

**STATE OF WASHINGTON  
SPOKANE CONSERVATION DISTRICT  
REQUEST FOR QUALIFICATIONS (RFQ)  
RFQ – Spokane River Fish Habitat Enhancement**

**PROJECT TITLE:** Spokane River at Starr Road Fish Habitat Enhancement Design

**RFQ DUE DATE:** RFQs are due to the Spokane Conservation District (SCD) offices no later than 4:00 p.m., on February 17, 2012. SCD offices are located at 210 N. Havana, Spokane, WA 99202

E-mailed RFQs will be accepted. Faxed RFQs will not.

**ESTIMATED TIME PERIOD FOR CONTRACT:** March 15, 2012– June 30, 2012

**CONSULTANT ELIGIBILITY:** This procurement is open to those consultants that satisfy the minimum qualifications stated herein and that are available for work in Washington State.

## **1. PURPOSE AND BACKGROUND**

The Spokane Conservation District hereafter called "AGENCY," is initiating this Request for Qualifications (RFQ) to engineer a structure to enhance fish habitat. The habitat enhancement project may include, but is not limited to, boulder placement and/or an engineered logjam type of structure. The goal is to provide fish habitat areas sized small enough for juvenile redband trout, but not large enough for predator fish. The engineering evaluation will include design concepts based on current hydraulic conditions. Along with evaluating current hydraulic conditions, a HEC-RAS, or equivalent, hydraulic model will be used to simulate potential water surface changes based on the designed structures.

### **1.1. OBJECTIVES AND SCOPE OF WORK**

The AGENCY requests professional engineering services for engineering design and development of a one dimensional surface water flow model, such as HEC-RAS. Services will include surveying of cross-sections used in the model, preliminary meeting with interested agency personnel, and a final presentation.

### **1.2 MINIMUM QUALIFICATIONS**

Minimum qualifications include:

- Licensed to do business in the State of Washington or provide a commitment that it will become licensed in Washington within thirty (30) calendar days of being selected as the Apparently Successful Contractor.
- Licensed Engineer.
- Experience with fish habitat enhancement techniques.

### 1.3 PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFQ is tentatively scheduled to begin on or about March 15, 2012 and to end on June 30, 2012.

## 2. GENERAL INFORMATION FOR CONSULTANTS

### 2.1. RFQ COORDINATOR

The RFQ Coordinator is the sole point of contact in the AGENCY for this procurement. All communication between the Consultant and the AGENCY upon release of this RFQ shall be with the RFQ Coordinator, as follows:

Name	Rick Noll
E-Mail Address	rick-noll@sccd.org
Mailing Address	210 N. Havana St. Spokane, WA 99202
Physical Address for Delivery	210 N. Havana St. Spokane, WA 99202
Phone Number	509/535-7274

Any other communication will be considered unofficial and non-binding on the AGENCY. Consultants are to rely on written statements issued by the RFQ Coordinator. Communication directed to parties other than the RFQ Coordinator may result in disqualification of the Consultant.

### 2.2. ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Request for RFQs	January 27, 2012
RFQs due	February 17, 2011
Conduct phone interviews with finalists, if required	February 24, 2011
Announce "Apparent Successful Contractor" and send notification via fax or e-mail to unsuccessful proposers	February 28, 2011
Negotiate contract	March 5, 2011
Begin contract work	March 15, 2011

The AGENCY reserves the right to revise the above schedule.

### 2.3 SUBMISSION OF RFQS

*(NOTE: RFQs can be submitted either hard copy or electronically. Use the appropriate sections below.)*

#### **HARD COPY RFQS:**

Consultants are required to submit two (2) copies of their RFQ. One copy must have original signatures. The RFQ, whether mailed or hand delivered, must arrive at the AGENCY no later than 4:00PM, on February 17, 2012.

The RFQ is to be sent to the RFQ Coordinator at the address noted in Section 2.1. The envelope should be clearly marked to the attention of the RFQ Coordinator.

Consultants mailing RFQs should allow normal mail delivery time to ensure timely receipt of their RFQs by the RFQ Coordinator. Consultants assume the risk for the method of delivery chosen. The AGENCY assumes no responsibility for delays caused by any delivery service. RFQs may not be transmitted using facsimile transmission.

Late RFQs will not be accepted and will be automatically disqualified from further consideration. All RFQs and any accompanying documentation become the property of the AGENCY and will not be returned.

**ELECTRONIC RFQS:**

The RFQ must be received by the RFQ Coordinator no later than 4:00PM, on February 17, 2012.

RFQs must be submitted electronically as an attachment to an e-mail to Rick Noll (rick-noll@sccd.org) the RFQ Coordinator, at the e-mail address listed in Section 2.1. Attachments to e-mail shall be in Microsoft Word format or PDF. Zipped files cannot be used for submission of RFQs. The cover submittal letter and the Certifications and Assurances form must have a scanned signature of the individual within the organization authorized to bind the Consultant to the offer. The AGENCY does not assume responsibility for problems with Consultant's e-mail. If the AGENCY'S email is not working, appropriate allowances will be made.

Consultants should allow sufficient time to ensure timely receipt of the RFQ by the RFQ Coordinator. Late RFQs will not be accepted and will be automatically disqualified from further consideration, unless the AGENCY'S e-mail is found to be at fault. All RFQs and any accompanying documentation become the property of the AGENCY and will not be returned.

**2.4 REVISIONS TO THE RFQ**

In the event it becomes necessary to revise any part of this RFQ, addenda will be provided via e-mail to all individuals, who have made the RFQ Coordinator aware of their interest. Addenda will also be published on the AGENCY website, SCCD.org. For this purpose, the published questions and answers and any other pertinent information shall be provided as an addendum to the RFQ and will be placed on the website.

If you downloaded this RFQ from the Agency website located at: SCCD.org, you are responsible for sending your name, e-mail address, and telephone number to the RFQ Coordinator in order for your organization to receive any RFQ addenda.

The AGENCY also reserves the right to cancel or to reissue the RFQ in whole or in part, prior to execution of a contract.

**2.5 MINORITY & WOMEN-OWNED BUSINESS PARTICIPATION**

In accordance with chapter 39.19 RCW, the state of Washington encourages participation in all of its contracts by firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this solicitation or on a subcontractor basis. However, no preference will be included in the evaluation of RFQs, no minimum level of MWBE participation shall be required as a condition for receiving an award, and RFQs will not be rejected or considered non-responsive on that basis.

The established annual procurement participation goals for MBE is 10% and for WBE, 4%, for this type of project. These goals are voluntary. For information on certified firms, consultants may contact OMWBE at 360/753-9693 or <http://www.omwbe.wa.gov>.

## **2.6 ACCEPTANCE PERIOD**

RFQs must provide 30 days for acceptance by AGENCY from the due date for receipt of RFQs.

## **2.7 REJECTION OF RFQS**

The AGENCY reserves the right at its sole discretion to reject any and all RFQs received without penalty and not to issue a contract as a result of this RFQ.

## **3. RFQ CONTENTS**

### **HARD COPY:**

RFQ must be written in English and submitted on eight and one-half by eleven inch (8 ½" x 11") paper with tabs separating the major sections of the RFQ. The four major sections of the RFQ are to be submitted in the order noted below:

1. Letter of Submittal, including signed Certifications and Assurances (Exhibit A to this RFQQ)
2. Documentation of Qualifications
3. Examples of Similar Work; and,
4. Schedule of Availability.

### **ELECTRONIC:**

RFQ must be written in English and submitted electronically to the RFQ Coordinator in the order noted below:

1. Letter of Submittal, including signed Certifications and Assurances (Exhibit A to this RFQ);
2. Documentation of Qualifications;
3. Examples of similar work; and,
4. Schedule of Availability.

## **5. RFQ EXHIBITS**

Exhibit A Certifications and Assurances

Exhibit B Example of standard SCD contract

**CERTIFICATIONS AND ASSURANCES**

I/we make the following certifications and assurances as a required element of the RFQ to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract:

1. I/we declare that all answers and statements made in the RFQ are true and correct.
2. In preparing this RFQ, I/we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this RFQ or prospective contract, and who was assisting in other than his or her official, public capacity. If there are exceptions to these assurances, I/we have described them in full detail on a separate page attached to this document.
3. I/we understand that the AGENCY will not reimburse me/us for any costs incurred in the preparation of this RFQ. All RFQs become the property of the AGENCY, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this RFQ.
4. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by him/her prior to opening, directly or indirectly, to any other Proposer or to any competitor.
5. I/we agree that submission of the attached RFQ constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.
6. No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a RFQ for the purpose of restricting competition.
7. I/we grant the AGENCY the right to contact references and other, who may have pertinent information regarding the ability of the Consultant and the lead staff person to perform the services contemplated by this RFQ.

We (circle one) **are / are not** submitting proposed Contract exceptions. (See Section 2.10, Contract and General Terms and Conditions.) If Contract exceptions are being submitted, I/we have attached them to this form.

**On behalf of the Consultant submitting this RFQ, my name below attests to the accuracy of the above statement. If electronic, also include: We are submitting a scanned signature of this form with our RFQ.**

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Signature of Proposer

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Title Date

**CONTRACT FOR PROFESSIONAL SERVICES  
BETWEEN  
THE SPOKANE CONSERVATION DISTRICT  
AND**

This Contract is made and entered into by and between the state of Washington, Spokane Conservation District hereinafter referred to as the "AGENCY", and the below named firm, hereinafter referred to as "CONTRACTOR,"

Phone:  
Email:  
Federal ID No.:  
WA State UBI No.:

**PURPOSE**

The purpose of this contract is to make an agreement whereby the CONTRACTOR provides

**SCOPE OF WORK**

The CONTRACTOR will provide services, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

*See attached Exhibit B Scope of Work: Scope, Cost Schedule, and Deliverables and Exhibit C*

Exhibit A: General Terms and Conditions contains the General Terms and Conditions governing work to be performed under this contract, the nature of the working relationship between the AGENCY and the CONTRACTOR, and specific obligations of both parties.

Exhibit B: Scope of Work contains Scope of Work for each Task, the cost estimate, and the deliverables.

Exhibit C: RFQ contains the required tasks.

The CONTRACTOR shall produce the following written reports or other written documents (deliverables) by the dates indicated below:

*See attached Exhibit B Scope of Work: Scope, Cost Schedule, and Deliverables*

All written reports required under this contract must be delivered to Rick Noll, the Contract Manager, in accordance with the schedule above.

**PERIOD OF PERFORMANCE**

Subject to other contract provisions, the period of performance under this contract will be from ..... or date of execution, whichever is later, through June 30, 2012, unless sooner terminated or extended as provided herein.

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**COMPENSATION AND PAYMENT**

AGENCY shall pay an amount not to exceed ..... for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. CONTRACTOR'S compensation for services rendered shall be based on the following rates or in accordance with the following terms:

*See attached Exhibit B Scope of Work: Scope, Cost Schedule, and Deliverables*

**Expenses:** CONTRACTOR shall receive reimbursement for travel and other expenses as identified in Exhibit B, Table 1 Scope of Work or as authorized in advance by the AGENCY as reimbursable. The maximum amount to be paid to the CONTRACTOR for authorized expenses shall not exceed ....., which amount is included in the contract total above.

AGENCY will pay CONTRACTOR upon receipt of properly completed invoices, which shall be submitted to the Contract Manager not more often than monthly. The invoices shall describe and document to the AGENCY'S satisfaction a description of the work performed, the progress of the project, and fees. To receive reimbursement, CONTRACTOR must provide a detailed breakdown of authorized expenses, identifying what was expended and when. A receipt must accompany any single expenses in the amount of \$50.00 or more in order to receive reimbursement.

Payment shall be considered timely if made by the AGENCY within thirty (30) days after receipt of properly completed invoices. Payment shall be sent to the address designated by the CONTRACTOR.

The AGENCY may, in its sole discretion, terminate the contract or withhold payments claimed by the CONTRACTOR for services rendered if the CONTRACTOR fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the AGENCY.

**CONTRACT MANAGEMENT**

The Contract Manager for each of the parties shall be the contact person for all communications and billings regarding the performance of this Contract.

<b>CONTRACTOR Contract Manager</b>	<b>AGENCY Contract Manager</b>
<i>Phone :</i> <i>Fax:</i> <i>Email address:</i>	Rick Noll Spokane Conservation District 210 N. Havana St. Spokane, WA 99202 <i>Phone:</i> (509) 535-7274 <i>Fax:</i> (509) 535-7410 <i>Email address:</i> rick-noll@sccd.org

## **INSURANCE**

The CONTRACTOR shall provide insurance coverage as set out below. The intent of the required insurance is to protect the state should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the CONTRACTOR or subcontract, or agents of either, while performing under the terms of this contract.

The CONTRACTOR shall provide insurance coverage which shall be maintained in full force and effect during the term of this Contract, as follows:

1. Commercial General Liability Insurance Policy – Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence. Additionally, the CONTRACTOR is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.
2. Automobile Liability – In the event that services delivered pursuant to this contract involve the use of vehicles, either owned or unowned by the CONTRACTOR, automobile liability insurance shall be required. The minimum limit for automobile liability is:

\$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage

3. The insurance required shall be issued by an insurance company/ies authorized to do business within the state of Washington, and shall name the state of Washington, its agents and employees as additional insureds under the insurance policy/ies. All policies shall be primary to any other valid and collectable insurance. CONTRACTOR shall instruct the insurers to give AGENCY 30 days advance notice of any insurance cancellation.

CONTRACTOR shall submit to AGENCY within fifteen days of the contract effective date, a certificate of insurance which outlines the coverage and limits defined in the Insurance section. CONTRACTOR shall submit renewal certificates as appropriate during the term of the contract.

## **ASSURANCES**

AGENCY and the CONTRACTOR agree that all activity pursuant to this contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

## **ORDER OF PRECEDENCE**

Each of the exhibits listed below is by this reference hereby incorporated into this contract. In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions as contained in this basic contract instrument
- Exhibit B, Scope of Work
- Any other provision, term or material incorporated herein by reference or otherwise incorporated

## **ENTIRE AGREEMENT**

This contract including referenced exhibits represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, shall be deemed a part hereof.

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## GENERAL TERMS AND CONDITIONS

DEFINITIONS - As used throughout this contract, the following terms shall have the meaning set forth below:

- A. "Agency" shall mean the Spokane Conservation District, of the state of Washington, any division, section, office, unit or other entity of the Agency, or any of the officers or other officials lawfully representing that Agency.
- B. "Agent" shall mean the Director, and/or the delegate authorized in writing to act on the Director's behalf.
- C. "Contractor" shall mean that firm, provider, organization, individual or other entity performing service(s) under this contract, and shall include all employees of the Contractor.
- C. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this contract under a separate contract with the Contractor. The terms "Subcontractor" and "Subcontractors" means Subcontractor(s) in any tier.
- D. "Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers. Personal Information includes "Protected Health Information" as set forth in 45 CFR § 164.50 as currently drafted and subsequently amended or revised and other information that may be exempt from disclosure to the public or other unauthorized persons under either Chapter 42.17 RCW or other state and federal statutes.

ACCESS TO DATA - In compliance with RCW 39.29.080, the Contractor shall provide access to data generated under this contract to AGENCY, the Joint Legislative Audit and Review Committee, and 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 methodology for those models.

Contractor agrees to make personal information covered under this agreement available to Agency for inspection or to amend the personal information. Contractor shall, as directed by Agency, incorporate any amendments to the personal information into all copies of such personal information maintained by the Contractor or its subcontractors.

ADVANCE PAYMENTS PROHIBITED - No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by the Agency.

AMENDMENTS - This contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35 - The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

ASSIGNMENT – Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of the Agency.

ATTORNEYS' FEES - In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorneys fees and costs.

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CONFIDENTIALITY / SAFEGUARDING OF INFORMATION - The Contractor shall not use or disclose any information concerning the Agency, or information which may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of the Agency, or as may be required by law.

CONFLICT OF INTEREST - Notwithstanding any determination by the Executive Ethics Board or other tribunal, the Agency may, in its sole discretion, by written notice to the Contractor terminate this contract if it is found after due notice and examination by the Agent that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Contractor in the procurement of, or performance under this contract.

In the event this contract is terminated as provided above, the Agency shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of the Agency provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Agent makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

COPYRIGHT PROVISIONS - Unless otherwise provided, all Materials produced under this contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Agency. The Agency shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, Contractor hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to the Agency effective from the moment of creation of such Materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the contract, but that incorporate pre-existing materials not produced under the contract, Contractor hereby grants to the Agency a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the Agency.

The Contractor shall exert all reasonable effort to advise the Agency, at the time of delivery of Materials furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this contract. The Agency shall receive prompt written notice of each notice or claim of infringement received by the Contractor with respect to any data delivered under this contract. The Agency shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

COVENANT AGAINST CONTINGENT FEES - The Contractor 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 maintained by the Contractor for the purpose of securing business. The Agency shall have the right, in the event of breach of this clause by the Contractor, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

DISPUTES - Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with Agent.

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1. The request for a dispute hearing must:
  - Be in writing;
  - State the disputed issue(s);
  - State the relative positions of the parties;
  - State the contractor's name, address, and contract number; and
  - Be mailed to the agent and the other party's (respondent's) contract manager within 3 working days after the parties agree that they cannot resolve the dispute.
2. The respondent shall send a written answer to the requester's statement to both the agent and the requester within 5 working days.
3. The Agent shall review the written statements and reply in writing to both parties within 10 working days. The Agent may extend this period if necessary by notifying the parties.
4. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable ADR method in addition to the dispute resolution procedure outlined above.

GOVERNING LAW - This contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

INDEMNIFICATION - Agency and Contractor each agree to indemnify and hold the other harmless, and their respective officers, employees, agents and representatives, from and against liability for all claims, losses, damages and expenses, including reasonable attorneys' fees, to the extent such claims, losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors or omissions. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of Agency and Contractor, they shall be borne by each party in proportion to its negligence.

INDEPENDENT CAPACITY OF THE CONTRACTOR - The parties intend that an independent contractor relationship will be created by this contract. The Contractor and his or her employees or agents performing under this contract are not employees or agents of the Agency. The Contractor will not hold himself/herself out as or claim to be an officer or employee of the Agency or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with the Contractor.

INDUSTRIAL INSURANCE COVERAGE - The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the 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, Agency may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. The Agency may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the Agency under this contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

LICENSING, ACCREDITATION AND REGISTRATION - The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this contract.

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LIMITATION OF AUTHORITY - Only the Agent or Agent's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the Agent.

NONCOMPLIANCE WITH NONDISCRIMINATION LAWS - In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the Agency. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

NONDISCRIMINATION - During the performance of this contract, the Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies.

OVERPAYMENTS AND ASSERTION OF LIEN - In the event that the Agency establishes overpayments or erroneous payments made to the Contractor under this contract, the Agency may secure repayment, plus interest, if any, through the filing of a lien against the Contractor's real property or by requiring the posting of a bond, assignment of deposit or some other form of security acceptable to the Agency or by doing both.

PRIVACY - Personal information collected, used or acquired in connection with this contract shall be used solely for the purposes of this contract. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the Agency or as provided by law. Contractor agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

The Agency reserves the rights to monitor, audit or investigate the use of personal information collected, used or acquired by the contractor through this contract. The monitoring, auditing or investigating may include but is not limited to "salting" by the Agency. Contractor shall certify the return or destruction of all personal information upon expiration of this contract. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The Contractor agrees to indemnify and hold harmless the Agency for any damages related to the Contractor's unauthorized use of personal information.

PUBLICITY - The Contractor agrees to submit to the Agency all advertising and publicity matters relating to this Contract wherein the Agency's name is mentioned or language used from which the connection of the Agency's name may, in the Agency's judgment, be inferred or implied. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of the Agency.

RECORDS MAINTENANCE - The Contractor shall maintain books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review or audit by the Agency, personnel duly authorized by the Agency, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

REGISTRATION WITH DEPARTMENT OF REVENUE - The Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

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RIGHT OF INSPECTION - The Contractor shall provide right of access to its facilities to the Agency, 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.

The Contractor shall make available information necessary for Agency to comply with the client's right to access, amend, and receive an accounting of disclosures of their Personal Information according to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) or any regulations enacted or revised pursuant to the HIPAA provisions and applicable provisions of Washington State law. The Contractor's internal policies and procedures, books, and records relating to the safeguarding, use, and disclosure of Personal Information obtained or used as a result of this contract shall be made available to Agency and the U.S. Secretary of the Department of Health & Human Services, upon request.

SAFEGUARDING OF INFORMATION - The Contractor shall not use or disclose Personal Information in any manner that would constitute a violation of federal law, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) or any regulations enacted or revised pursuant to the HIPAA provisions and applicable provisions of Washington State law. The Contractor agrees to comply with all federal and state laws and regulations, as currently enacted or revised, regarding data security and electronic data interchange of all Personal Information.

The Contractor shall protect Personal Information collected, used, or acquired in connection with this Contract, against unauthorized use, disclosure, modification or loss. The Contractor shall ensure its directors, officers, employees, subcontractors or agents use it solely for the purposes of accomplishing the services set forth in this agreement. The Contractor and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make it known to unauthorized persons without the express written consent of AGENCY or as otherwise required by law. The Contractor agrees to implement physical, electronic, and managerial policies, procedures, and safeguards to prevent unauthorized access, use, or disclosure of data in any form. The Contractor shall make the Personal Information available to amend as directed by Agency and incorporate any amendments into all the copies maintained by the Contractor or its Subcontractors.

The Contractor shall certify its return or destruction upon expiration or termination of this Contract and the Contractor shall retain no copies. If the Contractor and Agency mutually determine that return or destruction is not feasible, the Contractor shall not use the Personal Information in a manner other than those permitted or required by state and federal laws.

Agency reserves the right to monitor, audit, or investigate the use of personal information collected, used or acquired by the contractor through this contract. The monitoring, auditing, or investigating may include, but is not limited to, "salting" by Agency. Salting is the act of introducing data containing unique but false information that can be used later to identify inappropriate disclosure of data.

The Contractor shall notify Agency in writing within 5 working days of becoming aware of any unauthorized access, use or disclosure. The contractor will take steps necessary to mitigate any known harmful effects of such unauthorized access including, but not limited to sanctioning employees, notifying subjects, and taking steps necessary to stop further unauthorized access. The Contractor agrees to indemnify and hold harmless Agency for any damages related to unauthorized use or disclosure by the Contractor, its officers, directors, employees, Subcontractors or agents.

Any breach of this clause may result in termination of the contract and the demand for return of all Personal Information.

SAVINGS - In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the Agency may terminate the contract under the "Termination for Convenience" clause, without the ten day notice requirement, subject to renegotiation at the Agency's discretion under those new funding limitations and conditions.

SEVERABILITY - The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

SITE SECURITY - While on Agency premises, Contractor, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

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SUBCONTRACTING - Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the Agency. In no event shall the existence of the subcontract operate to release or reduce the liability of the Contractor to the Agency for any breach in the performance of the contractor's duties. This clause does not include contracts of employment between the contractor and personnel assigned to work under this contract.

Additionally, the Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subcontracts. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as provided by law.

TAXES - All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

TERMINATION FOR CAUSE – In the event the Agency determines the Contractor has failed to comply with the conditions of this Contract in a timely manner, the Agency has the right to suspend or terminate this Contract. Before suspending or terminating the Contract, the Agency shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 days, the Contract may be terminated or suspended. In the event of termination or suspension, the Contractor shall be liable for 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, e.g., cost of the competitive bidding, mailing, advertising and staff time. The Agency reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by the Agency to terminate the Contract. A termination shall be deemed to be a "Termination for Convenience" if it is determined that the Contractor: (21) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of the Agency provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

TERMINATION FOR CONVENIENCE - Except as otherwise provided in this contract, the Agency may, by 10 days written notice, beginning on the second day after the mailing, terminate this contract, in whole or in part. If this contract is so terminated, the Agency shall be liable only for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination.

TERMINATION PROCEDURES - Upon termination of this contract, the Agency, in addition to any other rights provided in this contract, may require the Contractor to deliver to the Agency any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The Agency shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the Agency, and the amount agreed upon by the Contractor and the Agency for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services which are accepted by the Agency, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Agent shall determine the extent of the liability of the Agency. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The Agency may withhold from any amounts due the Contractor such sum as the Agent determines to be necessary to protect the Agency against potential loss or liability.

The rights and remedies of the Agency provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Agent, the Contractor shall:

1. Stop work under the contract on the date, and to the extent specified, in the notice;
  2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
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3. Assign to the Agency, in the manner, at the times, and to the extent directed by the Agent, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Agency has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agent to the extent Agent may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to the Agency and deliver in the manner, at the times, and to the extent directed by the Agent any property which, if the contract had been completed, would have been required to be furnished to the Agency;
6. Complete performance of such part of the work as shall not have been terminated by the Agent; and
7. Take such action as may be necessary, or as the Agent may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Agency has or may acquire an interest.

#### TREATMENT OF ASSETS -

- A. Title to all property furnished by the Agency shall remain in the Agency. 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 the Agency 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 the Agency 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 the Agency in whole or in part, whichever first occurs.
- B. Any property of the Agency furnished to the Contractor shall, unless otherwise provided herein or approved by the Agency, be used only for the performance of this contract.
- C. The Contractor shall be responsible for any loss or damage to property of the Agency which 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.
- D. If any Agency property is lost, destroyed or damaged, the Contractor shall immediately notify the Agency and shall take all reasonable steps to protect the property from further damage.
- E. The Contractor shall surrender to the Agency all property of the Agency prior to settlement upon completion, termination or cancellation of this contract.
- F. All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

WAIVER - Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by authorized representative of the Agency.

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