



STAFF REPORT/RESOLUTION

TO: Southwest Washington Regional Transportation Council Board of Directors
FROM: Matt Ransom, Executive Director *MR*
DATE: September 30, 2014
SUBJECT: **General Legal Counsel Service Consulting Agreement,
Resolution 10-14-17**

AT A GLANCE - ACTION

The RTC Board is asked to authorize a Consulting Agreement with a law firm to provide general legal counsel services to the RTC.

INTRODUCTION

The RTC is a non-profit corporation that has been organized through an interlocal agreement among member jurisdictions. RTC operates in a complex legal environment and is responsible for administering a host of federal and state laws and administrative procedures in order to effect the regional transportation planning processes within Clark, Skamania and Klickitat counties. Through the years, the RTC has been provided ad-hoc legal services in partnership with the Clark County Prosecuting Attorney's office – Civil Division. During the summer of 2014 the RTC published a Request for Qualifications to solicit Responses from law firms capable of providing general legal counsel services to the RTC on a contract basis.

CONSULTANT SELECTION PROCESS

A Request For Qualifications was published on two occasions over the course of the summer; once in July and a second time in August. Advertisement was made via RTC's newspaper of record, in two trade journals with focus in both Portland and Seattle and also in an email to members to a Washington association representing municipal attorneys. In total, three Responses were received over the course of the two advertisements.

Each of the three Responses received was considered to meet the minimum qualifications and each was reviewed by a staff review committee according to pre-published rating criteria. The evaluation included a numeric scoring of each response and also written comments that further described the specific attributes (positive or negative) of the response materials and respondent (firm).

The staff rating resulted in a top numeric ranking and unanimous recommendation to negotiate a Consulting Agreement with Ted H. Gathe, LLC (Firm). The staff review team's conclusions were based in part on the following: the Firm's resume best met the breadth of experience and familiarity with intergovernmental and non-profit law experience; the Firm's fee proposal was the most cost competitive; an, the Firm's local presence and knowledge was ideally suited to supporting staff and the Board on an as-needed basis. The staff conclusions were also reviewed by the Board Chair for consistency with the prior policy guidance provided by the Board.

A Scope of Work and Fee has been negotiated and is presented in the attached Consulting Agreement.

SCOPE OF WORK

The Scope of Work for the proposed Consulting Agreement includes all activities and assignments customary to the duties of general legal counsel to the RTC and as generally set forth below. Typical Duties may include but not limited to:

- Serve as general legal counsel to the Executive Director and RTC Board.
- Provide review, interpretation, and advice regarding federal and state statutes and administrative rules.
- Provide administrative law services to promote organizational integrity.
- Assist RTC in compliance with federal and state grant administration.
- Attend public meetings of the RTC Board of Directors and provide guidance on the implementation of parliamentary procedures.
- Attend special meetings as requested by RTC staff.
- Review and attest to contracts and resolutions adopted by the RTC Board of Directors and administered by the Executive Director.
- Facilitate the Executive Director annual performance and contract review with the Board of Director's executive review committee.

POLICY IMPLICATION

None. The RTC is best served as an organization to have the committed services of general legal counsel for interpretation of regulations, oversight of Open Public Meetings Act and parliamentary procedures at public meetings, and general oversight on legal matters of the organization.

BUDGET IMPLICATION

Adoption of the resolution would authorize a Consulting Agreement which provides legal services to be billed at an authorized rate, not to exceed annual per-annum billings of \$30,000. The Consulting Agreement will be in effect upon signing and will expire on December 31, 2017. Sufficient operating funds are available to authorize this Consulting Agreement. In so doing, the year 2015 subsequent budgets through year 2017 will be prepared to include this projected expenditure.

ACTION REQUESTED

Adoption of Resolution 10-14-17 “General Legal Counsel Services Consulting Agreement”, and authorize the Executive Director to sign the Consulting Agreement.

ADOPTED this _____ day of _____ 2014,
by the Southwest Washington Regional Transportation Council.

SOUTHWEST WASHINGTON
REGIONAL TRANSPORTATION COUNCIL

ATTEST:

Jack Burkman
Chair of the Board

Matt Ransom
Executive Director

Attachment

CONSULTING AGREEMENT

FOR

GENERAL LEGAL COUNSEL SERVICES

FOR THE

SOUTHWEST WASHINGTON REGIONAL TRANSPORTATION COUNCIL

Parties:

SOUTHWEST WASHINGTON REGIONAL
TRANSPORTATION COUNCIL, a non-profit
corporation composed of public agencies,
(hereinafter "RTC"); and

Ted H. Gathe, LLC
(hereinafter "Contractor").

Recitals:

- A. The Southwest Washington Regional Transportation Council (RTC) is an intergovernmental member organization, which was established by Interlocal Agreement among participating public agencies under the provisions of RCW 39.34 on July 1, 1992.
- B. The RTC is a nonprofit corporation. The RTC filed incorporating papers with the Secretary of State under the provisions of the Washington Nonprofit Corporation Act (RCW 24.03) and was approved thereof on June 9, 1992. The corporation was formed as the legal entity of members to the Interlocal Agreement, and for the purpose of carrying out the responsibilities delegated to RTC under Federal and State laws and for other lawful activities which are afforded to such as a registered corporation.
- C. The RTC is the Metropolitan Planning Organization (MPO) for Clark County. This designation was made pursuant to 23 U.S.C. 134(b)(2) and 49 U.S.C. 1607 at Section 8(3) and designated as such by the Governor of Washington on July 8, 1992.
- D. The RTC's function is to provide regional transportation planning and grant fund programming services in accordance with the requirements of applicable Federal laws (Titles: 23 USC 134; 23 CFR 450; and 49 CFR 613) and State law (RCW 47.80).
- E. According to Federal and State laws, the RTC is responsible for the coordination and administration of the metropolitan and regional transportation planning programs for Clark, Skamania, and Klickitat counties. The RTC is also the designated agency for coordinating bi-state transportation plans with the MPO(s) and equivalent organizations within the State of Oregon which abut the RTC service area.
- F. The RTC is responsible for the administration of multiple Federal and State laws and administrative procedures, which requires a broad understanding of federal, state and administrative law.
- G. The Contractor(s) to this Consulting Agreement is a firm experienced in all aspects of administrative law and the interpretation and application of Federal, State, and local laws and regulations. Further, the Contractor is experienced in the application of the Washington State Open Public Meetings and Public Records Acts.
- H. The Parties desire to enter into this Consulting Agreement ("Agreement") in order to set out the terms and conditions under which RTC will hire Contractor to provide RTC general legal counsel services.

NOW THEREFORE, in consideration of the mutual terms and conditions provided in this Agreement, the Parties agree as follows:

1. Consulting Agreement

1.1 Statement of Contract. RTC hereby agrees to hire Contractor for, and Contractor agrees to provide the consulting services described in Paragraph 1.3 below, pursuant to the terms and conditions of this Consulting Agreement (Agreement).

1.2 Standard of Care. Contractor shall perform all services under this Agreement in a manner that is consistent with generally accepted standards of professional practice.

1.3 Scope of Work. Contractor shall provide consulting services by performing the activities tasks as set forth in Exhibit "A".

2. Completion Dates

2.1 Starting Date. Contractor shall commence services on the Project immediately upon execution of this Agreement.

2.2 Task Schedule. Tasks assigned under this Agreement shall be completed consistent with the completion date requirement established by mutual agreement or as described on the assigned Task Order.

2.3 Completion Date. Contractor shall complete all Task Orders and the Agreement shall expire no later than the Completion Date, which is December 31, 2017.

2.4 Extensions. RTC and the Contractor may negotiate one (1) Extension to this Agreement for a term of up-to 3-years. Such Extension would become effective upon RTC Board approval.

3. Principals

Each party shall designate an individual to serve as their "Principal." The Principal shall act as the primary manager of the Agreement and contact person or liaison for a party. The Principal shall be knowledgeable about the scope of work, the requirements under this Agreement, and the status of all work assigned under and administrative matters pertaining to this Agreement. The Parties' Principal shall be:

RTC's Principal:	Executive Director (current)
Contractor's Principal:	Ted H. Gathe

4. Payment Provisions

For services performed, RTC shall pay Contractor an amount equal to direct costs incurred in fulfillment of the services according to the Contractor's approved rate schedule per Exhibit B, and sub-consultant rates as pre-approved by the RTC.

RTC agrees to reimburse the contractor for completion and delivery of services subject to the requirements and limitations set forth in this Paragraph. Such payment shall be full compensation for work performed and services rendered, for all supplies, materials, equipment or use thereof, for all transportation, lodging and meals, and for all other necessary incidentals. All expenses shall be detailed on invoices submitted by the consultant to RTC. RTC makes no provision for reimbursement of expenses beyond that actually contracted.

4.1 Certified Invoice. In order to qualify for invoice payment, Contractor shall file a "Certified Invoice" with RTC's Principal. The term "Certified Invoice" means an invoice submitted by Contractor's Principal and certified as correct by Contractor's Principal. A Certified Invoice shall contain the following information: (a) an itemization of all hours worked, type of service provided, hours per type of service provided; and (b) documentation of all reimbursable expenses which shall be itemized and shall be detailed by copies of all invoices for all non-travel reimbursable expenses; and, (3) and, itemization of all indirect and overhead costs incurred by task for the billing period.

4.1.2 Payment Cycle. Contractor shall file a Certified Invoice within 25 days of the end of each month for which Contractor desires to receive payment. An original invoice must be received by the third Tuesday of the month for submittal to the RTC Board of Directors for approval and payment in conjunction with the monthly Claims at the monthly Board Meeting held on the first Tuesday of each month. Invoices must be addressed, RTC, P.O. Box 1366, Vancouver, WA 98666-1366.

The RTC will not recommend payment of a Certified Invoice unless it complies with the submission requirements and the actual invoice remittance date is subject to the payment cycle interval. Should a Certified Invoice not comply with the invoice submission or cycle requirements, the invoice will be reviewed in the subsequent payment cycle(s), until such time that the invoice is finally paid.

4.2 Payment Approval Process. Upon receipt, RTC shall have up to five (5) working days to disapprove, or conditionally approve of the Certified Invoice, which such action shall be communicated to Contractor's Principal.

4.2.1 Disapproval. An invoice that is disapproved shall be blue-lined and the balance not in question paid. However, Contractor may file a replacement Certified Invoice covering the same period at any time, which invoice shall be subject to the payment approval process provided in this Paragraph 4.2.

4.2.2 Conditional Approval. RTC may conditionally approve an invoice for payment based upon information to be provided by Contractor. An invoice that is conditionally approved shall be placed on the monthly Claims list and will be paid within 30 days of the Claims approval date.

4.3 Limitations on Payments. Notwithstanding anything herein to the contrary, all payments made to Contractor shall be subject to the limitations set forth in this Paragraph 4.3.

4.3.1 Cost Limitation of Total Budget. The total amount of payments paid to Contractor for completion of the Scope of Work shall not exceed and the RTC shall incur no financial obligation more than the maximum annual fee as itemized in Exhibit "B".

4.3.2 Additional Services. Contractor agrees to use commercially reasonable efforts to perform the services described in the Scope of Work for the cost limitation. If however, Contractor has reason to believe that the total cost for the performance of the services will be greater than the contract cost limitation because of factors beyond control of the firm or its staff, Contractor shall notify RTC in writing to that effect, giving its revised estimate of such total cost for the performance of the services. Contractor shall give notice prior to the expenditure of the final ten (10) percent of the budget as set by the contract cost limitation. Any modification to the cost limitation shall be approved by RTC prior to Contractor proceeding.

4.3.3 Equipment Expenses. RTC shall not be obligated to pay for invoiced equipment expenses unless such equipment is listed on Exhibit "B" to this Agreement. Contractor shall be responsible for any sales or use tax due on such equipment, if applicable.

5. Consultation Requirements

As part of the services required to complete the Project, Contractor shall, as requested from time to time by RTC's Principal, confer with RTC concerning: (a) the status of the Project; (b) expenses incurred to date; (c) an estimate of future expenses to completion; (d) any other matter relating to the Project of interest to RTC.

6. Preparation of Reports.

6.1 Progress Reports. As part of the services required to complete the Project, Contractor shall prepare and present to RTC monthly progress reports which shall accompany submission of the Certified Invoice. Each progress report shall include regular progress information on assigned Task Orders and all general matters related to implementation of the Scope of Work as identified by RTC's Principal at the beginning of the project.

6.2 Technical Memoranda and Other Documentation. The Contractor shall prepare and present to RTC legal opinions, technical memoranda, meeting documentation and other materials necessary to implement the specific Task Orders and generally the Scope of Work to this Agreement. Such materials shall be submitted to RTC's Principal no later than ten (10) working days after completion of the task for which the information is required.

6.3 Ownership. Contractor acknowledges that RTC shall be the owner of any findings, conclusions or reports derived as a result of Contractor's services on the Project.

7. Inspection and Retention of Records

7.1 Inspection Rights. As provided in this Paragraph, Contractor shall allow RTC or its representative(s) full access rights to inspect Contractor's Project Records during the Retention Period for any purpose, including but not limited to, the right to examine, copy or make excerpts from such records.

7.1.1 Definition of Records. As used herein, the term "Contractor's Project Records" shall include any and all documents or papers relating to Contractor's services on the Project, whether in draft or final form, including but not limited to: notes; bids; contracts; subcontracts; invoices; materials; payroll and accounting records; or Project information located or stored in computer memory or on a recording.

7.1.2 Definition of Retention Period. As used herein, the "Retention Period" shall be: (a) all times during the term of this Agreement; (b) all times during the three year period after Contractor receives written notice from RTC that the Project is complete and this Agreement is terminated; and (c) in compliance with the provisions with the Washington State Public Records Act (RCW 42.56) and Federal Public Records Act(s) as applicable.

7.1.3 Inspection Times. RTC's right to inspect Contractor's Project records shall be limited to normal business hours and shall be conducted in a manner least disruptive to Contractor's business. However, no advance notice shall be required and there shall be no limitation on the number or length of such inspections.

7.2 Audits, Inspections and Retention of Records. The Federal Highway Administration, the Washington State Department of Transportation, the State Auditor, and any of their representatives shall have full access to and the right to examine, during normal business hours and as often as they deem necessary, all of the Contractor's records with respect to all matters covered by this Agreement, unless such information is protected from inspection under applicable State or Federal laws. Any and all legal rights pertaining to exemption of public records shall be availed and or exercised by both the RTC and Contractor.

Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls and other matters covered by this Agreement. All documents, papers, accounting records and other materials pertaining to costs incurred in connection with the project shall be retained by the Contractor for three years from the date of completion of the project to facilitate any audits or inspections. If any litigation, claim, or audit is commenced, the records along with supporting documentation shall be retained until any litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the three-year retention period.

7.3 Public Disclosure of Records. All records prepared in conjunction with this Consulting Agreement may be subject to public disclosure under the provisions of applicable Federal and State laws. Any and all legal rights and privileges pertaining to exemption of public record(s) disclosure shall be availed and or exercised by both the RTC and Contractor.

8. Termination Provisions

8.1 Termination by RTC. RTC reserves the right to terminate this Agreement at any time upon thirty (30) days advance written notice to Contractor's Principal. In the event RTC shall exercise its termination right, Contractor shall not be entitled to any claim for breach of contract, but shall be entitled to the following amounts as liquidated damages: reimbursement for salary, direct and indirect expenses actually incurred by Contractor prior to the termination date, including proportional fee earned.

8.2 Termination by Contractor. Except upon the occurrence of a material breach by RTC (non-payment shall be considered a material breach), Contractor shall not have the right to terminate this Agreement prior to completion of the Project without the prior written consent of RTC, which shall not be unreasonably withheld.

9. Legal Relations

9.1 Independent Contractor Status. The Parties agree that Contractor, Contractor's employees, agents and subcontractors, shall be deemed independent contractors, and not employees of RTC, for all purposes, including but not limited to workman's compensation, unemployment, income tax and social security trust fund withholding requirements.

9.1.1 Withholding Requirements. In signing this Agreement, Contractor acknowledges that Contractor is responsible for timely filing and paying of any such withholding payments on reimbursements received from RTC, if applicable.

9.1.2 Income and Business Taxes. In signing this Agreement, Contractor acknowledges that Contractor is responsible for any state income, excise or business tax imposed or levied on Contractor's earnings under this Agreement.

9.1.3 Indemnification/Hold Harmless. In signing this Agreement, Contractor agrees to indemnify and hold harmless RTC, its officers, agents, and employees, from any and all amounts due for the taxes listed in this Paragraph 9.1., including penalties and interest for failure to file reporting forms or pay such taxes.

9.2 Compliance with Applicable Laws. Contractor agrees to comply with Applicable Laws, as defined herein, relating to services undertaken by Contractor to complete the Project, whether such services are done by Contractor directly or indirectly through or by a subcontractor(s) or sub-subcontractor(s), during the time of project performance. For purposes of this Paragraph, the term "Applicable Laws" shall mean Federal, state and local laws, ordinances, regulations, orders and directives applicable to services on the Project, including but not limited to employment matters, including equal opportunity employment, nondiscrimination assurances, project record keeping, audit, inspection and record retention requirements, as set forth on Exhibit "C" to this Agreement. Federal laws, regulations, and directives may change and these changes will apply to this contract.

9.3 Liability Between the Parties. Except as provided herein, neither party shall be responsible to the other party for the consequences of any act or omission of any person, firm or corporation not a party to this Agreement.

9.3.1 Contractor's Liability. Contractor shall be responsible for any damage(s) to persons or property but only to the extent they result from negligence on the part of Contractor, its employees, agents, officers, subcontractors or sub-subcontractors.

9.3.2 RTC's Responsibility. RTC shall be responsible only for damage(s) to persons or property but only to the extent they result from the negligence on the part of RTC, its employees, agents or officers.

10. Subcontracting Provision

Contractor acknowledges that RTC has entered into this Agreement based upon representations made by Contractor concerning its expertise and experience in providing consulting services as required herein. Therefore, except as provided herein, Contractor agrees that all services done on the Project shall be completed by Contractor under the direction of Contractor's Principal.

10.1 Approval of Subcontractors. Contractor shall not assign, subcontract or transfer any of the services to be performed by Contractor under this Agreement without the prior written approval of RTC's Principal.

10.2 Approval of Subcontract. Contractor shall not enter into any subcontract agreement without the prior written approval of RTC's Principal.

10.3 Approval Standard. Approval of any services to be subcontracted or of any subcontract agreement shall be at the sole discretion of RTC's Principal, but shall not be unreasonably withheld.

10.4 Subcontract Requirements. To the extent applicable to the services to be performed here under every subcontractor shall be licensed. Pursuant to Washington's construction contracting requirement, every subcontract shall prohibit sub-subcontracting without the prior written approval of RTC's Principal. In addition, as part of the services required to complete the Project, Contractor shall comply with applicable Federal, state and local laws, ordinances, regulations, orders and directives applicable to such subcontracting.

11. Expert Witnesses

As provided in this Paragraph and upon RTC's offer, and Contractor's acceptance of said offer, Contractor will make its employees, agents and subcontractors available to testify on behalf of RTC, or RTC's designee, as expert witnesses in support of the services conducted by Contractor under this Agreement, including but not limited to methodology, studies, conclusions and recommendations.

11.1 Qualifications of Expert Witnesses. Contractor shall make available employees, agents and subcontractors who are qualified and experienced in their field and who are directly knowledgeable about the services performed to complete the Project.

11.2 Fees and Expenses of Expert Witnesses. Expert witness fees and expenses shall be mutually agreed upon by RTC and Contractor. Provided RTC shall not be obligated to compensate Contractor for expert witness fees and expenses incurred in a proceeding which involves alleged negligence by Contractor in completing its work under this Agreement.

12. Contractor's Representations

12.1 Qualified to do Business. Contractor represents that Contractor is qualified to do business in Washington, including but not limited to: (a) registration with each state taxing authority, if applicable; (b) procurement of applicable business and professional licenses; and (c) procurement of any applicable business bond(s).

12.2 Maintenance of Licensure. The Contractor shall secure and maintain at its sole expense such licenses and permits as may be required to provide the services or supplies under this contract, including but not limited to a license to do business in the State of Washington and the City of Vancouver. If, for any reason, the Contractor's required licenses or certificates are terminated, suspended, revoked or in any manner modified from their status at the time this contract becomes effective, the Contractor shall notify RTC immediately of such condition in writing.

12.2 Contractor represents and warrants that Contractor has commercial automobile insurance, for all owned and non-owned vehicles used in conducting activities under this Contract, in the amount of \$500,000 per occurrence, combined single limit for bodily injury liability and property damage liability with a 1,000,000 annual aggregate limit. The contractor is responsible to provide evidence of continuing coverage during the period of the contract.

12.3 No Liens. Contractor represents that Contractor will not allow any lien or levy to attach to any materials or equipment purchase or used for completing services on the Project under this Agreement.

12.4 Authority to Enter into Agreement. Contractor represents that the person signing this Agreement on behalf of Contractor has been duly authorized by Contractor to execute this Agreement in Contractor's name.

13. Modifications

Either party may request changes in the terms of this Agreement (including any exhibit). However, except as provided herein for Change Orders, any modification to the terms of this Agreement (including any exhibit) shall not be valid unless made in writing, signed by the Principal for each party.

13.1 Change Orders. Notwithstanding anything in this Paragraph 13 to the contrary, RTC shall have the right to unilaterally change the Scope of Work under a task, as set forth on Exhibit "A" to this Agreement, under the following conditions: (a) the change does not alter the Completion Date under Paragraph 2; and (b) the change does not increase the salary, direct costs and indirect costs budgeted for that task under Exhibit "B". The Consultant will review the change order to identify if the change would increase the salary, direct costs, and indirect costs budgeted.

14. Confidentiality Provisions

Contractor recognizes and acknowledges that some information Contractor receives from RTC and/or develops in completing the Project may be confidential (hereinafter "Confidential Information"). Therefore, as to any information specifically identified by RTC as confidential, Contractor agrees not to at any time, after the term of this Agreement, disclose to third parties, any Confidential Information, or permit any third parties to use, examine and/or make copies of any documents, files, data or other information sources which contain Confidential Information, without the prior written permission of RTC's Principal or as required by law.

14.1 Exceptions. The preceding restriction shall not apply to information which is in the public domain, was previously known to Contractor, was acquired by Contractor from others who have no confidential relationship to RTC with respect to same, or which, through no fault of Contractor comes into the public domain. Contractor shall not be restricted in any way from

releasing information, including proprietary information, in response to a subpoena, court order, or other legal process. Contractor shall not be required to resist such subpoena, court order, or legal process, but shall promptly notify RTC in writing of the demand for information before Contractor responds to such demand. RTC may, at its sole discretion, seek to quash such demand.

15. Miscellaneous

15.1 Assignability. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Contractor may not assign the rights and obligations provided for herein without the prior written consent of RTC.

15.2 Attorney Fees. In any suit, proceeding or action to enforce any term, condition or covenant of this Agreement or to procure an adjudication or determination of the rights of the Parties, the prevailing party shall be entitled to recover from the other party reasonable sums as attorney fees and costs and expenses (including expert fees) in connection with such suit, proceeding or action, including appeal, which sums shall be included in any judgment or decree entered herein.

15.3 Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The Parties hereby consent to the exclusive personal jurisdiction of the courts of the State of Washington and agree that any suit in connection with or relating to this agreement shall lie exclusively in Clark County, Washington. The Parties agree that if either party is required to move any court to change venue in order to enforce the venue provision above, the party so moving shall be entitled to an award of their attorney fees and costs of such motion from the other party.

15.4 Effect of Execution. The Parties hereto shall become bound by the terms of this Agreement as of the date they execute this Agreement.

15.5 Enforcement. The provisions of the Agreement shall be enforceable notwithstanding the existence of any claim or cause of action between the parties whether predicated on this Agreement or otherwise.

15.6 Gender and Number. As used herein, the masculine shall include the feminine, and the singular or plural shall include the other.

15.7 Headings. The headings provided in this Agreement are for informational purposes only and shall not be given substantive effect.

15.8 Notices. All notices and demands required under this Agreement shall be in writing and shall be deemed to have been duly given, made and received when delivered or deposited in the United States mail, registered or certified mail, postage prepaid, addressed as set forth below:

If to RTC:

RTC
Executive Director
P.O. Box 1366
Vancouver, WA 98666

If to Contractor:

Ted H. Gathe, LLC
Municipal Attorney
PO Box 961
Vancouver, WA 98666-0961

Either party may change its address by notifying the other party of the address change by letter, sent regular mail.

15.9 Recitals. The recitals set forth at the beginning of this Agreement are hereby incorporated into and shall be construed as a part of this Agreement.

15.10 Representation. By signing this Agreement, Contractor has been advised to seek the advice of independent counsel regarding the execution of this document.

15.11 Severability. If any provision of this Agreement shall be held invalid, the remainder of this Agreement shall not be affected thereby.

15.12 Survival. The representatives, warranties and covenants made in this Agreement by either party, and any term or provision of this Agreement intended by its terms to be observed and performed after the termination of this Agreement, shall survive the termination of this Agreement, regardless of any investigation made by any party hereto.

15.13 Total Agreement. This Agreement contains the entire agreement between the Parties. There are no other understandings, agreements, representations or warranties, oral or written, not specified herein regarding this Agreement.

15.14 Waiver of Breach. The waiver of any breach of any provision of this Agreement or failure to enforce any provision hereof shall not operate or be construed as a waiver of any subsequent breach by any party.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year written below their names.

Ted H. Gathe, LLC

Southwest Washington
Regional Transportation Council

[Signature]

[Signature]

[Print Title]

[Print Title]

[Date]

[Date]

EXHIBIT A

CONTRACT SCOPE OF WORK

The Scope of Work includes all activities and assignments customary to the duties of General Legal Counsel to the RTC and as generally set forth below.

1. Typical Duties may include but not limited to:
 - a. Serve as general legal counsel to the RTC Board and Executive Director.
 - b. Provide review, interpretation, and advice regarding federal and state statutes and administrative rules.
 - c. Provide administrative law services to promote organizational integrity.
 - d. Assist RTC in compliance with federal and state grant administration.
 - f. Attend public meetings of the RTC Board of Directors and provide guidance on the implementation of parliamentary procedures.
 - g. Attend special meetings as requested by RTC staff.
 - h. Review and attest to contracts and resolutions adopted by the RTC Board of Directors and administered by the Executive Director.
 - i. Facilitate the Executive Director's annual performance and contract review with the Board of Directors executive review committee.

Project assignments that require significant efforts and resources shall be mutually established by and described in a Task Order, and authorized by each Principal prior to commencement work. The Task Orders shall establish at a minimum: a description of the assigned work, performance expectations, and completion dates. All Task Orders shall be billed at the approved Rate (Exhibit B), or where additional sub-consultant assistance is desired or required in fulfillment of the Task Order, then a sub-consultant Fee shall be established in conjunction with and prior to Task Order approval.

EXHIBIT B

APPROVED RATES

EXHIBIT B

Job Classification	Professional Name	Rates	Rates	Rates	Rates
		YR 2014	YR 2015	YR 2016	YR 2017
Primary Attorney	Ted H. Gathe	\$200/ hr.	\$200/ hr.	\$200/ hr.	\$225/ hr.

EQUIPMENT and OVERHEAD:

- Billed at applicable rates.

DIRECT EXPENSES:

- Billed at actual cost incurred.

MAXIMUM ANNUAL FEE:

- Unless otherwise amended, the total maximum annual billings under the Scope of Work shall be \$30,000.00 per year.

EXHIBIT C

CERTIFICATION AND ASSURANCES

The Contractor hereby agrees to the following standard Assurances:

1. CIVIL RIGHTS

(1) **Equal Employment Opportunity** - The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, marital status, national origin, disability, age, veteran status, on-the-job injury, or sexual orientation. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements U.S. DOT may issue.

(2) The Contractor also agrees to include these requirements in each **subcontract** financed in whole or in part with Federal assistance, modified only if necessary to identify the affected parties.

2. TITLE VI

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. Compliance with Regulations.

The contractor shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation (hereinafter DOT), Title 49, Code of Federal Regulations, part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination.

The contractor, with regard to the work performed during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination

prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontracts, including Procurement of Materials and Equipment.

In all solicitations either by competitive bidding or negotiations made by the contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color, sex, or national origin.

4. Information and Reports.

The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Southwest Washington Regional Transportation Council or the Washington State Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Southwest Washington Regional Transportation Council, or the Washington State Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance.

In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Southwest Washington Regional Transportation Council and the Washington State Department of Transportation shall impose such contract sanctions as it, or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- a) Withholding of payments to the contractor under the contract until the contractor complies, and/or;
- b) Cancellation, termination, or suspension of the contract, in whole or in part.

6. Incorporation of Provisions.

The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontractor or procurement as the Southwest Washington Regional

Transportation Council or the U.S. Department of Transportation, Federal Highway Administration, may direct as a means of enforcing such provisions including sanctions for noncompliance.

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Southwest Washington Regional Transportation Council enter into such litigation to protect the interests of the Southwest Washington Regional Transportation Council, and in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

3. DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

Contract Assurance 49 C.F.R. Part 26. The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as RTC deems appropriate.

4. NO OBLIGATION BY THE FEDERAL GOVERNMENT

The Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by U.S. DOT. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

5. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTION

As required by U.S. DOT regulations on Government-wide Debarment and Suspension (Non-Procurement) at 49 CFR 29 subpart C:

The Lower Tier Participant (Applicant for a third party subcontract or sub-grant) IBI Group, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction; violation of Federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses listed in this statement of this certification. Have not within a three year period preceding this certification had one or more public transactions (federal, state, or local) terminated for cause of default.

The applicant also certifies that if, later, it becomes aware of any information contradicting this statement, it will promptly provide that information to RTC.

Where the Lower Tier Participant (Applicant for a third party subcontract or sub-grant) is unable to certify to any of the statements in this certification, such Participant shall attach an explanation to this proposal.

BY ENDORSING THIS SIGNATURE PAGE, I _____ (name) declare that I am duly authorized by the Contractor to make the certifications and assurances on behalf of the Contractor and bind the Contractor to comply with them. Thus, the Contractor agrees to comply with all Federal statutes, regulations, executive orders, and administrative guidance required for this contract.

The Contractor affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted herein with this document. In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statement made by me on behalf of the Contractor are true and correct.

Authorized Official Signature

Attorney's Signature

Title of Authorized Official

Date

SOUTHWEST WASHINGTON REGIONAL TRANSPORTATION COUNCIL
(RTC)

AFFIDAVIT CONCERNING CONFLICTS OF INTEREST
AND NONCOMPETITIVE PRACTICES

STATE OF _____)

ss

COUNTY OF _____)

The undersigned, being first duly sworn, on oath states on behalf of the contractor:

A. Conflict of Interest

That the contractor by entering into this contract with RTC to perform or provide work, services, or materials to RTC has thereby covenanted, and by this affidavit does again covenant and assure, that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any such interest, which conflicts in any manner or degree with the services required to be performed under this contract and that it shall not employ any person or agent having any such interest. In the event that the contractor or its agents, employees, or representatives hereafter acquire such a conflict of interest, it shall immediately disclose such interest to RTC and take action immediately to eliminate the conflict or to withdraw from this contract, as RTC may require.

B. Contingent Fees and Gratuities

That the contractor, by entering into this contract with RTC to perform or provide services or materials for RTC has thereby covenanted, and by this affidavit does again covenant and assure:

1. That no person or selling agency bona fide employees or designated agents or representatives of the contractor has been employed or retained to solicit or secure this contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and

2. That no gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the contractor or any of its agents, employees, or representatives, to any official member or employee of RTC or other governmental agency with a view toward securing this contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this contract.

Company Name

By _____

Title _____

Subscribed and Sworn to Before Me

this _____ day of _____, 20____.

Notary Public in and for the State of _____

residing at _____.