

## **RESOLUTION 2022-T**

### **A RESOLUTION OF THE TOWN OF EATONVILLE, WASHINGTON AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES CONSULTANT AGREEMENT WITH KPG, P.S. FOR SR 161/WASHINGTON AVE N. CORRIDOR STREETSCAPE PROJECT PHASE 2 CONSTRUCTION MANAGEMENT SERVICES**

**WHEREAS**, the Town of Eatonville was awarded Federal Grant Funds in the amount of \$2,145,200.00 for the completion of Phase 2 of the SR161/Washington Ave N Corridor Streetscape Phase 2 project from Puget Sound Regional Council; and

**WHEREAS**, the Eatonville Town Council approved Resolution 2019-P on May 28, 2022 supporting the completion of Phase 2 and committing to provide the local match; and

**WHEREAS**, the Town is in need of a professional consulting firm to provide construction management for the full depth project; and

**WHEREAS**, final design of Phase 2 is being reviewed by WSDOT and once complete the federal funds will be obligated and, pending approval, the Town will need KPG, P.S. to assist with managing all aspects of the project; and

**WHEREAS**, the Town contracted with KPG, P.S. for Phase 1 and the design of Phase 2 of the project and it is in the best interest of the project to utilize them for Phase 2; now, therefore,

**THE TOWN COUNCIL OF THE TOWN OF EATONVILLE, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:**

**THAT:** The Town Council approves, and the Mayor is authorized to execute on behalf of the Town, the consultant agreement, attached hereto as Exhibit A, with KPG, P.S. for construction management services for SR161/Washington Ave Corridor Streetscape Project Phase 2, not to exceed \$404,417.91, once the federal funds are obligated.

**PASSED** by the Town Council of Town of Eatonville and attested by the Town Clerk in authentication of such passage this 11<sup>th</sup> day of April 2022.

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David Baublits, Mayor

ATTEST:

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Miranda Doll, Town Clerk

RESOLUTION 2022-T

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

Agreement Number: 21145

Firm/Organization Legal Name (do not use dba's): KPG Psomas Inc.	
Address 2502 Jefferson Ave, Tacoma WA 98402	Federal Aid Number STPUS-0161(013)
UBI Number 601-248-468	Federal TIN or SSN Number 91-1477622
Execution Date	Completion Date 12/31/2023
1099 Form Required <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Federal Participation <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Project Title SR 161/Washington Ave N Corridor Streetscape Phase 2	
Description of Work Construction management services.	
<input checked="" type="checkbox"/> Yes 16% <input type="checkbox"/> Yes <input type="checkbox"/> Yes <input type="checkbox"/> Yes	<input 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: \$399,417.91 Management Reserve Fund: \$5,000.00 Maximum Amount Payable: \$404,417.91	

## Index of Exhibits

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

Agreement Number: 21145

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

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.

In the absents of a mandatory DBE goal, a voluntary SBE goal amount of ten percent of the Consultant Agreement is established. The Consultant shall develop a SBE Participation Plan prior to commencing work. Although the goal is voluntary, the outreach efforts to provide SBE maximum practicable opportunities are not.

The CONSULTANT, on a monthly basis, shall enter the amounts paid to all firms (including Prime) involved with this AGREEMENT into the [wsdot.diversitycompliance.com](http://wsdot.diversitycompliance.com) program. Payment information shall identify any DBE Participation.

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: Set Boettcher  
Agency: Town of Eatonville  
Address: 201 Center Street West  
City: Eatonville State: WA Zip: 98328  
Email: [sboettcher@eatonville-wa.gov](mailto:sboettcher@eatonville-wa.gov)  
Phone: 360-832-3361  
Facsimile:

**If to CONSULTANT:**

Name: Olivia Paraschiv  
Agency: KPG Psomas Inc.  
Address: 2502 Jefferson Avenue  
City: Tacoma State: WA Zip: 98402  
Email: [olivia@kpg.com](mailto:olivia@kpg.com)  
Phone: 253-627-0720  
Facsimile: N/A

## **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.

Agreement Number: 21145

## 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](http://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 A&E 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](mailto:ConsultantRates@wsdot.wa.gov).  
Failure to supply this information by either the prime CONSULTANT or any of their A&E 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. (excluding Meals, which are reimbursed at the per diem rates identified in this section) 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.

Agreement Number: 21145



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, "Extra 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, "Extra 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.

Agreement Number: 21145

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

Agreement Number: 21145

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

Agreement Number: 21145



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.

Agreement Number: 21145

## **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.

Agreement Number: 21145

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: Seth Boettcher  
Agency: Town of Eatonville  
Address: 201 Center Street West  
City: Eatonville State: WA Zip: 98328  
Email: sboettcher@eatonville-wa.gov  
Phone: 360-832-3361  
Facsimile:

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: 21145

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.

Agreement Number: 21145



## **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.

Agreement Number: 21145



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

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

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

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

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

## **XX. Records Maintenance**

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

For purposes of this AGREEMENT, "documents" means every writing or record of every type and description, including electronically stored information ("ESI"), that is in the possession, control, or custody of the CONSULTANT, including, without limitation, any and all correspondences, contracts, 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,

Agreement Number: 21145

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

3/31/2022

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: 21145

# ***Exhibit A Scope of Work***

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Project No. STPUS-0161(013)

Please see attached Exhibit A, Scope of work

Agreement Number: 21145

## EXHIBIT A

### **Town of Eatonville SR 161/Washington Ave N. Corridor Streetscape Project Phase 2 Construction Management Services Federal Aid Number: STPR-0161(031)**

KPG Psomas Inc.  
Scope of Work  
February 28, 2022

This work will provide construction management services for construction of the SR161/ Washington Ave N Corridor Streetscape Project Phase 2. Improvements to be performed include removal of existing pavement; temporary erosion and water pollution control; installation of new illumination system and RRFB; storm drainage and water line improvements; construction of retaining walls, curb, gutter, and sidewalk; installation of street trees in tree grates; urban design amenities; property restoration; installation of new channelization and permanent signing; and other work in accordance with the Plans and Contract Provisions.

A detailed scope for the Contract follows:

#### **1.2 INTRODUCTION**

The following scope of services and associated costs are based upon the assumptions outlined below.

##### **General Assumptions:**

- The CONSULTANT will include one part-time resident engineer at 4 hours a day, one full-time inspector which includes 8 hours of inspection time a day, and a part-time documentation specialist at 6 hours a day. There will be a material testing provided by the Consultant.
- The CONSULTANT'S level of service is based on project duration of approximately **120 working days of construction**. A material procurement suspension may occur following the Notice to Proceed.
- The CONSULTANT will develop, manage, and deliver a completed Record of Materials (ROM).
- The TOWN will review and execute the insurance, bonds and the Construction Contract.
- All Community Outreach will be completed by the TOWN.
- The CONSULTANT will review RAM's, shop drawings, and answer RFI's. These services will be performed in accordance with the Contract Plans & Special Provisions, WSDOT Local Agency Guidelines (LAG), the WSDOT Construction Manual, and Town of Eatonville engineering standards.
- Relocation of franchised utilities is not anticipated. If needed, franchised utilities will provide field inspection for all work surrounding the construction or relocation of their utility systems. The CONSULTANT will coordinate franchise utility inspection.

## EXHIBIT A

### 2.2 SCOPE OF WORK

The objective and purpose of this Construction Management Services Agreement is for the CONSULTANT to successfully deliver the construction of the Project to the Town by ensuring that the improvements are constructed in accordance with the approved Plans and Specifications, as may be amended or revised, that all the required Project documentation is accounted for, and ultimately that the Town receives a successful review by WSDOT Local Programs at the end of the Project.

#### TASK 1 – MANAGEMENT / COORDINATION / ADMINISTRATION

Provide monthly invoicing reports. This effort will include the following elements:

- Review monthly expenditures and Construction Management (CM) team scope activities. Prepare and submit project progress letters to the Town along with invoices describing CM services provided each month. Prepare and submit reporting required by funding source(s), if any.

##### *Task 1 Deliverables:*

- Monthly invoices

#### TASK 2 – ADMINISTRATIVE SERVICES UP NTP

- 2.1 **Pre-Construction Conference:** The Consultant will prepare an agenda for, distribute notices of, and conduct a Pre-Construction Conference in the Town's offices or virtually if necessary. The Consultant's design engineer, resident engineer, inspector, and document control specialist will attend the Pre-construction Conference. The Consultant will prepare a written record of the meeting and distribute copies of the notes to all attendees and affected agencies, staff, etc.

At the Pre-Construction Conference, the Consultant shall facilitate discussions with the Contractor concerning the plans, specifications, schedules, franchise utilities, unusual conditions, Federal, State, and local requirements, and any other items that will result in better project understanding among the parties involved and meet the Federal Funding requirements.

- 2.2 **Pre-Construction Photos:** The resident engineer and inspector shall walk the project site prior to the beginning of construction to inspect existing conditions and take photos for the project records.
- 2.3 **Review Plans and Specification:** The Consultant will review the Contract plan and specification prior to the start of construction.
- 2.4 **Prepare Hard and Electronic Files:** The Consultant will prepare all necessary files to administer the project. A copy of the files, both hard and electronic, will be given to the Town at the completion of the project.
- 2.5 **Prepare ROM:** The Consultant will prepare and maintain the ROM in accordance with the Contract Plans & Special Provisions, WSDOT Local Agency Guidelines (LAG), the WSDOT Construction Manual, and Town of Eatonville engineering standards.



## EXHIBIT A

- 2.6 **Prepare Pre-construction Agenda:** The Consultant will prepare the pre-construction agenda in accordance with the Contract Plans & Special Provisions, WSDOT Local Agency Guidelines (LAG), the WSDOT Construction Manual, and Town of Eatonville engineering standards.
- 2.7 **Prepare Templates:** The Consultant will prepare all necessary templates as required by the Contract.
- 2.8 **Utility Coordination:** The Consultant will coordinate with all local Utility Agencies as necessary prior to construction to identify areas of concern.

### *Task 2 Deliverables:*

- Pre-Construction conference agenda with meeting minutes
- Pre-Construction photos
- Project files upon completion
- Prepared and Tracked Record of Material (ROM)
- Project Specific Templates

## TASK 3 – CONSTRUCTION MANAGEMENT – NTP TO CLOSEOUT

- 3.1 **Document Control.** Original documentation will be housed at the Consultant's office and filed in accordance with standard filing protocol. A copy of working files will be maintained in the field office. Document Control will consist of the following:
  - Final Estimate (Approving Authority File)
  - Comparison of Preliminary and Final Quantities (Approving Authority File)
  - Final Records (Approving Authority File)
  - Record of Material Samples and Tests
  - Materials Certification
  - KPG's inspector to visually verify materials on site or Contractor to provide documentation as needed/ required.
  - Release for the Protection of Property Owners and General Contractor
  - **Project Coordination:** Liaison with Town, Contractor, Designer, Utilities, and property owners as needed/ requested by Town to discuss project issues and status.
  - **Plan Interpretations:** Provide technical interpretations of the drawings, specifications, and Contract Documents, and evaluate requested deviations from

## EXHIBIT A

the approved design or specifications as related to the civil scope. Coordinate with Town for resolution of issues involving scope, schedule, and/or budget changes.

- **Weekly Meetings:** Consultant will lead weekly meetings through completion of the project, including preparation of agenda, meeting minutes, and distribution of minutes to attendees. Outstanding issues to be tracked on a weekly basis.
- **Initial Schedule Review:** Perform detailed schedule review of Contractor provided CPM for conformance with the Contract Documents.
- **Submittals:** Submittals will be logged, distributed, and tracked as they are received. Coordinate review process for shop drawings, samples, traffic control plans, test reports, and other submittals from the Contractor for compliance with the contract documents. Distribute as necessary to the appropriate representatives for review and approval.
- **Request for Information (RFI):** Consultant will assess and distribute RFI's to the appropriate representatives for review. RFI's shall be logged and tracked by the Consultant.
- **Lump Sum Breakdown:** Evaluate Contractors' Schedule of Values for lump sum items. Review the Contract Price allocations and verify that such allocations are made in accordance with the requirements of the Contract Documents. Lump Sum Breakdowns for payment each month will be calculated with detailed data provided by KPG inspection staff.
- **Monthly Pay Requests:** Prepare monthly requests for payment based on inspection staff (KPG and Town) provided documentation, review with the Town, ARC for the Town, and Contractor. Town to approve and distribute. Utilize Town-provided format for pay estimates, or Consultant format.
- **Monthly Schedule Review:** Perform schedule analysis on Contractor-provided CPM updates and review schedule for delays and impacts. Coordinate with the Town in the development of possible recovery schedules, as needed, to address delays caused by either events or issues within the Contractor's control or other events or issues beyond the Contractor's control.
- **Cost Projections:** Prepare up to two cost projections for the project. Projections to be based on the current amount paid to date, pending change orders, quantity projections, and other information provided by Town staff on site upon request.
- **Change Management:** Develop and track RFP's, field work directives, and change orders and provide technical assistance to negotiate changes and assist in

## EXHIBIT A

resolution of disputes which may occur during the course of the project. Change management will be logged and tracked by Consultant.

### *Task 3 Deliverables:*

- Document Control

## **TASK 4 – FIELD INSPECTION**

- 4.1 **Inspection:** The Consultant shall provide the services of one (1) full-time inspector during construction activities. Consultant staff shall oversee the work on the project site, and will observe the technical progress of the construction, including providing day-to-day contact with the Contractor and the Town.

The Consultant's field inspection staff will perform the following duties as a matter of their daily activities:

- i. Observe technical conduct of the construction, including providing day-to-day contact with Contractor, Town, utilities, and other stakeholders, and monitor for adherence to the Contract Documents. The Consultant's personnel will act in accordance with Sections 1-05.1 and 1-05.2 of the Standard Specifications.
- ii. Inspect material, workmanship, and construction areas for compliance with the Contract Documents and applicable codes and notify Contractor of noncompliance.
- iii. Document all material delivered to the job site in accordance with the LAG Manual & Construction Manual.
- iv. Prepare daily inspection reports, recording the Contractor's operations as actually observed by the Consultant; includes quantities of work placed that day, Contractor's equipment and crews, and other pertinent information. All daily inspection reports will adhere to WSDOT Local Agency Guidelines & Construction Manual.
- v. Prepare field records and documents to help assure the Project is administered in accordance with funding agency requirements. The Contractor will provide measurement and payment information to the Consultant for development of monthly pay estimates.
- vi. Attend and actively participate in regular weekly construction meetings.
- vii. Take periodic digital photographs during the course of construction, and record locations.
- viii. Coordinate with the Town's traffic operations and maintenance personnel.
- ix. Monitor the Contractor's temporary traffic control operations for compliance with the Contract Documents and Town Standards.
- x. Punch List: Upon substantial completion of work, coordinate with the Town and affected agencies, to prepare a 'punch list' of items to be completed or corrected. Coordinate final inspection with those agencies.

## EXHIBIT A

### *Assumptions:*

- The Consultant will provide observation services for 8 hours a day; the time that the Contractor's personnel are on-site. The Inspector's work schedule will be approved by the Town. One additional hour a day will be required to complete field paperwork.
- The Consultant's monitoring of the Contractor's activities is to ascertain whether or not they are performing the work in accordance with the Contract Documents; in case of noncompliance, Consultant will reject non-conforming work, and pursue remedies in the interests of the Town, as detailed in the Contract Documents. The Consultant cannot guarantee the Contractor's performance, and it is understood that Consultant shall assume no responsibility for: proper construction means, methods, techniques; project site safety, safety precautions or programs; or for the failure of any other entity to perform its work in accordance with laws, contracts, regulations, or Town's expectations.
- If this project involves multiple site locations and multiple work zones, the Consultant's Inspector will monitor traffic control operations when on site. The Town will approve traffic control plans and assist with monitoring traffic control operations.
- **Substantial Completion:** Upon substantial completion of work, the Consultant will coordinate with the Town and other affected agencies, to perform a project inspection and develop a comprehensive list of deficiencies or 'punch list' of items to be completed. A punch list and Certificate of Substantial Completion will be prepared by the Consultant and issued by the Town.

### *Task 4 Deliverables:*

- Daily Construction Reports with project photos – submitted on a weekly basis
- Punch List, Certificate of Substantial Completion

## TASK 5 – PROJECT CLOSEOUT

- 5.1 **Construction Office Support:** The Consultant will prepare final project reports for the Town for WSDOT and FHWA acceptance and includes:
  - Final Estimate (Approving Authority File)
  - Comparison of Preliminary and Final Quantities (Approving Authority File)
  - Final Records as identified in WSDOT LAG (Approving Authority File)
  - Record of Material Samples and Tests
  - Materials Certification
  - Affidavit of Wages Paid
  - Release for the Protection of Property Owners and General Contractor
- 5.2 **Field Paperwork:** The inspector will review the Contractor provided redlines for accuracy and will confirm all paperwork submitted is in accordance with Contract, WSDOT, and Town standards.
- 5.3 **Deliver Documentation to the Town:** The Consultant will prepare and deliver all necessary project files to the Town upon completion of the Project if requested.
  - Meeting agendas and notes
  - Monthly pay estimates

## EXHIBIT A

- WSDOT reporting
- Subcontractor Packets
- Physical Completion Letter
- Final project documents

### *Task 5 Deliverables:*

- Hard and electronic Project files

## **TASK 6 – MATERIAL TESTING**

- 6.1 **Subcontract with Material Tester:** The Consultant will contract with a 3<sup>rd</sup> party material testing firm to provide all material testing as required by the Project plans and specification. The Consultant will coordinate all testing required to the Contract.
- 6.2 **Invoicing:** The Consultant will review invoices received from the material testing firm for accuracy and approve monthly invoices.

### *Task 6 Deliverables:*

- Contract with, coordinate, and schedule all testing required by the Contract
- Manage monthly invoices received from the material testing firm

## **TASK 7 – PSIFE**

- 7.1 **Monthly PSIFE Inspections:** The Consultant will perform monthly walks with the Town to examine the plants. The Contractor will be notified of any plants found not to be in conformance during the PSIFE period and will assume responsibility for replacing them as required by the Contract.
- 7.2 **Final PSIFE Inspection:** The Consultant will perform a final walk with the Town at the end of the PSIFE period to ensure all plants are in conformance with the Contract.
- 7.3 **Prepare Final Pay Estimate for PSIFE:** The Consultant will produce a final pay estimate on the completion of the PSIFE period for the Town to execute.
- 7.4 **Certified Payroll during PSIFE:** The Consultant will track certified payrolls to ensure compliance during the PSIFE period.

### *Task 7 Deliverables:*

- Monthly PSIFE Inspections
- Final PSIFE Inspection
- Final Pay Estimate
- Certified Payroll Tracking

## **TASK 8 – ENGINEERING SUPPORT SERVICES**

The Consultant will provide engineering support services during the construction period as requested by the Town.

- 8.1 The Consultant will prepare for and attend up to ten (10) coordination meetings, construction meetings, or site visits, during the project to discuss key issues and as requested by the Town.



## **EXHIBIT A**

- 8.2 The Consultant will issue design changes when required. Revised plan drawings will be provided. Design revisions required due to error or omission will be provided at no cost to the Town.

### *Task 8 Deliverables:*

- Up to ten (10) coordination meetings
- Issue design revisions as needed

## **TASK 9 – MANAGEMENT RESERVE**

A management reserve of \$5,000.00 has been included in the cost of services as a placeholder. At the time these services are required, the Consultant shall provide a details scope of work and an estimate of costs. The Consultant shall not proceed with the work until the Town has authorized the work and issued a notice to proceed.

## **ADDITIONAL SERVICES**

Additional services requested by the Town will be performed only when authorized by the Town. Authorization to perform additional services will be in writing, specifying the work to be performed, and basis of payment. Items such as Community Outreach (except as completed on a day-to-day basis by the inspector and resident engineer), Public Meetings, claims analysis, surveying, services during shutdown periods of non-working days, and services for extended working days are examples of possible additional services. This fee is based on 10 days prior to construction, a 120 working day contract, and 20 days for closeout, 8-hour days. Additional extension of days will be approximately \$2500.00 per day.

This project has a DBE goal of 16%. KPG Psomas will meet this goal by utilizing two different DBE certified subconsultants.

HWA GeoSciences Inc

- o Cert# #D5F0024692

- o Budget \$26,653

- o Materials Testing

- Akana

- o Cert# #D1M0015051

- o Budget \$38,164

- o Construction Observation

Total commitment to DBE for: \$64,817

Total Approved Contract (Incl MR): \$404,417

DBE Goal 16% = \$64,707

KPG Staff responsibility for reporting:

- Georgeanne Smith

- Admin Department Manager

- Georgeanne@kpg.com

# ***Exhibit C***

## ***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

Please see Scope of Work

B. Roadway Design Files

Please see Scope of Work

C. Computer Aided Drafting Files

Please see Scope of Work

Agreement Number: 21145

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

Please see Scope of Work

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

Please see Scope of Work

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

Please see Scope of Work

## II. Any Other Electronic Files to Be Provided

Please see Scope of Work

## III. Methods to Electronically Exchange Data

Please see Scope of Work



A. Agency Software Suite

Please see Scope of Work

B. Electronic Messaging System

Please see Scope of Work

C. File Transfers Format

Please see Scope of Work

***Exhibit D***  
***Prime Consultant Cost Computations***

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Please see attached Exhibit D

Agreement Number: 21145

**EXHIBIT D**  
**PRIME CONSULTANT COST COMPUTATIONS**  
**Client:** Town of Eatonville  
**Project** KPG#10089, Fed: STPUS-016(013)  
 sr161/Washington Ave Streetscape  
**DATE:** 24-Feb-22

	Task Description	Labor Hour Estimate								Total Hours and Labor Fee Estimate by Task	
		Senior Engineer	Design Engineer	Construction Manager	Resident Engineer	Construction Observer II	Document Control Specialist	Document Admin	Senior Admin		
Task No.		\$68.30	\$42.50	\$63.00	\$45.57	\$41.50	\$41.01	\$27.73	\$37.70	Hours	Fee
Task 1 - Management / Coordination / Administration											
1.1	Project Management and Administrative Services										
1.2	Prepare, review and submit monthly expenditures										
	Task Total	0	0	84	0	0	0	4	0	88	\$ 5,403.17
Task 2 - Administrative Services up to Contractor Notice to Proceed (NTP) (2 weeks)											
2.1	Proceed										
2.2	PreCon Photos										
2.3	Review plans and Specs										
2.4	Prepare Hard and Electronic Files										
2.5	Prepare ROM										
2.6	Prepare PreCon Agenda										
2.7	Prepare Templates										
2.8	Utility Coordination										
	Task Total	0	0	0	48	40	80	0	0	168	\$ 7,127.91
Task 3 - Construction Management (CM) and Administrative Services. NTP to Project Closeout. (24 weeks)											
3.1	Construction Management Office Support										
3.1	Construction Management Certified Payrolls										
	Task Total	0	0	0	480	0	792	0	0	1272	\$ 54,352.65
Task 4 - Provide Field Inspection for Each of the Project's Working Days (24 weeks)											
4.1	Construction Inspection										
	Task Total	0	0	0	0	775	0	0	0	775	\$ 32,159.40
Task 5 - Project Closeout (2 weeks)											
5.1	Construction Management Office Support										
5.2	Construction Management Field Paperwork/Inspection										
5.3	Prepare Documentation to Deliver to City										
					30		40			70	\$ 3,007.47
					20					20	\$ 829.92
							10			10	\$ 410.07
										0	\$ -

Task Total		0	0	0	0	30	20	50	0	0	100	\$	4,247.46			
Task 6 - Materials Testing																
6.1	Subcontract with Material Tester (See Subconsultant)										0	\$	-			
6.2	Prepare Invoices and Billings for Subcontractor			6							6	\$	378.02			
Task Total		0	0	6	0	0	0	0	0	0	6	\$	378.02			
Task 7 - PSIPE																
7.1	Inspection: Monthly PSIPE Walks				36						36	\$	1,640.62			
7.2	Inspection of Final PSIPE Period				4						4	\$	182.29			
7.3	Preparation of Final Pay Estimate for PSIPE							2			2	\$	82.01			
7.4	Tracking Payroll during PSIPE							24			24	\$	984.17			
Task Total		0	0	0	40	0	0	26	0	0	66	\$	2,889.10			
Task 8 - Engineering Support Services During Construction																
8.1	Engineering Support	20	40								16	\$	5,569.20			
Task Total		20	40	0	0	0	0	0	0	0	16	\$	5,569.20			
Total Labor Hours and DL		20	40	90	598	835	948	4	16	2,409	\$		112,126.91			
													ICR Overhead @ 1.6761% =		\$	187,935.92
													Fixed Fee @ 30% =		\$	33,638.07
													Total KPG (DL + OH + Fixed Fee) =		\$	333,700.91
													Task 9 Management Reserve =		\$	5,000.00
Subconsultants																
													HWA GeoSciences Inc (DBE #D5F0024692) (Exhibit E-1)		\$	26,653.00
													Akana (DBE #D1M0015051) (EXHIBIT E-2)		\$	38,164.00
													Subtotal		\$	64,817.00
													Administrative Charge (5%) (Non-LAG Agreements)			
													Total Subconsultant Expense		\$	64,817.00
Reimbursable Direct Non-Salary Costs																
													Mileage at current IRS rate		\$	900.00
													Reproduction Allowance			
													Total Reimbursable Expense		\$	900.00
													Total Estimated Budget (includes Management Reserve)		\$	404,417.91

## ***Exhibit E***

### ***Sub-consultant Cost Computations***

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If no sub-consultant participation at this time. The CONSULTANT shall not sub-contract for the performance of any work under this AGREEMENT without prior written permission of the AGENCY. Refer to section VI “Sub-Contracting” of this AGREEMENT.

HWA GeoSciences Inc. - \$26,653.00 (DBE Sub)

Cooper Zietz Engineers, Inc. dba. Akana - \$38,164.00 (DBE Sub)

Agreement Number: 21145



**PROPOSED WORK SCOPE:**

This cost estimate is based on plans provided by the Town of Eatonville. Federal funding increases inspection/acceptance requirements.

1. Sampling of HMA aggregate for acceptance and oil at the plant for ignition oven correction factor.
2. Sampling and acceptance/Proctor testing of CSBC, CSTC, and Gravel Borrow for use in trench backfill, wall base, and roadway/sidewalk/ramp construction.
3. Sampling and acceptance testing of GB for Drains and Native soils for use on site.
4. Inspection and testing of compacted aggregates for roadway/sidewalk, utility trenches, walls, and ADA ramp construction.
5. Inspection and testing of HMA placement and compaction (minimum: one test per 100 tons).
6. Sampling and testing HMA during paving for Rice density, extraction and gradation (minimum: one test sample per 1000 tons).
7. Periodic concrete sampling for stairs, walls, curb/gutter, signal poles, luminaires, driveways, and ADA ramps. Includes next-day pickups.
8. Sampling and testing concrete aggregates for acceptance (assume 1 source).
9. Written field reports will be prepared for all inspections and reviewed for QC.

**Material Testing - ESTIMATED HWA LABOR:**

Scope of Services	2022 PERSONNEL & HOURLY RATES					
	Engr VII \$78.00	Geol V \$48.50	Inspector \$28.00	Clerical \$25.50	TOTAL HOURS	TOTAL AMOUNT
<b>Aggregate Inspection and Testing, including:</b>						
Sampling of CSBC, CSTC, Gravel Borrow, and GB for Drains at WSDOT intervals (1 source)			4		4	\$112
Inspection and Testing of Compacted Road Base Aggregates			12		12	\$336
Inspection and Testing of Compacted Trench/Structure Backfill			24		24	\$672
Inspection and Testing of Wall Backfill			24		24	\$672
<b>Asphalt Inspection and Testing, including:</b>						
Inspection and Testing during HMA Placement for Roadway			20		20	\$560
HMA Oven Ignition Correction Sampling of Aggregate and Oil (1 mix)			5		5	\$140
HMA Sampling at Batch Plant (1 trip x 5 hrs.)			5		5	\$140
<b>Concrete Inspection and Testing, including:</b>						
Concrete Aggregate Sampling and Testing (2 mixes x 2 aggregates x 1 source)			4		4	\$112
Curb & Gutter, Driveway Testing (2 periodic visits, plus pickups)			18		18	\$504
ADA Ramps (2 periodic visits, plus pickups)			18		18	\$504
Illumination/RRFB Pole Foundations (3 periodic visits, plus pickups)			27		27	\$756
CIP Stairs (2 periodic visits, plus pickups)			18		18	\$504
Concrete Driveways (1 visit, plus pickup)			9		9	\$252
<b>Project Management</b>						
Preconstruction Meeting		1			1	\$49
QA Review, Reporting, Submittal Reviews, and Report Distribution	8	4			12	\$818
<b>DIRECT SALARY COST</b>	8	5	188	0	201	<b>\$6,131</b>

Material Testing - LABORATORY TESTING ESTIMATE:

LABORATORY EXPENSE DESCRIPTION	Est No.	Unit Test	TOTAL
Asphalt Ignition Oven Correction (1 mix, 3 burns)	3	\$140	\$420
CSBC/CSTC Acceptance Testing (FF, SE, GS) at WSDOT Intervals (1 source)	2	\$345	\$690
Gravel Borrow, GB for Drains Acceptance Testing (GS, SE) at WSDOT Intervals (1 source)	2	\$290	\$580
Proctor Tests on All Materials to be Compacted (including native samples)	3	\$300	\$900
HMA Aggregate Acceptance (Voids, FF, SE) (1 mix)	1	\$310	\$310
Bitumen Content by Extraction with Gradation of Aggregate (1 sample)	1	\$185	\$185
Maximum Theoretical Specific Gravity of HMA (Rice Density) (1 sample)	1	\$140	\$140
Concrete Aggregate Acceptance (2 mixes x 2 aggregates x 1 source) (Gradation)	4	\$185	\$740
Concrete Compressive Strength Testing (10 sets x 4 per set)	40	\$30	\$1,200
LABORATORY TOTAL:			\$5,165

EXPENSES:

EXPENSE DESCRIPTION	Total Cost
Nuclear Gauge Rental (\$40/day), assuming 10 days	\$400
Thin Lift (HMA Testing) Nuclear Gauge Rental (\$60/day), assuming 2 days	\$120
Mileage to and from the job site for all inspections/pickups at IRS mileage rate (32 trips)	\$2,600
Mileage for HMA, and aggregate sampling, assuming 4 trips	\$350
EXPENSE TOTAL:	\$3,470

ESTIMATED PROJECT TOTALS AND SUMMARY:

Direct Salary Cost (DSC)	\$6,131
OH @ 1.6390 * DSC	\$10,048
FF @ 30% * (DSC)	\$1,839
Total Labor Cost	\$18,018
Laboratory Testing	\$5,165
Direct Expenses	\$3,470
ESTIMATED PROJECT TOTAL:	\$26,653

Assumptions:

1. These estimates may require adjustment due to the Contractor's rate of construction, weather delays, source changes and/or other factors beyond our control.
2. The HWA PM reserves the right to shift hours between the various subtasks as required.
3. The HWA work scope does not include safety assessment nor work pertaining to any environmental issues.
4. This cost estimate was prepared with the understanding that the Client will schedule inspection as needed.
5. All night work is charged at an 8 hour minimum segment. Night work cancelled within 12 hrs of scheduled time will be charged 4 hrs.
6. All weekend work is charged at an 4 hour minimum segment. Weekend work cancelled within 12 hrs of scheduled time will be charged 4 hrs.
7. 3000psi, Commercial, and concrete for sidewalks and thrust blocks will not be tested.
8. This cost estimate assumes temporary HMA (trench patching, etc) will not be tested.



**Washington State  
Department of Transportation**

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

TTY: 1-800-833-6388  
[www.wsdot.wa.gov](http://www.wsdot.wa.gov)

September 9, 2021

HWA GeoSciences, Inc.  
21312 30<sup>th</sup> Drive SE, Suite 110  
Bothell, WA 98021

Subject: Acceptance FYE 2020 ICR – CPA Report

Dear Vasiliy Babko:

We have accepted your firms FYE 2020 Indirect Cost Rate (ICR) of 163.90% of direct labor (rate includes 0.22% Facilities Capital Cost of Money) based on the “Independent CPA Report,” prepared by Thomas W. Maxwell, CPA. This rate will be applicable for WSDOT Agreements and Local Agency Contracts in Washington only. This rate may be subject to additional review if considered necessary by WSDOT. Your ICR must be updated on an annual basis.

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

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

If you have any questions, feel free to contact our office at **(360) 705-7019** or via email [consultantrates@wsdot.wa.gov](mailto:consultantrates@wsdot.wa.gov).

Regards;

A handwritten signature in blue ink that reads "Erik K. Jonson".

ERIK K. JONSON  
Contract Services Manager

EKJ:ah

# Proposal Fee Estimate

## Exhibit E-2

AKANA

CLIENT Name: KPG

PROJECT Description: Eatonville SR161/Washington Ave N Corridor Streetscape project

Proposal/Job Number:

January 1, 2014 Rates																																			
Classification:																																			
Hourly Rate:																																			
Task 300 - Construction Services Field																																			
field inspection services																																			
Task																																			
Task 300 - Subtotal																																			
All Phases Total																																			
								Jeff Faunce		Tom Gilbert		safety		Sue Timm		Mindy Corey		Total		AKANA		OH @ 1.2639 ICR		AKANA		Fixed Fee @ 30% of DLR only		AKANA		Direct Non Salary Costs ODCs		Total Expenses		Total Labor + Expenses	
								\$100		\$55		\$43		\$47		\$49		Hours		Fees		126%		30%		Fees									
										262								262		\$14,410		\$18,213		\$4,323		\$1,218		\$23,754		\$38,164					
																		0		\$0		\$0		\$0				\$0		\$0		\$0			
																		0		\$0		\$0		\$0				\$0		\$0		\$0			
								0		262		0		0		0		262		\$14,410		\$18,213		\$4,323		\$1,218		\$23,754		\$38,164					
								0		262		0		0		0		262		\$14,410		\$18,213		\$4,323		\$1,218		\$23,754		\$38,164					



**Washington State  
Department of Transportation**

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Tumwater, WA 98501-6504

TTY: 1-800-833-6388  
[www.wsdot.wa.gov](http://www.wsdot.wa.gov)

August 25, 2021

Cooper Zietz Engineers, Inc. dba Akana  
6400 SE Lake Road, Suite 270  
Portland, OR 97222

Subject: Acceptance FYE 2020 ICR – Audit Office Review

Dear Bernie Egan:

Transmitted herewith is the WSDOT Audit Office's memo of "Acceptance" of your firm's FYE 2020 Indirect Cost Rate (ICR) as follows:

- Home Rate: 141.91% of direct labor
- Field Rate: 126.39% of direct labor

This rate will be applicable for WSDOT Agreements and Local Agency Contracts in Washington only. This rate may be subject to additional review if considered necessary by WSDOT. Your ICR must be updated on an annual basis.

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

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

If you have any questions, feel free to contact our office at **(360) 705-7019** or via email [consultantrates@wsdot.wa.gov](mailto:consultantrates@wsdot.wa.gov).

Regards;

A handwritten signature in blue ink that reads "Erik K. Jonson".

ERIK K. JONSON  
Contract Services Manager

EKJ:ah

# **Exhibit F - Title VI Assurances Appendix A & E**

## **APPENDIX A**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, *(Title of Modal Operating Administration)*, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.  
*[Include Modal Operating Administration specific program requirements.]*
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin. *[Include Modal Operating Administration specific program requirements.]*
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the *(Title of Modal Operating Administration)* to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the *(Title of Modal Operating Administration)*, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non- discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the *(Title of Modal Operating Administration)* may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the *(Title of Modal Operating Administration)* may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.



# ***Exhibit F - Title VI Assurances Appendix A & E***

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## **APPENDIX E**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

### **Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

## ***Exhibit G***

### ***Certification Documents***

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- Exhibit G-1(a) Certification of Consultant
- Exhibit G-1(b) Certification of Town of Eatonville
- 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: 21145

## Exhibit G-1(a) Certification of Consultant

I hereby certify that I am the and duly authorized representative of the firm of  
KPG Psomas Inc.  
whose address is  
2502 Jefferson Avenue Tacoma WA 98402  
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 WA State Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

KPG Psomas Inc.

Consultant (Firm Name)



Signature (Authorized Official of Consultant)

3/31/2022

Date

Agreement Number: 21145

**Exhibit G-1(b)    Certification of** Town of Eatonville

I hereby certify that I am the:

- ☒ Certified Authority
- ☐ Other

of the Town of Eatonville, and KPG Psomas Inc.  
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 WA Dept of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

KPG Psomas Inc.

Consultant (Firm Name)



Signature (Authorized Official of Consultant)

3/31/2022

Date

Agreement Number: 21145

## 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.

KPG Psomas Inc.

Consultant (Firm Name)



Signature (Authorized Official of Consultant)

3/31/2022

Date

Agreement Number: 21145



## 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 SR 161/Washington Ave Streetscapes Ph 2 \* are accurate, complete, and current as of April 1, 2022 \*\*.

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: KPG Psomas 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: 21145

## **Exhibit H**

### **Liability Insurance Increase**

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#### **To Be Used Only If Insurance Requirements Are Increased**

The professional liability limit of the CONSULTANT to the AGENCY identified in Section XII, Legal Relations and Insurance of this Agreement is amended to \$ N/A .

The CONSULTANT shall provide Professional Liability insurance with minimum per occurrence limits in the amount of \$ N/A .

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: \$ N/A .

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

N/A

Agreement Number: 21145

# **Exhibit I**

## ***Alleged Consultant Design Error Procedures***

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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: 21145

## **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.

# **Exhibit J**

## **Consultant Claim Procedures**

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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.

Agreement Number: 21145

### **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.