



**DAN JOHNSON**  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT  
DEVELOPMENT SERVICES BUILDING  
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

October 17, 2019

Board of Commissioners  
Clackamas County

Members of the Board:

**Approval of a contract with the National Safety Council for the purposes of  
Safe Systems Approach to Rural Road to Zero**

<b>Purpose/ Outcomes</b>	The funds will support our Drive to Zero work focused on two Health Equity Zones: Molalla and Canby. This project will showcase how a holistic Safe Systems Approach to traffic safety can be effective in reducing crashes, particularly serious and fatal crashes in a rural community.
<b>Dollar Amount and Fiscal Impact</b>	The grant awarded is \$132,280.00. There is no match requirement.
<b>Funding Source</b>	National Highway Traffic Safety Administration and National Safety Council
<b>Duration</b>	Effective September 1, 2019 and terminates on August 31, 2020
<b>Previous Board Action</b>	Lifecycle form was approved by County Administrator on January 23, 2019. The Board approved the award acceptance on July 11, 2019
<b>Strategic Plan Alignment</b>	- Ensure safe, healthy and secure communities.
<b>Counsel Review</b>	Reviewed and approved by County Counsel on 10/18/19
<b>Contact Person</b>	Rob Sadowsky- Transportation Safety Outreach Coordinator 742-4776

**BACKGROUND:**

The Department of Transportation and Development (DTD) requests the authorization to enter into a contract with the National Safety Council to accept a grant award of \$132,280. DTD will showcase how a holistic Safe Systems Approach to traffic safety can be effective in making strides in reducing crashes, particularly serious and fatal crashes in a rural community. This Safe Systems Approach will combine low-cost engineering using proven countermeasures along with education focused on behavioral change followed with targeted enforcement in collaboration with regional towns. Layered throughout the project will be the intentional collaboration with partners in public health and schools to

tackle issues of alcohol and drug use, build new opportunities with rural transit for teens and older adults, and to work hard to bring affordable driver's education and child protection to those who can least afford access.

The County's Drive to Zero initiative is an inspiring goal. To be successful, we need active partners throughout the county that will engage in the implementation of various elements and work toward the behavioral change that is necessary. The Transportation Safety Action Plan and the embodiment of Drive to Zero needs effective communications that is centered on county stories told by county people. We hope that target audiences see themselves in these stories and add to the collection of stories of how together, as a county, we can achieve this inspiring vision. Ultimately, the problem we are trying to impact is the number of fatalities and serious injuries due to traffic crashes in the county.

Staff respectfully recommends the Board approve and sign the contract with National Safety Council.

Respectfully submitted,

Joe Marek, Traffic Engineering Supervisor  
Department of Transportation and Development

SUBAWARD  
between  
NATIONAL SAFETY COUNCIL ("NSC")  
and  
County of Clackamas ("Subrecipient")

**Subaward Number:**  
**NSC Cost Center:** 750-8765  
**Subaward Effective Date:** September 1, 2019  
**Subaward Expiration Date:** August 31, 2020  
**Subaward Title:** Safe System Approach to Rural Road to Zero  
**Subaward Amount:** \$132,280.00  
**Subrecipient Match:** \$0.00  
**Subrecipient Indirect Rate Allowed:** 0%  
**Subrecipient DUNS:** 096992656  
**Subrecipient Address:** 2051 Kaen Rd, Oregon City, OR 97045-1819  
**Federal Award Identification Number:** DTNH2215H00473-0002  
**Federal Award Project Description:** Road to Zero Support  
**Federal Award Date:** January 11, 2017  
**Federal Awarding Agency:** National Highway Traffic Safety Administration  
**Amount of Federal Funds Obligated by this Subaward:** \$132,280.00  
**Total Amount of Federal Funds Obligated to the Subrecipient by NSC:** \$132,280.00  
**Total Amount of the Federal Award Committed to Subrecipient:** \$132,280.00  
**CFDA Number and Name:** 20.614 NHTSA Discretionary Safety Grants  
**FFATA Reportable:** Yes  
**Research and Development (R&D):** No

<p>The NSC representatives for this project are:</p> <p><b>Jane Mellow</b> for Project Manager/Technical Direction: Senior Program Manager, Road to Zero 1121 Spring Lake Dr. Itasca, IL 60143 <a href="mailto:jane.mellow@nsc.org">jane.mellow@nsc.org</a> (630) 487-9326</p> <p><b>Anne Hughes</b> for financial/administrative matters: Director, Grant Monitoring and Compliance 1121 Spring Lake Dr. Itasca, IL 60143 <a href="mailto:anne.hughes@nsc.org">anne.hughes@nsc.org</a> (630) 775-2251</p>	<p>The Subrecipient representatives for this project are:</p> <p><b>Rob Sadowsky</b> for Project Manager/Technical Direction: Transportation Safety Outreach Coordinator 150 Beaver Creek Road Oregon City, OR 97045 <a href="mailto:RSadowsky@clackamas.us">RSadowsky@clackamas.us</a> (503) 742-4776</p> <p><b>Michael Morasko</b> for financial/administrative matters: Senior Accountant Public Services Building 2051 Kaen Road Oregon City, OR 97045 <a href="mailto:MMorasko@clackamas.us">MMorasko@clackamas.us</a> (503) 742-5435</p>
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## SUBAWARD AGREEMENT

This subaward agreement (the "**Agreement**") is entered into by and between **NSC** and **Subrecipient**, each of which may be referred to individually as a "Party" and collectively as "Parties," in order for Subrecipient to develop a holistic Safe Systems approach to traffic safety within a rural community in order to reduce fatal and serious injury (the "**Project**"), in accordance with the "General Terms and Conditions" attached as **Attachment A** and any other attachments to this Agreement.

### BACKGROUND

NSC and National Highway Traffic Safety Administration ("**NHTSA**" or "**Prime Funder**") entered into a cooperative agreement project for the purpose of stimulating near-term implementation of proven countermeasures to reduce motor vehicle crash deaths across the Nation through a competitive traffic safety research and evaluation grant program (the "**Prime Award**"). Under the terms of the Prime Award, NSC is able to make a subaward to Subrecipient for use in carrying out the Project. Subrecipient shall be subject to and comply with the terms and conditions contained in the Prime Award that are applicable to Subrecipient, which are attached hereto as **Attachment B**.

NSC is a federally-chartered 501(c)(3) non-profit that advocates for safety at work, in homes and communities, and on the road. NSC desires to enter into an agreement with Subrecipient for Subrecipient to perform certain tasks in furtherance of the objectives set forth in the Prime Award.

The Subrecipient, a governmental entity organized under the laws of Oregon wishes to perform, and has represented to NSC that it is capable of performing and is willing to perform the work described herein in support of NSC's performance of the objectives under the Prime Award.

In consideration of the promises contained in this Agreement, the Parties agree as follows:

### AGREEMENT

#### 1. Period of Performance

Performance under this Agreement will commence on the Subaward Effective Date stated on the first page (the "**Effective Date**") and, unless terminated as described below, will automatically expire on the Subaward Expiration Date (the "**Expiration Date**") stated on the first page ("**Period of Performance**"). The Period of Performance may be changed by written agreement of the Parties. Unless otherwise stated, costs incurred outside of the Period of Performance will be disallowed.

#### 2. Scope of Work

- A. Subrecipient shall provide the necessary personnel, services, equipment, and facilities to conduct the work on the Project as described in the scope of work ("**Scope of Work**") which is attached hereto as **Attachment C**.
- B. Subrecipient shall not deviate in any material way from the Scope of Work without the prior written approval of NSC.

#### 3. Payment Provisions

- A. The total amount paid under this Agreement will not exceed the Subaward Amount, which will be disbursed in accordance with the budget which is attached hereto as **Attachment D** (the "**Budget**"). Subrecipient acknowledges that the Budget does not include all necessary funds for completion of the tasks described in the Scope of Work. Subrecipient has secured the funds necessary for completion from other sources, and the Subaward will fund the tasks only up to the budgeted amount. NSC shall not be obligated to pay Subrecipient for any amounts not shown in the Budget. The Subaward Amount may be increased only through mutual written amendment of this Agreement.

- B. Notwithstanding the above, Subrecipient may reallocate funds between direct-cost categories, subject to the restrictions in this subsection. If the Subrecipient desires to reallocate 10% or more of the total approved budget, Subrecipient shall obtain prior written approval of the reallocation from NSC. If the Subrecipient desires to reallocate less than 10% of the total approved budget, Subrecipient may proceed with the reallocation but shall notify NSC's Project Manager and Administrator in writing of the reallocation.
- C. NSC shall have no obligation to disburse funds to Subrecipient under this Agreement, except to the extent that funds are actually disbursed to NSC under Prime Award.
- D. None of the Subaward Amount may be used as match to other U.S. Federal awards.
- E. To be eligible for reimbursement under this Agreement, a cost must be
  - a. incurred in accordance with the Budget;
  - b. incurred within the Period of Performance;
  - c. attributable to work covered by this Agreement;
  - d. incurred for work that has been completed in a manner satisfactory and acceptable to NSC;
  - e. reasonable; and
  - f. allowable per the cost principles outlined in 2 CFR Part 200.
- F. Subrecipient shall notify NSC of any negotiations with the Federal Government regarding its current or future indirect rates. Subrecipient shall provide NSC with documentation reflecting any changed or new indirect rate within 30 days of finalizing the rate with the Federal Government, and the Parties shall negotiate the inclusion and applicability of the rate to this Agreement. If Subrecipient fails to reach an agreement with the Federal Government on a new indirect rate that will apply upon the expiration of the current rate, the Parties may negotiate a change to the indirect rate. Upon closeout of the Agreement, NSC shall have no further obligations to pay Subrecipient for costs incurred as indirect rates not paid prior to closeout.
- G. In the event NSC determines that it has paid Subrecipient more than Subrecipient is or was entitled to receive under this Agreement, NSC will inform Subrecipient of the discrepancy and the amount of the discrepancy. If there will be future payments due to Subrecipient, NSC may adjust the future payment as necessary. If no future payments are due to be made to Subrecipient, Subrecipient shall promptly refund the amount of the discrepancy.

**4. Disbursement and Accounting:**

Subrecipient shall separately account for payments received under this Agreement in its accounting records. NSC shall disburse funds to Subrecipient monthly upon NSC's receipt of a complete and accurate Financial Report for the applicable period as set forth in Section 5 below.

## 5. Required Reports

Subrecipient shall furnish NSC with the following written reports of findings, progress, and status under this Agreement in accordance with the following schedules:

REPORTING DUE DATES	
Interim Performance Reports	Monthly, due no later than 20 calendar days after the end of the month.
Final Performance Report	Due no later than 45 days after the Expiration or Termination Date
Interim Financial Reports & Invoices	Monthly, due no later than 20 calendar days after the end of the month. For June 2020, an estimate of expenditures, due no later than July 5.
Final Financial Report and Invoice	Due no later than 45 days after the Expiration or Termination Date

Reports shall include:

A. Interim Performance Reports shall describe activities conducted during the reporting period using the Performance Report Form provided electronically as **Attachment E** and shall address, at a minimum:

- (i) a comparison of actual accomplishments compared to the objectives established for the reporting period;
- (ii) reasons why established objectives and performance measures were not met, if appropriate;
- (iii) favorable developments or alternatives that could result in meeting the objectives sooner or at less cost than anticipated; and
- (iv) other pertinent information, including, where appropriate an analysis and explanation of cost underruns, overruns, or high unit costs.

B. Final Performance Report The final report shall cover the entire period of performance and shall document the results of the project. The report shall describe the problem addressed, project goal, research methodology, problem solution and all project impacts and outcomes as well as recommendations for future replication or use.

C. Interim Financial Reports/Requests for Reimbursement: Subrecipient shall use the report format provided electronically as **Attachment F** and shall include, at a minimum:

- (i) the monthly reimbursement request (the "**Request for Reimbursement**") using Subrecipient's standard invoice format;
- (ii) a download from Subrecipient's general ledger which ties to the monthly reimbursement request;
- (iii) an analysis and explanation of variance to budget, when appropriate; and
- (iv) other pertinent information to describe the financial status of the program or change in the financial status of Subrecipient.

D. Detailed Requests for Reimbursement: From time to time, NSC may request that additional supporting documentation accompany a Request for Reimbursement. In each case, NSC shall provide Subrecipient with 30 days' notice of such request. In addition to the information required under 5.C. above, Subrecipient shall provide:



- (a) supporting documentation that includes: time reports; detailed/itemized receipts for all transactions which include a statement of the business purpose and, for travel, individual's names;
- (b) copies of subcontracts and subawards, and documentation of procurement process for subcontracts, as applicable.

E. Final Financial Report/Request for Reimbursement: Subrecipient shall use the format provided electronically as **Attachment F**, marked as "Final."

F. Significant Developments Reports shall be submitted promptly, as needed, regarding events that will have a significant impact upon this Agreement. Such reports shall describe:

- (i) Unfavorable Conditions such as problems, delays, or adverse conditions, including a change of project director or other changes in Subrecipient personnel that will materially affect the ability to attain objectives and performance measures, prevent the meeting of time schedules and objectives, or preclude the attainment of project objectives or performance measures by the established time periods. This report shall be accompanied by a statement of the action taken or contemplated and any NSC or Federal assistance Subrecipient needs to resolve the situation.
- (ii) Favorable developments that enable Subrecipient to meet time schedules and objectives sooner than anticipated or achieving greater performance measure output than originally projected.

All Performance Reports, Financial Reports, Requests for Reimbursement and supporting materials shall be submitted to NSC's Project Manager and Administrator at the email addresses specified above. Subrecipient's appropriate financial officer shall certify all Financial Reports and Requests for Reimbursement.

## 6. Awarding Official

The following is the NSC awarding official for this Agreement:

Nick Smith  
Chief Operating Officer  
National Safety Council  
1121 Spring Lake Dr.  
Itasca, IL 60143  
Phone: (630) 775-2239  
E-mail: nick.smith@nsc.org

## 7. Notices

All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement must be in writing and (i) delivered personally or by a nationally recognized overnight courier service with delivery charges prepaid, (ii) mailed by certified or registered mail, postage prepaid, return receipt requested, or (iii) sent via email, to the receiving Party's administrative representative at its address above or to such other person or address as either Party may specify by notice in writing to the other Party. All notices, requests, demands, waivers and communications are received on date of delivery.

## 8. Agreement Documents

This Agreement consists of the following, listed by the documents' order of precedence:

- A. The provisions of 2 CFR 200 that are applicable to Subrecipient, whether or not explicitly stated herein.

- B. The Prime Award terms and conditions that are applicable to Subrecipient; and
- C. This Agreement, including any attachments thereto.

**The undersigned parties bind themselves to the faithful performance of this Agreement:**

**COUNTY OF CLACKAMAS**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**NATIONAL SAFETY COUNCIL**

By: *Nick Smith*  
Nick Smith

Chief Operating Officer

Date: 10/3/19



## **Attachment A**

### **General Terms and Conditions**

Definitions: All terms defined in the Agreement shall have the same meaning in this **Attachment A**.

#### **ARTICLE 1. COMPLIANCE WITH LAWS**

Subrecipient shall comply with all applicable Federal statutes, regulations, and policies, and all applicable state and local laws, ordinances, rules, and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement. When NSC requests satisfactory proof of compliance, Subrecipient shall furnish such proof.

- A. **Whistleblower Protections.** Subrecipient certifies, by signing this Agreement, that it complies with the Federal whistleblower protections at 10 U.S.C. 2409, 41 U.S.C. 4712 and 10 U.S.C. 2324, 41 U.S.C. 4304, and 41 U.S.C. 4310.
- B. **Debarment and Suspension.** Subrecipient certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this Agreement by any Federal department or agency or listed on the Government-wide exclusions list.
- C. **Trafficking in Persons.** Subrecipient, Subrecipient's employees and any lower-tier subrecipient, subcontractor, or their employees shall not:
  - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
  - ii. Procure a commercial sex act during the period of time that the award is in effect; or
  - iii. Use forced labor in the performance of the award or subawards under the award.

Subrecipient shall inform NSC immediately of any information Subrecipient receives from any source alleging a violation of a prohibition in this section. NSC may terminate this Agreement for any violation of this section; such right of termination is in addition to all other remedies for noncompliance that are available to NSC.

For purposes of this Article 1, Section C, "award" refers to this Agreement.

- D. **DUNS Number and SAM Registration.** Subrecipient certifies that it has a current Data Universal Numbering System (DUNS) number, which is shown on the first page of this Agreement, and a current System for Award Management (SAM) registration at [www.sam.gov](http://www.sam.gov). Subrecipient also certifies that it will maintain current and up-to-date information in SAM for the duration of the Agreement. No entity may receive a subaward unless the entity has provided its unique entity identifier (the identifier required for SAM registration to uniquely identify business entities) to NSC.
- E. **Protection of Personally Identifiable Information.** Subrecipient shall take reasonable measures to safeguard protected personally identifiable information and other information the Prime Funder or NSC designates as sensitive or that NSC considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

#### **ARTICLE 2. STANDARD ASSURANCES**

The Subrecipient assures and certifies that:

- A. It possesses legal authority to apply for and receive the subaward; and that, if necessary, a resolution, motion, or similar action has been duly adopted or passed as an official act of the Subrecipient's governing body, authorizing receipt of this subaward, including all understandings and assurances contained in it.

## **Attachment A**

### **General Terms and Conditions**

- B. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
- C. It will conduct the due diligence required by 2 CFR 200 prior to awarding any subaward to a lower-tier subrecipient and will provide the necessary oversight of the subaward.

#### **ARTICLE 3. VALIDITY AND FUNDING OF AGREEMENT**

- A. **Validity and Enforcement of Agreement.** Funds will be paid to Subrecipient only to the extent sufficient funds are made available to NSC by the Prime Funder for the Project. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Prime Funder that may affect the provisions, terms, or funding of this Agreement in any manner.
- B. **Appropriations.** If at any time during the Period of Performance, expected Federal funds become reduced or eliminated, NSC may immediately terminate the Agreement or reduce the Subaward Amount. The decision of whether to terminate the Agreement or reduce the Subaward Amount is solely within the determination of NSC, as may be directed by the Prime Funder. Such decision shall be effective upon a thirty (30) day written notice to the Subrecipient.
- C. **Determination of Funding.** If at any time during the Period of Performance NSC determines that there is insufficient funding to continue the project, NSC shall notify the Subrecipient, giving notice of intent to terminate this Agreement, as specified in Article 11. If at the end of the Period of Performance, NSC determines that it would like to have Subrecipient continue performance and there is sufficient funding to allow Subrecipient to continue performance under this Agreement, NSC may notify the Subrecipient of its intent to continue this Agreement. The Parties shall then enter into a written amendment to this Agreement that modifies the funding amount, scope of work, and period of performance, as applicable.
- D. **Payments Contingent on Receipt of Appropriated Funds.** Notwithstanding any other term of this Agreement, all payments to Subrecipient, including reimbursement payments, are contingent upon the (i) availability of appropriated funds; and (ii) NSC's receipt of those funds.

#### **ARTICLE 4. INSURANCE**

Subrecipient has an ongoing self-insured program established under ORS 30.272 and will use the self-insurance program to process claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Agreement by Subrecipient, its agents, representatives, employees, subcontractors, or lower-tier subrecipients. Subrecipients shall require all of its subcontractors and lower-tier subrecipients to procure and maintain insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of their agreements. This requirement is in addition to the insurance required by 2 CFR 200.310.

#### **ARTICLE 5. AMENDMENTS**

This Agreement may be amended by mutual written agreement.

#### **ARTICLE 6. CORRECTION OF WORK AND ADDITIONAL WORK**

- A. **Correction of Work.** If the Subrecipient submits work that does not comply with the terms of this Agreement or has errors or omissions, NSC may instruct the Subrecipient to make any revisions that are necessary to bring the work into compliance with this Agreement or to correct the error(s) or omission(s). Subrecipient shall make the revisions and corrections, and no additional compensation shall be paid for this work.
  - i. If the Subrecipient has submitted work in accordance with the terms of this Agreement but NSC requests changes to the completed work or parts of the work that involve changes to the original scope of services or character of work under this Agreement, the Subrecipient shall make those

## **Attachment A**

### **General Terms and Conditions**

revisions as requested and directed by NSC. These revisions will be considered changed work and will be paid for as specified in Article 7.

- B. **Additional Work.** Any work that Subrecipient performs or costs that Subrecipient incurs are reimbursable only to the extent expressly stated in this Agreement. NSC shall not pay Subrecipient for any work or costs not directly associated with this Agreement or performed outside of the Period of Performance.

#### **ARTICLE 7. CHANGED WORK**

- A. **Changed Work.** If the Subrecipient is of the opinion that any assigned work is beyond the scope of this Agreement and constitutes additional work, the Subrecipient shall promptly notify NSC in writing. If NSC finds that such work does constitute additional work, NSC shall advise the Subrecipient, and the Parties may enter into a written amendment to this Agreement. The Amendment shall provide for compensation on the same basis as the original work.
- B. **Authorization Required.** No payments will be made for any unauthorized supplies or services or for any unauthorized changes to the work specified herein. This includes any services performed by the Subrecipient of their own volition or at the request of an individual other than a duly appointed NSC representative. Only a duly appointed NSC representative is authorized to change the specifications, terms, and conditions under this effort.

#### **ARTICLE 8. RECORDS AND RIGHT TO ACCESS RECORDS**

- A. Subrecipient shall preserve its fiscal records and supporting documentation, documents, papers, or other records that are pertinent to the Project (the "**Records**") until June 30 2024 (the "**Retention Period**") or until such later time as required under applicable regulations, which includes without limitation, if:
- i. any litigation, claim or audit is started before the expiration of the Retention Period. In that instance, Subrecipient shall retain the Records until all litigation, claims, or audit findings involving the Records have been resolved and final action has been taken.
  - ii. NSC or the Government notifies Subrecipient in writing to extend the Retention Period. In that instance, Subrecipient shall retain the Records as instructed.
  - iii. the Records involve real property and equipment acquired with Federal funds. In that instance, Subrecipient shall retain the Records for three years after final disposition.
  - iv. the Records are transferred to or maintained by the Prime Funder or NSC. In that instance, Subrecipient has no obligation to retain the Records.
  - v. the Records involve program income transactions after the Period of Performance. In that instance, Subrecipient shall retain the Records pursuant to 2 CFR 200.333(e).
  - vi. the Records involve indirect cost rate proposals and cost allocation plans. In that instance, Subrecipient shall retain the Records per 2 CFR 200.333(f).
- B. In accordance with Federal regulations at 2 CFR 200, Subrecipient shall permit NSC, the Prime Funder, the Comptroller General of the United States of America, and any of their authorized representatives access to audit, inspect, examine, excerpt, and copy books, records, memoranda, correspondence, personnel staff records, independent audit work papers, and any other documents (the "**Documents**") during normal business hours or at any reasonable time. Such right of access shall also include timely and reasonable access to the Subrecipient's personnel for the purpose of interview and discussion related to the Documents.

**Attachment A**  
**General Terms and Conditions**

- C. The right of access described above, includes the right to access and audit both Documents and Records. The right of access continues as long as the Documents or Records are retained and does not expire on the expiration or termination of this Agreement or the expiration of the Retention Period.

**ARTICLE 9. INDEMNIFICATION**

- A. To the extent permitted by law, the Subrecipient, if other than a government entity, shall indemnify, hold, and save harmless NSC and its officers and employees from all claims and liability due to the acts or omissions of the Subrecipient, its agents, or employees. The Subrecipient also agrees, to the extent permitted by law, to indemnify, hold, and save harmless NSC from any and all expenses, including but not limited to attorneys' fees, all court costs and awards for damages incurred by NSC in litigation or otherwise resisting claims or liabilities as a result of any activities of the Subrecipient, its agents, or employees.
- B. To the extent permitted by law, the Subrecipient, if other than a government entity, agrees to protect, indemnify, and save harmless NSC from and against all claims, demands, and causes of action of every kind and character brought by any employee of the Subrecipient against NSC due to personal injuries to or death of any employee resulting from any alleged negligent act, by either commission or omission on the part of the Subrecipient.
- C. If the Subrecipient is a government entity, both Parties agree that no Party is an agent, servant, or employee of the other Party, and each Party agrees it is responsible for its individual acts and deeds, as well as the acts and deeds of its contractors, employees, representatives, and agents.

**ARTICLE 10. DISPUTES AND REMEDIES**

- A. **Dispute Resolution.** In the event there is a dispute between the Parties arising out of the interpretation or application of this Agreement, the Parties shall attempt in good faith to resolve the dispute promptly by negotiations between designated representatives of the Parties who have the authority to settle the dispute. If the matter has not been resolved within sixty (60) days of a Party's request for negotiation, either Party may initiate arbitration by providing written notice to the other Party or may institute an action in a court of competent jurisdiction.
- B. **Remedies.** This Agreement requires compliance with certain Federal statutes, regulations and terms and conditions of the Prime Award, some of which are set forth in this Agreement. If Subrecipient violates any Federal statute, regulation, or a term or condition of the Prime Award, notwithstanding anything to the contrary in this Agreement, NSC may elect to do any of the following, which should not be considered exclusive remedies: (a) impose conditions described in 2 CFR 200.207, Specific Conditions; (b) temporarily withhold cash payments pending compliance; (c) disallow all or part of the cost of the activity or action not in compliance; (d) wholly or partly suspend or terminate the Agreement; or (e) take any other remedy available under this Agreement or a remedy otherwise legally available. NSC's rights and remedies stated in this Section are in addition to any rights or remedies that the Federal Government may exercise or impose.
- C. **Cumulative Remedies.** All rights and remedies of the Parties are in addition to all other rights and remedies available at law or in equity, including, without limitation, specific performance for the enforcement of this Agreement, and temporary and permanent injunctive relief.

**ARTICLE 11. TERMINATION**

- A. This Agreement shall expire as of the last day of the Period of Performance, unless otherwise terminated below:
  - i. This Agreement is terminated in writing with the mutual consent of both Parties;
  - ii. There is a written thirty (30) day notice by either Party;



**Attachment A**  
**General Terms and Conditions**

- iii. NSC determines that the performance of the Project is not in the best interest of NSC and informs the Subrecipient that the Project is terminated, which termination shall be effective as stated in the notice; or
  - iv. NSC may terminate this Agreement, or any severable portion of this Agreement, for cause based upon Subrecipient's material breach of a term of this Agreement, by giving written notice to the Subrecipient. The notice will include a statement of the reason for the termination for cause and provide Subrecipient fifteen (15) days to cure the breach or default under the Agreement (the "**Cure Period**"). If Subrecipient fails to cure the breach or default to the reasonable satisfaction of NSC within the Cure Period, NSC may terminate this Agreement. NSC may obtain, in the manner NSC considers appropriate, any remaining services or items necessary to perform this Agreement, and Subrecipient shall be liable for and pay to NSC any costs incurred by NSC in the procurement process of such services or items, including the cost for additional managerial and administrative services, that are in excess of the Subaward Amount.
- B. The Subrecipient shall not incur nor be reimbursed for any new obligations after the Agreement expires or is otherwise terminated.

**ARTICLE 12. INSPECTION OF WORK**

- A. NSC has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement and the premises in which it is being performed.
- B. If any inspection or evaluation is made on the premises of the Subrecipient or a subawardee of Subrecipient, the Subrecipient shall provide and require its subawardee to provide access to all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and evaluations shall be performed in a manner that will not unduly delay the work.
- C. Review of Announcement of Publications. The Subrecipient agrees that neither the Subrecipient, nor any of its subawardees, shall make public releases of information or any matter pertaining to this Agreement, including, but not limited to, advertising in any medium, or presentation before technical, scientific, or industry groups, without the prior written approval of the duly appointed NSC representative. The provisions of this clause shall survive the expiration or termination of the Agreement. The provisions of this clause shall be included in all subawards at any tier. Any approved publication shall bear the appropriate legend, as may be provided by the Prime Funder.

**ARTICLE 13. SUBAWARDS**

Except as otherwise described in the Scope of Work, Subrecipient shall not enter into a subaward, including a subcontract, under this Agreement without prior written approval by NSC. Such approval shall not make NSC a party to the subaward. Subawards shall contain all applicable terms and conditions, as required by this Agreement and 2 CFR 200. Such terms and conditions include, but are not limited to, all Federal regulations and compliance requirements of this Agreement. Subrecipient shall remain responsible for performance of its obligations under this Agreement, regardless of any subaward.

**ARTICLE 14. GIFT POLICY**

- A. NSC policy mandates that employees of NSC shall not solicit or accept any benefit, gratuity, gift, favor, or anything of monetary value from any person doing business with or who, reasonably speaking, may do business with NSC under this Agreement. The only exceptions allowed are ordinary business lunches and items that have received the advanced written approval of NSC's Executive Director.
- B. Any person doing business with or who, reasonably speaking, may do business with NSC under this Agreement may not make any offer of benefit, gratuity, gift, favor, or anything of monetary value to NSC

## **Attachment A**

### **General Terms and Conditions**

employees, except as mentioned above. Failure on the part of the Subrecipient to adhere to this policy may result in termination of this Agreement.

#### **ARTICLE 15. PROHIBITION ON CONTINGENT FEES**

The Subrecipient warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Subrecipient, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. If the Subrecipient breaches or violates this warranty, NSC shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, brokerage fee, contingent fee, or gift.

#### **ARTICLE 16. PROHIBITION ON CONFLICT OF INTEREST**

- A. **Personal Conflict of Interest.** The Subrecipient represents that it and its employees (and members of their immediate family) have no conflict of interest that would in any way interfere with its or its employees' performance or that would in any way conflict with the interests of NSC.
- B. **Organizational Conflict of Interest.** The Subrecipient represents that neither it nor any of its affiliates (including a parent or subsidiary) has a real or apparent organizational conflict of interest. Such organizational conflict of interest exists when the Subrecipient is unable, or potentially unable, to provide impartial and objective assistance or advice to NSC due to the Subrecipient's other activities, relationships, contractors, or circumstances.
- C. **Performance of the Agreement.** The Subrecipient shall exercise reasonable care and diligence to prevent any actions or conditions that could result in either a personal or organizational conflict of interest. If at any time during the Period of Performance, the Subrecipient discovers either type of conflict of interest that could not reasonably have been known to it prior to award of this Agreement, the Subrecipient shall make an immediate and full disclosure to NSC.
- D. **Remedies for Conflict of Interest.** If a nondisclosure or misrepresentation of or concerning a conflict of interest is discovered after award of this Agreement, NSC may terminate this Agreement for cause.

#### **ARTICLE 17. SUBRECIPIENT'S RESOURCES**

- A. The Subrecipient certifies that it presently has adequate qualified personnel in its employment to perform the work required under this Agreement, or will be able to obtain such personnel from sources other than NSC.
- B. All employees of the Subrecipient shall have the knowledge and experience that will enable them to perform the duties assigned to them. Any employee of the Subrecipient who, in the opinion of NSC, is incompetent or whose conduct becomes detrimental to the work, shall immediately be removed from association with the Project.
- C. Unless otherwise specified, the Subrecipient shall furnish all equipment, materials, supplies, and other resources required to perform the work.

#### **ARTICLE 18. PROCUREMENT AND PROPERTY MANAGEMENT**

Equipment and supplies purchased with funds received pursuant to this Agreement are governed by 2 CFR 200.

Subrecipient shall ensure that in performing this Agreement, its procurement and property-management procedures comply with (1) the Subrecipient's own documented procurement and property management standards and (2) the federal procurement and property management standards provided by 2 CFR §§ 200.310-.316, 200.318-.324.



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**ARTICLE 19. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY**

Government Regulations: The Prime Funder and the Parties have certain rights to intangible property, as set forth in 2 CFR 200.315 and 37 CFR 400.14 (modified as necessary to reflect the arrangement between the Parties). The Parties shall comply with the obligations described in the aforementioned regulations. Additionally, the Subrecipient shall provide, upon request by NSC, a periodic listing of all subject inventions in accordance with these regulations and prior to the closeout of the Agreement. Any rights to intangible property not set forth in those regulations or a clause specified in Attachment B, are determined as follows.

Upon expiration or termination of this Agreement and NSC's request, Subrecipient shall provide to NSC copies of all finished or unfinished documents, data, studies, surveys, reports, maps, drawings, models, photographs, sketches, calculation, or other data prepared by the Subrecipient without restriction or limitation of their further use.

Information made available to the Subrecipient or employee(s) of the Subrecipient by NSC for the performance or administration of this effort shall be used only for those purposes and shall not be used in any other way without NSC's express written approval.

The Subrecipient agrees to assume responsibility for protecting the confidentiality of NSC's records, which are not public information. Each contractor or employee of the Subrecipient to whom information may be made available or disclosed shall be notified in writing by the Subrecipient that such information may be disclosed only for a purpose and to the extent authorized herein.

- A. **Intellectual Property Defined.** Intellectual property consists of copyrights, patents, and any other form of intellectual property rights covering any databases, software, inventions, training manuals, systems design, or other proprietary information in any form or medium.
- B. **Subrecipient Rights.** Subject to the rights set forth in the Government Regulations, intellectual property initially developed by the Subrecipient without any type of funding or resource assistance from NSC ("Subrecipient Classes and Materials") shall remain the Subrecipient's intellectual property.
- C. **NSC Rights.** Notwithstanding the any other provision in this Agreement, NSC shall have the right to use and disclose, and to authorize others to use and disclose, for any lawful purpose all intellectual property, data, and information, and all versions thereof, that Subrecipient and its subawardees develop under this Agreement, whether independently or jointly. Subrecipient further agrees to provide NSC with a license to use any such intellectual property solely for the purposes of satisfying NSC's obligations under its Prime Agreement.

Subrecipient is prohibited from using NSC's name, logo, or images in Subrecipient's promotional materials, written or oral endorsements, customer profiles, online information, or sales collateral unless specifically authorized in writing by NSC.

**ARTICLE 20. SUCCESSORS AND ASSIGNS**

This Agreement shall be binding on the successors, executors, approved assigns, and administrators of NSC and the Subrecipient. The Subrecipient shall not assign, sublet, or transfer interest and obligations in this Agreement without written consent of NSC.

**ARTICLE 21. CIVIL RIGHTS COMPLIANCE**

- A. **Nondiscrimination:** Subrecipient shall comply with all Federal statutes and implementing regulations relating to nondiscrimination. The Subrecipient also agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented by the U.S. Department of Labor regulations (41 CFR, Part 60).

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- B. Solicitations for subawards, including procurement of materials and equipment: In all solicitations either by competitive bidding or negotiation made by the Subrecipient for work to be performed under a subcontract, including procurements of materials and leases of equipment, each potential Subrecipient or supplier shall be notified by the Subrecipient of the Subrecipient's obligations under this Agreement and the regulations relative to nondiscrimination on the grounds of race, color, sex, national origin, age, religion, or disability.
- C. Information and reports: The Subrecipient shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NSC to be pertinent to ascertain compliance with the Regulations or directives. Where any information required of the Subrecipient is in the exclusive possession of another who fails or refuses to furnish this information, the Subrecipient shall certify that to NSC and shall set forth what efforts the Subrecipient has made to obtain the requested information.
- D. Actions for noncompliance: In the event of the Subrecipient's noncompliance with the nondiscrimination provision of this Agreement, NSC may terminate this Agreement in accordance with Article 11 and/or pursue any other legal remedies available to it, whether or not specifically identified in this Agreement.
- E. Incorporation of provisions: The Subrecipient shall include the provisions of Sections A through D of this Article in every subaward, including procurements of materials and leases of equipment, unless exempt by the regulations or directives. The Subrecipient shall take any action with respect to any subaward or procurement that NSC may direct as a means of enforcing those provisions, including remedies for noncompliance. However, in the event a Subrecipient becomes involved in, or is threatened with litigation with a subawardee as a result of such direction, the Subrecipient may request NSC to enter into litigation to protect the interests of NSC; and in addition, the Subrecipient may request the United States to enter into such litigation to protect the interests of the United States.

**ARTICLE 22. CERTIFICATION REGARDING FEDERAL LOBBYING**

In entering into this this Agreement, Subrecipient certifies 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 any 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. Subrecipient 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) and that all subawardees 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.

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**ARTICLE 23. RESTRICTION ON STATE AND LOCAL LOBBYING**

None of the funds under this program will be used for any activity specifically designed to urge or influence a state or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any state or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This prohibition does not preclude a state official whose salary is supported with Prime Award funds from engaging in direct communications with state or local legislative officials, in accordance with customary state practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

**ARTICLE 24. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT REQUIREMENTS**

- A. Any recipient of funds under this Agreement agrees to comply with the Federal Funding Accountability and Transparency Act and implementing regulations at 2 CFR Part 170, including Appendix A.
- B. The Subrecipient agrees that it shall report the total compensation and names of its top five (5) executives if:
  - i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
  - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission or reports filed pursuant to the Internal Revenue Code.

**ARTICLE 25. AUDIT REPORT**

- A. In accordance with the provisions of 2 CFR 200, Subpart F – Audit Requirements, non-Federal entities that expend financial assistance of \$750,000 or more in Federal awards in the entity's fiscal year will have a single or a program-specific audit conducted for that year. Non-Federal entities expend less than \$750,000 a year in Federal awards are exempt from Federal audit requirements for that year, except as noted in 2 CFR 200.503. For direct procurement contracts, audits will be conducted in accordance with the Federal Acquisition Regulation.
- B. If threshold expenditures of \$750,000 or more are met during the Subrecipient's fiscal year, the Subrecipient must submit a Single Audit Report and Management Letter (if applicable) to NSC within 30 calendar days of report finalization or nine months after the end of the audit period, whichever is earlier.
- C. If expenditures are less than \$750,000 during the Subrecipient's fiscal year, the Subrecipient must submit a statement to NSC's Audit Office as follows: "We did not meet the \$750,000 expenditure threshold and therefore, are not required to have a single audit performed for FY\_\_\_\_\_."
- D. For each year the Project remains open for Federal funding expenditures, the Subrecipient will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the Agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

**ARTICLE 26. NO WAIVER**

The failure of NSC or the Subrecipient to enforce one or more of the terms or conditions of the Agreement or to exercise any of its rights or privileges, or the waiver by NSC of any breach of such terms or conditions, shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no waiver had occurred.

**ARTICLE 27. INTERPRETATION, JURISDICTION, AND VENUE**

This Agreement is governed by and should be construed in accordance with Federal statutes and regulations and Federal common law of Government grants and contracts, as enunciated and applied by Federal judicial bodies,

**Attachment A**  
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boards of contract appeals and quasi-judicial agencies of the Federal Government where questions of Federal law arise, and otherwise with the laws of the State of Illinois, without giving effect to its conflict-of-law provisions. The Subrecipient hereby consents and submits to the jurisdiction of the appropriate courts of Illinois or of the United States having jurisdiction in Illinois for adjudication of any suit or cause of action arising under or in connection with the Agreement documents, or the performance of such Agreement, and agrees that any such suit or cause of action may be brought in any such court.

**ARTICLE 28. CAPTIONS**

The captions of the various Articles and Sections are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

**ARTICLE 29. NO THIRD-PARTY BENEFICIARIES**

There are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

**ARTICLE 30. SEVERABILITY**

In the event a court of competent jurisdiction determines that any provision of the Agreement is unlawful, invalid, or unconstitutional, such determination shall not affect, in any manner, the legality of the remaining provisions of the Agreement, and each provision of the Agreement will be and is deemed separate and severable from each other provision.

**ARTICLE 31. COMMUNICATIONS WITH PRIME FUNDER**

All communications with the Prime Funder regarding the Project shall be made by NSC, unless NSC has approved a communication with the Prime Funder by the Subrecipient in advance.

**ARTICLE 32: CLOSEOUT REQUIREMENTS**

All Subrecipient closeout requirements set forth in this Agreement will apply even after the Period of Performance expires or terminates. To closeout this Agreement, Subrecipient shall, as applicable, provide all reports required by this Agreement, liquidate all obligations incurred, and account for any real or personal property acquired with Subaward Funds no later than 90 calendar days after the Period of Performance expires or terminates. Subrecipient will be notified and instructed by NSC if they must complete any additional forms for closeout of this Subaward.

**ARTICLE 33. ENTIRE AGREEMENT**

This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings, or agreements.



## Attachment B

### Prime Award Provisions for NSC Subawards

1. **Seat Belt Use Policies and Programs.** In accordance with Executive Order 13043, Increasing Seat Belt Use in the United States, dated April 16, 1997, the Subrecipient is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles.
2. **Encouraging policies to ban text messaging while driving.**
  1. As used in this Agreement: "Driving" –
    - a. Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise
    - b. Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.
  2. "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.
  3. The Subrecipient is encouraged to –
    - a. Adopt and enforce policies that ban text messaging while driving –
      - i. Subrecipient-owned or –rented vehicles or government-owned vehicles; or
      - ii. Privately-owned vehicles while performing under this Agreement.
    - b. Conduct initiatives in a manner commensurate with the size of the Subrecipient, such as –
      - i. Establishment of new rules and programs or re-evaluations of existing programs to prohibit text messaging while driving; and
      - ii. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
3. **Human Subjects.** The Subrecipient shall not conduct any research activity involving human subjects covered by 49 CFR 11.101 unless the research is approved in advance by NSC, which will coordinate approval with Prime Funder, as necessary. Such Prime Funder approval will require approval by an Institutional Review Board, amongst other requirements.
4. **Rights in Data.** In addition to Article 19 of the General Terms and Conditions of this Subaward, the following terms govern the Parties' and Government's rights to data.
  - A. Definitions.
    - i. "Proprietary Information or Data" means information, data, or technology developed or being developed by or for the Grantee or its affiliates, subcontractors, or agents entirely outside of the Agreement, regardless of the source of funding.

## Attachment B

### Prime Award Provisions for NSC Subawards

- ii. "Program Developed Information" means information, data, or technology developed under this Agreement that may make use of, either in whole or in part, but does not otherwise contain Proprietary Information or Data.
  - iii. These definitions and this clause are not intended to affect any right that the Government, NSC, or the Subrecipient has been granted in another funding instrument in information, data, or technology developed with Federal funds under another program, and all of such rights, if any, are retained.
- B. Except as provided in the Prime Funder's Standard Patent Rights (as modified herein), (Government Rights) rights to all Proprietary Information or Data are retained by the Party responsible for the Data, and the Government does not have rights thereto. With respect to Program Developed Information, NSC and the Subrecipient has the right to use, release to others, reproduce, prepare derivative works, distribute, or publish any such information, and the Prime Funder (and others acting on its behalf) has the right to reproduce, prepare derivative works, distribute copies to the public, and perform publicly or display publicly, in any manner and for any purpose, any such information, and to have or permit others to do so.
- C. Any Proprietary Information or Data submitted by Subrecipient to NSC must be submitted in accordance with 49 CFR Part 512, including the Certificate in Support of Request for Confidentiality.
- D. Subrecipient shall not, without prior permission of NSC, incorporate in any deliverables required under this Agreement any Proprietary Information or Data that has not been granted confidentiality by NSC and the Government and which contains a copyright notice of 17 U.S.C. § 401 or 402.
- E. The Prime Funder's Standard Patent Rights are modified as follows: the Government will have march-in rights and Government-purpose license rights with respect to any and all patents arising out of this Agreement. If the Prime Funder and all Parties expressly agree in writing not to seek title to an invention arising out of this Agreement, the Recipient or Subrecipient shall publish the invention in the public domain within 60 days of such written agreement. The publication must be in a documented searchable fashion.
- F. Project results are releasable per the Public Release Schedule that NSC negotiates with the Prime Funder.
- G. If the Prime Funder provides limited-rights information or data to NSC that NSC provides to Subrecipient for the performance of this Agreement, the Subrecipient may use the information or data during the performance of the Agreement, provided that any such information or data, including any copies of the information or data, are returned at the end of the Agreement or destroyed, per directions from NSC. Subrecipient and its employees are prohibited from divulging to the public any limited-rights information or data without the express written permission from NSC and the Prime Funder, which permission NSC will coordinate.
- 5. Conflict of Interest with Prime Funder's Activities.** By signing this Agreement, Subrecipient certifies that it does not have an interest that may be substantially affected by U.S. Department of Transportation activities and which is related to the work specified in this Agreement. If, after award, the Subrecipient discovers any such conflict of interest, it shall make an immediate and full disclosure to NSC.
- 6. Drug-Free Workplace.** Subrecipient shall comply with the Drug-Free Workplace requirements set forth in 2 CFR Part 182, Subpart B.
- 7. Subrecipient Tax Liability or Felony Conviction.** By signing this Agreement, Subrecipient certifies that it does not have a Tax Delinquency (an unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability) or a Felony Conviction (a



## Attachment B

### Prime Award Provisions for NSC Subawards

conviction within the preceding 24 months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. Code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559). For all Covered Transactions (a transaction that uses any Federal Award funds that is a contract, memorandum of understanding, cooperative agreement, grant, loan, or loan guarantee) that Subrecipient enters into:

- A. Before entering into the Covered Transaction, Subrecipient shall check the System for Award Management (SAM) for an entry describing that entity.
  - B. Before entering into the Covered Transaction, Subrecipient shall require the other party to:
    - i. certify whether the party has a Tax Delinquency; and
    - ii. certify whether the party has a Felony Conviction.
  - C. If (1) the SAM entry for the other party indicates that it has a Tax Delinquency or a Federal Conviction; (2) the other party provides an affirmative response to either certification in 7.B.; or (3) the other party's certification under 7.B was inaccurate when made or becomes inaccurate after it was made, Subrecipient shall not enter into or continue the Covered Transaction unless it notifies NSC of the discrepancy and NSC obtains Prime Funder's written determination that suspension or debarment of that entity is not necessary to protect the interests of the Prime Funder.
  - D. If the SAM entry for a Participant (an entity that submits a proposal to Subrecipient for a Covered Transaction or an entity that enters into a Covered Transaction with Subrecipient) indicates that the Participant has a Tax Delinquency or a Felony Conviction, Subrecipient shall notify NSC in writing of that entry. If a Participant provides an affirmative response regarding either certification in this clause, the Subrecipient shall notify NSC in writing of that response. If the Subrecipient knows that a Participant's certification was inaccurate when made or becomes inaccurate after being made, the Subrecipient shall notify NSC in writing of the inaccuracy.
  - E. For all Covered Transactions, the Subrecipient shall flow down the contents of this clause.
- 8. Section 508 Compliance.** The Subrecipient shall ensure that electronic documents and HTML deliverables it prepares meet the requirements of Section 508 of the Rehabilitation Act. The Subrecipient should review Section 508 of the Rehabilitation Act (<https://www.access-board.gov/508/508standards.htm>) and the Federal IT Accessibility Initiative Home Page (<https://section508.gov/>) for further information on these requirements. Subrecipient shall further ensure the documents and deliverables comply with the accessibility standards found in 36 CFR 1194.22.
- 9. Audit Requirements.** If Subrecipient awards a contract for more than \$10,000 to a commercial organization under this Agreement, it shall include the following requirements, defining such terms as necessary:
- A. **Examination of Costs.** The contractor shall maintain—and NSC and the Prime Funder shall have the right to examine and audit—books, records, documents, and other evidence and accounting procedures and practices, regardless of form (e.g., machine-readable media such as disk, tape, etc.) or type (e.g., databases, applications software, database management software, utilities, etc.), sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this agreement. This right of examination includes inspection at all reasonable times of the contractor's facilities, or parts of them engaged in performing the agreement.
  - B. **Reports.** If the contractor is required to furnish cost, funding, or performance reports, NSC and the Prime Funder shall have the right to examine and audit books, records, or other documents and supporting materials for the purpose of evaluating (a) the effectiveness of contractor's policies and procedures to produce data compatible with the objectives of these reports and (b) the data reported.

## Attachment B

### Prime Award Provisions for NSC Subawards

- C. **Availability.** The contractor shall make available at its office at all reasonable times the materials described in paragraph A. above for examination, audit, or reproduction, until the later of 3 years after final payment or any resulting final settlement of a termination, appeal, litigation, or claim, or for any shorter period specified in FAR Subpart 4.7, Records Retention, or for any longer period required by statute.
- D. Except as otherwise provided in FAR Subpart 4.7, Records Retention, the contractor may transfer computer data in machine-readable form from one reliable computer medium to another. The contractor's computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original data. The contractor's choice of form or type of materials described in this clause does not affect the contractor's obligations nor does it affect NSC's or the Prime Funder's rights under this clause.
- 10. Data Collection.** If Subrecipient believes the Agreement will involve the collection of information as defined in 5 CFR Part 1320, it shall immediately notify NSC and obtain NSC and Government approval, which will be coordinated by NSC. If such collection is approved and performed by Subrecipient, it shall not represent to respondents that the data is being collected for or in association with Prime Funder or any Federal agency, unless it has received specific written approval.
- 11. Privacy Act.** If Subrecipient believes the Agreement will involve a system of records on individuals designed, developed, or operated on behalf of the Federal Government, it shall immediately notify NSC. In such instances, Subrecipient shall comply with the Privacy Act of 1974.
- 12. Required Format of Products and Publications.** If Subrecipient prepares publications under this Agreement, they shall submit them in accordance with Government Printing Office guidelines and shall submit them so they can be posted on the Prime Funder's website.
- 13. Additional NHTSA Guidance.** The Subrecipient is encouraged to review materials available on NHTSA's Highway Safety Program Resources Guide (<https://www.nhtsa.gov/highway-safety-grants-program/resources-guide>) for additional guidance on administering funding provided by NHTSA. Specifically, Subrecipient should be aware of, and comply with NHTSA guidance related to:
- Use of NHTSA Highway Safety Grant Funds for Certain Purchases
  - Buy America Act Guidance

## **Attachment C** **Scope of Work**

### **Clackamas County Department of Transportation and Development** **Safe System Approach to Rural Road to Zero**

This project will showcase how a holistic Safe Systems approach to traffic safety can be effective in reducing fatal and serious injury crashes in a rural community. A Safe Systems approach will combine proven low-cost engineering countermeasures with behavioral change- focused education, followed with targeted enforcement in collaboration with regional law enforcement partners. Layered throughout the project is collaboration with public health and schools to tackle issues of alcohol and drug use, build new opportunities with rural transit options to move teens and older adults, and work with the Oregon DOT to create more and affordable driver's education and child protection to those who can least afford access. This project will include:

1. Rapid deployment of proven low-cost safety countermeasures on rural roadways based on the County's Transportation Safety Action Plan projects and local road safety audits where applicable. Such low-cost countermeasures may include enhanced delineation for horizontal curves and intersections, longitudinal rumble strips, recessed raised reflective pavement markers and creation of all-way stop-control at intersections.
2. Utilization of behavioral and cultural change education using micro-targeting in order to effectively reach the targeted rural area. Professional behavior and culture change experts will be utilized to build the internal capacity to conduct micro-targeting using social media, social media ad buys, and direct email campaigns. The focus will be on common behaviors that cause the most serious and fatal crashes in the County as well as the results of a 2017 survey by Montana State University regarding Aggressive Driving, Beliefs and Attitudes among Adults in the Molalla Area.
3. Enhance existing and build new partnerships with locally based community organizations and business leaders to help amplify messaging and gain buy-in for countermeasures, tapping into the importance of storytelling in rural communities.
4. Build opportunities for community residents who have less financial resources so that they can afford access to both driver's education for teen household members and child protection equipment. This will build on our current partnership with the non-profit Oregon Impact, who is currently conducting an environmental scan of child protection equipment services and programs in the County. This includes partnering with social service agencies that serve Latinx families in the County.
5. Engage rural transportation agencies in building new access for both teens and older adults to ensure good mobility options.

Clackamas County forms the southern County of the Portland, Oregon, metropolitan area. The county encompasses 1,879 square miles, a population of 413,000 and a 1,400 mile County-owned and maintained roadway system. The county's heavily timbered geographical features include the 11,235-foot Mt. Hood, the Mt. Hood National Forest, the Bull Run Watershed and numerous rivers - including the Willamette, Clackamas, Sandy, Pudding, Molalla and Salmon. Some of Oregon's richest farmland is located in areas surrounding the communities of Canby, Sandy, Boring, Wilsonville and Molalla.

Drive to Zero Clackamas County has set a goal to eliminate fatal and serious injury crashes on its roads by 2035. Their Drive to Zero Safety Action Plan, first adopted in 2012 and updated in early 2019, represents an evidence-based approach to reduce fatal and serious injury crashes. The emphasis areas align with those of Toward Zero Deaths: A National Strategy on Highway Safety, of which the County is proud partner; and the Oregon Transportation Safety Action Plan, 2016. Successful implementation of the plan depends on everyone, including emergency medical services, personnel, activists, educators, local leaders, law enforcement, business, engineers, and most importantly, the traveling public.

From 2009 to 2015, 183 people were killed in traffic crashes in Clackamas County. Another 795 people suffered serious, potentially life-altering injuries. People must drive further in rural areas to reach destinations, and emergency response times can be longer than in urban areas. Speeds are also higher than in urban areas and there are fewer transportation options. As a result, rural areas are more susceptible to severe crashes than urban areas. 45% of reported severe crashes in the County occurred in rural areas, while 20% of the County's population lives in rural areas. The most contributing factors in reported crashes in the county are:

- 36% inexperienced drivers (25 years of age or younger)

## Attachment C Scope of Work

- 34% roadway departures
- 31% aggressive driving
- 22% motorcycles
- 21% alcohol/drug related crashes
- 17% senior drivers
- 16% pedestrians and bicyclists

Drive to Zero embraces the importance of creating a positive safety culture using the tools within the Positive Culture Framework. The County has worked with the Center for Health and Safety Culture at Montana State University on a local collaboration with a not-for-profit in the Molalla, Oregon area. This project will use best practices from the pilot project to increase community engagement throughout the rest of the County. Additionally, staff with the Drive to Zero Program have worked with public health professionals in development of the Clackamas County Blueprint for a Healthy Clackamas County, 2017-2020, which includes a goal of eliminating roadway fatalities. This collaboration is helping to build the health and safety in all policies, particularly as different plans from the Public Health Division and the Department of Transportation and Development are adopted

### **Task 1**

#### **Investment in low-cost proven safety countermeasures to significantly reduce fatal and serious injury crashes on the rural roadway network.**

The infrastructure phase of the project will be managed by Christian Snuffin, Senior Traffic Engineer. The County's Transportation Safety Action Plan (found at <http://bit.ly/2CHV78c>) will guide investments based on a roadway network screening and safety priorities developed in collaboration with the Oregon Department of Transportation. County staff will implement low-cost safety countermeasures on approximately 50 miles of the following arterial roadways:

- Canby-Marquam Highway – Canby City Limits to Hwy 211 (7 miles)
- Barlow Road – Hwy 99E to County Line (11.21 miles)
- Lone Elder Road – Hwy 99E to Canby-Marquam Hwy (3.32 miles)
- Macksburg Road – Canby-Marquam Hwy to OR 213 (5.32 miles)
- Barnards Road – Barlow Rd to Hwy 213 (6.21 miles)
- Whiskey Hill Road – County Line to Barlow Rd (1.74 miles)
- Mulino Road – Haines Rd to Hwy 213 (6.72 miles)
- Union Mills Road – Hwy 213 to Hwy 211 (3.9 miles)
- Knights Bridge Road – Arndt Rd to Canby City Limits (1.57 miles)
- Arndt Road – Airport Rd to Barlow Rd (2.07 miles)
- Township Road – Central Point Rd to Mulino Rd (1.6 miles)

In keeping with the County's emphasis on systemic application of proven low-cost safety countermeasures, Clackamas County DOT will implement a number of countermeasures with proven track records of reducing serious injury and fatal crashes. All of the proposed countermeasures are associated with significant crash reduction factors (CRF), and are listed in the Crash Modification Factors Clearinghouse ([www.CMFClearinghouse.org](http://www.CMFClearinghouse.org)), which is a FHWA-funded web-based repository of CMFs. Additionally, most of the proposed countermeasures have been calibrated by the Oregon Department of Transportation and used as part of their All Roads Transportation Safety Program.

#### **Example Countermeasures:**

- Wider edge lines. This countermeasure will increase the width of white edge lines from four inches to six inches on high-traffic arterials and collectors. Research has shown that this countermeasure is proven to reduce road departure crashes.
- Centerline rumble strips. This countermeasure consists of milled-in transverse grooves that follow the centerline. They alert inattentive drivers who have crossed the centerline by causing a tactile vibration and audible rumbling. This countermeasure is proven to significantly reduce sideswipe and head-on crashes.
- Centerline recessed raised pavement markers. This countermeasure consists of installing reflective raised pavement markers (RPMs) in a milled-in channel. The RPMs provide enhanced visual and tactile guidance for nighttime dry or wet weather conditions. Installing the RPMs in the channel prevents them



## Attachment C Scope of Work

from being destroyed by snowplows, thus extending their useful service life. The milled-in channels also provide additional visual guidance and tactile feedback that helps drivers stay in their lanes.

Additional treatments may include one or more of the following:

- Converting two-way stop controlled intersections to all-way stop control;
- High-friction surface treatments;
- Enhanced signing on curves;
- Enhanced roadside delineation; and
- Post-mounted solar flashing beacons at stop-controlled intersections.

County staff will conduct a thorough engineering analysis of each roadway that will include a review of crash history, roadway geometry, traffic speeds and volumes to determine the most appropriate and effective safety countermeasure(s) for each roadway segment.

County Engineering staff will be responsible for design of the systemic safety countermeasures listed above, which will occur in the first three to six months. Installation will be provided by County maintenance staff or a qualified contractor, and this work will take place in months six through 12.

**Timeline:**            **Design**            **September – December 2019**  
                                 **Installation**       **January - August 2020**

### **Task 2**

**Holistic systems approach to culture and behavior change, enforcement and education to reduce serious and fatal crashes due to common driver behavior.**

The safety outreach work will be managed by Rob Sadowsky, the Drive to Zero Outreach Coordinator.

Aggressive driving, such as speeding, distracted driving and driving under the influence will be the key behaviors targeted using a combination of efforts as follows. A key element of this strategy is Clackamas County DOT's partnership with the County's Department of Health, Housing and Human Services and the Public Health Division. This partnership seeks to combine efforts where strategies align, particularly around alcohol/drug and injury prevention. Components will include:

#### *Young Adult Education*

In school presentations, in driver's education presentations, encouragement of driver's education, scholarships and investments, and exploration of partnerships with ride sharing and transit. Micro-targeting social media approaches and peer-to-peer based programming. Prevention work with the County's Health, Housing and Human Services Department. The work will carry throughout the year.

#### *Young Children Education and Outreach*

Early education on issues of traffic safety is important to establish cultural norms and good driving, walking and bicycling behavior. The outreach team will promote safety through "Safety Street" and other in-school activities focusing on basic traffic safety and helmet use. Safety Street is a mobile trailer filled with pedal cars, traffic signals and signs that allow the team to set up a mobile traffic course. Children under nine years old, accompanied by an adult, learn about basic traffic safety and receive a safety coloring book when complete. Safety Street will be deployed at community fairs and events including the one week County Fair in August. Safety Street reached more than 2000 kids in 2018.

#### *Teen Education and Outreach*

More than 36% of crashes in the County involved a driver that was 25 years or younger. Additionally, 21% of crashes involved a driver under the influence of drugs or alcohol. For this reason, this program will incorporate a variety of programs targeting young adults through direct outreach and educational events and through partnerships around alcohol and drug prevention. Direct education programming will include presentations at high school health classes and area drivers' education classes focusing on the most common behaviors that result in serious and fatal crashes. Drivers' education is not required in Oregon and only 30% of the young adults take drivers' education. However, 90% of fatal crashes involving a young adult involve a driver that did not take drivers' education. This work will include a three-tiered approach to increase the level of teens in these programs.

## **Attachment C**

### **Scope of Work**

- The first step is to encourage more enrollment by engaging parents at PTA events, school open houses and other opportunities.
- The second step is working with the Oregon Department of Transportation – Transportation Safety Division and drivers' education providers to bring low-cost subsidized classes to the targeted region. Currently there is one course for the targeted region and students in the most eastern parts of the targeted area have many barriers to attending these classes.
- The third tier of this work will be partnering with nonprofit organizations and the County's Public Health department on prevention strategies including working with local transit agencies and ride sharing companies to explore ways to provide mobility options for teens.

#### *General Education and Outreach*

The project increase the county's skills and abilities in micro-targeting outreach. The County DOT will contract with professionals in the field of culture and behavioral change marketing to develop a long term strategy that will include targeting advertising and direct messaging using social media, email, and web/app sites such as Next Door. The County DOT will partner with community organizations, local businesses (including insurance brokers and companies), event tabling, religious institutions, schools and neighborhood associations. The County DOT will leverage its active partnership with the local community college, Clackamas Community College, to help the team target outreach and education efforts to students who live and work in the targeted areas of the County. This effort seeks to build the County's capacity and skills that could be sustained long term by current staff. This work will occur throughout the year. Outreach funding from the NSC grant will primarily support this strategy.

#### *Older Adult Education and Outreach*

17% of the County's crashes involve a driver who was 65 years or older. This segment of the population is rapidly growing within the County. This project will incorporate proven measures in partnership with the local AARP chapter to provide additional and targeted safe driving programs to seniors. The County DOT will also partner with public health professionals to incorporate safe driving and multimodal trip planning for case workers who serve older adults. Additionally, the micro-targeting strategy mentioned above will also be integrated here. The County DOT, in partnership with AARP, will be working with local transit agencies and ride sharing companies to explore ways to provide mobility options for older adults.

#### *Targeted enforcement of driving behavior and sale of alcohol and marijuana to minors*

A vital component of the Drive to Zero strategy is stepping up targeted traffic enforcement by partnering with the County Sheriff and local police departments. These strategies focus on the most common behaviors that cause serious and fatal crashes and reinforce community norms. The County DOT will leverage state safety funds to conduct traffic enforcement operations along with minor decoy operations targeting alcohol and marijuana sales to minors. This work will involve partnership with the County Sheriff's Office, Canby and Molalla Police Departments and the Oregon Liquor Control Commission.

#### *Getting Child Passenger Seat education and seats for young children into the hands of low-income residents*

The County has seen some high profile crashes in the targeted rural area that involved passengers who were not properly restrained, particularly children. We will partner with Oregon Impact, a statewide nonprofit, to implement strategies to increase compliance with car restraint laws. Oregon Impact is conducting environmental scan under contract with the County that will provide a current state of providers and services in the area along with recommendations for moving forward with services. This work is coordinated by Oregon Impact in partnership with Clackamas County DOT. The work will occur throughout the year.

**Timeline: September 2019 – August 2020**



**Attachment C**  
**Scope of Work**

**Task 3**

**Develop and present a webinar in conjunction with the Road to Zero Coalition on the project.** The Road to Zero Coalition is hosting a series of webinars featuring the RTZ grant recipients. This webinar will explain the project and share results of what was learned. It might also discuss issues like challenges encountered and how they were resolved, and how this project could be replicated elsewhere.

**Timeline: Develop in July and August 2020. Work with RTZ Coalition on when to present it.**

## Attachment D Budget

National Safety Council Subrecipient Monthly Budget

**Subrecipient name:** Clackamas County Department of Transportation and Development  
**Project Title:** Safe Systems Approach to Rural Road to Zero  
**Project Start Date:** 9/1/2019  
**Project End Date:** 8/31/2020

Month	Rate	Sep-19	Oct-19	Nov-19	Dec-19	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Total by Budget Category
1 Personnel			2,000.00	2,000.00	2,000.00	1,229.32								7,229.32
2 Fringe Benefits*	0%													-
3 Travel														-
4 Events														-
5 Equipment														-
6 Supplies														-
7 Contractual		13,995.89	13,995.89	13,995.89	6,495.89	6,495.89	6,495.89	6,495.89	6,495.89	6,495.89	16,495.89	16,495.89	11,095.89	125,050.68
8 Other														-
<b>9a Total Direct Costs</b>		<b>13,995.89</b>	<b>15,995.89</b>	<b>15,995.89</b>	<b>8,495.89</b>	<b>7,725.21</b>	<b>6,495.89</b>	<b>6,495.89</b>	<b>6,495.89</b>	<b>6,495.89</b>	<b>16,495.89</b>	<b>16,495.89</b>	<b>11,095.89</b>	<b>132,280.00</b>
10 Indirect Cost**	0%													-
<b>11 Total Budget</b>		<b>13,995.89</b>	<b>15,995.89</b>	<b>15,995.89</b>	<b>8,495.89</b>	<b>7,725.21</b>	<b>6,495.89</b>	<b>6,495.89</b>	<b>6,495.89</b>	<b>6,495.89</b>	<b>16,495.89</b>	<b>16,495.89</b>	<b>11,095.89</b>	<b>132,280.00</b>

\* The County of Clackamas has elected to not bill for fringe benefits related to salaries charged to this award.

\*\* The County of Clackamas has elected to waive indirect costs on this award.

**Attachment E**  
**Performance Report Formant**

**Subaward Number:**

**Reporting Period Covered:**

**Project Manager:**

Each report should provide enough information for NSC to understand the current status, potential challenges, and anticipated changes in timing and or funding. The Subrecipient shall provide:

- a comparison of actual accomplishments compared to the objectives established for the reporting period;
- reasons why established objectives and performance measures were not met, if appropriate;
- favorable developments or alternatives that could result in meeting the objectives sooner or at less cost than anticipated; and
- other pertinent information, including, where appropriate an analysis and explanation of cost underruns, overruns, or high unit costs.

Address each question, as applicable:

**Project Summary:**

1. Is the project work on schedule?

Response...

2. Will the project take longer than the approved project period? If so, have you formally requested an amendment in writing?

Response...

3. Are there any issues with funding sources other than those included in this agreement?

Response...

4. Is there a change in key personnel?

Response...

**Task 1: Investment in low-cost proven safety countermeasures.**

1. What work was accomplished for this reporting period? How does the work compare to the objectives for the reporting period. NOTE: The report should quantify results as measurable products, i.e. numbers, contacts, trainings, meetings, etc.

Response...

2. Provide reasons why established objectives and performance measures were not met, if appropriate; what corrective action was taken?

Response...

**Attachment E**  
**Performance Report Formant**

3. Describe any favorable developments or alternatives that could result in meeting the objectives sooner or at less cost than anticipated.

Response...

4. Is the project work on schedule?

Response...

5. Provide other pertinent information, including, where appropriate an analysis and explanation of cost underruns, overruns, or high unit costs.

Response...

6. What work is projected for the new reporting period?

Response...

**Task 2: Holistic systems approach to culture and behavior change, enforcement and education**

1. What work was accomplished for this reporting period? How does the work compare to the objectives for the reporting period. NOTE: The report should quantify results as measurable products, i.e. numbers, contacts, trainings, meetings, etc.

Response...

2. Provide reasons why established objectives and performance measures were not met, if appropriate; what corrective action was taken?

Response...

3. Describe any favorable developments or alternatives that could result in meeting the objectives sooner or at less cost than anticipated.

Response...

4. Is the project work on schedule?

Response...

**Attachment E**  
**Performance Report Formant**

5. Provide other pertinent information, including, where appropriate an analysis and explanation of cost underruns, overruns, or high unit costs.

Response...

6. What work is projected for the new reporting period?

Response...

**Task 3: Develop and present a webinar in conjunction with the Road to Zero Coalition on the project**

1. What work was accomplished for this reporting period? How does the work compare to the objectives for the reporting period. NOTE: The report should quantify results as measurable products, i.e. numbers, contacts, trainings, meetings, etc.

Response...

2. Provide reasons why established objectives and performance measures were not met, if appropriate; what corrective action was taken?

Response...

3. Describe any favorable developments or alternatives that could result in meeting the objectives sooner or at less cost than anticipated.

Response...

4. Is the project work on schedule?

Response..

5. Provide other pertinent information, including, where appropriate an analysis and explanation of cost underruns, overruns, or high unit costs.

Response...

6. What work is projected for the new reporting period?

Response...

## Attachment F Financial Report

National Safety Council Subrecipient Financial Report  
Summary Financial Report w/ Comparison to Time Elapsed

Subawardee Name: Clackamas County Department of Transportation and Development  
 Project Title: Safe Systems Approach to Rural Road to Zero  
 Subaward Number: NSC - XXXXX  
 Project Start Date: 9/1/2019  
 Project End Date: 8/31/2020  
 Report Through (Short Date Format): 9/30/2019  
 Report Date:

Prior Period Adjustments require a detailed explanation in the notes section provided below.  
 Fill in the yellow shaded areas only.

Categories	Rate	Budget (A)	Prior Period Expenses (B)	Prior Period Adjustments (C)	Current Period Expenses (D)	Total LOP Expenses to Date (E=B+C+D)	Balance (F=A-E)
1 Personnel		7,229.32				-	7,229.32
2 Fringe Benefits*	0%					-	-
3 Travel						-	-
4 Events						-	-
5 Equipment						-	-
6 Supplies						-	-
7 Contractual		125,050.68				-	125,050.68
8 Other						-	-
<b>9a Total Direct Costs</b>		<b>132,280.00</b>	-	-	-	-	<b>132,280.00</b>
10 Indirect Cost**	0%					-	-
<b>11 Total Costs</b>		<b>132,280.00</b>	-	-	-	-	<b>132,280.00</b>

<b>Percentage of Budget Spent</b>	0.00%
<b>Percentage of Time Elapsed</b>	7.95% Under

<b>Total NSC Funds Requested this Period</b>	-
<b>Total NSC Funds Received to Date</b>	

Explanation of Prior Period Adjustments

\_\_\_\_\_  
Name and Title - Authorized Official

\_\_\_\_\_  
Signature - Authorized Official

\_\_\_\_\_  
Signature Date

- \* The County of Clackamas has elected to not bill for fringe benefits related to salaries charged to this award.
- \*\* The County of Clackamas has elected to waive indirect costs on this award.



## Attachment F Financial Report

National Safety Council Subrecipient Financial Report  
Detailed Monthly Report w/ Comparison to Budget

Subawardee Name: Clackamas County Department of Transportation and Development  
 Project Title: Safe Systems Approach to Rural Road to Zero  
 Subaward Number: NSC -XXXXX  
 Project Start Date: 9/1/2019  
 Project End Date: 8/31/2020  
 Report Through (Short Date Format): 9/30/2019  
 Report Date: 1/0/1900

Fill in actual expenses in the yellow shaded area for the relevant month

Month	Rate	Sep-18	Oct-18	Nov-18	Dec-18	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Total by Budget Category
1 Personnel														-
2 Fringe Benefits*	0%													-
3 Travel														-
4 Events														-
5 Equipment														-
6 Supplies														-
7 Contractual														-
8 Other														-
9a Total Direct Costs														-
10 Indirect Cost**	0%													-
11 Total Actual Expenses by Month														-
12 Budgeted Amount		13,995.89	15,995.89	15,995.89	8,495.89	7,725.21	6,495.89	6,495.89	6,495.89	6,495.89	16,495.89	16,495.89	11,095.89	132,280.00
13 Over/(Under) Monthly Budget		(13,995.89)	(15,995.89)	(15,995.89)	(8,495.89)	(7,725.21)	(6,495.89)	(6,495.89)	(6,495.89)	(6,495.89)	(16,495.89)	(16,495.89)	(11,095.89)	(132,280.00)
14 Cumulative Over/(Under)		(13,995.89)	(29,991.78)	(45,987.67)	(54,483.56)	(62,208.77)	(68,704.66)	(75,200.55)	(81,696.44)	(88,192.33)	(104,688.22)	(121,184.11)	(132,280.00)	(132,280.00)

Explanation of Significant Deviations from Monthly Budget

Name and Title - Authorized Official      Signature - Authorized Official      Signature Date

\* The County of Clackamas has elected to not bill for fringe benefits related to salaries charged to this award.  
 \*\* The County of Clackamas has elected to waive indirect costs on this award.



**DAN JOHNSON**  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT  
DEVELOPMENT SERVICES BUILDING  
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

October 17, 2019

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of Intergovernmental Agreement Between Clackamas County and the City of Oregon City Related to Plan Review, Permitting, and Inspection Services, Including Clarification of Inspection Roles During Times of Emergencies**

<b>Purpose/Outcomes</b>	This Agreement updates a previous Intergovernmental Agreement (IGA) between the County and the City of Oregon City to renew the agreement, adjust the billing structure and provide clarification of inspection roles during times of emergencies.
<b>Dollar Amount and Fiscal Impact</b>	Inspection services shall be calculated hourly, using the active charge out rate of labor plus over head for the employee providing the services and shall include travel time between jurisdictions. Plan review services shall be paid at 70% of the plan check fee charged by the borrowing party.
<b>Funding Source</b>	Permit fees – no County general funds are involved.
<b>Duration</b>	The IGA is effective upon signing and execution.
<b>Previous Board Action/Review</b>	The Board executed Intergovernmental Agreements on March 9, 1995 (95-185), June 26, 2003 (Resolution No. 03-19)
<b>Strategic Plan Alignment</b>	Ensure safe, healthy and secure communities
<b>Counsel Review</b>	Reviewed and approved by County Counsel on 10/1/19
<b>Contact Person</b>	Matt Rozzell, Building Codes Administrator, Transportation & Development, 503-742-4748

**BACKGROUND:**

On March 9, 1995 the City of Oregon City and Clackamas County entered into an IGA for the County to provide for the City of Oregon City the service of continued processing of the State of Oregon Structural Specialty Code (Fire and Life Safety Plan Review only); and plan review, inspection and enforcement of the Oregon State Plumbing Specialty Code, State of Oregon One- and Two-Family Dwelling Specialty Code-Plumbing Section, and the State of Oregon Electrical Code. The IGA was updated on

July 1, 2003 to include an amendment to adjust the fees the County received from 88% for the permit and plan review fees to 70% of the permit and plan review fees to account for the City issuing all plumbing and electrical permits.

This IGA updates the billing methodology to an hourly rate including the active charge out rate, plus overhead, including travel time for inspection services. For plan review services, the IGA billing methodology is set for the Borrowing party to pay 70% of the plan check fee, therefore capturing the cost of staff salaries and other associated employment costs.

This updated IGA will provide each party the ability to call the other to perform needed inspection or plan review service for all Oregon Specialty Codes. The IGA also provides the County the ability to inspect their own buildings located within the City of Oregon City during times of emergencies.

**RECOMMENDATION:**

Staff recommends that the Board of County Commissioners approve this Intergovernmental Agreement between Clackamas County and the City of Oregon City related to Plan Review, Permitting, and Inspection Services, including the clarification of inspection roles during times of emergencies.

Respectfully submitted,

Matthew Rozzell  
Building Codes Administrator  
Department of Transportation and Development

## RECORD COPY

Intergovernmental Agreement for Provisions of  
Building Inspection/Plan Review (BI/PR) Services Mechanical Inspection/ Plan Review, Plumbing Inspection/Plan Review, Electrical  
Inspection/Plan Review and  
Clarification of Inspection Roles during Times of Emergencies

This Agreement is entered into by and between the City of Oregon City, an Oregon municipal corporation (the "City"), and Clackamas County, a political subdivision of the State of Oregon (the "County"), (each a "Party" or collectively the "Parties").

### RECITALS

- A. ORS 190.010 authorizes and allows the parties to this Agreement to perform the functions and activities that another party to this Agreement has authority to perform.
- B. Each of the parties has staff that provides BI/PR services, as defined below, for their respective jurisdictions.
- C. With the fluctuations in development and construction activity in Oregon the Parties have experienced variations in demand for BI/PR services over the course of the last few fiscal years; and the Parties believe it may be more cost effective and better serve the public to share experienced staff of another jurisdiction rather than independently hiring additional staff.
- D. During times of emergency including but not limited to earthquake, flood, and high-wind events, demands for timely BI/PR services can increase significantly.
- E. Post-disaster, each Party must respond to their respective communities as quickly and efficiently as possible.
- F. Each of the Parties has a desire to serve their respective communities in the swiftest and most efficient way possible during an emergency.
- G. Many of the County's buildings and facilities are located within the City's jurisdiction.

### AGREEMENT

Now, therefore, based on the foregoing, the Parties agree as follows:

- 1. Definitions. As used herein, the following words and phrases mean:
  - 1.1. "Borrowing Party" is the governmental entity requesting and obtaining staff assistance from another signatory to this Agreement.
  - 1.2. "Building Inspection/Plan Review Services" (BI/PR) are services related to the issuance of permits under the provisions of ORS Chapters 197.215, 227 or 455.
  - 1.3. "Originating Party" is the entity loaning one or more of its employees to the Borrowing Party for staff assistance related to BI/PR.
  - 1.4. "Reimbursement Costs" are those charges related to a Shared Employee as set forth in a fee schedule

adopted by an Originating Party. The charges shall be set out as an hourly rate for inspection services, and a percentage of the plan review fee for plan review services.

- 1.5. "Shared Employee" is the Originating Party's employee loaned to a Borrowing Party under this Agreement.
  2. Requested Use of Shared Employees. Each Party to this Agreement shall make available its employees providing BI/PR, to the extent these employees are (in the opinion of the Originating Party) available for loan. The Borrowing Party shall inform the Originating Party that it desires staff assistance related to BI/PR from the Originating Party and stating the number of positions and the minimum qualifications of the staff requested. The request shall also set out when the Shared Employee would be needed and an estimate of the duration for the need.
  3. Response to Request for Use. The Originating Party shall promptly provide Borrowing Party with the name(s) of employee(s) that are available and a brief description of the employees' qualifications. It shall be in the sole discretion of the Originating Party to select the employees subject to this Agreement. This process is to be quick and responsive such that a Borrowing Party may make a request in the morning and be lent a Shared Employee that same day.
  4. Payment for Use of Shared Employee and Revenue Sharing.
    - 4.1 Inspections services shall be calculated hourly, using the active charge out rate of labor, plus overhead, for the employee providing the service and shall include travel time between jurisdictions. Charge out rates are updated each fiscal year, and invoices will reflect the current rate for services performed.
    - 4.2 Plan review services shall be paid at 70% of the plan check fee charged by the Borrowing Party. The Originating party shall provide copies of all permit receipts for projects which received plan review services.
  5. Accounting for Shared Employee. The Originating Party shall provide to the Borrowing Party an accounting of hours spent performing inspection services and accounting for plan review services for the Borrowing Party. This information shall be provided within 30-days of the end of each calendar month and may be provided via US mail, e-mail or fax. The Borrowing Party shall pay all Reimbursement Costs within 30-days of receipt of the accounting described in this paragraph.
  6. Status of Shared Employee. A Shared Employee shall:
    - 6.1. Account for the number of hours in service to a Borrowing Party;
    - 6.2. Remain an employee of the Originating Party continuing to be paid and receiving employee benefits therefrom without entitlement or claim to any salary, compensation or other benefits from the Borrowing Party;
    - 6.3. Continue working the number of hours specified in his or her contract of employment with the Originating Party while loaned to a Borrowing Party, unless the Originating Party, Borrowing Party and the Shared Employee agree otherwise;
    - 6.4. In the event of any dispute between the Shared Employee and Borrowing Party about the performance of services under this Agreement, Shared Employee shall be subject to the exclusive direction and control (including personnel actions and discipline) of the Originating Party.
    - 6.5. Administer the building code and the adopted policies of the Borrowing Party, and shall defer to the direction of the building official of the Borrowing Party on matters relating to the BI/PR services and the issuance of permits. It is agreed by and between the parties that the Shared Employee is carrying out a function on behalf of the Borrowing Party, and the Borrowing Party has the right of direction or control of the manner in which the Borrowing Party delivers services under this Agreement and exercises control over the activities of the Shared Employee when providing agreed upon services
  7. Obligations of Borrowing Party. If the Shared Employee does not meet the needs or is otherwise not satisfactory to Borrowing Party, Borrowing Party's sole recourse shall be the return of Shared Employee to Originating Party. The Borrowing Party shall provide a written explanation to the Originating Party for the return of the Shared Employee(s). Borrowing Party shall provide a Shared Employee with all material(s) and work space necessary to perform the requested BP/PR.
-

8. Obligations of Originating Party. In addition to its other obligations set out elsewhere in this Agreement, the Originating Party shall be responsible for provision of any official motor vehicle necessary for performance of services by a Shared Employee.

9. Authorization to perform inspections on County Buildings and Facilities.

9.1. During times of emergency, as defined in ORS 401.025 and as duly declared by either the governing body of the City or the County or as mutually agreed by the Parties, the City authorizes the County to perform inspections on County-owned or operated facilities for the purpose of determining whether they are structurally sound and/or otherwise suitable for safe occupancy.

9.2. The County shall use only certified personnel to evaluate buildings and facilities.

9.3. The County shall utilize the ATC-20 and ATC-45 or other equivalent methodologies and standard, rational engineering practices in the determination of suitability for occupancy.

9.4. The County shall provide copies to the City of all reports and findings as soon as is practical after the inspections are performed.

9.5. If during an emergency it is the desire of the City to utilize County inspection personnel in the evaluation of its own facilities, terms shall be as outlined in this agreement.



10. General Provisions.

- 10.1 Compliance with Laws. Every party shall comply with all applicable federal, state and local laws, including those related to discrimination in employment because of race, color, ancestry, national origin, religion, sex, sexual orientation, marital status, age, medical condition or disability and all applicable laws and regulations regarding the handling and expenditure of public funds.
- 10.2 Oregon Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon without giving effect to the conflicts of laws provisions thereof.
- 10.3 Time is of the Essence. Time is of the essence in the performance of this Agreement.
- 10.4 System Access. The Borrowing Party agrees to provide the Originating Party access to the Borrowing Party's permitting system.
- 10.5 Default. A Party shall be deemed in default if it fails to comply with any provision of this Agreement. The non-defaulting party shall provide the defaulting party written notice of the default and an explanation thereof and allow the defaulting party thirty (30) days within which to cure.
- 10.6 Indemnification. Each Party in its capacity as an Originating Party hereby agrees to indemnify, defend and hold harmless the Borrowing Party (including their elected officials, officers, employees and agents) from and against all claims, demands and causes of actions and suits of any kind or nature made by a third party for personal injury, death or damage to property arising out of the service(s) performed by the Originating Party its elected officials, officers, employees (including Shared Employees) and agents pursuant to the terms of this Agreement. Each Party shall give the other Party to this Agreement notice of any claim made or case filed that relates to this Agreement or services performed hereunder.
- Each Party in its capacity as a Borrowing Party hereby agrees to indemnify, defend and hold harmless the Originating Party (including their elected officials, officers, employees and agents) from and against all claims, demands and causes of actions and suits of any kind or nature made by a third party for personal injury, death or damage to property arising out of the service(s) performed by the Borrowing Party its elected officials, officers, employees and agents pursuant to the terms of this Agreement. Each Party shall give the other Party to this Agreement notice of any claim made or case filed that relates to this Agreement or services performed hereunder.
- 10.7 Insurance. Each Party agrees to maintain liability and workers compensation insurance in accordance with statutory requirements at levels necessary to protect against liabilities allowed by law. Each Originating Party shall maintain workers compensation coverage for any Shared Employee loaned under this Agreement.
- 10.8 Modification. This agreement may be amended in writing as may be mutually agreed to between the Parties.
- 10.9 Dispute Resolution. The Parties shall first attempt to informally resolve any dispute concerning this Agreement. A neutral party may be used to facilitate those negotiation in the event of an impasse, the issue shall be submitted to the governing bodies for a recommendation or resolution.
- 10.10 Enforcement. Subject to the provisions in section 10.7, any Party may institute legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of this Agreement.
- 10.11 Excused Performance. In addition to the specific provisions of this Agreement, performance by any Party shall not be in default where delays or default is due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the Parties, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance that are not within the reasonable control of the Party to be excused.
- 10.12 Termination. A Party may terminate its participation in this Agreement, with or without cause and at any time, by providing thirty (30) days written notice to the other Party to this Agreement.
- 10.13 Severability. If any one or more of the provisions contained in this Agreement is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of the



Agreement will not be affected or impaired in any way.

10.14 Entire Agreement. This Agreement is the entire agreement of the Parties on its subject and supersedes any prior discussions or agreements regarding the same subject.

11. Term of Agreement. This Agreement shall take effect on the date that both Parties have signed the agreement and continue thereafter from year to year in perpetuity unless terminated by the Parties consistent with section 10 above.

12. Contact Persons. Communications about this Agreement and any notice sent under its terms shall be sent by and to the following contact persons for the respective parties:

<u>Jurisdiction</u>	<u>Contact Person</u>	<u>Address</u>
City of Oregon City	Mike Roberts	698 Warner Parrott
Clackamas County	Matt Rozzell	150 Beaver creek Rd

12. Appropriations Clause. The obligations of the parties are subject to appropriations by their governing bodies. This Agreement is subject to the debt limitations in Oregon Constitution, Article XI, section 10 and any debt limitations contained in a city charter.

IN WITNESS WHEREOF, the respective parties have caused to be signed in their behalf to make and enter into this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

CLACKAMAS COUNTY

By \_\_\_\_\_  
Chair, Board of County Commissioners

Date \_\_\_\_\_

Approved as to Form:

By \_\_\_\_\_  
Mary Raethke, Recording Secretary

Date \_\_\_\_\_

CITY OF OREGON CITY

By Anthony J. Konkol III  
Anthony Konkol III, City Manager

Date 10-2-19

Approved as to Form:

By [Signature]  
City Attorney

Date 10-3-19



**DAN JOHNSON**  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT  
DEVELOPMENT SERVICES BUILDING  
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of a Contract with Murraysmith, Inc. for the  
Jennings Ave: OR99E to Oatfield Rd Project**

<b>Purpose/Outcomes</b>	Execution of the contract allows Clackamas County to proceed with the design of sidewalk and bicycle improvements to Jennings Avenue between OR99E and Oatfield Rd.
<b>Dollar Amount and Fiscal Impact</b>	The contract amount is not to exceed \$848,665.07.
<b>Funding Source</b>	Federal Surface Transportation Program (STP) and County Road Funds.
<b>Duration</b>	June 30, 2022.
<b>Previous Board Action</b>	01/01/17: BCC Approval of Master Certification Agreement No. 30923 for County implementation of federally funded projects.
<b>Strategic Plan Alignment</b>	This project will "Build a strong infrastructure" and "Ensure safe, healthy and secure communities" by constructing sidewalks and bicycle lanes.
<b>Counsel Review</b>	October 8, 2019
<b>Contact Person</b>	Robert Knorr, Project Manager 503-742-4680

**Background:**

The County obtained Federal Surface Transportation Program funding to construct improvements along Jennings Avenue from OR99E (McLoughlin Blvd) to Oatfield Road. The improvements include constructing a curb tight sidewalk on the north side of the road and constructing bike lanes on both sides of the road for enhanced bicycle and pedestrian connectivity. The total length of improvements is approximately three quarters (3/4) of a mile (approximately 3860 feet).

**Procurement Process:**

This project was advertised in accordance with ORS and LCRB Rules on March 13, 2019. Proposals were opened on April 16, 2019. The County received two (2) Proposals: Murraysmith, Inc., and Harper Houf Peterson Righellis. An evaluation committee of four DTD personnel scored Murraysmith, Inc.'s proposal the highest. Upon Contract award, the final statement of work was negotiated and finalized. Project fees were negotiated and based upon existing Oregon Department of Transportation ("ODOT") Negotiated Billing Rates.

**Recommendation:**

Staff respectfully recommends that the Board approve and execute the Engineering and Related Services Contract with Murraysmith, Inc. for the Jennings Ave: OR 99E to Oatfield Rd Project.

Sincerely,

Joel Howie,  
Civil Engineering Supervisor

Placed on the BCC Agenda \_\_\_\_\_ by Procurement and Contract Services

**ENGINEERING AND RELATED SERVICES CONTRACT**  
**Contract Number: 1831 (RFP 22234-01/2019-14)**

<b>Project Title: Jennings Ave: OR99E to Oatfield Rd</b>	<b>County Project Number: 22234</b>
<b>Project Location: Clackamas County</b>	<b>Associated RFP Number: 2019-14/22234-01</b>
<b>Federal Aid Number: C005 (103); Key #19276</b>	<b>DBE Goal: 8.5% (see Exhibit E)</b>
<b>Total Not-to-Exceed (“NTE”) amount for this Contract.</b> This total includes: a) all allowable non-contingency costs, expenses and profit/ fixed-fee amount; and b) <b>\$101,045.47</b> for all allowable costs, expenses and profit/fixed-fee amount for contingency tasks, each of which must be separately authorized by County.	<b>\$ 848,665.07</b>

This Contract is between Clackamas County, hereafter called “County” or “Agency” and **Murraysmith, Inc.**, an Oregon corporation, hereafter called “Consultant.” County and Consultant together are also referred to as “Parties” and individually referred to as “Party.” The primary contacts for this Contract are identified in Exhibit J, Contact Information and Key Persons.

This Contract includes Federal Highway Administration (“FHWA”) funding coordinated through the Oregon Department of Transportation (“ODOT”). See Section 18 - Compliance with Applicable Law.

For purposes of this Contract:

- a) “business days” means calendar days, excluding Saturdays, Sundays and all State of Oregon recognized holidays;
- b) “calendar days” means any day appearing on the calendar, whether a weekday, weekend day, national holiday, State of Oregon holiday or other day;
- c) “Engineering” Services means architectural, engineering, photogrammetric mapping, transportation planning or land surveying services that must be procured using qualifications based selection procedures [see ORS 279C.100 and ORS 279C.110]; and
- d) “Related Services” has the meaning provided in ORS 279C.100.

**TERMS AND CONDITIONS**

**Contract Effective Date and Term.** This Contract is effective on the date it has been signed by the parties and all required approvals have been obtained. No work or compensation under the Contract is authorized until notice to proceed has been issued in writing (email acceptable) by the County. Unless otherwise amended or terminated, this Contract shall expire June 30, 2022.

**2. Statement of Work.** Consultant shall perform all Services and deliver all deliverables as described in Exhibit A, Statement of Work (the “Services”). The required schedule for performance under the Contract is specified in the Statement of Work.

**3. Compensation.** The maximum NTE amount, which includes the total of all allowable and reimbursable costs and expenses (and contingency tasks, if any) payable to Consultant under this Contract, is set forth in the table above and detailed further in Exhibit B, Compensation. County reserves the right, in its sole discretion, to amend this Contract to increase this amount for additional Services within the scope of the procurement. If this Contract was awarded as a Direct Appointment/Small Purchase, amendments to increase the maximum amount payable are subject to limitations and additional requirements as set forth in applicable Federal, State and local laws. The payment methodology and basis for payment to Consultant is described in

Exhibit B, Compensation. Consultant and any subconsultants are subject to the requirements and limitations of 48 CFR Part 31 - Contract Cost Principles and Procedures.

**4. Contract Exhibits.** This Contract includes the following exhibits, each of which is incorporated into this Contract as though fully set forth herein:

- Exhibit A - Statement of Work
- Exhibit B - Compensation
- Exhibit C - Insurance
- Exhibit D - Title VI Non-Discrimination Provisions
- Exhibit E - Disadvantaged Business Enterprise (“DBE”) Provisions
- Exhibit F -Special Terms & Conditions
- Exhibit G - RESERVED
- Exhibit H - RESERVED
- Exhibit I - Errors & Omissions (“E&O”) Claims Process
- Exhibit J - Contact Information and Key Persons

**5. Order of Precedence.** Unless a different order is required by law, this Contract shall be interpreted in the following order of precedence: this Contract (including all amendments, if any) less all Exhibits, attachments and other documents/information incorporated into this Contract, then the Statement of Work and Payment Schedule, then all other Exhibits, then any other attachments or documents/information incorporated into this Contract by reference.

**6. Independent Contractor; Conflict of Interest; Responsibility for Taxes and Withholding; Consultant Oversight.**

- a. Consultant, by its signature on the Contract, certifies that it is an independent contractor as defined in ORS 670.600 and as described in IRS Publication 1779, which is available at the following link: <https://www.irs.gov/pub/irs-pdf/p1779.pdf>. Consultant shall perform all required Services as an independent contractor. Although County reserves the right (i) to determine the delivery schedule (as mutually acceptable to County and Consultant) for the Services to be performed and (ii) to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Consultant's performance. Consultant is responsible for determining the appropriate means and manner of performing the Services. Consultant is not an "officer", "employee", or "agent" of County, as those terms are used in ORS 30.265.
- b. Consultant, by its signature on the Contract, certifies that: (i) Consultant and, to the best of its information, knowledge and belief, its Associates have made any disclosures required under the COI Disclosure Form (available at: [https://www.oregon.gov/ODOT/Business/Procurement/DocsLPA/COI\\_LPA.docx](https://www.oregon.gov/ODOT/Business/Procurement/DocsLPA/COI_LPA.docx)) or any applicable law; and (ii) if a conflict of interest is discovered during the term of the Contract, Consultant shall timely submit a COI Disclosure Form to County disclosing the conflict(s).
- c. Consultant shall be responsible for all Federal or State of Oregon (“State”) taxes applicable to compensation or payments paid to Consultant under the Contract and, unless Consultant is subject to backup withholding, County will not withhold from such compensation or payments any amount(s) to cover Consultant's Federal or State tax obligations. Throughout the duration of the Contract, Consultant shall submit an updated W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>) to County whenever Consultant's backup withholding status or any other information changes. Consultant is not eligible for any social security, unemployment insurance or workers' compensation benefits from



compensation or payments paid to Consultant under the Contract, except as a self-employed individual.

- d. Consultant shall not be responsible for or have control over the means, manner, methods or techniques required of or used by other consultants or contractors under contract with County, unless otherwise expressly agreed to in writing by the Parties. The Parties agree, however, that these Section 6.d. provisions do not in any way revise or adjust Consultant's professional responsibility to report to County any information that comes to Consultant's attention (during performance of this Contract) pertaining to a project, or to performance by other consultants or contractors on a project, that would adversely affect County or a particular project.

**7. Subcontracts and Assignment; Successors and Assigns**

- a. Consultant shall obtain County's written consent prior to entering into any subcontracts for any of the Services required by the Contract, or in any manner assigning, selling or transferring any of its rights or interest under the Contract or delegate any of its duties or performance under the Contract. In addition to any other provisions County may require, Consultant shall include, in any permitted subcontract under the Contract, contractual provisions that shall require any subcontractor (which may also be referred to as "subconsultant") to comply with Sections 9, 10, 11, 12, 13, 16, 17, 18, 19, 23, 27 and 29 of these Contract provisions, the limitations of **Exhibit B** - Compensation, Exhibit D - Title VI Nondiscrimination Provisions, and the requirements and sanctions of ORS Chapter 656, Workers' Compensation, in the performance of the subcontractor's Services on the project that is the subject of the Contract, as if the subcontractor were the Consultant. County's consent to any subcontract shall not relieve Consultant of any of its duties or obligations under the Contract, including with respect to any Services, whether performed or to be performed by Consultant or a subcontractor.
- b. The provisions of the Contract shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective successors and permitted assigns, if any.
- c. Any purported assignment, delegation or disposition in violation of subsection "a." above is void.

**8. Third Party Beneficiaries.** The State of Oregon, the Oregon Transportation Commission (OTC) and ODOT, are intended third-party beneficiaries of the Contract with express independent authority to enforce the terms and conditions of the Contract. Otherwise, there are no third-party beneficiaries of the Contract.

**9. Representations and Warranties.** Consultant represents and warrants to County that (i) Consultant has the power and authority to enter into and perform the Contract, (ii) the Contract, when executed and delivered is a valid and binding obligation of Consultant, enforceable in accordance with its terms, (iii) the Services under the Contract will be performed in accordance with the professional standard of care set forth in Section 10 below; (iv) Consultant is duly licensed to perform the Services, and if there is no licensing requirement for the profession or Services, is duly qualified and professionally competent to perform the Services; and (v) Consultant is an experienced firm having the skill, legal capacity, professional ability and resources necessary to perform all the Services required under the Contract. The warranties set forth in this Section are in addition to, and not in lieu of, any other warranties provided.

**10. Professional Standard of Care; Responsibility of Consultant; Design Within Funding Limit**

**a. Professional Standard of Care.**

Consultant shall perform all Services under the Contract in accordance with the degree of skill and care ordinarily used by competent practitioners of the same professional

discipline when performing similar services under similar circumstances, taking into consideration the contemporary state of the practice and the project conditions.

**b. Responsibility of Consultant.**

- (i) Consultant shall be responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other Services furnished by Consultant under the Contract. Consultant shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications and other Services.
- (ii) County's review, approval or acceptance of, or payment for, the Services required under the Contract shall not be construed to operate as a waiver of any rights under the Contract or of any cause of action arising out of the performance of the Contract, and Consultant shall be and remain liable to County in accordance with applicable law for all damages to County caused by Consultant's negligent performance of any of the Services furnished under the Contract or negligent failure to perform any of the Services under the Contract.
- (iii) The rights and remedies of County provided for under the Contract are in addition to any other rights and remedies provided by law.
- (iv) If Consultant is comprised of more than one legal entity (for example, a joint-venture or partnership), each such entity shall be jointly and severally liable under the Contract.

**c. Design Within Funding Limit.**

When the Services under the Contract include preparation of design plans for the project:

- (i) Consultant shall accomplish the design Services required under the Contract so as to permit construction of the project within County's budget for construction. **County's budget for construction of the project is \$2,640,000.00.** Consultant shall promptly advise County's Contract Administrator if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable project within these limitations. Upon receipt of such information, the Contract Administrator will review Consultant's revised estimate of construction cost. County may, if it determines that the estimated construction contract price set forth in this Section is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in this Section, or County may adjust such estimated construction contract price.
- (ii) Prior to releasing the bid for the construction contract, County will prepare an estimate of constructing the design submitted. If County's estimator(s) determines Consultant's design exceeds County's budget for the construction contract as set forth in Section (i) above {and as may be revised per Section (i) above}, then Consultant shall perform such redesign and other Services as are necessary to permit contract award within the funding limitation. These additional Services shall be performed at no increase in the price of the Contract. However, Consultant shall not be required to perform such additional Services at no cost to County if Consultant's design exceeds County's budget {as set forth in Section (i) above} as a result of conditions beyond Consultant's reasonable control.

**11. Ownership of Work Product**

**a. Definitions.** The following terms have the meanings set forth below:

- (i) "Consultant Intellectual Property" means any intellectual property owned by Consultant and developed independently from the Contract.

- (ii) "Third Party Intellectual Property" means any intellectual property owned by parties other than County or Consultant.
  - (iii) "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item, and all intellectual property rights therein, that Consultant is required to deliver to County pursuant to the Contract.
- b. **Work Product.** All Work Product created by Consultant pursuant to the Contract, including derivative works and compilations, and whether or not such Work Product is considered a "work made for hire," shall be the exclusive property of County. County and Consultant agree that Work Product that constitutes original works of authorship (the "Original Work Product") is "work made for hire" of which County is the author within the meaning of the United States Copyright Act. If for any reason Original Work Product created pursuant to the Contract is not "work made for hire," Consultant hereby irrevocably assigns to County any and all of its rights, title, and interest in all Original Work Product created pursuant to the Contract, whether arising from copyright, patent, trademark, trade secret, or any other State or Federal intellectual property law or doctrine. Upon County's reasonable request, Consultant shall execute such further documents and instruments necessary to fully vest such rights in Original Work Product in County. Consultant forever waives any and all rights relating to Original Work Product created pursuant to the Contract, 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. However, see Sections 11.c and 11.d immediately below, for provisions applicable to Consultant Intellectual Property, Third Party Intellectual Property, Consultant Intellectual Property derivative works and Third Party Intellectual Property derivative works.
- c. **Consultant and Third Party Intellectual Property.** In the event that any Work Product is Consultant Intellectual Property or Third Party Intellectual Property (Consultant Intellectual Property or Third Party Intellectual Property that is applicable to the Services being performed by Consultant under the Contract or included in Work Product deliverable to County under the Contract), or in the event any Consultant Intellectual Property or Third Party Intellectual Property is needed by County to reasonably enjoy and use any Work Product, Consultant hereby agrees that it will grant to, or obtain for, the County an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Consultant Intellectual Property and or Third Party Intellectual Property, including the right of County to authorize contractors, consultants and others to do the same on County's behalf. This obligation of the Consultant does not apply to a situation involving a third party who enters a license agreement directly with the County. At the request of Consultant, County shall take reasonable steps to protect the confidentiality and proprietary interests of Consultant in any Consultant Intellectual Property licensed under this Section, within the limits of the Oregon Public Records Law (ORS 192.410 through 192.505) and the Oregon Uniform Trade Secrets Act (ORS 646.461 to 646.475).
- d. **Consultant and Third Party Intellectual Property-Derivative Work.** In the event that Work Product created by Consultant under the Contract is a derivative work based on Consultant Intellectual Property or Third Party Intellectual Property, or is a compilation that includes Consultant Intellectual Property or Third Party Intellectual Property, Consultant hereby agrees to grant to, or obtain for, County an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of Consultant Intellectual Property or Third Party Intellectual Property employed in the Work Product, including the right of County to authorize others to do the same on County's behalf.

- e. **Consultant Use of Work Product.** Notwithstanding anything to the contrary in this Section 11, Consultant may refer to the Work Product in its brochures or other literature that Consultant utilizes for advertising purposes and, unless specified otherwise in Exhibit A - Statement of Work, County hereby grants to Consultant a non-exclusive, non-transferable, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display County-owned Work Product on other unrelated projects, except for any "Confidential Information" protected from disclosure under the provisions of Section 12 below, pertaining to Confidentiality and Non-Disclosure.

**12. Confidentiality and Non-Disclosure.** Consultant and its subcontractors, and their respective employees and agents, shall keep confidential all information, in whatever form, produced, prepared, observed or received to the extent that such information is designated as confidential by the County, by law, or by this Contract. In the event Consultant is required to disclose Confidential Information pursuant to a subpoena or other legal process, Consultant shall immediately notify County of such subpoena or other legal process, provide County with copies of any subpoena, other legal process and any other written materials supporting the subpoena or other legal process, and otherwise cooperate with County in the event County decides to oppose the disclosure of the Confidential Information. In the event County decides not to oppose such subpoena or other legal process or County's decision to oppose the subpoena or legal process has not been successful, Consultant shall be excused from the confidentiality provisions of this Section, to the extent necessary to meet the requirements of the subpoena or other legal process controlling the required disclosure.

### **13. Indemnity**

- a. **Claims for Other Than Professional Liability.** Consultant shall indemnify, defend, save, and hold harmless the County, State of Oregon, the OTC and ODOT, and their respective officers, members, agents and employees from any and all claims, suits, actions, losses, liabilities, damages, costs and expenses, including attorney fees, of whatsoever nature, resulting from or arising out of the acts or omissions of Consultant or its subcontractors, or their respective agents or employees, under the Contract.
- b. **Claims for Professional Liability.** Consultant shall indemnify, defend, save, and hold harmless the County, State of Oregon, the OTC and ODOT, and their respective officers, members, agents and employees from any and all claims, suits, actions, losses, liabilities, damages, costs and expenses, including attorney fees, of whatsoever nature, resulting from or arising out of the professionally negligent acts, errors or omissions of Consultant or its subcontractors, or their respective agents or employees, in the performance of Consultant's professional services under the Contract.
- c. **Indemnity for Infringement Claims.** Without limiting the generality of section 13(a) or 13(b), Consultant expressly agrees to indemnify, defend, save and hold harmless the County, State of Oregon, the OTC and ODOT, and their respective officers, members and their agencies, subdivisions, officers, directors, agents, and employees from any and all claims, suits, actions, losses, liabilities, damages, costs and expenses, including attorney fees, arising out of or relating to any claims that Consultant's services, the Work Product or any other tangible or intangible items delivered to the County by Consultant that may be the subject of protection under any state or federal intellectual property law or doctrine, or the County's use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party; provided, County shall provide Consultant with prompt written notice of any infringement claim. Provided, however, Consultant shall not be obligated to indemnify, defend, save and hold harmless the County (or other entities identified above) under this section 13(c), based solely on the following: Consultant's compliance with County

specifications or requirements, including, but not limited to the required use of tangible or intangible items provided by County.

- d. **Defense Qualification.** Neither Consultant nor any attorney engaged by Consultant shall defend or purport to defend a claim in the name of the County, the State of Oregon, the OTC or ODOT without first receiving from the applicable entity, authority to act as legal counsel, nor shall Consultant settle any claim on behalf of the foregoing entities without the approval of these entities. The County, the State of Oregon, the OTC or ODOT may, at their election and expense, assume their own defense and settlement.
- e. **County's Acts or Omissions.** This section 13 does not include indemnification by Consultant of the County, the State of Oregon, the OTC and ODOT, and their respective officers, members, agents and employees, for the acts or omissions of these entities and their respective officers, members, agents and employees, whether within the scope of the Contract or otherwise.

14. **Insurance.** Consultant shall carry insurance as required on **Exhibit C**.

15. **Termination**

- a. **Termination by Mutual Consent.** The Contract may be terminated at any time, in whole or in part, by mutual written consent of the Parties.
- b. **County's Right to Terminate for Convenience.** County may, at its sole discretion, terminate the Contract, in whole or in part, upon 30 calendar day's prior written notice to Consultant.
- c. **County's Right to Terminate for Cause.** County may terminate the Contract, in whole or in part, immediately upon written notice to Consultant or at such later date as County may establish in such notice, upon the occurrence of any of the following events:
  - (i) County fails to receive appropriations, limitations or other expenditure authority sufficient to allow County, in the exercise of its reasonable administrative discretion, to continue to make payments for Consultant's Services. Payments under this Contract and continuation of this Contract beyond the current biennium are subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available from current funding sources. The County may terminate this Contract, and Consultant waives any and all claims for damages, effective immediately upon receipt of written notice, or any date specified therein, if for any reason the County's funding from local, state and/or federal sources is not appropriated or is withdrawn, limited or impaired;
  - (ii) Federal, State or local laws, regulations or guidelines are modified or interpreted in such a way that either the Services under the Contract are prohibited or County is prohibited from paying for such Services from the planned funding source;
  - (iii) Consultant no longer holds any license or certificate that is required to perform the Services; or
  - (iv) Consultant commits any material breach or default of any covenant, warranty, obligation or agreement under the Contract, fails to perform the Services under the Contract within the time specified or any extension thereof, or so fails to perform the Services as to endanger Consultant's performance under the Contract in accordance with its terms, and such breach, default or failure is not cured within 14 calendar days after County's notice to Consultant, or such longer period as County may specify in such notice.
- d. **Consultant's Right to Terminate for Cause.**
  - (i) Consultant may terminate the Contract by giving written notice to County if County fails to pay Consultant pursuant to the terms of the Contract and if County fails to cure within 14 calendar days after receipt of Consultant's written notice, or such longer period of cure as Consultant may specify in such notice.



- (ii) Consultant may terminate the Contract, for reasons other than nonpayment, if County commits any material breach or default of any covenant, warranty, obligation or agreement under the Contract, fails to perform under the Contract within the times specified, or so fails to perform as to endanger Consultant's performance under the Contract, and such breach, default or failure is not cured within 14 calendar days after Consultant's notice to County, or such longer period as Consultant may specify in such notice.
- e. **Remedies.**
  - (i) In the event of termination pursuant to Sections 15(a), 15(b), 15(c)(i), 15(c)(ii) or 15(d), Consultant's sole remedy (except as otherwise required by applicable State or Federal law) shall be a claim for payment of the satisfactory Services actually rendered up to the time of termination, less previous amounts paid and any claim(s) which State has against Consultant, except in the event of a termination under Section 15(c)(i) where no payment will be due and payable for Services performed or costs incurred after the last day of the current biennium. If previous amounts paid to Consultant exceed the amount due to Consultant under this subsection, Consultant shall pay all excess to County upon demand.
  - (ii) In the event of termination pursuant to Section 15(c)(iii) or 15(c)(iv), County shall have any remedy available to it in law or equity. If it is determined for any reason that Consultant was not in default under Section 15(c)(iii) or 15(c)(iv), the rights and obligations of the Parties shall be the same as if the Contract was terminated pursuant to Section 15(b).
- f. **Consultant's Tender Upon Termination/Retained Remedies of County.** Upon receiving a notice of termination of the Contract, Consultant shall immediately cease all activities under the Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of the Contract, Consultant shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed. Upon County's request, Consultant shall surrender to anyone County designates, all documents, information, research, works-in-progress, Work Product and other property, that are deliverables or would be deliverables had the Contract been completed, that are in Consultant's possession or control and may be needed by County to complete the Services.

**16. Records Maintenance; Access.** Consultant, and its subconsultants, shall maintain all fiscal records relating to the Contract in accordance with generally accepted accounting principles. In addition, Consultant shall maintain all other records pertinent to the Contract and the project and shall do so in such a manner as to clearly document Consultant's performance. The County, ODOT, the Oregon Secretary of State's Office (OSS), FHWA and the Comptroller General of the United States (CGUS) and their respective, duly authorized representatives shall have access, and Consultant shall permit the aforementioned entities and individuals access, to such fiscal records and other books, documents, papers, plans and writings of Consultant that are pertinent to the Contract to perform examinations and audits and make excerpts and transcripts. Consultant shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of 6 years, or such longer period as may be required by applicable law, following final payment and expiration or termination of the Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later. Any cost data submitted by Consultant pursuant to this Contract may be shared with ODOT, FHWA, OSS and CGUS, as necessary, for audit purposes. County, ODOT and FHWA shall have the right to review or examine the work in progress for any Services performed under the Contract.

**17. Performance Evaluations.** County will conduct performance evaluation(s) on the Consultant and its subconsultants during the term of the Contract, which will be compiled and maintained by County, and become a written record of Consultant's performance. Generally, the performance evaluations will include criteria related to, but not limited to, quality and technical performance, adherence to contract scope and budget, schedule performance, and business relations (including communications and negotiations performance). County will provide a copy of the performance evaluation results to Consultant within 14 calendar days following completion. Consultant may respond, in writing, or may request a meeting to address any or all findings contained in the completed performance evaluation within 30 calendar days following receipt. County may adjust evaluation score(s) upon County's finding of good cause. County may provide copies of any performance evaluation documentation to ODOT, FHWA, and other parties unless lawfully exempt from disclosure. County may use performance evaluation findings and conclusions in any way deemed necessary, including, but not limited to, corrective action, requiring submittal of performance improvement plan by Consultant and withholding of retainage. County and ODOT may use Consultant performance under previous contracts as a selection criterion for future contracts.

**18. Compliance with Applicable Law.** Consultant shall comply with all Federal, State and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Contract, in effect at the time the Contract is executed and as may be amended, revised, enacted or adopted thereafter. Changes in these legal requirements after the execution of the Contract may or may not be the basis for modifications to Consultant's schedule, scope and fee, depending on a reasonable assessment of the nature of the change, the extent to which the change was anticipated by Consultant or the Parties, and other circumstances then existing. Without limiting the generality of the foregoing, Consultant expressly agrees to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659a.142; (iv) the Clean Air Act (42 U.S.C. 7401-7671q); (v) the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387); (vi) Executive Order 11738; (vii) Environmental Protection Agency regulations (40 CFR part 15); (viii) and all applicable standards, orders, regulations and administrative rules established pursuant to the foregoing laws. County's performance under the Contract is conditioned upon Consultant's compliance with, and Consultant shall comply with, the obligations applicable to public contracts and intended for contractors under ORS 279C.505 through 279C.580, the terms of which are incorporated by reference herein. All rights and remedies available to County under applicable federal, state and local laws are also incorporated by reference herein and are cumulative with all rights and remedies under the Contract. If Consultant discovers a conflict among Federal, State and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Contract, Consultant shall in writing request County to resolve the conflict (in collaboration with ODOT and FHWA as applicable). Consultant shall specify if the conflict(s) create a problem for the design or other Services required under the Contract. If County concludes there is a conflict among the applicable laws, Federal laws shall govern among the others; State laws shall govern over the others except Federal. The resolution of the conflict of the applicable laws by County shall be final and not subject to further review or challenge.

**19. Permits and Licenses**

- a. Permits and licenses to conduct business.** Unless otherwise specified in **Exhibit A**, Statement of Work, Consultant shall obtain, hold, maintain and fully pay for during the term of the Contract all permits and licenses required by law for Consultant to conduct its business and perform the Services under the Contract.

- b. **Permits and licenses required for the project.** Unless otherwise specified in **Exhibit A**, Statement of Work, Consultant shall obtain, hold and maintain during the term of the Contract all permits and licenses required for the project (for example, permits from regulatory authorities and use permits or licenses from owners of real and personal property), but County shall pay for such permits and licenses. Consultant shall review the project site, if applicable, and the nature of the Services that Consultant shall perform under the Contract. Consultant shall advise County throughout the course of the project as to the necessity of obtaining all project permits and licenses, the status of the issuance of any such permits and licenses, and any issues or impediments related to the issuance or continuation of any such permits and licenses.

**20. Foreign Contractor.** If Consultant is not domiciled in or registered to do business in the State of Oregon, Consultant shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to the Contract.

**21. Force Majeure.** Neither County nor Consultant shall be held responsible for delay or default in the performance of its obligations due to a cause beyond its reasonable control, including, but not limited to, fire, riot, acts of God, terrorist acts or other acts of political sabotage, or war where such cause was beyond the reasonable control of County or Consultant, respectively. Consultant shall, however, 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 the Contract.

**22. Survival.** All rights and obligations shall cease upon termination or expiration of the Contract, except for the rights and obligations set forth in Sections 5, 9, 10, 11, 12, 13, 15(e), 15(f), 16, 22, 23, 26, 27 and 29 and all other rights and obligations which by their context are intended to survive.

**23. Time is of the Essence.** Consultant agrees that time is of the essence in Consultant's performance of its obligations under the Contract.

**24. Notice.** Except as otherwise expressly provided in the Contract, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by e-mail, by personal delivery, facsimile, or mailing the same, postage prepaid, to Consultant or County at the e-mail address, the delivery address or facsimile number set forth in the Contract, or to such other addresses or numbers as either Party may hereafter indicate in writing to the other. Any notice or day-to-day communication sent by e-mail shall be deemed received when it is sent. **The recipient of any notice sent by e-mail shall reply by e-mail to confirm receipt of such notice.** Any communication or notice made by personal delivery shall be deemed to be received when actually delivered. Any communication or notice properly addressed and mailed shall be deemed received 5 calendar days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed received on the date of the notice of successful transmission generated by the transmitting machine. To be effective, such facsimile transmission must be confirmed by telephone notice to County's Contract Administrator or Consultant's representative, as applicable.

**25. Severability.** The Parties agree that if any term or provision of the 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.

**26. Dispute Resolution and Errors & Omissions Claims Process.** In the event of a dispute between the Parties regarding any aspect of the Contract or performance under the Contract, the Parties agree to attempt in good faith to investigate and resolve any such dispute through direct communications and negotiations.

- a. **Errors & Omissions Related.** In the event those good faith efforts do not resolve disputes related to potential Errors and Omissions, the Parties agree to make good faith efforts to resolve the matter pursuant to **Exhibit I, Errors & Omissions Claims Process.**
- b. **Other Disputes.** In the event good faith efforts do not resolve disputes unrelated to Errors & Omissions, the Parties agree to make a good faith effort to resolve any such dispute through fact finding and non-binding mediation prior to resorting to litigation. The mediator shall be selected by mutual agreement of the Parties. If the Parties fail to agree on a mediator, each Party shall select a mediator and those two persons shall agree on a third-party, who will be the sole mediator. The cost of the mediator shall be split equally between the Parties.
- c. **Notification to ODOT.** County shall immediately notify ODOT of any disputes that seek resolution with the Errors & Omissions Claims Process or mediation.

**27. Governing Law; Venue; Consent to Jurisdiction.** The Contract shall be governed by, and construed and enforced in accordance with, the laws of the State of Oregon, without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between County (or any agency or department of the State of Oregon) and Consultant that arises from or relates to the Contract shall be brought and conducted solely and exclusively within the Circuit Court located in the County in which the Project is located; provided, however, if a Claim must be brought in a Federal forum, then 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 County or State of Oregon of any form or defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution, or otherwise. **CONSULTANT, BY EXECUTION OF THE CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

**28. Amendments.** County may amend the Contract to the extent permitted by applicable statutes, administrative rules and ordinances and as mutually agreed upon by County and Consultant. County may agree to appropriate increases in the maximum compensation payable under the Contract, should any County-approved increase occur in the scope, character, schedule or complexity of Services as outlined in the Statement of Work. Consultant shall not commence any Services authorized under an amendment, and the amendment is not effective, unless it is in writing, signed by the Parties and all approvals required by applicable law have been obtained.

**29. False Claims**

- a. Consultant understands and acknowledges it is subject to the Oregon False Claims Act ([ORS 180.750 to 180.785](#)) and to any liabilities or penalties associated with the making of a false claim under that Act. By its execution of the Contract, Consultant certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or cause to be made that pertains to the Contract or the Project for which the Services are being performed, including but not limited to Consultant's statement of proposal and any invoices, reports, or other deliverables.
- b. Consultant shall immediately disclose (in writing) to County whenever, in connection with the award, performance or closeout of the Contract, or any subcontract thereunder,

Consultant has credible evidence that a principal, employee, agent, or subcontractor of Consultant has committed—

- (i) A violation of the Oregon False Claims Act; or
  - (ii) A violation of State or Federal criminal or civil law involving fraud, conflict of interest, bribery, gratuity or similar misconduct.
- c. Consultant must include subsections (a) and (b) of this section in each subcontract Consultant may award in connection with the performance of the Contract. In doing so, Consultant may not modify the terms of those subsections, except to identify the subcontractors or sub grantee that will be subject to those provisions.

**30. Certified Small Businesses.** Respecting certification as a disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns or an emerging small business under ORS 200.055, as and when applicable, the Consultant shall maintain the certifications, and require in its subcontracts that subcontractors maintain the certifications required by Section 2, Chapter 325, Oregon Laws 2015, as amended by Section 26, Chapter 565, Oregon Laws 2015 as a material condition of the Contract. If the Consultant or subcontractor was awarded the Contract or subcontract, as applicable, in the course of County carrying out an affirmative action goal, policy or program under ORS 279A.100, and fails to maintain the required certification, County may terminate the Contract, require the Consultant to terminate the subcontractor, or exercise any of remedies reserved for breach of the Contract.

**31. Merger Clause; Waiver; Interpretation.** The Contract, including everything incorporated by reference, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding the Contract. No waiver, consent, modification or change of terms of the Contract shall bind either Party, unless such waiver, consent, modification or change of terms is in writing and signed by the Parties, and all necessary State of Oregon governmental approvals have been obtained. Such a waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. Either Party's failure to enforce any provision of the Contract shall not constitute a waiver by that Party of that or any other provision. The characterization of provisions of the Contract as material provisions or the failure to comply with certain provisions as a material breach of the Contract shall in no way be construed to mean that any other provisions of the Contract are not material or that failure to comply with any other provisions is not a material breach of the Contract.

## CONSULTANT CERTIFICATIONS

**A. Any individual signing on behalf of Consultant hereby certifies under penalty of perjury:**

- Consultant has provided its correct TIN to County;
- Consultant is not subject to backup withholding because (a) Consultant is exempt from backup withholding, (b) Consultant has not been notified by the IRS that Consultant is subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified Consultant that Consultant is no longer subject to backup withholding; and
- S/he is authorized to act on behalf of Consultant, s/he has authority and knowledge regarding Consultant's payment of taxes, and to the best of her/his knowledge, Consultant is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a State tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250, ORS Chapters 118, 314, 316, 317, 318, 321, and 323; and local taxes administered by the Department of Revenue under ORS 305.620.



**B. Any individual signing on behalf of Consultant hereby certifies they are authorized to sign this Contract and that:**

- **Consultant has read this Contract, understands it, and agrees to be bound by its terms and conditions.**
- Consultant understands and agrees that various documents are not physically attached, but are incorporated by reference and have the same force and effect as if fully set forth herein.
- Consultant understands and has provided to all Associates the COI Disclosure Form available at: <https://www.oregon.gov/ODOT/Business/Procurement/Pages/LPA.aspx>. Consultant and (to the best of the undersigned's information, knowledge and belief) Consultant's Associates are in compliance with the disclosure requirements of the COI Disclosure Form and have no conflicts of interest to disclose. If disclosures regarding this Contract or the related Project are required per the COI Disclosure Form, Consultant has made such disclosures to County on a properly prepared and submitted form and, if determined necessary by County or ODOT, a mitigation plan has been approved by County and ODOT.
- **(a)** No Federal appropriated funds have been paid or will be paid, by or on behalf of Consultant, 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 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, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.  
**(c)** 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.  
**(d)** Consultant shall require that the language of this certification be included in all subcontracts in excess of \$100,000 at all tiers and that all such subcontractors shall certify and disclose accordingly.
- Consultant is an independent contractor as defined in ORS 670.600 and as described in IRS Publication 1779.
- In the event that Consultant is a general partnership or joint venture, Consultant signature(s) on this Contract constitutes certifications to the above statements pertaining to the partnership or joint venture, as well as certifications of the above statements as to any general partner or joint venturer signing this Contract.

No Payment shall be made for Services that are performed before all necessary governmental approvals have been obtained, the Contract is fully executed, and Notice-To-Proceed has been issued by County.

**Counterparts:** The Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

**CONSULTANT SIGNATURE(s)**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**COUNTY SIGNATURES**

Chair: \_\_\_\_\_

Date: \_\_\_\_\_

Recording Secretary: \_\_\_\_\_

**COUNTY LEGAL REVIEW:**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT A - STATEMENT OF WORK

### RFP 22234-01/ #2019-14

#### STATEMENT of WORK and DELIVERY SCHEDULE

Jennings Ave: OR 99E to Oatfield Rd

##### **A. PROJECT DESCRIPTION and OVERVIEW of SERVICES**

Clackamas County (the “County” or “Agency”) is contracting with Consultant for Services in connection with the following project (the “Project”): Jennings Ave: OR 99E to Oatfield Rd Project.

County obtained \$3,625,283 in Federal-Aid Surface Transportation Program Urban (STP-U) funds to make improvements to Jennings Avenue. Jennings Avenue is a minor arterial in a densely populated residential area and the length of improvements is approximately  $\frac{3}{4}$  of a mile (approximately 3,860 feet). These improvements include constructing a curb tight sidewalk on the north side of the road and constructing bike lanes on both sides of the road for enhanced bicycle and pedestrian connectivity. The total estimated Project cost is \$4,040,213.

County is contracting with Consultant for Services to prepare preliminary and final roadway and stormwater designs, construction cost estimates, identify all necessary environmental permits, identify right-of-way and easement acquisitions, and perform all services necessary to acquire environmental permits and right-of-way and easements.

The tasks associated with this Statement of Work (SOW) include providing project management, surveying, geotechnical, hydraulic analysis, stormwater design, roadway design, right-of-way acquisition, environmental (wetlands, archaeological and historical), and final engineering design services for the Project. The work covered by this SOW includes the preparation of reports, and final engineering documents. All documents and other deliverables are to be completely described in the English system unit of measure. A Project Location Map is included as Attachment A.

##### **General Expectation**

Consultant commits to provide Services (and oversee and direct the design of the Project, if applicable) to obtain the greatest long-term value for the government, and to promote prudent expenditure of public funds within the constraints of the Project, program, context, budget and cost-effective sustainability principles. Consultant shall: (i) avoid expenditures for aesthetic effect which are disproportionate to the Project as a whole; (ii) use recycled/recyclable products to the maximum extent economically feasible in the performance of this Contract, and (iii) apprise County throughout the Project concerning any issues or decisions with potential economic impact to the Project.

## Project Phasing

This Project is divided into 2 phases:

- Preliminary Engineering/Design Acceptance Package (DAP), Right of Way, Final Design and Bid Assistance Phase
- Construction Engineering, Inspection and Construction Contract Administration Phase

This statement of work (“SOW”) addresses the first phase of the Project. Following completion of a given phase, County may, at its discretion:

- Amend this Contract to add the next phase (or various elements), or
- Elect to complete subsequent phase tasks with in-house staff, or
- Assign subsequent phase tasks to another consulting firm.

County and Consultant shall negotiate the detailed tasks, deliverables, schedule and costs for each phase County elects to add. Each added phase will be authorized only by written Contract amendment with all required approvals and signatures.

## County Responsibilities

- County review periods do not exceed 3 weeks.
- County will be primary point of contact with ODOT regarding CONTRACT and design aspects of this Project.
- Unless otherwise stated within a specific task, the County will be responsible for payment of any associated permit, processing, application or other fees necessary for the Project.

## Acronyms and Definitions

AASHTO	.....American Association of State Highway and Transportation Officials	FHWA	.....Federal Highway Administration
APM	.....Agency Project Manager (Clackamas County)	HAER	.....Historic American Engineering Record
APWA	.....American Public Works Association	HEC	.....Hydraulic Engineering Circular
BA	.....Biological Assessment	HEC-RAS	.....Hydrologic Engineering Center – River Analysis System
BO	.....Biological Opinion	LAL	.....ODOT Local Agency Liaison
CADD	.....Computer Automated Drafting and Design	NE	.....No Effects
CFR	.....Code of Federal Regulations	NEPA	.....National Environmental Policy Act
Corps	.....US Army Corps of Engineers	NMFS	.....National Marine Fisheries Service
DAP	.....Design Acceptance Package	ODA	.....Oregon Department of Agriculture
DEQ	.....Department of Environmental Quality	ODFW	.....Oregon Department of Fish and Wildlife
DOE	.....Determination of Eligibility	ODOT	.....Oregon Department of Transportation
DSL	.....Department of State Lands	OHWM	.....Ordinary High Water Mark
DTM	.....Digital Terrain Model		
EFH	.....Essential Fish Habitat		
ESA	.....Endangered Species Act		

ONHD.....Oregon Natural Heritage  
Database  
ORBIC .....Oregon Biodiversity  
Information Center  
PCE.....Programmatic Categorical  
Exclusion  
ROE.....Right of Entry  
ROW .....Right of Way  
SHPO .....State Historic Preservation  
Office  
SLOPES IV.Standard Local Operating  
Procedures for Endangered  
Species (SLOPES) IV  
SOW.....Statement of Work  
T&E.....Threatened & Endangered  
USACE .....U.S. Army Corps of Engineers  
USFS.....United States Forest Service



## **B. STANDARDS and GENERAL REQUIREMENTS**

### **1. Standards**

The following standards and general requirements shall apply to this SOW:

#### ***General***

- Oregon Standard Specifications for Construction, ODOT 2018 Standard Specifications
- ODOT Local Agency Guidelines

#### ***Environmental***

- Wetland Delineation Manual, United States Corp of Engineers/Environmental Protection Agency (USCOE/EPA) 1987

#### ***Geotechnical***

- Soil and Rock Classification Manual, ODOT 1986
- Geotechnical Design Manual, ODOT April 2011

#### ***Hydraulic***

- Hydraulic Manual, Part I & II, ODOT 2008

#### ***Roadway***

- AASHTO A Policy on Geometric Design of Highways and Streets
- Clackamas County Roadway Standards
- Manual of Uniform Traffic Control Devices
- Standards Manual of the Oregon Utilities Coordinating Council

#### ***Structural***

- ODOT Geotechnical Design Manual

#### ***Right-of-Way***

- ODOT Right of Way Manual
- Real Estate Acquisition Guide for Local Public Agencies
- Uniform Standards of Professional Appraisal Practice (USPAP)
- Uniform Appraisal Standards for Federal Land Acquisition

### **2. Software and Format Requirements**

Software standards and formats include but are not limited to the following:

- Each draft and final text-based or spreadsheet-based deliverable shall be provided in MS Office file formats (i.e., MS Word, Excel, etc.) and must be fully compatible with version used by County.
- Consultant shall submit draft and final deliverables in electronic format via e-mail (and hard copy if requested).
- Consultant shall also submit any graphic files accompanying reports separately in .jpg or .tif formats unless specified differently by County.
- The Contractor shall develop the design concepts utilizing AutoCAD Civil 3D version 2015 or later.

3. **Professional Licenses, Registrations and Qualifications**

- Consultant and its subconsultants must be duly licensed where required by law to perform the Services, and must be under the "responsible charge" (as that term is defined under ORS Chapter 672) of a person so licensed, as required by the applicable Oregon Revised Statutes and Oregon Administrative Rules, and other applicable laws (or must be otherwise exempt from any licensing requirements applicable to the Services being performed).
- County may require Consultant's Personnel to demonstrate a competency in the particular area/discipline to which they are assigned. This may include, but is not limited to, submittal of license number, resume, and work samples from previously completed projects.

4. **General Requirements**

- **Endorsement of Data.** Consultant shall place their official Oregon Registered Engineer seal and signature on all engineering design drawings and specifications furnished to County, as well as any other materials where professional standards require such seal and signature.
- **Safety Equipment.** Consultant shall provide and use all safety equipment including (but not limited to) hard hats, safety vests and clothing if required by State and Federal regulations and County policies and procedures for the Services under the Contract.
- **Quality Plan.** Consultant shall perform QC reviews prior to submittal of plans, design revisions and computations, estimates, and other deliverables in conformance with Consultant's approved Quality Plan on file with Agency.

5. **RESERVED**

6. **ADA Compliance – Assessment, Design, Inspection.** When the Services under this Contract include **assessment or design (or both)** for curb ramps, sidewalks or pedestrian-activated signals (new, modifications or upgrades), Consultant shall:

- a. Utilize ODOT standards to assess and ensure Project compliance with the Americans with Disabilities Act of 1990 ("ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards; and shall
- b. Follow ODOT's processes for design, modification, upgrade, or construction of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form.

When the Services under this Contract include **inspection** of curb ramps, sidewalks or pedestrian-activated signals (new, modifications or upgrades), all such inspections shall include inspection for compliance with the standards and requirements in a. and b. above. In addition, at Project completion, Consultant shall send an ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to ODOT's Project Manager for each curb ramp constructed, modified, upgraded, or improved as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

<http://www.oregon.gov/ODOT/Forms/Pages/default.aspx>

Above references to curb ramps, sidewalks or pedestrian-activated signals also include, when applicable, shared use paths, transit stops, park-and-rides and on-street parking.

### **C. REVIEW, COMMENT and SCHEDULE OVERVIEW**

- Consultant shall submit all deliverables to APM or designee unless otherwise noted in specific tasks.
- Consultant shall make revisions to address County review comments and submit revised deliverable(s) to APM within 10 business days of receipt of County review comments, unless a different timeframe is specified for specific tasks or otherwise agreed to in writing by County.

### **D. PROJECT COOPERATION**

Consultant shall only be responsible for those obligations and deliverables identified as being assigned to Consultant (or its subconsultants) in this Contract and the Statement of Work. All work assigned to other entities, other than subconsultants, is not subject to this Contract, but shall be the subject of separate Intergovernmental Agreements or contracts which will contain the obligations of those entities. Any tasks or deliverables assigned to a subconsultant shall be construed as being the responsibility of Consultant. Any Consultant tasks or deliverables which are contingent upon receiving information, resources, assistance, or cooperation in any way from another entity (other than subconsultants) as described in this Statement of Work shall be subject to the following guidelines:

- a. At the first indication of non-cooperation, Consultant shall provide written notice to County's Contract Administrator of the specific acts or inaction indicating non-cooperation and of any deliverables that may be delayed due to such lack of cooperation by other entities referenced in the Statement of Work.
- b. County's Contract Administrator shall contact the non-cooperative entity/s to discuss the matter and attempt to correct the problem and expedite items determined to be delaying Consultant/Project.

If Consultant has followed the notification process described in section "a", and delinquency or delay of any deliverable is found to be a result of the failure of other referenced entities to provide information, resources, assistance, or cooperation, as described in the Statement of Work, Consultant will not be found in breach or default with respect to delinquencies beyond any reasonable control of Consultant; nor shall Consultant be assessed or liable for any damages arising as a result of such delinquencies. Neither shall County be responsible or liable for any damages to Consultant as the result of such non-cooperation by other entities. County's Contract Administrator will negotiate with Consultant in the best interest of the government, and may revise the delivery schedule to allow for delinquencies beyond any reasonable control of Consultant. Revised delivery dates beyond the expiration date require an amendment to the Contract.

### **E. TASKS, DELIVERABLES and SCHEDULE**

Consultant shall complete all tasks and provide all deliverables (collectively, the "Services") included in this SOW, unless specifically stated otherwise in a particular task. Consultant shall provide all labor, equipment and materials to manage, coordinate, and complete the work in accordance with the performance and delivery schedules identified in this SOW.

The tasks associated with this SOW are anticipated to occur from September of 2019 to June of 2021, or approximately twenty-two (22) months.

**Task Numbering:** For purposes of standardization, task numbers in this SOW may be non-sequential and do not necessarily begin with "1" on the first task.

## **TASK 1 – PROJECT MANAGEMENT**

Consultant shall provide management and coordination of Services under this SOW for delivery of Tasks and Deliverables according to the agreed upon delivery schedule and the level of effort defined by this SOW.

### **1.1 Administration & Record Keeping**

Consultant shall:

- Prepare a Project design schedule using the Critical Path Method (“CPM”). The Project schedule must include, but is not limited to: all major authorized tasks as agreed upon by the Parties, Project design team meetings, and milestones (type and date) specified in this SOW and required to complete all Services under this Contract. Updates to the Project schedule shall be made during the course of the Project if milestone dates are modified. For budgeting purposes, it is assumed that up to two (2) Project schedule updates will be necessary;
- Prepare invoices and progress reports according to the Invoice Requirements Guide referenced in the Contract under Section H.5 - Invoices. Each progress report must:
  - Include a summary of previous period’s activities and the planned activities for the upcoming period;
  - Identify percentage completed of each Task/Deliverable;
  - Reconcile the budget with the actual amount billed to date;
  - Identify unresolved issues and concerns that may affect the SOW, schedule and/or budget for Services.

For budgeting purposes, it is assumed that up to 22 progress reports will be necessary.

- Develop and maintain a Project file to include survey and engineering computations, assumptions, meeting agendas and minutes, working drawings, quality control and review documentation, correspondence, and memoranda. (See Terms & Conditions No. 16 Records Maintenance; Access).

### **1.1 Consultant Deliverables and Schedule**

Consultant shall provide:

- Project Design Schedule submitted within 7 calendar days of NTP. Submit electronically to the APM (PDF) and provide an electronic file MS Project format to the APM.
- Updated Project Design Schedule, as necessary, via timeline agreed to by APM. Submit electronically to the APM (PDF) and provide an electronic file (MS Project format to the APM.
- Progress reports and invoices submitted electronically to APM no later than the 20th calendar day of the month following the reporting period.

### **1.2 Coordination**

Consultant shall:

- Coordinate with the APM as the main point of contact for coordination and management of Consultant Services under the Contract;
- Contact other County staff, other LPA staff, and regulatory agency staff, if necessary throughout the Contract, to gather any additional information needed for the Project, Project site, regulations and guidance;
- Provide overall management, direction and coordination of staff (including sub-consultants, if any) to include any necessary internal Consultant staff meetings;

## **1.2 Consultant Deliverables and Schedule**

Consultant shall provide:

- On-going coordination and communication as needed to appropriately manage the Services under this Contract (no tangible deliverables for this task).

## **1.3 Project Meetings**

### **1.3.1 Project Kickoff Meeting**

Consultant shall organize, conduct, prepare for and attend a Project kickoff meeting. The Project kickoff meeting will be held at Clackamas County's Office (150 Beavercreek Road, Oregon City) with County, ODOT LAL, Consultant's PM and other necessary Consultant staff in attendance. Consultant shall prepare the meeting agenda with input from the County. The purpose of the Project kickoff meeting is to review Project issues such as SOW; work products and deliverables; schedules; budgets; right of way; utility coordination/design; design criteria; guidance documents and standards, and quality control. Consultant shall schedule Project kickoff meeting within 10 business days of Notice to Proceed (NTP). Consultant shall prepare draft meeting minutes for review. For budgeting purposes, it is assumed that up to 6 Consultant staff shall attend the 1.5 hour Project kickoff meeting.

### **1.3.2 Project Development Team Meetings**

Consultant shall organize, conduct, prepare for and attend up to 2 Project Development Team (PDT) Meetings in-person. Each in-person PDT meeting will be held at Clackamas County's Office (150 Beavercreek Road, Oregon City) with County, Consultant's PM and other necessary Consultant staff in attendance. Consultant shall prepare the meeting agenda with input from the County. Consultant shall prepare draft and final meeting minutes to be distributed to County, and all other meeting participants. For budgeting purposes, it is assumed that up to (3) Consultant staff shall attend each in-person PDT meeting.

## **1.3 Consultant Deliverables and Schedule**

For each meeting, Consultant shall provide:

- Meeting agenda submitted electronically to APM, and all other meeting participants 2 business days prior to meeting.
- Draft meeting minutes submitted electronically to APM, and all other meeting participants within 2 business days of meeting.
- Final meeting minutes submitted electronically to APM, and all other meeting participants within 7 business days of meeting.

## **TASK 2 SURVEY**

Consultant shall survey this Project for the areas as described in Section A of this SOW unless otherwise noted in specific tasks. Deliverables are to be scheduled as per Task 1 Project Management.

Specific to County standards, Consultant shall follow Ground Confidence Point Analysis and Report standards as defined in the *2015 ODOT Survey Policy and Procedure Manual* to ensure DTM accuracy along the entire project corridor.

All other project survey methods must adhere to Clackamas County Survey Standards and Procedures.

### **Right of Entry ("ROE")**

County will obtain the ROE's required for Consultant's field reconnaissance work, estimated to be needed for 50 to 60 properties. County and Consultant acknowledge that once requests to owners are



sent out, it can take up to 3 to 4 weeks to receive the ROE authorization back from the landowners due to schedules and availability.

If ROEs are required for geotechnical boring outside the right of way, Consultant shall provide a map (see Task 6.2) identifying the approximate location of the proposed boring(s) on the parcel. This map will be included in the County's mailing to the affected property owner to assist the owner in understanding the proposed work. Consultant shall allow adequate time for the County to obtain this additional ROE.

In addition to the Project ROE referenced above, Consultant shall notify land owners as required by ORS 672.047 (Right of Entry by Land Surveyor). Entry notifications by mail require 7 days advance notice from time of mailing.

## **2.1 Research**

Consultant shall obtain the research data for the area as described in Section A of this SOW.

Consultant shall perform data research as necessary to prepare for and support Project activities, and to produce Project maps and reports as called for in subsequent tasks. The typical records required for research are, but not limited to; vesting deeds, land sales contracts, County assessor plats and road records, subdivision plats, General Land Office plats, ODOT ROW drawings, railroad maps, county surveys, road dedications and vacations.

### **Existing Vesting Deeds and Property Ownerships**

Consultant shall obtain a "Trio listing kit" (typically provided by a title company). Consultant shall identify property ownership within and adjacent to the Project site by investigating property deeds and county tax records. Consultant shall itemize and report property ownership and owner contact information to APM. Consultant shall submit each deed in its own electronic file. Consultant shall include all vesting deeds referenced in the property vesting deeds if needed to resolve the property boundary.

Consultant shall also obtain up to fifty (50) preliminary title reports for properties within the Project area to identify easements, dedications, ownership vesting, and other items affecting the ROW location. Consultant shall submit each preliminary title report in its own electronic file.

### **Existing Right of Way Records**

Consultant shall research and obtain copies of surveys, subdivision plats, and land partition plats filed in the county surveyor's office related to the properties potentially impacted by the Project. This information is used to find monuments that might be impacted from the Project and establish property lines for area calculations when new ROW is acquired.

Consultant shall research and obtain copies of county assessor maps, General Land Office plats, and county road records related to the properties potentially impacted by the Project.

Consultant shall research and obtain available data about Government Public Lands Survey Corners and their references in the Project area as defined in the SOW.

### Existing Horizontal/Vertical Control Stations

Consultant shall research and obtain data about horizontal and vertical control points as required for the Project area including triangulation stations, GPS stations, benchmarks, and prior Project control surveys from County, Federal, county, city, and other governmental agencies.

### Existing Utility Records

Consultant shall research and obtain available facility maps and as-built construction plan data pertaining to utilities in or near the Project area from the County, One-Call Service, county, city, or other governmental agencies and utility companies.

### Existing Water Way Data

Consultant shall research and obtain publicly available maps and data about Boardman Creek, springs or flowing water in or near the Project area from County, Federal, and other governmental agencies. Consultant shall include items such as but not limited to: FEMA Flood maps, tide gage data and stream navigability per Division of State Lands designation.

## **2.1 Consultant Deliverables and Schedule**

Consultant shall incorporate information from this task into the deliverables listed in Tasks 2.4, 2.5, and 14.2 as required for delivery of documents in subsequent tasks.

## **2.2 Horizontal And Vertical Control Network**

The purpose of this task is to provide the means by which the Project can be located relative to horizontal and vertical datum, map projection, and coordinate systems. Consultant shall establish a horizontal and vertical control network using the datum associated with the Project area or as approved by the County.

Consultant shall establish horizontal control according to County standards using Terrestrial (Theodolite and EDM), GPS (Static or Rapid Static) or a combination of both. Consultant shall set and adjust control points in conformance with County guidelines.

Consultant shall use 5/8" Rebar with plastic caps, or other County approved control point, for the GPS and network points. Consultant shall establish a minimum of 3 GPS control points through the length of the survey.

Consultant shall establish vertical control using differential leveling. Consultant shall get County approval before using other methods such as trigonometric leveling and elevations derived from GPS.

## **2.2 Consultant Deliverables and Schedule**

Consultant shall:

- Place control points in the ground at the Project location.
- Incorporate the information listed below into the deliverables listed in Tasks 2.4 and 2.5 as required for delivery of documents in subsequent tasks.
  - An adjustment report for one or more of the following, Least Squares adjustment for networks, an approved traverse adjustment method for traverses and/or a GPS adjustment report when using GPS.
  - An ASCII file containing the coordinates for every network point set and found.
  - If the levels were electronically processed then one copy each of the following: original raw level file as collected in the field, ASCII file showing level closure data,

- ASCII file with point number, northing, easting, elevations, and descriptions on all network points and/or an ASCII file showing the level rod readings.
- Original field notes for the control network and one scanned copy of the original field notes in “.pdf” format.
  - An AutoCAD design file (\*.dwg) containing all the set and tied control points to show elevations.
  - An AutoCAD file (\*.dwg) containing all vertical and horizontal control points stored as Autodesk Civil 3D points to show elevations.

### **2.3 Monument Recovery**

The purpose of this task is to address the requirements of ORS 209.150 and 209.155, and other survey related statutes for construction Projects.

Consultant shall survey for but not limited to: Government corners, geodetic control stations, bench marks, ROW monuments, property boundary markers, and roadway alignment markers.

#### **Identify, Search and Recover Monuments**

Consultant shall recover existing monuments to preserve the locations of any monuments of record that are endangered by any activity related to the Project and to resolve roadways and property lines. Consultant shall provide a record (field notes) of monuments searched for, the date of the search and the results of the search.

#### **Field Survey of Recovered Monuments**

Consultant shall locate, measure and document the location of survey markers and monuments of record for property boundaries and/or ROW needed within the areas.

### **2.3 Consultant Deliverables and Schedule**

Consultant shall incorporate the information gathered in this task including field notes into the deliverables listed in Tasks 2.4 and 2.5 as required for delivery of documents in subsequent tasks.

### **2.4 Topographic Data, Detailed Base Map And Digital Terrain Model (DTM)**

The purpose of this task is to collect the existing topographic features and create a detailed basemap and DTM for the Project area as described in Section A of this SOW.

#### **Topographic Data Collection**

Consultant shall collect topographic data between the boundaries described in Section A of this SOW. Consultant shall collect and tie topographic data of man-made and/or natural features using a variety of County approved methods. These methods include but are not limited to: collecting the data using terrestrial (Theodolite and EDM), GPS (RTK), 3D Laser Scanning, or station and offset.

Consultant shall contact Oregon Utility Notification Center to request a pre-survey utility locates. Consultant shall keep the locate request number and ticket information within the Project file.

Consultant shall record in the field notes the utility ownership when describing the line data points. Consultant shall record all visible utility identifications in the field notes, such as numbers shown on power and/or telephone poles, vault tags, telephone pedestals (aka risers), cabinets, meters, fences or screened enclosures for gas regulators, and sanitary sewer pump stations. This data is needed for the County or Consultant to communicate where the facility may be in conflict with the Project.

Consultant shall measure and record all utility facility structures (e.g. concrete pads, top slab of vaults, pump station housing, barrier screens or fenced enclosures). Consultant shall make a request to the utility owner to pull the cover whenever a manhole is found locked or bolted.

Consultant shall collect any hydraulic or culvert information in accordance with the “ODOT Hydraulics Manual” on streams and rivers that pass under or are parallel to any roadways in the area.

Consultant shall tie environmental and archaeological features that have been identified within the Project area. These features include, but are not limited to, wetlands, high water mark, T&E species, hazmat sites, archaeology sites and sensitive plants.

Consultant shall tie improvements or vegetation within proposed easement boundaries or within close proximity of proposed easement boundaries when the proximity to the improvement has the potential to cause the improvement to suffer damage.

Consultant shall tie and record utility test hole information under Task 5.4.4.

#### Detailed Basemap

Consultant shall take applicable topographic data collected in this subtask and create a detailed basemap file. A detailed basemap has all features drafted to County provided criteria.

#### Digital Terrain Model (DTM)

Consultant shall create a 3 dimensional digital terrain surface using all relevant topographical data collected in this subtask.

Consultant shall collect the topographical data to create points and break lines in adequate quantity and in proper placement, to accurately represent the surface of the ground. Consultant shall collect confidence points in the field and generate a confidence point report that conforms with the **2015 ODOT Survey Policy and Procedure Manual**. The topographical data and confidence points must meet County Criteria. Consultant shall generate 0.5 foot minor contours and 1 foot major contours throughout the DTM for a QC analysis of the surface.

### **2.4 Consultant Deliverables and Schedule**

Consultant shall provide:

- The following deliverables and submit them electronically (.PDF) to the APM within 60 calendar days of NTP:
  - 1 copy of field notes
  - Copy of the AutoCAD Files (\*.dwg) Detailed Base Map with Civil 3D DTM
  - All files for the network control points in (ASCII) format
  - Files of listing kits
  - Files of survey research
  - Files of tax maps
  - Confidence Point Report
  - Control Point Worksheet with datum used and descriptions of control points found and set

### **2.5 Existing ROW & Boundary Resolution**

The purpose of this task is to identify the location of the existing Centerline(s), ROW lines and property line(s) as necessary, to perpetuate the location of the monuments found, to document the control used for

this Project area, and establish property lines for area calculations when new ROW is acquired. This task addresses the requirements of ORS 209.150 and 209.155 and other survey related statutes.

#### Resolve ROW and Property Boundaries

Consultant shall resolve the location of the ROW within the present limits as described in this SOW.

Consultant shall resolve identified ROW centerlines alignments, ROW lines and property boundaries abutting the roadway and along the proposed route of construction, using accepted concepts and rationale methods of survey professional judgment. Consultant shall evaluate the available evidence for relevance, adequacy, and reliability; use professional judgment in determining the type and quantity of evidence available, and the influence given each factor; and determine a best-fit with the evidence and probable location of ROW alignments and property boundaries for the area as described. Consultant shall provide a detailed narrative of available evidence, desirable evidence not available, rationale for decisions made, and a summary of the conclusions in the establishment of the ROW centerline, ROW lines (including all jogs) and property boundary lines.

#### Control, Recovery, Retracement Record of Survey

If the Project will impact property or existing survey monuments, Consultant shall create a Record of Survey (ROS) which meets County and ORS requirements. The survey(s) must be prepared for 18-inch by 24-inch sheet plots. The “**Control**” survey must consist of Geodetic and Terrestrial points set for the Project. The “**Recovery**” is the documentation of the monuments recovered for the Project. The “**Retracement**” is a record of resolved ROW centerlines, ROW lines and/or property boundaries. These surveys may be combined or separate surveys as directed by County.

Consultant shall submit a draft ROS to LPA for review. Consultant shall address comments received from the LPA and submit the final ROS for filing to the appropriate County in the format required. Consultant shall pay for County ROS filing fee, up to \$600.

### **2.5. Consultant Deliverables and Schedule**

Consultant shall provide:

- Draft ROS to APM (transmittal letter only to APM) within 6 months of NTP.
- Copy of Final ROS to APM upon submittal to County for filing within 14 calendar days of Surveyor Office’s comments.

### **Task 2.6 Staking (CONTINGENCY – See Section F)**

Consultant shall place stakes during Project development to demarcate existing ROW, proposed ROW, and proposed easements to support Task 14 activities. A Notice to Proceed is required from the County to perform this task.

### **2.6 Consultant Deliverables and Schedule**

Consultant shall physically place stakes and/or paint marks, supported by:

- Original data collector printout field notes in .pdf format per the schedule developed in Task 1 Project Management.
- Text file of ‘as-staked’ points with associated exhibit map in .pdf format per the schedule developed in Task 1 Project Management.
- Provide staking services for up to 39 parcels.

### **TASK 3 ENVIRONMENTAL SERVICES**

Consultant shall complete necessary field and literature investigations to provide the County environmental documentation and permits required for completion of this Project. Consultant shall complete the following environmental investigations, documentation, and permits for this Project, unless marked as a CONTINGENCY TASK, which Consultant shall complete only following County and Consultant's written agreement on cost and receipt of NTP from County (see Section F for additional contingency task requirements):

- Final NEPA CE and PCE Documentation
- Archaeological Resources Literature Review/Field Reconnaissance/Baseline Report
- Phase 1 Archaeological Investigation with Technical Report (CONTINGENCY)
- Historic Resources Baseline Report
- Hazardous Materials Study and Services
- Surface and Subsurface Soil Samples (CONTINGENCY)
- Endangered Species Act (ESA) No Effect Memorandum
- Federal-Aid Highway Program ("FAHP") ESA Programmatic Documentation
- Wetland/Waters of the U.S./State Fieldwork and Determination Memo
- Wetland/Waters of the U.S./State Delineation Report (CONTINGENCY)
- USACE/DSL Joint Permit Application and DEQ 401 Certification (CONTINGENCY)

For all of Task 3, the Project Area is the same as described in Section A of this SOW unless otherwise noted and described in specific Task 3 subtasks.

County is responsible for obtaining all Rights-of Entry ("ROE"). Consultant shall not conduct any fieldwork outside of County ROW and/or property until all ROEs for private property have been obtained and are in field staff's possession.

#### **3.1 NEPA Categorical Exclusion ("CE") and Programmatic CE ("PCE") and Supporting Documentation**

Consultant shall provide technical assistance and services necessary to meet FHWA NEPA classification documentation requirements for NEPA Categorical Exclusion projects ("Class 2 Projects").

##### **3.1.1 RESERVED**

##### **3.1.2 RESERVED**

##### **3.1.3 Final NEPA CE and PCE Documentation**

Consultant shall compile data completed in tasks 3.2 through 3.7 to complete a draft PCE Approval or CE Closeout Document and submit to County for review and approval. Consultant shall coordinate with County on compiling data completed during Project development to deliver the draft PCE Approval or CE Closeout Document to County to finalize and approve.

Only after all relevant tasks 3.2 through 3.7 have been completed and approved by County can this task be completed. In the draft PCE Approval or CE Closeout document, Consultant shall follow the specific protocols in the CE/PCE Procedures to complete drafts of the following:

- After County has accepted tasks 3.2 through 3.7, complete each of the resource narrative sections using protocols and standard language contained in the "Procedures for Completing NEPA for



Categorical Exclusion and Programmatic Categorical Exclusion Projects with Oregon Division Federal-Aid Highway Program Nexus” (known as the CE/PCE Procedures, available here: [http://www.oregon.gov/ODOT/GeoEnvironmental/Docs\\_NEPA/NEPA\\_CE-PCE-Procedures.pdf](http://www.oregon.gov/ODOT/GeoEnvironmental/Docs_NEPA/NEPA_CE-PCE-Procedures.pdf)

- Include the supporting documents required as per the CE/PCE Procedures, as applicable to the Project (e.g. Endangered Species Act (“ESA”) approvals, cultural resources documentation, hazardous materials, etc.). If submittal of the draft PCE or CE document requires supporting documentation not developed under this SOW, it will be provided by APM.

County and ODOT Environmental staff will review all draft PCE Approval and CE Closeout documents, send back to Consultant for any revisions needed. ODOT staff will approve, on behalf of FHWA, the accepted PCE Approval document as per the PCE Agreement, or ODOT will submit the accepted CE Closeout Document to FHWA Oregon Division for FHWA review and approval.

### **3.1.3 Consultant Deliverables and Schedule**

Consultant shall prepare and submit:

- One electronic copy of the Draft PCE Approval or CE Closeout Document and supporting documentation to APM for review per Task 1 Project Design Schedule.
- One electronic copy of the Final County accepted Draft PCE Approval or CE Closeout Document and supporting documentation to APM 2 weeks following receipt of draft review comments.

## **3.2 Archaeological Resources**

All archaeological sub tasks must be completed by registered professional archaeologists who meet the Secretary of the Interior's professional standards for Archaeology ([36 CFR 61, Appendix A](#)) and who have been “qualified” through the [Agency Cultural Resources Consultant Qualification Training Program](#).

### **3.2.1 Literature Review/Field Reconnaissance/Baseline Report**

The purpose of this task is for the Consultant to conduct archival and background research in combination with field reconnaissance to determine the presence or absence of high probability landforms or archaeological sites within the Area of Potential Effect (“APE”) and to make recommendations for further archaeological review.

Consultant shall conduct a Literature Review for the APE, and include a description of the APE, detailed historic context and ethno-historic information, methodology, recommendations for future work, detailed bibliography, maps, and photos. Consultant shall provide the APM with a minimum of 5 business days advance notice prior to Field Reconnaissance.

Consultant shall examine the following data bases and/or documents:

- the State Historic Preservation Office (“SHPO”) database in Salem, OR; appropriate Tribal Historic Preservation Office (“THPO”) database if APE is within a recognized reservation boundary;
- General Land Office (“GLO”) maps;
- Sanborn Fire Insurance Maps;
- other records archives (i.e. historical societies; tribal archives) for known/potential prehistoric and historic archaeological resources within a one mile radius of the APE.

Field Reconnaissance must include a pedestrian survey. Consultant shall conduct pedestrian surveys within the APE and must include areas where ground will be disturbed by Project construction including temporary access roads, as well as staging areas, material sources, disposal sites, detours, etc.

Pedestrian survey methods must be consistent with the latest updated [SHPO guidelines](#). The recommended maximum spacing of transects is 20 meters apart and may vary depending on terrain features and/or ground visibility. Consultant shall determine transect spacing based on professional judgment to ensure that all probable site locations are discovered. All cultural resources observable on the surface and in exposed subsurface profiles must be identified and recorded. Field Reconnaissance must enable Consultant to identify areas of high and low probability for archaeological resources and to determine the appropriate level of survey or subsurface exploratory probing. Up to 24 discovery probes shall be excavated if requested by County, and shall be conducted under Contingency Task 3.2.2.

Consultant shall prepare a Baseline Report that must contain the following:

- A completed Oregon SHPO Archaeological Report Cover Page
- A purpose statement and full Project description including:
  1. ODOT Key Number and Federal Aid Number
  2. Location and legal description
  3. General environmental description
  4. Historic context
  5. Proposed construction activities
  6. Defined APE and APE map
  7. Total acreage of impact
- Results of SHPO/THPO database search including:
  1. Brief summary of previous archaeological research completed within one mile of APE
  2. Brief summary of recorded archaeological features within one mile of APE; include eligibility discussion if available.
- Results of GLO and Sanborn map review including:
  1. Brief summary of features (trails, buildings, etc.) depicted on maps and within APE; include eligibility discussion if available.
- Description of pedestrian survey methods including date of survey, types of transects used, and names and duties of personnel conducting the survey
- Findings of pedestrian survey including ground conditions (percent visibility) and difficulties encountered, if any
- Identification of areas of high and low probability for archaeological resources within APE
- Recommendations for appropriate level of additional survey and/or subsurface exploratory probing, if any
- Site and isolate forms (hard copies) for newly discovered archaeological sites and isolates. Consultant shall also complete the SHPO online site form.
- List of references cited
- Location map at 1:24,000 scale; aerial image (Google map acceptable) showing APE; and representative digital images of current conditions within APE

### **3.2.1 Consultant Deliverables and Schedule**

Consultant shall prepare and submit:

- One electronic copy (in WORD format) of the Draft Baseline Report to APM and LAPM for review per Task 1 Project Design Schedule.

- One electronic copy (in Word and PDF format) of the Final Baseline Report to APM and LAPM 2 weeks following receipt of draft review comments.

### **3.3 Historic Resources**

All historic sub tasks must be completed by professional historians who meet the Secretary of the Interior's professional standards for architectural history and/or history ([36 CFR 61, Appendix A](#)) and who have been “qualified” through the [ODOT Cultural Resources Consultant Qualification Training Program](#).

#### **3.3.1 Historic Resources Baseline Report**

The purpose of the Historic Resource Baseline Report is to identify and characterize the historic resource issues using APE to determine what may be impacted by a transportation project. The Historic Resource Baseline Report is a scoping report that is not intended to be a comprehensive technical report. As part of developing the Historic Resource Baseline Report, Consultant shall review the SHPO Statewide Inventory and conduct an on-site reconnaissance of the Project area.

The Historic Resources Baseline Report must include, but is not limited to:

- Project description and a description of the APE;
- Photographs of resources that are 45 years old or older;
- Descriptions of historic resources that are 45 years old or older, including a discussion of each potential NRHP eligibility (A-D); and
- Map that identifies the location of each potential historic resource within the APE

It is anticipated that up to 15 historic resources will be identified in the baseline report.

#### **3.3.1 Consultant Deliverables and Schedule**

Consultant shall prepare and submit:

- One electronic copy (in WORD format) of the Draft Historic Resources Baseline Report to APM and LAPM for review per Task 1 Project Design Schedule.
- One electronic copy (in WORD and PDF format) of the Final Historic Resources Baseline Report to APM and LAPM 2 weeks following receipt of draft review comments.

#### **3.3.2 Section 106 Determination of Eligibility (DOE) (CONTINGENCY – See Section F)**

A DOE is a finding that a property meets the eligibility criteria (A-D) for inclusion in the NRHP. A DOE shall include a brief physical description, history, context, significance, map (the historic boundary included) and photographs of resources that possess integrity of one or all of the following: location, design, setting, materials, workmanship, feeling, and association. If requested by County staff, then Consultant shall prepare draft and final DOE Reports for each historic resource (up to 2) that is considered potentially eligible for the NRHP. For authorized DOE Report(s), Consultant shall also prepare a Project Submittal Letter in ODOT-approved format.

Consultant shall prepare each DOE using the most recent Agency form. Each DOE must include but is not limited to:

- Physical description of the resource and contributing and non-contributing features, including the history and context of the resource, the design, setting, materials, workmanship, feeling, and association;
- Map showing the location and orientation of the resource and its historic boundary; and
- Photographs of the resource, including historic photographs and current photographs.

ODOT Cultural/Historic Resource Specialist will transmit the final DOE(s) to SHPO and will obtain the necessary concurrence documentation from SHPO.

### **3.3.2 Consultant Deliverables and Schedule**

Consultant shall prepare and submit:

- Draft DOE(s) (in electronic WORD format) for each resource that is potentially eligible for the NRHP to APM and LAPM for review per Task 1 Project Design Schedule.
- Final DOE(s) (in electronic PDF format) for each resource that is potentially eligible for the NRHP to APM and LAPM 2 weeks following receipt of draft review comments.

### **3.3.3 Section 106 Finding of Effect (“FOE”) (CONTINGENCY – See Section F)**

Following coordination with County and ODOT staff, Consultant shall prepare a FOE Report for each resource (up to 2) that is listed or has been determined eligible for the NRHP following the format provided by ODOT (including coordination of public outreach). The FOE Report must include a narrative assessment of the potential effects of the Project to the historic resource’s qualities that make it significant and/or eligible or listed. Consultant shall include in the FOE Report a discussion of the alternatives to avoid or minimize adverse effects. When requested by County, Consultant shall coordinate with the ODOT Project Designer or Project Team Leader to discuss available options to avoid or minimize adverse effects to listed or eligible historic resources. Consultant shall coordinate with ODOT to ensure that FHWA concurs with the proposed FOE on the resources prior to transmittal to SHPO. A Project Submittal Letter must be submitted with an FOE Report.

Consultant shall coordinate with ODOT to obtain FHWA concurrence with the proposed FOE on the resource(s), prior to submittal to SHPO.

Consultant shall prepare FOE(s) using the most current Agency form. The FOE(s) must:

- Assess the Project’s effects on the historic resource including: physical destruction or damage; alteration or rehabilitation; removal; change of setting; introduction of visual, atmospheric or audible elements; neglect of a property; or transfer or sale of ownership; and
- Discuss alternatives to avoid or minimize adverse effects to the resource.

ODOT Historic Resource Specialist will transmit the final FOE(s) to SHPO and will obtain the necessary concurrence documentation from SHPO.

### **3.3.3 Consultant Deliverables and Schedule**

Consultant shall prepare and submit:

- Draft FOE(s) (in electronic WORD format) with Project Submittal Letter for each effected resource that is listed or eligible for the NRHP to APM and LAPM for review per Task 1 Project Design Schedule.
- Final FOE(s) (in electronic WORD and PDF format) with Project Submittal Letter for each effected resource that is listed or eligible for the NRHP to APM and LAPM 2 weeks following receipt of draft review comments.

### **Task 3.4 Hazardous Materials Study and Services**

The purpose of this task is to facilitate County compliance with environmental regulations pertaining to site cleanup and waste management. The services to be provided shall include:

- Conduct a Hazardous Materials Corridor Study to identify potential sources of contamination that could impact property acquisition or construction.

- Review available existing information to evaluate historic land use.
- Conduct geophysical surveys to identify potential underground storage tanks or buried debris.
- Screen and collect soil and water samples from geotechnical borings which may be drilled in areas with known or suspected subsurface contamination.
- Collect surface material samples from road shoulders to determine if the material meets Oregon Department of Environmental Quality (DEQ) standards for clean fill.
- Conduct site-specific subsurface investigations to determine if soil or groundwater is contaminated within the project corridor.
- Prepare contract bid documents for handling and disposal of contaminated materials.

Consultant shall conduct all tasks in accordance with ODOT’s HazMat Program Procedures Guidebook (March 2010) and applicable industry standards. Consultant shall submit deliverables in an electronic format (native file and \*.pdf) version using Microsoft® Word.

**Task 3.4.1 Hazardous Materials Corridor Study**

Consultant shall conduct a Hazardous Materials Corridor Study (HMCS) according to the following standards and guides:

- “Hazardous Waste Guide for Project Development” (1990), by the American Association of State Highway and Transportation Officials (AASHTO) Special Committee on Environment, Archaeology and Historic Preservation.
- “ODOT Hazmat Program Procedures Guidebook,” 2010, Oregon Department of Transportation.
- “Level 1 Corridor Study” report template, Oregon Department of Transportation.
- And the requirements listed below.

Consultant shall conduct a site reconnaissance to identify potential sources of contamination that could impact construction or result in County acquiring contaminated property.

Consultant shall review available federal and State environmental databases to identify sites that could potentially impact the project, using the minimum search radii listed below.

Environmental Database	Search Radius
State-Equivalent NPL List (ECSIS)	0.25 mile
Oregon Permitted Landfill List	0.25 mile
State Leaking (L)UST List	0.25 mile
Federal RCRA Generators List	Site and Adjoining
State Fire Marshal’s Spill Response List	Site and Adjoining
State Certified UST List	Site and Adjoining

Consultant shall use commercially available database reports such as provided by EDR (Environmental Data Resources) to determine whether contamination from adjacent facilities is likely to impact project construction.

Consultant shall review the Oregon Water Resources Department on-line database at [OWRD Well Database](#) to determine if water wells or monitoring wells are located on or adjacent to the project corridor.

Consultant shall review project files at the DEQ Northwest Region office in Portland, OR for all facilities considered to be high risk for impacting project construction. Consultant shall use DEQ file information to delineate contaminated areas within the project corridor and identify if that information is sufficient to develop construction plans and specifications without additional sampling.

Consultant shall conduct historical research to identify past uses of the project corridor and adjacent properties, using one or more of the following resources:

- Sanborn Fire Insurance Maps
- Aerial Photographs
- Reverse City Directories
- Historic property ownership/occupancy records or building permits

The resource(s) selected must, if possible, provide historic information regarding land use back to 1935 at 10 year intervals, or the Consultant must demonstrate that such information is not readily available.

Consultant shall review pertinent records that may be made available by the County as they relate to the environmental condition of the project corridor.

Consultant shall assess if soil sampling is necessary to determine if soil excavated from the project corridor shall meet DEQ clean fill screening levels for contaminants-of-concern including pesticides, herbicides, metals, polynuclear aromatic hydrocarbons, petroleum hydrocarbons, and solid waste.

Consultant shall prepare a HMCS report summarizing the information obtained through the activities listed above, using ODOT's Corridor Report Template available at [ODOT Report Template](#).

The report must include photographs documenting project corridor observations. The report must include conclusions that identify specific sources of contamination that could impact project construction and recommendations for further investigation, if needed.

**Deliverables/Schedule:**

Consultant shall provide:

- Draft HMCS report to the County within eight weeks following Notice to Proceed (NTP).
- Final HMCS report within one week following receipt of County comments.

**Task 3.4.2 Geotechnical Drilling Support (CONTINGENCY – See Section F)**

If recommended by Task 3.4.1, Consultant shall monitor for hazardous materials during geotechnical drilling (see Task 6.2). Consultant shall field screen drill spoils and collect soil and groundwater samples sufficient to adequately determine whether or not subsurface materials are contaminated. The results shall be presented in a technical memorandum. The memorandum shall discuss soil and groundwater sample methods, analytical results, and conclusions regarding the presence or absence of subsurface contamination.

**Task 3.4.2.1 Work Plan and Health and Safety Plan (CONTINGENCY – See Section F)**

Consultant shall prepare a Work Plan and Health and Safety Plan (HASP) describing how samples shall be collected from geotechnical borings under Task 3.4.2.2. The Work Plan shall describe the number of borings, sample collection, sampling equipment, equipment decontamination, and handling and shipment of samples. The HASP shall be completed in accordance with 29 CFR 1910.120 and OAR



437-02-100 et seq., and all other state and Federal worker health and safety regulations applicable for Task 3.4.2.2. The HASP should reflect the sampling and characterization activities described in the Work Plan. The HASP should cover the activities of all Consultant, sub-consultant, and County employees.

Consultant shall submit the draft Work Plan/HASP to the County for review and comment. No field work activities under Task 3.4.2.2 shall proceed until the Consultant has received written authorization (e-mail) from the County.

**Deliverables/Schedule:**

Consultant shall provide:

- Draft Work Plan/HASP within two weeks following NTP.
- Final Work Plan/HASP within one week following receipt of County comments.

**Task 3.4.2.2 Sample Collection and Reporting (CONTINGENCY – See Section F)**

Consultant shall collect soil and groundwater samples from up to four (4) geotechnical borings to determine whether or not contaminants-of-concern are present. Samples shall be collected as described in the approved Work Plan. As many as three soil samples and one water sample shall be collected from each boring recommended for monitoring. Soil samples shall be field screened for volatile organic compounds using a photoionization detector (PID).

Investigation derived waste (IDW) generated from borings monitored under Task 3.4.2.2 shall be placed in 55-gallon drums and temporarily stored on County property pending the results of laboratory analyses. The contents and date of accumulation must be marked on each drum. The Consultant shall be responsible for disposal of all IDW.

Soil samples shall be analyzed for:

- NWTPH-Gx, NWTPH-Dx, Method 8260B VOCs, Method 8270 SIM PAHs, RCRA 8 total metals, and total antimony, copper, and zinc.

Groundwater samples shall be analyzed for:

- NWTPH-Gx, NWTPH-Dx, Method 8260B VOCs, Method 8270 SIM PAHs, and dissolved RCRA 8 metals.

Samples shall be shipped to Pace Analytical in Mt. Juliet, TN. Consultant shall submit samples using the State chain of custody form, indicating the laboratory must bill the County directly and requesting a turn-around time of five business days. Consultant shall be responsible for shipping samples under chain-of-custody procedures, such that the samples arrive at the laboratory undamaged. County will pay all shipping costs directly to the laboratory.

Consultant shall prepare a technical memorandum summarizing the results of Task 3.4.2.2. The report shall include:

- Field observations, photographs, description of sampling, laboratory reports, and data tables summarizing analytical results.
- Evaluation of the laboratory results versus DEQ's clean fill screening levels and risk-based

concentrations for construction and excavation workers.

- Conclusions that identify specific sources of contamination that could impact project construction.
- Recommendations for handling and disposal of contaminated soil or groundwater that may be generated during construction activities.

**Deliverables/Schedule:**

Consultant shall provide:

- Draft technical memorandum within four weeks following completion of Task 6.2.
- Final technical memorandum within one week following receipt of County comments.

**Task 3.4.3 Reserved**

**Task 3.4.4 Reserved**

**Task 3.4.5 Shoulder Material Investigation (CONTINGENCY – See Section F)**

Consultant shall collect surface soil samples within the limits of the project corridor for laboratory analysis. The results of those analyses must be compared with Oregon Department of Environmental Quality (DEQ) guidelines to determine if surface material excavated for project construction can be handled and disposed as clean fill.

**Task 3.4.5.1 Work Plan and Health and Safety Plan (CONTINGENCY – See Section F)**

Consultant shall prepare a Work Plan and HASP describing sample collection for Task 3.4.5.2. The Work Plan must describe sample collection methods, sampling equipment, equipment decontamination, and handling and shipment of samples. The HASP must be completed in accordance with 29 CFR 1910.120, OAR 437-02-100 et seq., and all other state and Federal worker health and safety regulations applicable for Task 3.4.5.2. The HASP should reflect the sampling and characterization activities described in the Work Plan. The HASP should cover the activities of all Consultant, sub-consultant, and County employees. The HASP should include a traffic control plan, if needed.

The Consultant shall obtain all required permits from the County District Permit Office prior to initiating fieldwork activities. The District contact person is listed in B.4, General Requirements

Consultant shall submit the draft Work Plan/HASP to the County for review and comment. No field work activities under Task 3.4.5.2 shall proceed until after the Consultant has received written authorization (e-mail) from the County.

**Deliverables/Schedule:**

Consultant shall provide:

- Draft Work Plan/HASP to the County within four weeks following NTP for this contingency.
- Final Work Plan/HASP within one week following receipt of County comments.

**Task 3.4.5.2 Sample Collection and Reporting (CONTINGENCY – See Section F)**

Consultant shall collect surface soil samples from up to sixteen (16) locations. Consultant shall provide flagging and traffic control as needed to complete sample collection. At each location, samples must be collected at 0 to 6 feet from edge of pavement. Soil samples shall be obtained from 0 to 0.5 feet and 1 to 1.5 feet below ground surface. Consultant shall mark the proposed sample locations in white paint and

obtain utility locates for all locations. Consultant shall provide flagging and traffic control as needed to complete sample collection. Sample locations must be backfilled with excavation spoils; there must be no investigation derived waste (IDW). Equipment decontamination water can be disposed on-site.

Consultant shall ship the samples to Pace Analytical in Mt. Juliet, TN where they will be composited into as many as four (4) groups based on depth and distance from edge of pavement. The composite samples must be analyzed for the following:

- NWTPH-Dx, Method 8270 SIM PAHs, Method 8151 herbicides, Method 8081 pesticides, Method 8082 PCBs, and total metals according to Methods 6020 and 7471A.
- Total metals analyses will include antimony, arsenic, barium, cadmium, chromium, copper, lead, selenium, zinc, and mercury.

Consultant shall submit samples using the State chain of custody form, indicating the laboratory must bill the County directly and requesting a turn-around time of five business days. Consultant shall be responsible for shipping samples under chain-of-custody procedures, such that the samples arrive at the laboratory undamaged. County will pay all shipping costs directly to the laboratory.

Consultant shall prepare a Surface Material Investigation (SMI) report summarizing the results of Task 3.4.5.2. The report must include the following:

- Field observations, photographs, description of sampling methods, laboratory reports, and tables summarizing the analytical results.
- Evaluation of the laboratory results compared to DEQ's clean fill screening levels.
- Conclusions that identify specific sources of contamination that could impact project construction.
- Recommendations for handling and disposal of contaminated surface soil generated during construction.

**Deliverables/Schedule:**

Consultant shall provide:

- Draft SMI report within six weeks following completion of Task 3.4.5.1.
- Final SMI report within one week following receipt of County comments.

**Task 3.4.6 Site-Specific Investigations (CONTINGENCY – See Section F)**

If recommended by Task 3.4.1, Consultant shall collect subsurface soil and groundwater samples in the project corridor or on as many as one (1) adjacent private property. Soil and groundwater samples must be collected for contaminant analysis and the results presented in a Preliminary Site Investigation (PSI) report. The report must discuss soil and groundwater sample methods, laboratory analytical results, and conclusions regarding the presence or absence of subsurface contamination.

**Task 3.4.6.1 Work Plan and Health and Safety Plan (CONTINGENCY – See Section F)**

Consultant shall prepare a Work Plan and Health and Safety Plan describing sample collection for Task 3.4.6.2. The Work Plan must describe the number of borings, sample collection, sampling equipment, equipment decontamination, and handling and shipment of samples. The Health and Safety Plan (HASP) must be completed in accordance with 29 CFR 1910.120 and OAR 437-02-100 et seq., and all other state and Federal worker health and safety regulations applicable for Task 3.4.6.2. The HASP must reflect the sampling and characterization activities described in the Work Plan. The HASP should cover

the activities of all Consultant, sub-consultant, and County employees. The HASP must include a traffic control plan, if needed.

The Consultant shall obtain all required permits from the County prior to initiating fieldwork activities. The County contact person is listed in B.4, General Requirements

Consultant shall submit the draft Work Plan/HASP to the Agency for review and comment. Consultant shall not proceed with field work activities under Task 3.4.6.2 until they have received written authorization (e-mail) from the County.

**Deliverables/Schedule:**

Consultant shall provide:

- Draft Site-Specific Investigation Work Plan/HASP within four weeks following NTP.
- Final Site-Specific Investigation Work Plan/HASP within one week following receipt of County comments.

**Task 3.4.6.2 Sample Collection and Reporting (CONTINGENCY – See Section F)**

The Consultant shall conduct subsurface investigations within the project corridor or on as many as one (1) adjacent private property. Consultant shall collect surface soil samples from up to four (4) direct push borings on each adjacent private property as described in the approved Work Plan. The borings must each be drilled depths ranging from ten (10) to fifteen (15) feet below ground surface. Two soil samples must be collected from each boring. If groundwater is encountered, then a groundwater sample must be collected. Samples collected from boreholes will be field screened for volatile organic compounds using a photoionization detector (PID). Consultant shall provide flagging and traffic control as needed to complete drilling and sampling. County shall obtain right-of-entry permit for private property access if needed.

All test bore holes must be backfilled according to Oregon Water Resources Department regulations immediately following sample collection. The top six inches of each borehole must be filled with asphalt or concrete to match the existing pavement condition. IDW generated from drilling and testing must be placed in 55-gallon drums and temporarily stored on County property pending the results of laboratory analyses. The contents and date of accumulation must be marked on each drum. The Consultant shall be responsible for disposal of all IDW.

Soil shall be analyzed for:

- NWTPH-Gx, NWTPH-Dx, Method 8260B VOCs, Method 8270 SIM PAHs, and total cadmium, chromium, and lead.

Groundwater samples shall be analyzed for:

- NWTPH-Gx, NWTPH-Dx, Method 8260B VOCs, and Method 8270 SIM PAHs.

Consultant shall ship samples to Pace Analytical in Mt. Juliet, TN using the State chain of custody form, indicating the laboratory must bill the County directly and requesting a turn-around time of five business days. Consultant shall be responsible for shipping samples under chain-of-custody procedures, such that the samples arrive at the laboratory undamaged. County will pay all shipping costs directly to the laboratory.

Consultant shall prepare a PSI report summarizing the results of Task 3.4.6.2. The report must include the following:

- Field observations, photographs, description of sampling, laboratory reports, and data tables summarizing analytical results.
- Evaluation of the laboratory results versus DEQ's clean fill screening levels and risk-based concentrations for construction and excavation workers.
- Conclusions that identify specific sources of contamination that could impact project construction.
- Recommendations for handling and disposal of contaminated soil or groundwater that may be generated from construction activities.

**Deliverables/Schedule:**

Consultant shall provide:

- Draft PSI report within four weeks following completion of Task 3.4.6.1.
- Final PSI within one week following receipt of County comments.

**Task 3.4.7 Design Acceptance Narrative and Contract Documents (CONTINGENCY – See Section F)**

Consultant shall prepare and include in the Design Acceptance Package (DAP) (Task 11), a narrative and plans, specifications, and estimates (PS&E) for all construction activities impacted by contaminated materials. The DAP Narrative summarizes the results, conclusions, and recommendations provided in the Hazardous Materials Corridor Study and other studies completed prior to the DAP project milestone.

Consultant shall provide plans specifications and estimates for managing hazardous materials to be submitted with the major project milestones: Preliminary, Advance, and Final Plans (as covered in Task 14). Each milestone will be reviewed by the Region 1 Hazardous Material unit.

Comments received during the technical review shall be addressed by the Consultant and incorporated into PS&E deliverables prior to the Project Team Review for each major project milestone. Comments received during Project Team Reviews shall be addressed by the Consultant, documented in the project review comment log, and incorporated in the deliverables for the next milestone.

Consultant shall prepare the PS&E using the ODOT's existing templates. Boilerplate special provisions templates for contaminated media (Sections 00290 through 00299) are available at [ODOT Special Provisions](#).

The special provisions shall include health and safety, sampling, waste management, and reporting requirements. Associated plans shall indicate the locations of contamination and hazardous materials that might impact project construction.

**Deliverables/Schedule:** Consultant shall provide:

- Draft DAP Narrative two weeks prior to DAP Completion milestone
- Final DAP Narrative within one week following receipt of County comments.
- PS&E documents for technical review no later than two weeks prior to each of the major project milestones: Preliminary, Advance, and Final Plans
- PS&E documents for Project Development Team review no later than two business days prior to each of the major project milestones: Preliminary, Advance, and Final Plans

- Responses to review comments shall be added to the Project Comment Log within one week following receipt of County comments
- Final, stamped PS&E documents within one week following receipt of County Final Plans comments.

### **3.5 Biological Resources Compliance and Permitting**

Consultant shall complete the appropriate biological resources tasks presented below based on the 60% construction plans. General biological work shall be executed by a qualified biologist who meets the following minimum qualifications: 3 full years of environmental analysis or resource Project management experience and a Bachelor’s degree that included 30-quarter or 20-semester hours in biology, environmental science, natural science, or closely related field. An individual who makes determinations of effect under the ESA and prepares ESA documentation must also be an ESA qualified biologist as per ODOT Technical Services Bulletin GE14-03(B) or most current ([http://www.oregon.gov/ODOT/Engineering/Doc\\_TechnicalGuidance/GE14-03b.pdf](http://www.oregon.gov/ODOT/Engineering/Doc_TechnicalGuidance/GE14-03b.pdf)).

#### **3.5.1 Endangered Species Act (ESA) No Effect Memorandum**

When ODOT determines or approves Consultant’s determination that a proposed action will not affect state or federal ESA listed or proposed species or critical habitat, a No Effects Memorandum (“NE Memo”) is prepared to document compliance with the state and federal ESAs. The NE Memo must be completed by an ESA qualified biologist as described above.

Consultant shall:

- Use a qualified ESA biologist(s) to conduct 1 field survey of the area of API at the appropriate time for each ESA listed plant and wildlife species with the potential to be present in the API and their potential suitable habitats following standard/appropriate field survey techniques.
- Conduct Oregon Department of Agriculture (“ODA”), Oregon Department of Fish and Wildlife (“ODFW”), National Marine Fisheries Service (“NMFS”), and U.S. Fish and Wildlife Service (“USFWS”) database searches to acquire ESA information for the Project area.
- Contact the ODOT and/or Oregon Biodiversity Information Center (“ORBIC”) to obtain data regarding listed threatened and endangered species as well as those proposed for listing under the federal and state ESA that may occur within the API. Consultant shall determine if Federally-listed species and their habitat will be affected by the Project.
- Make ESA effects determinations following the analysis of gathered ESA information. If a determination is No Effect for at least one listed or proposed species, obtain ODOT concurrence on the No Effects determination.
- Coordinate with design staff and County to develop appropriate measures (i.e., construction special provisions) to avoid impacting listed species proposed for coverage in the NE Memo if avoidance measures are necessary to obtain the No Effect determination.
- Prepare draft NE Memo for the Project area using the most recent ODOT provided form; provide to ODOT and APM for review and comment.
- Prepare final NE Memo for ODOT and County acceptance.
- Notify ODOT and County immediately if Consultant determines that an ESA determination of No Effect is no longer appropriate.



### **3.5.1 Consultant Deliverables and Schedule**

Consultant shall prepare and submit:

- One electronic PDF copy of the Draft No Effect Memo to APM for review per Task 1 Project Design Schedule.
- One electronic PDF copy of the Final No Effect Memo to APM within 2 weeks following receipt of draft review comments.
- One electronic PDF copy of the Draft construction special provisions relevant to NE determination to APM and LAPM for review per Task 1 Project Design Schedule.
- Final construction special provisions relevant to NE determination to APM and LAPM within 2 weeks following receipt of draft review comments.

### **3.5.2 Federal-Aid Highway Program (“FAHP”) ESA Programmatic Documentation**

Consultant shall coordinate and document compliance with the federal ESA for NMFS trust species and USFWS trust species using the FAHP Programmatic. The FAHP ESA Programmatic is appropriate for most Projects with Federal-Aid funding. ESA documentation must be completed by a qualified biologist (as per Section B.3 of this SOW). All documentation for the Project design phase must follow procedures contained in the most recent version of the ODOT FAHP Programmatic User’s Guide available on the ODOT Biology ESA website: (<http://www.oregon.gov/ODOT/GeoEnvironmental/Pages/ESA.aspx>). FAHP ESA programmatic documentation must be completed by an ESA qualified biologist as described above.

Consultant shall:

- Facilitate early coordination with NMFS and/or USFWS according to Section 2.3 of the FAHP Programmatic User’s Guide.
- Coordinate with the APM and ODOT biologist to complete the FAHP Project Stakeholder list as shown in Table 4 of the FAHP Programmatic User’s Guide.
- Utilizing the latest template available on the FAHP Programmatic website, prepare and submit the Project Initiation Form to the REC for the Project.
- Contact the ODOT biologist via phone or email for site-specific information on ESA species including but not limited to background reports and ORBIC special status species lists.
- Contact via phone or email ODA, ODFW, NMFS and/or USFWS for additional site-specific information on ESA species.
- Review all ESA information provided or obtained.
- Facilitate and attend 1 site visit with the County, ODOT and USFWS and/or NMFS to discuss Project impacts, applicable FAHP Programmatic standards, and possible modifications to the Project to meet FAHP Programmatic standards; Consultant shall prepare site visit meeting notes that include topics discussed and recommendations.
- Prepare and submit all required FAHP Programmatic forms to the County and ODOT REC for the Project, utilizing the latest templates available on the ODOT ESA website. In addition to the Stakeholder List and Initiation Form detailed above, the following forms are required as part of the FAHP Project Notification documents:
  - Notification Form
  - Additional Info as required
  - Additional Stormwater Information
  - Change Form

### **3.5.2 Consultant Deliverables and Schedule**

Consultant shall prepare and submit:

- Draft Site Visit Meeting Notes within 1 week of the meeting to APM and ODOT REC
- Final Site Visit Meeting Notes within 1 week of receiving comments to APM and ODOT REC
- Draft FAHP Programmatic Project Initiation Form within 2 weeks of Kickoff Meeting to APM and ODOT REC
- Final FAHP Programmatic Project Initiation Form within 1 week of receiving comments to APM and ODOT REC
- Draft FAHP Programmatic Project Notification documents per Task 1 Project Design Schedule to APM and ODOT REC
- Final FAHP Programmatic Project Notification documents 2 weeks of receiving comment to APM and ODOT REC

### **3.6 WETLAND AND WATER RESOURCES**

Consultant shall research and prepare documentation necessary to satisfy the requirements of Section 404 of the Clean Water Act and Oregon's Removal Fill Law (ORS 196.795-196.990).

#### **3.6.1 Wetland/Waters of the U.S./State Determination**

Consultant shall complete a wetland field determination and ordinary high water mark "(OHWM)" demarcation for the Project Study Area ("PSA").

Consultant shall use available data (including but not limited to: soil surveys, aerial photos, National/Local Wetland Inventory maps ("NWI/LWI")) as well as data gathered in the field to document the presence or absence of wetlands within the PSA.

Consultant shall:

- Determine wetland boundaries within the PSA in accordance with the criteria and methods described in the *1987 Corps of Engineers Wetland Delineation Manual (Environmental Laboratory Technical Report Y-87-1)* and appropriate Regional Supplements.
- Ensure that field methods used and data collected meet the U.S. Army Corps of Engineers ("USACE") and DSL technical requirements for wetland delineations and ordinary high water demarcations. Collect and record wetland delineation data on approved wetland determination data sheets for possible inclusion with a wetland delineation report.
- Place flags in the field to show the Wetland Boundary and OHWM elevation of all jurisdictional surface waters. Coordinate with survey team to locate flagging. Use of handheld GPS is allowed if it has the accuracy necessary for the regulatory agencies and the staff are willing to escort County representatives on a field site tour.
- Conduct a pebble count at two (2) locations and collect two (2) streambed sediment samples in the vicinity of the bridge for grain size analysis.

Consultant shall prepare one (1) Wetland/Waters of the U.S./Delineation Report (Wetland Delineation Report) in accordance with DSL and USACE requirements and standards. The Wetland Delineation Report shall include all required information outlined in Oregon Administrative Rules (OAR) 141-090-035.

Consultant shall prepare appropriate graphics required by USACE and DSL to accompany the Wetland Delineation Report. This shall include a site location map, tax lot map, National Wetland Inventory or Local Wetland Inventory map (if available), soil survey map, and aerial overlay map. Consultant's

Wetland Delineation Report must also include wetland delineation boundary mapping (figures) as finalized by Consultant and as per the requirements of DSL, and a color photographic record depicting existing conditions.

Consultant shall also complete the appropriate DSL cover page for submitting the Wetland Delineation Report to for review and approval. Consultant shall attend one site visit with County representatives if determined necessary by USACE and/or DSL, and shall respond to their comments.

Consultant shall submit the Wetland Delineation Report to DSL and USACE. Consultant shall be responsible for signing the wetland delineation report cover page. Consultant shall be responsible for payment of associated fees, anticipated to total \$454. County and ODOT shall review the draft Wetland Delineation Report and shall provide comments to Consultant within three weeks of receipt of the draft. Consultant shall make appropriate modifications to the draft Wetland Delineation Report in response to the comments and shall prepare the final for submittal.

### **3.6.1 Consultant Deliverables and Schedule**

Consultant shall prepare and submit:

- Electronic copies of the Draft Wetland Delineation Report to County for review per the schedule in Task 1.
- Electronic copy (PDF) of the Final Wetland Delineation Report to County two weeks following receipt of draft review comments per the schedule in Task 1.
- Final Wetland Delineation Report to DSL and the USACE per the schedule in Task 1.
- Sketch map of approximate wetland and waters boundaries to County (if present) per the schedule in Task 1.
- Notification to County (via email) if wetlands are present and will be impacted per the schedule in Task 1.
- Electronic copy (Word) of the draft Wetland Determination to APM for review per the schedule in Task 1.
- Electronic copy (PDF) of the Final Wetland Determination to APM 2 weeks following receipt of draft review comments.

### **3.6.2 Functional Assessments (CONTINGENCY – See Section F)**

Consultant shall prepare Stream and Wetland Functional Assessments, as appropriate for the expected project impacts, in accordance with DSL and USACE requirements and standards. The functional assessments shall be conducted following the *Stream Function Assessment Method* (SFAM), *Oregon Rapid Wetland Assessment Protocol* (ORWAP), *Hydrogeomorphic (HGM)-based Assessment of Oregon Wetland and Riparian Sites* or best professional judgment, as appropriate for the site conditions and level of impact.

Consultant shall submit the Functional Assessments with the Joint Permit Applications to DSL and USACE. County and ODOT will review the draft Functional Assessments and will provide comments to Consultant within three weeks of receipt of the draft. Consultant shall make appropriate modifications to the draft Functional Assessments in response to the comments and shall prepare the final for submittal.

### **3.6.2 Consultant Deliverables and Schedule**

Consultant shall prepare and submit:

- Electronic copy of the Draft Functional Assessments to County for review per the schedule in Task 1.

- Electronic copy (PDF) of the Final Functional Assessments to County two weeks following receipt of draft review comments per the schedule in Task 1.
- Final Functional Assessments to DSL and the USACE per the schedule in Task 1.

### **3.7 Environmental Permits and Clearances**

Consultant shall research and prepare state and federal permit applications required for the Project as described in the subtasks listed below.

#### **3.7.1 USACE/DSL Joint Permit Application (“JPA”) and DEQ Section 401 Certification (CONTINGENCY – See Section F)**

Consultant shall prepare a complete JPA meeting all the applicable requirements of the most recent version of the Oregon Department of State Lands Removal-Fill Guide and USACE permit application standards. Consultant shall submit the JPA and Stormwater Management Plan to the Oregon Department of Environmental Quality (DEQ) to obtain Section 401 Water Quality Certification.

LPA will select the preferred design for the Project prior to the preparation of the JPA.

Consultant shall:

- Prepare JPA for a USACE Section 404 Nationwide Permit and a DSL General Permit or General Authorization, to authorize work within the jurisdictional waters and any wetlands found in the Project area.
- Provide pre submittal coordination with DEQ to inform them of the Project and verify requirements and documentation necessary to apply for Section 401 Water Quality Certification.
- Provide pre-submittal coordination with representatives of the USACE and DSL to confirm permitting requirements and application procedures. Consultant shall coordinate and attend one pre-submittal site visit with DSL and the USACE to discuss the Project and address the resource agencies concerns.
- Verify that features and impacts are correctly identified for the permit application.
- Prepare all JPA required drawings, maps, photographs, site descriptions, and any additional information required by DSL or the USACE for inclusion in the JPA.
- Prepare narratives and descriptions on Project purpose and need and Project alternatives using Project development information provided by LPA as necessary to complete the JPA.
- Respond to questions or comments raised by the USACE and DSL following the submission of the JPA. This task may include correspondence and clarification of the JPA in the form of telephone calls, letters, or e-mails, to clarify regulatory County concerns and to facilitate the issuance of the USACE and DSL permits for this Project. No regulatory County site visit or in person meetings will be required.
- Submit to DEQ a copy of the complete Joint Permit Application, Stormwater Management Plan, and provide a transmittal letter to DEQ requesting Section 401 Water Quality Certification for the Project.

All required wetland and/or waters mitigation will be satisfied with Payment-to-Provide or purchase of mitigation bank credits. On-site or off-site compensatory wetland/waters mitigation coordination and planning will not be required.

Due to the varied nature of post-submittal coordination, it is expected that the Consultant shall not expend more than eight hours for office review and coordination time for post-submittal coordination with DSL, USACE, and DEQ. APM will be responsible for obtaining Land Use Planning Signature on the JPA.

### **3.7.1 Consultant Deliverables and Schedule**

Consultant shall prepare and submit:

- Electronic copy of the Draft JPA Submittal Package to County and LAPM for review per Task 1 Project Design Schedule.
- Electronic copy (PDF) of the Final JPA Submittal Package to County and LAPM 2 weeks following receipt of draft review comments.

### **3.7.2 Oregon Department of Environmental Quality (DEQ) 1200-C Permit Application (CONTINGENCY – See Section F)**

If the Project design results in an overall ground disturbance that is greater than one acre, a DEQ 1200-C Permit will be required.

Consultant shall provide pre-submittal coordination with representatives of the DEQ and LPA to confirm permitting requirements and application procedures. Consultant coordination includes correspondence in the form of telephone calls, e-mail, letters, and memos to document permit needs. Consultant shall assemble permit application materials including the application forms, plans, drawings, memos, details, and specifications to support the permit application.

Consultant shall provide support to successfully transfer the 1200-C permit to the eventual construction contractor by providing a detailed technical memorandum to LPA fully describing all steps, processes, and timeline to transfer the Permit to the Contractor.

County will acquire Planning Department Signature and LPA will be listed as applicant on the 1200-C application.

### **3.7.2 Consultant Deliverables and Schedule**

Consultant shall prepare and submit:

- Electronic copy of the Draft 1200-C Permit Application Package to County and LAPM for review per Task 1 Project Design Schedule.
- Electronic copy (PDF) of the Final 1200-C Permit Application Package to County and LAPM 2 weeks following receipt of draft review comments.
- 1200-C Permit Transfer Technical Memorandum to LAPM per Task 1 Project Design Schedule

## **TASK 4 PUBLIC INVOLVEMENT SUPPORT**

County will have responsibility for the Project public involvement and outreach program. Project information and status will be provided on the County's website.

### **4.1 Public Involvement Plan (Reserved)**

### **4.2 Public Involvement Meetings**

Consultant shall attend up to 4 meetings, as listed below, to provide Project information and address specific questions and concerns related to the Project.

- 1 public involvement coordination meeting (1 hour length)
- 1 stakeholder meetings
- 2 public open house meetings

County shall document input received from the meetings and prepare written summaries.

Consultant shall prepare fact sheets and exhibits for the meetings and County intends to display these fact sheets and exhibits on its website. Consultant shall prepare:

- Project fact sheets,
- Aerial graphics of the proposed project,
- Roll maps.

County will schedule, coordinate the location and advertise the meeting. For budgeting purposes, it is assumed that up to 2 Consultant staff shall attend each 2 hour public meeting.

#### **4.2 Consultant Deliverables and Schedule:**

Consultant shall:

- Provide up to 2 fact sheets, 1 aerial graphic and 1 aerial graphic of the proposed project 10 business days prior to each scheduled meeting. The files must be provided in draft and final forms in PDF. The County will place the PDFs on the County's website.

### **TASK 5 - UTILITIES**

Consultant shall perform the coordination of all utility facilities within the Project limits. If any utility is nonresponsive or uncooperative, Consultant shall notify County upon completing the level of effort defined by the BOC, and County will communicate with the utility to affect a solution.

#### **5.1 Utility Location and Coordination**

Consultant shall perform utility coordination and liaison activities with utility owners/operators for the Project. Consultant shall comply with the current version of the Utility coordination policy requirements as described in the ODOT Right of Way Manual. This work includes reviewing utilities that may be in conflict with the Project work and utility relocation coordination with the utility owners to resolve those potential conflicts. Additionally, Consultant shall obtain system mapping from utilities located within the Project limits and shall conduct a utility reconnaissance of the project areas to determine visual evidence of underground and aboveground utility facilities. The Consultant shall use this information to confirm the survey map as developed under Task 2, Surveying.

The utilities with potential facilities within the Project limits are:

- Portland General Electric (PGE)
- Clackamas County
- NW Natural Gas
- Clackamas River Water District
- Oak Lodge Water Services District
- Frontier
- Verizon
- AT&T
- MCI
- Comcast Cable

#### **5.1 Consultant Deliverables and Schedule**

Consultant shall provide:

- Existing utility information gathered in Task 5.1 to be included in the survey map/base map



- Record of communications with each utility within the Project limits. Copies of communication record must be provided to APM and LAPM within 3 business days of request.

## **5.2 Utility Report**

Consultant shall prepare a draft and final “Utility Report” for those utilities located within the Project limits. The “Utility Report” should include as many of the following items that are known and applicable:

- Description of utilities located within the Project limits
- Utility facility’s structure dimension
- Probable buried depth of cover or aerial lowest height of wire
- General description of utility facility structure material
- Reliance upon other utilities in the vicinity (joint use facility)
- Description of the means used to verify facility location and limits of conflict (test hole data a.k.a. “pothole” verification)
- Proposed project construction requirements
- Potential utility conflicts
- Probable conflict resolution (relocation or adjustment concept)

## **5.2 Consultant Deliverables and Schedule**

Consultant shall provide:

- Draft Utility Report to be submitted with DAP Package under Task 13.
- Final Utility Report to be submitted to APM within 10 business-days receipt of comments on draft document.

## **5.3 Utility Coordination Meetings**

To facilitate the development of each utility relocation plan, Consultant shall organize, conduct, prepare for and attend the following utility coordination meetings with utilities within the Project limits:

- One (1) on-site group utility meeting with potentially affected utilities, to coordinate relocation plan, construction constraints, means and methods, work sequence and schedule limitations.

Consultant shall prepare a meeting agenda, and meeting minutes summarizing the discussions at the group meeting.

For budgeting purposes it is assumed that up to two (2) Consultant staff shall attend each 2 hour meeting, including travel time.

## **5.3 Consultant Deliverables and Schedule**

For each meeting Consultant shall provide to APM:

- Meeting Agenda and Meeting Minutes for each meeting; agenda due within two (2) business days prior to meeting; meeting minutes due within five (5) business days after meeting

## **5.4 Utility Relocations**

Consultant shall coordinate the efforts of the utility agencies in developing and executing a plan for relocating utilities to resolve conflicts with the Project design. As part of that effort, Consultant shall complete the following:

- Preparation of Project Notification Letter(s)/Utility Conflict Notices
- Review of Utility Relocation Plans and Preparation of Relocation Time Requirement Letters

### **5.4.1 Utility Conflict Analysis and Conflict Notices**

Consultant shall produce a Conflict Map or Conflict Plan Sheets that corresponds to the Conflict List, color-coding each type of conflict.

For those Utilities where no conflict is anticipated, Consultant shall provide a Project Notification (first notice per OAR 734-055-045). Consultant shall use County Project Notification letter templates. The Project Notification letter must include plan sheets indicating location of existing utilities in relationship to proposed project.

For those Utilities where a conflict is anticipated, Consultant shall provide a Conflict Notice (first notice per OAR 734-055-045). Consultant shall use County Project Conflict letter templates.

Consultant's coordination schedule must allow each utility a 30-day calendar period to respond with a proposal from date of the notice. Multiple notices or revised notices must be created and delivered to a utility owner when additional facility conflicts become apparent and the utility owner's response time may be shortened to seven (7) calendar days.

### **5.4.1 Consultant Deliverables and Schedule**

Consultant shall provide:

- Project Notification letter(s) and Conflict Notice(s) with enclosures to Utilities; due within 10 business days after submittal of DAP plans to County.
- Revised Conflict Analysis (Advance Plans) within ten (10) business days of submittal of Advance Plans.
- List of Utility Conflicts, and Conflict Plan Sheets within ten (10) business days of submittal of Advance Plans.
- Revised Conflict Notice(s) within ten (10) business days of submittal of Advance Plans.
- One (1) \*.pdf of Project Notification/ Utility Conflict letters with enclosures to APM, LAPM and, State Utility Liaison (SUL).

### **5.4.2 RESERVED**

### **5.4.3 Review Utility Relocation Plans and Relocation Time Requirement Letters**

Consultant shall examine all received utility relocation plans for completeness and accuracy. If relocation plans do not resolve utility conflict, Consultant shall provide comments to Utility for correction and re-submittal. Utilities are anticipated to relocate into a proposed utility easement on the north side of Jennings Avenue.

Consultant shall negotiate with each utility a utility construction work schedule that conforms to the project construction schedule. Consultant shall deliver a Time Requirement Letter (second notice) to each utility owner accepting or modifying the required utility facility construction time.

### **5.4.3 Consultant Deliverables and Schedule**

Consultant shall provide:

- The final utility relocation plan(s) submitted to the County within ten (10) business days after acceptance.
- Time Requirement Letter(s) submitted to each utility and SUL within twenty (20) business days after submittal of Advance Plans to County.

### **Task 5.4.4 Reserved**

### **5.5 RESERVED**

### **5.6 Utility Certification**

Consultant shall complete and sign the Utility Certification verifying that all utility work has been completed or that all necessary arrangements have been made for it to be undertaken and completed as required for proper coordination with the physical construction schedule.

If an exception is required, Consultant shall prepare, for the APM's signature, a Public Interest Finding as part of the Utility Certification including facts regarding the cause for the exception, an action plan and time table in securing a utility agreement (a.k.a. Time Requirements letter).

### **5.6 Consultant Deliverables and Schedule**

Consultant shall provide:

- One (1) \*.pdf copy of the Utility Certification sent to SUL for co-signature due 10 business days prior to PS&E.
- One (1) hard copy of signed Utility Certification form to be incorporated into PS&E package.

## **TASK 6 GEOTECHNICAL / PAVEMENT SERVICES**

Consultant shall conduct geotechnical and pavement field investigation to explore the following:

- Surface and subsurface conditions in proposed improvement areas, including roadway subgrade and existing roadway structural section.
- Area of new pavement construction.
- Surface and subsurface conditions in areas of highly saturated soils or existing steep slopes and up to one (1) proposed retaining wall.
- Existing soil types and characteristics, including infiltration test results

Consultant shall provide documentation which summarizes and presents the results of the investigation, analyses, and recommendations.

### **6.1 Data Review / Reconnaissance**

Data Review:

Consultant shall review available existing information to evaluate the following:

- Geologic conditions and hazards along the proposed Project alignment, such as geologic units, and fill materials
- Pavement construction history

Consultant shall review available information from the following sources (as applicable):

- Existing published and unpublished literature from County records

- Previous geology and/or geotechnical reports from County, federal, or other officials, consultants, groups or individuals pertinent to the Project
- As-built roadway plans (as available)
- Maintenance records

Reconnaissance:

Consultant shall conduct a pavement, geologic, and geotechnical reconnaissance of the site consisting of one site visit. Consultant shall identify the following:

- Geologic conditions at the Project site, any geologic hazards present and their impacts to the proposed Project elements.
- Perform a general pavement condition survey and delineate areas where full depth pavement repair is necessary.

As part of the site reconnaissance work, Consultant shall

- Observe surface conditions that may be indicative of subsurface conditions of concern, as well as past or ongoing geologic processes (e.g., areas of seeps or springs, erosion, unstable slopes, shallow groundwater, roadway settlement, offsets and depressions, existing earthwork performance, exposed soil and bedrock units).
- Identify site constraints, staging concerns (for exploration and construction), and environmental considerations
- Identify potential exploration and/or monitoring locations.
- Locate potential pavement core explorations and paint on the ground proposed core locations.
- Locate borings and stake or paint on the ground proposed boring locations.

**6.1 Consultant Deliverables and Schedule:**

Information from this task shall be incorporated into deliverables for Tasks 6.2, 6.5 and 6.6.

**6.2 Exploration and Testing Work Plan (ETWP)**

Consultant shall prepare an Exploration and Testing Work Plan (ETWP) prior to beginning field work. The ETWP will follow an example format provided by the County. No field work is to be performed, other than initial site reconnaissance, before review and approval by County of the ETWP.

The ETWP must address the proposed drilling (borings, test pits and cores); site access; exploration and sampling procedures; preliminary laboratory testing plan; safety plan; and the traffic control plans. The traffic control plan must address minor road encroachments as well as lane and/or shoulder closures for activities associated with cores, borings, and restoration of pavements, shoulders, and other areas disturbed due to subsurface exploration activities, including erosion control measures.

County will furnish required Right-of-Entry (ROE) Permits to the Consultant for exploration locations prior to beginning field work. Consultant shall provide a map to County identifying the approximate location of the proposed boring(s) on the parcel to support the ROE process.

County will obtain required Right-of-Entry Agreements from the property owners under Task 14.1.

**6.2 Consultant Deliverable and Schedule:**

Consultant shall provide:

- ETWP in MS Word format at least 5 business days prior to beginning field work to APM.

### **6.3 Geotechnical and Pavement Explorations**

Consultant shall conduct field investigation work in accordance with the most current versions of the ODOT Geotechnical Design Manual and the ODOT Pavement Design Guide.

All field explorations shall be performed in conformance with the approved ETWP developed in Task 6.2. When possible, Consultant shall coordinate traffic control and other subcontractors, such as drillers, to provide exploration services for both pavement and geotechnical explorations concurrently.

Consultant shall perform subsurface explorations to estimate and characterize the in situ soils for the purposes of addressing foundation support and other geotechnical or geological considerations for the following:

- Retaining wall design and construction
- Embankment widening
- Onsite infiltration of stormwater

Consultant shall use data from the subsurface explorations to provide retaining wall design soil parameters, and to provide soil bearing and settlement information to support the design of anticipated structures and embankments. The anticipated retaining wall, embankment and infiltration subsurface explorations to be performed for the Project are shown in the following table:

<b>TEST METHOD</b>	<b>EST # OF TESTS</b>	<b>DEPTH(S) OF EXPLORATION(S)</b>
Drilled Borings	3	10-ft to 25-ft
Infiltration Tests	2	1.5-ft to 5-ft

Consultant shall provide an experienced engineer or geologist to supervise the field operations for in situ data gathering. Consultant shall perform pavement explorations and/or tests in order to estimate the following:

- In-site Subgrade Resilient Modulus values for widening and patching design
- Thickness of the existing pavement section

The pavement field investigation program will include:

- Pavement core recovery
- Subgrade sampling and in-site Dynamic Cone Penetration (DCP) testing to depths on the order of 3 feet
- Visual condition survey of the existing pavement

The anticipated pavement tests and/or explorations to be performed for the Project are shown in the following table:

<b>TEST METHOD</b>	<b>EST #</b>	<b>TEST INTERVAL(S)</b>
Shallow Borings (4ft minimum or refusal) with pavement coring and DCP testing	10	

Consultant shall provide an experienced engineer or geologist, as applicable, to supervise the field operations and conduct a detailed visual pavement condition survey to identify the type, extent and severity of the distress present.

Consultant shall perform the exploration work while following additional requirements as follows:

- Boring locations that have restrictions must be performed in conformance with the permit requirements.
- Collect the drill cuttings and drilling mud in sealable steel drums and remove from the site, unless otherwise coordinated with County.
- The borings must be abandoned and backfilled according to Oregon Water Resources Department (OWRD) regulations.
- All borings and core holes through pavement must be patched with cold patch asphalt emulsion, quick set PCC, or as approved by County.
- Core samples of the pavement must be retrieved using a diamond bit core drill.
- Pavement cores must be logged according to the ODOT Pavement Design Guide and photographed for inclusion in the report.

Classified traffic count and growth rate data (traffic data) is furnished under Task 8. Consultant shall utilize traffic data in order to compute the 18-kip equivalent single axle loads (ESALs) within the project limits, as required by the ODOT Pavement Design Guide.

### **6.3 Consultant Deliverables and Schedule:**

Information from this task shall be incorporated into deliverables for Tasks 6.5 and 6.6.

### **6.4 Laboratory Testing**

Consultant shall perform laboratory tests on disturbed and/or undisturbed soil samples obtained from the explorations in order to:

- Characterize the subgrade and subsurface soils
- Develop engineering soil parameters for retaining wall design
- Assist with determining engineering geologic unit boundaries
- Check field soil classification.

The laboratory testing program shall be performed in accordance with standard ASTM and County practices to include the following mandatory items:

- Moisture/density of SPT/Shelby tube samples;
- Atterberg limits;
- Organic content;
- Consolidation;
- Soil unconfined compressive strength;
- Triaxial resilient modulus test;
- Torvane shear strength test for Shelby tube samples;
- Soil corrosion tests (pH and resistivity) for corrosion potential evaluation.

The laboratory testing program may include the optional items contingent upon field conditions encountered in accordance with standard ASTM and County practices:

- Organic content;
- Consolidation;
- Direct shear strength test

#### **6.4 Consultant Deliverables and Schedule:**

Information from this task shall be incorporated into deliverables for Tasks 6.5 and 6.6.

#### **6.5 Pavement Design Report**

Consultant shall prepare a Pavement Design Report indicating pavement design criteria, design parameters, and pavement design recommendations to be used for the Project. Consultant shall provide alternative pavement design recommendations for up to a total of 2 pavement sections for:

- New pavement for areas of widening or reconstruction;

Unless otherwise specified, the pavement designs shall be developed for design periods as provided in the current version of the ODOT Pavement Design Guide. Pavement section design shall be performed in accordance with the most current versions of the ODOT Pavement Design Guide and AASHTO Guide for Design of Pavement Structures.

#### **6.5 Consultant Deliverables and Schedule:**

Consultant shall provide:

- Draft Pavement Design Report in MS Word and PDF format to be incorporated into DAP delivered under Task 13.
- Final Pavement Design Report in PDF format to APM within 2 weeks of receipt of comments from County.

#### **6.6 Geotechnical Report and Foundation/Geotechnical Data Sheets**

Consultant shall prepare a Geotechnical Report according to the ODOT Geotechnical Design Manual criteria for submittal to County and LPA for review. The Geotechnical Report must:

- Summarize the geotechnical design and construction recommendations.
- Identify general specification criteria for the construction contract and provide recommendations for special provisions, if required.
- Summarize the results of the geotechnical analyses.
- Provide design recommendations for the retaining walls, and embankment design.
- Provide content, review and sealing for the development of two (2) Geotechnical Data Sheets

#### **6.6 Consultant Deliverables and Schedule:**

Consultant shall provide:

- Draft Geotechnical Report in MS Word and PDF format to be incorporated into DAP delivered under Task 13.
- Final Geotechnical Report in PDF format to APM within 2 weeks of receipt of comments from County.
- Geotechnical Data Sheet content and review to accompany Task 15.1.

### **TASK 7 HYDRAULICS RELATED SERVICES**

Consultant shall provide stormwater management and hydraulic related design services under this SOW for delivery of Tasks and Deliverables according to the agreed upon delivery schedule.

#### **7.1 Hydraulic Site Investigation**

The purpose of this subtask is to identify existing information and field conditions.



Consultant shall:

- Obtain the Flood Insurance Study (“FIS”) report and if available the Flood Insurance Rate Map using the Federal Emergency Management Agency (“FEMA”) web site.
- Review local floodplain ordinances to determine if there are any applicable to this water body.
- Determine channel and floodplain hydraulic roughness values (document with photographs).
- Visit the bridge/culvert site and record observations with respect to the following:
  - Lateral channel stability.
  - Stream channel hydraulic roughness.
  - Aggradation or degradation of bed material.
  - Existing evidence of scour and/or erosion.
- Coordinate with Geotechnical Engineer and review geotechnical report with regard to lateral stream stability and scour potential and coordinate geotechnical.
- Review the *Preliminary Engineering Analysis of Surface Water Management Options for the South Boardman Basin*, prepared for the Oak Lodge Sanitary District by URS Greiner Woodward Clyde (August 1999).
- Review the *Hydrologic and Hydraulic Modeling Technical Appendix to the Oak Lodge Sanitary District Surface Water Management Program Master Plan*, prepared by Montgomery Watson Engineers (October 1997)

#### **7.1 Consultant Deliverables and Schedule:**

Consultant shall incorporate the information from this task into deliverables for Task 7.4

#### **7.2 Hydrologic Analysis**

The purpose of this subtask is to perform hydrologic analysis to determine appropriate flow rates for design of various Project elements.

Consultant shall:

- Review ODOT Hydraulic Manual and available hydrologic data sources to determine the most appropriate 2-, 10-, 25-, 50-, 100-, and 500-year design flow for the proposed Project.
- Analyze available stream gauge records to calculate flood frequency and flow duration values to support hydraulic analysis and design.

In the absence of stream specific data, Consultant shall utilize prior studies to characterize upstream tributary areas.

#### **7.2 Consultant Deliverables and Schedule:**

Consultant shall incorporate information from this task into deliverables for Task 7.4

#### **7.3 Reserved**

#### **7.4 Reserved**

#### **7.5 Stormwater Management Design**

The purpose of this subtask is to design stormwater systems for the conveyance and treatment of drainage in the Project.

### **Storm Sewer Conveyance**

The purpose of this subtask is to provide design of stormwater conveyance facilities that collect and carry highway runoff per local agency, ODOT Hydraulics Manual, and/or Federal Aid Highway Program Programmatic Biological Opinion, whichever standard is most strict.

Consultant shall:

- Determine the locations of flow entering and leaving the Project right-of-way.
- Review existing conditions downstream of locations where flow is leaving the Project right-of-way for deficiencies and document observations.
- Delineate on-site drainage basins, calculate peak flow rates for design, model the proposed pipe network, and calculate hydraulic grade line to check that proper freeboard design requirements are being met.
- Check inlet capacity and inlet spacing, calculate gutter flow to check spread, and provide design recommendations for inlet locations.
- Provide design recommendations for pipe network, associated pipe sizes, pipe material recommendations, and manhole access design recommendations (i.e.-spacing, location within a travel lane, etc.).
- Provide manhole diameter design recommendations based upon analysis of pipe connections at each manhole.
- Compare pipe network against known utilities in the Project area and provide design recommendations to minimize utility conflicts or to adjust existing utilities.
- Provide Stormwater Outfall design and energy dissipator design recommendations in compliance with applicable Project permits.

### **Roadside Channel Conveyance**

Consultant shall model ditches to calculate water surface elevation, depth, and velocity and provide channel lining design recommendations per HEC-15, Design of Roadside Channels with Flexible Linings.

### **Stormwater Quality Design**

The purpose of this subtask is to provide design of stormwater management facilities that provide water quality treatment of highway runoff per local agency standards, ODOT Hydraulics Manual, and/or Federal Aid Highway Program Programmatic Biological Opinion, whichever standard is most strict.

Consultant shall:

- Define Contributing Impervious area.
- Delineate on-site drainage subbasins.
- Identify treatment Best Management Practice (“BMP”) types applicable for the site.
- Identify potential locations to site facilities within and outside the existing right-of-way.
- Estimate facility size, type and space needs at each of the potential locations.
- Evaluate constraints to siting a stormwater facility (i.e.-drainage area, adjacent grades, roadway safety, presence of existing utilities, protected resource areas, etc.)
- Prepare up to three stormwater management strategies that combine potential stormwater facilities into a comprehensive solution for meeting the needs of the Project.
- Compare alternative stormwater management strategies and recommend a preferred strategy.

### **Stormwater Quantity Design**

The purpose of this subtask is to provide design of stormwater management facilities that control quantity and flow rate of highway runoff per local agency standards, ODOT Hydraulics Manual, and/or Federal Aid Highway Program Programmatic Biological Opinion, whichever standard is most strict.

Consultant shall:

- Define Contributing Impervious Area (“CIA”).
- Delineate on-site drainage subbasins.
- Identify potential locations to site facilities within and outside the existing right-of-way.
- Estimate facility size, type and space needs at each of the potential locations.
- Evaluate constraints to siting a stormwater facility (i.e. drainage area, adjacent grades, roadway safety, presence of existing utilities, protected resource areas, etc.).
- Prepare up to three stormwater management strategies that combine potential stormwater facilities into a comprehensive solution for meeting the needs of the Project.
- Compare alternative stormwater management strategies and recommend a preferred strategy.
- Provide written design recommendations in the Stormwater Design report (Task 7.6) for:
  - Pipe network and associated pipe sizes
  - Manhole diameter
  - Pipe material recommendations
  - Channel Lining
  - Stormwater outfall
  - Energy dissipator
- Provide documentation in the Stormwater Design report (Task 7.6) for up to three stormwater management strategies and include a recommended preferred strategy.

#### **7.5 Consultant Deliverables and Schedule:**

Information from this task shall be incorporated into deliverables for Tasks 7.6.

#### **7.6 Stormwater Design Report**

The purpose of this subtask is to provide preliminary stormwater design recommendations and document the final stormwater facility design recommendations.

Consultant shall prepare a preliminary version of the Project Stormwater Design Report per Federal-Aid Highway Program (FAHP) guidelines containing preliminary stormwater facility design recommendations.

Consultant shall prepare a final Stormwater Design Report to reflect County review comments on stormwater facility design recommendations, changes to stormwater facility design due to advancement of the overall Project design, and supporting documentation of the final stormwater facility design.

#### **7.6 Consultant Deliverables and Schedule:**

Consultant shall provide:

- Draft Stormwater Design Report in PDF file format, along with an MS Word file containing the report narrative, and 3 hard copies, due with the Design Acceptance Package.
- Final Stormwater Design Report, PDF file of complete report, and 3 hard copies, due with the Final Plans.

#### **7.7 Stormwater Operation and Maintenance (O&M) Manual**

The purpose of this subtask is to provide Operations and Maintenance Manual documentation of all proposed stormwater management facilities so that the County has a record of the stormwater facilities that need to be as-built, operated and how to maintain them after the Project is constructed.

Consultant shall prepare up to 1 Draft Operation and Maintenance (“O&M”) Manuals, one for each stormwater facility anticipated for the Project, per Chapter 4, Section 4.6.6 of the Hydraulics Manual (latest edition).

Consultant shall prepare operational plans as outlined in Technical Bulletin GE 16-01 (B) titled “Stormwater Control Facility Operation and Maintenance Plan Development Drafting Guidance”.

### **7.7 Consultant Deliverables and Schedule:**

Consultant shall provide:

- One copy of each Draft O&M manual in MS Word and Adobe “pdf” format to the APM with Advanced Plans.
- One copy of each draft operational plan in Microstation format (CAD file) to the APM with Advanced Plans.

## **TASK 8 TRAFFIC ENGINEERING & MANAGEMENT**

Consultant shall provide traffic analysis and design Services under this SOW for delivery of Tasks and Deliverables according to the agreed upon delivery schedule.

### **8.1 Traffic Analysis**

Consultant shall conduct an evaluation of the potential inclusion of a Rectangular Rapid Flashing Beacon (RRFB) and/or Driver Speed Feedback Sign as part of the project. The evaluation must be based on field observations, input from County staff, and current industry practices (NCHRP Report 562).

Consultant shall collect the following traffic data as part of this task:

- Two (2) bi-directional 24-hour traffic volume, speed, and vehicle classification counts along Jennings Avenue
- Two (2) AM peak period turn-movement counts at locations to be agreed upon with the County
- Two (2) PM peak period turn-movement counts at locations to be agreed upon with the County
- Accident data for the past five (5) years within the Project limits
- Estimate the traffic growth rate based on available forecasts provided by the County and complement with classified traffic counts to facilitate ESAL calculations under Task 6

Further design and/or installation of RRFB or Driver Speed Feedback Signs are excluded from the project.

### **8.1 Consultant Deliverables and Schedule**

Consultant shall provide:

- Consultant shall submit a Draft Traffic Analysis Memo included in DAP (Task 13)
- Consultant shall submit a Final Traffic Analysis Memo included with Preliminary PS&E submittal (Task 15.1)

### **8.2 Traffic Signal Design**

Consultant shall prepare plans, specifications and construction cost estimate (“PS&E”) for the construction of traffic signal improvements to meet ADA requirements at Jennings Avenue and OR 99E. Further design and/or installation of traffic signals or supporting poles are excluded from the project.

As part of the DAP, Consultant shall evaluate the feasibility of installing conduits for future intelligent transportation system (ITS) improvements along the project corridor. Consultant shall meet with County staff under Task 1 to identify future needs and summarize the findings in the DAP narratives. A DAP

level cost estimate will accompany the improvements. Further design and/or installation of ITS components are excluded from the project.

All traffic signal plans and specifications must conform to Manual on Uniform Traffic Control Devices (“MUTCD”), ODOT, County, and National Electric Code (“NEC”) standards as applicable. Consultant shall coordinate with the utility for service connections.

Plans and specifications shall include locating pedestrian push buttons to meet current MUTCD and ADA standards, in accordance with the ODOT Signal Design Manual, the ODOT Signal Policy and Guidelines, and applicable ODOT standard drawings.

Consultant shall meet with ODOT staff prior to DAP at a ‘Pre-Design Verification Meeting’ to confirm design assumptions and project requirements. Consultant shall work with ODOT Region Traffic to prepare Traffic Signal Approval Request Form.

### **8.2 Consultant Deliverables and Schedule**

Consultant shall provide:

- ODOT Pre-Design Verification Meeting agenda submitted electronically to APM, and all other meeting participants 2 business days prior to meeting.
- ODOT Pre-Design Verification Meeting draft meeting minutes submitted electronically to APM, and all other meeting participants within 2 business days of meeting.
- ODOT Pre-Design Verification Meeting final meeting minutes submitted electronically to APM, and all other meeting participants within 7 business days of meeting.
- 30% Traffic Signal plans and cost estimate included in DAP (Task 13)
- Preliminary Traffic Signal plans, specifications, and cost estimate included in Preliminary PS&E submittal (Task 15.1)
- Advance Traffic Signal plans, specifications, and cost estimate included in Advance PS&E submittal (Task 15.2)
- Final Traffic Signal plans, specifications, and cost estimate included in Final PS&E Package submittal (Task 15.3)

### **8.3 Illumination Analysis**

PGE will lead/complete a lighting analysis to evaluate existing intersection and segment light levels within the project corridor and compare those light levels to the anticipated light levels upon completion of their utility pole relocation/removal work.

Consultant shall perform the coordination of illumination improvements within the Project limits. If PGE is nonresponsive or uncooperative, Consultant shall notify County upon completing the level of effort defined by the BOC, and County will communicate with PGE to affect a solution.

### **8.3 Consultant Deliverables and Schedule**

Consultant shall provide:

- Record of communications with PGE within the Project limits. Copies of communication record must be provided to APM and LAPM within 3 business days of request.

#### **8.4 Permanent Signing and Pavement Markings**

Consultant shall prepare combined plans, specifications, and construction cost estimates for the permanent signing and pavement markings associated with the proposed improvements. The design must be completed in accordance with applicable MUTCD and County standards.

#### **8.4 Consultant Deliverables and Schedule**

Consultant shall provide:

- 30% Permanent Signing and Pavement Marking plans and cost estimate included in DAP (Task 13)
- Preliminary Permanent Signing and Pavement Marking plans, specifications, and cost estimate included in Preliminary PS&E submittal (Task 15.1)
- Advance Permanent Signing and Pavement Marking plans, specifications, and cost estimate included in Advance PS&E submittal (Task 15.2)
- Final Permanent Signing and Pavement Marking plans, specifications, and cost estimate included in Final PS&E Package submittal (Task 15.3)

#### **8.5 Reserved**

#### **8.6 Reserved**

#### **8.7 Reserved**

#### **8.8 Traffic Control Plans (TCPs)**

Consultant shall prepare and submit PS&E for temporary traffic control to accommodate the public during construction. Plans and specifications shall be developed to accommodate vehicle, bicycle and pedestrian traffic during construction. ODOT standard plans must be referenced where possible.

Consultant's TCPs shall indicate such elements as traffic control sequencing, work zone limits, transitions, traffic control devices, signage, detours and staging cross sections (where applicable), and work zone details for vehicles, bicycles and pedestrians.

#### **8.8 Consultant Deliverables and Schedule**

Consultant shall provide:

- 30% TCPs and cost estimate included in DAP (Task 13)
- Preliminary TCPs, specifications, and cost estimate included in Preliminary PS&E submittal (Task 15.1)
- Advance TCPs, specifications, and cost estimate included in Advance PS&E submittal (Task 15.2)
- Final TCPs, specifications, and cost estimate included in Final PS&E Package submittal (Task 15.3)

#### **TASK 9 RESERVED**

#### **TASK 10 ROADWAY DESIGN**

Consultant shall provide roadway design Services under this SOW for delivery of Tasks and Deliverables according to the agreed upon delivery schedule.

## **10.1 Design Criteria**

Consultant shall prepare draft and final design criteria. Design criteria shall be consistent with Clackamas County Roadway Standards. Consultant shall present the design criteria in a table or matrix format listing all conditions, assumptions and minimum standards for the roadway design elements of the Project. This includes the following:

- Obtain functional classification facility based on current TSP
- Determine design vehicles
- Obtain existing and design year ADT from traffic report or Project Prospectus
- Determine design speed
- Review crash data / history
- Determine roadside design requirements (clear zone)
- Determine sight distance considerations
- Determine cross slope, horizontal curves, and super-elevation
- Determine maximum grade, vertical curves
- Determine cross section elements:
  - Number and width of travel lanes
  - Shoulders
  - Curbs
  - Side slopes
  - Ditches or swales (drainage facilities)

### **10.1 Consultant Deliverables and Schedule:**

Consultant shall provide:

- Draft design criteria electronically to APM within 4 weeks from Notice to Proceed (NTP).
- Final design criteria electronically to APM within 2 weeks from receipt of County comments.

## **10.2 Concept Plans/Alternative Analysis**

The Consultant shall work with the County to develop up to 2 alternatives for the roadway alignment and cross section based on initial solutions from the scoping notes and project prospectus, suggestions from the County, and current County and AASHTO design standards.

Consultant shall develop each alternative to concept level design sufficient to establish construction limits, quantities and major construction activities. Each alternative shall have horizontal and vertical alignment developed that meets minimum design standards. Consultant shall prepare a conceptual drawing for each alternative. The drawing shall utilize a GIS or topographic survey base map or corridor roll plot on an aerial map at a scale of 1"=30'. Geometric design elements that do not meet design standards shall be identified as needing a design exception.

Consultant shall analyze each alternative and determine the potential benefits and impacts associated with construction of the proposed alternative. Potential benefits and impacts to be considered include, but are not limited to, right way, access, safety, utilities, permitting and environmental.

Consultant shall prepare a construction cost estimate for each alternative that includes the major construction items and quantities that can be identified at this level of design detail.



Consultant shall prepare an Alternative Analysis technical memorandum that summarizes the results of analysis for each alternative. The memo must include a summary of the identified impacts and cost estimate associated with each alternative to allow County to determine which alternative to move forward to DAP.

**10.2 Consultant Deliverables and Schedule:**

Consultant shall provide:

- Alternatives Analysis technical memorandum and drawings to APM and LAPM electronically (PDF) within 3 months of NTP.

**10.3 Roadway Design Exceptions (CONTINGENCY – See Section F)**

Consultant shall prepare up to 4 draft Roadway Design Exception Request(s) for the Project. The Design Exception Request(s) must be prepared using the County’s standard Design Exception Request form or, if ADA related, the standard form defined in the Highway Design Manual. The final Design Exception Request(s) for the Project must be stamped and signed by the engineer of record. The County will coordinate final approval of the Design Exception Request(s).

**10.3 Consultant Deliverables and Schedule:**

Consultant shall provide:

- 1 electronic copy in WORD format to APM of draft Design Exception Request(s) within 2 weeks of DAP or TS&L or Approved Alternative from Task 10.2
- 1 hard copy and 1 electronic copy in WORD and PDF format to APM of final Design Exception Request(s) no later than 2 weeks of receipt of comments from County.

**TASK 11 RESERVED**

**TASK 12 LOCAL PERMITS (CONTINGENCY – See Section F)**

Consultant shall provide local agency permitting Services under this SOW for delivery of Tasks and Deliverables according to the agreed upon delivery schedule.

**12.1 Permit Research (CONTINGENCY – See Section F)**

Consultant shall evaluate permit requirements for the Project. Consultant’s evaluation shall include permit requirements from local agencies for the Project.

Based on Project information and available County’s zoning and land use information, Consultant shall determine the required land use or environmental permits and processes. The proposed Project activities shall occur entirely within the jurisdiction of Clackamas County. Anticipated permits include:

- Clackamas County Floodplain Development
- ODOT TPARP

Consultant shall prepare a technical memorandum detailing permits required, County staff contacted, and the cited respective code sections that require them. Consultant’s permitting technical memorandum shall outline the procedure for obtaining these permits and approximate timeframes associated with them. Consultant’s permitting technical memorandum shall include specific conditions listed in those code sections which may apply to the Project. Consultant shall contact by phone or email County planning staff members to verify the required permits, processes, standards, and criteria.

### **12.1 Consultant Deliverables and Schedule**

Consultant shall provide:

- Draft Permitting Technical Memorandum due with DAP, Task 13 per Task 1 Project Schedule in electronic (MS Word) format.
- Final Permitting Technical Memorandum submitted in electronic format. Consultant shall perform 1 set of revisions due 10 business days after receiving County comments on draft Technical Memorandum.

### **12.2 Local Permit Acquisition (CONTINGENCY – See Section F)**

Consultant shall initiate and attend one pre-application conference with County planning staff to determine the scope of drawings and supporting documentation required for County permit application for required local permits, which are anticipated to be Floodplain Development, and ODOT TPARP.

Consultant shall prepare a draft County permit type including drawings, narrative, calculations, etc. addressing Project compliance with relevant standards of the Clackamas County ZDO. Consultant shall submit the development permit applications, drawings and any other support documentation for County review. Consultant shall modify the permit application, drawings and/or supporting documentation in response to County comments and submit a final local Floodplain Development and Natural Resource Area development application package to the County.

Upon submittal of permit application materials to County, County PM shall answer questions on the application during the permit review period.

Consultant shall provide coordination with County. Consultant shall monitor permit application completeness review process, provide supplemental information as required, and revise the application in response to review comments and conditions of approval.

#### **Notes:**

- County/LPA will provide all required signatures on application forms.

### **12.2 Consultant Deliverables and Schedule**

Consultant shall provide:

- Draft Permit Applications; electronic copies for County review due per Task 1 Project Schedule.
- Final Permit Applications; 2 hard copies filed with the permitting County due 14 days after receiving County comments.

### **TASK 13 - DESIGN ACCEPTANCE PACKAGE (30%)**

The objective of the DAP is to identify the size of the Project footprint, required design exceptions and any required environmental permits prior to preparing the Preliminary, Advance and Final Plans.

Consultant shall prepare a DAP that includes design plans (30%), cost estimate and a design narrative that addresses the following:

- Description of the purpose, need, and design solution for the Project;
- Summary of existing conditions, (i.e., Project location, roadway classification, lanes, ADT, posted speed, and other design standards pertinent to the Project);
- Summary of design exceptions that will be necessary

- Summary of roadway alignment and typical section alternatives considered, including recommendations;
- Outline of Project constraints such as topography, environmental, permits, ROW, utilities and cost (NOTE: these may be executive summaries prepared by Consultant for other deliverables associated with this Project);
- Environmental impacts and mitigation measures;
- Environmental permitting requirements;
- Utility conflicts;
- Public Involvement efforts;
- Description of geotechnical subsurface conditions;
- Draft Geotechnical Report;
- Draft Stormwater Management Plan;
- Description of drainage features;
- ROW needs;
- Local permit needs;
- Construction staging, temporary detours, and temporary protection and direction of traffic during construction;

Consultant shall prepare DAP plan sheets according to the following table:

<b>Name of Sheet</b>	<b>Estimated # of Sheets</b>
Title sheet	1
Typical sections	1
Details	2
TP&DT (including bicycle and pedestrian)	4
Roadway plans	4
Roadway profiles	4
Roadway cross sections	1
Drainage/stormwater plan/profiles	4
Drainage/water quality details	2
Retaining wall #1 plans and details	3
Sign and striping plans	4
Signal plans	2

Consultant shall summarize and reference in the DAP all of the reports and technical memoranda pertinent to the Project. Consultant shall prepare and submit design plans and a cost estimate as appendices to the DAP. Drawings submitted with the DAP must be marked as "Design Acceptance Plans for Review." Both the DAP and the design plans must bear the responsible engineer's seal. Consultant shall prepare the Title sheet in accordance with County standards and provide an index to the drawing set.

County will provide comments on the DAP. Consultant shall address County comments. Consultant shall attend a DAP Plan Review Meeting to communicate and discuss resolution to County review comments. Consultant shall provide written responses to address review comments received from County after attending the DAP Plan Review Meeting.

For budgeting purposes it is assumed that Consultant staff shall attend the DAP Plan Review Meeting, including travel time, per Task 1.3.2.

### **13 Consultant Deliverables and Schedule:**

Consultant shall provide:

- 1 electronic copy of DAP in PDF format to APM within 20 weeks of NTP.
- 1 electronic copy of written responses to DAP review comments to APM within 1 week of the DAP Plan Review Meeting.

### **TASK 14 RIGHT OF WAY (ROW)**

Consultant shall conduct the ROW activities for all properties in accordance with the most current version of the following:

- Right of Way Services Agreement specific to the Project
- “*ODOT Right of Way Manual*”
- “*ODOT Guide to Appraising Real Property*”
- “*ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide*”
- ORS 35, with reference to the “*Uniform Appraisal Standards for Federal Land Acquisitions*”
- County ROW acquisition policies and procedures

Consultant shall use County versions of all forms, spreadsheets, brochures and pamphlets referenced in the “*ODOT Right of Way Manual*” and needed to complete work associated with Task 14. These forms, spreadsheets, brochures and pamphlets shall not be altered without written permission from the County. They may be obtained through the County Right of Way Manager or Designee.

Consultant shall track status for all parcel files to be acquired for ROW purposes in the format provided by County. Consultant should coordinate the details of this process with the County Right of Way Manager or Designee at the project kickoff meeting.

For estimating purposes, up to 39 files are anticipated for this project on the north side of Jennings Avenue.

#### **14.1 Right-Of-Way Coordination Meeting**

Consultant shall attend up to 1 meeting, as listed below, to provide Project information and address specific questions and concerns related to the Project.

- 1 right-of-way coordination meeting (2 hours in length)

Consultant shall document input received from the meeting and prepare a written summary. For budgeting purposes, it is assumed that up to one (1) Consultant staff shall attend the 2 hour meeting.

#### **14.2 Title Reports and Document Requests**

Consultant shall prepare and assemble all title documents, including vesting deeds, necessary to accomplish acquisition of ROW to County and/or ODOT standards for each impacted property.

Consultant shall obtain preliminary title reports for each impacted property, up to fifty (50) in total under Task 2.1. Consultant shall obtain all title reports from one Title Company.

#### **14.2 Consultant Deliverables and Schedule**

Consultant shall provide:

- Digital copies of Preliminary Title Reports and Title Documents per the schedule developed in Task 1 Project Management.

#### **14.3 Right of Way Engineering, Maps & Descriptions**

Consultant shall perform ROW data research as necessary to prepare for and support all Project activities; and to produce Project maps and reports as called for in subsequent tasks. Consultant shall complete a thorough search for all recorded survey monuments and features pertaining to the establishment of property lines and ROW boundaries and shall perform a survey to locate, identify, measure and document all such monuments and features that are found. Consultant shall collect and review general Project background documentation, recorded surveys and conveyance documents, and shall follow all statutes.

Consultant shall develop and provide a centerline description from one end of the project limits to the other to be used by County with their Resolution of Necessity for the project. County will provide an example if needed. County will review and provide feedback to Consultant if needed. Consultant shall make any necessary changes requested by County.

For each file, Consultant shall prepare ROW Maps and Descriptions based upon centerline stationing and in accordance with the current ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide and the Right of Way Engineering Manual. County will review and provide feedback to Consultant if needed. If any acquisitions are on a State highway, the preliminary and final versions of the property descriptions and maps will be reviewed and approved by the State. Consultant shall make any necessary changes requested by County and State.

For each file, Consultant shall prepare a ROW Impact Map, developed to County standards. County will provide an example if needed. County will review and provide feedback to Consultant if needed. Consultant shall make any necessary changes requested by County.

#### **14.3 Consultant Deliverables and Schedule**

Consultant shall provide:

- A centerline description of the project in PDF format to APM per the schedule developed in Task 1 Project Management.
- ROW Impact Map(s) in PDF format to APM per the schedule developed in Task 1 Project Management.
- ROW real property description(s) Exhibits A and B in PDF format to APM per the schedule developed in Task 1 Project Management.
- A copy of the Title Report and vesting documents for each property owner and ROW file in PDF format to APM per the schedule developed in Task 1 Project Management.

#### **14.4 Right of Way Programming Estimate**

Consultant shall prepare a ROW programming estimate for use by ODOT and County Right of Way Sections to program funds for property acquisition. Consultant shall obtain the most current version of the Programming Estimate form to be used from the County Right of Way Manager or designee. The programming estimate shall include the Project name and county in which the Project is located and all

Project ROW costs, including separate Consultant, County, and ODOT ROW costs as outlined in the Right of Way Services agreement with the Local Public Agency. The ROW programming estimate shall include dollar amounts for the following items: Land & Improvements; Damages/Cost to Cure; Relocation; Demolition; Personnel & Administration; Legal & Contingencies and totals for all Items. The programming estimate shall be submitted to the County Right of Way Manager or Designee for review.

Consultant shall revise and re-submit programming estimate, incorporating comments received from County and ODOT.

#### **14.4 Consultant Deliverables and Schedule**

Consultant shall provide:

- 1 draft Programming Estimate for delivery electronically to County Right of Way Manager or Designee and APM per the schedule developed in Task 1 Project Management.
- 1 final Programming Estimate for delivery electronically to County Right of Way Manager or Designee and APM per the schedule developed in Task 1 Project Management.

**PLEASE NOTE: Consultant shall not perform any Services described in Tasks 14.5 through 14.10 below until County issues NTP for the ROW phase of the Project.**

#### **14.5 Preliminary Activities**

Upon receipt of authorization to proceed with ROW Acquisition, Consultant shall set up ROW parcel files and deliver a General Information Notice (GIN), acquisition and relocation brochures, and a copy of the applicable portion of the ROW Acquisition map (marked Preliminary and showing the parcel(s) to be purchased) to all owners and occupants of affected properties. Consultant shall send GIN via certified mail with return receipt request. Proof of delivery must be kept in the parcel file. Consultant shall use County GIN form.

Consultant shall prepare and maintain a Diary of Personal Contact for each file. The Diary of Personal Contact must include dates associated with the mailing and receipt of delivery of the GIN in addition to the date, place of contact, parties contacted, what was delivered and explained, and a summary of what was discussed, for all contact with affected property owners and/or their representatives.

#### **14.5 Consultant Deliverables and Schedule**

Consultant shall provide:

- GINs, 1 hard copy and 1 digital copy of each GIN and attached map for each file to County ROW Manager and APM within 20 business days following NTP for the ROW acquisition phase.
- 1 digital copy of the certified mail receipt and returned receipt request for each property with the Final Report Package or RC Package.

#### **14.6 Appraisal and Appraisal Review**

The County intends to acquire most permanent and temporary construction easements through an Administrative Determination of Just Compensation (ADJC) process for files that are valued less than \$10,000. ADJC will be determined through analysis and review of the sales used in the appraisal of the similar zoned properties.

Consultant shall use appraisers who are licensed or certified in the State of Oregon, experienced and competent in eminent domain appraising, and on ODOT's Qualified Appraisers List.

An initial analysis will be made to determine which files will need appraisals. The analysis will be based on the property impact maps. Consultant shall bring the results of the analysis to County ROW Manager and APM for discussion and decision. Consultant shall provide an appraisal for all files that are estimated to be valued above \$10,000. At least one appraisal will be needed for each of the properties in the four following zoning designations: R8.5/R7/R10, MR-1, HL, and C-3.

All real estate appraisals provided by the Consultant shall be prepared using forms or formats of, or approved by, the County's ROW Section. The types of appraisal reports shall fall into the following categories:

- Taking and Damages appraisals for simple takings.
- Detailed (before/after) appraisals for complex takings.

Consultant shall prepare all reports and estimates necessary to value specialty items to be acquired or to support cost-to-cure estimates.

Consultant shall provide not fewer than 15 days written notice to owners of the planned appraisal inspections. The property owner and designated representative, if any, shall be invited to accompany the appraiser on any inspection of the property for appraisal purposes. Consultant shall provide field markings of property boundaries to facilitate the inspection under Task 2.6. Consultant shall send this notice via certified mail with return receipt request. Proof of delivery must be kept in the parcel file.

Special Benefits, if any, must be quantified by the appraiser whether or not there are any compensable damages to the property.

Tenant owned improvements included in the acquisition must be identified and segregated in the appraisal.

Consultant shall perform independent reviews of appraisals. Consultant shall forward both appraisal and review to County for final approval.

County will establish just compensation for each property owner and will notify the Consultant.

Consultant shall continue documentation in the Diary of Personal Contact for each file. The Diary of Personal Contact must include dates associated with the delivery of the written notice of appraisal inspection, and a record of other personal contacts conducted during the appraisal process.

#### **14.6 Consultant Deliverables and Schedule**

Consultant shall provide:

- 15 Day Notice of Appraisal Inspection to each property owner and electronic copy to County's ROW Section and APM per the schedule developed in Task 1 Project Management.
- A photo copy of certified mail receipt and signed return receipt request for each 15-Day Notice
- Up to six (6) appraisals. One hard copy and one digital copy of each Appraisal and one digital copy of each Appraisal Review and Specialty Report for each file to County ROW Section and APM as per Project Design Schedule developed under Task 1.



#### **14.7 Acquisition Services**

All ROW shall be acquired in the name of the County as easement if a partial acquisition and as fee if a whole acquisition is required. Consultant shall conduct negotiations, on behalf of the County, in good faith and in compliance with all federal and state laws and regulations and County policies and procedures. Consultant shall conduct negotiations for acquisition of real property based on just compensation issued by County. Consultant shall use Acquisition Agents who are licensed in the State of Oregon to conduct real estate transactions, experienced and competent in negotiating for eminent domain acquisitions, and approved by ODOT to conduct ROW acquisitions for Federally Funded projects.

Consultant shall consult with County to determine the extent to which Consultant shall be responsible for clearing title encumbrances identified on the Preliminary Title Report or making the offer subject to clearing title encumbrances. Consultant shall present any requests for taking title subject to one or more outstanding interests to County for approval. Fee owners' and contract purchasers' ownership interests must be addressed. When impacted by the taking, lessees' interests must also be addressed.

Consultant shall prepare and present to County the draft Offer Packets for review before any offers are made. All offers shall be made by Consultant as County's buyer's agent. These Offer Packets shall include, but are not limited to, acquisition and relocation brochures, offer-benefit letter, acquisition and relocation summary statements, County's Obligations Agreement if appropriate, copy of appraisal or ADJC, map of acquisition, instruments of conveyance and W-9 form (if money is exchanged).

To every reasonable extent possible, Consultant shall make offers in person, especially where the acquisition involves either a major impact to the property or the displacement of persons occupying the property. If this is deemed not possible, Consultant shall send offer package via certified mail with return receipt request. Dates of delivery must be documented in the Diary of Personal Contact and the file.

Consultant shall make every reasonable effort to acquire the ROW expeditiously by negotiation. Consultant shall give property owners reasonable opportunity to consider the offer (statutorily 40 calendar days) and to present material the owner believes is relevant to determining the value of the property. Consultant shall attempt to negotiate an approved administrative settlement, but shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property (49 CFR 24.102(h)).

- IF the OFFER is ACCEPTED, Consultant shall present a Final Report Packet covering the acquisition of ROW to County for final approval, acceptance, payment, conveyance of title and recording. The Final Report Packet shall include County's Final Report and Transmittal of Documents form and all other documentation associated with the ROW activities conducted for this file. Consultant shall include satisfactory documentation of signer's authority to sign if Grantor is a Trust, Corporation, Partnership, or Non-Profit.
- IF a COUNTER OFFER is received, Consultant shall submit the proposed COUNTER OFFER (exceeding the estimate of just compensation) with a justification letter and owner supplied supporting documentation to County for approval. If accepted see above.
- IF an acceptable agreement is not reached within the timeframe set by County, Consultant shall prepare and submit a Recommendation for Condemnation Packet. The RC Packet shall include County's RC form and all other documentation associated with the ROW activities conducted for this file.

Consultant shall continue documenting the Diary of Personal Contact for each file. The Diary of Personal Contact must include a dated record in chronological order of all contact with property owners and or their representatives and all occupants and or their representatives, including but not limited to the means by which the communication took place (email, fax, telephone, in person, etc.), the location of the contact, efforts to achieve amicable settlements, owners' suggestions for changes in plans, responses to owners' counterproposals, etc.

No communications with property owners or occupants and or their representatives are to be made via text.

**14.7 Consultant Deliverables and Schedule:**

Consultant shall provide the following per the Project Design Schedule developed under Task 1:

- Draft Offer Packet for review for each file to County ROW Manager and APM.
- Final Offer Packet for review to County ROW Manager (if deemed necessary by County on a case by case basis).
- Final Report Packets one for each file, containing the file contents and a Final Report (County form) to County ROW Manager.
- If applicable, proposed counter offers with justification information to County ROW Manager.
- If applicable, Recommendation for Condemnation to County ROW Manager and APM.

**Assumptions:**

- Consultant to secure and pay for all title reports under Task 2.1.
- County will provide conveyance document forms.
- County will approve GIN and Offer documents.
- County will disperse payment to property owners and record all documents.
- Number of parcels/files 39 is based on County’s preliminary assessment and is subject to change. If more or less, payment for this scope of services may be adjusted up or down by negotiation.
- Consultant will provide a project centerline description, legal descriptions and exhibits, property impact maps, and other drawings as needed.
- Consultant will provide the most up-to-date plan sheets as needed for the ROW process.

**TASK 15 - PLANS, SPECIFICATIONS, AND ESTIMATE (PS&E)**

Consultant shall prepare plan sheets according to the following table:

Table 15

<b>Name of Sheet</b>	<b>Estimated # of Sheets</b>	<b>60% PS&amp;E Submittal</b>	<b>Advanced Submittal</b>	<b>Final Submittal</b>
Title sheet	1	X	X	X
Layout of sheets	1	X	X	X
General notes	1	X	X	X
Legend & Abbreviations	1	X	X	X
Typical sections	1	X	X	X

Civil details	5	X	X	X
Roadway plan and profiles (1"=30')	8	X	X	X
Roadway cross sections	4	X	X	X
Driveway profiles/elevations	5	X	X	X
ADA ramp/intersection details	5	X	X	X
Drainage /stormwater plan/profiles (1"=30')	8	X	X	X
Drainage & water quality details	4	X	X	X
Erosion control cover & notes	1	X	X	X
Erosion control plans (1"=40')	5	X	X	X
Erosion control details	1			
Retaining wall #1 plan and profile	1	X	X	X
Retaining wall #1 sections	1	X	X	X
Retaining wall details	2	X	X	X
Temporary traffic control plan (1"=40')	5	X	X	X
Temporary protection and direction of traffic (including bicycle and pedestrian traffic) (1"=40')	6	X	X	X
Signal legend	1	X	X	X
Signal plans	4	X	X	X
Signal details	1	X	X	X
Sign and striping plans (1"=40')	5	X	X	X
Sign and striping details	1	X	X	X
Sign and post data table	2	X	X	X

### **15.1 Preliminary PS&E (60%)**

Consultant shall prepare preliminary (60%) documents for the Project incorporating comments from DAP review (Task 13).

Consultant shall prepare drawings, per Table 15 above and:

- Reference County and ODOT standard drawings and details;
- Prepare the 2018 Bid Booklet and Special Provisions Document Assembly form;
- Prepare construction cost estimate quantities and unit costs utilizing ODOT standard bid items. Consultant shall prepare the estimate to include mobilization, contingency, and construction engineering (the percentages will be agreed to by both parties). The estimate must be based on unit prices utilizing Agency and Consultant's historical bid information and considering a Spring of 2021 bid letting.

The APM will submit a Preliminary PS&E Review Comment Log as a single electronic file to Consultant.

Consultant shall address comments received and communicate with the APM the proposed resolution to the comments. Consultant shall provide written response to address review comments received from the APM and LAPM on the Preliminary PS&E.

### **15.1 Consultant Deliverables and Schedule**

Consultant shall submit the following to the APM within 8 weeks of the APM written approval (e-mail acceptable) of the final DAP (Task 13):

- Preliminary Plans (PDF)
- Special Provisions Document Assembly Form (PDF)
- Preliminary Construction Cost Estimate in Excel/Table format (PDF)

Consultant shall submit Preliminary PS&E Review Comment Log with initial responses to the APM within 2 weeks of receipt of comments.

### **15.2 Advance PS&E (90%)**

This task includes preparation of advance plans, Special Provisions, construction cost estimate, risk assessment, and quality control reviews, as well as incorporating comments from previous reviews.

#### Advance Plans:

Consultant shall prepare drawings, per Table 15 above and reference County and ODOT standard drawings and details, and other related drawings.

#### Advance Special Provisions:

Consultant shall update Project Special Provisions based on changes and clarifications to the Project design, as determined at DAP and in accordance with 2018 *Oregon Standard Specifications for Construction as amended* and ODOT *Specification and Writing Style Manual*. Consultant shall prepare the Special Provisions to the 90% level (the “Advance Special Provisions”) in MS Word utilizing “Track Changes”.

The Advance Special Provisions must incorporate the County’s boilerplate Special Provisions corresponding with the Project Bid Date. If a bid date has not been identified, Consultant shall use the most current boilerplate Special Provisions. Boilerplates, by bid date, can be found at the following website:

[https://www.oregon.gov/ODOT/Business/Pages/Standard\\_Specifications.aspx](https://www.oregon.gov/ODOT/Business/Pages/Standard_Specifications.aspx)

Consultant shall obtain concurrence from the proper County technical resource for any unique special provisions or changes made to the boilerplate special provisions, beyond fill-in-the-blank changes. Consultant shall document the changes made to the Special Provisions and technical resource concurrence using ODOT’s Special Provision Summary Form. The list of ODOT technical resources and corresponding special provision can be found at the following website:

<http://www.oregon.gov/ODOT/HWY/SPECS/Pages/index.aspx>

Consultant shall submit the ODOT Civil Rights Request for Goals Worksheet to the ODOT Office of Civil Rights and incorporate the appropriate Disadvantaged Business Enterprise (“DBE”) goals,

Minority, Women, and Emerging Small Business (“MWESB”) aspirational target values, and On the Job Training (OJT) hours into the Project Special Provisions;

Consultant shall submit the ODOT risk assessment form to the APM and incorporate the resulting insurance information into the Special Provisions.

Advance Cost Estimate:

Consultant shall update the construction cost estimate quantities and unit costs utilizing ODOT standard bid items to support the Advance Plans (the “Advance Cost Estimate”). Consultant shall prepare the estimate to include mobilization, contingencies, and construction engineering. The estimate must be based on unit prices utilizing ODOT, County and Consultant historic bid information and anticipating a Spring of 2021 bid letting. Consultant shall prepare the final cost estimate using an electronic format (native file and \*.pdf) version using Microsoft® Excel software.

Construction Schedule:

Consultant shall prepare a construction schedule, using the Critical Path Method (MS Project and PDF format) that outlines a reasonable Project construction sequence and time frames. The schedule must include anticipated material lead times, Project milestones and anticipated construction phasing and staging.

Advance PS&E Revisions/Corrections:

The APM will submit a single electronic file of Advance PS&E Comment Log review comments to Consultant.

Consultant shall address comments received and communicate with the APM the proposed resolution to the comments. Consultant shall provide written response to address review comments received from the APM on the Advance PS&E.

**15.2 Consultant Deliverables and Schedule**

Consultant shall submit the following to the APM within 8 weeks of the APM’s written approval (e-mail acceptable) of the Preliminary PS&E (60%) (Task 15.1):

- Advance Plans (PDF)
- Advance Special Provisions in electronic format (MS Word, utilizing “Track Changes”)
- Advance Construction Cost Estimate in electronic format (Excel and PDF)
- Construction schedule in electronic format (MS Project format and PDF)
- Comment response log for plans and specifications (In an Excel document)
- ODOT risk assessment form
- Special Provisions summary form
- Civil Rights request for goals worksheet

Consultant shall submit Advance PS&E Review Comment Log with initial responses to the APM and LAPM within 2 weeks of receipt of comments.

**15.3 Final PS&E Package (100%)**

This task includes preparation of the Final PS&E package for bidding purposes. The final plans, Special Provisions, and construction cost estimate must incorporate all revisions agreed to and documented on the Advance PS&E Comment Log (Task 15.2).

Consultant shall coordinate with the APM to ensure all deliverables listed on the most current Final PS&E Submittal and Completeness checklists are satisfied. Refer to the latest version of the Final PS&E checklists at: [http://www.oregon.gov/odot/hwy/opl/pages/manuals\\_forms\\_etc.aspx](http://www.oregon.gov/odot/hwy/opl/pages/manuals_forms_etc.aspx)

County will review final plan sheets and note any final revisions needed prior to preparation and submittal of Professional of Record (POR)-signed Final Plans within 2 weeks of receipt of documents from Consultant. Consultant shall incorporate final revisions into POR-signed Final Plans.

Upon request from County, Consultant shall resolve comments from ODOT.

**15.3 Consultant Deliverables and Schedule**

Consultant shall submit the following, 4 weeks prior to the PS&E Due Date to the County:

Description	To APM		To ODOT LAL	
	Electronic	Paper	Electronic	Paper
Un-signed Final Design Plans (11 x 17)	PDF	X	PDF	X
Project Special Provisions	Word & PDF	X	PDF	X
POR Certification with all Special Provisions sections stamped	PDF		PDF	
Signed Special Provision Integrity Certification	PDF		PDF	
Email from Civil Rights noting Applicable DBE goals, MWESB targets and OJT hours				
Cost Estimate	Excel and PDF		Excel and PDF	X
CPM Construction Schedule (11 x 17 in color)	MS Project & PDF		PDF	X
Fuel Escalation Worksheet	Excel		Excel	
Steel Escalation Worksheet	Excel		Excel	
Project Risk Assessment Summary	PDF		PDF	
NEPA Approval Documentation (delivered under Task 3)	PDF	X	PDF	
Utilities Certification (delivered under Task 5)	PDF	X	PDF	

Consultant shall submit the following to APM, no later than 1 week prior to the PS&E Due Date to the ODOT LAL:

- POR-signed Final Plans printed on 11 x 17 paper, 4 copies
- POR-signed Final Plans in PDF format

Consultant shall submit the following to APM, no later than 1 week prior to the PS&E Due Date to the County:

- POR-signed Final Plans printed on 11 x 17 paper, 2 copies

- POR-signed Final Plans in PDF format

## **TASK 16 BID AND AWARD ASSISTANCE**

This task includes the preparation of addenda, as needed, and responding to questions during the bidding phase. Consultant shall respond to questions from County and Construction Contractors about the plans and specifications during the bidding process. Duties of the PM in the Bid and Award phase are summarized in the ODOT Construction Manual, Chapter 6 – Examination of Project Site or Data by Bidders. This document can be found at

<http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/Pages/CAIndex.aspx>. This document is revised and updated from time to time. Review this chapter to ensure that the scope of work adequately reflects the responsibilities of the PM as detailed in Chapter 6 of the ODOT Construction Manual and revise the scope of work as necessary to fit the needs of the project.

Consultant shall prepare all required Contract addenda to provide clarification to the bid documents. Consultant shall submit the addenda to County for distribution to bidders.

### **16.1 Questions During Bidding**

Consultant's Project Manager, or Consultant's designee(s) approved by County, shall assist County with questions regarding the bid documents and bid process. Consultant shall respond to all questions in writing within 3 day(s) to County Project Manager.

Consultant shall, during the bidding process, assist the County with the communications with Construction Contractors and suppliers in a manner that assures that no Construction Contractor or supplier is provided with information not in the bidding documents and that could provide a bidding advantage or disadvantage. Consultant shall prepare a written log to document conversations and questions asked by construction contractors or suppliers and the answers provided to the County. Consultant shall maintain the written log in the project file and provide upon request of the APM or County.

#### **16.1 Consultant Deliverables and Schedule**

- Written log of conversations, questions and answers, provided to APM upon request.

## **F. CONTINGENCY TASKS**

The table below is a summary of contingency tasks that County, at its discretion, may authorize Consultant to perform. Details of the contingency tasks and associated deliverables are stated in the Task section of the SOW. Consultant shall complete only the specific contingency task(s) identified and authorized via written (email acceptable) Notice-to-Proceed ("NTP") issued by County's Project Manager. If requested by County, Consultant shall submit a detailed cost estimate for the agreed-to contingency Services (up to the NTE amount(s) in the Contingency Task Summary Table) within the scope of the contingency task.

If County chooses to authorize some or all of these tasks, Consultant shall complete the authorized tasks and deliverables per the schedule identified for each task. The NTP will include the contingency task name and number, agreed-to due date for completion and NTE for the authorized contingency task.

Each contingency task is only billable (up to the NTE amount identified for the task) if specifically authorized per NTP. In the table below, the "NTE for Each" amount for a contingency task includes all

labor, overhead, profit, and expenses for the task. The funds budgeted for contingency tasks may not be applied to non-contingency tasks without an amendment to the Contract. The total amount for all contingency tasks authorized shall not exceed the maximum identified in the table below. Each authorized contingency task must be billed as a separate line item on Consultant's invoice.

**CONTINGENCY TASK SUMMARY**

Contingency Task Description	NTE for Each	Max Quantity	Method of Compensation	Total NTE Amount
2.6 Staking		1	T&M	\$8451.34
3.3.2 Section 106 Determination of Eligibility		1	T&M	\$6744.73
3.3.3 Section 106 Finding of Effect		1	T&M	\$5378.73
3.4.2.1 Work Plan and Health and Safety Plan		1	T&M	\$2312.59
3.4.2.2 Sample Collection and Reporting		1	T&M	\$7289.59
3.4.5.1 Shoulder Material Investigation/Work Plan and Health and Safety Plan		1	T&M	\$3807.59
3.4.5.2 Sample Collection and Reporting		1	T&M	\$10269.59
3.4.6.1 Site-Specific Investigations/Work Plan and Health and Safety Plan		1	T&M	\$3807.59
3.4.6.2 Sample Collection and Reporting		1	T&M	\$13794.59
3.4.7 Design Acceptance Narrative		1	T&M	\$2093.24
3.6.2 Functional Assessments		1	T&M	\$8222.68
3.7.1 USACE/DSL Joint Permit Application and DEQ Section 401 Certification		1	T&M	\$16084.86
3.7.2 Oregon DEQ 1200-C Permit Application		1	T&M	\$1783.85
10.3 Roadway Design Exceptions		1	T&M	\$4326.11
12.1 Permit Research		1	T&M	\$2288.99
12.2 Local Permit Acquisition		1	T&M	\$4389.41
<b>Total NTE For All Contingency Tasks:</b>				<b>\$101,045.47</b>



## EXHIBIT B - COMPENSATION

### Definitions:

**CPFF** - Cost Plus Fixed Fee

**FCCM** - Facilities Capital Cost of Money

**NBR** - Negotiated Billing Rates. NBRs are fully loaded billing rates used by firms that do not have an audited, approved overhead rate. NBRs are inclusive of direct salary, indirect expenses and profit.

**NTE** - Not to Exceed Amount

**T&M** - Time and Materials

### A. METHOD of COMPENSATION for NON-CONTINGENCY TASKS

Payment will be made for completion of, or acceptable monthly progress on, tasks and deliverables in conformance with Contract requirements and all applicable standards. Consultant shall complete all Services and provide all deliverables as defined in the Contract. If the applicable compensation is exhausted, but Services and deliverables are not complete, Consultant shall complete the Services and provide the deliverables to County's satisfaction without additional compensation.

The amount payable under the Contract may be adjusted by County or renegotiated to:

- Reduce the NTE, Fixed-Price or Fixed-Fee amount associated with Tasks/Deliverables that were not authorized by County or not performed by Consultant;
- Reduce the NTE, Fixed-Price or Fixed-Fee amount commensurate with deductive amendments to reduce the risk associated with the project or to reduce the scope of work required under the Contract;
- Increase the NTE, Fixed-Price or Fixed-Fee amount for additional Tasks/Deliverables added to the scope of work via amendment to the Contract.

#### 1. Cost Plus Fixed Fee with Not-To-Exceed (CPFF)

County will pay Consultant actual costs plus the negotiated fixed fee, up to the NTE established in the Contract, to complete the Services required under the Contract.

**Actual Costs.** Actual costs are limited to:

- **Direct Salary Costs** -the direct salary rate (up to the maximum rate approved in the Contract for the employee's classification) paid to the specific employee(s) productively engaged in work to complete the Services required under the Contract.
- **Allowable Indirect Costs** - (See section I, Indirect Costs)
- **Direct Non-Labor Costs** (without mark-up) - Approved travel costs (up to the rates established in Section B of this Exhibit) and other approved direct-non labor expenses that are not included in overhead.
- **Subconsultant Costs** (without mark-up) - the actual labor costs, direct non-labor costs (as described above) and indirect costs that have been billed to Consultant and recognized by Consultant as valid, undisputed and payable.

**Fixed-Fee.** A profit rate will be negotiated. The Fixed-Fee amount will be developed by multiplying the negotiated profit rate by the Labor Costs (excluding labor costs from NBRs) plus Allowable Indirect Costs for the project. The cost basis for calculating the Fixed Fee must not include:

- direct non-labor expenses,
- labor costs for firms using NBRs (these rates already include profit),
- FCCM

- costs for contingency tasks, if any. Cost and profit for contingency tasks will be included in the amount negotiated for each contingency task and will not be included in the Fixed-Fee for non-contingency tasks.

**The total not-to-exceed amount for allowable, actual costs for non-contingency tasks is:  
\$ 694,772.30**

**The total dollar amount for the Fixed Fee for non-contingency tasks is: \$ 52,847.30**

**(The non-contingency costs and fixed-fee amounts for Consultant and each subconsultant is set forth in the Summary page of the BOC incorporated into this Contract.)**

Consultant acknowledges and agrees that the Fixed-Fee is only due and payable for work authorized by County and satisfactorily completed by Consultant.

### **B. PAYMENT OPTIONS**

Payments will occur only after County has determined that Consultant has completed, and County has accepted, the required Services (including defined deliverables) for which payment is sought via a properly submitted and correct invoice.

**(For CPFF and T&M) - Progress Payments for Acceptable Progress.** County will pay Consultant monthly progress payments for actual costs, up to the Contract NTE amount, for Consultant's acceptable (and verifiable) progress on tasks and deliverables included in the invoice.

### **Basis of Payment or Fixed Fee (for CPFF only)**

**The Basis of Payment for Fixed Fee is as follows:**

- The Fixed-Fee will be paid for accepted and verified progress based on an estimated percentage of completion of the Services and deliverables required under the Contract.
- The Fixed-Fee will be paid as a single lump sum payment following completion and acceptance of all Services and deliverables required under the Contract.
- The Fixed-Fee will be paid in the amounts identified for each completed and accepted milestone: \_\_\_\_\_ **[Identify milestones and dollar amount for each.]**

### **C. TRAVEL**

Travel costs are allowable only if they are authorized under the Contract and if the travel is essential to the normal discharge of County's responsibilities and is related to official County business. **All travel shall be conducted in the most efficient and cost-effective manner that results in the best value for the State.** Personal expenses shall not be authorized at any time. The following guidelines shall apply to the Contract:

- The travel, lodging, and per diem rates referenced in this Section C are the maximums that Consultant's estimate (or reimbursement, if applicable) may be based on. Travel rates other than those referenced in this Section C may be negotiated in the Contract, however, under no circumstance shall travel, lodging and per diem rates exceed the maximums set forth by the State Controller at <https://www.oregon.gov/DAS/SCD/SARS/policies/oam/40.10.00.PO.pdf>.
- Mileage - For compensation based on Cost-Plus-Fixed-Fee or Time and Materials (or Fixed Price or Price Per Unit when travel reimbursement is approved and mileage is compensated separately), all mileage approved by County will be reimbursed according to the rates set forth by the State Controller at

<https://www.oregon.gov/DAS/SCD/SARS/policies/oam/40.10.00.PO.pdf> that are in effect on the date when the travel occurs.

- For compensation based on Cost-Plus-Fixed-Fee or Time and Materials, Consultant shall submit receipts for travel-related expenses billed to County, such as but not limited to, lodging, rental vehicles, and air fare. If lodging is shared by two or more travelers, the lodging receipt must indicate the names of any travelers on official State business who shared the room.

#### **D. INVOICES**

Consultant shall submit invoices in the format required by County (and with supporting documentation to substantiate charges on the invoice, including a detailed line-item breakdown of labor and direct non-labor costs by task/subtask) no more frequently than once per month. The address for invoice submittal is set forth in Exhibit J. In addition to all other applicable invoice requirements in this section D, each invoice must include the following information:

- The County's Contract number
- The County's project number

**Progress Reports:** Each monthly invoice must include a progress report. The monthly progress report must cover the period invoiced and, at minimum, must:

- Describe the previous month's project activities and the planned activities for the next month;
- For each task/deliverable identify the percentage completed during the month and the cumulative percentage completed;
- Reconcile progress of each task/deliverable with the schedule identified for each.
- Identify issues/concerns that may affect the project Statement of Work, schedule or budget.

#### **"Paid Summary Report"**

Consultant shall complete and submit to APM [Paid Summary Report\(s\)](#) [form 734-2882] per the instructions on the form. Consultant must report payment information for all subcontractors and suppliers used under the Contract throughout the period of performance. **This reporting is required for all Contracts that include subs, regardless of funding or whether or not a DBE goal or Certified Small Business Aspirational Target is assigned.**

#### **CPFF and T&M Compensation:**

- Consultant shall prepare invoices based on the actual hourly rates, up to the maximums for each respective classification approved in the Contract, of the employees (or subconsultants) that performed the Services.
- Consultant shall provide documentation in each invoice to itemize all reimbursable actual labor costs and direct non-labor expenses for which Consultant seeks reimbursement, including a breakdown by task of the number of labor hours for each employee, employee names and classifications. Include receipts for any items purchased or equipment rentals for the Project that exceed \$100. Include copies of all invoices, similarly detailed, from authorized subconsultants.
- County will reimburse Consultant for approved travel expenses incurred in accordance with **Exhibit B**, Section C of the Contract, if County has agreed to reimburse Consultant for travel expenses. For travel expense claims include receipts for lodging; rental cars, airfare.

**Fixed-Price Compensation.** Consultant shall prepare invoice(s) based on the payment option identified in Section B of this Exhibit:

- For Contracts using "Payment upon Full Completion" payment option, Consultant shall submit a single invoice requesting payment for the full Fixed-Price amount after all Services have been completed and all Deliverables have been accepted by County.

- For Contracts using “Progress Payments for Percentage of Services Completed” payment option, Consultant invoices shall be limited to an amount commensurate with the percentage of the total Services (including Deliverables) that were completed in the month invoiced.

County may request a full written itemization of and receipts for, but not limited to, any or all labor and direct costs billed by Consultant. Consultant shall provide written itemization and receipts to County within 5 business days of County’s request. County will not make payment to Consultant under the applicable invoice until County has received all requested supporting documentation from Consultant and County has approved the invoiced amounts. Any overdue payments to Consultant by County for an approved invoice are subject to ORS 293.462.

#### **E. PAYMENT TERMS**

Payment will be made to Consultant no later than 45 calendar days from receipt of invoice completed in conformance with all contractual requirements. County will endeavor to notify Consultant within 10 business days of receipt of invoice regarding any necessary revisions or corrections to the invoice. If revisions are necessary, payment will be made no later than 45 calendar days from receipt of the revised invoice. Any interest for overdue payment will be in conformance with Oregon law.

#### **F. CORRECTIVE WORK**

Consultant shall complete all Services, including Deliverables, as required in the Contract to County’s satisfaction. If County, using reasonable discretion, determines that the Services or associated deliverables, or both, are unacceptable, County shall notify Consultant in writing of the deficiency. Within 7 calendar days (unless a different timeframe is agreed to by the Parties) of receipt of the deficiency notification Consultant shall respond to County outlining how the deficiency shall be corrected. Consultant shall correct any deficiencies in the Services and Deliverables to County’s satisfaction without further compensation. County will not unreasonably withhold payment.

#### **G. WITHHOLDING/RETAINAGE**

County reserves the right to initiate, at any time during the Contract, withholding of payment equal to 5% of the amount of each invoice submitted to County under the Contract. County will make final payment of any balance due to Consultant promptly upon verification of completion and acceptance of all Services by County and will pay interest as required on retainage.

#### **H. PAYMENT REDUCTION**

County, or its duly authorized agents, may audit Consultant’s fiscal records, including certified payroll and overhead records at any time. If County finds previously undisclosed inaccurate or improper costs have been invoiced and paid, County will notify Consultant and seek clarification. County, in its sole discretion, may reduce the payment for Services by withholding the inaccurate or improper amounts from any future payment to Consultant, withhold the inaccurate or improper amounts from final payment to Consultant, or may use any other means to seek recovery of already paid but improperly calculated amounts.

#### **I. SPECIFIC LIMITATIONS and UNALLOWABLE CHARGES**

##### **Specific Limitations**

For cost reimbursement compensation such as CPFF or T&M, Consultant shall invoice County only for actual productive time Consultant personnel spend on Services by any level of Consultant’s staff (up to the established not-to-exceed amount). Consultant’s general supervisors or personnel who are responsible for more than one County project shall charge only for actual productive time spent directly on the project identified in the Contract.

County will pay Consultant only up to the hourly rates set forth in the Contract that are commensurate with the type of Services performed regardless of the classification, title, or level of experience of the

individual performing those Services. However, under no circumstances shall Consultant invoice County based on higher direct salary rates than the actual amount paid to its employees.

**Discriminatory Pricing.** Direct and indirect costs as applied to work performed under County contracts and subcontracts may not be discriminatory against the County. It is discriminatory against the County if employee (or owner/sole proprietor) compensation (in whatever form or name) is in excess of that being paid for similar non-County work under comparable circumstances.

**Discriminatory Wage Rates.** Pursuant to ORS 279C.520, Consultant shall comply with the prohibitions set forth in ORS 652.220. Failure to comply is a breach that entitles the County to terminate the Contract for cause.

**Employee Discussions Regarding Compensation.** Consultant shall not prohibit any of its employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person {see ORS 279C.520(1)}.

### **Unallowable Charges**

County will not pay for direct or indirect costs that are unallowable under the provisions of [48 CFR Part 31](#).

Costs or direct charges for, but not limited to, the following are not reimbursable:

- Costs for negotiation of the Contract or Contract amendments, including but not limited to proposal preparation, BOC preparation, preparation for negotiations, and negotiation of level of effort/budget.
- Costs related to disputes or E&O Claims, including but not limited to discussions, meetings and preparation of any dispute or claim related documentation.
- Mark-up on subcontractors or direct non-labor costs.
- Transfer of knowledge and information related to Key Person replacements.
- Correcting or making adjustments to incorrect or improper invoices.
- Direct compensation for items included in firm's indirect costs (unless properly credited back to indirect cost).
- Premium costs incurred as a result of working overtime or holidays. (Premium time should normally be charged to overhead. In accordance with ORS 279C.520, employees shall be paid at not less than time and one-half for all overtime worked and for work on legal holidays, except for individuals who are excluded from receiving overtime under personal services contracts pursuant to ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209.)

## **J. INDIRECT COSTS; SALARY and BILLING RATE SCHEDULES**

**1. Approved cost data on file with ODOT** - If Consultant or its subconsultants have current, approved overhead, salary, or NBR rate schedules on file at ODOT, Consultant and its subconsultants will submit those approved rate schedules and any required certifications (or County may obtain rate schedules from ODOT) as required in subsections 2 and 3 below for use under the Contract.

**2. Overhead Schedule** - If Consultant or subconsultants calculate overhead as part of their normal business practice, the overhead schedules shall be prepared and submitted in accordance with ODOT's Billing Rate Policy (as may be revised from time to time by ODOT) available at: <https://www.oregon.gov/ODOT/Business/Procurement/DocsPSK/brPolicy.pdf>. Consultant Certification of compliance with Federal Cost Principles is required per FHWA directive 4470.1a: <https://www.fhwa.dot.gov/legsregs/directives/orders/44701a.htm>. A signed [Certification of Final Indirect Costs form](#) must be submitted with the overhead schedule.

In order to assess the adequacy of an audited overhead rate for use in fair and reasonable price negotiation, County and/or ODOT may evaluate a firm's financial capability, internal control structure, and overhead schedule. This includes a determination as to the applicability of historical overhead rates to the anticipated future contract period, performing financial ratio analysis, evaluating overhead account trends and utilization rates for reasonableness.

### **3. Salary and Billing Rate Schedules**

Consultant shall, and shall cause all of its subconsultants to submit electronically to County the applicable rate schedules described below.

**Direct Salary Rate Schedule** - includes the name, classification and actual direct salary rate as approved for each employee that may be used under the Contract. This schedule is required for firms that calculate an overhead rate. This schedule will not be included in the Contract but will be retained by County.

**Negotiated Billing Rate Schedule** - may be required for Consultants or subconsultants that do not have a cognizant or acceptable independent audit for overhead rates (or do not calculate overhead as part of their normal accounting practice) and County determines it is in the public's best interest to negotiate specific billing rates. Instead of calculating a billing rate using a formula that applies overhead, profit, and FCCM to the direct salary rate, this schedule lists negotiated rates that are fully inclusive of profit, overhead and any cost of living or merit raises. The billing rates invoiced under the Contract must not exceed the rates per classifications listed in the schedule and may be no greater than the lowest rates charged to other public or private clients.

**Direct Non-Labor Rate Schedule** - is an optional schedule used to list actual costs of reimbursable items that are not included in the firm's overhead rate (or that are properly applied as a credit in overhead calculation).

**Approved Rate Schedules** - The rate schedules approved for the Contract and the BOC are incorporated into this Contract by this reference. Prior to approval of additional subconsultants, Consultant shall provide to County any requested documentation of qualifications and experience of the prospective subconsultant and its staff.

### **K. RATE REVISIONS**

The hourly rates (including escalations, if any) approved for use under this Contract shall remain in effect throughout the duration of the Contract unless revisions are approved by County. Any approved revisions to the hourly rates allowable under the Contract shall not cause an increase in the Contract NTE amount (exceptions may be approved by County on a case by case basis).

### **L. BREAKDOWN OF COSTS (BOC)**

Prior to execution of the Contract or any amendments that add Services, Consultant shall prepare and submit a BOC based on the approved overhead and actual direct salary rates (and approved NBRs as applicable) for each classification to be used under the Contract. Consultant shall include names of proposed staffing in the BOC.

The BOC must include a detailed breakdown of the costs for each element of the work regardless of compensation method. The BOC must identify:

- a) the proposed staff assignments (classifications and names) and hours per task and sub-task;
- b) an itemization with documentation (estimates from vendors shall be provided upon request) to support rental equipment, flaggers, travel and other direct non-labor expenses; and
- c) the estimate for Services as provided by each subconsultant that shows the assigned staff and hours per task and sub-task and itemized direct non-labor costs. County may ask for qualifications

of any staff assigned to work on a project if they were not included in Statement of Proposal originally submitted for solicitation.

- d) the certification status of any disadvantaged business enterprise, minority-owned business, woman-owned business, service-disabled veteran-owned business or emerging small business subcontractors included in the BOC.
- e) **Contingency Tasks.** Amounts for any contingency tasks must be shown as a separate line-item for each task. The amount for a contingency task must include all labor, overhead, profit, and expenses for the task. Expenses for contingency tasks must not be included in an overall amount for direct non-labor expenses applied to the budget for the non-contingency tasks. Enter the agreed to unit and extended amounts for contingency tasks in the Contingency Task Summary table.

**The final BOC agreed to by the Parties is incorporated by this reference.**

## EXHIBIT C - INSURANCE

All insurance required by this Contract shall be maintained with insurers with an A.M. Best Financial Strength Rating of no less than A-. Insurers must be legally authorized to transact the business of insurance and issue coverage in the State of Oregon. Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions and self-insurance. Prior to beginning work and during the term of this Contract, including any extensions or warranty period, Consultant shall maintain in force at its own expense each insurance set forth below:

1. **Workers' Compensation** insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (Consultants with one or more employees, unless exempt under ORS 656.027).
2.  **Required by County**  **Not required by County.**  
**Professional Liability** insurance with a per claim, incident or occurrence limit, or the equivalent, of not less than  **\$1,000,000**, or  **\$2,000,000**. Any annual aggregate limits must not be less than  **\$1,000,000**, or  **\$2,000,000**. This insurance must cover damages caused by negligent acts, errors or omissions of Consultant and Consultant's subcontractors, agents, officers or employees related to the professional Services to be provided under the Contract. If this insurance is provided on a "claims made" basis, Consultant shall continue the same coverage for  **2 years**,  **3 years**, or  **6 years** after completion of the Services or acquire "tail" coverage or an Extended Reporting Period endorsement for the foregoing extended period beyond Contract expiration or termination. Evidence of any required extended period coverage will be a condition of final payment under the Contract.
3.  **Required by County**  **Not required by County.**  
**Commercial General Liability** insurance must be issued on an occurrence basis with per occurrence limit, or the equivalent, of not less than \$1,000,000 covering "bodily injury" and "property damage." Any annual aggregate limits shall not be less than \$2,000,000.
4.  **Required by County**  **Not required by County.**  
**Automobile Liability** insurance covering Consultant's business-related automobile use, with a combined single limit, or the equivalent, of not less than \$1,000,000 each occurrence for "bodily injury" and "property damage," including coverage for all owned, non-owned, rented or hired vehicles.
5. **Notice of change or cancellation.** There shall be no cancellation, material change (one that would adversely impact the protection of County provided through the insurance coverages required in this **Exhibit C**), reduction of limits or intent not to renew the insurance coverage(s) without 30 calendar days prior written notice from Consultant or its insurer(s) to County. **All policies and certificates of insurance, including Workers' Compensation, must include a notice of cancellation or nonrenewal clause as required under ORS 742.700 to 742.710.**
6. **Certificates of Insurance.** As evidence of the insurance coverages required by this Contract, Consultant shall furnish acceptable insurance certificates to County prior to Contract execution. Throughout the life of this Contract, Consultant shall submit updated certificates of insurance prior to the policy expiration date(s) indicated for the required coverages. If requested by County, Consultant shall either: a) provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to County; or b) make such insurance policies, endorsements, self-insurance documents and related insurance documents available for inspection by County's representatives at a location in the State of Oregon that is reasonably convenient for County's representatives responsible for verification of the insurance coverages required under the Contract.
7. **Additional Insureds.** Insurance certificates for Automobile and Commercial General Liability must include an endorsement physically attached to the certificate specifying the County, the State of Oregon, the OTC, the Oregon Department of Transportation, and their respective officers, members, agents and employees as Additional Insureds and must expressly provide that the interest of the Additional Insureds shall not be affected by Consultant's breach of policy provisions.
8. **Subcontractors.** Consultant shall: (i) obtain proof of the above insurance coverages, as applicable, from any subcontractor providing Services related to this Contract, or (ii) include subcontractors within Consultant's coverage for the duration of the subcontractor's Services related to this Contract.



## EXHIBIT D - TITLE VI NON-DISCRIMINATION PROVISIONS

During the performance of this Contract, Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "Consultant") agrees as follows:

- a. **Compliance with Regulations:** Consultant shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
- b. **Nondiscrimination:** Consultant, with regard to the work performed by it during the Contract, shall not discriminate on the grounds or race, color, sex, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment. Consultant shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
- c. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by Consultant of Consultant's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.
- d. **Information and Reports:** Consultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County, ODOT, FHWA or the Federal Transit Administration (FTA) as appropriate, to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to County, ODOT, FHWA or FTA as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. **Sanctions for Noncompliance:** In the event of Consultant's noncompliance with the nondiscrimination provisions of this Contract, County shall impose such Contract sanctions as it, ODOT, FHWA or FTA may determine to be appropriate, including, but not limited to:
  - (i) Withholding of payments to Consultant under the Contract until Consultant complies, and/or
  - (ii) Cancellation, termination or suspension of the Contract, in whole or in part.
- f. **Incorporation of Provisions:** Consultant shall include the provisions of paragraphs (a) through (e) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as County, ODOT, FHWA or FTA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event Consultant becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, Consultant may request County, ODOT, and, in addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

## EXHIBIT E - DISADVANTAGED BUSINESS ENTERPRISE (“DBE”) PROVISIONS (Goal)

The DBE program is administered by the ODOT Office of Civil Rights (“OCR”). As the County is entering into this Contract under authority granted by ODOT, the DBE Provisions apply the same as if ODOT were the contracting agency.

“Consultant” and “Contractor” are hereinafter referred to as “Contractor”. **See sections d and i for specific documentation and reporting requirements of Contractor.**

**a. Policy and Program Authorities:** ODOT and Contractor agree to abide by and take all necessary and reasonable steps to comply with these DBE Provisions and the following, which are incorporated in this Contract with the same force and effect as though fully set forth in this Contract:

- [ODOT DBE Policy Statement](#)
- [ODOT DBE Program Plan](#), and
- Requirements of [Title 49, Code of Federal Regulations, Part 26](#) - Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

ODOT’s DBE Program authorities are set forth in the ODOT DBE Program Plan.

**b. DBE Goals:** ODOT’s overall goal for DBE participation is 11.6% for FHWA funded contracting and 6% (proposed) for FTA funded contracting. For FHWA funded contracting, ODOT may assign DBE Contract goals to increase participation by DBEs. For any Contract with an assigned DBE goal, Contractor shall select a portion of work available under the Contract for DBE participation. Contractor may use DBE subcontractors, suppliers, manufacturers, or Professional Services and Related Services providers to fulfill the assigned DBE Contract goal as long as the DBE is certified in the types of work selected. The assigned DBE Contract goal remains in effect throughout the life of the Contract. Dollar values of participation shall be credited toward meeting the assigned DBE Contract goal based on DBE gross earnings.

• **A separate DBE Contract goal, as set forth on page 1 of the Contract, has been assigned for this procurement.**

**c. Nondiscrimination Requirement:** Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Contract. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as ODOT deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR § 26.13(b)).

**d. Documentation of Proposed Participation:** Contractor shall document sufficient DBE participation to meet an assigned Contract goal or, alternatively, document adequate good faith efforts to do so (see 49 CFR § 26.53). All work committed to a DBE firm toward meeting the assigned participation goal must be performed under a written subcontract. The subcontract must fully describe any work committed to be performed by the DBE and shall include all required flow-down provisions of the primary Contract. Contractor must complete and submit the following documentation, as applicable:

1. **Subcontractor Solicitation and Utilization Report (SSUR)** - submitted with proposal in response to formal and informal Requests for Proposals (RFPs).
2. **Breakdown of Costs (“BOC”) or (“BOC-NBR”), as applicable** - submitted prior to negotiation and execution of the Contract and each amendment that changes the scope of work and costs under the Contract. The BOC forms and BOC Requirements are available

from the Internet at:

<https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx>. The BOC or BOC-NBR must clearly list any tasks or subtasks to be performed by subcontractors (DBEs and non-DBEs), each subcontractor's Federal Tax ID and identification of any required personnel. Include in the Expense Detail tab any required equipment and supplies furnished by the DBE, any of the prime contractor's resources that will be provided for the DBE's use, and identification of any second or lower tier subcontractors with the dollar amounts for each.

3. **Committed DBE Breakdown and Certification Form(s)-AE.** Required for all Contracts with assigned goals and completed prior to Contract execution and any proposed substitution. See submittal instructions on the Instructions tab of the form.
  4. **Subcontractor Reporting:** Complete and submit an initial **Paid Summary Report** [form 734-2882] per the instructions on the form.
- e. **Good Faith Efforts:** Contractor shall make good faith efforts, as set forth in 49 CFR § 26.53, Appendix A to Part 26, and ODOT DBE Program Plan, to obtain and support DBE participation that could reasonably be expected to produce and maintain a level of DBE participation sufficient to meet the Contract goal. Good faith efforts are required during solicitation, upon Contract award, and continue throughout the performance of the Contract to maximize DBE participation. The County (or local agency when applicable) Project Manager ("APM") may request Contractor to submit evidence of good faith efforts prior to Contract execution or at any time during the course of the Contract and Contractor shall promptly submit such evidence. Contractor shall use the specific DBEs listed in the Committed DBE Breakdown and Certification form(s) to perform the work and supply the materials for which each is listed unless the contractor obtains ODOT's prior written consent to terminate and replace a DBE as provided in section j. below. Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBEs as required by this provision.
- f. **Commercially Useful Function ("CUF"):** Contractor is responsible to ensure the DBE performs a commercially useful function on the Contract. A DBE performs a CUF when it is responsible for execution of the work of the Contract/subcontract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. Additional detail regarding CUF requirements and other conditions for counting participation by DBE contractors is set forth in 49CFR § 26.55. The APM will review the proposed DBE participation and may provide written comments as to whether the activities and type of work identified for DBEs complies with program regulations. In those instances where proposed activity and type of work violates applicable regulations, written comments will be offered as to corrective action required in order to comply with the regulations. ODOT may perform a CUF review at any time during the performance of the Contract.
- g. **Changes in Work Committed to DBE:** ODOT will consider the impact on DBE participation in instances where the prime Contract is amended to reduce, or delete work committed to the DBE. In such instances, Contractor shall not be required to replace the work but is encouraged to do so to the maximum extent practicable.
- h. **Prompt Payment and Retainage:** Contractor shall pay each subcontractor for satisfactory performance under its contract no later than 10 calendar days from receipt of each payment Contractor receives from ODOT (or local agency when applicable) for the subcontracted work. In addition, within 10 calendar days of receipt of retainage from ODOT (or local agency when applicable), Contractor shall pay to each subcontractor the retainage that pertains to the work of that subcontractor.
- i. **Reporting Requirements:** Contractor must report payment information for all subcontractors and suppliers used under the Contract throughout the period of performance. Contractor shall complete and submit initial, interim and final Paid Summary Report(s) [form 734-2882] per the instructions included on the form.

- j. **Termination of DBE Notification Requirement:** Contractor shall comply with all requirements set forth in 49 CFR § 26.53 regarding termination of DBEs including, without limitation, documentation of good cause, 5-day notice to the DBE subcontractor and ODOT, DBE responses, ODOT’s prior written consent of DBE termination, and replacement of DBEs. ODOT will provide such written consent only if it agrees the prime contractor has good cause to terminate the DBE in accordance with 49 CFR 26.53(f)(3).
- k. **Remedies:** Contractor’s failure to comply with these DBE Provisions and the requirements of 49 CFR Part 26 may result in one or more of the following administrative actions as deemed appropriate by ODOT: non-compliance documented in ODOT evaluation of Contractor performance, a corrective action plan prepared by Contractor, ODOT (or local agency when applicable) withholding of retainage, suspension of work, reporting of non-compliance to the federal System for Award Management (“SAM”) available at <https://sam.gov/SAM/>, any other remedies provided under the Contract.
- l. **Information/Questions:** The DBE program is administered by the ODOT Office of Civil Rights (“OCR”). Questions related to the DBE Program may be sent via email to [ocrinforequest@odot.state.or.us](mailto:ocrinforequest@odot.state.or.us) or otherwise directed to: Oregon Department of Transportation Office of Civil Rights 3930 Fairview Industrial Drive SE (MS 23), Salem, OR 97302; Phone: 503-986-4350 Fax: 503-986-6382.
- m. **Directory of Certified Firms:** A searchable database for active certified firms (by NAICS code, NIGP code, ODOT code, certification type, location or project ethnicity goals) is available on line at: <https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp>.

**Related Web Sites:**

All forms, documents and CFR citations referenced or linked in these DBE Provisions are available on line at:

- o **Forms:** <https://www.oregon.gov/ODOT/Business/OCR/Pages/Forms.aspx>
- o **Documents:** <https://www.oregon.gov/ODOT/Business/OCR/Pages/Disadvantaged-Business-Enterprise.aspx>
- o **49 CFR Part 26:** <https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=34ea04c7ed3d45b0e41f82a5646f1c15&rgn=div5&view=text&node=49:1.0.1.1.20&idno=49>

**Acronyms & Definitions Applicable to Exhibit E**

APM	ODOT’s or local agency’s Project Manager
BOC	Breakdown of Costs
BOC-NBR	Breakdown of Costs for Negotiated Billing Rates
CFR	Code of Federal Regulations
CUF	Commercially useful function
DBE	Disadvantaged Business Enterprise
OCR	ODOT Office of Civil Rights
ODOT	Oregon Dept. of Transportation
RFP	Request for Proposals
SSUR	Subcontractor Solicitation and Utilization Report
USDOT	United States Department of Transportation

## EXHIBIT F - SPECIAL TERMS & CONDITIONS

Provisions in this Exhibit F are in addition to and do not supersede the terms and conditions set forth in the Contract.

**NEPA Decision Documents and Final Design.** County is not obligated to proceed with final design for any alternative; all reasonable alternatives will be evaluated and given appropriate consideration, and the Consultant under the Contract may not proceed with final design until the relevant NEPA decision documents have been issued.

## EXHIBIT G - RESERVED

## EXHIBIT H - RESERVED

## EXHIBIT I - ERRORS & OMISSIONS ("E&O") CLAIMS PROCESS

**Exhibit I** is not physically attached but is incorporated into this Contract with the same force and effect as though fully set forth herein. For purposes of this Contract, the term "Agency" or "County", as used in the E&O Claims Process, means "local public agency". The E&O Claims Process (as may be revised from time to time by ODOT) is available at the following Web address as Exhibit I:

<http://www.oregon.gov/ODOT/Business/Procurement/DocsPSK/xbti.pdf>

## EXHIBIT J - CONTACT INFORMATION and KEY PERSONS

### 1. Party Contact Information.

#### a.1 \* County's Project Manager (APM)

<b>Name:</b>	Robert Knorr
<b>Ph:</b>	503-742-4680
<b>E-mail:</b>	rknorr@clackamas.us

#### a.2 \*: County Contract Administrator for contractual matters:

<b>Name:</b>	
<b>Ph:</b>	
<b>E-mail:</b>	

#### a.3 County's address for invoicing:

<b>Mailing Address:</b>	150 Beaver Creek Road, Oregon City, OR 97045
<b>E-mail:</b>	rknorr@clackamas.us

#### b. \*\*Consultant's Project Manager (PM) for this Contract is:

<b>Name:</b>	Troy Bowers, PE
<b>Ph:</b>	503-225-9010
<b>E-mail:</b>	<a href="mailto:Troy.bowers@murraysmith.us">Troy.bowers@murraysmith.us</a>

#### c. Consultant's remit address for payments and contact for billings:

<b>Name:</b>	Murraysmith, Inc.
<b>Address:</b>	88 SW 5 <sup>th</sup> Ave, Suite 1170 Portland, Oregon 97204
<b>Ph:</b>	503-225-9010
<b>E-mail:</b>	<a href="mailto:Troy.bowers@murraysmith.us">Troy.bowers@murraysmith.us</a>

\* County may change the Contract Administrator or Project Manager designation by promptly sending written notice (e-mail acceptable) to Consultant, with a copy to ODOT Procurement Office.

\*\*Any changes to Consultant's Project Manager must be approved in writing (e-mail acceptable) by County.

### 2. Key Persons

Consultant acknowledges and agrees that County selected Consultant, and is entering into the Contract because of the special qualifications of Consultant's key personnel ("Key Persons" or "Key Personnel"), which may include specific staff agreed to during Contract negotiations. In particular, County, through the

Contract is engaging the expertise, experience, judgment and personal attention of the Key Persons identified in the Contract.

Each Key Person shall not delegate performance of any management powers or other responsibilities he or she is required to provide under the Contract to another of Consultant’s or subconsultant’s personnel without first obtaining the written consent of County. Further, Consultant shall not re-assign or transfer any Key Person to other duties or positions such that the Key Person is no longer available to provide County with his or her expertise, experience, judgment, and personal attention according to any schedule established under the Contract without first obtaining County’s prior written consent to such re-assignment or transfer. Notification of request to change a Key Person shall be in writing (via e-mail or other form as may be required by County.) Throughout the term of the Contract, Consultant shall provide updated information (if requested by County) to demonstrate the continuing qualifications of any staff working on County projects, including those approved as Key Persons.

In particular, County, through the Contract is engaging the expertise, experience, judgment and personal attention of the following Key Persons:

Name	Role
Nicholas McMurtrey	Registered Professional Engineer
Troy Bowers	Registered Professional Engineer
Terry Goodman	Registered Professional Land Surveyor

**3. Reassignment or Transfer of Key Person**

In the event Consultant requests that County approve a reassignment or transfer of a Key Person:

- Consultant shall provide a resume for the proposed substitute demonstrating that the proposed replacement has qualifications that are equal to or better than the qualifications of the person being replaced.
- County shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Key Person.
- Any substitute or replacement for a Key Person must be approved in writing (e-mail acceptable) and shall be deemed to be a Key Person under the Contract.

Consultant agrees that the time/costs associated with the transfer of knowledge and information for a Key Person replacement is not a cost borne by County and shall not be billed to County. This includes labor hours spent reviewing project documentation, participation in meetings with personnel associated with the Contract/project, and participating in site visits to become familiar with the project.



**DAN JOHNSON**  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT  
DEVELOPMENT SERVICES BUILDING  
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of Personal Services Contract with David Evans and Associates,  
Inc., to provide Design Services for  
Canby Marquam Highway Bear Creek Bridge**

<b>Purpose/ Outcomes</b>	Execution of the contract between Department of Transportation and Development and David Evans and Associates, Inc., for the Canby Marquam Highway: Bear Creek Bridge Design Services.
<b>Dollar Amount and Fiscal Impact</b>	The contract amount is not to exceed \$529,737.26.
<b>Funding Source</b>	State Funded Local Project Program (SFLP) Funds and County Road Funds. 215-7432-02105-481180-22257 & 215-7432-02105-481206-22257
<b>Duration</b>	December 31, 2021
<b>Previous Board Action</b>	3/21/19: BCC Approval of Local Agency Agreement No. 33216 with Oregon Department of Transportation for the Canby Marquam Hwy: Bear Creek Bridge #06027
<b>Strategic Plan Alignment</b>	This project will “Build a strong infrastructure” and “Ensure safe, healthy and secure communities” by replacing a functionally obsolete and structurally deficient bridge.
<b>Counsel Review</b>	September 25, 2019
<b>Contact Person</b>	Joel Howie, 503-742-4697

**BACKGROUND:**

The existing Canby Marquam Highway Bridge over Bear Creek was constructed in 1960 and is showing signs of decay as a result of heavy truck traffic. The bridge is considered functionally obsolete (narrow) and structurally deficient, with a sufficiency rating of 27.2 out of 100. The bridge is composed of undersized timber members that have shear and flexure damage, which were temporarily repaired until the bridge can be replaced. The asphalt pavement wearing surface requires constant repair due to the bridge vibrating and shaking when trucks travel on the bridge.

The County obtained federal Highway Bridge Program funds from the ODOT Local Bridge Program and requested to exchange the federal funds for state funds. The federal funds are to be exchanged at a 1:1 fund ratio up to \$2,076,172.74. The state funds will be matched by up to \$237,627.26 in County Road Funds for a total project cost of \$2,313,800.



**PROCUREMENT PROCESS:**

This project was advertised in accordance with ORS and LCRB Rules on April 3, 2019. Proposals were opened on May 2, 2019, one (1) proposal was received: David Evans and Associates, Inc. After review of the proposal and all necessary documentation, David Evans and Associates, Inc., was determined to be the successful proposer.

The contract was reviewed and approved by County Counsel.

**RECOMMENDATION:**

Staff recommends that the Board of County Commissioners of Clackamas County, approve and execute the Contract between Department of Transportation and Development and David Evans and Associates, Inc., for the Design Services for Canby Marquam Highway Bear Creek Bridge project for a total contract amount not to exceed \$529,737.26.

Respectfully submitted,

Joel Howie,  
Civil Engineering Supervisor

Placed on the Agenda of \_\_\_\_\_ by the Procurement Division



**CLACKAMAS COUNTY  
PERSONAL SERVICES CONTRACT  
Contract #1868**

This Personal Services Contract (this “Contract”) is entered into between **David Evans and Associates, Inc.**, (“Contractor”), and Clackamas County, a political subdivision of the State of Oregon (“County”) on behalf of Department of Transportation and Development.

**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 **December 31, 2021**.
- 2. Scope of Work.** Contractor shall provide the following personal services: Design Services for Canby Marquam Highway Bear Creek Bridge (“Work”), further described in **Exhibit A**.
- 3. Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed **Five hundred twenty nine thousand seven hundred thirty-seven dollars and twenty six cents (\$529,737.26)**, for accomplishing the Work required by this Contract. Consideration rates are on a time and materials basis in accordance with the rates and costs specified in Exhibit B. 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 to Contractor following the County’s review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County 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: Joel Howie.

- 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 County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: <http://www.clackamas.us/bids/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 County Contacts.**

Contractor	County
Administrator: Joel Tubbs Phone: 503-499-0410 Email: <a href="mailto:jbt@deainc.com">jbt@deainc.com</a>	Administrator: Joel Howie Phone: 503-742-4658 Email: <a href="mailto:JHowie@clackamas.us">JHowie@clackamas.us</a>

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. County 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 County 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 County 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 County 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. RESPONSIBILITY FOR DAMAGES; INDEMNITY.** 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, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all

claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

**8. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County 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, County 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 County 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 County 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. Contractor shall provide proof of said insurance and name the County as an additional insured 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 [procurement@clackamas.us](mailto:procurement@clackamas.us).

Required - Workers Compensation: Contractor shall comply with the workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.126.
<input checked="" type="checkbox"/> Required – Commercial General 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 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 occurrence for Bodily Injury and Property Damage.

This policy(s) shall be primary insurance as respects to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it. Any obligation that County 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 21 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 County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or [procurement@clackamas.us](mailto:procurement@clackamas.us). 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 County'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 County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County 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 County may reasonably request in order to fully vest such rights in County. 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, County shall have no rights in any pre-existing Contractor intellectual property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for County use only. If this Contract is terminated prior to completion, and the County is not in default, County, in addition to any other rights provided by this Contract, may require the Contractor to transfer and deliver all partially completed Work Product, reports or documentation that the Contractor has specifically developed or specifically acquired for the performance of this Contract.
- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County 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; and (E) the Work under this Contract shall be performed in the same professional skill, care, diligence and standards as other professionals performing similar services under similar conditions. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 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, 11, 13, 14, 16 and 21, and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the County'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 County, which shall be granted or denied in the County's sole discretion. In addition to any provisions the County 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. County'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 County 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. TERMINATIONS.** A) This Contract may be terminated by mutual agreement of the parties or by the County for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Contractor; or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County. Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. (B) if Contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.
- 20. REMEDIES.** If terminated by the County due to a breach by the Contractor, then the County 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 County, less any setoff to which the County is entitled.
- 21. NO THIRD PARTY BENEFICIARIES.** County 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 County nor Contractor shall be held responsible for delay or default caused by events outside the County 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 County to enforce any provision of this Contract shall not constitute a waiver by County 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 County 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. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract as such claim becomes due, the proper officer representing Clackamas County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract.
- f. 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 County to terminate this Contract for cause.
- g. 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. KEY PERSONS.** Contractor acknowledges and agrees that a significant reason the County is entering into this Contract is because of the special qualifications of certain Key Persons set forth in the contract. Under this Contract, the County 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 County provides prior written consent to such delegation. Contractor shall not reassign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide the County with such Key Person's services unless the County provides prior written consent to such reassignment or transfer.

**28. MERGER.** THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR,

ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

David Evans and Associates, Inc.

Clackamas County

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name / Title (Printed)

\_\_\_\_\_  
Recording Secretary

114015-10  
Oregon Business Registry #

Approved as to Form:

DBC/Oregon  
Entity Type / State of Formation

\_\_\_\_\_  
County Counsel

\_\_\_\_\_  
Date



**EXHIBIT A  
PERSONAL SERVICES CONTRACT  
STATEMENT OF WORK  
DESIGN SERVICES FOR CANBY MARQUAM HIGHWAY: BEAR CREEK BRIDGE**

**EXHIBIT B  
FEE SCHEDULE**