



**Washington State
Department of Transportation**

CONTRACT

No. K1653

FOR

**FEDERAL HIGHWAY ADMINISTRATION (FHWA) MEGA-PROJECTS (MP) DISADVANTAGED BUSINESS ENTERPRISE
(DBE) PROGRAM COMPLIANCE**

By and Between

**STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION**

and

FORCH CONSULTING, LLC

Dated February 14, 2024

CONTRACT

No. K1653

FEDERAL HIGHWAY ADMINISTRATION (FHWA) MEGA-PROJECTS (MP) DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM COMPLIANCE

This Contract (“Contract”) is made and entered into by and between the State of Washington acting by and through the Department of Transportation, a Washington State governmental agency (“WSDOT”) and Forch Consulting, LLC, a Washington Corporation (“Contractor”) and is dated and effective as of February 01, 2024.

RECITALS

- A. Pursuant to Legislative direction codified in RCW 39.26, WSDOT is authorized to solicit and award contracts for goods and/or services for use by WSDOT.
- B. WSDOT issued a Sole Source Notification, Solicitation #SS 2024 0131 dated January 31, 2024, for the purpose of obtaining a contractor for the Federal Highway Administration (FHWA) Mega-Projects (MP) Disadvantaged Business Enterprise (DBE) Program Compliance in accordance with its authority under RCW 39.26.
- C. WSDOT has determined that entering into this Contract will meet the identified needs and be in the best interest of the State of Washington.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereto hereby agree as follows:

1. **TERM.** The term of this Contract is for a five (5) month term commencing February 14, 2024, ending June 30, 2024; subject to mutual agreement, the term of the Contract may be extended for up to six (6) additional one (1) year terms.
2. **SCOPE – INCLUDED GOODS AND/OR SERVICES AND PRICE.**
 - 2.1. **CONTRACT SCOPE.** Pursuant to this Contract, Contractor is authorized to sell and provide only those services and prices set forth in *Exhibit A – Scope of Work & Pricing*.
 - (a) **Goods.** For purposes of this Contract, “Goods” means all equipment, materials, supplies, ancillary parts, accessories, components and other items purchased as defined in this Contract.
 - (b) **Services.** For purposes of this Contract, “Services” means all services of any nature ordered by WSDOT pursuant to this Contract.
 - (c) **Specifications.** Where applicable, specifications for Goods and/or Services as detailed in this Contract. Unless otherwise specified, all Goods and/or Services provided shall be new and unused of the latest model or design.
 - 2.2. **STATE’S ABILITY TO MODIFY SCOPE OF CONTRACT.** Subject to mutual agreement between the parties, WSDOT reserves the right to modify the services included in this Contract; *Provided*,

however, that any such modification shall be effective only upon ten (10) days advance written notice; and *Provided further*, that any such modification must be within the scope of the Competitive Solicitation for this Contract.

- 2.3. PRICE CEILING. Although Contractor may offer lower prices to WSDOT, during the term of this Contract, Contractor guarantees to provide the Goods and/or Services at no greater than the prices set forth in *Exhibit A - Scope of Work & Pricing*.

3. CONTRACTOR REPRESENTATIONS AND WARRANTIES. Contractor makes each of the following representations and warranties as of the effective date of this Contract and at the time of performance pursuant to this Contract. If, at the time of performance, Contractor cannot make such representations and warranties, Contractor shall not perform and shall, within three (3) business days notify WSDOT, in writing, of such breach.

- 3.1. QUALIFIED TO DO BUSINESS. Contractor represents and warrants that Contractor is (a) in good standing; (b) qualified to do business in the State of Washington; and (c) registered with the Washington State Department of Revenue and the Washington Secretary of State.
- 3.2. TAXES. Contractor represents and warrants that Contractor is current, in full compliance, and has paid all applicable taxes owed to the State of Washington.
- 3.3. LICENSES; CERTIFICATIONS; AUTHORIZATIONS; & APPROVALS. Contractor represents and warrants that Contractor possesses and shall keep current during the term of this Contract all required licenses, certifications, permits, authorizations, and approvals necessary for Contractor's proper performance of this Contract.
- 3.4. SUSPENSION & DEBARMENT. Contractor represents and warrants as previously certified in Contractor's Bidder's Certification, that neither Contractor nor its principals or affiliates presently are not have ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any governmental Contract by any governmental department or agency within the United States.
- 3.5. WAGE VIOLATIONS. Contractor represents and warrants as previously certified in Contractor's Bidder's Certification, that during the term of this Contract and the three (3) year period immediately preceding the award of the Contract, Contractor has not been determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgement entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW 49.46, 49.48, or 49.52.
- 3.6. CIVIL RIGHTS. Contractor represents and warrants that Contractor complies with all applicable requirements regarding civil rights. Such requirements prohibit discrimination against individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 3.7. EXECUTIVE ORDER 18-03 – WORKERS' RIGHTS. Contractor represents and warrants, as previously certified in Contractor's Bidder's Certification, that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Contract, Contractor shall not, as a condition of employment, require

its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

- 3.8. WASHINGTON SMALL BUSINESS. Contractor represents and warrants, as previously certified in Contractor's Bidder Certification, that Contractor qualifies as a Washington Small Business pursuant to RCW 39.26.010.
- 3.9. PUBLIC CONTRACTS AND PROCUREMENT FRAUD. Contractor represents and warrants that, within the three (3) year period prior to this Contract, neither Contractor nor its principals or affiliates: (a) have 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) contract under a public contract; (b) have been in violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offense enumerated in subsection (b) of this provision; or (d) had one or more public contracts (federal, state or local) terminated for cause or default.
- 3.10. PROCUREMENT ETHICS & PROHIBITION ON GIFTS. Contractor represents and warrants that Contractor complies fully with all applicable procurement ethics restrictions including, but not limited to, restrictions against Contractor providing gifts or anything of economic value, directly or indirectly, to State employees.
- 3.11. WASHINGTON'S STATEWIDE PAYEE DESK. Contractor represents and warrants that Contractor is registered with Washington's Statewide Payee Desk, which registration is a condition to payment.
- 3.12. ADVERTISING AND ENDORSEMENT. Contractor understands and acknowledges that neither WSDOT nor the State of Washington are endorsing Contractor's goods and/or services or suggesting that such goods and/or services are the best or only solution to their needs. Accordingly, Contractor further represents and warrants that Contractor shall make no reference to WSDOT or the State of Washington in any promotional material without the prior written consent of WSDOT.
- 3.13. CONTINGENT FEES. Contractor represents and warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established agents as defined in the Federal Acquisition Regulations.
- 3.14. FINANCIALLY SOLVENT. Contractor represents and warrants that Contractor has not commenced bankruptcy proceedings and that there are no judgment, liens, or encumbrances of any kind affecting title to any Goods and/or Services that are the subject of this Contract.
- 3.15. OPERATIONAL CAPABILITY. Contractor represents and warrants, as previously certified in Contractor's Bidder's Certification, that Contractor has the operational and financial capability to perform the Contract.
- 3.16. CONTRACT TRANSITION. Contractor represents and warrants that, in the event this Contract is transitioned to another contractor (e.g., Contract expiration or termination), Contractor shall use commercially reasonable efforts to assist WSDOT for a period of sixty (60) days to

effectuate a smooth transition to another contractor to minimize disruption of service and/or costs to the State of Washington.

3.17. NONDISCRIMINATION.

3.17.1. **NONDISCRIMINATION REQUIREMENT.** During the term of this Contract, Contractor, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, Contractor, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which Contractor, or subcontractor, has a collective bargaining or other agreement.

3.17.2. **OBLIGATION TO COOPERATE.** Contractor, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that Contractor, including any subcontractor, has engaged in discrimination prohibited by this Contract pursuant to RCW 49.60.530(3).

3.17.3. **DEFAULT.** Notwithstanding any provision to the contrary, WSDOT may suspend Contractor, including any subcontractor, upon notice of a failure to participate and cooperate with any state WSDOT investigation into alleged discrimination prohibited by this Contract, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until WSDOT receives notification that Contractor, including any subcontractor, is cooperating with the investigating state agency. In the event Contractor, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), WSDOT may terminate this Contract in whole or in part, and Contractor, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. Contractor or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.

3.17.4. **REMEDIES FOR BREACH.** Notwithstanding any provision to the contrary, in the event of Contract termination or suspension for engaging in discrimination, Contractor, subcontractor, or both, shall be liable for contract damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. WSDOT shall have the right to deduct from any monies due to Contractor or subcontractor, or that thereafter become due, an amount for damages Contractor or subcontractor will owe WSDOT for default under this provision.

4. QUALITY; WARRANTY; REMEDIES.

4.1. **SERVICES WARRANTY.** Contractor warrants that: (a) Services will be performed in a timely, efficient, professional, and workmanlike manner; (b) all Contractor personnel assigned to perform Services will have the necessary skill and training; and (c) Services will be performed in a manner consistent with the standard of care in the industry (“Services Warranty”). The

Services Warranty will survive for a period of twelve (12) months after the date when Services are completed (“Services Warranty Period”).

- 4.2. SERVICES REMEDY. If Services do not comply with the Services Warranty or are in any manner found to be nonconforming during the Services Warranty Period, Contractor promptly shall remedy the non-conformance, or at WSDOT’s election, Contractor shall re-perform or correct the nonconforming Services at no additional cost to WSDOT or refund the amounts paid for the Services.
 - 4.3. IT WARRANTY. Contractor warrants, that all hardware, software, and firmware associated with Goods or Services (“IT Goods” and “IT Services”, respectively) will not: (a) contain any viruses, malicious code, Trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to: (i) damage, destroy, or alter any software or hardware; (ii) reveal, damage, destroy, or alter any data; (iii) disable any computer program automatically; or (d) permit unauthorized access to any software or hardware; (b) contain any third party software (including software that may be considered free software or open source software) that (i) may require any software to be published, accessed, or otherwise made available without the consent of WSDOT, or (ii) may require distribution, copying, or modification of any software free of charge; and (c) infringe on any patent, copyright, trademark, or other proprietary or intellectual property right of any third party or misappropriate any trade secret of any third party (“IT Warranty”). The IT Warranty will expire twelve (12) months after the date IT Goods are delivered or IT Services are complete, as applicable.
 - 4.4. IT REMEDY. If IT Goods or IT Services do not comply with the IT Warranty, or if any defect or non-conformance develops during the IT Warranty Period, Contractor, at WSDOT’s election, promptly will: (a) remedy the defect by removing, repairing, correcting or replacing, and/or reinstalling any defective IT Goods; (b) re-perform or correct the non-conforming IT Services at no additional cost to WSDOT; or (c) refund the amounts paid for IT Services and IT Goods.
 - 4.5. FAILURE TO REMEDY. If Contractor does not remedy a defect or nonconformity within ten (10) calendar days after receipt of written notice from WSDOT, or if an emergency exists rendering it impossible or impractical for WSDOT to have Contractor provide a remedy, WSDOT may, without prejudice to any other rights or remedies available to it, make or cause to be made required modifications, adjustments, or repairs, or may replace Goods, Services, IT Goods, or IT Services, in which case Contractor shall reimburse WSDOT for its actual costs or, at WSDOT’s option, WSDOT will offset the costs incurred from amounts owing to Contractor.
 - 4.6. TECHNICAL SUPPORT. During any applicable warranty period, Contractor shall provide all warranty service and telephone support, including after-hour technical support, at its own cost. Contractor shall maintain a technical support hotline to address breakdowns and safety incidents.
5. **SAFETY; SECURITY.** Contractor’s failure to comply with any of the requirements in this Section shall be cause for termination.
- 5.1. REGULATORY REQUIREMENTS/SAFETY. Goods and/or Services supplied by Contractor shall meet all OSHA and other safety-related federal, state, and/or local regulatory agency requirements applicable to the Goods and/or Services.

- 5.2. MATERIAL SAFETY DATA SHEETS. As applicable, Contractor shall provide WSDOT with all appropriate Material Safety Data Sheets (“MSDS”) at the time of delivery of each shipment of Goods which requires such compliance and/or and for materials used by Contractor while performing Services and any updates of the same.
- 5.3. CLEAN-UP. If Contractor, its agents, employees, or subcontractors perform onsite Services, Contractor, at its cost, will remove all excess materials, equipment, packaging, and garbage within the scope of its performance of Services and leave that portion of the premises in which the work was performed in a clean condition. Should Contractor fail to clean up a Site after completion of work, WSDOT will have the right to remove the materials and set off the cost of clean up against amounts owed to Contractor.
- 5.4. ACCIDENT AND INJURY REPORTING. If Contractor, its agents, employees, or subcontractors are present at WSDOT’s premises, Contractor promptly will report in writing all injuries, accidents, property damage, near-miss incidents, or any claims regarding damages or injury involving Contractor, its agents, employees, or subcontractors occurring at such premises. Contractor agrees to cooperate and assist in any WSDOT investigation of incidents.
- 5.5. ON SITE REQUIREMENTS. While on WSDOT’s premises, Contractor, its agents, employees, or subcontractors shall comply, in all respects, with WSDOT’s physical, fire, access, safety, and other security requirements and not interfere with WSDOT’s operations. Contractor represents and warrants that Contractor, its agents, employees, or subcontractors who access WSDOT’s premises will be adequately trained and at all times comply with WSDOT’s requirements.
- 5.6. IT SECURITY POLICIES. Contractor, its agents, employees, or subcontractors shall comply with all Washington State IT security policies and standards which will be made available to Contractor upon request.

6. SUBCONTRACTORS.

- 6.1. CONTRACTOR RESPONSIBILITY. Notwithstanding any provision to the contrary, in the event Contractor elects to utilize subcontractors to perform this Contract, Contractor shall: (a) incorporate Contractor’s responsibilities under this Contract into its subcontracts; (b) be fully responsible for the performance of any such subcontractors (regardless of tier) and ensure that subcontractors comply with each and every Contractor obligation set forth in this Contract; (c) be the sole point of contact for WSDOT regarding all contractual matters; and (d) defend, indemnify, and hold WSDOT harmless in case of negligence, other tortious fault, or intentional misconduct by any such subcontractors (regardless of tier).
- 6.2. REPORTING. If Contractor is required to report to WSDOT, such report(s) will include subcontractor data, by subcontractor, for any data that Contractor is required to report as well as a consolidated ‘rollup’ report combining Contractor and subcontractor data.
- 6.3. SUBCONTRACTOR REPRESENTATIONS AND CERTIFICATIONS. Any Contractor representations or certifications set forth in this Contract shall apply to subcontractors (at any tier) and Contractor shall not utilize any subcontractors (at any tier) who cannot provide such representations or certifications, excepting the certification to be registered with Washington’s Statewide Payee Desk, unless WSDOT will pay such subcontractor directly.

7. DELIVERY & INSTALLATION.

- 7.1. DELIVERY REQUIREMENTS. Contractor must ensure that the Goods and/or Services are delivered or provided as required by this Contract, including the requirements set forth in *Exhibit A*, or as otherwise mutually agreed in writing between WSDOT and Contractor. The following apply to all deliveries:
- (a) Contractor shall make all deliveries to the applicable delivery location specified herein. Such deliveries shall occur during WSDOT's normal work hours and within the time period mutually agreed in writing between Contractor and WSDOT.
 - (b) Contractor shall ship all Goods and/or Services purchased pursuant to this Contract, freight charges prepaid by Contractor, FOB WSDOT's specified destination with all transportation and handling charges included. Contractor shall bear all risk of loss, damage, or destruction of the Goods and/or Services ordered hereunder that occurs prior to delivery and installation, except loss or damage attributable solely to WSDOT's fault or negligence.
 - (c) All packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written materials associated with this Contract shall be identified by the Contract number set forth on the cover of this Contract.
- 7.2. RECEIPT AND INSPECTION OF GOODS AND/OR SERVICES. Goods and/or Services purchased under this Contract are subject to WSDOT's reasonable inspection, testing, and approval at WSDOT's destination. WSDOT reserves the right to reject and refuse acceptance of goods and/or services that are not in accordance with this Contract. If there are any apparent defects in the Goods and/or Services at the time of delivery, WSDOT promptly will notify Contractor. At WSDOT's option, and without limiting any other rights, WSDOT may require Contractor to repair or replace, at Contractor's expense, any or all of the damaged goods and/or services or, at WSDOT's option, WSDOT's may note any damage to the goods and/or services on the receiving report, decline acceptance, and deduct the cost of rejected goods and/or services from final payment.

8. PERFORMANCE OF SERVICES

- 8.1. OWNERSHIP OF DELIVERABLES. Notwithstanding any provision to the contrary, the parties understand and agree that WSDOT shall own all rights to any plans, reports, or other deliverables provided to WSDOT pursuant to this Contract. The copyright in all works of authorship created pursuant to this Contract shall be owned by the State of Washington. All such works or portions of works created by the Contractor are hereby agreed to be "works made for hire" within the meaning of 17 U.S.C. § 201. If, however, the State of Washington is not able to obtain copyright ownership under the statutory provisions for "works made for hire," then Contractor hereby assigns to State of Washington all right, title, and interest in: (a) the copyright to Contractor's work of authorship ("Work") and contribution to any such Work ("Contribution"); (b) any registrations and copyright applications, along with any renewals and extensions thereof, relating to the Contribution or the Work; (c) all works based upon, derived from, or incorporating the Contribution or the Work; (d) all income, royalties, damages, claims and payments now or hereafter due or payable with respect to the Contribution or the Work; (e) all causes of action, either in law or in equity, for past, present,

or future infringement of copyright related to the Contribution or the Work, and all rights corresponding to any of the foregoing, throughout the world. In addition, to the extent any applicable law or treaty prohibits the transfer or assignment of any moral rights or rights of restraint the Contractor has in the Contribution or the Work, the Contractor waives those rights as to State of Washington, its successors, licensees, and assigns.

- 8.2. **CONTRACTOR KEY STAFF CHANGES.** Except in the case of a leave of absence, sickness, death, termination of employment, agreed upon Key Staff must not be changed during the term of this contract. Otherwise, any change in Key Staff must be agreed in writing between the parties. During the term of the Contract, WSDOT reserves the right to approve or disapprove of Contractor and Subcontractor Key Staff assigned to perform services as required by this contract, or to require the removal or reassignment of any Contractor or Subcontractor Key Staff found unacceptable by WSDOT, subject to WSDOT 's compliance with applicable laws and regulations. Contractor must provide WSDOT with a resume of any member of its Key Staff or a Subcontractor's Key Staff assigned to or proposed for any aspect of performance under this Contract prior to commencing any Services.

In the event that proposed Contractor resources are unavailable to deliver the work, Contractor must staff the project with resources with equal or greater skills and capabilities, subject to approval from WSDOT.

WSDOT must be notified of any change in Contractor Key Staff as soon as practicable but in no event less than five (5) working days after removal of such staff from their duties in support of this Contract. Contractor must provide resumes and describe the roles and responsibilities of any replacement staff to WSDOT as soon as practicable but in no event less than five (5) working days prior to the date that such staff begin work under this Contract. WSDOT reserves the right, in its sole judgement, to approve or reject such replacement staff. WSDOT 's approval of such staff will not be unreasonably withheld.

9. INVOICING & PAYMENT

- 9.1 **CONTRACTOR INVOICE.** Contractor shall submit properly itemized invoices to WSDOT's designated invoicing contact for Goods and/or Services delivered under this Contract to:

ATTN: Michael Carpenter, Project Manager

310 MAPLE PARK AVE

OLYMPIA, WA 98504

(360) 705-6864

carpenm@wsdot.wa.gov

Such invoices shall itemize the following:

- (a) Contract No. K1653;
- (b) Contractor name, address, telephone number, and email address for billing issues (i.e., Contractor Customer Service Representative);
- (c) Contractor's Federal Tax Identification Number;
- (d) Date(s) of delivery;
- (e) Description of Services and Deliverables provided;

- (f) Net invoice Price for each Service or Deliverables;
 - (g) Applicable taxes;
 - (h) Total invoice amount; and
 - (i) Payment terms, including any available prompt payment discounts.
- 9.2. CONTRACTOR'S INVOICES FOR PAYMENT SHALL REFLECT ACCURATE CONTRACT PRICES. Invoices will not be processed for payment until receipt of a complete invoice as specified herein. WSDOT shall have no obligation to pay Contractor for any services that do not comply with this Contract Payment. Payment is the sole responsibility of, and will be made by, WSDOT. Payment is due within thirty (30) days of invoice. If WSDOT fails to make timely payment(s), Contractor may invoice WSDOT in the amount of one percent (1%) per month on the amount overdue or a minimum of \$1. Payment will not be considered late if a check or warrant is mailed within the time specified.
- 9.3. OVERPAYMENTS. Contractor promptly shall refund to WSDOT the full amount of any erroneous payment or overpayment. Such refunds shall occur within thirty (30) calendar days of written notice to Contractor; Provided, however, that WSDOT shall have the right to elect to have either direct payments or written credit memos issued. If Contractor fails to make timely refunds of overpayment(s) (either directly or by such credit memo), Contractor shall pay WSDOT interest at a rate of one percent (1%) per month on the amount overdue thirty (30) calendar days after notice to Contractor.
- 9.4. ADVANCE PAYMENT PROHIBITED. Except as authorized by law, Contractor shall not request or receive advance payment for any Good and/or Services furnished by Contractor pursuant to this Contract.
- 9.5. NO ADDITIONAL CHARGES. Unless otherwise specified herein, Contractor shall not include or impose any additional charges including, but not limited to, charges for shipping, handling, insurance, or payment processing.
- 9.6. TAXES/FEEES. Contractor promptly shall pay all applicable taxes on its operations and activities pertaining to this Contract. Failure to do so shall constitute breach of this Contract. Unless otherwise agreed, WSDOT shall pay applicable sales tax imposed by the State of Washington on purchased goods and/or services. Contractor's invoices shall separately state (a) taxable and non-taxable charges and (b) sales/use tax due by jurisdiction. In regard to federal excise taxes, Contractor shall include federal excise taxes only if, after thirty (30) calendar days written notice to WSDOT, WSDOT has not provided Contractor with a valid exemption certificate from such federal excise taxes.

10. CONTRACT MANAGEMENT

- 10.1. CONTRACT ADMINISTRATION & NOTICES. Except for legal notices, the parties hereby designate the following contract administrators as the respective single points of contact for purposes of contract administration for this Contract. WSDOT's contract administrator shall provide contract administrative oversight. Contractor's contract administrator shall be Contractor's principal contact for invoice/billing activities under this Contract. The parties may change contract administrators by written notice as set forth below.

Any notices required or desired shall be in writing and sent by U.S. mail, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email

address set forth below or to such other address or email address as the parties may specify in writing:

WSDOT

Attn: Contract Services Office, C/O
Marianna Adams
WSDOT
PO BOX 47408
Olympia, WA 98504-7408
Tel: (360) 705-7106
Email: admincontracts@wsdot.wa.gov

Contractor

Attn: Bobby Forch Consulting, LLC.
Bobby Forch
517 26th Avenue
Seattle, WA 98122-6121
Tel: (206) 805-5418
Email:
forchbo@consultant.wsdot.wa.gov

Notices shall be deemed effective upon the earlier of receipt, if mailed, or, if emailed, upon transmission to the designated email address of said addressee.

- 10.2. CONTRACTOR CUSTOMER SERVICE REPRESENTATIVE. Contractor shall designate a customer service representative (and inform WSDOT of the same) who shall be responsible for addressing WSDOT's issues pertaining to this Contract.
- 10.3. LEGAL NOTICES. Any legal notices required or desired shall be in writing and delivered by U.S. certified mail, return receipt requested, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

WSDOT

Attn: Jackie Bayne
WSDOT
310 Maple Park Avenue
Olympia, WA 98504
Tel: (360) 705-7084
Email: baynej@wsdot.wa.gov

Contractor

Attn: Bobby Forch Consulting, LLC.
Bobby Forch
517 26th Avenue
Seattle, WA 98122-6121
Tel: (206) 805-5418
Email:
forchbo@consultant.wsdot.wa.gov

Notices shall be deemed effective upon the earlier of receipt when delivered, or, if mailed, upon return receipt, or, if emailed, upon transmission to the designated email address of said addressee.

11. RECORDS RETENTION & AUDITS

- 11.1. RECORDS RETENTION. Contractor shall maintain books, records, documents, and other evidence pertaining to this Contract to the extent and in such detail as shall adequately reflect contract performance and administration of purchases, payments, taxes and fees. Contractor shall retain such records for a period of six (6) years following expiration or termination of this Contract or final payment, whichever is later; Provided, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.
- 11.2. AUDIT. WSDOT reserves the right to audit, or have a designated third-party audit, applicable records to ensure that Contractor properly has invoiced WSDOT. Accordingly, Contractor

shall permit WSDOT and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of six (6) years following expiration or termination of this Contract or final payment, whichever is later; Provided, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.

12. INSURANCE

- 12.1. **REQUIRED INSURANCE.** Contractor, at its expense, shall maintain in full force and effect the insurance coverages set forth in Exhibit B– Insurance Requirements. All costs for insurance, including any payments of deductible amounts, shall be considered incidental to and included in the prices for Goods and/or Services and no additional payment shall be made to Contractor.
- 12.2. **WORKERS COMPENSATION.** Contractor shall comply with applicable workers compensation statutes and regulations (e.g., RCW Title 51, Industrial Insurance). If Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, WSDOT may terminate this Contract. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from Contractor. If Contractor performs Services on WSDOT's behalf in the State of Washington, and only to the extent of claims against Contractor by WSDOT under the Indemnity obligations in this Contract, Contractor expressly waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW. Contractor's indemnification obligation will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefit acts. The parties expressly acknowledge and certify that the waiver of immunity under Title 51 RCW was mutually negotiated and agreed upon.

13. CLAIMS. ASSUMPTION OF RISKS; CLAIMS BETWEEN THE PARTIES. Contractor assumes sole responsibility and all risks of personal injury or property damage to itself and its employees and agents in connection with Contractor's operations under this Contract. WSDOT has made no representations regarding any factor affecting Contractor's risks. Contractor shall pay for all damage to any WSDOT's property resulting directly or indirectly from Contractor's acts or omissions under this Contract, even if not attributable to negligence by Contractor or its agents.

- 13.2. **THIRD-PARTY CLAIMS; GENERAL INDEMNITY.** To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold WSDOT and its employees and agents harmless from and against all claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities or losses including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees (collectively "Claims") arising out of Contractor's or its successors', agents', and subcontractors' negligence, other tortious fault, or intentional misconduct under this Contract, ; Provided, however, that no right to indemnity will exist as to that portion of a Claim resulting from the sole negligence, tortious fault, or intentional misconduct of WSDOT. The parties agree that if there are any limitations of Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is

responsible, such limitations of liability shall not apply to injuries to persons, including death, or to damages to property. Contractor shall take all steps needed to keep WSDOT's property free of liens arising from Contractor's activities, and promptly obtain or bond the release of any such liens that may be filed.

13.3. **INTELLECTUAL PROPERTY INDEMNITY.** To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold WSDOT and their employees and agents harmless from against any and all Claims resulting from allegations of infringement of any patents, copyrights, trade secret, or similar intellectual property rights covering the Goods and/or Services provided, or the use of the Goods and/or Services under this Contract. If WSDOT's use of Goods and/or Services provided by Contractor is enjoined based on an intellectual property infringement Claim, Contractor shall, at its own expense, either procure for WSDOT the right to continue using the Goods and/or Services or, after consulting with WSDOT and obtaining WSDOT's consent, replace or modify the Goods and/or Services with substantially similar and functionally equivalent non-infringing Goods and/or Services.

14. DISPUTE RESOLUTION. The parties shall cooperate to resolve any dispute pertaining to this Contract efficiently, as timely as practicable, and at the lowest possible level with authority to resolve such dispute. If, however, a dispute persists and cannot be resolved, it may be escalated within each organization. In such situation, upon notice by either party, each party, within five (5) business days shall reduce its description of the dispute to writing and deliver it to the other party. The receiving party then shall have three (3) business days to review and respond in writing. In the event that the parties cannot then agree on a resolution of the dispute, the parties shall schedule a conference between the respective senior manager of each organization to attempt to resolve the dispute. In the event the parties cannot agree, either party may resort to court to resolve the dispute.

15. SUSPENSION; EXPIRATION; TERMINATION; REMEDIES.

15.1. **TERMINATION.** This Contract may be terminated: (a) upon the mutual written agreement of the parties; (b) by the non-breaching party where the breach is not cured within thirty (30) calendar days after written notice of breach is delivered to the breaching party, unless a different time for cure is otherwise stated in this Contract; and (c) as otherwise expressly provided for in this Contract. This Contract shall terminate automatically and without further action if a party becomes insolvent or is placed in receivership, reorganization, liquidation, or bankruptcy. In addition to any other available remedies, the non-breaching party may terminate this Contract as provided in subsection (b) above without further liability by written notice to the breaching party. A termination for breach will not affect rights or obligations accrued or owed before the effective date of the termination notice.

15.2. **TERMINATION FOR NONAPPROPRIATION OR REDUCTION OF FUNDS OR CHANGES IN LAW.** WSDOT may suspend or terminate this Contract, at the sole discretion of WSDOT or, as applicable, if WSDOT reasonably determines that: (a) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (b) that a change in available funds affects WSDOT's ability to pay Contractor. A change of available funds as used in this section includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor. If a written notice is delivered under this provision, WSDOT will reimburse Contractor for Goods properly ordered and/or Services properly performed until the effective

date of said notice. Except as stated in this provision, in the event of termination for nonappropriation or reduction of funds or changes in law, WSDOT will have no obligation or liability to Contractor.

- 15.3. TERMINATION FOR PUBLIC CONVENIENCE. WSDOT, for public convenience, may terminate this Contract; Provided, however, that such termination for public convenience must, in WSDOT's judgment, be in the best interest of the State of Washington; and Provided further, that such termination for public convenience shall only be effective upon sixty (60) days prior written notice; and Provided further, that such termination for public convenience shall not relieve WSDOT from payment for Goods and/or Services already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such termination for public convenience, WSDOT shall not have any obligation or liability to Contractor.
- 15.4. EXPIRATION – WSDOT's Obligations. Upon expiration of this Contract, WSDOT shall accept and take delivery of all outstanding and not yet fulfilled orders and pay Contractor the price as set out in the Contract.
- 15.5. EXPIRATION OR TERMINATION – Contractor's Obligations. Upon expiration or termination of this Contract, Contractor shall: (a) continue to fulfill its warranty obligations with respect to any Goods and/or Services sold hereunder and all provisions of the Contract that, by their nature, would continue beyond the expiration, termination, or cancellation of the Contract shall so continue and survive; and (b) promptly return to WSDOT all keys, badges, and other materials supplied by WSDOT pursuant to this Contract.
- 15.6. DEFAULT. Any of the following events shall constitute cause for WSDOT to declare Contractor in default of this Contract:
 - (a) Contractor fails to perform or comply with any of the terms or conditions of this Contract;
 - (b) Contractor breaches any representation or warranty provided herein; or
 - (c) Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary.
- 15.7. SUSPENSION & TERMINATION FOR DEFAULT. WSDOT may suspend Contractor's operations under this Contract immediately by written cure notice of any default. Suspension shall continue until the default is remedied to WSDOT's reasonable satisfaction; Provided, however, that, if after twenty (20) days from such a suspension notice, Contractor remains in default, WSDOT may terminate Contractor's rights under this Contract. All of Contractor's obligations to WSDOT survive termination of Contractor's rights under this Contract, until such obligations have been fulfilled.
- 15.8. REMEDIES FOR DEFAULT.
 - (a) WSDOT's rights to suspend and terminate Contractor's rights under this Contract are in addition to all other available remedies.
 - (b) In the event of termination for default, WSDOT may exercise any remedy provided by law including, without limitation, the right to procure replacement goods and/or services. In such event, Contractor shall be liable to WSDOT for damages as authorized by law including, but not limited to, any price difference between the Contract price and the replacement or cover price as well as any administrative

and/or transaction costs directly related to such replacement procurement – e.g., the cost of the competitive procurement.

- 15.9. **LIMITATION ON DAMAGES.** Notwithstanding any provision to the contrary, the parties agree that in no event shall any party be liable to the other for exemplary or punitive damages; Provided, however, that nothing contained in this Section will in any way exclude or limit: (a) a party's liability for all damages arising out of that party's intentional acts or omissions; (b) the operation of any Goods and/or Services warranty provided in this Contract; or (c) damages subject to the Intellectual Property Indemnity section of this Contract. Any limitation of either party's obligations under this Contract, by delivery slips or other documentation is void.
- 15.10. **SUSPENSION/TERMINATION PROCEDURE.** Regardless of basis, in the event of suspension or termination (in full or in part), the parties shall cooperate to ensure an orderly and efficient suspension or termination. Accordingly, Contractor shall deliver to WSDOT all Goods and/or Services that are complete (or with approval from WSDOT, substantially complete) and WSDOT shall inspect, accept, and pay for the same in accordance with this Contract. Unless directed by WSDOT to the contrary, Contractor shall not process any orders after notice of suspension or termination inconsistent therewith.

16. PUBLIC INFORMATION & PUBLIC RECORDS DISCLOSURE REQUESTS.

- 16.1. **WASHINGTON'S PUBLIC RECORDS ACT.** Unless statutorily exempt from public disclosure, this Contract and all related records are subject to public disclosure as required by Washington's Public Records Act, RCW 42.56.
- 16.2. **CONTRACTOR OBLIGATION.** Contractor shall identify and mark the precise portion(s) of the relevant page(s) of any records provided to WSDOT that Contractor believes are statutorily exempt from disclosure and identify the precise statutory basis for exemption from disclosure. In addition, if, in Contractor's judgment, certain portions of such records are not statutorily exempt from disclosure but are sensitive because particular portions of Contractor's records (NOT including pricing) include highly confidential, proprietary, or trade secret information (or the equivalent) that Contractor protects through the regular use of confidentiality or similar agreements and routine enforcements through court enforcement actions, Contractor shall identify and mark the precise portion(s) of the relevant page(s) of any records that include such sensitive information.
- 16.3. **WSDOT'S OBLIGATION.** In the event that WSDOT receives a public records disclosure request pertaining to records that Contractor has submitted and marked either as (a) statutorily exempt from disclosure; or (b) sensitive WSDOT, prior to disclosure, will do the following: WSDOT's Public Records Officer will review any records marked by Contractor as statutorily exempt from disclosure. In those situations, where the designation comports with the stated statutory exemption from disclosure, WSDOT will redact or withhold the record(s) as appropriate. For records marked 'sensitive' or for records where WSDOT determines that no statutory exemption to disclosure applies or is unable to determine whether the stated statutory exemption to disclosure properly applies, WSDOT will notify Contractor, at the address provided in the Contract, of the public records disclosure request and identify the date that WSDOT intends to release the record(s) (including records marked 'sensitive' or exempt from disclosure) to the requester unless Contractor, at Contractor's sole expense, timely obtains a court order enjoining WSDOT from such disclosure. In the event Contractor

fails to timely file a motion for a court order enjoining such disclosure, WSDOT will release the requested record(s) on the date specified. Contractor's failure properly to identify exempted or sensitive information or timely respond after notice of request for public disclosure has been given shall be deemed a waiver by Contractor of any claim that such records are exempt or protected from public disclosure.

17. GENERAL PROVISIONS.

- 17.1. **TIME IS OF THE ESSENCE.** Time is of the essence for each and every provision of this Contract.
- 17.2. **COMPLIANCE WITH LAW.** Contractor shall comply with all applicable law. Contractor shall obtain all necessary permits and approvals and give all stipulations, certifications, and representations that may be required for it to perform this Contract.
- 17.3. **ENTIRE AGREEMENT.** This Contract constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations, representations, and understandings between them. There are no representations or understandings of any kind not set forth herein.
- 17.4. **AMENDMENT OR MODIFICATION.** Except as set forth herein, this Contract may not be amended or modified except in writing and signed by a duly authorized representative of each party.
- 17.5. **AUTHORITY.** Each party to this Contract, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Contract and that its execution, delivery, and performance of this Contract has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- 17.6. **NO AGENCY.** The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Contract. Neither party is an agent of the other party nor authorized to obligate it.
- 17.7. **INDEPENDENT CONTRACTOR.** The parties intend that an independent contractor relationship is created by this Contract. Contractor and its employees or agents performing under this Contract are not employees or agents of WSDOT. Contractor shall not have authorization, express or implied, to bind WSDOT to any agreement, liability, or understanding, except as expressly set forth herein. Contractor and its employees and agents are not entitled to unemployment insurance or worker's compensation benefits through WSDOT or the State of Washington and WSDOT and the State of Washington will not pay for or otherwise provide such coverage for Contractor and its employees and agents.
- 17.8. **ASSIGNMENTS.** Contractor may not assign its rights under this Contract without WSDOT's prior written consent and WSDOT may consider any attempted assignment without such consent to be void; Provided, however, that, if Contractor provides written notice to WSDOT within thirty (30) days, Contractor may assign its rights under this Contract in full to any parent, subsidiary, or affiliate of Contractor that controls or is controlled by or under common control with Contractor, is merged or consolidated with Contractor, or purchases a majority or controlling interest in the ownership or assets of Contractor. Unless otherwise agreed, Contractor guarantees prompt performance of all obligations under this Contract notwithstanding any prior assignment of its rights.

- 17.9. **BINDING EFFECT; SUCCESSORS & ASSIGNS.** This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- 17.10. **ASSIGNMENT OF ANTITRUST RIGHTS Regarding Purchased Goods and/or Services.** Contractor irrevocably assigns to WSDOT, on behalf of the State of Washington, any claim for relief or cause of action which Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws in connection with any goods and/or services provided in Washington for the purpose of carrying out the Contractor's obligations under this Contract, including, at WSDOT's option, the right to control any such litigation on such claim for relief or cause of action.
- 17.11. **FORCE MAJEURE.** Except for payment of sums due, neither party shall be liable to the other or deemed in breach under this Contract if, and to the extent that, such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that causes a delay that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences. If either party is delayed by force majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall likewise be provided. So far as consistent with the rights reserved below, the time of completion shall be extended by Contract amendment for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Contract. Notwithstanding any provision to the contrary, in the event that a Contractor-declared force majeure event lasts for more than thirty (30) days, WSDOT shall have the right to terminate the Contract and/or purchase the goods and/or services set forth in this Contract; Provided, however, that in such event, Contractor shall not be liable to WSDOT for any price difference for such goods and/or services.
- 17.12. **FEDERAL FUNDS.** To the extent that WSDOT uses federal funds to purchase goods and/or services pursuant to this Contract, WSDOT shall specify any applicable requirement or certification that must be satisfied by Contractor as a condition of payment and Contractor shall adhere to such applicable federal requirements and/or certifications.
- 17.13. **SEVERABILITY.** If any provision of this Contract is held to be invalid or unenforceable, such provision shall not affect or invalidate the remainder of this Contract, and to this end the provisions of this Contract are declared to be severable. If such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Contract.
- 17.14. **WAIVER.** Failure of either party to insist upon the strict performance of any of the terms and conditions hereof, or failure to exercise any rights or remedies provided herein or by law, or to notify the other party in the event of breach, shall not release the other party of any of its obligations under this Contract, nor shall any purported oral modification or rescission of this Contract by either party operate as a waiver of any of the terms hereof. No waiver by either party of any breach, default, or violation of any term, warranty, representation, contract, covenant, right, condition, or provision hereof shall constitute waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, contract, covenant, right, condition, or provision.

- 17.15. **SURVIVAL.** All representations, warranties, covenants, agreements, and indemnities set forth in or otherwise made pursuant to this Contract shall survive and remain in effect following the expiration or termination of this Contract, Provided, however, that nothing herein is intended to extend the survival beyond any applicable statute of limitations periods.
- 17.16. **GOVERNING LAW.** The validity, construction, performance, and enforcement of this Contract shall be governed by and construed in accordance with the laws of the State of Washington, without regard to any choice of law principles that would provide for the application of the laws of another jurisdiction.
- 17.17. **JURISDICTION & VENUE.** In the event that any action is brought to enforce any provision of this Contract, the parties agree to submit to exclusive jurisdiction in Thurston County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively at Olympia, Washington.
- 17.18. **ATTORNEYS' FEES.** In the event of litigation or other action brought to enforce the terms of this Contract or alternative dispute process, each party agrees to bear its own attorneys' fees and costs.
- 17.19. **FAIR CONSTRUCTION & INTERPRETATION.** The provisions of this Contract shall be construed as a whole according to their common meaning and not strictly for or against any party and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Contract. Each party hereto and its counsel has reviewed and revised this Contract and agrees that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be construed in the interpretation of this Contract. Each term and provision of this Contract to be performed by either party shall be construed to be both a covenant and a condition.
- 17.20. **FURTHER ASSURANCES.** In addition to the actions specifically mentioned in this Contract, the parties shall each do whatever may reasonably be necessary to accomplish the transactions contemplated in this Contract including, without limitation, executing any additional documents reasonably necessary to effectuate the provisions and purposes of this Contract.
- 17.21. **EXHIBITS.** All exhibits referred to herein are deemed to be incorporated in this Contract in their entirety.

Purposely left blank

- 17.22. CAPTIONS & HEADINGS. The captions and headings in this Contract are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Contract nor the meaning of any provisions hereof.
- 17.23. ELECTRONIC SIGNATURES. An electronic signature or electronic record of this Contract or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Contract or such other ancillary agreement for all purposes.
- 17.24. COUNTERPARTS. This Contract may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Contract at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Contract.

EXECUTED as of the date and year first above written.

**STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION**

Bobby Forch Consulting, LLC.

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

K1653
EXHIBIT A: SCOPE OF WORK & PRICING
BOBBY FORCH CONSULTING LLC

The scope of services shall include the following:

- The Consultant shall develop and assist mega-projects with implementing national best practice compliance mechanisms through contract language and specialized training.
- The Consultant shall serve as a liaison to the small business community and lead community engagement efforts on behalf of the STATE concerning DBE/MSVWBE participation on assigned projects.
- The Consultant shall serve as a change agent to the STATE and the prime contractor community by ensuring that both the DBE/MSVWBE programs' intent and goals are met on the projects.
- The Consultant shall work to enhance relationships with DBEs/MSVWBEs, community organizations, Mega-project Contractors and others involved in assigned projects.
- The Consultant shall maintain continuous contact and communication with the STATE and Mega-project staff and contractors and key stakeholders, elected officials, and community organizations.

OBJECTIVES

WORK ELEMENT 1 - STRATEGIC ADVISEMENT (TO WSDOT)

Reporting directly to the Director of the STATE OECR, the CONSULTANT shall provide strategic advisement to the STATE regarding DBE, Small Business, Veteran Business, and Minority owned business availability, capacity, and willingness to work on WSDOT projects. The CONSULTANT shall also provide the Director of OECR routine updates regarding progress toward goal attainment on assigned projects, barriers to successful goal attainment, complaints, concerns, and issues surrounding contract disputes, prompt pay, and release of retainage.

Estimated allocation: 20% the Consultants time will be allocated to Work Element 1

WORK ELEMENT 2 - STRATEGIC ADVISEMENT (TO CONSULTANT/ DBE/MSVWBE)

Consultant acting as the Strategic Advisor shall:

- Act as a single point of contact for all DBE/MSVWBE's
- Conduct Community Outreach
- Make recommendations to the DBE Liaison Officer and other appropriate project staff regarding the removal of impediments and barriers to DBE participation.

Estimated allocation: 20% the Consultants time will be allocated to Work Element 2

WORK ELEMENT 3 - OVERSIGHT/MONITORING OF PROJECT PERFORMANCE TOWARD THE PROJECT GOALS

The Consultant shall provide strategic advisement and subject matter expertise as needed for all WSDOT Metaprogram’s, including but not limited to the following projects:

- Alaskan Way Viaduct Replacement Program
- Washington State Ferries (WSF) Seattle Multimodal Terminal at Colman Dock Project SR-520, Bridge Replacement and HOV Program
- 1-405 Renton to Bellevue Project Puget Sound Gateway Program Vigor Electric Hybrid Vessel
- I-5 - Interstate Bridge Replacement Program
- Kitsap Fish Passages
- AWV Project Closeout
- Cascadia High-speed Rail program
- Portage Bay
- Ferry Fleet Electrification

Consultant will review post sub-contract activities monthly, per project, quantifying:

- Prompt payment and release of retainage to ensure compliance with 49 CFR §26.29 and chapter 60.28 RCW.

Estimated allocation: 20% the Consultants time will be allocated to Work Element 3

WORK ELEMENT 4 - MONITOR PROJECT GOAL ACHIEVEMENT EFFORTS

Consultant will actively monitor efforts to achieve the various DBE/MSVWBE contract goals, which will include at a minimum such actions as:

- Identification of DBE/MSVWBE opportunities that may be found through the purchase of materials, technical and professional consulting services.
- Provide assistance through the procurement of services, personnel, or equipment necessary for the project.
- Consideration of unbundling large pay items to facilitate DBE/MSVWBE participation.
- Evaluation of bonding and insurance requirements for small, low-risk prime contracts.
- Evaluation of Project Labor Agreement requirements for small and disadvantaged businesses.
- Identification of additional opportunities that may be subcontracted to DBEs/ MSVWBEs, including anticipated dollar amounts.
- Identification of targeted DBE/MSVWBE outreach and communication strategies. Identification of any supportive services that will be provided to DBEs during the project.
- Direct communication with DBE/MSVWBEs concerning upcoming opportunities and bidding processes.

Estimated expenditure: 25% the Consultants time will be allocated to Work Element 4

WORK ELEMENT 5 - REPORTING DEVELOPMENT

DBE/MSVWBE Participation and Reporting Metrics

Review, Implement and Monitor Past and Present DBE participation. These provisions include:

- Verify/Authenticate DBE/MSVWBE quote to commitment and commitments. Actual payments to DBEs
- Ensure work committed to each DBE/MSVWBE at contract award or subsequently is/has been

actually performed by those DBE/MSVWBEs.

On a quarterly basis for each project, review and verify with written certification the production of documentation/reports for WSDOT to ensure the following are included:

- Name of DBE/MSVWBE
- What the DBE/MSVWBE is certified to perform Type of work or service performed
- Dollar amounts committed to DBE/MSVWBE
- Dollar amounts invoiced, paid, and claimed toward goal attainments Dates DBE /MSVWBE performed work or services.

Estimated expenditure: 15% the Consultants time will be allocated to Work Element 5

FY 2023-24 AGREEMENT:

Work Categories	Hourly Rate	Estimated Hours per Category	Totals
<i>Work Element 1 - Strategic Advisement (to WSDOT)</i>	215	590	\$126,850
<i>Work Element 2 - Strategic Advisement (to Consultant/ DBE/MSVWBE)</i>	215	590	\$126,850
<i>Work Element 3 - Oversight/Monitoring of Project Performance toward the Project Goals</i>	215	590	\$126,850
<i>Work Element 4 - Monitor project goal achievement efforts</i>	215	738	\$158,670
<i>Work Element 5 - Reporting Development</i>	215	442	\$95,030
<i>Total Anticipated Hours</i>	\$215.00	2950	\$634,250

FY 2024-25 AGREEMENT TOTAL:

Work Categories	Hourly Rate	Estimated Hours per Category	Totals
<i>Work Element 1 - Strategic Advisement (to WSDOT)</i>	215	946	\$203,390
<i>Work Element 2 - Strategic Advisement (to Consultant/ DBE/MSVWBE)</i>	215	946	\$203,390
<i>Work Element 3 - Oversight/Monitoring of Project Performance toward the Project Goals</i>	215	946	\$203,390
<i>Work Element 4 - Monitor project goal achievement efforts</i>	215	1182	\$254,130
<i>Work Element 5 - Reporting Development</i>	215	630	\$135,450
<i>Total Anticipated Hours</i>	\$215.00	4650	\$999,750

EXHIBIT B

INSURANCE REQUIREMENTS

1. **INSURANCE OBLIGATION.** During the Term of this Contract, Contractor shall obtain and maintain in full force and effect, at Contractor's sole expense, the following insurance coverages:
 - a. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Commercial General Liability Insurance (and, if necessary, commercial umbrella liability insurance) covering Bodily Injury and Property Damage on an 'occurrence form' in the amount of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. This coverage shall include Contractual Liability insurance for the indemnity provided under this Contract.
 - b. **WORKERS' COMPENSATION INSURANCE.** Contractor shall comply with applicable Workers' Compensation or Industrial Accident insurance providing benefits as required by law.
 - c. **EMPLOYER'S LIABILITY (STOP GAP) INSURANCE.** Employer's liability insurance (and, if necessary, commercial umbrella liability insurance) with limits not less than \$1,000,000 each accident for bodily injury by accident, \$1,000,000 each employee for bodily injury by disease, and \$1,000,000 bodily injury by disease policy limit.
 - d. **COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.** Commercial automobile liability insurance covering the ownership, maintenance, and/or use of all owned/leased, non-owned, and hired vehicles used in the performance of the Contract, with limits of not less than \$1,000,000 per accident, combined single limit for bodily injury and property damage liability. Coverage shall be provided on Insurance Services Office (ISO) form number CA 0001 or an equivalent. The required limits can be satisfied by any combination of primary, umbrella, or excess policy.

The insurance coverage limits set forth herein are the minimum. Contractor's insurance coverage shall be no less than the minimum amounts specified. Coverage in the amounts of these minimum limits, however, shall not be construed to relieve Contractor from liability in excess of such limits. Contractor waives all rights against the State of Washington for the recovery of damages to the extent such damages are covered by any insurance required herein.

2. **INSURANCE CARRIER RATING.** Any required Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable to the State of Washington's Office of Risk Management. Insurance coverage shall be provided by companies authorized to do business within the State of Washington and rated A- Class VII or better in the most recently published edition of Best's Insurance Rating. WSDOT reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
3. **ADDITIONAL INSURED.** Commercial General Liability, Commercial Automobile Liability, and Pollution Liability Insurance shall include the State of Washington and all authorized WSDOT (and their agents, officers, and employees) as Additional Insureds evidenced by copy of the Additional Insured Endorsement attached to the Certificate of Insurance on such insurance policies.
4. **CERTIFICATE OF INSURANCE.** Prior to execution of the Contract, Contractor shall furnish to WSDOT, as evidence of the insurance coverage required by this Contract, a certificate of insurance satisfactory to WSDOT that insurance, in the above-stated kinds and minimum amounts, has been

secured. In addition, no less than ten (10) days prior to coverage expiration, Contractor shall furnish to WSDOT an updated or renewed certificate of insurance, satisfactory to WSDOT, that insurance, in the above-stated kinds and minimum amounts, has been secured. Failure to maintain or provide proof of insurance, as required, will result in contract cancellation. **All policies and certificates of insurance shall include the Contract number stated on the cover of this Contract.** All certificates of Insurance and any related insurance documents shall be sent via email to WSDOT, and shall be sent to the email address asset forth below:

Email: adamsma@wsdot.wa.gov

Note: For Email notice, the Email Subject line must state:

Contract Insurance Certificate – Contract No. K1653

5. **PRIMARY COVERAGE.** Contractor’s insurance shall apply as primary and shall not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above including, at a minimum, the State of Washington and/or any WSDOT. All insurance or self-insurance of the State of Washington and/or WSDOT shall be excess of any insurance provided by Contractor or subcontractors.
6. **SUBCONTRACTORS.** Contractor shall include all subcontractors as insureds under all required insurance policies. Alternatively, prior to utilizing any subcontractor, Contractor shall cause any such subcontractor to provide insurance that complies with all applicable requirements of the insurance set forth herein and shall furnish separate Certificates of Insurance and endorsements for each subcontractor. Each subcontractor must comply fully with all insurance requirements stated herein. Failure of any subcontractor to comply with insurance requirements does not limit Contractor’s liability or responsibility.
7. **WAIVER OF SUBROGATION.** Contractor waives all rights of subrogation against the State of Washington and any WSDOT for the recovery of damages to the extent such damages are or would be covered by the insurance specified herein.
8. **NOTICE OF CHANGE OR CANCELLATION.** There shall be no cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage, either in whole or in part, without at least sixty (60) days prior written Legal Notice by Contractor to WSDOT. Failure to provide such notice, as required, shall constitute default by Contractor. Any such written notice shall include the Contract number stated on the cover of this Contract.
9. **EXTENDED REPORTING PERIOD.** If any required insurance coverage is on a claims-made basis (rather than occurrence), Contractor shall maintain such coverage for a period of no less than three (3) years following expiration or termination of the Contract.

* * * END OF INSURANCE REQUIREMENTS * * *