

**2009**  
**Professional Services Consultant Agreement**  
**Task Order Negotiated Hourly Rate**  
**Agreement Number Y-10864**

Firm Name and Address:  Tom Warne and Associates, LLC 9874 S. Spruce Grove Way South Jordan, UT 84095	
Federal Employer Identification Number: 522325785	Unified Business Identifier (UBI) Number: 602479142
Execution Date:	Completion Date: September 30, 2010
Federal Aid Number: NA	1099 Form Required: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Project title and description of work:  2010, Columbia River Crossing Expert Review Panel  Chairperson of an Expert Review Panel to assess the financial and implementation plans for the Columbia River Crossing Project	
Maximum Amount Payable	
\$120,012.00	

**Index of Exhibits**

- Exhibit "A"** - Scope of Work
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**THIS AGREEMENT, made and entered into as shown in the “Execution Date” box on page one (1) of this AGREEMENT, between the State of Washington, acting through the Washington State Department of Transportation, hereinafter called the “STATE,” and the organization/firm referenced on page one (1) of this AGREEMENT, hereinafter called the “CONSULTANT.”**

**WHEREAS, the STATE desires to accomplish the work referenced in the “Project title and description of work” section on page one (1) of this AGREEMENT and hereafter called the “PROJECT”; 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 for the PROJECT; 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 STATE.

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 PROJECT work and services as herein defined, and necessary to accomplish the completed work for this PROJECT. The CONSULTANT shall furnish all services, labor, and related equipment necessary to conduct and complete the work as designated elsewhere in this AGREEMENT.

## **II Scope of Work**

**The Scope of Work for this PROJECT is detailed in Exhibit “A” attached hereto and by this reference made a part of this AGREEMENT.**

Each item of work under this AGREEMENT will be provided by Task Order. Each Task Order will be individually negotiated with the CONSULTANT. Each Task Order will be considered a separate agreement, identifying the maximum amount authorized, start date and end date, and scope of work specific to the task. The terms of the Task Order cannot be modified without written approval from the STATE and CONSULTANT. Any work performed outside of the terms and conditions of the Task Order will not be considered for reimbursement. Task Orders within this AGREEMENT must be completed no later than the AGREEMENT end date.

### **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 STATE. Necessary contacts and meetings with agencies, groups, and/or individuals shall be coordinated through the STATE. The CONSULTANT shall attend coordination, progress and presentation meetings with the STATE and/or such Federal, Community, City or County officials, groups or individuals as may be requested by the STATE. The STATE 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 STATE and the **CONSULTANT and shown in Exhibit "A."**

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

If D/M/WBE firms are utilized, 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.

All Reports, PS&E materials, and other data furnished to the CONSULTANT by the STATE shall be returned. All electronic files, prepared by the CONSULTANT, must meet the **requirements as outlined in Exhibit "C."**

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 this PROJECT, and are the property of the STATE. Reuse by the STATE or by others, acting through or on behalf of the STATE of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

### **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 STATE. 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 STATE in the event of a delay attributable to the STATE, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the STATE is required to extend the established completion time.

## V Payment Provisions

The CONSULTANT shall be paid by the STATE for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31.

- A. Hourly Rates: Hourly rates are comprised of the following elements - Direct (Raw) Labor, Overhead, and Fixed Fee (Profit.) The CONSULTANT shall be paid by the STATE for work done, based upon the negotiated hourly rates shown in Exhibit “D” attached hereto and by reference made part of this agreement. These negotiated hourly rates will be accepted **based on a review of the CONSULTANT’s direct labor rates and overhead computations and** agreed upon fixed fee for the last completed fiscal year. The accepted negotiated rates shall be applicable for the first twelve (12) month period starting from the execution date of the AGREEMENT.

These accepted negotiated hourly rates shall be subject to renegotiations for the following twelve (12) month period upon written request of the CONSULTANT or the STATE. The written request must be made to the other party within ninety (90) days prior to the anniversary date of the AGREEMENT. If no such written request is made, the initial twelve (12) month period negotiated hourly rates will remain in effect for the next twelve (12) month period.

Conversely, if a timely request is made, the parties will commence negotiations to determine the new hourly rate that will be applicable for the next twelve (12) month period. If the parties cannot reach an agreement on the hourly rate, the STATE shall perform an **audit of the CONSULTANT’S books and records to determine the CONSULTANT’S actual** costs and overhead rate. The audit findings will establish the hourly rate that will be applicable for the next twelve (12) month period.

The process for establishing the hourly rates for each subsequent twelve (12) month period as described herein will apply during the course of the AGREEMENT. The fixed fee percentage, however, may not be changed and will remain in place throughout the existence of the AGREEMENT.

The CONSULTANT shall maintain and have accessible support data for verification of the components of the hourly rates, i.e., direct labor, overhead and fixed fee (profit) percentage. If the classification ranges (Actuals not to Exceed Table) are utilized, the CONSULTANT **must bill each employee’s actual salary plus overhead plus fixed fee within the appropriate** classification ranges.

- B. Direct Non-Salary Costs: Direct Non-Salary Costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to, the following items: travel, printing, long distance telephone, supplies, computer charges and fees of sub-consultants. Air or train travel will be reimbursed only to economy class levels unless otherwise approved by the STATE. The CONSULTANT shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance

with the STATE, Department of Transportation's Accounting Manual M 13-82, Chapter 10 – Travel Rules and Procedures, revisions thereto. However, Air, train, and rental car costs shall be reimbursed in accordance with 48 Code of Federal Regulations (CFR) Part 31.205-46 "Travel Costs." The billing for direct non-salary costs shall include an itemized listing of the charges directly identifiable with the PROJECT. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the STATE upon request. All above charges must be necessary for the services provided under this AGREEMENT.

- C. Maximum Total Amount Payable: The Maximum Total Amount Payable by the STATE to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The Maximum Total Amount Payable does not include payment for Extra Work as stipulated in Section XIV, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.
- D. Monthly Progress Payments: Progress payments may be claimed on a monthly basis for all costs authorized in A and B above. The monthly billings shall be supported by detailed statements for hours expended at the rates established in Exhibit "D", including names and classifications of all employees, and billings for all direct non-salary expenses. To provide a **means of verifying the billed salary costs for the CONSULTANT'S employees, the STATE** 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 PROJECT at the time of the interview.
- E. Final Payment: Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the STATE after the completion of the work under this AGREEMENT, contingent 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 STATE unless such claims are specifically reserved in writing and transmitted to the STATE by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the STATE may have against the CONSULTANT or to any remedies the STATE 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 STATE 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 **STATE of overpayment. Per the STATE'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 STATE for audit findings.**

- F. Inspection of Cost Records: The CONSULTANT and their sub-consultants shall keep available for inspection by representatives of the STATE and the United States, for a period of three (3) 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 contract is initiated before the expiration of the three (3) 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 need for a post audit will be **determined by the STATE's Consultant Services Office and performed by the STATE's** External Audit Office.

## **VI Sub-Contracting**

The STATE permits sub-contracts for those items of work as shown in Exhibit "A" attached hereto and by this reference made part of this AGREEMENT.

Compensation for this sub-consultant work shall be based on the cost factors shown on Exhibit "E."

The work of the sub-consultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the STATE.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the sub-consultant shall be substantiated in the same manner as outlined in Section V. All sub-contracts shall contain all applicable provisions of this Agreement.

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

## **VII Employment**

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 STATE shall have the right to annul this AGREEMENT without liability or, in its discretion, to deduct from the 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 STATE, 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 the AGREEMENT, in the employ of the United States Department of Transportation or the STATE, except regularly retired employees, without written consent of the public employer of such person if he/she will be working on this AGREEMENT for the CONSULTANT.

## **VIII Nondiscrimination**

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

- Title VI of the Civil Rights Act of 1964  
(42 USC Chapter 21 Subchapter V Section 2000d through 2000d-4a)
- Federal-aid Highway Act of 1973  
(23 USC Chapter 3 Section 324)
- Rehabilitation Act of 1973  
(29 USC Chapter 16 Subchapter V Section 794)
- Age Discrimination Act of 1975  
(42 USC Chapter 76 Section 6101 et seq.)
- Civil Rights Restoration Act of 1987  
(Public Law 100-259)
- American with Disabilities Act of 1990  
(42 USC Chapter 126 Section 12101 et. seq.)
- 49 CFR Part 21
- 23 CFR Part 200
- 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 STATE to terminate this AGREEMENT at any time upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the STATE other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged 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 work 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 STATE for any excess paid.

If the services of the CONSULTANT are terminated by the STATE 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 shall be determined by the STATE with consideration given to the actual costs incurred by the CONSULTANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the STATE at the time of termination, the cost to the STATE of employing another firm to complete the work required and the time which may be required to do so, and other factors which affect the value to the STATE of the work 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 it's employee's default** or negligence, the termination shall be deemed to be a termination for the convenience of the STATE. In such an event, the CONSULTANT would be reimbursed for actual costs in accordance with the termination for other than default clauses listed previously.

In the event of the death of any member, partner or officer of the CONSULTANT or the death **of any of the CONSULTANT'S supervisory personnel** assigned to the PROJECT or disaffiliation of any principally involved CONSULTANT employee, the CONSULTANT shall continue to be obligated to complete the work under the terms of the AGREEMENT unless the STATE chooses to terminate the AGREEMENT for convenience or chooses to renegotiate any term(s) of the 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 work by the STATE shall not constitute a waiver by the STATE 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 work required of it by the STATE. 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 complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the STATE, without additional compensation thereof. Should the STATE find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the STATE. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

## **XI Disputes**

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the STATE shall be referred for determination to the Secretary of Transportation of the Washington State Department of Transportation, 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 Secretary's decision, that decision shall be subject to ***de novo judicial review***. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the **procedures found in the Washington State Department of Transportation "Consultant Service's Procedures Manual" M27-50** and revisions thereto.

## **XII Venue, Applicable Law, and Personal Jurisdiction**

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in Thurston County. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall 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 Thurston County.

## **XIII Legal Relations**

The CONSULTANT shall comply with all Federal, State, and local laws, rules, codes and regulations applicable to the work to be done under this AGREEMENT. This contract shall be interpreted and construed in accordance with the laws of the State of Washington.

The CONSULTANT shall indemnify and hold the STATE and its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at

law or equity arising in whole or in part from the **CONSULTANT'S** or the **CONSULTANT'S** agents' or employees' negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the STATE against and hold harmless the STATE from claims, demands or suits based solely upon the conduct of the STATE, its agents, officers and employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the **CONSULTANT'S** or the **CONSULTANT'S** agents or employees, and (b) the **STATE**, its agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence (2) the costs to the STATE of defending such claims and suits shall be valid and enforceable only to the extent of the **CONSULTANT'S** negligence or the negligence of the **CONSULTANT'S** agents or employees.

**The CONSULTANT'S relation to the STATE shall be at all times as an independent contractor.**

Notwithstanding any determination by the Executive Ethics Board or other tribunal, WSDOT may, in its sole discretion, by written notice to the CONSULTANT terminate this contract if it is found after due notice and examination by WSDOT 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, solely for the purpose of** this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

Unless otherwise specified in the AGREEMENT, the STATE 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 STATE 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 the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

Insurance Coverage

- A. **Worker's compensation and employer's liability insurance as required by the STATE.**
- B. Commercial general liability insurance written under ISO Form CG 00 01 12 04 or its equivalent with minimum limits of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) 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 dollars (\$1,000,000) combined single limit each occurrence.**

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance secured by the CONSULTANT, the State of Washington, Department of Transportation will be named on all policies as an additional insured. The CONSULTANT shall furnish the STATE with verification of insurance and endorsements required by the AGREEMENT. The STATE 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:

Washington State Department of Transportation  
**Consultant Service's Office**  
PO Box 47323  
Olympia, WA 98504-7323

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the STATE Consultant Service's Office.

**The CONSULTANT'S professional liability to the STATE shall be limited to the accumulative amount of the authorized task order(s) or one million (\$1,000,000) dollars, whichever is the greater. In no case shall the CONSULTANT'S professional liability to third parties be limited in any way.**

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

#### **XIV Extra Work**

- A. The STATE may at any time, by written order, make changes within the general scope of the 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 work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the STATE 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 the 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 STATE decides that the facts justify it, the STATE may receive and act upon a CLAIM submitted before final payment of the AGREEMENT.

- D. Failure to agree to any adjustment shall be a dispute under the 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.

## **XV Endorsement of Plans**

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

## **XVI Federal Review**

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

## **XVII Certification of the Consultant and the State**

**Attached hereto as Exhibit "G-1(a and b)" are the Certifications of the CONSULTANT and the STATE, 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 AGREEMENTS over \$100,000 and Exhibit "G-4" is required only in AGREEMENTS over \$500,000.**

## **XVIII 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 an amendment to this AGREEMENT.

## **XIX**

### **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 agreements contained in the proposal, and the supporting material submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

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.

TOM WARNE AND ASSOCIATES, LLC

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Signature

Date

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

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Signature

Date

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

***Exhibit B - D/M/WBE Participation  
Agreement Number Y-10864***

Firm Name	D/M/WBE Cert. Number	Amt. Authorized	% of Total Contract
<b>Tom Warne &amp; Associates, LLC</b>		\$120,012	100

D/M/WBE participation for all On-Call AGREEMENTS and Project Specific Agreements under \$250,000.00, is considered race-neutral. No mandatory goal will be established but any voluntary participation will be tracked. For all On-Call AGREEMENTS, there will not be an amount listed in the "Amt. Authorized" column and there will not be a percentage indicated in the "% of Total Contract" column.

**Note: Prime is bolded.**

## **Exhibit C**

### **Preparation and Delivery of Electronic Engineering Data**

#### **I. Surveying, Roadway Design & Plans Preparation Section**

Upon WSDOT approval and acceptance of the final signed and stamped plans, the consultant shall provide to WSDOT the final electronic data, files, and resources for all survey, roadway design, and plans associated with the project. This information shall be delivered on a compact disc (CD) that includes an index file listing all the files with a brief description of the contents and purpose of each file. Electronic data and files shall be prepared, organized, and delivered as described in Sections A, B, and C below and as described in the Electronic Engineering Data Standards Manual<sup>1</sup> posted on the WSDOT CAE Consultant Resources web site. <http://www.wsdot.wa.gov/eesc/CAE/resources/>

- A. Surveying: Survey data shall be collected using WSDOT methodologies as defined in the Highway Survey Manual (M22-97 Jan 2005) and all applicable professional surveying practices.

All primary survey control shall be established using Washington State Plane (NAD 83/91) and North American Vertical Datum of 1988 (NAVD 88) in English units. Primary control shall be transformed to project datum by applying the appropriate combined correction factor (scale factor, elevation factor.) All secondary control and topography work shall be done on the Project Datum.

The consultant shall prepare and deliver the electronic survey information in InRoads format in accordance with Section 5.1 of the Electronic Engineering Data Standards Manual<sup>1</sup>.

- B. Roadway Design: The WSDOT supported version of InRoads, current at the date of execution of the consultant agreement, shall be used for all computer aided roadway design calculations. If WSDOT upgrades to a newer version after the date of execution, the consultant, at their discretion, may use the more current WSDOT supported version. WSDOT custom resource files shall be used where applicable. All InRoads files shall be prepared using Project Datum as defined in Section "A" above.

The consultant shall prepare and deliver the electronic roadway design information in accordance with Section 6.2 of the Electronic Engineering Data Standards Manual<sup>1</sup>.

- C. **Plans Preparation: Plans developed with Computer Aided Drafting "CAD" software shall adhere to the expanded level standards<sup>2</sup> defined in the Plans Preparation Manual (M22-31.) CAD files shall use a Project Datum as defined in Section "A" above.**

The consultant shall prepare and deliver the CAD files in accordance with Section 7 of the Electronic Engineering Data Standards Manual<sup>1</sup>. CAD basemap and sheet files shall be delivered as 2D files in a format that can be used directly by MicroStation without translation.

- D. Right to Review Product by the WSDOT: The State reserves the right to schedule visits



at the consultant's location to review electronic files for compliance with WSDOT methodologies and standards. The consultant may request visits by WSDOT to review electronic files.

- E. State Furnished Services and Information: The State will provide access to computer aided engineering support personnel for information about setting up and using WSDOT custom resources and procedures for InRoads and MicroStation.

The State will provide training on WSDOT specific procedures and custom resources for InRoads and MicroStation to consultant personnel who are already experienced with using InRoads and MicroStation. The dates and locations for all training will be scheduled by the State.

General training on how to use InRoads & MicroStation software will be the responsibility of the consultant.

WSDOT custom resources and guidance for using InRoads and MicroStation to deliver projects that meet the requirements outlined above are available at the following web site. Guidance and resources for WSDOT survey procedures are also available along with links to various manuals and other WSDOT sites of interest.

<http://www.wsdot.wa.gov/eesc/CAE/resources/>

Questions about this material or requests for other information should be directed to the WSDOT CAE Support Team. E-mail addresses and telephone numbers are posted on the website.

Other WSDOT web sites of interest:

<http://www.wsdot.wa.gov> - WSDOT Home Page

<http://www.wsdot.wa.gov/biz/construction/MoreBooks.cfm> - Standard Specifications

<http://www.wsdot.wa.gov/eesc/design/projectdev/> - Wage Rates, GSPs, Std Items

<http://www.wsdot.wa.gov/eesc/design/designstandards/> - Standard Plans

<http://www.wsdot.wa.gov/fasc/EngineeringPublications/library.htm> - Engineering Publications

<sup>1</sup> *The Electronic Engineering Data Standards Manual is currently in draft and under review. The final version will be posted on the WSDOT CAE Consultant Resources web site 2<sup>nd</sup> qtr of 2006.*

<sup>2</sup> *WSDOT expanded level standards for MicroStation will be published only in digital format and will be available on the WSDOT CAE Consultant Resources web site 2<sup>nd</sup> qtr of 2006.*

## **II. Photogrammetric Mapping Services**

- A. Photogrammetry Deliverables: The consultant shall provide photogrammetric mapping services and any related services deemed necessary to include, project design, aerotriangulation, and compilation using current generation analytical and / or softcopy systems to produce and deliver 3D Computer Aided Drafting and Design (CADD) files; Digital Ortho Photos; and hardcopy plots. In all cases, data will be compiled to WSDOT specifications for accuracy, completeness, and file management. Delivery will be in the format consistent with that currently in use by WSDOT. A current listing and description of WSDOT procedures, methodology, software, equipment, and systems will be made available by contacting WSDOT Photogrammetry Section at 360-709-5540.

All map files shall be delivered to WSDOT in unedited, unprocessed form, directly from the stereoplotter system where the data was compiled from the stereomodel. WSDOT regards these files not as a finished cartographic product, but rather as raw data to be used in the preparation of alignments, design templates, and contract plans. Therefore, it is desirable to have the data exactly as interpreted and measured by the photogrammetrist without subsequent adjustment for aesthetic purposes. No attempt should be made to compile data where the ground is not clearly visible.

The consultant shall also provide to WSDOT the negatives for all original aerial photography used to produce the photogrammetry data.

- B. Right to Review Photogrammetric Product by the WSDOT: The state reserves the right to schedule visits at the consultant's location to review procedures, systems, methodology, software, and qualifications for assurance of meeting WSDOT standards. The review(s) will include monitoring electronic file format and organization. The state reserves the right to review deliverables for compliance, completeness, and level of quality.

## **III. Bridge Design Section**

- A. Computer Aided Drafting Files: Computer Aided Drafting (CAD), files shall be prepared using WSDOT Bridge Office methodologies and standards as defined in Bridge Design Manual (M23-50.)
- B. Right to Review Product by the WSDOT: The State reserves the right to schedule visits at the consultant's location to review electronic files for compliance with WSDOT methodologies and standards. The consultant may request visits by WSDOT to review electronic files.
- C. Electronic Deliverables to WSDOT: Upon WSDOT approval and acceptance of the final signed and stamped plans; the consultant shall provide to WSDOT the final electronic versions of all CAD files and associated resource files on compact disc (CD.) The CD shall include and index file that lists all the files on the CD and provides a brief description of the content and purpose of each file.

CAD files shall be in a format that can be used directly by MicroStation without translation. All files associated with a CAD drawing shall be included using Bind for Xrefs or Pack N Go for fonts, shapes, etc.

- D. State Furnished Services and Information: The State will provide access to computer aided engineering support personnel for information and answers to questions on WSDOT standard procedures for plan preparation.

Additional information is available at the following WSDOT web site:

<http://www.wsdot.wa.gov/eesc/bridge/drawings>

#### **IV. Methods to Electronically Exchange Data**

- A. WSDOT Level Playing Field Software Suite: The Department of Transportation has adopted a standard suite of software products and minimum level for computer hardware. This suite of products and hardware is referred to as the level playing field (LPF.) Word processing, spreadsheet, database, and other documents shall be delivered to WSDOT in a format that can be viewed directly by WSDOT's current versions of LPF software without conversion. Contact the WSDOT MIS Help Desk at 360-705-7050 for information on the current versions of LPF software.
- B. Electronic Messaging: WSDOT currently uses Microsoft Outlook as an electronic mail standard.
- Where appropriate consultants can use "Internet" or "smtp" mail to send routine written correspondence.
  - Sending and receiving attached documents to e-mail message should be done in "rich-text" format that conserves formatting of the original document.
  - WSDOT currently has imposed a 3 Mb file size limit on e-mail attachments.
- C. File Transfers using FTP: WSDOT has an FTP site (<ftp://ftp.wsdot.wa.gov>) for transferring files that exceed the 3 Mb limit for email attachments. Public files on the FTP server are not private and have a limited retention time. It can be customized for the specific parties involved or for purposes of the project to have longer file retention times and more security considerations. Contact the WSDOT MIS Help Desk at 360-705-7050 for information on how to access and use the FTP site.
- D. Exchange of Removable Media: WSDOT physical exchange requirements vary from office to office. This contract should describe the specific types or the range of removable media to be exchanged physically with business partners so that both parties can read and write to that media.



# TomWarne&Associates

March 16, 2010

Washington State Department of Transportation  
PO Box 47323  
Olympia, WA 98504-7323

Subject: Hourly Rate Statement

Attention: Director of Consultant Programs Division

Below are the highest anticipated hourly billing rates for the On-Call Tom Warne and Associates, LLC Services. These rates are fully burdened and are the lowest rates charged to our clients.

<b>Classification</b>	<b>Hourly Billing Rate</b>
Principal	\$250.00
Administrative/Research Support	\$ 50.00

Respectfully,

Thomas R. Warne, PE  
President

## EXHIBIT D

Solving problems—hard problems.  
[www.tomwarne.com](http://www.tomwarne.com)

TEL (801) 302-8300  
FAX (801) 302-8301  
EMAIL [twarne@tomwarne.com](mailto:twarne@tomwarne.com)

Tom Warne and Associates, LLC  
9874 S. Spruce Grove Way  
South Jordan, UT 84095

***Exhibit E - Sub-consultant Cost Computations  
Agreement Number Y-10864***

There isn't any sub-consultant participation at this time. The CONSULTANT shall not sub-contract for the performance of any work under this AGREEMENT without prior written permission of the STATE. Refer to section VI "Sub-Contracting" of this AGREEMENT.

## **Exhibit F**

### **Title VI Assurances**

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

1. **Compliance with Regulations:** The CONSULTANT shall comply with the Regulations relative to non-discrimination in federally assisted programs of the STATE, 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 the 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 the 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 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 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 STATE shall impose such AGREEMENT sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - Withholding of payments to the CONSULTANT under the AGREEMENT until the CONSULTANT complies, and/or;
  - Cancellation, termination, or suspension of the AGREEMENT, in whole or in part

6. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (1) through (5) in every sub-contract, 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 STATE 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 STATE enter into such litigation to protect the interests of the STATE and, in addition, the CONSULTANT may request the United States enter into such litigation to protect the interests of the United States.

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

I hereby certify that I am the \_\_\_\_\_  
and duly authorized representative of the firm of Tom Warne and Associates, LLC whose  
address is 9874 S. Spruce Grove Way, South Jordan, UT 84095 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 the 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.

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Signature

Date



**Exhibit G-1(b)**  
**Certification of Washington State Department of Transportation**

I hereby certify that I am the:

Director of the Consultant Service Program

Other \_\_\_\_\_

of the Department of Transportation of the State of Washington, and Tom Warne and Associates, LLC 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 Administration, U.S. Department of Transportation, in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

---

Signature

Date

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

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

TOM WARNE AND ASSOCIATES, LLC

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Consultant (Firm Name)

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Signature (Authorized Official of Consultant)

Date

**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, a 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 subcontracts, which exceed \$100,000, and that all such sub-recipients shall certify and disclose accordingly.

TOM WARNE AND ASSOCIATES, LLC

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Consultant (Firm)

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Signature (Authorized Official of Consultant)

Date

## **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 2010, Columbia River Crossing Expert Review Panel\* are accurate, complete, and current as of

\*\*

This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

Firm: TOM WARNE AND ASSOCIATES, LLC

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Signature:

---

Title:

---

Date of Execution \*\*\*:

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- \* 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.