



September 14, 2023

BCC Agenda Date/Item: _____

Board of County Commissioners
 Acting as the governing body of Water Environment Services
 Clackamas County

Approval of a Contract with OTAK, Inc. for Personal Services including engineering services necessary for the design and construction management of the Upper Kellogg Capital Improvements. Total Contract value is \$287,481.58 for 3 years. Funding is through WES Surface Water Operating Funds. No County General Funds are involved.

Previous Board Action/Review	Presented at Issues – September 12, 2023		
Performance Clackamas	1. This project supports the WES Strategic Plan to provide Enterprise Resiliency, infrastructure Strategy and Performance and Operational Optimization. 2. This project supports the County’s Strategic Plan of building a strong infrastructure that delivers services to customers and honors, utilizes, promotes and invest in our natural resources.		
Counsel Review	Yes	Procurement Review	Yes
Contact Person	Ron Wierenga	Contact Phone	503-742-4581

EXECUTIVE SUMMARY: WES has identified in the Storm System Master Plan opportunities that will improve the piped stormwater system and the drainage and capacity of the Upper Kellogg Creek channel to prevent chronic drainage issues. The purpose of this contract is to assist WES with the modeling, design, permitting, outreach and construction services for four high priority capital improvement projects in Upper Kellogg Creek (Phase 1 of 2). WES was recently allocated three million dollars of American Rescue Plan Act (ARPA) funds. These funds were allocated for the construction of three of the four Upper Kellogg projects, including SE Clackamas Road, Aldercrest Culvert Replacement, and Thiessen Culvert Replacement. Per the ARPA requirements, awarded funds need to be spent by 12/31/2026. WES anticipates construction starting in the summer of 2025. Project costs that exceed the ARPA funds are anticipated to come from WES stormwater fees.

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RECOMMENDATION: Staff recommends the Board approve Contract #8215 with OTAK, Inc. for personal services that include design and construction management of the Upper Kellogg Capital Improvements.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Greg Geist", with a long horizontal flourish extending to the right.

Greg Geist
Director, WES



**WATER ENVIRONMENT SERVICES
PERSONAL SERVICES CONTRACT
Contract #8215**

This Personal Services Contract (this “Contract”) is entered into between OTAK, Inc. (“Contractor”), and Water Environment Services, a political subdivision of the State of Oregon (“District”).

ARTICLE I.

- 1. Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on June 30, 2026.
- 2. Scope of Work.** Contractor shall provide engineering services necessary for the design and construction management of the Upper Kellogg Capital Improvements (“Work”), further described in the **negotiated scope of RFP 2023-4** which is attached as **Exhibit A**.
- 3. Consideration.** The District agrees to pay Contractor, from available and authorized funds, a sum not to exceed **Two Hundred Eighty Seven Four Hundred and Eight One dollars and Fifty-Eight cents (\$287,481.58)**, for accomplishing the Phase 1 Work required by this Contract. Consideration rates are on a time and materials basis in accordance with the rates and costs specified in Exhibit A. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A.
- 4. Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The invoices shall include the total amount billed to date by Contractor prior to the current invoice. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made in accordance with ORS 293.462 to Contractor following the District’s review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the District will not be obligated to pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

Invoices shall reference the above Contract Number and be submitted to: LJohanson@clackamas.us

- 5. Travel and Other Expense.** Authorized: Yes No
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the Clackamas County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: <https://www.clackamas.us/finance/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.
- 6. Contract Documents.** This Contract consists of the following documents, which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit A, and Exhibit B.

7. Contractor and District Contacts.

Contractor	District
Administrator: Kevin Timmins Phone: 503-415-2340 Email: kevin.timmins@otak.com	Administrator: Leah Johanson Phone: 503-460-0772 Email: LJohanson@clackamas.us

Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records will subject Contractor payments to backup withholding.

ARTICLE II.

- 1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. District and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
- 2. AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the District in its sole administrative discretion.
- 3. CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
- 4. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time.
- 5. COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- 6. GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between District and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the District of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.

7. INDEMNITY, RESPONSIBILITY FOR DAMAGES. Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify and defend the District and Clackamas County, and their officers, elected officials, agents and employees from and against all claims, actions, losses, liabilities, including reasonable attorney and accounting fees, and all expenses incidental to the investigation and defense thereof, arising out of or based upon Contractor’s acts or omissions in performing under this Contract.

However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of District or Clackamas County (“County”), purport to act as legal representative of District or County, or settle any claim on behalf of District or County, without the approval of the Clackamas County Counsel’s Office. District or County may assume their own defense and settlement at their election and expense.

8. INDEPENDENT CONTRACTOR STATUS. The service(s) to be rendered under this Contract are those of an independent contractor. Although the District reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, District cannot and will not control the means or manner of Contractor’s performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of District for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to District employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.

9. INSURANCE. Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. The insurance requirements outlined below do not in any way limit the amount or scope of liability of Contractor under this Contract. Contractor shall provide proof of said insurance and name the District and Clackamas County as an additional insureds on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or the County Contract Analyst.

Required - Workers Compensation: Contractor shall comply with the statutory workers’ compensation requirements in ORS 656.017, unless exempt under ORS 656.027 or 656.126.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per claim, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input checked="" type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per accident for Bodily Injury and Property Damage.

The policy(s) shall be primary insurance as respects to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it. Any obligation that District agree to a waiver of subrogation is hereby stricken.

- 10. LIMITATION OF LIABILITIES.** This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Except for liability arising under or related to Article II, Section 13 or Section 20 neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.
- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to District, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during District's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of District. District and Contractor intend that such Work Product be deemed "work made for hire" of which District shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to District all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as District may reasonably request in order to fully vest such rights in District. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, District shall have no rights in any pre-existing Contractor intellectual property provided to District by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for District use only.
- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to District that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; (E) the Work under this Contract shall be performed in accordance with the standard of professional skill and care required for a project of similar size, location, scope, and complexity, during the time in which the Work is being performed. The Contractor shall be responsible for the technical accuracy of its services and documents resulting therefrom, and District shall not be responsible for discovering deficiencies therein. The Contractor shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in information furnished by the District.
- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 10, 12, 13, 14, 15, 17, 20, 21, 25, 27, and 29, and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the District's right to enforce this Contract

with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

15. SEVERABILITY. If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

16. SUBCONTRACTS AND ASSIGNMENTS. Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the District, which shall be granted or denied in the District's sole discretion. In addition to any provisions the District may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16, and 27 as if the subcontractor were the Contractor. District's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

17. SUCCESSORS IN INTEREST. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

18. TAX COMPLIANCE CERTIFICATION. The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle District to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.

19. TERMINATION. This Contract may be terminated for the following reasons: (A) by mutual agreement of the parties or by the District (i) for convenience upon thirty (30) days written notice to Contractor, or (ii) at any time the District fails to receive funding, appropriations, or other expenditure authority as solely determined by the District; or (B) if contractor breaches any Contract provision or is declared insolvent, District may terminate after thirty (30) days written notice with an opportunity to cure.

Upon receipt of written notice of termination from the District, Contractor shall immediately stop performance of the Work. Upon termination of this Contract, Contractor shall deliver to District all documents, Work Product, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon District's request, Contractor shall surrender to anyone District designates, all documents, research, objects or other tangible things needed to complete the Work.

20. REMEDIES. If terminated by the District due to a breach by the Contractor, then the District shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the District, less any setoff to which the District is entitled.

21. NO THIRD PARTY BENEFICIARIES. District and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to

give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

- 22. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 23. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 24. FORCE MAJEURE.** Neither District nor Contractor shall be held responsible for delay or default caused by events outside the District or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 25. WAIVER.** The failure of District to enforce any provision of this Contract shall not constitute a waiver by District of that or any other provision.
- 26. PUBLIC CONTRACTING REQUIREMENTS.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:
- a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
 - b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
 - c. Not permit any lien or claim to be filed or prosecuted against District on account of any labor or material furnished.
 - d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
 - e. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling District to terminate this Contract for cause.
 - f. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.
- 27. NO ATTORNEY FEES.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.
- 28. KEY PERSONS.** Contractor acknowledges and agrees that a significant reason the District is entering into this Contract is because of the special qualifications of certain Key Persons set forth in the contract. Under this Contract, the District is engaging the expertise, experience, judgment, and personal attention of such Key Persons. Neither Contractor nor any of the Key Persons shall delegate performance of the management powers and responsibilities each such Key Person is required to provide under this Contract to any other employee or agent of the Contractor unless the District

**EXHIBIT A
SCOPE OF WORK**

**Upper Kellogg Capital Improvements
Otak Project # 21050**

UNDERSTANDING

The purpose of this project is to assist Clackamas Water Environment Services (WES) with the modeling, design, permitting, outreach and construction services for four high priority Capital Improvement Projects (CIP) in the Upper Kellogg Watershed. WES was recently allocated three million dollars of American Rescue Plan Act (ARPA) funds by the Board of Clackamas County. These funds were allocated for the construction of three of the four Upper Kellogg CIP, including SE Clackamas Road (CIP 1091), Aldercrest Culvert Replacement (CIP 1079), and Thiessen Culvert Replacement (CIP 1055). Figure 1 show the location of the four CIP projects. Per the ARPA requirements, awarded funds need to be spent by 12/31/2026. WES anticipates construction needs to start during the summer of 2025. Project costs that exceed the ARPA funds are anticipated to come from WES stormwater fees.



Figure 1: Map showing the 4 CIP Locations and proximity to each other.

WES is interested in building upon the existing concepts described in the recently completed Storm System Master plan for the four CIP projects. All four of projects are known to contribute to chronic drainage issues observed along SE Clackamas Rd. Clackamas Department of Transportation (DTD) will manage full design and construction of the new Thiessen Culvert project (CIP 1055) under a separate contract. Modeling results performed under this contract will be used to inform the design.

Descriptions of the issues and potential projects are summarized as follows:

SE Clackamas Road Drainage Infrastructure (CIP 1091): The problem area is located just west of where SE Clackamas Road crosses Kellogg Creek, southwest of Ann-Toni Schreiber Park. A stream that drains a pond south of SE Tidwells Way is collected by a standard ditch inlet at the edge of a residential property and is conveyed in storm pipes down SE Clackamas Road to Kellogg Creek. The ditch inlet is not large enough to capture the stream flow, especially when debris collects at the inlet. Maintenance crews are called frequently to clear the inlet. The stream frequently exceeds the capacity of the inlet, flows through a yard, and floods SE Clackamas Road and neighboring homes. The problem is compounded by the fact that Kellogg Creek is very flat at this location (0.1% slope), and the SE Clackamas Road crossing consists of a single undersized culvert. The storm pipes on SE Clackamas Road discharge into Kellogg Creek upstream of the road crossing, where a wetland has formed. Backwater from the undersized crossing limits the capacity of the storm pipes in SE Clackamas Road and contributes to the flooding issue.

SE Wildlife Estates Dr Ditch Inlet & Upstream Detention (CIP 1005): The problem area is located near SE Wildlife Estates Drive, just west of the intersection of SE Stohler Rd and SE Clackamas Rd. A ditch inlet is located at the bottom of a steep slope where a small tributary stream deposits several dump-truck-sized loads of sediment each year. The rocks and sediment periodically clog the inlet grate, causing flooding of roadways and a few homes at least annually on SE Stohler Road and SE Clackamas Rd. The source of the sediment is a small creek, Tributary C of Kellogg Creek. Portions of the creek's banks are unstable and are collapsing into the stream, carrying sediment to the problem area. The stream's flows are impacted by runoff from a residential neighborhood southwest of SE Norma Road on the ridge above the problem area.

Aldercrest Culvert Replacement & Kellogg Creek Restoration (CIP 1079): Kellogg Creek, between SE Clackamas Road and SE Thiessen Road, is confined and restricted by culverts and a concrete channel. The creek passes between SE Aldercrest Road and private homes to the west. Ten driveways cross Kellogg Creek in the reach. Three of these driveways cross using narrow culverts. The creek also passes through a pair of parallel culverts which are not associated with any crossing of the stream and which appear to be impeding stream flow. Finally, a narrow concrete channel across private property confines the creek for about 600 feet. The culverts are undersized for the flows, and they obstruct stream flow and cause flooding. The stream floods SE Aldercrest Court, driveways, and private property along this section at least annually. Backwater from the culverts in this reach exacerbates flooding upstream at SE Clackamas Road.

WES is planning to complete the modeling and analysis this CIP. However, full design and construction of culvert removals will be dependent on property owner access and easements. Full design will only be completed for properties with land owner permission, as determined during the Public Involvement Task described below.

Thiessen Culvert Replacement & Kellogg Creek Restoration (CIP 1055): SE Thiessen Road crosses Kellogg Creek just west of SE Aldercrest Court. Kellogg Creek flows through an undersized (6-foot diameter) culvert which causes the creek to back up at SE Thiessen Road and flood the road and properties upstream. Due to the significant backwater caused by this culvert, the location was identified as one of the highest priority road crossing culvert replacements in the 2019 Upper Kellogg Basin Assessment prepared for Water Environment Services. Flooding upstream of the culvert occurs annually. In addition to the flooding, the culvert blocks fish passage on Kellogg Creek. The culvert is not the only barrier on the creek, and this issue is secondary to reduce flooding.

It is anticipated that the Upper Kellogg Capital Improvements Project will be completed in two Phases as follows:

Phase 1:

Task 1A: Project Management (Phase 1)

Task 2: Collect and Analyze Background Information

Task 3: Field Work/Data Collection

Task 4: Modeling

Task 5: Alternatives Analysis & Construction Sequencing

Task 6: Stakeholder Involvement/Public Outreach (Phase 1)

Phase 2:

Task 1B: Project Management (Phase 2)

Task 7: Stakeholder Involvement/Public Outreach

Task 8: Detailed Design and Review

Task 9: Permitting Coordination

Task 10: Bid and Construction Support

Phase 2 will be scoped and contracted by amendment following the completion of Phase 1.

DETAILED SCOPE OF WORK For PHASE 1

TASK 1A: PROJECT MANAGEMENT (PHASE 1):

The purpose of this task is to monitor project progress with respect to scope, schedule, and budget; to maintain regular communication with WES, and to manage the quality control process during the first phase of work to develop a conceptual design.

Consultant shall:

- a. Setup the project for tracking and reporting in Otak project management systems.
- b. Prepare preliminary project schedule in MS Project.
- c. Prepare and execute subconsultant agreements.
- d. Review project reporting and tracking formats with WES project manager.
- e. Prepare for and attend a 1-hour Project Kick-off Meeting at WES to introduce the project team and review project expectations including, scope of work, deliverables, and schedule.
- f. Plan and track progress with respect to scope, schedule, and budget.
- g. Schedule and attend sixteen (16) regular 30-minute conference calls (approximately once every two weeks) with WES Project Manager following a standing agenda.
- h. Maintain a communication log for the weekly conference calls to record decisions and direction received, and follow-up action items identified during the call.
- i. Prepare one (1) schedule update
- j. Prepare up to eight (8) Monthly project status reports to accompany the monthly invoices. The report will identify work completed and percent complete vs percent spent for all project tasks and phases. The report will identify ongoing and upcoming work items, and any issues/concerns.
- k. Coordinate quality review of deliverables, including validation of calculations, cost estimates and other key components of the design.
- l. Prepare an updated scope of work, budget, and schedule for Phase 2

Deliverables:

- Project schedule
- Agenda and presentation materials for the Kick-off Meeting
- Communication Log
- Schedule updates
- Monthly Project Status report
- Revised scope, budget, schedule documents

TASK 2: COLLECT AND ANALYZE BACKGROUND INFORMATION

The purpose of this task is to review available information, identify gaps, and create a plan for obtaining additional data necessary to complete Phase 1 scope of work.

Consultant shall:

- a. Submit a request for available as-built information.
- b. Coordinate with WES on transfer of files.
- c. Review existing data, mapping, reports, models, and regulatory information anticipated to include:
 - Existing Storm As-Builts and Stormwater Plans
 - Storm System Master Plan (2022)
 - Kellogg-Mt. Scott Watershed Action Plan (2009)
 - Upper Kellogg Modeling (Brown and Caldwell 2014)
 - HEC-HMS Model (2005 Master Plan)
 - Upper Kellogg FEMA maps
 - North Clackamas Watersheds Council's Watershed Action Plan (2022)
- d. Interview up to eight (8) key WES/DTD staff to collect additional background knowledge for each project location and discuss potential project ideas.
- e. Review existing photos/videos provided and identify up to 12 locations in the study area with physical references to go survey the elevation observed in the photo for comparison with model results.
- f. Conduct two half-day field trips with WES staff to view key storm system facilities and stream segments at each project location (two sites per field trip).
- g. Prepare a basemap of the overall study area and for each project location using GIS data to include aerial photo, LiDAR derived contours, creeks, existing pipes and culverts, and other key storm/stream elements to visually display existing conditions and ownership. Add photographs and call-outs to illustrate key features of the site(s).
- h. Prepare a schematic diagram of the system elements to be modeled for this project using GIS data and the basemap of the overall study area.
- i. Attend a 2-hour meeting with WES/DTD staff to discuss results of existing information compilation, and to discuss options and priorities for additional field and technical analysis work for each project location.
- j. Prepare Data Review Memorandum summarizing compiled information, recommendations by project location for further field work, and technical analysis including modeling.

Deliverables:

- Basemap of overall Study area (Large Format, .PDF file)
- Basemap for each project location (22"x34", .PDF file)
- Data Review Memorandum (.PDF file)

TASK 3: FIELD WORK/DATA COLLECTION (PHASE 1)

The purpose of this task is to develop a work plan, obtain concurrence, then execute the work plan needed to support Phase 1 of the project. Otak plans to subcontract with Cafferata for wetlands surveys.

Consultant shall:

- a. Prepare a Draft Field Work Plan based on where there are gaps in existing information. The Field Work Plan will define which gaps need to be filled in Phase 1 versus Phase 2 of the project.
- b. Present the recommended Field Work Plan to WES/DTD staff through a virtual, 30-minute meeting.

- c. Revise the Draft Field Work Plan per feedback and comments from WES/DTD and submit Final Field Work Plan. Field work anticipated for Phase 1 include the following:
 - Field reconnaissance to support modeling and alternatives analysis
 - Minimum topographic data needed to perform hydraulic modeling of the study area
 - Presence/absence of jurisdictional wetlands and waters in the overall study area
- d. Perform Phase 1 field reconnaissance per the approved work plan, anticipated to include the following:
 - Visit the study area to confirm the limits of the contributing drainage area by field verifying storm sewer connections (i.e.-inlets, manholes, pipes, ditches, etc.) and observe storm sewer conditions (i.e.- evidence of clogging, siltation, vegetation, standing water, etc.).
 - Walk the stream channels (where accessible) within the study area to observe conditions (i.e.- active channel width, depth, slope, riparian vegetation condition, streambed composition, sign of erosion, slope instability, channel incision, etc.) and confirm observations previously documented in studies for Wildlife Estates from six or more years ago.
 - Update available system mapping information to better define the limits of the system that need to be evaluated in this study and update the data and maps to support field investigations.
- e. Perform Phase 1 topographic survey to data per the approved work plan, anticipated to include the following:
 - Call for Utility Locates and request available maps from utilities to show what to expect in the area
 - Establish survey control to record data on the same datums as Clackamas WES GIS.
 - Perform up to three (3) days of topographic data collection to survey key locations in the stream or storm sewer system (i.e.- culverts, bridges, channel cross sections, catch basins, manholes, pipe type/size, etc.) and to photograph utility locates marked in the field.
 - Post-process data and save in AutoCAD (.DWG) file for access by hydraulic modelers and future incorporation into a topographic basemap for design.
- f. Perform Phase 1 wetlands survey per the approved work plan, anticipated to include the following:
 - Desktop review of basemap and other available data sources to inform a wetlands survey.
 - One day of field reconnaissance to observe the overall study area from locations with public access to look for evidence of the presence or absence of jurisdictional wetlands and waters
 - Draw the estimated boundary of areas observed to exhibit characteristics of a jurisdictional wetland or waterway.
 - Prepare a brief Wetlands Presence/Absence Memorandum to document findings and basis for those findings.

Deliverables:

- AutoCAD file of survey points (.DWG)
- Wetlands Absence/Presence Memorandum (.PDF)
- Updated Basemaps from Task 2 (.PDF)

TASK 4: MODELING

The purpose of this task is to simulate the hydraulic performance of the existing storm system, confirm the observations at each of the known problem areas, quantify the magnitude/frequency of the problem, and create a model that can be used to evaluate the proposed concepts. The modeling task needs to be sufficient to evaluate:

- Culvert crossings along Aldercrest (CIP 1079) that cause backwater at Clackamas Rd.
- Pipe sizing, alternatives to address CIPs 1079, 1005, 1091

- Sizes and fish passage improvements for Aldercrest and Thiessen Rd culvert crossings
- Wildlife Estates (CIP 1005) alternatives

Flow information will be needed for the hydraulic modeling. The downstream limit of hydraulic modeling is expected to be the culvert under Parmenter Court, in order to provide adequate distance downstream of the detailed study area to avoid influences from boundary conditions. Therefore, the approximate limits of the hydrologic modeling effort is from the upper limits of the watershed, downstream to the culvert under Parmenter Court, or approximately the area outlined in Figure 2 below.

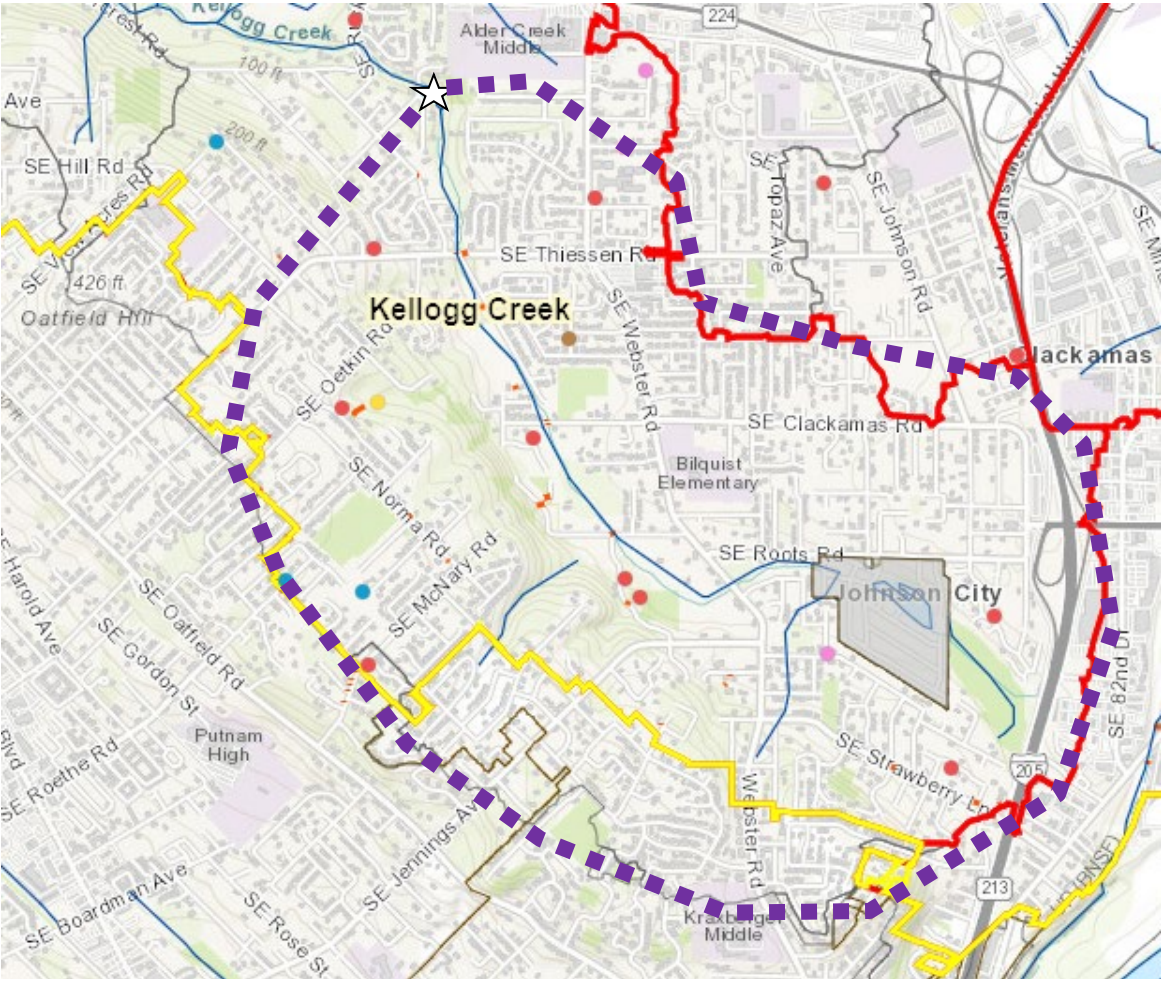


Figure 2: Approximate watershed area to be included in the hydrologic model (downstream limit at Parmenter Court).

The estimated limits of the hydraulic modeling effort is highlighted in Figure 3 below.

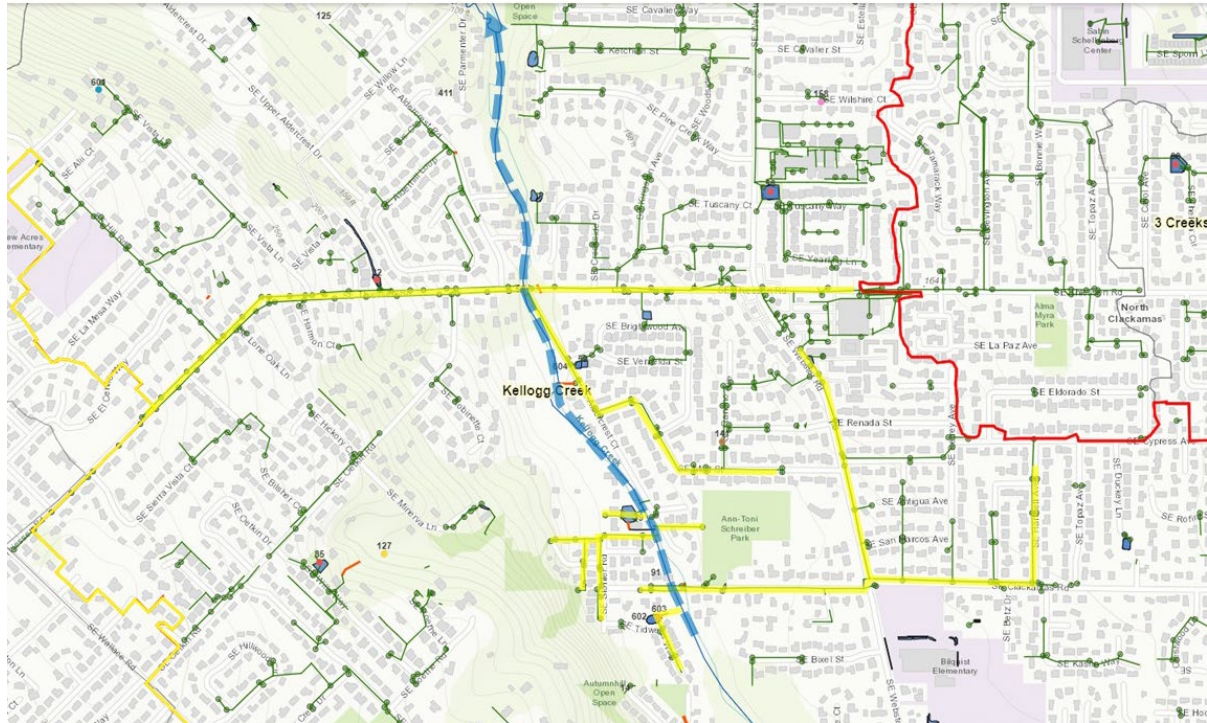


Figure 3: Estimate of storm sewers (highlighted in yellow) and stream channel (highlighted in blue/dashes) to be included in the hydraulic modeling.

TASK 4.1: HYDROLOGIC MODELING FOR EXISTING CONDITIONS

The purpose of this subtask is to setup a hydrology model to simulate runoff response for existing land use conditions using the HSPF model. Results will be used to provide flow rates/volumes as an input/boundary condition to the hydraulic models.

- a. Review and crop LiDAR based data to prepare a DTM file for the study area.
- b. Delineate drainage basin areas contributing flow to each location defined for flow input in the model and characterize the land use (soil, slope, vegetation cover, impervious area, etc.). Intersect and export the results for input as land segment information to the HSPF model
- c. Review available long-term precipitation gauge records in the area and configure one for use in this project model.
- d. Develop FTABLES for upstream subbasins
- e. Perform continuous simulation hydrologic calculations using the HSPF model program using regional coefficients and Evapotranspiration timeseries from Tualatin River Urban Stormwater Tool
- f. Perform flood frequency and flow duration analysis on HSPF RCHRES locations that contribute flow directly to the stream hydraulic model (additional flow input will come from the SWMM results).
- g. Export timeseries results for each subbasins to be linked to the XP-SWMM model. The timeseries results may be truncated to isolate specific flow events and be 1 to 2 weeks in length in order to reduce simulation run times.
- h. Describe the benefits and make a recommendation about modeling future land use conditions as part of the Phase 2 design efforts in an email WES Project Manager.

Deliverables

- Model Results Output Table
- HSPF model files (compressed *.zip folder)
- Recommendations for Modeling Future Land Use conditions

TASK 4.2: STORM SEWER MODELING FOR EXISTING CONDITIONS

The purpose of this subtask is to setup a hydraulic model of the existing storm sewer pipes relevant to each CIP and the downstream storm sewer connections to the stream channel. Results will be used to simulate performance of the storm sewer system and provide flow rates/volumes as an input/boundary condition to the hydraulic model of the stream channel.

Consultant shall:

- a. Compile storm system geometry data (rims, inverts, pipe size & type, etc., cross-sections, stage/storage, etc.) from as-builts, GIS, and/or topographic survey.
- b. Develop hydraulic model of storm sewer conveyance systems, including storm sewer mainlines and existing detention pond(s) using the EPA-SWMM software program.
- c. Review and/or analyze existing data to determine downstream model boundary conditions.
- d. Link the hydrologic model results to the hydraulic storm sewer model using WWHM-SWMM and run the SWMM model for the same time period as the HSPF output provides.
- e. Review the model performance for continuity and stability and make adjustments to model input to achieve a minimum of “good” continuity.
- f. Identify locations where the model shows that the system capacity is exceeded.
- g. Add additional geometry data into the SWMM model where flow volume is leaving the model (i.e.- catch basin rims or ditch cross-sections) to keep all volume passing through the system to the downstream boundary.
- h. Characterize the frequency and magnitude of the problem at locations where system capacity is exceeded in a Model Results Output Table.
- i. Identify possible solutions to the problem and recommend a work plan to Clackamas WES for hydrologic and hydraulic modeling to be completed to test the solutions under the Proposed Conditions Task.

Assumptions

- The model will have less than 100 nodes.
- Detention systems located upstream from the part of the storm sewer system being modeled will be ignored.

Deliverables

- Model Results Output Table
- SWMM model files (compressed *.zip folder)
- Recommendations for Modeling Proposed Solutions

TASK 4.3: STREAM AND CULVERT MODELING FOR EXISTING CONDITIONS

The purpose of this subtask is to setup a new hydraulic model of the existing Upper Kellogg Creek, including culverts through the study area. Results will be used to evaluate backwater depth and frequency caused by each culvert, and the frequency and extent of the existing flooding problems.

Consultant shall:

- a. Compile hydraulic geometry data (Cross-sections, culvert inverts & size, roughness coefficients, overbank stations, distances between cross-sections, ineffective flow boundaries, etc.) from GIS, LiDAR, topographic survey, aerial photography, and field observations.
- b. Develop 1-dimensional hydraulic model for Upper Kellogg Creek using the HEC-RAS software program.
- c. Review and/or analyze existing data to determine downstream model boundary conditions.
- d. Input hydrologic model results as flow rates to the upstream boundary condition.
- e. Insert flow changes using model results from the SWMM model at locations where the storm sewers connect to Upper Kellogg Creek in the study reach.
- f. Perform an independent Senior review of the model and address comments from the review.
- g. Map inundation limits for the (approximate) 2-year, 5-year, 10-year, and 25-year flood events
- h. Compare against observed inundation data available from review of photos and video.
- i. Summarize the frequency, velocity, and depth of backwater at each culvert and at each location of a known issue based upon model results in a Model Results Output Table.
- j. Describe the source of the problem in the study area.
- k. Identify possible solutions to the problem and recommend a work plan to Clackamas WES for hydrologic and hydraulic modeling to be completed to test the solutions under the Proposed Conditions Task.

Assumptions

- The model includes less than 15 bridges or culverts.

Deliverables

- Model Results Output Table
- HEC-RAS model files (compressed *.zip folder)
- Recommendations for Modeling Proposed Solutions

TASK 4.4: STREAM AND CULVERT MODELING FOR PROPOSED CONDITIONS

The purpose of this subtask is to modify the Upper Kellogg Creek hydraulic model to test solutions and alternatives. Results will be used to compare against existing model results to quantify reductions to flooding problems and to inform boundary condition changes needed to test solutions in the proposed storm sewers model.

Consultant shall:

- a. Modify the Existing Conditions HEC-RAS model to evaluate the impact/benefit of each culvert to the overall flood elevations in the study area. Simulate an increase in the size of each culvert (up to 10) that demonstrates it causes backwater at the 2-year, 5-year, 10-year, or 25-year flood. Starting at the downstream end, change the culvert geometry to maximize the reduction in backwater at each culvert without raising the road/driveway.
- b. Review model results with WES and this will be used to prioritize access and easement discussions.
- c. Modify the Existing Conditions Models for the study area and create Proposed Conditions Models to simulate one set of recommendations and quantify the benefits to reducing the magnitude and frequency of flooding.

Assumptions

- The model includes up to four scenarios.

Deliverables

- Model Results Output Table
- HEC-RAS model files (compressed *.zip folder)
- Recommendations for Proposed Solutions to carry forward in design

TASK 4.5: STORM SEWER MODELING FOR PROPOSED CONDITIONS

The purpose of this subtask is to modify the Upper Kellogg Creek storm sewer model to test solutions and alternatives for the CIPs. Results will be used to compare against existing model results to quantify reductions to flooding problems.

Consultant shall:

- a. Modify the Existing Conditions SWMM models for the study area and create Proposed Solutions Models for up to eight (8) scenarios to test the effectiveness of eight separate changes to the storm sewer system for reducing the magnitude and/or frequency of problems.
- b. Modify the Existing Conditions SWMM models for the study area and create a Proposed Conditions Model to simulate one set of recommendations and quantify the collective benefits to reducing the magnitude and frequency of flooding.

Assumptions

- One scenario is defined as one contiguous system improvement (i.e. upsizing a run of storm sewer pipe, or adding in one storage facility, etc.).

Deliverables

- Model Results Output Table
- XP-SWMM model files (compressed *.zip folder)
- Recommendations for Proposed Solutions to carry forward in design

TASK 5: ALTERNATIVES ANALYSIS & CONSTRUCTION SEQUENCING

The purpose of this task is to develop preliminary concepts and cost estimates for the recommended solutions to reduce the chronic flooding at the four priority CIP locations.

Consultant shall:

- a. Review design of Thiessen Road culvert project provided by Clackamas DTD.
- b. Prepare Conceptual Design plan and illustrative cross-section for up to three (3) alternatives to address known issues along Aldercrest Road.
- c. Prepare Conceptual Design plan and illustrative cross-section for up to two (2) alternatives to address known issues at Clackamas Road.
- d. Prepare Conceptual Design plan and illustrative cross-section for up to three (3) alternatives to address known issues at Wildlife Estates.

- e. Use conceptual design alternatives to inform proposed conditions modeling in Task 4, and to support Stakeholder involvement/public outreach in Task 6.
- f. Attend a 2-hour workshop with County staff to review results of the proposed conditions modeling, select solutions to carry forward as recommendations, and define the scope of up to four (4) Storm Sewer Improvement projects.
- g. Prepare Conceptual Design drawings (plan/profile/cross-sections) and cost estimate that describe the scope of work for the solutions selected to carry forward into Phase 2.

Deliverables

- Eight (8) Conceptual Design plans and illustrative cross sections (.PDF)
- Meeting minutes from workshop to document decisions (.DOC)
- Four (4) Conceptual Design Plan Sets (.PDF) and Cost Estimates (.PDF and .XLS)

TASK 6: STAKEHOLDER INVOLVEMENT/PUBLIC OUTREACH (PHASE 1)

The purpose of this task is to support WES in engaging the public and interested stakeholders during Phase 1 the design process. Otak plans to subcontract with JLA Public Involvement (JLA) for most of these services.

Consultant shall:

- a. Collaborate with WES to identify stakeholders, desired outreach, and create a proposed outreach timeline for outreach for the project.
- b. Create a public involvement plan, to guide the process for engaging stakeholders and interaction with watershed groups, private property owners, and other interested parties. This plan will serve as a living document to guide the day-to-day work for the project team, reviewed and updated regularly.
- c. Collaborate with North Clackamas Watersheds Council (NCWC) to create an outreach plan and materials to educate area residents and property owners about the flooding problem and potential solutions. Materials will include information on benefits, improvements, enhancements, and opportunities for stakeholder input for NCWC analysis.
- d. Provide content for a project website with available renderings, a decision graphic and/or timeline, along with graphically formatted outreach materials in the form of an educational mailer and fact sheet.
- e. Perform an independent quality review of material content and provide approval of materials before distribution to WES.
- f. Hold a planning meeting with WES to discuss strategy and summarize in meeting notes.
- g. Prepare a map of the property owners to be included in this engagement process for review by WES. WES will provide property owner names and contact information.
- h. Conduct outreach to direct neighbors, particularly the 18 private properties along Upper Kellogg between Clackamas and Thiessen roads. Focused public involvement and outreach may also be needed for the approximately 20 private properties that back up to the tributary in the Wildlife Estates project channel. Outreach may include holding small neighborhood meetings, individual property owner engagement meetings, and/or attendance at Community Planning Organizations (CPOs) and watershed council meetings.
- i. Assemble materials for the meetings.
- j. Track stakeholder engagement, including attendance, notes, outcomes, and follow-up using a Stakeholder Engagement tracking table.

Assumptions

- WES will host the website and domain, share or purchase social media posts, purchase print materials, and cover mailing.

Deliverables

- Public Involvement and Outreach Plan.
- Coordination, meetings and notes with NCWC.
- Project website content: Content to include background and goals, frequently asked questions, and contact information.
- Outreach mailer: Content for a mailer to engage with residents and property owners.
- Educational fact sheet: Content to include background and goals, images or graphics, and contact information. The fact sheet will be available on the website and shared during meetings with key stakeholders.
- Social media: Content for postings.
- Survey: A short online survey will be created and hosted to provide opportunities for stakeholder input.
- Stakeholder engagement tracking table (.XLS)

DRAFT SCOPE OF WORK For PHASE 2

As noted above, the Upper Kellogg Capital Improvements Project will be completed in two Phases. Upon completion of Phase 1, the scope of work and budget for Phase 2 will be finalized. Phase 2 will be authorized through a contract amendment.

The Draft Phase 2 scope of work is provided below.

TASK 1B: PROJECT MANAGEMENT (PHASE 2):

The purpose of this task is to monitor project progress with respect to scope, schedule, and budget; to maintain regular communication with WES, and to manage the quality control process during the second phase of work to implement the conceptual design.

Consultant shall:

- a. Update the project tracking and reporting in Otak project management systems.
- b. Prepare and execute amended subconsultant agreements.
- c. Prepare for and attend a 1-hour Phase 2 Kick-off Meeting at WES to review project expectations including, scope of work, deliverables, and schedule.
- d. Plan and track progress with respect to scope, schedule, and budget.
- e. Schedule and attend sixteen (30) regular 30-minute conference calls (approximately once every two weeks) with WES Project Manager following a standing agenda.
- f. Maintain a communication log for the weekly conference calls to record decisions and direction received, and follow-up action items identified during the call.
- g. Prepare one (1) schedule update
- h. Prepare up to twelve (12) Monthly project status reports to accompany the monthly invoices.
- i. Coordinate quality review of deliverables, including validation of calculations, cost estimates and other key components of the design.

Deliverables:

- Agenda and presentation materials for the Kick-off Meeting
- Communication Log
- Schedule updates
- Monthly Project Status report

TASK 7: PUBLIC INVOLVEMENT (PHASE 2)

The purpose of this task is to support WES in on-going public engagement during Phase 2 design and permitting of the project. Otak plans to subcontract with JLA Public Involvement (JLA) for most of these services.

Consultant shall:

- a. Provide up to 100 hours of public engagement support during Phase 2 per the Public Involvement and Outreach Plan prepared during Phase 1.
- b. Track stakeholder engagement, including attendance, notes, outcomes, and follow-up using a Stakeholder Engagement tracking table.

Deliverables

- Coordination, meetings and notes with NCWC.
- Project website content: Content to include background and goals, frequently asked questions, and contact information.
- Outreach mailer: Content for a mailer to engage with residents and property owners.
- Educational fact sheet: Content to include background and goals, images or graphics, and contact information. The fact sheet will be available on the website and shared during meetings with key stakeholders.
- Social media: Content for postings.
- Stakeholder engagement tracking table (.XLS)

TASK 8: DETAILED DESIGN AND REVIEW

The purpose of this task to develop the project solutions selected in Phase 1 and prepare construction documents.

Consultant shall:

- a. Establish survey control. Horizontal datum shall be on NAD 83 (2011) Oregon North Zone, and vertical datum shall be on NAVD 88;
- b. Contact Oregon Utility Notification Center to request utility locates and request maps;
- c. Perform up to ten (10) days of topographic data collection by a 2-man survey crew
- d. Prepare a basemap of the area where topographic data collection occurred.
- e. Develop a plan set with up to forty (40) sheets. Progress submittals will be made at 30%, 60%, 90% and 100% design for WES review and comment. The preliminary and final plan sets shall include plan sheets, design details,
- f. Prepare cost estimate to accompany each progress submittal at 30%, 60%, 90% and 100% design for WES review and comment.
- g. Prepare project draft technical specifications at 90%
- h. Prepare project final technical specifications at 100%
- i. Provide written response to comments received on progress submittals

Assumptions

- Full design for SE Clackamas Rd (CIP 1091) and Wildlife Estates (CIP 1005).
- Full design for only the Aldercrest Culverts (CIP 1079) that have property owner permissions.
- Forty Plan sheets in the Construction drawing set
- Plan sheets are set to be 22"x34" plans
- Plan sheets will be submitted as half-size (11"x17") .PDF files for progress submittals.
- Plan sheets will be submitted as full-size (22"x34") .PDF files for the 100% submittal with .DWG files also provided at the end of design.

Deliverables

- Basemap of Topographic data (.DWG)
- Digital Terrain Model of Existing Conditions (.DWG)
- Written response to comments on the design submittals.
- Three (3) sets of Preliminary Construction drawings
- Final Design stamped Construction drawings (22"x34" .PDF file)
- Draft Technical Specifications (.DOC file)
- Final Stamped Technical Specifications
- Three (3) Preliminary Engineer's Cost Estimates
- Final Engineer's Cost Estimate

TASK 9: PERMITTING COORDINATION

The purpose of this task is to determine the permitting needs for the project and prepare the permit applications.

Consultant shall:

- a. Conduct a wetland delineation for the area of projects proposed in Phase 1 and prepare a Wetland Delineation report for submittal to agencies for their review and concurrence.
- b. Research potential permit requirements and contact regulatory agencies to confirm the necessary permits, review and approvals, submittal requirements, anticipated review timelines, and likely conditions of approval.
- c. Summarize the local, state, and federal permits that will likely be needed in a Tech Memo for WES review and comment. At a minimum, this is anticipated to include Clackamas County, Oregon Department of State Lands (DSL), US Army Corps of Engineers, and Oregon DEQ.
- d. Prepare a Stormwater Management Plan to support 401 Water Quality Certification
- e. Prepare a Stormwater Design Report to support County permitting
- f. Prepare a Joint Permit Application for submittal to Oregon DSL and USACOE
- g. Prepare County permit applications

Deliverable:

- Wetland Delineation Report (.PDF)
- Draft and Final Permitting Needs Technical Memorandum (.DOC and .PDF)
- Stormwater Management Plan (.PDF)
- Stormwater Design report (.PDF)
- Joint Permit Application (.PDF)
- County Permit Applications (.PDF)

TASK 10: BID AND CONSTRUCTION SUPPORT

The purpose of this task is to provide support to WES during the bidding process and construction.

Consultant shall:

- a. Respond to questions during bidding
- b. Attend a pre-construction meeting
- c. Review and log up to forty (40) Submittals or Requests for Information during construction and provide a written response.
- d. Attend up to twenty (20) weekly construction project progress meetings
- e. Conduct up to ten (10) half-day site visits
- f. Provide full-time (40 hours per week) site observation for 16 weeks during active construction to monitor construction for conformance with contract documents.
- g. Prepare Daily Progress reports on days for which construction activities are observed
- h. Take digital photographs during construction and store in directories organized by date photo was taken

- i. Provide notice of Non-conformance to WES PM upon finding work not meeting contract requirements when Construction Contractor has failed to comply with requests and suggestions for remedy.

Assumptions

- WES will prepare and advertise the final bid package.

Deliverables

- Email response to questions during bidding
- Daily progress reports of construction for days in which Consultant is on site
- Digital photo log of construction activities
- Notices of non-conformance
- 40 submittal or RFI responses
- Project files

EXHIBIT B
FEDERAL TERMS AND CONDITIONS

As used herein, “Contractor” means Otak, Inc., and “District” means Water Environment Services, a political subdivision of the State of Oregon.

1. The District intends that all or a portion of the consideration paid to Contractor will be eligible for reimbursement by one or more federal agencies including, but not limited to, the Federal Emergency Management Agency (“FEMA”). This Contract is subject to the additional terms and conditions required by federal law for a federal award. All terms and conditions required under applicable federal law for a federal award including, but not limited to, 2 C.F.R. § 200.326 and 2 C.F.R. § Pt. 200, App. II, are hereby incorporated by this reference herein.

2. Reserved.

3. By execution of this Contract, Contractor hereby certifies that it and all subcontractors will comply with (i) all Federal statutes relating nondiscrimination, including, but not limited to: Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis race, color or national origin; Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681 et seq.), which prohibits discrimination on the basis of sex; the Age Discrimination Act of 1975, as amended (29 U.S.C. §§6101 et seq.), which prohibits discrimination on the basis of age; the Rehabilitation Act of 1973, as amended (29 U.S.C. §§793 et seq.), which prohibits discrimination against requires affirmative action for qualified individuals with disabilities; the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (42 U.S.C. §§4541 et seq.), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; §§523 and 527 of the Public Health Service Act of 1912 (4s U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; Title VII of the Civil Rights Act of 1969 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; any other discrimination provisions in the specific statute(s) under which for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply; (ii) will comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352 et. seq.), and shall file the required certification if the award is \$100,000 or more; and (iii) will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

4. If this Contract involves a federal award that meets the definition of a “funding agreement” under 37 CFR § 401.2 (a), and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

5. If this Agreement is in excess of \$150,000, Contractor certifies that it and all subcontractors will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. Violations shall be reported to the awarding Federal Department and the appropriate Regional Office of the Environmental Protection Agency. Contractor shall include these requirements in all contracts with subcontractors receiving more than \$150,000.

6. If this Agreement is in excess of \$100,000 and involves the employment of mechanics or laborers, Contractor and all subcontractors will comply with all applicable standards, orders or regulations issued pursuant to the Contract Work Hours and Safety Standards Act 40 USC §§3701 et seq. as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Further, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. Contractor shall include and require all providers to include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.

7. Contractor shall comply with 2 CFR Part 180 (including executive orders 12549 and 12689). These regulations restrict sub-awards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs or activities. Contractor is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Contractor may access the Excluded Parties List System at <https://www.sam.gov>. The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549 and 12689. Awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award. Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. 180.995) or its affiliates (defined at 2 C.F.R. 180.905) are excluded (defined at 2 C.F.R. 180.940) or disqualified (defined at 2 C.F.R. 180.935). The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction that Contractor enters into. This certification is a material representation of fact relied upon by the District. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, then in addition to remedies available to the District, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

8. Record Retention. Contractor will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings that are directly related to this Agreement for a minimum of six (6) years, or such longer period as may be required by the federal agency or applicable state law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later, according to 2 CFR 200.333-337. Contractor agrees to provide to the District, to the FEMA Administrator, to the Comptroller General of the United States, or to any of their authorized representatives, access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to provide the FEMA Administrator or the Administrator's authorized representative's access to construction or other work sites pertaining to the Work being completed under the Contract. In compliance with the Disaster Recovery Act of 2018, the District and the Contractor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the appropriate federal administrator, including the FEMA Administrator, or the Comptroller General of the United States.

9. DHS Seal, Logo, and Flags: Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
10. Compliance with Federal Law, Regulations, and Executive Orders: This is an acknowledgement that FEMA financial assistance may be used to fund this Contract only. Contractor will comply with all federal law, regulations, executive orders, FEMA policies, procedures, and directives.
11. No Obligation by Federal Government: The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.
12. Program Fraud and False or Fraudulent Statements or Related Acts: Contractor acknowledges the 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.
13. Contractor will comply with all applicable requirements of 2 CFR 200.216, 2 CFR 200.321, and 2 CFR 200.322.
14. Procurement of Recovered Materials (2 CFR 200.323): Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
15. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification, set forth below. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Contractor hereby makes the following certification:

Byrd Anti-Lobbying Amendment Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this

Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date