,000.00.) These Exhibits must be executed by the CONSULTANT, and submitted with the master AGREEMENT, and returned to the AGENCY at the address listed in section III "General Requirements" prior to its performance of any SERVICES under this AGREEMENT.

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XVII. Complete Agreement

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

XVIII. Execution and Acceptance

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

XIX. Protection of Confidential Information

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

Immediately upon expiration or termination of this AGREEMENT, the CONSULTANT shall, at the AGENCY's option: (i) certify to the AGENCY that the CONSULTANT has destroyed all of the State's Confidential Information; or (ii) returned all of the State's Confidential Information to the AGENCY; or (iii) take whatever other steps the AGENCY requires of the CONSULTANT to protect the State's Confidential Information.

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

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

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

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

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

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

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

XX. Records Maintenance

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

For purposes of this AGREEMENT, "documents" means every writing or record of every type and description, including electronically stored information ("ESI"), that is in the possession, control, or custody of the CONSULTANT, including, without limitation, any and all correspondences, contracts, AGREEMENT 's, appraisals, plans, designs, data, surveys, maps, spreadsheets, memoranda, stenographic or handwritten notes, reports, records, telegrams, schedules, diaries, notebooks, logbooks, invoices, accounting records, work sheets, charts, notes, drafts, scribbings, recordings, visual displays, photographs, minutes of meetings,

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tabulations, computations, summaries, inventories, and writings regarding conferences, conversations or telephone conversations, and any and all other taped, recorded, written, printed or typed matters of any kind or description; every copy of the foregoing whether or not the original is in the possession, custody, or control of the CONSULTANT, and every copy of any of the foregoing, whether or not such copy is a copy identical to an original, or whether or not such copy contains any commentary or notation whatsoever that does not appear on the original.

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

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

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

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

Signature

Date

Signature

Date

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

Agreement Number:

Exhibit A
Scope of Work

Project No.

See attached Exhibit A.

Agreement Number:



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Scope of Services

The City of Fife plans to resurface 70th Avenue East by grinding the pavement, repair failed areas and then overlay with new HMA, adjustment of monuments and utilities, replacement of pavement markings, and upgrade of substandard pedestrian access ramps.

The roadway is part of the National Highway System and will be designed and constructed using federal funding and the construction will be managed by the CONSULTANT.

70th Avenue East is a 5 lane street section with curb and gutter. Work will include raising utilities iron, providing bid and field inspection during construction, and re-establishing MUTCD compliant pavement markings when the paving is complete.

This scope of services is for design, minor field data collection for pavement, utility locations and accessible pedestrian curb ramp design, and PS&E to be incorporated into a bid set.

Phase I of the project consists of design services to be completed over an estimated 4 month period, beginning approximately **March 1, 2015** and completed by **June 30, 2015**. A federal aid obligation ready project package will be completed by **May 30, 2015**

Phase II of the project consists of construction administration services to be completed over a 5 month period, beginning approximately **July 1, 2015** and completed by **November 31, 2015**. Schedules are subject to adjustment to reflect actual construction and may require an adjustment for time of completion.

In addition to the specific assumptions associated with each of the tasks outlined herein, several key assumptions are made in developing the scope and schedule in order to clarify the needs of this work program, and assure timely decisions that will enable the team to achieve the goals of the schedule:

- A Notice To Proceed will be issued by the City via email.
- Any documents to be supplied by the City will be requested by the CONSULTANT in email;
- WSDOT specifications will be used, with special provisions written only where required;
- Plans will be based on scaled overlays on high resolution aerial photos, aerial maps obtained by the CONSULTANT from Pierce County, any cost will be covered by the City;
- The City will be responsible for any required City permits. No State permits are anticipated;
- The CONSULTANT will provide coordination for both City owned and for private utilities;
- The City will provide timely reviews and provide approvals at the end of each level;
- Draft documents will be clearly marked "DRAFT", "PRELIMINARY", OR "___% SUBMITTAL" either with a stamp or watermark, and final engineering reports and documents will be stamped by the Professional Engineer in charge of that work;
- One complete set of design documents will be prepared meeting design and contracting requirements;
- Documents will be delivered to the City in PDF format via email or hard copies; and,
- All references to "cost estimates" shall mean "engineers opinion of probable costs."



The following are the specific elements of the work plan for this project.

TASK 1: Project Administration

1.1 Team Management

The CONSULTANT shall be responsible for on-going management of the consultant team for this project in accordance with the provisions of the Agreement. On-going management will include confirming that the work is completed in a timely manner and within the Agreement budget. The CONSULTANT shall be responsible for:

- Strategic management and reporting.
- Developing and maintaining a project schedule.
- Making assignments to project staff and subconsultants.
- Implementing effective quality assurance/quality control procedures.
- Processing agency requests.
- For the purposes of budgeting, the anticipated length of the project will be **4 months** for design beginning approximately **March 1, 2015** and completed by **June 30, 2015**, and **5 months** for construction beginning **July 1, 2015** and completing by **November 30, 2015**. The CONSULTANT shall prepare a simplified project schedule within one week of the signing of this Agreement.

The CONSULTANT shall be responsible for coordinating the activities to complete the Elements of the Agreement. This coordination will include coordination with the City's Project Manager – Ken Gill and internal staff, timely input for meetings, incorporating work into project deliverables and obtaining answers to issues raised by the City. The CONSULTANT's Project Manager – Aaron Butters shall be the contact for questions and requests from the City's Project Manager. Discussions, correspondence, or work requested of the CONSULTANT, that impact the scope of work, budget, or products shall be directed in writing to the City's Project Manager.

Deliverables:

- Project Schedule

1.2 Monthly Status/Progress Reports and Invoices

The CONSULTANT shall provide monthly invoices to the City listing of activities by work element performed by the CONSULTANT Team during the reporting period.

Deliverables:

- Monthly Invoices

1.3 Project Coordination/Progress Meetings

The CONSULTANT's project manager and project engineer will meet with the City six times – during design of the project, once for a project kickoff meeting, and bi-weekly through the design phase. The meeting will be in the City's offices.

Deliverables:

- Meeting Minutes/Notes

1.4 Regular Coordination with the City

The CONSULTANT shall maintain regular contact and coordination with the City Project Manager in accordance with the provisions of the Agreement. Regular coordination with the City will include working with the City to involve staff with aspects of the project. The CONSULTANT Project Manager shall be responsible for:

- Maintaining regular contact with the City and designated project management team staff through informal office visits, telephone conversations, and e-mails.
- Maintaining open access to project information by the City.

1.5 Quality Assurance/Quality Control

The CONSULTANT shall provide quality assurance and quality control (QA/QC) throughout the life of the Agreement to ensure adequate administration, accounting, budget monitoring, scheduling, communications and planning and engineering procedures leading to the final product.

1.6 Public Involvement

The CONSULTANT shall develop public information and communication materials for the project for distribution by the City.

Deliverables:

- One informational mailer
- Web content consisting of the mailers reformatted for web use

TASK 2: Data Collection

2.1 Information Gathering

Assumptions:

- As-built plans for this will be provided by the City.

EXHIBIT A: City of Fife 70th Avenue East – Overlay



- High resolution electronic format aerial photos (sufficient to develop 100 scale plans) will be used as a base map for project plan sheets.
- Available geotechnical reports within the project area will be provided by the city.

Deliverables:

- None

2.2 Field Inventory/Site Assessment

The CONSULTANT will perform a field visit to verify that aerial photos used for the plans development correctly reflect current pavement markings. It is assumed that utility risers, or manholes are located within the limits of the overlay will be located by field observation and identification on aerial photos and a field survey to identify riser and manhole locations is not necessary.

Deliverables:

- None

TASK 3: Pavement Design

No field exploration will be completed; the CONSULTANT will use the standard pavement section identified in previous reports for this section of roadway. The CONSULTANT will identify the location of areas for pavement repair and include in the contract plans.

TASK 4: Environmental

Under this task, the CONSULTANT will provide project information to the CITY for preparation of a SEPA Exemption letter and the CONSULTANT will prepare a Draft ECS form.

4.1 Work Element 1 – Environmental

1. Environmental Classification Summary/Documented Categorical Exclusion:

The CONSULTANT will prepare a Local Agency Environmental Classification Summary (ECS) with supporting documentation as required by WSDOT for projects that receive federal funding through WSDOT (Environmental Procedures Manual, Section 310.07). The ECS will include the recommended NEPA determination (assumed to be a Class II, Documented Categorical Exclusion). We will document this assumption following the WSDOT Local Agency Guidance (LAG) manual.

The ECS will also include an effect determination for species listed under the Endangered Species Act (ESA) and Essential Fish Habitat (EFH) evaluation, a determination of project impacts on cultural resources, and a Section 4(f) analysis (see the following scope items).

Assumptions:

- The 70th Avenue East Preservation project will be determined to be a Class II Documented Categorical Conclusion and neither a NEPA Environmental Impact Statement nor an Environmental Assessment will be required.

Deliverables:

- An electronic and paper copy of the draft ECS in Adobe PDF.
- An electronic and six (6) paper copies of the final ECS in Adobe PDF.

2. Biological Assessment (BA) and Essential Fish Habitat Evaluation (EFH):

The CONSULTANT will prepare a brief effect determination letter on species listed as threatened under the ESA (assumed to be “no effect” and completed on as part of the ECS) and an EFH evaluation. We will obtain updated species lists from the agencies web sites and also request site specific habitat information from the Washington State Department of Fish and Wildlife priority habitats and species database. Evaluation of specific project details such as construction techniques and equipment used, timing of construction, temporary sediment and erosion control measures, and best management practices will be based on information developed under Work Element 1.

Assumptions:

- The project will have no effect on listed species or their designated critical habitat and a detailed Biological Assessment will not be required.

Deliverables:

- No deliverable; the results of the Section 7 investigation will be documented as part of the ECS (Work Element 1.1)

3. Cultural Resource Investigation:

The CONSULTANT will conduct the required National Historic Preservation Act Section 106 Cultural Resources Survey. Work would consist of the following tasks necessary to comply with Section 106:

- Conduct a background search to identify known cultural resources within the project area of potential effect (APE) defined by the City of Federal Way and assess the potential for the APE to contain cultural resources.
- Conduct a pedestrian field reconnaissance with WSDOT to complete the assessment of the potential for the APE to contain cultural resources.

Assumptions:

- We will assist the City of Fife with APE definition.
- No historic properties within the APE.
- The project qualifies as exempt under WSDOT’s programmatic Agreement.
- No human burials or archaeological sites will be encountered.

Deliverables:

- No deliverable, the results of the Section 106 investigation will be documented as part of the ECS (Work Element 1.1).

4.2 SEPA Checklist

This project is assumed to be SEPA exempt under the repair and maintenance provisions of the

WAC.

Assumptions:

- The project will not require ROW acquisition.

Deliverables:

- SEPA exemption letter

TASK 5: 90% Design, and Final PS&E

This task will include the development of 90% plans and Final Plans, Specifications and Estimate, to be delivered in a single bid package.

5.1 90% Project Design

The CONSULTANT will prepare 90% project plans including roadway, pavement section, and channelization. The CONSULTANT will also develop special provisions and a preliminary opinion of probable cost.

Roadway Plans: The CONSULTANT will develop a project plan set using high resolution aerial photos for background at 100 scale, re-establishment of intersection layouts based on field verification of existing markings (coordinated with City staff for any desired modifications), and notations of known utility access box relocations.

Channelization and Signing Plans: The CONSULTANT will prepare the channelization and signing plans which will include the re-established pavement markings and affected signing, with miscellaneous details.

Pedestrian Facilities: The CONSULTANT shall prepare plans for modifications to pedestrian facilities showing location, size, and details.

Construction Traffic Control Plans: The CONSULTANT shall prepare traffic control plans displaying general traffic control. Detailed traffic control plans will not be prepared.

Cost Estimate: The CONSULTANT will calculate quantities and prepare an estimate of probable construction costs using bid items.

Specifications: The CONSULTANT will review the WSDOT/APWA/City's Standard Construction Specifications and prepare special provisions for these items not included or are changed from the standard specifications. The CONSULTANT will prepare the complete specification package for the project incorporating the city's standard contracts and division 1 requirements.

Quality Control: The CONSULTANT will conduct an in-house quality review of the plans and specifications before they are submitted to the City.

Review Meeting: The CONSULTANT will meet with the City to review their comments on the interim plans.

Deliverables:

- Two sets of 90% Project Plans, Specifications and Construction Estimate hard copy 11"x17" and PDF format.

TASK 6: Final Project Design

Based on the City's comments from their review of the 90% plans and specifications, the CONSULTANT will prepare the final project design plans including roadway, channelization, signing, and traffic control. The CONSULTANT will also develop special provisions and cost estimate. It is assumed that there are no major changes from the 90% design submittal.

Roadway Plans: The CONSULTANT will finalize the roadway plans.

Channelization and Signage Plans: The CONSULTANT will finalize the channelization and signage plans, which will include the pavement markings, signing and miscellaneous details.

Pedestrian Facilities: The CONSULTANT will finalize plans for modifications to pedestrian facilities showing location, size and details.

Construction Traffic Control Plans: The CONSULTANT shall prepare traffic control plans displaying general traffic control. Detailed traffic control plans will not be prepared.

Cost Estimate: The CONSULTANT will finalize quantity calculations and prepare the engineer's opinion of probable costs.

Special Provisions: The CONSULTANT will finalize the special provisions for these items not included or are changed from the standard specifications.

Quality Control: The CONSULTANT will conduct an in-house quality review of the final plans and specification before they are submitted to the City.

Deliverables:

- Camera-ready Final Project Plans, Specifications and Construction Estimate with Engineer's stamp.
- Electronic copy of drawings, specifications and cost estimate in correctly scalable PDF and DWG formats.
- Four sets (11" x 17") of Final Project Plans, Specifications and Construction Estimate with Engineer's stamp for the City and three sets for the consultant team.

TASK 7: Bid Assistance

The CONSULTANT will provide assistance during the bidding process for this project. This work will include preparing responses to bidder's questions and addenda as required. For budgeting purposes, up to one (1) addendum will be assumed.

The CONSULTANT will also review the bids with the City, prepare a summary of the bids, and recommend award of the contract.

Assumptions:

- The City will advertise, solicit, and provide bid packages to prospective bidders, and accept and open bids.

Deliverables:

- Written responses to bidder's questions
- One addendum package
- Bid Summary Tabs
- Award Recommendation letter

TASK 8: Construction Management and Inspection

The CONSULTANT will provide construction management and observation services for the project. Construction observation services shall not be a replacement for satisfying City, or permit inspections that may be required by the Uniform Building Code, or National Electrical Code.

Assumptions:

- Construction management and observation services have been estimated based on 1 Construction Contract with a maximum duration of 40 working days requiring an equivalent of 30 days of inspection including nights and weekends.
- The CONSULTANT Project Manager/Engineer will provide oversight of execution of Contract provisions by the Contractor, and will coordinate with the City Project Manager, for issues that may arise during the course of the Contract.
- If required construction survey services will be provided through the construction Contract by the Prime Contractor. If construction survey services are required of the CONSULTANT, an amendment will be developed in consultation with City staff.
- WSDOT will prepare the initial Record of Materials (ROM) at the City's request; the CONSULTANT will update the ROM to reflect submittals and testing frequency.
- The CONSULTANTS Inspector will provide complete records of work completed by the Contractor including but not limited to Inspector's Daily Reports, Filed Note Records and tickets for all materials delivery to the job site or incorporated into the project.

8.1 Project Management during Construction

This task includes the work required to provide Project Manager oversight for maintaining budget and schedule compliance during construction. The Project Manager will coordinate with project staff, the City, and the Prime Contractor performing the construction effort. The Project Manager will track and maintain the following:

- Monthly progress reports for professional services along with invoice
- Quality Assurance/Quality Control

8.2 Construction Administration

This task provides for construction management support for the construction activity in accordance with the Project's plans and specifications and the WSDOT Local Agency Guidelines. The CONSULTANT will monitor, log, and review Contract Documentation in an orderly manner throughout the project. The CONSULTANT Project Manager/Engineer will provide the City with supporting documentation in order for them to process monthly progress reports.

Specific activities include:

Contract Award and Execution

The CONSULTANT will complete the following:

- Prepare award data for submittal to WSDOT
- Collect the following documentation from the Contractor
 - Non-collusion statements
 - Statements of non-segregated facilities
 - Bid Bond
 - Performance and Payment Bond
 - Insurance certificate
 - Lists of sub-tier Contractors
 - Contractor/ Subcontractor Certification
 - Copy of Contracts for Subcontractor and Sub-tier Contractors
 - Affirmative Action Plans (if required)
 - DBE/WBE goal documentation
 - Schedule and sequence of work
 - Intents to Pay Prevailing Wages and Affidavits of wages paid
 - Requests to Sublet
 - Notices to labor unions
 - Apprenticeship agreements
 - Certified Payrolls

Preconstruction Conference

The CONSULTANT will prepare the agenda and facilitate the pre-construction conference and prepare meeting minutes documenting the pre-construction conference.

Contract Administration and Documentation

- Coordinate, review, and process Requests for Information (RFI's) for interpretation and clarification of the construction documents. City to be copied on all responses to RFI's.
- Coordinate and process Change Order Proposals and provide recommendations to the City as it relates to the plans, specifications, and site conditions. Change orders are to be prepared and processed using the City's format and forms.
- Facilitate including agenda preparation weekly construction meetings to review construction progress, clarification of plans and specifications, monitoring and testing needs for upcoming work, and address construction or utility coordination issues.
- Prepare and distribute minutes from meetings.
- Prepare and review monthly progress payment estimates including supporting documentation and make recommendations to the City.
- Review claims relating to the execution and progress of the construction and make recommendations on course of action.

- Review the contractor's initial schedule against contract requirements and identify any potential flaws to the City.
- Prepare and submit weekly statement of working days to the Contractor.

8.3 Construction Observation and Materials Testing

The CONSULTANT will provide part time on-site construction observation during the anticipated construction period and project documentation in accordance with the requirements of the WSDOT Local Agency Guidelines. Additional inspection required due to the Contractor's performance, increased Contract time, or other factors outside of the CONSULTANT's control may affect the total fee. Thirty (30) days of on sight inspection services are assumed.

Visits to the Project site and observations made by the CONSULTANT as part of services during construction under Agreement shall not make the CONSULTANT responsible for, nor relieve the construction Contractor(s) of, the obligation to conduct comprehensive monitoring of the work sufficient to ensure conformance with the intent of the Contract Documents, and shall not make the CONSULTANT responsible for, nor relieve the construction Contractor(s) of, the responsibility for construction means, methods, technique, sequences, and procedures necessary for coordinating and completing the work under the construction Contract(s) and for all safety precautions incidental thereto.

Specific activities include:

- The CONSULTANT Project Inspector will monitor construction work, track construction scheduling, review quantities, prepare daily inspection reports, document methods and materials, take progress photos and perform wage interviews. The CONSULTANT Project Inspector will report to the City's Project Manager/Engineer on the progress and quality of work and documentation.
- The Project Inspector will coordinate with the City at intervals appropriate to the stage of construction to monitor progress and quality of work and to determine if the results are in accordance with the plans and specifications.
- The Project Inspector will notify the CONSULTANT Project Manager/Engineer and the City Project Manager/Engineer of observed work which does not conform to the result required in the construction Contract. A written report will be prepared describing any apparent non-conforming work and recommend corrections. The Project Inspector will implement and oversee corrections as directed by the CONSULTANT Project Manager/Engineer in coordination with the City Project Manager.
- The Project Inspector will troubleshoot problems on site as they develop. Any proposed changes requested by the Contractor, whether or not they may affect the Contract price, will be evaluated by the Project Manager/Engineer and then presented to the City Project Manager/Engineer for authorization.
- Witnessing and documenting facility quality control verification and testing.
- Coordination of and attendance at facility start-ups.
- Observe Contractors work and document that the project is constructed in accordance with Contract requirements.
- The CONSULTANT's inspector will attend weekly project site meetings with the Contractor, City staff, Utilities, and others associated with the project.

- Prepare field note records.
- Collect scaleman's daily reports as required.
- Review materials delivered to the project and check for compliance with the RAMs.
- Prepare Inspectors daily reports.
- Monitor the Contractor's traffic control procedures for conformance to approved plans and provide recommendations to the City and the Contractor.
- Coordinate with the City's Project Manager to prepare punch list items.
- Take digital photos of the construction as the project progresses and maintain in project file.
- Obtain request for approval of materials sources from the contractor and maintain record of submittals and provide approvals.
- Coordinate materials testing with testing Sub-consultant as required for testing of concrete, aggregates and asphalt.
- Conduct employee interviews on Prime Contractor and Subcontractors performing more than 30% of the work as measured by Contract dollars and document on form (424-003).

Materials Testing and Documentation

The materials testing Subconsultant will complete the materials testing and documentation as required by the LAG Manual and ROM as follows:

- Perform materials testing and sampling at the frequencies required for aggregates.
- Concrete will be accepted using small quantity procedures.
- Asphalt will be accepted using a WSDOT approved mix design with testing completed for sand equivalent, rice density and compaction.
- Written reports for site visits and materials testing will be prepared by the materials testing Subconsultant and provided to the CONSULTANTS Project Manager/Engineer.
- Update and maintain ROM as documentation and testing requirements are satisfied.

8.4 Project Completion and Closeout

The CONSULTANT will coordinate with the City's Project Manager and Contractor to complete all documentation required by the Contract and the Local Agency Guidelines Manual including but not limited to the following:

Project Completion

- Prepare final Contractor pay estimate and voucher.
- Prepare Physical Completion letter.
- Prepare final missing documentation letter to the Contractor (if required).
- Prepare the final punch list and complete one walk through with the City's Project Manager.
- Follow up with Contractor to address any unresolved punch list items.
- Review final records using WSDOT for 230-036A Initial Documentation Review as a guideline for checking record completeness.

- Prepare materials certification using the format as shown in Appendix 52.104 of the Local Agency Guidelines.
- Transmit Project closeout to the City once all Change Orders and have been finalized and there are no outstanding issues with the Contractor.

Project Closure

- Prepare completion letter for the City to send to WSDOT Region Highways and Local Programs Engineer (within 15 days after project is completed).
- Assist City in preparing final billing to send to Region Highways and Local Programs Engineer (within 90 days after completion).
- Resolve deficiencies found during the WSDOT's final inspection.
- Provide documentation for and attend WSDOT audit.
- Prepare WSDOT forms for and assist the City in obtaining WSDOT grant reimbursement.
- Obtain and verify record drawing information from Contractor.
- Submit State release forms.
- Provide 1 (one) set of Project files to City at project close out.
- Provide electronic copies of construction photos.

Deliverables:

- At the completion of the project, the CONSULTANT will provide a box containing a complete set of construction documents including: transmittals, construction observation reports, pay requests, meeting minutes, requests for information, requests for approval of materials, completed LAG Manual Appendix 14.52 – Project Development Checklist, and written communications.

TASK 9: Contract Close Out

The CONSULTANT team will gather the work files from team members and organize and combine to one file. The CONSULTANT will prepare a summary contract close out document and will provide a package in electronic formats, PDF and/or DWG.

Deliverables:

- Summaries of items discussed will be included in the monthly status reports.
- Project files in electronic format (AutoCAD 2014, Microsoft Word and Excel).
- Design Reports and Documentation
- Contract PS&E
- Audit with WSDOT Local Programs

Exhibit B
DBE Participation

None

Agreement Number:

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

N/A

B. Roadway Design Files

PDF and DWG format

C. Computer Aided Drafting Files

PDF and DWG format

Agreement Number:

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

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

Informational mailer

Draft ECS

Final ECS

90% plans, specifications and estimate

100% plans, specifications and estimate

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

Existing Geotechnical report

Available as-built plans for widening constructed by developers and sanitary sewer constructed by city.

The above items are available on the city's website.

Agreement Number:

II. Any Other Electronic Files to Be Provided

none

III. Methods to Electronically Exchange Data

Electronic data will be exchanged through emails and Lochner's FTP site.

A. Agency Software Suite

N/A

B. Electronic Messaging System

N/A

C. File Transfers Format

N/A

Exhibit D
Prime Consultant Cost Computations

See attached Exhibit D.

Agreement Number:

**70th Ave Overlay
City of Fife, Washington
Exhibit D - Cost Estimate
H. W. Lochner**

Design Phase				
Classification	Hourly Rate	Total Hours	Labor Salary	Total Costs
Project Principal	\$ 68.01	6	\$408.06	
Project Manager	\$ 63.75	104	\$6,630.00	
Sr. Engineer - Traffic	\$ 58.01	28	\$1,624.28	
Project Engineer	\$ 48.00	39	\$1,872.00	
Transportation Engineer	\$ 50.77	40	\$2,030.80	
Engineer III	\$ 32.53	150	\$4,879.50	
Technician	\$ 24.00	226	\$5,424.00	
Communications	\$ 25.00	8	\$200.00	
Project Management Assistant	\$ 18.72	32	\$599.04	
Sr Accountant	\$ 30.20	12	\$362.40	
Total Direct Salary Cost		645	\$24,030.08	
Salary Escalation	2015	10.00%	3%	\$72.09
Total Lochner Labor		Rounded	\$24,102	
Overhead at 169.62% of DSC			\$40,882.10	
Profit at 30% of DSC			\$7,230.65	
Total HWL Labor Including Overhead and Profit:			Rounded	\$72,215
Direct Reimbursable:				
Travel:	\$ 403			
Per Diem	\$ 56			
Reproduction:	\$ 218			
Communications/Postage	\$ 100			
Graphics/Miscellaneous	\$ 600			
Reimbursable Subtotal:		Rounded		\$1,377
Firm Total: H.W. Lochner, Inc.		Rounded		\$73,591
Subconsultants				
Widener and Assoc			\$5,299	
B&O Tax on Subconsultants			\$95	
Subconsultants Subtotal:				\$5,299
Total Project - H. W. Lochner, Inc.				\$78,891

LOCHNER

**70th Ave Overlay
City of Fife, Washington
Exhibit D - Cost Estimate
H. W. Lochner**

Construction Management and Inspection				
Classification	Hourly Rate	Total Hours	Labor Salary	Total Costs
Project Principal	\$ 68.01	6	\$408.06	
Project Manager	\$ 63.75	140	\$8,925.00	
Sr. Engineer - Traffic	\$ 58.01	8	\$464.08	
Project Engineer	\$ 48.00	16	\$768.00	
Transportation Engineer	\$ 50.77	256	\$12,997.12	
Engineer III	\$ 32.53	216	\$7,026.48	
Technician	\$ 24.00	40	\$960.00	
Communications	\$ 25.00	0	\$0.00	
Project Management Assistant	\$ 18.72	20	\$374.40	
Sr Accountant	\$ 30.20	12	\$362.40	
Total Labor Cost				
		714	\$32,285.54	
Salary Escalation				
	2015	90.00%	3%	\$871.71
Total Lochner Labor			Rounded	\$33,157
Overhead at 169.62% of DSC				\$56,241.33
Profit at 30% of DSC				\$9,947.18
Total HWL Labor Cost:			Rounded	\$99,346
Direct Reimbursable:				
Travel:	\$ 1,208			
Per Diem	\$ 140			
Reproduction:	\$ 150			
Communications/Postage	\$ 100			
Graphics/Miscellaneous	\$ -			
Reimbursable Subtotal:			Rounded	\$1,598
Firm Total: H.W. Lochner, Inc.			Rounded	\$100,944
Subconsultants				
Materials Testing Sub (estimate)				\$12,500
Subconsultants Subtotal:				\$12,500
Total Project - H. W. Lochner, Inc.				\$113,444

Exhibit E

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.

Widener and Associates for Environmental Services - See attached Exhibit B.

Agreement Number:

Exhibit B
Environmental
Cost Estimate

	Project Manager	Project Biologist		
Project Coordination	16	8		
Environmental Classification Summary (ECS)				
Draft	2	6		
Revise Draft	2	2		
Final	2	2		
Biological Assessment and Essential Fish Habitat		6		
Cultural Resources Investigation	2	8		
Total hours	24	32		
Summary	Hours	Rate	Cost	
Project Manager	24	\$64.00	\$1,536.00	
Project Biologist	32	\$21.00	\$672.00	
Total Labor				\$2,208.00
Overhead 110%				\$2,428.80
Profit 30%				\$662.40
TOTAL ESTIMATED COST				\$5,299.20

Exhibit F

Title VI Assurances

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

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

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

Agreement Number:

Exhibit G

Certification Documents

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

Agreement Number:

Exhibit G-1(a) Certification of Consultant

I hereby certify that I am the and duly authorized representative of the firm of
H.W. Lochner, Inc.

whose address is

915 118th Avenue SE, Suite 130, Bellevue WA 98005

and that neither the above firm nor I have:

- a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this AGREEMENT;
- b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this AGREEMENT; or
- c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this AGREEMENT; except as hereby expressly stated (if any);

I acknowledge that this certificate is to be furnished to the City of Fife and the Federal Highway Administration, U.S. Department of Transportation in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

H.W. Lochner, Inc.

Consultant (Firm Name)

Signature (Authorized Official of Consultant)

Date

Agreement Number:

Exhibit G-1(b) Certification of

I hereby certify that I am the:



Other

of the _____, and
or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this AGREEMENT to:

- a) Employ or retain, or agree to employ to retain, any firm or person; or
- b) Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind; except as hereby expressly stated (if any):

I acknowledge that this certificate is to be furnished to the _____ and the Federal Highway Administration, U.S. Department of Transportation, in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

Signature

Date

Agreement Number: _____

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

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

H.W. Lochner, Inc.

Consultant (Firm Name)

Signature (Authorized Official of Consultant)

Date

Agreement Number:

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

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

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

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

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

H.W. Lochner, Inc.

Consultant (Firm Name)

Signature (Authorized Official of Consultant)

Date

Agreement Number:

Exhibit G-4 Certificate of Current Cost or Pricing Data

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 2.101 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of 70th Avenue East Preservation * are accurate, complete, and current as of February 12, 2015 **.

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: H.W. Lochner, Inc.

Signature

Vice President

Title

Date of Execution***:

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

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

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

Agreement Number:

Exhibit H

Liability Insurance Increase

To Be Used Only If Insurance Requirements Are Increased

The professional liability limit of the CONSULTANT to the AGENCY identified in Section XIII, Legal Relations and Insurance of this Agreement is amended to \$

The CONSULTANT shall provide Professional Liability insurance with minimum per occurrence limits in the amount of \$ 1,000,000.00

Such insurance coverage shall be evidenced by one of the following methods:

- Certificate of Insurance.
- Self-insurance through an irrevocable Letter of Credit from a qualified financial institution.

Self-insurance through documentation of a separate fund established exclusively for the payment of professional liability claims, including claim amounts already reserved against the fund, safeguards established for payment from the fund, a copy of the latest annual financial statements, and disclosure of the investment portfolio for those funds.

Should the minimum Professional Liability insurance limit required by the AGENCY as specified above exceed \$1 million per occurrence or the value of the contract, whichever is greater, then justification shall be submitted to the Federal Highway Administration (FHWA) for approval to increase the minimum insurance limit.

If FHWA approval is obtained, the AGENCY may, at its own cost, reimburse the CONSULTANT for the additional professional liability insurance required.

Notes: Cost of added insurance requirements: \$

- Include all costs, fee increase, premiums.
- This cost shall not be billed against an FHWA funded project.
- For final contracts, include this exhibit.

Agreement Number:

Exhibit I

Alleged Consultant Design Error Procedures

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

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

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

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

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

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

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

Step 4 Attempt to Resolve Alleged Design Error with Consultant

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

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

Agreement Number:

Step 5 Forward Documents to Local Programs

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

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

Agreement Number:

Exhibit J

Consultant Claim Procedures

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

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

Step 1 Consultant Files a Claim with the Agency Project Manager

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

The consultant's claim must outline the following:

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

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

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

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

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

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

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

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

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

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

Step 5 Informing Consultant of Decision Regarding the Claim

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

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

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

Agreement Number: