



**TOPPENISH CITY COUNCIL  
REGULAR MEETING AGENDA  
FEBRUARY 8, 2021 – 7:00 P.M.**

TELEVISED LIVE ON MIDVALLEY TELEVISION  
SPECTRUM CABLE CHANNEL 194

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**1. REMOTE MEETING INSTRUCTIONS**

Pursuant to Governor Inslee's Emergency Proclamation regarding suspending certain provisions of the Open Public Meetings Act during the COVID-19 Outbreak, the Toppenish City Council will not accept in-person public comments. All members of the public wanting to comment on City Council agenda items may submit written comments, to include your name and address for the record, in advance by email to [CityClerk@cityoftoppenish.us](mailto:CityClerk@cityoftoppenish.us) by 4:00 p.m. on February 8, 2021 to be read during the meeting. Call-in information for "listen-only" mode is: (253) 215-8782 [Meeting ID: 840 7935 3626] [Passcode: 717788] Email [CityClerk@cityoftoppenish.us](mailto:CityClerk@cityoftoppenish.us) or call (509) 865-6754 with questions.

**2. REGULAR SESSION CALL TO ORDER**

Pledge of Allegiance/Roll Call/Welcome

**3. APPROVE AGENDA**

**4. ADVANCE PUBLIC COMMENTS RECEIVED BY 4:00 P.M. ON FEBRUARY 8, 2021 TO BE READ BY STAFF AT THE MEETING**

**5. CONSENT AGENDA**

All matters on the consent agenda have been provided to each Councilmember for review and are considered to be routine or have been previously discussed and will be adopted by one motion and vote without discussion. However, if a Councilmember desires, any item on this agenda will be discussed before any action is taken on it.

- a. Approve Minutes of the January 25, 2021 Regular Council Meeting.
- b. Approve Payroll Checks Number 35191 through 35204 and electronic transfers in the total amount of \$158,765.55 dated February 4, 2021.
- c. Approve Claims Checks Number 93226 through 93285, EFTAP 2/2021 and electronic transfers in the total amount of \$130,136.07 dated February 8, 2021 and void Checks Number NR93193 and NR93269.

**6. NEW BUSINESS**

- a. AB 21-008: Resolution 2021-07, Approve First Amendment to Lease Agreement with New Cingular PCS, LLC for Cell Tower Site at 8A Buena Way
- b. AB 21-009: Resolution 2021-08, Approve Consultant Agreement with HLA Engineering Land Surveying, Inc. for Train Depot Railroad Roof Rehabilitation Project

**7. COUNCIL MEETING REPORTS/COMMUNITY ANNOUNCEMENTS**

**8. CITY MANAGER REPORTS**

**9. ADJOURNMENT**

**NEXT REGULAR COUNCIL MEETING WILL BE HELD ON FEBRUARY 22, 2021.**

**TOPPENISH CITY COUNCIL  
Regular Meeting Minutes  
January 25, 2021**

Mayor Oaks called the meeting to order at 7:00 p.m.

**REMOTE MEETING INSTRUCTIONS**

CC Riojas recited the remote meeting instructions for the record pursuant to Governor Inslee’s Emergency Proclamation with the temporary suspension of certain provisions of the Open Public Meetings Act during the COVID-19 Outbreak that prohibit all in-person public comments. In addition, she recited the instructions to attend the meeting in “listen only” mode by using the call-in phone number.

**ROLL CALL**

Remote Attendees: Mayor Mark Oaks, Mayor Pro Tem Elpidia Saavedra, and Councilmembers Loren Belton, Juan Ceja, Naila Duval, George Garcia, and Clara Jiménez.

Remote Staff: City Manager Lance Hoyt (CM Hoyt), City Attorney Gary Cuillier, , Interim Chief of Police Tim Bardwell, Public Works Superintendent Rocky Wallace, City Clerk Heidi Riojas (CC Riojas), and Cable Television Manager Judy Devall.

CC Riojas conducted roll call for each City Councilmember to respond their attendance at the meeting. Mayor Oaks, Mayor Pro Tem Saavedra, and Councilmembers Belton, Ceja, Duval, Garcia, and Jiménez responded their remote attendance during roll call.

**APPROVE AGENDA**

Councilmember Jiménez moved, seconded by Councilmember Garcia to approve the January 25, 2021 Agenda. Motion carried unanimously.

**ADVANCE PUBLIC COMMENTS RECEIVED BY 4:00 P.M. ON JANUARY 25, 2021**

CC Riojas noted the City received no public comments by the 4:00 p.m. deadline prior to the meeting.

**CONSENT AGENDA**

Mayor Pro Tem Saavedra moved, seconded by Councilmember Duval to approve Consent Agenda items a and d:

- a. Approve Minutes of the January 11, 2021 Regular Council Meeting.
- b. Approve Payroll Checks Number 35176 through 35190 and electronic transfers in the total amount of \$235,455.74 dated January 20, 2021.
- c. Approve Claims Checks Number 93160 through 93183 and electronic transfers in the total amount of \$82,109.52 dated January 20, 2021 for Period 13.2 to pay December 31, 2020 invoices.

- d. Approve Claims Checks Number 93184 through 93225 and electronic transfers in the total amount of \$31,586.96 dated January 25, 2021 and void Check Number 93136.

Motion carried unanimously.

## NEW BUSINESS

**Resolution 2021-05: A Resolution Authorizing the City Manager to Execute a Technical Assistance Contract With the Yakima County Council of Governments for Land-Use and Planning Review Services.**

Councilmember Jiménez moved, seconded by Councilmember Belton to approve Resolution 2021-05. Motion carried unanimously.

**Resolution 2021-06: A Resolution Approving General Agreement With HLA Engineering and Land Surveying, Inc. for the Water Service Meter Replacement Project.**

Councilmember Belton moved, seconded by Councilmember Jiménez to approve Resolution 2021-06. Motion carried unanimously.

## COUNCIL MEETING REPORTS/COMMUNITY ANNOUNCEMENTS

Councilmember Belton had nothing to report.

Councilmember Ceja had nothing to report.

Councilmember Duval expressed her appreciation to Astria Toppenish Hospital and the Toppenish School District for organizing the vaccination clinic on January 22, 2021. She also thanked the people that volunteered to display the luminaries on Fort Road to recognize the lives lost to COVID-19 in Yakima County.

Councilmember Garcia had nothing to report.

Councilmember Jiménez reported her participation in the Martin Luther King Jr. Peace Drive on January 18, 2021 and that the event well attended by the community. She thanked City staff in the Fire, Police, and Public Works Departments that assisted in the MLK Peace Drive. Councilmember Jiménez announced that the vaccination clinic distributed 319 vaccines on January 22, 2021.

Mayor Pro Tem Saavedra had nothing to report.

Mayor Oaks had nothing to report.

## CITY MANAGER REPORT

CM Hoyt updated Council on the following:

- MLK Peace Drive
- February 1, 2021 Study Session agenda topics
- Public Works projects
- Extreme Weather Shelter is a 24-hour shelter

**ADJOURNMENT**

There being no further business to come before the Council, the meeting adjourned at 7:26 p.m.

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MARK OAKS, MAYOR

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HEIDI RIOJAS, CMC, CITY CLERK

# Payroll Check Register

Payroll for Period 1/16/2021 - 1/31/2021

Fund Number	Description	Amount
001-000-011	Legislative	\$2,643.15
001-000-013	Executive	\$5,603.20
001-000-014	Finance, Record	\$11,667.12
001-000-018	Central Services, Personnel Services	\$4,720.78
001-000-021	Law Enforcement	\$47,161.79
001-000-022	Fire Services	\$23,153.49
001-000-024	Protective Inspections	\$1,041.08
001-000-058	Planning and Community Development	\$260.26
001-000-076	Pool, Park Facilities	\$3,703.79
030-000-021	Criminal Justice Fund	\$18,689.60
101-000-000	Street Fund	\$2,814.17
108-000-000	Cemetery Fund	\$3,275.01
401-000-000	Water Fund	\$11,213.29
403-000-000	Wastewater Fund	\$9,967.74
405-000-000	Solid Waste Fund	\$9,048.46
457-000-000	Cable TV Fund	\$3,802.62
	<b>Grand Total</b>	<b>\$158,765.55</b>

Payroll checks 35191-35204 and electronic transfers

I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered or the labor performed as described herein, that any advance payment is due and payable pursuant to a contract or is available as an option for full or partial fulfillment of a contractual obligation, and that the claim is a just, due and unpaid obligation against the City of Toppenish, and that I am authorized to authenticate and certify to said claim.

  
 Debbie Zabell, Administrative Services Director

February 4, 2021

Date

# Accounts Payable Check Register

February 8, 2021

Number	Vendor Name	Account Description	Amount
NR93193	City of Toppenish	Miscellaneous Fees & Charges	(\$150.00)
NR93269	Rotary Club of Toppenish	Memberships & Registrations	(\$50.00)
93226	Intermedia.net Inc.	Telephone	\$141.56
93227	U.S. Bank Corporate Payment System	Office & Operating Supplies	\$224.75
93228	911 Supply Inc.	Personal Protective Equipment	\$137.14
93229	A WorkSAFE Service, Inc.	Pre-Employment Services	\$110.00
		Professional Services	\$55.00
		Check Total:	\$165.00
93230	Adams View Glass & Screen, LLC	Service Repair/Maintenance	\$351.00
93231	Advanced Digital Imaging LLC.	Capital Purchase - Equipment	\$1,516.20
93232	Alba Enterprises	Sewer System Imp (Ph#4) - Construction	\$60.00
93233	Amazon Capital Services	Office & Operating Supplies	\$90.21
		Personal Protective Equipment	\$103.68
		Check Total:	\$193.89
93234	Andrews, James A	LEOFF Out Pocket Medical	\$1,735.20
93235	Aramark Uniform Services Everett Lockbox	Rentals	\$16.19
		Service Repair/Maintenance Police Dept Bldg	\$21.60
		Check Total:	\$37.79
93236	Association Of Washington Cities	Memberships & Registrations	\$75.00
93237	Backflow Management, Inc.	Cross Connection Program	\$2,000.00
93238	BNSF Railway Company	Miscellaneous Fees & Charges	\$250.00
93239	Budget Septic & Drain LLC	Professional Services	\$1,118.88
		Rentals	\$224.64
		Check Total:	\$1,343.52
93240	CenturyLink	Telephone	\$1,733.18
93241	CenturyLink 313081835	Telephone	\$842.01
		Telephone - Utility Billing	\$120.30
		Check Total:	\$962.31
93242	Charter Communications	Internet - Parks	\$412.47
		Professional Services	\$5,353.75
		Rentals	\$29.76
		Check Total:	\$5,795.98
93243	Cintas Corporation #605	Rentals	\$54.65
		Uniform Cleaning	\$178.39
		Check Total:	\$233.04
93244	City of Toppenish	Capital Purchase - Building	\$4,835.85
		City Utility Service - Fire	\$320.38
		City Utility Service - Police	\$539.79
		City Utility Services	\$177.48
		City Utility Services - Cemetery	\$85.89

<b>Number</b>	<b>Vendor Name</b>	<b>Account Description</b>	<b>Amount</b>
		City Utility Services - City Hall	\$320.38
		City Utility Services - Parks	\$460.02
		City Utility Services - Treatment Plant	\$439.67
		Check Total:	\$7,179.46
93245	D&G Cleaning LLC.	Janitorial Services - City Hall	\$2,400.00
		Janitorial Services - Police Department	\$2,400.00
		Check Total:	\$4,800.00
93246	Daily Journal of Commerce	Advertising	\$330.75
93247	DLC Construction	Abatement Charges	\$607.52
93248	Employment Security Department	Unemployment Compensation	\$3,675.79
93249	Eurofins Cascade Analytical	Professional Services	\$1,410.00
93250	Federal Express Corporation	Postage	\$44.18
93251	Ferguson Enterprises INC #3325 DBA Pollardwater	Small Tools & Minor Equipment	\$917.86
93252	Galls, Inc.	Uniforms & Clothing	\$360.70
93253	Hach Company	Chemicals	\$68.90
		Operating/Maintenance Supplies - General	\$335.39
		Check Total:	\$404.29
93254	Ideal Lumber & Hardware, Inc.	Operating/Maint Supplies - General	\$96.99
		Operating/Maint. Supplies	\$132.24
		Operating/Maint. Supplies - General	\$211.84
		Operating/Maintenance Supplies - General	\$121.00
		Service Repair/Maintenance	\$36.21
		Service Repair/Maintenance Equipment	\$5.48
		Service Repair/Maintenance Police Dept Bldg	\$16.45
		Small Tools & Minor Equipment	\$415.37
		Check Total:	\$1,035.58
93255	Intermedia.net Inc.	Telephone	\$144.44
93256	JSR Furniture Company	Operating/Maint. Supplies	\$139.32
93257	Law Office of Gary M. Cuillier	Legal Services	\$28.00
		Professional Services	\$1,008.00
		Check Total:	\$1,036.00
93258	Linker, Robert L	LEOFF Out Pocket Medical	\$1,699.20
93259	Lost Tree Service	Professional Services	\$2,160.00
		Service Repair/Maintenance Parks	\$7,020.00
		Check Total:	\$9,180.00
93260	NATOA	Memberships & Registrations	\$100.00
93261	Office Depot Card Plan	Office & Operating Supplies	\$161.99
		Office Supplies	\$55.95
		Operating/Maintenance Supplies - General	\$38.79
		Check Total:	\$256.73
93262	One Call Concepts, Inc.	Professional Services	\$29.96
93263	O'Reilly Auto Parts	Operating/Maintenance Supplies - Vehicles	\$75.20
93264	Oxarc, Inc.	Chemicals	\$2,010.53

Number	Vendor Name	Account Description	Amount
93265	Pacific Office Automation	Photocopies	\$11.24
		Rentals	\$52.55
		Check Total:	\$63.79
93266	Pacific Power & Light Co.	Electricity	\$5,553.39
		Electricity - Cemetery	\$174.32
		Electricity - Parks	\$1,167.88
		Electricity - Street Lights	\$5,877.30
		Lift Station Electricity	\$634.84
		Repair & Maintenance Equipment	\$849.11
		WWTP Electricity	\$6,567.04
		Check Total:	\$20,823.88
93267	POSitive Concepts/ATPI	Office & Operating Supplies	\$245.00
93268	Roberts, Bill	LEOFF Out Pocket Medical	\$1,735.20
93269	Rotary Club of Toppenish	Memberships & Registrations	\$50.00
93270	San Diego Police Equipt Co. Inc.	Range Supplies	\$695.67
93271	Sholtys, John	LEOFF Out Pocket Medical	\$1,519.20
93272	Spectrum	Internet - Sewer	\$124.98
93273	Summit Law Group	Legal Services	\$2,605.00
93274	Systems for Public Safety Inc.	Capital Purchase - Equipment	\$37,347.06
93275	TestAmerica Laboratories, Inc.	Professional Services	\$3,157.50
93276	U.S. Bank Corporate Payment System	Memberships & Registrations	\$908.17
93277	Volunteer Firefighters Board	Volunteer Insurance	\$1,200.00
93278	WA St Dept of Enterprise Services	Memberships & Registrations	\$400.00
93279	WA St Dept of Health	Operating Permits	\$3,392.70
93280	WA St Dept of Licensing	Weapon Permit - DOL License	\$21.00
93281	Washington State Patrol	Pre-Employment Services	\$11.00
93282	Yakima Bindery & Printing Co	Office & Operating Supplies	\$59.40
93283	Yakima Waste Systems, Inc.	Recycling Services	\$112.54
93284	Zee Medical Service Inc	Operating/Maintenance Supplies - General	\$35.01
93285	Rotary Club of Toppenish	Memberships & Registrations	\$40.00
EFTAP2/2021	Invoice Cloud	1/3 On-Line Utility Payment Charges	<u>\$3,395.90</u>
	<b>Grand Total</b>		<b>\$130,136.07</b>

**Total Accounts Payable for Checks #93226 -93285, #EFTAP 2/2021, and Void Checks NR93193 & NR93269**

I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered or the labor performed as described herein, that any advance payment is due and payable pursuant to a contract or is available as an option for full or partial fulfillment of a contractual obligation, and that the claim is a just, due and unpaid obligation against the City of Toppenish, and that I am authorized to authenticate and certify to said claim.

  
 Debbie Zabell, Administrative Services Director

February 5, 2021





**CITY OF TOPPENISH  
REQUEST FOR COUNCIL ACTION  
Agenda Bill No.: 21-008**

**Agenda Item  
6a**

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**Meeting Date:** February 8, 2021

**Subject:** Amend Lease Agreement for cell tower site located at the Public Works site located at 8A Buena Way

**Attachments:** Resolution 2021-07; and First Amendment to Lease Agreement

**Presented by:** Lance Hoyt, City Manager

**Approved for Agenda By:** Lance Hoyt, City Manager

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**Discussion**

In August of 2006, the City of Toppenish and Cingular Wireless PCS, LLC entered into a City Council approved agreement to place a cell tower site at the Public Works site located at 8A Buena Way, Toppenish, WA 98948. At that cell site, antennae equipment was placed on Water Tower #1 and a 448 square foot enclosure housing related cell site equipment was installed and continually maintained by Cingular Wireless.

Cingular Wireless would like to amend the exiting 2006 Lease Agreement by adding an additional 200 sq foot area to the existing fenced equipment enclosure to place a backup generator.

The current lease rent would be increased in relation to the total square foot of additional space being added. Current lease is \$693.35 to be increased by \$312 (additional 200 sq ft) to total of \$1005.38 monthly. On August 26, 2021 will be the five-year term 7.5% increase (\$1,080.75 monthly rent).

The additional space added to the existing facility will not cause any interference with regular operation of Public Safety communication equipment being operated by the City of Toppenish Police and Fire Department, or with other communications equipment located elsewhere throughout the City or Public Works operations.

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**Fiscal Impact:** Approve the First Amendment to Cingular Wireless PCS, LLC to maintain lease rental income and increase to \$1005.38 monthly.

**Recommendation:** Motion to approve Resolution 2021-07 authorizing the City Manager to sign the First Amendment to the Cingular Wireless PCS, LLC Lease Agreement on behalf of the City.

**Alternatives:** 1) Do not approve. 2) Forward to Study Session for further review.

RESOLUTION 2021-07

**A RESOLUTION APPROVING THE FIRST AMENDMENT  
TO LEASE AGREEMENT WITH  
NEW CINGULAR WIRELESS PCS, LLC**

WHEREAS the City of Toppenish has a water tower located at the Public Works site and federally licensed communications business known as New Cingular Wireless PCS, LLC has an existing lease dated August 26, 2006 to lease a small portion of the City's property to locate and maintain wireless communication equipment site, and

WHEREAS the Tenant wants to amend the original lease agreement to adjust the space and rent to locate a generator for backup power, and

WHEREAS such additional space added to the existing facility will not cause any interference with regular operation of Public Safety communication equipment being operated by the City of Toppenish Police and Fire Department, or with other communications equipment located elsewhere throughout the City,

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TOPPENISH, WASHINGTON AS FOLLOWS:

The First Amendment to the Lease Agreement between the City of Toppenish and New Cingular Wireless PSC, LLC is approved, and the City Manager is authorized and directed to execute said agreement on behalf of the City of Toppenish.

This resolution shall be effective immediately upon passage and signatures hereto.

PASSED by the Toppenish City Council at its regular meeting held on February 8, 2021.

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MARK OAKS, Mayor

ATTEST:

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HEIDI RIOJAS, CMC, City Clerk

Market: RWOR - SEATTLE/OREGON/ NO. ID  
Cell Site Number: WAL04760  
Cell Site Name: TOPPENISH  
**Fixed Asset Number: 10106511**

## FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT dated as of the latter of the signature dates below ("First Amendment"), is by and between City of Toppenish a Washington State Municipality, having a mailing address of 21 West First Avenue, Toppenish, WA 98949<sup>3</sup> (hereinafter referred to as "**Landlord**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd. NE, 3<sup>rd</sup> Floor, Atlanta, GA 30319 ("**Tenant**").

WHEREAS, Landlord and Tenant entered into a Lease Agreement dated August 23, 2006 whereby Landlord leased to Tenant certain Premises, therein described, that are a portion of the Property located at 8A Buena Way, Toppenish, WA 98948, in the County of Yakima, State of Washington ("Agreement");

WHEREAS, Landlord and Tenant desire to amend the Agreement to increase the size of the Premises; and

WHEREAS, Landlord and Tenant desire to adjust the Rent in conjunction with the modifications to the Agreement contained herein; and

WHEREAS, Landlord and Tenant desire to update the notice addresses contained in the Agreement; and

WHEREAS, Landlord and Tenant desire, in their mutual interest, wish to amend the Agreement as set forth below.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

- 1. New Premises Area.** Landlord agrees to increase the size of the Premises leased to Tenant by 200 square feet, to 648 square feet to meet Tenant's needs. Upon the execution of this First Amendment, Landlord leases to Tenant the additional premises described on attached Exhibit 1-A ("New Premises Area"). Landlord's execution of this First Amendment will signify Landlord's approval of Exhibit 1-A. Exhibit 1-A hereby supplements Exhibit I to the Agreement. The Premises under the Agreement prior to this First Amendment in addition to the New Premises Area under this First Amendment shall be the Premises under the Agreement.



2. **Generator.** Tenant shall have the right to install, repair, maintain, modify, replace, remove, utilize and operate (including but not limited to, operation as may be required by applicable law) the equipment as more completely described on attached Exhibit 1-A, including without limitation a concrete pad, generator thereon, and a back-up power supply. Landlord's execution of this First Amendment will signify Landlord's approval of Exhibit 1-A. Tenant shall have the right to access the Premises pursuant to the terms of the Agreement. The generator shall remain the property of Tenant, and Tenant shall have the right to remove or modify said generator at any time.
3. **Rent.** Commencing the first day of the month following commencement of installation within the New Premises Area ("Increase Commencement Date"), Rent shall be increased by Three Hundred Twelve and No/100 Dollars (\$312.00) per month, making total current Rent \$1005.38, subject to 7.5% increase per 60 month term, as provided in the Agreement; provided that the first such increased payment shall not be due until sixty (60) days after such Increase Commencement Date.
4. **Other.** Landlord represents and warrants that, to its knowledge, no conditions exist within the New Premises Area or otherwise on the Property where the Premises and New Premises Area are located that would adversely impact Tenant's permitting and/or installation of a generator within the New Premises Area. Landlord authorizes Tenant to prepare, execute and file all required applications to obtain any government approvals for Tenant's use of the New Premises Area under this First Amendment and agrees, at Tenant's request, to reasonably assist Tenant with such applications and with obtaining and maintaining the government approvals. Where applicable law governs how the generator will be used, Tenant may use the generator in the manner set forth under the applicable law. Tenant may terminate this First Amendment by written notice to Landlord at any time, and the Rent increase set forth in Section 3 hereof shall not take effect or shall be cancelled, as applicable, following any such termination. Within one hundred twenty (120) days after termination of this First Amendment, Tenant shall remove its equipment from the New Premises Area; provided that any portions of the equipment that Tenant fails to remove within such period and cessation of Tenant's operations at the New Premises Area shall be deemed abandoned. Tenant shall repair any damage, less ordinary wear and tear, to the New Premises Area caused by its removal activities.
5. **Notices.** Section 17 of the Agreement is hereby deleted in its entirety and replaced with the following:

All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows.

If to Tenant:

New Cingular Wireless PCS, LLC  
Attn: Network Real Estate Administration  
Re: Cell Site #: WAL04760 Cell Site Name: TOPPENISH (WA)  
Fixed Asset #: 10106511  
1025 Lenox Park Blvd. NE, 3<sup>rd</sup> Floor  
Atlanta, GA 30319

With the required copy of legal notice sent to Tenant at the address above, a copy to the Legal Department:

New Cingular Wireless PCS, LLC  
AT&T Legal Department – Network Operations  
Attn: Network Counsel  
Re: Cell Site #: WAL04760 Cell Site Name: TOPPENISH (WA)  
Fixed Asset #: 10106511  
208 S. Akard Street  
Dallas, TX 75202-4206

If to Landlord:

City of Toppenish  
Attn: City Manager  
21 West First Ave.  
Toppenish, WA 98948

A copy sent to the Legal Department is an administrative step which alone does not constitute legal notice. Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.

6. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Agreement and this First Amendment, the terms of this First Amendment shall control. Except as expressly set forth in this First Amendment, the Agreement otherwise is unmodified and remains in full force and effect. Each reference in the Agreement to itself shall be deemed also to refer to this First Amendment. The rights granted to Tenant herein are in addition to and not intended to limit any rights of Tenant in the Agreement. Unless otherwise specified herein or unless the context requires otherwise, the terms in the Agreement shall apply to the New Premises Area.
7. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this First Amendment on the dates set forth below.



**“LANDLORD”**

City of Toppenish

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



LANDLORD ACKNOWLEDGEMENT

INDIVIDUAL ACKNOWLEDGEMENT

STATE OF \_\_\_\_\_ )

) ss:

COUNTY OF \_\_\_\_\_ )

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ before me, the subscriber, a person authorized to take oaths in the State of \_\_\_\_\_, personally appeared \_\_\_\_\_ who, being duly sworn on his/her/their oath, deposed and made proof to my satisfaction that he/she/they is/are the person(s) named in the within instrument; and I, having first made known to him/her/them the contents thereof, he/she/they did acknowledge that he/she/they signed, sealed and delivered the same as his/her/their voluntary act and deed for the purposes therein contained.

Notary Public: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**“TENANT”**

New Cingular Wireless PCS, LLC  
a Delaware limited liability company

By: AT&T Mobility Corporation

Its: Manager

By: *Wayne Wooten*

Name: Wayne Wooten

Title: Director

Date: 1-25-21

TENANT ACKNOWLEDGEMENT

STATE OF OREGON )

)ss:

COUNTY OF WASHINGTON )

On the 25<sup>th</sup> day of January 2021 before me personally appeared Wayne Wooten, and acknowledged under oath that he is the Director of ATT Mobility Corporation of New Cingular Wireless PCS, LLC the Tenant named in the attached instrument, and as such was authorized to execute this instrument on behalf of the Corporation.

*Judith Mullen*

Notary Public: Judith Mullen - Oregon

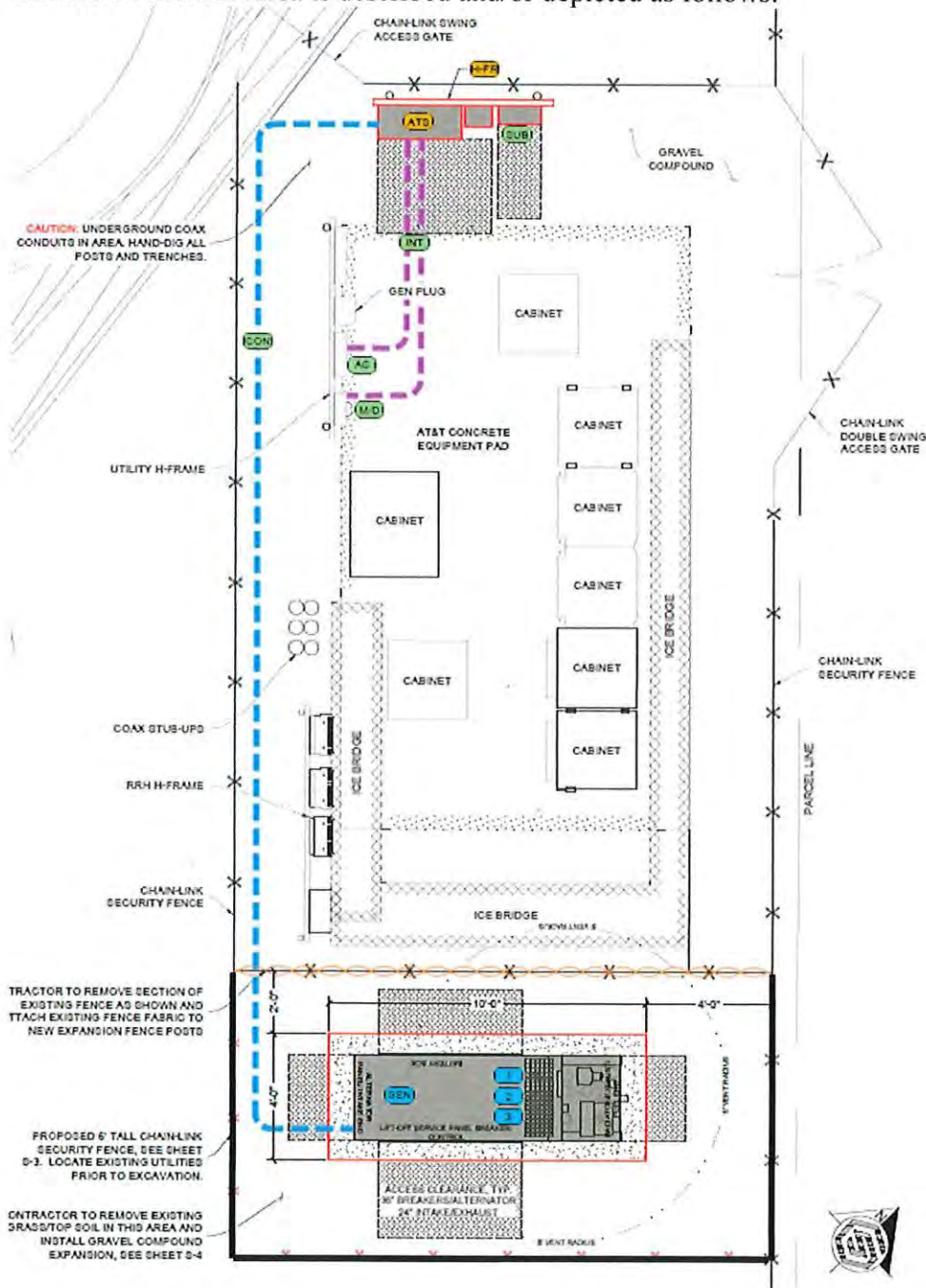
My Commission Expires: 5/16/2023



**EXHIBIT 1-A  
NEW PREMISES AREA**  
Page 1 of 1

to the First Amendment to LEASE AGREEMENT dated \_\_\_\_\_, 2021, by and between City of Toppenish as Landlord, and New Cingular Wireless PCS LLC, a Delaware limited liability company, as Tenant.

The New Premises Area is described and/or depicted as follows:







**CITY OF TOPPENISH  
REQUEST FOR COUNCIL ACTION  
Agenda Bill No.: 21-009**

**Agenda Item  
6b**

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**Meeting Date:** February 3, 2021

**Subject:** Local Agency A & E Professional Services Lump Sum Consultant Agreement Between the City of Toppenish and HLA Engineering and Land Surveying, Inc., federal State Transportation Block Grant (STBG) Set-aside Funded Project

**Attachments:** Resolution 2021-08; Local Agency A & E Consultant Agreement; and revised award letter.

**Prepared by:** Rocky Wallace, Public Works Superintendent

**Presented by:** Rocky Wallace, Public Works Superintendent

**Approved For Agenda By:** Lance Hoyt, City Manager

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**Discussion:**

Council authorized the City Manager to submit for the STBG grant application for the Train Depot Roof Rehabilitation Project during the March 23, 2020 Regular Council Meeting.

The City was successful and received the revised award letter on June 18, 2020.

Resolution 2021-04 Selecting HLA Engineering and Land Surveying Inc. for the engineering design and construction observation services for the Train Depot Roof Rehabilitation Project was approved by Council on January 11, 2021 during the regular Council meeting.

This project will construct a new faux slate roof on the Train Depot.

The Maximum Amount Payable for engineering services is \$56,100.00.

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**Fiscal Impact:** \$56,100.00, 100% grant

**Recommendation:** Motion to approve Resolution 2021-08 authorizing the City Manager to sign the Local Agency A & E Professional Services Lump Sum Consultant Agreement Between the City of Toppenish and HLA Engineering and Land Surveying, Inc.

**Alternatives:** 1) Do not adopt. 2) Forward to Study Session for further review

RESOLUTION 2021-08

**A RESOLUTION APPROVING LOCAL AGENCY A & E  
PROFESSIONAL SERVICES LUMP SUM CONSULTANT AGREEMENT  
WITH HLA ENGINEERING AND LAND SURVEYING, INC. FOR  
PROFESSIONAL ENGINEERING, SURVEYING AND CONSTRUCTION  
SERVICES FOR THE TRAIN DEPOT ROOF REHABILITATION  
PROJECT**

WHEREAS the City of Toppenish desires to replace the Train Depot Roof, with the aid of Federal STBG Set-aside funding, and is in need of selecting general professional engineering, surveying and construction management services for the project, and

WHEREAS the City does not have sufficient staff to perform any necessary engineering services, and

WHEREAS HLA Engineering and Land Surveying, Inc., is a professional engineering firm with the staff and expertise to provide professional engineering, surveying and construction project management services for projects as may be needed by the City,

WHEREAS the funding agent requires, as a condition of its funding for this project, that the City and HLA Engineering and Land Surveying, Inc., enter into the attached Consultant Agreement,

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TOPPENISH, WASHINGTON AS FOLLOWS:

The Local Agency A & E Professional Services Lump Sum Consultant Agreement between the City of Toppenish and HLA Engineering and Land Surveying, Inc., for the maximum amount payable of \$56,100.00, is approved and the City Manager is authorized to execute said attached agreement on behalf of the City of Toppenish.

This resolution shall be effective immediately upon passage and signatures hereto.

PASSED by the Toppenish City Council at its regular meeting held on February 8, 2021.

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MARK OAKS, MAYOR

ATTEST:

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HEIDI RIOJAS, CMC, City Clerk

# Local Agency A & E Professional Services Lump Sum Consultant Agreement

Agreement Number: 21035E

Firm/Organization Legal Name (do not use dba's): HLA Engineering and Land Surveying, Inc.	
Address 2803 River Road, Yakima, WA 98902	Federal Aid Number TAP-9939(030)
UBI Number 600517737	Federal TIN 91-1237188
Execution Date	Completion Date 12/31/2024
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 City of Toppenish Train Depot Roof Rehabilitation	
Description of Work Remove and replace the depot roof to preserve and rehabilitate the historic train depot.	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No DBE Participation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No MBE Participation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No WBE Participation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No SBE Participation	Maximum Amount Payable: \$56,100.00

## Index of Exhibits

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

Agreement Number: 21035E

THIS AGREEMENT, made and entered into as shown in the "Execution Date" box on page one (1) of this AGREEMENT, between the City of Toppenish 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. 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 Scope of Work was developed utilizing performance based contracting methodologies.

## **III. General Requirements**

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

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

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

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

In the absence of a mandatory UDBE, the Consultant shall continue their outreach efforts to provide SBE firms maximum practicable opportunities.

The CONSULTANT, on a monthly basis, shall enter the amounts paid to all firms involved with this AGREEMENT into the [wsdot.diversitycompliance.com](http://wsdot.diversitycompliance.com) program. Payment information shall identify any DBE Participation. Non-minority, woman owned DBEs does not count towards UDBE goal attainment.

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: Lance Hoyt  
Agency: City of Toppenish  
Address: 21 W. First Ave.  
City: Toppenish State: WA Zip: 98948  
Email: Lance.Hoyt@CityofToppenish.us  
Phone: 509-865-6319  
Facsimile:

**If to CONSULTANT:**

Name: Michael Battle  
Agency: HLA Engineering and Land Surveying, Inc  
Address: 2803 River Road  
City: Yakima State: WA Zip: 98902  
Email: mbattle@hlacivil.com  
Phone: 509-966-7000  
Facsimile:

**IV. Time for Beginning and Completion**

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

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

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## V. Payment Provisions

The CONSULTANT shall be paid by the AGENCY for completed SERVICES rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for SERVICES performed or SERVICES rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete SERVICES. 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 lump sum amount is attached hereto as Exhibits "D" and "E" and by this reference made part of this AGREEMENT.

- A. Lump Sum Agreement: Payment for all consulting SERVICES shall be on the basis of a lump sum amount as shown on page one (1) of this AGREEMENT.
- B. Maximum 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 on page one (1.) The Maximum Amount Payable does not include payment for extra work as stipulated in section XIII, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.
- C. Monthly Progress Payments: The CONSULTANT may submit billings to the AGENCY for reimbursement of costs on a monthly basis. To provide a means of verifying the billed salary costs for the CONSULTANT's employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates, and present duties of those employees performing work on the SERVICES at the time of the interview.
- D. Final Payment: Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the SERVICES under this AGREEMENT, contingent, 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. Per WSDOT's "Audit Guide for Consultants," Chapter 23 "Resolution Procedures," the CONSULTANT has twenty (20) working days after receipt of the final Post Audit to begin the appeal process to the AGENCY for audit findings.

- E. 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.

A 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.

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## **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 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.

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## 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 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.

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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.

## **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

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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.

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.

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## 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: Lance Hoyt  
Agency: City of Toppenish  
Address: 21 W. First Ave.  
City: Toppenish State: WA Zip: 98948  
Email: Hoyt@CityofToppenish.us  
Phone: 509-865-6319  
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.

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.

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### **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.

### **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.

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## **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.

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.

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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, 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.

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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.

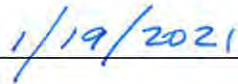
The CONSULTANT shall include this section XX "Records Maintenance" in every subcontract it enters into in relation to this AGREEMENT and bind the sub-consultant to its terms, unless expressly agreed to otherwise in writing by the AGENCY prior to the execution of such subcontract.

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

  
Signature

\_\_\_\_\_  
Date 

  
Date

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

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# **Exhibit A**

## **Scope of Work**

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Federal Aid No. TAP-9939(030)

### Design Engineering Services:

1. Perform the field investigations necessary to design the identified improvements.
2. Prepare the preliminary design and present to City Staff prior to preparing final plans and specifications. Plans may include roof design and project details.
3. On the basis of approved preliminary plans, prepare the final design and complete the bid documents.
4. Assist the agency with securing approval of such governmental authorities having jurisdiction over the design.

### Project Management and Administration:

1. Provide assistance for project updates and related administrative documents to the appropriate agencies having jurisdiction over design and construction of the work.
2. Coordinate stakeholder meetings as requested by the Agency.
3. Prepare funding reimbursement requests as requested by the Agency.
4. Provide status reports and invoices for work performed.
5. Prepare local agency supplements for funding obligation of construction phase as requested by the Agency.
6. Attend one City Council meeting to address technical aspects of the work related to scope, design, and schedule of the project.

### Environmental Compliance and Permitting:

1. Prepare SEPA checklist for transmittal to lead agency for review and action.
2. Prepare Area of Potential Effect (APE) and submit to WSDOT.
3. Prepare and submit NEPA form to WSDOT, as necessary.
4. Assumes a Section 106 Archaeological Resource Survey is not required for a roofing project.
5. Prepare HazMat Analysis Report, as necessary.

### Construction Contract Bidding Process:

1. Prepare advertisement for bids. Coordinate with Agency on number and location of publications. (all advertisement fees to be paid by Agency.)
2. Distribute contract documents and maintain a planholder's list.
3. Provide electronic project contract documents for bidding.
4. Answer and supply such information as is requested by prospective bidders.
5. Prepare and issue addenda, if necessary.
6. Provide Engineer's cost estimate.
7. Attend bid opening and participate in the bid opening and evaluation process.
8. Provide bid tabulation summary.
9. Provide recommendation of award letter.

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**Exhibit B**  
**DBE Participation**

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None.

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# **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

On file at Engineer's Office.

B. Roadway Design Files

N/A

C. Computer Aided Drafting Files

On file at Engineer's Office.

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

The Agency will review the product following preliminary plan completion and just prior to final plan completion.

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

Contract Documents.

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

A. Provide full information as to Agency requirements of the project.

B. Assist consultant by placing at their disposal all available information pertinent to the site of the project including previous reports, drawings, plats, surveys, utility records, and any other data relative to design and construction of the project.

C. Examine all studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by consultant, and render in writing decisions pertaining thereto within a reasonable time so as not to delay the work of the consultant.

D. Obtain approval of all governmental authorities having jurisdiction over the project, and such approvals and consents from such other individuals or bodies as may be necessary for completion of the project. Pay all review fees and costs associated with obtaining such approvals.

E. Pay for project bid advertisement costs.

II. Any Other Electronic Files to Be Provided

On file at Engineer's Office.

III. Methods to Electronically Exchange Data

Microsoft OneDrive administered through consultant's office, or other FTP site software.

A. Agency Software Suite

N/A

B. Electronic Messaging System

N/A

C. File Transfers Format

N/A

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

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See attached Exhibit D.

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## Exhibit D

### Consultant Fee Determination - Summary Sheet (Lump Sum, Cost Plus Fixed Fee, Cost Per Unit of Work)

Project: Train Depot Roof Rehabilitation

Design Engineering Services

#### Direct Salary Cost (DSC):

<u>Classification</u>	<u>Man</u> <u>Hours</u>		<u>Rate</u>	=	<u>Cost (\$)</u>
Senior Principal Engineer	32	x	\$85.00	=	\$2,720.00
Licensed Professional Engineer	70	x	\$43.50	=	\$3,045.00
Licensed Professional Surveyor	20	x	\$43.50	=	\$870.00
Surveyor	40	x	\$30.00	=	\$1,200.00
CAD	80	x	\$30.00	=	\$2,400.00
Contract Administrator	40	x	\$35.00	=	\$1,400.00
Engineering Technician	40	x	\$23.00	=	\$920.00
Project Engineer	160	x	\$42.00	=	\$6,720.00
Word Processing Technician	48	x	\$27.00	=	\$1,296.00

**Total DSC** = \$20,571.00

#### Overhead (OH Cost - including Salary Additives):

OH Rate x DSC                      136.71% x     \$20,571.00 =     \$28,122.61

#### Fixed Fee (FF):

FF Rate x DSC                      35.00% x     \$20,571.00 =     \$7,199.85

#### Reimbursables:

Mileage (\$0.56/mile)                      400 x     \$0.56 =     \$224.00

**Grand Total** \$56,117.46

Prepared by: Stephen S. Hazzard, PE

Date: 1/14/2021

**Exhibit E**  
**Sub-consultant Cost Computations**

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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.

N/A

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## **Exhibit F**

### **Title VI Assurances**

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

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

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

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## **Exhibit G**

### **Certification Documents**

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- Exhibit G-1(a) Certification of Consultant
- Exhibit G-1(b) Certification of 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~~
- ~~Exhibit G-4 Certificate of Current Cost or Pricing Data~~



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

I hereby certify that I am the and duly authorized representative of the firm of  
HLA Engineering and Land Surveying, Inc.  
whose address is  
2803 River Road, Yakima, WA 98902  
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 Washington 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.

HLA Engineering and Land Surveying, Inc.

\_\_\_\_\_  
Consultant (Firm Name)

  
\_\_\_\_\_  
Signature (Authorized Official of Consultant)

1/19/2021  
\_\_\_\_\_  
Date

**Exhibit G-1(b) Certification of Agency Official**

I hereby certify that I am the:

AGENCY Official

Other

of the Local Agency of Toppenish, WA \_\_\_\_\_, and that the consulting firm 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 Washington 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.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



HERE

**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.

HLA Engineering and Land Surveying, Inc.

Consultant (Firm Name)

  
Signature (Authorized Official of Consultant)

  
Date

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### **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.~~

---

Consultant (Firm Name)

---

Signature (Authorized Official of Consultant)

---

Date

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**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 \_\_\_\_\_ \* are accurate, complete, and current as of \*\*;~~

~~This certification includes the cost or pricing data supporting any advance AGREEMENT's and forward pricing rate AGREEMENT's between the offer or and the Government that are part of the proposal.~~

Firm:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Date of Execution\*\*\*:

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

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

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

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# **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 \$ \_\_\_\_\_.~~

~~The CONSULTANT shall provide Professional Liability insurance with minimum per occurrence limits in the amount of \$ \_\_\_\_\_.~~

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

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

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

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

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

~~Notes: Cost of added insurance requirements: \$ \_\_\_\_\_.~~

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

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# *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.

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### **Step 5 Forward Documents to Local Programs**

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

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

Agreement Number: 21035E



# **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.

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

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

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

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

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

### **Step 5 Informing Consultant of Decision Regarding the Claim**

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

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

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

Agreement Number: 21035E





## YAKIMA VALLEY CONFERENCE OF GOVERNMENTS

311 North 4th Street, Suite 204 • Yakima, Washington 98901  
509-574-1550 • FAX 574-1551  
website: [www.yvcog.org](http://www.yvcog.org)

June 18, 2020

Mark Oaks, Mayor  
City of Toppenish  
21 West First Avenue  
Toppenish, WA 98948

**SUBJECT: 2020 YVCOG Surface Transportation Block Grant Set-aside (STBG Set-aside) Program Funding Award**  
*(This letter supersedes the award letter of June 16, 2020)*

Dear Mayor Oaks,

Congratulations! The competitive process for the Yakima Valley Conference of Government's (YVCOG's) Surface Transportation Block Grant Set-aside (STBG Set-aside) is complete and the YVCOG Transportation Policy Board approved \$355,000 of STBG Set-aside funding to fully fund the City of Toppenish's **Train Depot Roof Rehabilitation** project.

Project progress reports will be required for all regional STBG Set-aside funded projects as part of the monthly YVCOG Transportation Technical Advisory Committee meetings. Any changes in federal funding amounts or anticipated obligation dates must be reported as soon as possible.


The project can be entered into the City of Toppenish's Transportation Improvement Program according to the following schedule:

- Obligation year = 2020; 2020 STBG Set-aside funding = \$355,000

Projects must be included in the State Transportation Improvement Program (STIP) before these federal funds can be obligated. If you have any questions concerning STIP amendments, please contact Alan Adolf at YVCOG, (509) 574-1550 or email at [alan.adolf@yvcog.org](mailto:alan.adolf@yvcog.org).

As always, the YVCOG is pleased to assist our members in securing funds necessary to realize their community goals.

Sincerely,



Christina Wickenhagen  
Executive Director

cc: Lance Hoyt, City Manager, City of Toppenish  
Rocky Wallace, Public Works Director, City of Toppenish  
Local Programs Engineer, WSDOT South Central Region

### MEMBER JURISDICTIONS

Grandview • Granger • Harrah • Mabton • Moxee • Naches • Selah  
Sunnyside • Tieton • Toppenish • Union Gap • Wapato • Yakima • Yakima County • Zillah