

**CONTRACT AGREEMENT**  
**Yakima Valley Conference of Governments – 2017-2018 On-Call Model Assistance**

**INTRODUCTION**

This agreement is made between **Yakima Valley Conference of Governments** (hereinafter known as Client) and **Eco Resource Management Systems Inc.** (hereinafter known as Contractor). The work defined in Part 3.0 will be performed on a Time & Material basis, in accordance with the terms and conditions of this contract.

**PART 1.0 SCHEDULE**

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**1.1 SCOPE OF WORK**

Contractor shall, except as otherwise provided, furnish the personnel, materials, equipment, and property necessary to perform the work identified in Part 3.0, "Statement of Work" of this contract.

**1.2 PRICES**

**Contract Type:** Time and Material

**Authorized Dollars:** The total price needed to complete the Statement of Work shall not exceed \$25,000 per year unless amended by written authorization.

Labor rates shall be invoiced as follows:

Individual	Rate
Robert Shull	\$195 per hour

Non-labor costs shall be reimbursed at cost. Any work beyond the authorized amount or outside of the scope of work is not authorized and will be at the contractor's risk.

**1.3 TERM OF CONTRACT**

The term of this contract is from **January 1, 2017 to December 31, 2018.**

**1.4 CONTRACT ADMINISTRATION**

In regard to administrative and contractual matters relating to this contract, the parties hereby appoint the below listed persons, or their duly authorized designees, as the only persons empowered to make commitments on behalf of their respective organizations to effect changes to any portion of this contract.

For Contractor:	Name: Robert Shull
	Title: President
	Address: PO Box 1850
	Vashon, WA 98070
	Phone: 206-414-8751
	Email: rshull@transportmodeler.com

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For Client:                   Name: James A. Restucci  
                                  Title: YVCOG Executive Committee Chair  
                                  Address: 311 North 4<sup>th</sup> Street, Suite 204  
  Yakima, WA 98901  
                                  Phone: (509) 574-1550  
                                  Fax: (509) 574-1551

## 1.5 TECHNICAL REPRESENTATIVE

In regards to technical matters relating to this contract, the parties hereby appoint the below listed persons.

For Contractor:             Name: Robert Shull  
                                  Title: President  
                                  Address: PO Box 1850  
  Vashon, WA 98070  
                                  Phone: 206-414-8751  
                                  Email: rshull@transportmodeler.com

For Client:                   Name: Deborah L. LaCombe  
                                  Title: MPO/RTPO Manager  
                                  Address: 311 North 4<sup>th</sup> Street, Suite 204  
  Yakima, WA 98901  
                                  Phone: (509) 574-1550  
                                  Fax: (509) 574-1551

## 1.6 EXCLUSIVITY

The Contractor understands and agrees that Contractor shall perform all work pursuant to this Contract exclusively for Client and will not, for the duration of this Contract Agreement participate in any efforts to perform said work for the Client either independently or as a Contractor to other firms, without the written consent of Client.

## 1.7 INVOICE INSTRUCTIONS

Invoice Instructions: Invoices may be submitted monthly. All invoices must be signed and approved by an authorized official of the Contractor, who shall certify that the invoiced amounts are accurate. The invoice shall clearly state (1) the number of hours and labor dollars for each individual for the billing period, as well as cumulative, (2) period covered by the invoice, (3) the indirect allocations applicable to direct labor, (4) breakdown of all non-labor related expenses (both current billing period and cumulative), (5) total amount invoices (both current billing period and cumulative), (6) fixed fee based on amount of fee earned (both current billing period and cumulative). Contractor shall submit invoices by the 15<sup>th</sup> of each month for work performed in previous billing period. Contractor shall be paid no later than 30 days from Client's receipt of invoice.

**Invoices shall be addressed to:**

**Yakima Valley Conference of Governments  
311 North 4<sup>th</sup> Street, Suite 204  
Yakima, WA 98901**

## **PART 2.0 GENERAL PROVISIONS**

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### **2.1 NONDISCLOSURE**

A. Contractor acknowledges that, in performing this contract, Client may be required to make available to Contractor certain information, which Client may consider proprietary. Additionally, Contractor acknowledges that it may gain access to certain information, which may be considered proprietary to Client. Such information includes without limitation, information related to patents, research, development, statistical models, financial information, computer software, designs or processes, pricing, trade secrets, customer lists and technical and business information and know-how of Client and /or Client ("Proprietary Information"). Contractor agrees to safeguard and hold in strictest confidence all Proprietary Information.

B. Contractor agrees not to make use of nor disclose to third parties any Proprietary Information except in performance hereunder or as expressly authorized in writing by Client or, where Client's Proprietary Information is being used or disclosed, by Client. Contractor's obligations under the terms of this provision shall survive termination of the Agreement for a period of three (3) years.

C. Notwithstanding anything contained in paragraphs A and B above, Contractor shall not be liable for any release or use of any information if Contractor can demonstrate by written evidence that the information:

1. Is part of public domain through no fault of Contractor; or
2. Is in Contractor's rightful possession at the time of receipt thereof; or
3. Is known to Contractor independently of Client and from a source other than one having an obligation of confidentiality to Client; or
4. Is independently developed by Contractor without violation of this or any other agreement.

### **2.2 TERMINATION**

Client may terminate this Agreement, in whole or in part, for default based upon any of the following default conditions: (i) Contractor fails to fulfill any of its obligations hereunder; (ii) Contractor fails to provide written assurances of performance after such assurances are requested by Client, (iii) the cessation of Contractor's operations in the normal course of business; or (iv) insolvency of Contractor or the entering into or filing by or against the Contractor of a petition, arrangement, or proceeding seeking an order for relief under the bankruptcy laws of the United States, a receivership for any of the assets of the Contractor, a composition with or assignment for the benefit of creditors, a readjustment of debt, or the dissolution or liquidation of the Contractor.

Prior to termination for default under any conditions, Client shall notify Contractor of the default condition and shall allow Contractor seven (7) calendar days within which to affect a cure. If the condition is cured within the allowed period, this Agreement shall remain in full force and effect. If the default condition remains uncured beyond the allowed period, Client may terminate this Agreement, in whole or in part by written notice of termination to the Contractor. All notices of termination shall minimally state the basis for termination, and the date upon which such termination will become effective. Upon termination of this Agreement for any reason,

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and except as otherwise directed by Client, Contractor shall: (i) stop work under this Agreement on the date and to the extent specified in the notice of termination, (ii) terminate all orders and subcontracts to the extent that they relate to the performance of any work terminated by the notice of termination, and (iii) transfer all work in progress which is included in the terminated work to Client.

### **2.3 INDEMNITY**

Contractor agrees to indemnify and save harmless Client, its officers, agents, and employees from and against any and all claims and liability, loss, expenses, suits, damages, judgments, demands, and costs (including reasonable legal fees and expenses) arising out of: (i) the acts or omissions of Contractor, its employees, agents or its Contractors; (ii) injury or death to persons, or loss of or damage to property, or fines and penalties which may result, in whole or in part, by reason of the buying, selling, distribution, or use of any of the goods or services purchased or provided under this Agreement except to the extent that such damage is due solely and directly to the negligence of Client; (iii) the infringement or violation of any patent, copyright, trade secret, or other proprietary interest of any third party resulting from Client's use, distribution, sale, sublicensing, or possession of the goods (including software and all forms of written materials) or services purchased or provided, as authorized hereunder, or from the use or possession of said goods or services by Client, as authorized hereunder; or (iv) false claims submitted by Contractor under this Agreement or as a result of a Contractor misrepresentation of fact or fraud by Contractor.

Contractor shall defend and settle at its sole expense all suits or proceedings arising out of the foregoing, provided that Contractor has notice or is given prompt written notice of such claim or suit and, further, that Contractor shall be given necessary information, reasonable assistance and the authority to defend such claim or suit.

If any of the goods or services provided by Contractor hereunder, including without limitation software and all forms of written materials, become the subject of a claim of infringement or violation of a third party's proprietary rights, Contractor shall, at its own expense, use its best efforts first to procure for Client the right to continue use and, if authorized under this Agreement, distribution of the infringing goods or services or, if that right cannot be procured, then to modify the goods or services to make them non-infringing or, if such modification cannot be made, then to replace them with equivalent, non-infringing counterparts. If none of the above mentioned can be successfully implemented, then Contractor shall refund to Client all monies paid Contractor for the infringing goods and services.

### **2.4 INSURANCE (domestic)**

Contractor must purchase and maintain the following insurance coverage:

#### **Commercial General Liability**

Coverage in an amount no less than \$1 Million Combined Single Limit for Bodily Injury and/or Property Damage per occurrence, \$2 Million in the aggregate. Coverage to include the following extensions: Contractual Liability, Independent Contractors' Liability, Premises Operations, Products/Completed Operations, Broad Form Property Damage.

#### **Workers' Compensation and Employers' Liability**

Coverage in an amount no less than \$1 Million per occurrence is required

### **Professional Liability**

Coverage in an amount no less than \$1 Million per occurrence is required. All-Risk Property insurance, if applicable, Contractor is responsible for insuring all of its own property and/or Property owned by Client or the client in its care, custody and control. Client, its officers and employees to be included as Additional Insured on the General Liability, Automobile Liability coverage referenced above. A Waiver of Subrogation will be obtained from the General Liability and Workers' Compensation insurance carriers in favor of Client. Client is to be named as a Loss Payee as respects to All-Risk Property if Contractor has care, custody and control of Client property and/or equipment.

### **2.5 DISPUTES**

Both parties shall attempt to mutually dispose of good faith disputes concerning questions of fact and/or law arising hereunder. A court of competent jurisdiction in the State of Texas shall decide any dispute that is not settled by the parties. Pending resolution of any dispute, Contractor agrees to proceed diligently with the performance of this Agreement.

### **2.6 NOTICE TO CLIENT OF DELAYS**

If Contractor encounters difficulty in meeting performance requirements, anticipates difficulty in complying with this Agreement's delivery schedule or dates, or has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Agreement, Contractor shall immediately notify Client in writing, giving pertinent details. This notification shall be informational only, and compliance with this provision shall not be construed as a waiver by Client of any delivery schedule or date or of any rights or remedies.

### **2.7 SUBCONTRACT AND ASSIGNMENT**

- A. Contractor shall not subcontract all or any portion of this Agreement without Client's prior written approval.
- B. No assignment or transfer of this Agreement, in whole or part, shall be binding upon Client without Client's prior written consent. Payments, whether to Contractor or any assignee, shall be subject to setoff or recoupment for claims, which Client may have against Contractor, however arising.

### **2.8 MODIFICATIONS**

Neither this Agreement nor any term, condition, or provision hereof, or Work Order issued hereunder, may be altered, changed, or modified in any manner whatsoever except upon the mutual agreement of both parties evidenced by a modification to the Agreement that is signed by both parties.

### **2.9 CHANGES**

Client may, by written notice to Contractor at any time before completion of this Agreement, make changes within the general scope of this Agreement in any one of the following: (a) drawings, designs or specifications; (b) description of services to be performed; (c) time of performance (i.e. hours of the day, days of the week); (d) place of performance of the services. If any such change causes a material increase or decrease in the cost of, or the time required for, performance of any part of the work under this Agreement, Client shall make an equitable adjustment; in the Agreement price, the delivery schedule, or both and shall modify the

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Agreement. The Contractor must have notified, Client in writing of any request for such adjustment within twenty (20) days from the date of such notice from Client or from the date of any act of Client, which Contractor considers, constitutes a change. Failure to agree to any adjustment shall be a dispute under the Disputes clause of this Agreement. However, Contractor shall proceed with the work as changed without interruption and without awaiting settlement of any such claim.

## **2.10 SEVERABILITY**

If any provision of this Agreement is or becomes void or unenforceable by force or operation of law, the other provisions shall remain valid and enforceable.

## **2.11 FORCE MAJEURE**

A. Neither party shall be responsible for any failure to comply with, or for any delay in performance of the terms of this contract, where such failure or delay arises from: (i) acts of God, (ii) acts of the Government in its sovereign (and not contractual) capacity, (iii) fires, (iv) floods, (v) epidemics, (vi) quarantine restrictions, (vii) strikes, (viii) freight embargoes, (ix) unusually severe weather, or (x) shortages of supplies or materials where such supplies or materials were unobtainable from an alternate source. In all such events where performance is delayed or prevented, the affected party shall nonetheless exert reasonable and diligent efforts to remove said causes and resume performance hereunder.

B. If failure or delay of performance resulting from a condition of force majeure continues for more than 30 days, or if the affected party is unable to provide, upon request, immediate written assurances that performance will be tendered within 30 days following initial occurrence of the force majeure condition, the other party may terminate this Agreement, in whole or in part, for default in accordance with the provisions of Article 2.7, Termination.

## **2.12 WAIVER**

Neither party shall be deemed to have waived any right or remedy unless such waiver is made expressly and in writing. No single event of waiver shall be deemed or shall constitute a continuing waiver for any purpose.

## **2.13 COMPLETE AGREEMENT**

This Agreement is the complete and exclusive statement of the understandings between the parties with regard to the subject matter hereof, and supersedes in its entirety any previous understandings between the parties, whether oral or written.

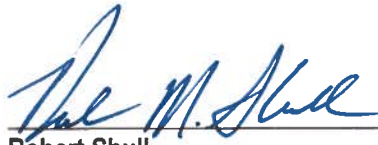
## **PART 3.0 STATEMENT OF WORK**

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Task 1: Contractor will provide travel demand model assistance that may include model updates, enhancements, and application in specific projects as directed by the Client.

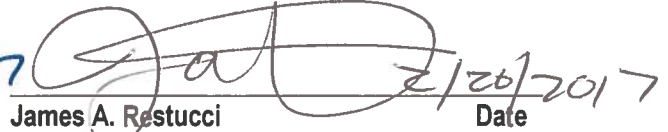
Additional tasks may be requested as needed during the contract period. The Client will provide details regarding the specific scope and responsibilities of the Contractor. Contractor will provide an estimate of the

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time and materials required to accomplish the additional tasks. Both the Client and the Contractor will agree to the additional tasks, responsibilities, and estimates before proceeding with the additional work.



Robert Shull  
President  
Eco Resource Management Systems Inc.

1/31/2017  
Date



James A. Restucci  
Executive Committee Chair  
Yakima Valley Conference of Governments

2/26/2017  
Date

CONTRACT AGREEMENT  
Yakima Valley Conference of Governments – 2017-2018 On-Call Model Assistance  
AMENDMENT #1

THIS AMENDMENT, to the Contract Agreement between **Yakima Valley Conference of Governments (YVOCG)**, acting herein by James A. Restucci, Chair, hereunto duly authorized, and **Eco Resource Management Systems Inc. (eRMSI)**, for 2017-2018 On-Call Model Assistance, a Washington Corporation, acting herein by Robert Shull, President, hereunto duly authorized;

WITNESSETH THAT;

WHEREAS, on January 1, 2017, YVOCG contracted with eRMSI for certain professional modeling services; and,

WHEREAS, it is necessary to amend certain sections of the contract;

NOW, THEREFORE, the parties do mutually agree to modify the contract to provide the following:

Compensation and Method of Payment:


The amount of the original contract for 2017 will be increased by an additional \$15,000.00, bringing the total amount of the original 2017 segment of the contract to \$40,000.00.

All other provisions of said contract shall remain unchanged.

DATED this 21 day of August, 2017.

YAKIMA VALLEY CONFERENCE OF  
GOVERNMENTS

  
\_\_\_\_\_  
JAMES A. RESTUCCI, Chair

ATTEST:   
\_\_\_\_\_  
Secretary

ECO RESOURCE MANAGEMENT SYSTEMS  
INC.

  
\_\_\_\_\_  
Robert M. Shull

ATTEST:   
\_\_\_\_\_  
Sharon E. Shull