



# Washington State Department of Transportation

CONTRACT

No. K17XX

FOR

**WASHINGTON ELECTRIC BICYCLE REBATE PROGRAM (“WE-BIKE”)**

By and Between

**WASHINGTON STATE DEPARTMENT OF TRANSPORTATION**

and

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Dated \_\_\_\_\_, 2024

**CONTRACT**

**No. K17XX**

**FOR**

**WASHINGTON ELECTRIC BICYCLE REBATE PROGRAM (“WE-BIKE”)**

This Contract (“Contract”) is entered into by and between the State of Washington, acting by and through the Department of Transportation (“WSDOT”) located at 7345 Linderson Way, Tumwater, WA 98501 and \_\_\_\_\_, a \_\_\_\_\_ (“Contractor”) and is dated and effective as of \_\_\_\_\_, 2024.

**RECITALS**

- A. Pursuant to Legislative direction codified in RCW 39.26, WSDOT is authorized to solicit and award contracts, through a competitive procurement process, to obtain services for its use, regarding the Washington Electric Bicycle Rebate Program (“Services”).
- B. WSDOT issued Solicitation #RFP 2024 0821 dated August 21, 2024, for the purpose of soliciting a Consultant to implement and administer the Washington Electric Bicycle Rebate Program (WE-Bike), as part of a competitive governmental procurement.
- C. WSDOT evaluated all responses to the Competitive Solicitation and identified Contractor as the apparent successful bidder.
- D. The purpose of this Contract is to enable WSDOT to purchase the Services as set forth herein.

**AGREEMENT**

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

- 1. TERM.** The initial term of this Contract is through June 30, 2025; subject to mutual agreement, the term of the Contract may be extended for up to two (2) additional two (2) year terms.
- 2. SCOPE – INCLUDED SERVICES AND PRICE.**
  - 2.1. **CONTRACT SCOPE.** Pursuant to this Contract, Contractor is authorized to sell and provide only those services (“Services”) set forth in *Exhibit A – Scope of Work* for the prices set forth in *Exhibit B – Budget & Pricing*.
    - (a) **Goods.** For purposes of this Contract, “Goods” means all equipment, materials, supplies, ancillary parts, accessories, components and other items purchased as defined in this Contract.
    - (b) **Services.** For purposes of this Contract, “Services” means all services of any nature ordered by WSDOT pursuant to this Contract.

- (c) Specifications. Where applicable, specifications for Services as detailed in this Contract. Unless otherwise specified, all Services provided shall be the latest model or design.
  - 2.2. LEGISLATIVE APPROPRIATIONS. This Contract is subject to amendments based on legislative appropriations for the 2025-2027 and 2027-2029 biennium.
  - 2.3. PRICE ADJUSTMENTS. Prices shall not be increased during the initial term of the contract. Beginning after the initial term of the Contract, Contractor may propose Service rate increases by written notice, so long as the price increase is submitted within sixty (60) days of the then end Contract term.
    - 2.3.1. Contractor agrees all the prices, terms, warranties, and benefits provided in this contract are comparable to or better than the terms presently being offered by the Contractor to any other governmental entity purchasing similar quantities under similar terms. If, during the term of this Contract, the Contractor enters into contracts with other governmental entities providing greater benefits or more favorable terms than those provided by this Contract, the Contractor is obligated to provide the same to WSDOT for subsequent purchases.
    - 2.3.2. No retroactive Contract price increase adjustments will be allowed.
  - 2.4. PRICE CEILING. Although Contractor may offer lower prices to WSDOT, during the term of this Contract, Contractor guarantees to provide the Services at no greater than the prices set forth in *Exhibit B – Budget & Pricing*.
  - 2.5. WSDOT’S ABILITY TO MODIFY SCOPE OF CONTRACT. Subject to mutual agreement between the parties, WSDOT reserves the right to modify the Services included in this Contract; *Provided*, however, that any such modification shall be effective only upon ten (10) days advance written notice; and *provided further*, that any such modification must be within the scope of the Competitive Solicitation for this Contract.
  - 2.6. MISCELLANEOUS EXPENSES. Expenses related to day-to-day contract performance (including but not limited to travel, lodging, meals, and incidentals) that is included in *Exhibit A – Scope of Work* and pre-approved by WSDOT shall be reimbursed to the Contractor according to the rates of State Administrative Accounting Manual (SAAM).
- 3. CONTRACTOR REPRESENTATIONS AND WARRANTIES.** Contractor makes each of the following representations and warranties as of the effective date of this Contract and at the time of performance pursuant to this Contract. If, at the time of performance, Contractor cannot make such representations and warranties, Contractor shall not perform and shall, within three (3) business days notify WSDOT, in writing, of such breach.
- 3.1. QUALIFIED TO DO BUSINESS. Contractor represents and warrants that Contractor is (a) in good standing; (b) qualified to do business in the State of Washington; and (c) registered with the Washington State Department of Revenue and the Washington Secretary of State.
  - 3.2. TAXES. Contractor represents and warrants that Contractor is current, in full compliance, and has paid all applicable taxes owed to the State of Washington.
  - 3.3. LICENSES; CERTIFICATIONS; AUTHORIZATIONS; & APPROVALS. Contractor represents and warrants that Contractor possesses and shall keep current during the term of this Contract all required

licenses, certifications, permits, authorizations, and approvals necessary for Contractor's proper performance of this Contract.

- 3.4. **SUSPENSION & DEBARMENT.** Contractor represents and warrants as previously certified in Contractor's Bidder's Certification, that neither Contractor nor its principals or affiliates presently are nor have ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any governmental Contract by any governmental department or agency within the United States.
- 3.5. **WAGE VIOLATIONS.** Contractor represents and warrants as previously certified in Contractor's Bidder's Certification, that during the term of this Contract and the three (3) year period immediately preceding the award of the Contract, Contractor has not been determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgement entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW 49.46, 49.48, or 49.52.
- 3.6. **CIVIL RIGHTS.** Contractor represents and warrants that Contractor complies with all applicable requirements regarding civil rights. Such requirements prohibit discrimination against individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 3.7. **EXECUTIVE ORDER 18-03 – WORKERS' RIGHTS.** Contractor represents and warrants, as previously certified in Contractor's Bidder's Certification, that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Contract, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.
- 3.8. **WASHINGTON SMALL BUSINESS.** Contractor represents and warrants, as previously certified in Contractor's Bidder Certification, that Contractor qualifies as a Washington Small Business as defined and set forth in Contractor's Bidder's Certification.
- 3.9. **CERTIFIED VETERAN-OWNED BUSINESS.** Contractor represents and warrants, as previously certified in Contractor's Bidder Certification, that Contractor qualifies as a Certified Veteran-Owned Business as defined and set forth in Contractor's Bidder's Certification.
- 3.10. **PUBLIC CONTRACTS AND PROCUREMENT FRAUD.** Contractor represents and warrants that, within the three (3) year period prior to this Contract, neither Contractor nor its principals or affiliates: (a) have been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract under a public contract; (b) have been in violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offense enumerated in subsection (b) of this provision; or (d) had one or more public contracts (federal, state or local) terminated for cause or default.

- 3.11. **PROCUREMENT ETHICS & PROHIBITION ON GIFTS.** Contractor represents and warrants that Contractor complies fully with all applicable procurement ethics restrictions including, but not limited to, restrictions against Contractor providing gifts or anything of economic value, directly or indirectly, to Washington State employees.
- 3.12. **WASHINGTON'S STATEWIDE PAYEE DESK.** Contractor represents and warrants that Contractor is registered with Washington's Statewide Payee Desk, which registration is a condition to payment.
- 3.13. **ADVERTISING AND ENDORSEMENT.** Contractor understands and acknowledges that neither WSDOT nor the State of Washington are endorsing Contractor's services or suggesting that such services are the best or only solution to their needs. Accordingly, Contractor further represents and warrants that Contractor shall make no reference to WSDOT or the State of Washington in any promotional material without the prior written consent of WSDOT.
- 3.14. **CONTINGENT FEES.** Contractor represents and warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established agents as defined in the Federal Acquisition Regulations.
- 3.15. **FINANCIALLY SOLVENT.** Contractor represents and warrants that Contractor has not commenced bankruptcy proceedings and that there are no judgment, liens, or encumbrances of any kind affecting title to any Services that are the subject of this Contract.
- 3.16. **OPERATIONAL CAPABILITY.** Contractor represents and warrants, as previously certified in Contractor's Bidder's Certification, that Contractor has the operational and financial capability to perform the Contract.
- 3.17. **PAY EQUITY.** The Contractor represents and warrants that "similarly employed" individuals in its workforce are compensated as equals, consistent with the following"
- 3.17.1. Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;
- (a) Contractor may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
- (b) A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.
- (c) A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.
- (d) A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.
- 3.17.2. This Contract may be terminated by WSDOT, if WSDOT or the Washington State Department of Enterprise Services (DES) determines that the Contractor is not in compliance with this provision.

3.18. NONDISCRIMINATION.

- (a) NONDISCRIMINATION REQUIREMENT. During the term of this Contract, Contractor, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, Contractor, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which Contractor, or subcontractor, has a collective bargaining or other agreement.
- (b) OBLIGATION TO COOPERATE. Contractor, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that Contractor, including any subcontractor, has engaged in discrimination prohibited by this Contract pursuant to RCW 49.60.530(3).
- (c) DEFAULT. Notwithstanding any provision to the contrary, WSDOT may suspend Contractor, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Contract, pursuant to RCW 49.60.530(3). Any such suspension shall remain in place until WSDOT receives notification that Contractor, including any subcontractor, is cooperating with the investigating state agency. In the event Contractor, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), WSDOT may terminate this Contract in whole or in part, and Contractor, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. Contractor or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.
- (d) REMEDIES FOR BREACH. Notwithstanding any provision to the contrary, in the event of Contract termination or suspension for engaging in discrimination, Contractor, subcontractor, or both, shall be liable for contract damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. WSDOT shall have the right to deduct from any monies due to Contractor or subcontractor, or that thereafter become due, an amount for damages Contractor or subcontractor will owe WSDOT for default under this provision.

- 3.19. ACCESS EQUITY – CONTRACT REPORTING (if utilizing subcontractors). Contractor represents and warrants, as previously certified in Contractor’s Bidder’s Certification, that Contractor, if utilizing subcontractors to perform this Contract, shall register and report monthly, as Contractor, through *Access Equity*, Washington’s secure online business diversity vendor management system (B2Gnow), which is managed by Washington’s Office of Minority and Women’s Business Enterprises (OMWBE), any payments to subcontractors pertaining to the Contract. Contractor further represents and warrants, as previously certified in Contractor’s Bidder’s Certification, that Contractor shall use commercially reasonable efforts to ensure that such subcontractors also utilize *Access Equity* to verify such payment information as reported by Contractor.

- 3.20. **CONTRACT TRANSITION.** Contractor represents and warrants that, in the event this Contract is transitioned to another contractor (e.g., Contract expiration or termination), Contractor shall use commercially reasonable efforts to assist WSDOT for a period of sixty (60) days to effectuate a smooth transition to another contractor to minimize disruption of service and/or costs to the State of Washington.

**4. QUALITY; WARRANTY; REMEDIES.**

- 4.1. **SERVICES WARRANTY.** Contractor warrants that: (a) Services shall be performed in a timely, efficient, professional, and workmanlike manner; (b) all Contractor personnel assigned to perform Services shall have the necessary skill and training; and (c) Services shall be performed in a manner consistent with the standard of care in the industry (“Services Warranty”). The Services Warranty shall survive for a period of twelve (12) months after the date when Services are completed (“Services Warranty Period”).
- 4.2. **SERVICES REMEDY.** If Services do not comply with the Services Warranty or are in any manner found to be nonconforming during the Services Warranty Period, Contractor promptly shall remedy the non-conformance, or at WSDOT election, Contractor shall re-perform or correct the nonconforming Services at no additional cost to WSDOT or refund the amounts paid for the Services.
- 4.3. **IT WARRANTY.** Contractor warrants, that all hardware, software, and firmware associated with Goods or Services (“IT Goods” and “IT Services”, respectively) shall not: (a) contain any viruses, malicious code, Trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to: (i) damage, destroy, or alter any software or hardware; (ii) reveal, damage, destroy, or alter any data; (iii) disable any computer program automatically; or (d) permit unauthorized access to any software or hardware; (b) contain any third party software (including software that may be considered free software or open source software) that (i) may require any software to be published, accessed, or otherwise made available without the consent of WSDOT, or (ii) may require distribution, copying, or modification of any software free of charge; and (c) infringe on any patent, copyright, trademark, or other proprietary or intellectual property right of any third party or misappropriate any trade secret of any third party (“IT Warranty”). The IT Warranty shall expire twelve (12) months after the date IT Goods are delivered or IT Services are complete, as applicable.
- 4.4. **IT REMEDY.** If IT Goods or IT Services do not comply with the IT Warranty, or if any defect or non-conformance develops during the IT Warranty Period, Contractor, at WSDOT election, promptly shall: (a) remedy the defect by removing, repairing, correcting or replacing, and/or reinstalling any defective IT Goods; (b) re-perform or correct the non-conforming IT Services at no additional cost to WSDOT; or (c) refund the amounts paid for IT Services and IT Goods.
- 4.5. **FAILURE TO REMEDY.** If Contractor does not remedy a defect or nonconformity within ten (10) calendar days after receipt of written notice from WSDOT, or if an emergency exists rendering it impossible or impractical for WSDOT to have Contractor provide a remedy, WSDOT may, without prejudice to any other rights or remedies available to it, make or cause to be made required modifications, adjustments, or repairs, or may replace Services, IT Goods, or IT Services, in which case Contractor shall reimburse WSDOT for its actual costs or, at WSDOT’s option, WSDOT shall offset the costs incurred from amounts owing to Contractor.

4.6. TECHNICAL SUPPORT. During any applicable warranty period, Contractor shall provide all warranty service and telephone support, including after-hour technical support, at its own cost. Contractor shall maintain a technical support hotline to address breakdowns and safety incidents.

**5. SAFETY; SECURITY; CONTRACTOR REQUIREMENTS WHILE ON PREMISES.** Contractor's failure to comply with any of the requirements in this Section shall be cause for termination.

5.1. REGULATORY REQUIREMENTS/SAFETY. Services supplied by Contractor shall meet all applicable health, safety, and other federal, state, and/or local regulatory agency requirements applicable to the Services.

5.2. MATERIAL SAFETY DATA SHEETS. As applicable, Contractor shall provide WSDOT with all appropriate current Material Safety Data Sheets ("MSDS") at the time of delivery of each shipment of materials used by Contractor while performing Services pursuant to this Contract.

5.3. CLEAN-UP. If Contractor, its agents, employees, or subcontractors perform onsite Services, Contractor, at its cost, shall remove all excess materials, equipment, packaging, and garbage within the scope of its performance of Services and leave that portion of the premises in which the work was performed in a clean condition. Should Contractor fail to clean up a site after completion of work, WSDOT shall have the right to remove the materials and set off the cost of clean up against amounts owed to Contractor.

5.4. ACCIDENT AND INJURY REPORTING. If Contractor, its agents, employees, or subcontractors are present at WSDOT's premises, Contractor promptly shall report in writing all injuries, accidents, property damage, near-miss incidents, or any claims regarding damages or injury involving Contractor, its agents, employees, or subcontractors occurring at such premises. Contractor agrees to cooperate and assist WSDOT in any investigation of incidents.

5.5. ON SITE REQUIREMENTS. As applicable, while on WSDOT's premises or while interacting with WSDOT's personnel, Contractor, its agents, employees, or subcontractors shall comply, in all respects, with WSDOT's physical, fire, access, safety, health, and security requirements and not interfere with WSDOT's operations. Contractor represents and warrants that Contractor, its agents, employees, or subcontractors who access WSDOT's premises shall be adequately trained and at all times comply with WSDOT's requirements.

5.6. IT SECURITY POLICIES. Contractor, its agents, employees, or subcontractors shall comply with all Washington State IT security policies and standards which shall be made available to Contractor upon request or can be found at the WaTech Policy website <https://watech.wa.gov/policies>.

**6. SUBCONTRACTORS.**

6.1. CONTRACTOR RESPONSIBILITY. Notwithstanding any provision to the contrary, in the event Contractor elects to utilize subcontractors to perform this Contract, Contractor shall:

- (a) Incorporate Contractor's responsibilities under this Contract into its subcontracts;
- (b) Be fully responsible for the performance of any such subcontractors (regardless of tier) and ensure that subcontractors comply with each and every Contractor obligation set forth in this Contract;
- (c) Be the sole point of contact for WSDOT regarding all contractual matters;



- (d) Ensure that such subcontractors are registered in WEBS;
- (e) Ensure that such subcontractors comply with the *Access Equity* requirements applicable to subcontractors as set forth in this Contract; and
- (f) Defend, indemnify, and hold WSDOT harmless in case of negligence, other tortious fault, or intentional misconduct by any such subcontractors (regardless of tier).

Prior to utilizing any subcontractor to perform this Contract, Contractor shall provide written notice to WSDOT's contract administrator. For each such subcontractor, such notice shall confirm that such subcontractor is:

- Registered in WEBS; and
- Identified by Contractor in *Access Equity*.

6.2. SUBCONTRACTOR APPROVAL. WSDOT reserves the right to approve or reject any and all Subcontractors and must be pre-approved, in writing, by WSDOT prior, in the event a Subcontractor is being replaced or added to the Contract.

6.2.1. Specific restrictions apply to contracting with current or former State employees pursuant to RCW 45.52. No subcontractors that are in violation of RCW 45.52 will be accepted as part of this Contract.

6.2.2. WSDOT may, by one (1) working days' notice, request immediate removal of a Subcontractor from the project(s) described in *Exhibit A – Scope of Work*, when it is in the best interest of WSDOT.

6.3. ACCESS EQUITY. If Contractor utilizes subcontractors to perform this Contract, this section applies. In such circumstances, this Contract is subject to compliance tracking using *Access Equity*, Washington's online business diversity vendor management system (B2Gnow), which is managed by Washington's Office of Minority and Women's Business Enterprises (OMWBE). *Access Equity* is web-based and can be accessed at <https://omwbe.diversitycompliance.com/>. User guides and documentation related to Contractor and subcontractor access to and use of *Access Equity* are available online at <https://omwbe.wa.gov/access-equity-help-center>. Contractor may contact the Contract Administrator for technical assistance in using the *Access Equity* system.

(a) Contract Payment Reporting & Verification. Contractor and any subcontractors utilized by Contractor to perform this Contract shall utilize *Access Equity* to report and confirm receipt of payments made to Contractor by WSDOT and to each subcontractor.

(b) Contractor Requirements.

1. Registration. Contractor, within fifteen (15) calendar days of the effective date of this Contract, shall register in *Access Equity* and enter all required subcontractor information. In the event Contractor subcontracts to perform this Contract after the effective date of this Contract, Contractor shall update *Access Equity* within fifteen (15) calendar days of such subcontract.
2. Training. Contractor, within twenty (20) calendar days of the effective date of this Contract (or later engagement of a

subcontractor), shall complete the required *Access Equity* user training (two (2) one-hour online sessions).

3. Subcontractors. Contractor shall require any subcontractor(s) utilized by Contractor to perform this Contract to:

- Register in *Access Equity*;
- Complete the required *Access Equity* user training;
- Use *Access Equity* to verify the amount and date of receipt of each payment from Contractor or, if applicable, a higher tier subcontractor;
- Use *Access Equity* to report payments made by subcontractor to any lower tier subcontractor(s), if any, in the same manner as specified herein;
- Promptly respond to any requests or instructions from Contractor or system-generated messages to check or provide information in *Access Equity*; and
- When necessary, promptly coordinate with Contractor and/or WSDOT to resolve any discrepancies between reported and received payments.

4. Reporting. Contractor, quarterly shall report the amount and date of:

- All payments received from WSDOT; and
- All payments paid to subcontractor(s);

*Provided*, however, that Contractor shall mark as “final” and report final subcontractor payments no later than thirty (30) calendar days after final payment is due to subcontractor(s).

5. Monitor & Respond. Contractor shall monitor contract payments and respond promptly to any requests or instructions from WSDOT or system-generated messages to check or provide information in *Access Equity*.

6. Resolve Discrepancies. When necessary, promptly coordinate with subcontractor(s) and/or WSDOT to resolve any discrepancies between reported and received payments.

(c) Right to withhold Payment for Noncompliance. In the event Contractor or subcontractors, if any, fails to comply with this section, WSDOT may, in addition to any other lawful remedy, upon written notice of such noncompliance, withhold payment to Contractor until such time as such noncompliance is cured.

6.4. REPORTING. If Contractor is required to report to WSDOT, such report(s) shall include subcontractor data, by subcontractor, for any data that Contractor is required to report as well as a consolidated ‘rollup’ report combining Contractor and subcontractor data.

- 6.5. SUBCONTRACTOR REPRESENTATIONS AND CERTIFICATIONS. Any Contractor representations or certifications set forth in this Contract shall apply to subcontractors (at any tier) and Contractor shall not utilize any subcontractors (at any tier) who cannot provide such representations or certifications, excepting the certification to be registered with Washington's Statewide Payee Desk, unless WSDOT shall pay such subcontractor directly.

## 7. DELIVERY & INSTALLATION.

- 7.1. DELIVERY REQUIREMENTS. Contractor must ensure that the Services are delivered or provided as required by this Contract or as otherwise mutually agreed in writing between WSDOT and Contractor. The following apply to all deliveries:
- (a) Contractor shall make all deliveries to the applicable delivery location specified herein. Such deliveries shall occur during WSDOT's normal work hours and within the time period mutually agreed in writing between Contractor and WSDOT.
  - (b) Contractor shall ship all Services purchased pursuant to this Contract, freight charges prepaid by Contractor, FOB WSDOT's specified destination with all transportation and handling charges included. Contractor shall bear all risk of loss, damage, or destruction of the Services ordered hereunder that occurs prior to delivery and installation, except loss or damage attributable solely to WSDOT's fault or negligence.
  - (c) All packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written materials associated with this Contract shall be identified by the Contract number set forth on the cover of this Contract.
- 7.2. RECEIPT AND INSPECTION OF SERVICES. Services purchased under this Contract are subject to WSDOT's reasonable inspection, testing, and approval at WSDOT's destination. WSDOT reserves the right to reject and refuse acceptance of Services that are not in accordance with this Contract. If there are any apparent defects in the Services at the time of delivery, WSDOT promptly shall notify Contractor. At WSDOT's option, and without limiting any other rights, WSDOT may require Contractor to repair or replace, at Contractor's expense, any or all of the damaged Services or, at WSDOT's option, WSDOT may note any damage to the Services on the receiving report, decline acceptance, and deduct the cost of rejected Services from final payment.
- 7.3. RIGHT OF INSPECTION. The Contractor shall provide right of access to its facilities to WSDOT, or any of its officers, or to any other authorized agent or official of the State of Washington or the Federal Government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.
- 7.4. CUSTOMER SERVICE. Questions or complaints submitted by the public shall be responded to by the Vendor, with a CC to a designated WSDOT representative, within five calendar days of receipt of the question or complaint. If the customer does not provide contact information, then a summary of the question or complaint must be provided to the designated WSDOT representative within five (5) calendar days of receipt of the question or complaint.

## 8. PERFORMANCE OF SERVICES.

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

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

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

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

## 9. INVOICING & PAYMENT.

9.1 CONTRACTOR INVOICE. Contractor shall submit properly itemized invoices to Adele Peers at [Adele.Peers@wsdot.wa.gov](mailto:Adele.Peers@wsdot.wa.gov) for Services delivered under this Contract. Such invoices shall itemize the following:

- (a) Contract No. K17XX;
- (b) Contractor name, address, telephone number, and email address for billing issues (i.e., Contractor Customer Service Representative);
- (c) Contractor's Federal Tax Identification Number;
- (d) Date(s) the Goods were received or the Service(s) provided;
- (e) Applicable Services;
- (f) Invoice date and amount;
- (g) Applicable taxes; and
- (h) Payment terms, including any available prompt payment discounts.

9.2. PROGRAM ADMINISTRATION PAYMENT. WSDOT shall pay the Contractor an amount no to exceed \$... for Program Administration.

9.2.1. The Contractor shall bill WSDOT for Program Administration costs monthly for work completed in the prior month with the exception of the last payment, which will be submitted following receipt and WSDOT's final approval of the Final Report. WSDOT shall pay the Contractor for all fees showing in Table \_\_ of *Exhibit B: Budget & Pricing* for which performance thresholds have been met at the time of each billing.

9.3. REBATE REIMBURSEMENT PAYMENTS. WSDOT shall pay all funds in the Contract amount not paid for Program Administration for Rebate Reimbursement Payments in an amount not to exceed \$....

9.3.1. WSDOT shall pay the Contractor for Reimbursement payments within [redacted] calendar days upon demonstration of completed milestones and receipt of properly completed reports and invoices, which shall be submitted to the individual indicated in 9.1.

9.4. PAYMENT. WSDOT's obligation to pay invoices is subject to receipt of a timely and accurate invoice and conforming Services. Unless Contractor has provided a prompt payment discount set forth in *Exhibit B – Budget & Pricing*, WSDOT's payment is due within thirty (30) days of invoice. WSDOT retains the right of setoff for any amount due or owing to WSDOT. WSDOT may make payments electronically (e.g., ACH payments). Contractor shall provide information necessary to facilitate electronic payments. If WSDOT fails to make timely payment(s), Contractor may invoice WSDOT in the amount of one percent (1%) per month on the amount overdue or a minimum of \$1. Payment shall not be considered late if a check or warrant is mailed within the time specified.

9.4.1. Any claim or invoice for payment as a result of costs incurred between each State Fiscal Year July 1<sup>st</sup> through June 30<sup>th</sup>, each year shall be submitted to WSDOT no later than June 15<sup>th</sup>, each year. WSDOT may not pay claims received after this date.

9.5. OVERPAYMENTS. Contractor promptly shall refund to WSDOT the full amount of any erroneous payment or overpayment. Such refunds shall occur within thirty (30) calendar days of written notice to Contractor; *Provided*, however, that WSDOT shall have the right to elect to have

either direct payments or written credit memos issued. If Contractor fails to make timely refunds of overpayment(s) (either directly or by such credit memo), Contractor shall pay WSDOT interest at a rate of one percent (1%) per month on the amount overdue thirty (30) calendar days after notice to Contractor.

- 9.6. ADVANCE PAYMENT PROHIBITED. Except as authorized by law, Contractor shall not request or receive advance payment for any Services furnished by Contractor pursuant to this Contract.
- 9.7. DUPLICATE PAYMENT. WSDOT shall not pay the Contractor, if the Contractor has charged or will charge WSDOT or any other party under any other contract or agreement for the same services or expenses.
- 9.8. NO ADDITIONAL CHARGES. Unless otherwise specified herein, Contractor shall not include or impose any additional charges including, but not limited to, charges for shipping, handling, insurance, or payment processing.
- 9.9. TAXES/FEEES. Contractor promptly shall pay all applicable taxes on its operations and activities pertaining to this Contract. Failure to do so shall constitute breach of this Contract. Unless otherwise agreed, WSDOT shall pay applicable sales tax imposed by the State of Washington on purchased services. Contractor's invoices shall separately state (a) taxable and non-taxable charges and (b) sales/use tax due by jurisdiction. In regard to federal excise taxes, Contractor shall include federal excise taxes only if, after thirty (30) calendar days written notice to WSDOT, WSDOT has not provided Contractor with a valid exemption certificate from such federal excise taxes.

**10. CONTRACT MANAGEMENT.**

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

Any notices required or desired shall be in writing and sent by U.S. mail, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

<b>Washington State Department of Transportation</b>	<b>Contractor</b>
Attn: Contract Services	Attn: _____
PO BOX 47408	_____
Olympia, WA 98504-7408	_____
Tel: (360) 705-7106	Tel: (____) _____
Email: <a href="mailto:admincontracts@wsdot.wa.gov">admincontracts@wsdot.wa.gov</a>	Email: _____

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

- 10.2. CONTRACT MANAGEMENT. Except for legal notices and Contract Administration Notices, the Parties hereby designate the following Contract Managers as the respective single points of

contact for purposes of contract management for this contract. WSDOT’s Contract Manager shall provide project management oversight and shall be the Contractor’s principal contact for invoice/billing activities under this Contract.

**Washington State Department of Transportation**

Attn: Adele Peers  
Active Transportation Division  
PO Box 47390  
Olympia, WA 98504-7390  
Tel: (564) 233-8863  
Email: adele.peers@wsdot.wa.gov

**Contractor**

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Tel: (\_\_\_\_) \_\_\_\_\_  
Email: \_\_\_\_\_

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

**Washington State Department of Transportation**

Attn: Schatzie Harvey  
Contract Services  
PO BOX 47408  
Olympia, WA 98504-7408  
Tel: (360) 705-7106  
Email: Schatzie.Harvey@wsdot.wa.gov

**Contractor**

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

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

**11. RECORDS RETENTION & AUDITS.**

- 11.1. RECORDS RETENTION. Contractor shall maintain books, records, documents, and other evidence pertaining to this Contract to the extent and in such detail as shall adequately reflect contract performance and administration of purchases, payments, taxes and fees. Contractor shall retain such records for a period of six (6) years following expiration or termination of this Contract or final payment, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.
- 11.2. AUDIT. WSDOT reserves the right to audit, or have a designated third-party audit, applicable records to ensure that Contractor properly has invoiced WSDOT. Accordingly, Contractor shall permit WSDOT and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor’s books, documents, papers and records directly pertinent to this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of six (6) years following expiration or termination of this Contract or final payment, whichever is later; *Provided*, however, that if

any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.

## **12. DATA.**

- 12.1. ACCESS TO DATA. In compliance with RCW 39.26.180, the Contractor shall provide access to data generated under this Contract to WSDOT, the Joint Legislative Audit and Review Committee, and the Office of the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and the methodology for those models.
- 12.2. DATA SHARING AGREEMENT AND SECURITY DESIGN REVIEW REQUIRED. WSDOT and the Contractor shall enter into Data Sharing Agreement following the execution of this Contract. The Contractor shall not preform work involving the collection or transfer of data prior to an executed Data Sharing Agreement.
  - 12.2.1. In compliance with Washington Technology Policy and Standards as maintained by WATECH, Security Design Review processes must be completed on technology infrastructure and solutions intended for use by the Contractor in the performance of work as determined by WSDOT. No work is to be performed with this technology without prior approval by WSDOT to proceed. The Contractor shall take corrective action to comply with any findings resulting from Security Design Review processes. Failure to comply could result in termination of this Contract.

## **13. CONFIDENTIALITY.**

- 13.1. "CONFIDENTIAL INFORMATION" as used in this section includes:
  - 13.1.1. All material provided to the Contractor by WSDOT that is designated as "confidential" by WSDOT;
  - 13.1.2. All material produced by the Contractor that is designated as "confidential" by WSDOT; and
  - 13.1.3. All Personal Information in the possession of the Contractor that may not be disclosed under state or federal law.
- 13.2. SAFEGUARDING OF INFORMATION. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of WSDOT or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide WSDOT with its policies and procedures on confidentiality. WSDOT may require changes to such policies and procedures as they apply to this Contract whenever WSDOT reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by WSDOT. Upon request, the Contractor shall immediately return to WSDOT any Confidential Information that WSDOT reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.



- 13.3. UNAUTHORIZED USE OR DISCLOSURE. The Contractor shall notify WSDOT within five (5) working days of an unauthorized use or disclosure of any confidential information and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

#### **14. TREATMENT OF ASSETS.**

- 14.1. Title to all property furnished by WSDOT shall remain in WSDOT. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in WSDOT upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in WSDOT upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by WSDOT in whole or in part, whichever first occurs.

14.1.1. Any property of WSDOT furnished to the Contractor shall, unless otherwise provided herein or approved by WSDOT, be used only for the performance of this contract.

14.1.2. The Contractor shall be responsible for any loss or damage to property of WSDOT that results from the negligence of the Contractor, or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.

14.1.3. If any WSDOT property is lost, destroyed or damaged, the Contractor shall immediately notify WSDOT and shall take all reasonable steps to protect the property from further damage.

14.1.4. The Contractor shall surrender to WSDOT all property of WSDOT prior to settlement upon completion, termination or cancellation of this contract.

14.1.5. All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

#### **15. INSURANCE.**

15.1. REQUIRED INSURANCE. Contractor, at its expense, shall maintain in full force and effect the insurance coverages set forth in *Exhibit C – Insurance Requirements*. All costs for insurance, including any payments of deductible amounts, shall be considered incidental to and included in the prices for Services and no additional payment shall be made to Contractor.

15.2. WORKERS COMPENSATION. Contractor shall comply with applicable workers compensation statutes and regulations (e.g., RCW Title 51, Industrial Insurance). If Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, WSDOT may terminate this Contract. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from Contractor. If Contractor performs Services on WSDOT's behalf in the State of Washington, and only to the extent of claims against Contractor by WSDOT under the Indemnity obligations in this Contract, Contractor expressly waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW. Contractor's indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefit acts. The parties

expressly acknowledge and certify that the waiver of immunity under Title 51 RCW was mutually negotiated and agreed upon.

**16. CLAIMS. ASSUMPTION OF RISKS; CLAIMS BETWEEN THE PARTIES.** Contractor assumes sole responsibility and all risks of personal injury or property damage to itself and its employees and agents in connection with Contractor's operations under this Contract. WSDOT has made no representations regarding any factor affecting Contractor's risks. Contractor shall pay for all damage to any WSDOT's property resulting directly or indirectly from Contractor's acts or omissions under this Contract.

16.2. **THIRD-PARTY CLAIMS; GENERAL INDEMNITY.** To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold WSDOT and its employees and agents harmless from and against all claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities or losses including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees (collectively "Claims") to the extent arising out of Contractor's or its successors', agents', and subcontractors' negligence, other tortious fault, or intentional misconduct under this Contract. The parties agree that if there are any limitations of Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability shall not apply to injuries to persons, including death, or to damages to property. Contractor shall take all steps needed to keep WSDOT's property free of liens arising from Contractor's activities, and promptly obtain or bond the release of any such liens that may be filed.

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

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

**18. SUSPENSION; EXPIRATION; TERMINATION; REMEDIES.**

18.1. **TERMINATION.** This Contract may be terminated: (a) upon the mutual written agreement of the parties; (b) by the non-breaching party where the breach is not cured within thirty (30) calendar days after written notice of breach is delivered to the breaching party, unless a different time for cure is otherwise stated in this Contract; and (c) as otherwise expressly provided for in this Contract. This Contract shall terminate automatically and without further action if a party becomes insolvent or is placed in receivership, reorganization, liquidation, or

bankruptcy. In addition to any other available remedies, the non-breaching party may terminate this Contract as provided in subsection (b) above without further liability by written notice to the breaching party. A termination for breach shall not affect rights or obligations accrued or owed before the effective date of the termination notice.

- 18.2. TERMINATION FOR NONAPPROPRIATION OR REDUCTION OF FUNDS OR CHANGES IN LAW. WSDOT may suspend or terminate this Contract, at the sole discretion of WSDOT or, as applicable, if WSDOT reasonably determines that: (a) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (b) that a change in available funds affects WSDOT's ability to pay Contractor. A change of available funds as used in this section includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor. If a written notice is delivered under this provision, WSDOT shall reimburse Contractor for Services properly performed until the effective date of said notice. Except as stated in this provision, in the event of termination for nonappropriation or reduction of funds or changes in law, WSDOT shall have no obligation or liability to Contractor.
- 18.3. TERMINATION FOR PUBLIC CONVENIENCE. WSDOT, for public convenience, may terminate this Contract; *Provided*, however, that such termination for public convenience must, in WSDOT's judgment, be in the best interest of the State of Washington; and *Provided further*, that such termination for public convenience shall only be effective upon sixty (60) days prior written notice; and *Provided further*, that such termination for public convenience shall not relieve WSDOT from payment for Services already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such termination for public convenience, WSDOT shall not have any obligation or liability to Contractor.
- 18.4. EXPIRATION – WSDOT'S OBLIGATIONS. Upon expiration of this Contract, WSDOT's shall accept and take delivery of all outstanding and not yet fulfilled orders and pay Contractor the price as set out in the Contract.
- 18.5. EXPIRATION OR TERMINATION – CONTRACTOR'S OBLIGATIONS. Upon expiration or termination of this Contract, Contractor shall: (a) continue to fulfill its warranty obligations with respect to any Services sold hereunder and all provisions of the Contract that, by their nature, would continue beyond the expiration, termination, or cancellation of the Contract shall so continue and survive; and (b) promptly return to WSDOT all keys, badges, and other materials supplied by WSDOT pursuant to this Contract.
- 18.6. DEFAULT. Any of the following events shall constitute cause for WSDOT to declare Contractor in default of this Contract:
- (a) Contractor fails to perform or comply with any of the terms or conditions of this Contract;
  - (b) Contractor fails to maintain the insurance coverages specified herein or timely provide to WSDOT the Certificate of Insurance and updates thereto specified herein;
  - (c) Contractor breaches any representation or warranty provided herein; or
  - (d) Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary.
- 18.7. SUSPENSION & TERMINATION FOR DEFAULT. WSDOT may suspend Contractor's operations under this Contract immediately by written cure notice of any default. Suspension shall continue

until the default is remedied to WSDOT's reasonable satisfaction; *Provided*, however, that, if after twenty (20) days from such a suspension notice, Contractor remains in default, WSDOT may terminate Contractor's rights under this Contract. All of Contractor's obligations to WSDOT survive termination of Contractor's rights under this Contract, until such obligations have been fulfilled.

**18.8. REMEDIES FOR DEFAULT.**

- (a) WSDOT's rights to suspend and terminate Contractor's rights under this Contract are in addition to all other available remedies.
- (b) In the event of termination for default, WSDOT may exercise any remedy provided by law including, without limitation, the right to procure replacement Services. In such event, Contractor shall be liable to WSDOT for damages as authorized by law including, but not limited to, any price difference between the Contract price and the replacement or cover price as well as any administrative and/or transaction costs directly related to such replacement procurement – e.g., the cost of the competitive procurement.

**18.9. LIMITATION ON DAMAGES.** Notwithstanding any provision to the contrary, the parties agree that in no event shall any party be liable to the other for exemplary or punitive damages; *Provided*, however, that nothing contained in this Section shall in any way exclude or limit: (a) a party's liability for all damages arising out of that party's intentional acts or omissions; (b) the operation of any Services warranty provided in this Contract; or (c) damages subject to the Intellectual Property Indemnity section of this Contract. Any limitation of either party's obligations under this Contract, by delivery slips or other documentation is void.

**18.10. SUSPENSION/TERMINATION PROCEDURE.** Regardless of basis, in the event of suspension or termination (in full or in part), the parties shall cooperate to ensure an orderly and efficient suspension or termination. Accordingly, Contractor shall deliver to WSDOT all Services that are complete (or with approval from WSDOT, substantially complete) and WSDOT shall inspect, accept, and pay for the same in accordance with this Contract. Unless directed by WSDOT to the contrary, Contractor shall not process any orders after notice of suspension or termination inconsistent therewith.

**19. PUBLIC INFORMATION & PUBLIC RECORDS DISCLOSURE REQUESTS.**

**19.1. WASHINGTON'S PUBLIC RECORDS ACT.** Unless statutorily exempt from public disclosure, this Contract and all related records are subject to public disclosure as required by Washington's Public Records Act, RCW 42.56.

**19.2. CONTRACTOR'S OBLIGATION.** Contractor shall identify and mark the precise portion(s) of the relevant page(s) of any records provided to WSDOT that Contractor believes are statutorily exempt from disclosure and identify the precise statutory basis for exemption from disclosure. In addition, if, in Contractor's judgment, certain portions of such records are not statutorily exempt from disclosure but are sensitive because particular portions of Contractor's records (NOT including pricing) include highly confidential, proprietary, or trade secret information (or the equivalent) that Contractor protects through the regular use of confidentiality or similar agreements and routine enforcements through court enforcement actions, Contractor shall identify and mark the precise portion(s) of the relevant page(s) of any records that include such sensitive information.

19.3. **WSDOT'S OBLIGATION.** In the event that WSDOT receives a public records disclosure request pertaining to records that Contractor has submitted and marked either as (a) statutorily exempt from disclosure; or (b) sensitive WSDOT, prior to disclosure, shall do the following: WSDOT's Public Records Officer shall review any records marked by Contractor as statutorily exempt from disclosure. In those situations, where the designation comports with the stated statutory exemption from disclosure, WSDOT shall redact or withhold the record(s) as appropriate. For records marked 'sensitive' or for records where WSDOT determines that no statutory exemption to disclosure applies or is unable to determine whether the stated statutory exemption to disclosure properly applies, WSDOT shall notify Contractor, at the address provided in the Contract, of the public records disclosure request and identify the date that WSDOT intends to release the record(s) (including records marked 'sensitive' or exempt from disclosure) to the requester unless Contractor, at Contractor's sole expense, timely obtains a court order enjoining WSDOT from such disclosure. In the event Contractor fails to timely file a motion for a court order enjoining such disclosure, WSDOT shall release the requested record(s) on the date specified. Contractor's failure properly to identify exempted or sensitive information or timely respond after notice of request for public disclosure has been given shall be deemed a waiver by Contractor of any claim that such records are exempt or protected from public disclosure.

## **20. SPECIAL PROVISIONS.**

- 20.1. **FRAUD AND OTHER LOSS REPORTING.** The Contractor shall report in writing all known or suspected fraud or other loss of any funds or other property furnished under this Contract immediately or as soon as practicable to the Contract Manager listed in Section 10.2 "Contract Management".
- 20.2. **LEGISLATIVE ETHICS BOARD REVIEW.** Any current elected Washington State Legislator performing any work under this Contract must submit to WSDOT, the conflict-of-interest decision from the Washington Legislature Ethics Board prior to the Legislator performing any work. The Contractor must comply with the decision rendered by the Board, and if the Legislator is disqualified or otherwise cannot perform the work based on the Board decision, the Contractor is required to find an alternative acceptable to WSDOT to perform the contemplated work at no additional cost to the state within 30 days of contract acceptance.
- 20.3. **POLITICAL ACTIVITIES.** Political activities of Contractor's employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17A RCW and the Federal Hatch Act, 5 USC 1501-1508. No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.
- 20.4. **RETURN OF UNSPENT FUNDING FOR REBATE REIMBURSEMENTS.** The Contractor shall return to WSDOT any remaining unspent funds that are intended for Rebate reimbursement payments and not designated as pending for processing claims submitted by Program Participants as of the end date of the Contract. Such unspent funds shall be returned to WSDOT within 15 calendar days of the end date of the Contract. Failure to return such unspent funding to WSDOT in a timely manner will result in WSDOT's right to recapture funding consistent with Section 9 "Invoicing and Payment".
- 20.5. **USE OF INTEREST GAINED FROM FUNDING.** The Contractor shall use any revenue received from interest, as a result of maintaining Rebate reimbursement payments prior to their processing, solely for Rebate reimbursement payments or return the funds to WSDOT at the end of the Contract. The Contractor shall submit interest statements monthly to WSDOT.

- 20.6. ORDER OF PRECEDENCE. In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:
1. Applicable federal and state of Washington statutes and regulations
  2. Contract K17XX
  3. Any Amendments to this Agreement
  4. Exhibit A – Scope of Work
  5. Exhibit B – Budget & Pricing
  6. Any Exhibits

## 21. GENERAL PROVISIONS.

- 21.1. TIME IS OF THE ESSENCE. Time is of the essence for each and every provision of this Contract.
- 21.2. COMPLIANCE WITH LAW. Contractor shall comply with all applicable law. Contractor shall obtain all necessary permits and approvals and give all stipulations, certifications, and representations that may be required for it to perform this Contract.
- 21.3. CONFLICT OF INTEREST. Contractor must maintain and comply with written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. Contractor must comply with the following minimum requirements:
- 21.3.1. No employee, officer, or agent may participate in the selection, award, or administration of a contract if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the Contractor may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts and must comply with RCW 39.26.020. However, Contractor may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Contractor.
- 21.3.2. If the Contractor has a parent, affiliate, or subsidiary organization that is not a state, local government, or federally recognized tribe, the Contractor must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the Contractor is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
- 21.4. ENTIRE AGREEMENT. This Contract constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations, representations, and understandings between them. There are no representations or understandings of any kind not set forth herein.
- 21.5. AMENDMENT OR MODIFICATION. Except as set forth herein, this Contract may not be amended or modified except in writing and signed by a duly authorized representative of each party.

- 21.6. **AUTHORITY.** Each party to this Contract, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Contract and that its execution, delivery, and performance of this Contract has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- 21.7. **NO AGENCY.** The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Contract. Neither party is an agent of the other party nor authorized to obligate it.
- 21.8. **INDEPENDENT CONTRACTOR.** The parties intend that an independent contractor relationship is created by this Contract. Contractor and its employees or agents performing under this Contract are not employees or agents of WSDOT. Contractor shall not have authorization, express or implied, to bind WSDOT to any agreement, liability, or understanding, except as expressly set forth herein. Contractor and its employees and agents are not entitled to unemployment insurance or worker's compensation benefits through WSDOT or the State of Washington, and WSDOT and the State of Washington shall not pay for or otherwise provide such coverage for Contractor and its employees and agents.
- 21.9. **ASSIGNMENTS.** Contractor may not assign its rights under this Contract without WSDOT's prior written consent and WSDOT may consider any attempted assignment without such consent to be void; *Provided*, however, that, if Contractor provides written notice to WSDOT within thirty (30) days, Contractor may assign its rights under this Contract in full to any parent, subsidiary, or affiliate of Contractor that controls or is controlled by or under common control with Contractor, is merged or consolidated with Contractor, or purchases a majority or controlling interest in the ownership or assets of Contractor. Unless otherwise agreed, Contractor guarantees prompt performance of all obligations under this Contract notwithstanding any prior assignment of its rights.
- 21.10. **BINDING EFFECT; SUCCESSORS & ASSIGNS.** This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- 21.11. **ASSIGNMENT OF ANTITRUST RIGHTS Regarding Purchased Services.** Contractor irrevocably assigns to WSDOT, on behalf of the State of Washington, any claim for relief or cause of action which Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws in connection with any Services provided in Washington for the purpose of carrying out the Contractor's obligations under this Contract, including, at WSDOT's option, the right to control any such litigation on such claim for relief or cause of action.
- 21.12. **FORCE MAJEURE.** Except for payment of sums due, neither party shall be liable to the other or deemed in breach under this Contract if, and to the extent that, such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that causes a delay that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences. If either party is delayed by force majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall likewise be provided. So far as consistent with the rights reserved below, the time of completion shall be extended by Contract amendment for a period of time equal to the time

that the results or effects of such delay prevented the delayed party from performing in accordance with this Contract. Notwithstanding any provision to the contrary, in the event that a Contractor-declared force majeure event lasts for more than thirty (30) days, WSDOT shall have the right to terminate the Contract and/or purchase the Services set forth in this Contract; *Provided*, however, that in such event, Contractor shall not be liable to WSDOT for any price difference for such Services.

- 21.13. FEDERAL FUNDS. To the extent that WSDOT uses federal funds to purchase Services pursuant to this Contract, WSDOT shall specify any applicable requirement or certification that must be satisfied by Contractor as a condition of payment and Contractor shall adhere to such applicable federal requirements and/or certifications.
- 21.14. SEVERABILITY. If any provision of this Contract is held to be invalid or unenforceable, such provision shall not affect or invalidate the remainder of this Contract, and to this end the provisions of this Contract are declared to be severable. If such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Contract.
- 21.15. WAIVER. Failure of either party to insist upon the strict performance of any of the terms and conditions hereof, or failure to exercise any rights or remedies provided herein or by law, or to notify the other party in the event of breach, shall not release the other party of any of its obligations under this Contract, nor shall any purported oral modification or rescission of this Contract by either party operate as a waiver of any of the terms hereof. No waiver by either party of any breach, default, or violation of any term, warranty, representation, contract, covenant, right, condition, or provision hereof shall constitute waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, contract, covenant, right, condition, or provision.
- 21.16. SURVIVAL. All representations, warranties, covenants, agreements, and indemnities set forth in or otherwise made pursuant to this Contract shall survive and remain in effect following the expiration or termination of this Contract, *Provided*, however, that nothing herein is intended to extend the survival beyond any applicable statute of limitations periods.
- 21.17. GOVERNING LAW. The validity, construction, performance, and enforcement of this Contract shall be governed by and construed in accordance with the laws of the State of Washington, without regard to any choice of law principles that would provide for the application of the laws of another jurisdiction.
- 21.18. JURISDICTION & VENUE. In the event that any action is brought to enforce any provision of this Contract, the parties agree to submit to exclusive jurisdiction in Thurston County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively at Olympia, Washington.
- 21.19. ATTORNEYS' FEES. In the event of litigation or other action brought to enforce this Contract, each party shall bear its own attorneys' fees and costs.
- 21.20. FAIR CONSTRUCTION & INTERPRETATION. The provisions of this Contract shall be construed as a whole according to their common meaning and not strictly for or against any party and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Contract. Each party hereto and its counsel has reviewed and revised this Contract and agrees that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be construed in the interpretation of



this Contract. Each term and provision of this Contract to be performed by either party shall be construed to be both a covenant and a condition.

- 21.21. FURTHER ASSURANCES. In addition to the actions specifically mentioned in this Contract, the parties shall each do whatever may reasonably be necessary to accomplish the transactions contemplated in this Contract including, without limitation, executing any additional documents reasonably necessary to effectuate the provisions and purposes of this Contract.
- 21.22. EXHIBITS. All exhibits referred to herein are deemed to be incorporated in this Contract in their entirety.
  - 21.22.1. Exhibit A – Scope of Work
  - 21.22.2. Exhibit B – Budget & Pricing
  - 21.22.3. Exhibit C – Insurance Requirements
  - 21.22.4. Exhibit D – RFP-2024-0821
  - 21.22.5. Exhibit E – Vendor RFP Response
- 21.23. CAPTIONS & HEADINGS. The captions and headings in this Contract are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Contract nor the meaning of any provisions hereof.
- 21.24. ELECTRONIC SIGNATURES. An electronic signature or electronic record of this Contract or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Contract or such other ancillary agreement for all purposes.
- 21.25. COUNTERPARTS. This Contract may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Contract at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Contract.

EXECUTED as of the date and year first above written.

**DEPARTMENT OF TRANSPORTATION,  
A WASHINGTON STATE AGENCY**

\_\_\_\_\_

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

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

Its:

Its:

SCOPE OF WORK

[insert at time of Contract award]

BUDGET & PRICING

[insert at time of Contract award]

**INSURANCE REQUIREMENTS**

1. **INSURANCE OBLIGATION.** During the Term of this Contract, Contractor shall obtain and maintain in full force and effect, at Contractor's sole expense, the following insurance coverages:
  - a. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Commercial General Liability Insurance covering Bodily Injury and Property Damage on an 'occurrence form' in the amount of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. This coverage shall include Contractual Liability insurance for the indemnity provided under this Contract.
  - b. **CYBER LIABILITY INSURANCE.** Contractor shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all relevant activities by the Contractor and licensed staff employed or under contract to the Contractor. Coverage obtained by the Contractor must be sufficient to include costs associated with a potential data security breach of software utilized at any Contractor or third-party location. The State of Washington, its agents, officers, and employees need not be named as additional insureds under this policy.
  - c. **WORKERS' COMPENSATION INSURANCE.** Contractor shall comply with applicable Workers' Compensation or Industrial Accident insurance providing benefits as required by law.
  - d. **EMPLOYER'S LIABILITY (STOP GAP) INSURANCE.** Employer's liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident, \$1,000,000 each employee for bodily injury by disease, and \$1,000,000 bodily injury by disease policy limit.
  - e. **COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.** Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$1,000,000.
  - f. **FIDELITY INSURANCE.** Every officer, director, employee, or agent who is authorized to act on behalf of the Contractor for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:
    - i. The amount of fidelity coverage secured pursuant to this Contract shall be \$100,000 or the highest of planned reimbursement for the Contract period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name WSDOT as beneficiary.
    - ii. Subcontractors that receive \$10,000 or more per year in funding through this Contract shall secure fidelity insurance as noted above. Fidelity insurance secured by Subcontractors pursuant to this paragraph shall name the Contractor as beneficiary.
  - g. **PROFESSIONAL LIABILITY (AKA ERRORS AND OMISSIONS (E&O) INSURANCE).** Contractor will provide professional liability insurance with limits not less than \$1,000,000 per occurrence to

cover all activities by the Contractor and licensed staff employed under contract. WSDOT, need not be named as additional insureds under this policy.

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

2. **INSURANCE CARRIER RATING.** Any required Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable to the State of Washington's Office of Risk Management. Insurance coverage shall be provided by companies authorized to do business within the State of Washington and rated A- Class VII or better in the most recently published edition of Best's Insurance Rating. WSDOT reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
3. **ADDITIONAL INSURED.** When specified as a required insurance coverage (see § 1 – Insurance Obligation, above), Commercial General Liability, Commercial Automobile Liability, and Pollution Liability Insurance shall include the State of Washington and all authorized WSDOT (and their agents, officers, and employees) as Additional Insureds evidenced by copy of the Additional Insured Endorsement attached to the Certificate of Insurance on such insurance policies.
4. **CERTIFICATE OF INSURANCE.** Prior to execution of the Contract, Contractor shall furnish to WSDOT, as evidence of the insurance coverage required by this Contract, a certificate of insurance satisfactory to WSDOT that insurance, in the above-stated kinds and minimum amounts, has been secured. In addition, no less than ten (10) days prior to coverage expiration, Contractor shall furnish to WSDOT an updated or renewed certificate of insurance, satisfactory to WSDOT, that insurance, in the above-stated kinds and minimum amounts, has been secured. Failure to maintain or provide proof of insurance, as required, shall result in Contractor suspension and/or contract termination. **All policies and certificates of insurance shall include the Contract number stated on the cover of this Contract.** All certificates of Insurance and any related insurance documents shall be sent via email to WSDOT at the email address set forth below:  

Email: Marianna.adams@wsdot.wa.gov  
Note: For Email notice, the Email Subject line must state:  
**Contract Insurance Certificate – Contract No. K17XX–**
5. **PRIMARY COVERAGE.** Contractor's insurance shall apply as primary and shall not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above including, at a minimum, the State of Washington and/or any WSDOT. All insurance or self-insurance of the State of Washington and/or WSDOT shall be excess of any insurance provided by Contractor or subcontractors.
6. **SUBCONTRACTORS.** Contractor shall include all subcontractors as insureds under all required insurance policies. Alternatively, prior to utilizing any subcontractor, Contractor shall cause any such subcontractor to provide insurance that complies with all applicable requirements of the insurance set forth herein and shall furnish separate Certificates of Insurance and endorsements for each subcontractor. Each subcontractor must comply fully with all insurance requirements

stated herein. Failure of any subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.

7. **WAIVER OF SUBROGATION.** Contractor waives all rights of subrogation against the State of Washington and any WSDOT for the recovery of damages to the extent such damages are or would be covered by the insurance specified herein.
8. **NOTICE OF CHANGE OR CANCELLATION.** There shall be no cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage, either in whole or in part, without at least sixty (60) days prior written Legal Notice by Contractor to WSDOT. Failure to provide such notice, as required, shall constitute default by Contractor. Any such written notice shall include the Contract number stated on the cover of this Contract.
9. **EXTENDED REPORTING PERIOD.** If any required insurance coverage is on a claims-made basis (rather than occurrence), Contractor shall maintain such coverage for a period of no less than three (3) years following expiration or termination of the Contract.

\* \* \* END OF INSURANCE REQUIREMENTS \* \* \*