

**AGREEMENT BETWEEN
OWNER AND CONSULTANT**

Contract No.

The “Effective Date” of this Agreement is: _____

The “Parties” to this Agreement are:

The “Owner”:

Washington State University
c/o Facilities Services, Capital
P.O. Box 641150
Pullman, WA 99164-1150

The “Consultant”:

Basic Information:

The “Project”:

Cougar Energy Initiative - Decarbonization Plan

The “Services”:

As described in Articles 1 and 2 and Exhibit A

The “Date of Completion”:

May 30, 2025

The “Consultant’s Representative”:

The Consultant’s “Compensation”:

The Services will be compensated on an hourly basis at the rates specified in Exhibit A (the “Compensation”) and Reimbursable Expenses as set forth in Exhibit B. In no event is the Owner obligated to pay more than the not-to-exceed amount of: \$_____ (“Maximum Compensation”). The Maximum Compensation includes the Compensation, Reimbursable Expenses and any subconsultants costs.

Minimum Required Insurance:

Commercial General Liability:	At least \$1 million per occurrence and in the aggregate
Automobile Liability:	At least \$1 million combined single limit and aggregate
Workers’ Compensation: (industrial insurance)	At least the state statutory amount
Employer’s Liability:	At least \$1 million
Professional Liability, if applicable:	At least \$1 million per claim and in the aggregate
Additional Insureds:	Washington State University c/o Facilities Services, Capital P.O. Box 641150 Pullman, WA 99164-1150

The Owner and Consultant agree as follows:

TERMS AND CONDITIONS OF AGREEMENT
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**ARTICLE 1
CONSULTANT’S RESPONSIBILITIES
AND SERVICES**

1.1. The “Services” consist of those performed by the Consultant, Consultant’s

employees, and Consultants subconsultants, if any, as enumerated in this Agreement and Exhibit A. To the extent the requirements of this Agreement conflict with the terms of any exhibit or attachment, the terms of this Agreement shall control.

1.2. The Consultant represents that it is qualified and capable in all respects to perform the Services and has an established record of providing the type of services covered by this Agreement. The Services shall meet or exceed the Owner's Standards set forth in Section 1.10, all applicable building codes, and all federal, state, county, city, and other jurisdictional laws, requirements, standards, and regulations in effect at that time that the Services are performed. Each person who performs the Services on behalf of the Consultant shall be experienced and qualified to perform the Services he or she performs, and the Owner shall be entitled to rely on any assistance, guidance, direction, and advice provided by any such person. If requested by the Owner, the Consultant shall remove from the Services, without cost to the Owner or delay to the Services, any person whose removal the Owner reasonably requests.

1.3. The Services shall be performed in a good, professional, and workmanlike manner, in accordance with the applicable standard of care, and with skill and diligence. The Consultant shall complete its Services by the Date of Completion specified on the cover page.

1.4. The Consultant's Representative specified on the cover page shall be responsible for and in charge of the Services. The Consultant's Representative shall not be changed for the duration of the Services without Owner's prior written approval.

1.5. At the time of performance, the Consultant shall be properly licensed, as required by applicable law, and properly equipped, organized, and financed to perform the Services. The Consultant shall also acquire and pay for, within the Maximum Compensation, any and all permits required by applicable law for the Consultant to properly perform the Services.

1.6. The Consultant shall, at no cost to the Owner, promptly and satisfactorily correct any Services that are defective or not in conformity with the requirements of this Agreement. The obligation of the Consultant to correct defective or nonconforming Services shall not in any way limit any other obligations of the Consultant and is in addition to any and all other rights and remedies available to the Owner under this Agreement or by law and shall in no event be construed or interpreted as obligating the Owner to make any correction of defective or nonconforming Services.

1.7. The Consultant accepts the relationship of trust and confidence between the

Consultant and the Owner established in this Agreement. The Consultant shall cooperate with the Owner and its employees, and the Owner's other consultants, contractors, subcontractors, suppliers, and others involved with or impacted by the Services, and shall use its best efforts to maintain a positive working relationship with each.

1.8. The Consultant shall be and operate as an independent contractor in the performance of the Services and shall have responsibility for all personnel performing the Services. The Consultant shall perform the Services in accordance with its own methods in an orderly and professional manner. In no event shall the Consultant be authorized on behalf of the Owner to: (a) enter into any agreements; (b) waive any provisions or receive or accept notice on behalf of the Owner; (c) authorize any payments or accept or approve any documents, work, services, goods, or materials on behalf of the Owner; or (d) act as or be an agent or employee of the Owner.

1.9. The Consultant may designate and subcontract with subconsultants with the Owner's prior written consent. The Consultant shall not subcontract with a subconsultant to which the Owner has a reasonable objection. The Consultant shall incorporate the provisions of this Agreement and a scope of services consistent with its Services into its subcontracts, if any. Any amounts due subconsultants shall be included in the Maximum Compensation. Any subcontracting of any of the Services shall not relieve the Consultant from its responsibilities under this Agreement.

1.10. The "Owner's Standards" consist of the "Washington State University Design Guidelines" (the "WSUDG") and the "WSU Design & Construction Standards" (the "WSUDCS"). The WSUDG and the WSUDCS may be found at <http://facilitieservices.wsu.edu/constructStandard.aspx>, and will be provided by the Owner upon request. The Owner's Standards are incorporated into this Agreement by reference and are a part of this Agreement as if fully set forth herein. The Owner's Standards are critical tools to assist the Consultant in understanding the desired standards of the Owner in developing, maintaining, and repairing its facilities. The Owner's Standards are standards, not specifications. The components within the Owner's Standards are to be conveyed within the Instruments of Service developed by the Consultant. If deviation from the Owner's Standards is unavoidable, the Consultant shall provide the Owner with written notice of any such deviation. The legal responsibility for Project

document preparation shall continue to reside with the Consultant.

1.10.1. The Instruments of Service shall be prepared in strict accordance with the Owner's "Drawing Standards and Guides," which are available at <http://facilitieservices.wsu.edu/constructStandard.aspx>, and will be provided by the Owner upon request.

ARTICLE 2 **ADDITIONAL SERVICES**

2.1. Additional Services, and any other services involving compensation beyond the Maximum Compensation, shall be provided if authorized in writing by the Owner and, when so authorized, shall become Services. The Owner shall pay for Additional Services only to the extent not caused by the errors, omissions, malfeasance, or negligence of the Consultant.

2.2. The Consultant shall not move forward in rendering Additional Services without the written permission of the Owner. The Consultant shall notify the Owner prior to providing any Services requiring an adjustment in the Maximum Compensation. Failure to provide such timely written notice before providing such Services shall be a waiver of any right to payment for Additional Services. If requested by the Owner in writing, the Consultant shall proceed with such Additional Services even if the parties have not yet agreed to a change in the Maximum Compensation. If the Owner deems that all or a part of such Additional Services are not required, the Owner shall give prompt written notice to the Consultant, and the Consultant shall have no obligation to provide, and the Owner shall have no obligation to compensate the Consultant for, such services.

ARTICLE 3 **OWNER'S RESPONSIBILITIES**

3.1. To the extent not already provided, the Owner shall provide full information regarding requirements for and limitations on the Project, including the Owner's objectives, schedule, constraints, and criteria, and will respond to any questions from the Consultant regarding such information.

3.2. The Owner shall pay the Consultant the Compensation in accordance with Article 9, for the Consultant's proper performance of the Services.

ARTICLE 4 **USE OF CONSULTANT'S INSTRUMENTS OF SERVICE**

4.1. Any documents, reports, information, data, drawings, specifications, maps, models, photographs, studies, and/or other work product, including those in electronic form, prepared (whether completed or partial) by the Consultant and its subconsultants, if any, as a part of the Services are the "Instruments of Service." The Instruments of Service shall become the joint property of the Owner and Consultant and, unless otherwise provided, the Consultant shall be deemed the author of these Instruments of Service and shall retain all common law, statutory, and other reserved rights, including the copyright, to the extent not modified herein. The Consultant grants to the Owner a non-exclusive license to use and reproduce at no additional cost the Instruments of Service for purposes of constructing, completing, using, maintaining, renovating, and/or adding to the Project. Reproducible copies of the Instruments of Service may be retained by the Owner and the Owner is entitled to make and retain copies and reproduce them for its own use.

4.2. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the either parties' reserved rights.

4.3. Upon request by the Owner, the Consultant shall provide electronic copies of its Instruments of Service, including CAD, Word, Excel, and similar files to the Owner as part of the Services.

ARTICLE 5 **DISPUTE RESOLUTION**

5.1. Any claim, dispute, or other matter in question between the Owner and the Consultant, including Consultant's subconsultants, arising out of or related to this Agreement ("Disputes"), shall be exclusively subject to the following alternative dispute resolution procedure in an effort to reduce the incidence and costs of extended Disputes and as a condition precedent to the institution of legal or equitable proceedings by either party. This requirement cannot be waived except by an explicit written waiver signed by the Owner and the Consultant.

5.2. The Owner and Consultant shall endeavor to resolve Disputes through good-faith

negotiation. If negotiations are not successful, each party shall continue to perform its obligations under this Agreement and the Owner and Consultant shall endeavor to resolve such Disputes by mediation, which, unless the parties mutually agree otherwise, shall be in accordance with the Washington Uniform Mediation Act and the Mediation Rules of the American Arbitration Association currently in effect. A request for mediation shall be filed in writing with the other party to this Agreement. If the parties are unable to select a mutually acceptable mediator within *thirty (30) days* of the request for mediation, the request may then be filed with the American Arbitration Association. Mediation shall proceed in advance of legal or equitable proceedings.

5.3. A principal of the Consultant, having full authority to settle the Dispute, must attend the mediation session. To the extent there are other parties in interest, such parties, each with full authority to settle all pending disputes or claims, shall also be encouraged to attend the mediation session.

5.4. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

5.5. Except for obligations under Article 8, the Consultant and the Owner mutually waive punitive and consequential damages, including, without limitation, all such damages due to either party's termination.

ARTICLE 6 **TERMINATION AND SUSPENSION**

6.1. Suspension: If any undisputed amount remains due and owing after a period of *sixty (60) days* from the date the Consultant submits an invoice, the Consultant may cease performing Services until all undisputed monies due are paid in full. The Consultant will not incur any liability for damages due to delay as a result of stopping performance of Services due to the Owner's failure to pay undisputed amounts for Services rendered.

6.2. Termination by the Owner: The Owner may, at its sole discretion, terminate all or a portion of the Services not then properly performed under this Agreement at any time with or without cause upon written notice to Consultant. All Instruments of Service shall thereupon become the

property of the Owner, and the Owner shall indemnify and hold harmless the Consultant, its agents and employees, from any claims arising from the Owner's subsequent use of the Instruments of Service after termination.

6.3. Compensation: Except in the event of a termination for cause, the Owner shall be liable to the Consultant only for Services properly completed prior to termination; this compensation shall not exceed the percentage of total Services properly completed at the time of termination multiplied by the Maximum Compensation.

ARTICLE 7 **MISCELLANEOUS PROVISIONS**

7.1. This Agreement shall be governed by the internal law of the State of Washington, without regard to its choice-of-law provisions.

7.2. The Owner and Consultant waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, but only to the extent covered by property insurance during construction, except such rights as they may have to the proceeds of such insurance as set forth in the Contract for Construction. The Owner and Consultant each shall require similar waivers from their contractors, consultants, agents, and employees.

7.3. The Owner and Consultant, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Consultant shall assign this Agreement without the written consent of the other.

7.4. This Agreement represents the entire and integrated agreement between the Owner and Consultant and supersedes all prior negotiations, representations, and agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and the Consultant.

7.5. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or the Consultant.

7.6. The Services shall be performed in accordance with generally accepted standards of

professional practice, any applicable statutory or regulatory standards, and the terms and conditions of the Agreement. The Consultant shall be solely responsible for the safety of its own personnel, equipment, agents, independent contractors, and consultants, and shall be solely responsible for general public health, safety, and welfare related to or arising from its acts or omissions at the site. The Consultant understands and agrees that it shall abide by all federal, state, and local laws and requirements, including without limitation those related to worker and site safety laws and regulations.

7.7. The Owner reserves the right to contract with other consultants, contractors, subcontractors, and suppliers for services.

7.8. To the extent required by applicable law and as requested by the Owner, the Consultant shall comply, and shall assist the Owner in complying, with the Washington Public Records Act, Chapter 42.56 RCW.

7.9. The Consultant shall comply with all applicable provisions of Chapter 49.60 RCW, the Law Against Discrimination, and shall not discriminate on the basis of race, creed, color, national origin, sex, sexual orientation, marital status, age, veteran status, or disability. This is in accordance with Title VI of the 1964 Civil Rights Act; Section 504 of the Rehabilitation Act, 1973, as amended; Americans with Disabilities Act, July 26, 1990, P.L. 101-336; and Title IX of the Education Amendments of 1972, as amended.

7.10. Capitalized terms not defined in this Agreement shall have the meaning as defined in the Contract for Construction or, if not defined therein, their normal industry meaning.

ARTICLE 8

INSURANCE AND INDEMNIFICATION

8.1. Insurance: The Consultant shall, at its sole cost and expense, secure and maintain at least the insurance types and limits identified on the cover page, on an occurrence basis (except for professional liability insurance, which may be on a claims-made basis), to protect the Owner, its successors, assigns, and the respective directors, employees, and agents of each of the foregoing, from and against any and all claims, losses, harm, costs, liabilities, damages, and expenses arising from the Services.

8.1.1. If applicable to the Services, the Consultant shall maintain professional liability insurance (errors and omissions) from the Effective Date through *six (6) years* after the Date of

Completion, with limits of at least those identified on the cover page, for claims that may result in any way from Consultant's negligent performance of its obligations under this Agreement.

8.1.2. All such insurance shall be placed with insurers and under such forms and limits of policies as may be reasonably acceptable to the Owner. Within *ten (10) days* of execution of this Agreement and at least annually thereafter during the performance of the Services, the Consultant shall deliver to the Owner certificates of insurance (including renewal or replacement certificates), bearing all required endorsements, acceptable to the Owner and signed by the insurer or its authorized representative, certifying that the policies are in full force and effect. The policies shall not be canceled or materially changed without the Consultant providing the Owner with at least *thirty (30) days'* prior notice of such cancellation or change. The Owner and any additional parties identified on the cover page, along with the successors, assigns, and respective directors, employees, and agents of each of the foregoing, shall be named as additional insureds on all applicable policies, with coverage provided on a primary and non-contributory basis. The Consultant shall be responsible for payment of any applicable deductibles or retention. The foregoing requirements as to insurance and acceptability to the Owner of insurers and insurance to be maintained by the Consultant shall not in any manner limit or qualify the liabilities or obligations assumed by the Consultant under this Agreement.

8.2. INDEMNIFICATION: The Consultant hereby releases and agrees to defend, indemnify, and hold the Owner, its successors and assigns, and the Owner's Board, directors, officers, agents, and employees of each of the foregoing ("Indemnified Parties") harmless, from and against: (1) any and all claims of third parties; and (2) losses, harm, costs, liabilities, damages, and expenses arising or resulting from such claims of third parties, including attorneys' fees, costs, and others litigation expenses ("damages"); to the extent arising out of or in connection with any willful misfeasance, bad faith, or negligence in, or reckless disregard of: (a) the performance of the Services by, (b) the obligations of, or (c) the acts or omissions of the Consultant or any of its consultants of any tier, their respective successors and assigns, the directors, officers, employees, and agents of each of them, or anyone acting on the Consultant's behalf in connection with this Agreement or its performance (the "Indemnifying Parties"); PROVIDED, however, that the Consultant

is not required to so defend, indemnify, or hold harmless any of the Indemnified Parties against claims or damages caused by or resulting from the sole negligence of the Indemnified Parties; and PROVIDED FURTHER that if such claims or damages are caused by or result from the concurrent negligence of the Indemnified Parties and the Indemnifying Parties then the Consultant's defense, indemnity, and hold harmless obligations hereunder shall be limited to the proportionate extent of the negligence of the Indemnifying Parties. Any of the foregoing limitations on the Indemnifying Parties' obligations shall not affect the Owner's rights under the insurance maintained pursuant to Section 8.1, and such insurance, if applicable, valid, and collectible, shall be primary to any indemnification obligations hereunder.

8.2.1. In claims against any person or entity indemnified under this Section 8.2 by an employee of the Consultant, any of its consultants of any tier, anyone directly or indirectly employed by them or anyone for whose acts they are liable, the obligations under this Section 8.2 shall not be limited by the amount or type of damages, compensation or benefits payable by or for the Consultant or a consultant under workers' compensation acts, disability benefit acts, or other employee benefit acts. After mutual negotiation of the parties, the Consultant expressly waives immunity as to the Owner under Title 51 RCW, "Industrial Insurance." This provision has been expressly and mutually negotiated.

ARTICLE 9 PAYMENTS TO CONSULTANT

9.1. Progress Payments on Account of Services: Progress payments are due and payable

to the Consultant within *thirty (30) days* of receipt of the Consultant's invoice, provided that the Consultant is entitled to payment as provided in this Agreement. Amounts unpaid *sixty (60) days* after the invoice receipt date shall bear interest at the Bank of America Prime Rate plus *two percent (2%)*.

9.1.1. Consultant's invoices shall be submitted monthly and include the description and value of Services completed during the previous month, the percent of Services completed through the previous month, and the balance of Services remaining. Invoices, including Reimbursable Expenses, shall be accompanied by receipts or records documenting those expenses. "Reimbursable Expenses," which shall be included in the Maximum Compensation, are identified in Exhibit B. Invoices for Additional Services, as authorized under Article 2, shall be accompanied by supporting information, such as time sheets or invoices, as necessary to substantiate the Additional Services.

9.2. Claims: If the Consultant believes that it is entitled to any additional compensation beyond the Maximum Compensation, such as payments for which the Consultant considers to be Additional Services, the Consultant shall notify the Owner in writing of such claims for compensation as provided in Section 2.2. Failure of the Consultant to provide such written notification to the Owner shall constitute a waiver of the Consultant's rights to seek additional compensation. In no event shall the Consultant have the right to seek such additional compensation from the Owner after acceptance of final payment by Consultant.

This Agreement entered into as of the Effective Date.

OWNER:

Washington State University

(Signature)

Joe Kline, P.E.

(Printed name)

Assistant Vice President, Capital and Operations
Facilities Services

(Title)

CONSULTANT:

Firm Name

(Signature)

(Printed name)

(Title)

EXHIBIT A

Scope of Services and Hourly Rates, dated _____.

[Attach a written scope of services and Consultant's hourly rates]

[Identify any subconsultant costs and Reimbursable Expenses to be paid by WSU]

[If Consultant's proposal is attached, remove or strike through terms of the proposal that conflict with the terms of this Agreement]

Sample

EXHIBIT B

I. Reimbursable Expenses:

A. Travel Expenses (when authorized) per WSU Guidelines

1. Within 50-mile radius of Job Site No reimbursement.
2. Beyond 50-mile radius of Job Site
 - a) Automobile \$0.655 cents/mile
 - b) Air travel* Actual coach class fare.
 - c) Rental automobile* Actual costs for midsize car or smaller.
 - d) Taxi/shuttle/ferry* Actual costs.
 - e) Parking* Actual costs.

B. Per Diem Expenses (when authorized) per WSU Guidelines

1. Lodging* and meals*, including state and local taxes, in accordance with the State of Washington guidelines for the project location, or most economical, best available corporate rate.

Note: WSU does NOT pay for alcoholic beverages.

C. Printing Costs (when authorized)

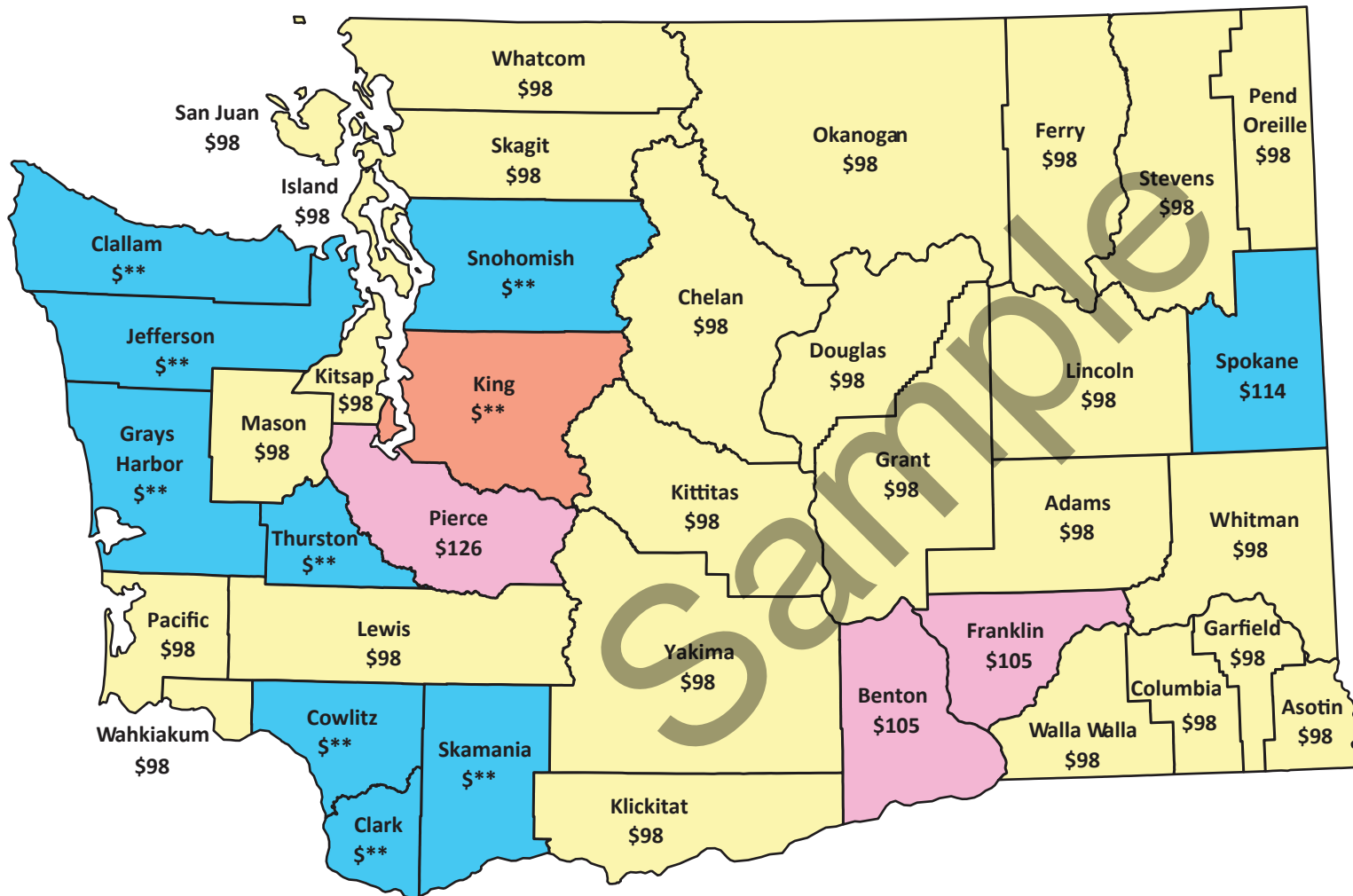
1. Bid sets, reports, specifications, final products, including postage/shipping costs.* Actual cost.
2. Correspondence, check prints, file copies, etc. Any printing or reproduction for in-house use. No reimbursement.

D. Telephone

1. Local No reimbursement.
2. Long distance* Actual cost.

*Itemized receipts required.

Per Diem Rates - As of October 1, 2022



Meal Rates

TOTAL	B	L	D
\$59	\$14	\$17	\$28
\$69	\$17	\$19	\$33
\$74	\$18	\$20	\$36
\$79	\$19	\$22	\$38

\$ Maximum Lodging Rate

** Seasonal Lodging Rates for Counties:

Clark, Cowlitz, & Skamania	06/01 - 10/31 11/01 - 05/31	\$182 \$152
Clallam & Jefferson	07/01 - 08/31 09/01 - 06/30	\$206 \$113
Grays Harbor	07/01 - 08/31 09/01 - 06/30	\$146 \$111
King	05/01 - 10/31 11/01 - 04/30	\$232 \$176
Snohomish	06/01 - 08/31 09/01 - 05/31	\$139 \$116
Thurston	09/01 - 10/31 11/01 - 08/31	\$120 \$140

POV Mileage Rate

The privately owned vehicle mileage reimbursement rate is \$0.655 per mile.
(effective 1/1/2023)

For Out-of-State Per Diem Rates, refer to the GSA website at: <http://www.gsa.gov>. To get the total meal and incidental expense rate breakdown of individual meal allowances, refer the State Administrative and Accounting Manual (SAAM), Subsection 10.40.10.c