

Issued by Clackamas County



Request for Proposals

A&E and Related Services

RFP Number: 22235-01 / #2018-62

RFP Title: Canby Ferry Bank Stabilization & ITS Project

Issue Date: July 11, 2018

PROPOSAL DUE DATE: August 2, 2018 by 2:00 pm PST

Proposer Questions, RFP Protests, and Requests for Change: due via email 7 calendar days prior to Proposal due date.

A pre-proposal conference will not be held.

Issuing Office / Single Point of Contact

Single Point of Contact for this RFP:	Ryan Rice, Clackamas County Procurement Division, 503-742-5444
Address:	Clackamas County Public Services Building 2051 Kaen Road Oregon City, OR 97045
E-mail:	rrice@clackamas.us
FAX:	503-742-5401

Proposals must be submitted to the above physical address.
(See submittal requirements in [RFP section 2.4](#))

This RFP is a Qualifications Based Selection (QBS) with
Federal Highway Administration (FHWA) Funding.

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1.0 SOLICITATION PURPOSE & CONTRACT OVERVIEW

1.1 SUMMARY OVERVIEW & PROCUREMENT SCHEDULE

Clackamas County ("County") is issuing this Request for Proposals and any addenda thereto (collectively, the "RFP") to obtain Proposals from qualified consultant(s) for preliminary engineering and final design and related services ("Services") for the following project Canby Ferry Bank Stabilization & ITS Project (the "Project"). For further information regarding the Project and Services needed, see sections 1.2 through 1.10 and Attachment B.

Proposers responding to this RFP do so solely at their expense, and County is not responsible for any Proposer expenses associated with the RFP.

Procurement Schedule	Date
RFP Issue Date, Deadline for Proposer Questions/Protests, and Proposal Submittal Deadline	August 2, 2018
Proposal Evaluation (and interviews if conducted) -	Estimated: August 3, 2018 to August 9, 2018
Notice of Intent to Award	Estimated: August 13, 2018
Negotiations	Estimated: August 20, 2018
Contract Start	Estimated: September, 2018

1.2 PROJECT BACKGROUND/SCOPE INFORMATION & LOCATION

Estimated cost of project construction: \$408,000

Estimated date for completion of construction project: October 2022.

The statement of work (SOW) will be developed and negotiated, within the scope advertised in this RFP, with the selected Proposer for inclusion in the Contract. A draft SOW is provided in RFP Attachment B, which will be negotiated with the selected Proposer for inclusion in the Contract.

1.3 PROJECT PHASES

County anticipates the contracted Services will be a phased development as follows:

- Phase I - Preliminary Engineering and Final Design;
- Phase II - Construction contract administration, construction engineering and inspection ("CA/CEI"). Following Project Final Design, County may, at its discretion:
 - (a) negotiate and amend the contract to include all CA/CEI Services (or various elements),
 - (b) complete various elements of construction oversight work with County's in-house staff, or
 - (c) assign various elements of CA/CEI Phase to another consulting firm.

1.4 PERIOD OF PERFORMANCE

The schedule for performance of Services needed under the prospective contract is approximately October 2018 to April 2020 for Phase I. Completion of Phase II, if applicable, is approximately October 2021.

1.5 QUANTITY OF CONTRACTS AWARDED & OFFER PERIOD

It is anticipated that 1 Proposer will be selected for Contract award from this RFP. A Proposer's Proposal is a firm offer, irrevocable, valid and binding on the Proposer for not less than 180 days following the closing date for this RFP. County may request, either orally or in writing, that Proposer extend the offer

period in writing.

1.6 FUNDING SOURCE(S): Federal Ferry Boat Discretionary Funds match by County Road Funds.

1.7 CONTRACT NOT TO EXCEED AMOUNT & METHOD OF COMPENSATION

The anticipated initial value of the contract awarded from this RFP is estimated to be in the range of \$150,000 to \$200,000. Contingent upon County's need, Consultant's performance, and the availability of approved funding, County reserves the right to amend the contract (within the scope of the Project described in this RFP) for additional tasks, Project phases and compensation as necessary to complete the Project.

The method of compensation will be determined by County and may be any of the following methods (may include more than 1 method - "Mixed"):

- Cost Plus Fixed-fee, up to a maximum NTE amount;
- Fixed Price for all Services; Fixed Price per Deliverable; Fixed Price per Milestone;
- Time and Materials, up to a maximum NTE amount;

1.8 DISADVANTAGED BUSINESS ENTERPRISE ("DBE") PARTICIPATION GOAL

ODOT's DBE Policy Statement is posted at the following Internet address:

<https://www.oregon.gov/ODOT/Business/OCR/Pages/Disadvantaged-Business-Enterprise.aspx>

The DBE Policy Statement applies and is incorporated with the same force and effect as though fully set forth in this RFP.

See **RFP Attachment C - Sample Contract**, Exhibit E for:

- information on reporting requirements and how credit for DBE participation is determined (for goal and no-goal contracts), and
- further explanation and description of the DBE program.

A DBE participation goal of 8.5% has been assigned for the Contract. Proposers shall demonstrate ability to meet the DBE goal assigned to this procurement. Proposers should not assume that a minority-owned business ("MBE"), a woman-owned business ("WBE"), a business owned by a service-disabled veteran ("SDV") or an emerging small business ("ESB") currently certified in Oregon is a DBE firm. Proposers are encouraged to verify the DBE firms' certification by:

- 1) requesting a copy of the DBE certification letter from the committed DBE firm; or
- 2) contacting the Oregon Certification Office for Business Inclusion and Diversity ("COBID") at (503) 986-0123. Proposers may also access the updated certification list by accessing COBID's Internet Web Page address at:

<https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp>

1.9 INSURANCE REQUIREMENTS

See Attachment C - Sample Contract for the insurance requirements (Contract Exhibit C) and terms and conditions that will apply to the prospective contract from this RFP.

1.10 CONTRACT TERMS & CONDITIONS

See Attachment C - Sample Contract, which is incorporated in the RFP by this reference, for the terms and conditions that will apply to the prospective contract from this RFP. Unless an official addendum has modified or reserved the right to negotiate any terms and conditions contained in the Sample Contract or exhibits thereto, County will not negotiate any term or condition after the solicitation protest deadline, except the SOW and pricing with the selected Proposer(s). Changes to standard contract terms and conditions may be subject to approval by ODOT.

By Proposal submittal, the selected Proposer agrees to be bound by the terms and conditions as set out in the Sample Contract associated with this RFP, and as they may have been modified or reserved by County for negotiation. **Any Proposal that is received conditioned on County's acceptance of any other terms and conditions or rights to negotiate will be rejected.**

2.0 INSTRUCTIONS TO PROPOSERS & SUBMITTAL REQUIREMENTS

2.1 PROPOSER QUESTIONS, RFP PROTESTS and REQUESTS FOR CHANGE

All questions, RFP protests or requests for change relating to any aspect of this RFP or the associated Project must be submitted in writing via e-mail to the Single Point of Contact identified on page 1 of this RFP. RFP protests and requests for change submitted after the due date on page 1 of this RFP will not be considered. RFP protests or requests for change must be in conformance with requirements set forth in [OAR 137-048-0240\(1\)](#). The foregoing procedures and deadline shall also apply to protests and requests for change respecting the contents of addenda to the RFP, unless the addenda specify a different deadline. **Failing to follow the foregoing requirements regarding the Single Point of Contact for inquiries may result in Proposal rejection by County.**

Answers to substantive questions and/or any changes to the RFP will be issued as official addenda to this RFP, no later than 5 business days prior to the Proposal due date.

If a pre-Proposal conference is scheduled, it is so stated on page 1 of this RFP.

2.2 ADDENDA

Changes or modifications to this RFP shall be binding on County only if in the form of written addenda to the RFP issued by County. Except for officially issued addenda, no person has been authorized to provide any other written or oral representation, clarification, warranty or assurance with respect to this RFP or the Project.

County shall advertise addenda, if any, at the following website: <http://www.clackamas.us/bids/>. Anyone who has downloaded or received a copy of this RFP will only be alerted to the existence of any addenda by monitoring and downloading from the above website, or by checking with the Single Point of Contact for this RFP. County is not responsible for sending addenda to any potential Proposers.

2.3 MINIMUM QUALIFICATIONS

2.3.1 Registered Professional Engineer. In the space provided on the Proposal Cover Sheet (RFP Attachment A), list the name and registration number of at least one Oregon Registered Civil Engineer in active status (or that will be prior to contract execution) employed by Proposer and proposed to be in responsible charge of engineering services under the prospective contract.

2.3.2 Registered Professional Land Surveyor (PLS). In the space provided on the Proposal Cover Sheet (RFP Attachment A), list the name and registration number of at least one PLS intending to perform services under the Contract.

2.3.3 Maximum Subcontracting. Proposers are advised that, to be considered for award, the prime consultant must have staffing and capacity to perform at least 51 percent of the work under the proposed contract using employees of the Proposing firm. Subconsultant assignments (including those needed to meet DBE goal, when applicable) will be permitted for portions of the work up to 49 percent of the contract value.

2.4 PROPOSAL & SUBMITTAL REQUIREMENTS

- 2.4.1 Time, Date and Place for Submission.** Proposals and all required submittal items must be received by the submittal deadline and at the place indicated on page 1 of this RFP. County will not accept Proposals submitted after the Proposal submittal deadline. A Proposal may be withdrawn or replaced with a modified Proposal by written request from Proposer, provided the request (and any modified Proposal) is received prior to the deadline for Proposal submittal.
- 2.4.2 Proposal Page Limit.** The Proposal is limited to **20 pages**. Any pages exceeding this limit will not be considered in the evaluation. Items excluded and not counted as pages toward the page limit include: Attachment A - Proposal Cover Sheet.
- 2.4.3 Proposal Format.** Use white, recycled 8½ x 11 paper (no foldouts), except where noted in section 3.2, Criteria 3. Proposals should be double-sided to the extent practicable with each side counted as one page. Proposals must use a minimum of 12-point font for substantive text (including text in tables or resumes, if any). Any content in the Proposal which Proposer believes to be a trade secret or exempt from public disclosure must be so indicated in conformance with [section 5.4](#) of this RFP.
- 2.4.4 Proposal Contents.** Proposals must include:
- A completed and signed Proposal Coversheet - RFP Attachment A (not counted toward page limit)
 - Responses to the scored criteria identified in RFP Section 3 and any other requirements specified in this RFP or the Proposal Coversheet.

This is a qualifications based selection. Cost information shall not be submitted with Proposals (see RFP section 4.0).

- 2.4.5 Additional Required Forms/Documents.** The following do not count toward the Proposal page limit and must be submitted with the Proposal package (but separate from Proposal):
- **Signed Subcontractor Solicitation and Utilization Report - SSUR** (form available at: <https://www.oregon.gov/ODOT/Forms/2ODOT/2721.pdf>.) [Submit 1 hard copy of a completed, signed SSUR with proposal. Also fax a copy of the completed, signed SSUR directly to ODOT Office of Civil Rights (Fax 503-986-6382) within 10 business days following proposal submittal due date.] **Signed Conflict of Interest Disclosure** (form available at: http://www.oregon.gov/ODOT/Business/Procurement/DocsLPA/COI_LPA.docx)

(Note: Proposers should review [section 4](#) of this RFP to ensure they can comply with submittal requirements for the selected Proposer.)

- 2.4.6 Number of Copies.** Submit the following:
- 1 original printed copy of Proposal with Coversheet (Attachment A) and 3 additional printed copies.
 - 1 original printed copy of required forms identified in section 2.3.5.
 - 1 electronic copy of Proposal and all required forms on CD or USB flash drive.
- 2.4.7 Proposal Packaging.** Submittals shall not include 3-ring binders or any plastic binding, folders, or indexing materials. Reusable binding posts, clips or rings and recycled content paper envelopes or folders are examples of acceptable bindings.

Submit Proposal in a sealed envelope or package with the following information conspicuously and legibly written or typed on the outside:

- Name and address of proposing firm
- RFP Number

- RFP Title
- RFP closing date and time
- Name of County's Single Point of Contact identified on page 1 of this RFP

3.0 EVALUATION PROCESS & CONSULTANT SELECTION

3.1 PROPOSAL EVALUATION

Submittals will be reviewed by County for responsiveness to all requirements (allowing for minor informalities) set forth in the RFP and RFP Coversheet. Responsive Proposals will be forwarded to an evaluation committee of at least 3 members that will independently review, score and rank Proposals according to the Scoring Criteria set forth in **section 3.2**. Evaluators will independently judge the merits of the Proposals by comparing the requirements and criteria stated in the RFP with the responsiveness and the relevance of experience/qualifications presented in the Proposal. The outcome of the Evaluation process may, in County's sole discretion, result in:

- (a) notice to Proposers of selection or rejection for Contract negotiation and possible award; or
- (b) further steps to gather additional information for evaluation (e.g. checking references, notice of placement on an interview list, requesting clarification).

County may require any clarification it needs to understand the Proposer's Proposal. Clarifications may not be used to rehabilitate a non-responsive Proposal.

3.2 EVALUATION CRITERIA

	Criteria	Maximum Points
1	<p>Project Team - This criterion relates to the Proposer's firm and key individuals qualifications, capabilities, and experience. Provide a description of the following:</p> <ul style="list-style-type: none"> • Description of the firm. • Credentials/experience of key individuals that would be assigned to this project. Provide description of previous experience of the key individuals working together as a team. Must be comprehensive expertise to cover all phases of the project. • Description of what distinguishes the firm from other firms performing similar services. 	20
2	<p>Prior Experience - This criterion relates the record of past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration. Provide a description of the following:</p> <ul style="list-style-type: none"> • Provide a description of providing similar services to public entities of similar size within the past five (5) years. Must provide project owner representative contact (phone and email) information. 	20
3	<p>Project Understanding and Approach - This criterion relates to the Proposer's understanding of the project and the methodology and course of action used to meet the goals and objectives of the project. The issue is whether the Proposer has a clear and concise understanding of the project based on existing information. Provide a description of the following:</p> <ul style="list-style-type: none"> • Proposer's understanding of the project as demonstrated in the RFP. 	35

	<ul style="list-style-type: none"> • Proposer's awareness of key issues. • Proposer's awareness of project requirements to produce the necessary project deliverables on schedule and within budget. • At least one page (11" X 17" allowed) of this section shall be dedicated to providing a detailed matrix illustrating tasks, subtasks and percent of overall project resources on one axis, and a timeline on the other axis. The matrix must identify the resources committed to perform the work and the proportion of the time that the firm's staff would spend on the project, including time for specialized services. • Proposer's understanding of their role in the public involvement process and ability to incorporate comments from the general public and stakeholders into the overall project. 	
4	<p>Communication and Availability - This criterion relates to accessibility and availability for project work, meetings, and other interaction with the County. Provide a description of the following:</p> <ul style="list-style-type: none"> • Ongoing projects for key staff and percent contracting availability for assignment to this project. • Resources available to perform the work for the duration of the project. • Accessibility for interaction with the Agency for meetings and other project tasks. • Ability to establish and maintain functional, productive working relationships. 	15
5	<p>Supportive Information - Supportive material may include graphs, charts, photographs, resumes, references, etc., and is completely discretionary. Please note that the material included as supportive information will not be considered when scoring any sections of the Proposal other than "Supportive Information".</p>	10

3.3 INTERVIEWS

County may, in its sole discretion, conduct and score interviews with the top ranked Proposers following Proposal evaluation. **If interviews are conducted, the following will apply:**

- A minimum of 3 evaluators shall score the interviews;
- Evaluation and scoring will be based on the criteria in section 3.2;
- Interviews will have a maximum score of 50 points;
- The number of Proposers selected for interviews is at the sole discretion of County;
- Interviews may require physical attendance at County's offices; however, County may elect to conduct interviews via teleconference or video conference. Further details will be included with notification of time and date of interviews, if conducted.

3.4 REFERENCES

County reserves the right to investigate references including customers other than those provided in the Proposal or Proposal Coversheet (Attachment A). Investigation may include past performance of any Proposer with respect to its successful performance of similar projects, compliance with specifications and contractual obligations, its completion or delivery of a project on schedule, and its lawful payment to employees and workers or any other criteria as determined by County.

3.5 PROTEST of CONSULTANT SELECTION

A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to the Single Point of Contact, identified on page 1 of this RFP, no later than 7 calendar days after the date of the selection notice. Selection protests submitted after this deadline will not be considered. Selection protests must be in conformance with requirements set forth in [OAR 137-048-0240\(2\)](#). All costs of a protest shall be the responsibility of the protestor and undertaken at the protestor's expense.

3.6 PUBLICITY

Any publicity giving reference to this project, whether in the form of press releases, brochures, photographic coverage, or verbal announcement, shall be done only after prior written approval of the County.

4.0 CONTRACT AWARD REQUIREMENTS & NEGOTIATIONS

The submittal requirements in this section 4 apply only to a Proposer that receives intent to award notice following County's evaluation and scoring of Proposals (and interviews, if conducted). Cost information shall not be submitted as part of the Proposal package and shall be submitted only when requested by County.

Failure to submit required submittal items in a timely manner may result in County rescinding the intent to award notice and issuing notice of intent to award to the next ranked Proposer.

4.1 COST INFORMATION

4.1.1 Approved Cost Data on File with ODOT. If awardee or its subconsultants have current, approved overhead, salary, or Negotiated Billing Rate (NBR) rate schedules on file at ODOT, awardee and its subconsultants will submit those approved rate schedules and any required certifications to County (or County may obtain approved rate schedules from ODOT) in lieu of the submittal requirements in section 4.1.3 below. If awardee or any of its subconsultants do not have approved cost data on file with ODOT, then the cost data and certification forms required under section 4.1.3 must be submitted as applicable.

4.1.2 Conformance with [Federal Cost Principles](#). Direct and indirect costs as applied to cost estimates and invoices under federally funded County contracts and subcontracts must be in conformance with Federal Cost Principles (48CFR Part 31). Costs 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. Any cost data submitted by Proposer pursuant to this solicitation may be shared with ODOT, FHWA and Oregon Secretary of State as necessary for audit purposes.

4.1.3 Billing Rates. Following notice of intent to award, the selected Proposer shall submit (electronically in Excel format) billing rate information within 5 business days of request by County. Compensation related forms/templates are available at <https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx>. Billing rate information must include either "Direct Salary and Overhead Information" or "Negotiated Billing Rate Schedule" described below, as applicable to your firm's (and subconsultant's) accounting method:

a. Direct Salary and Overhead Information:

(i) Direct Salary Rate Schedule. This schedule includes the name, classification and actual direct salary rate for each employee that may be used under the contract. The direct salary

rate schedule will not be included in the contract but will be used by County for negotiations and to develop an approved billing rate schedule, if applicable, for the contract.

- (ii) **Calculation of Overhead Rate** (if applicable for your firm's type of accounting). Current overhead accounting information on a form using the standard 3-column format. Firms shall condense or expand categories as applicable to the firm's method of accounting. Firms that have not established an overhead rate, based upon their particular financial reporting methodology, shall be reviewed by County to determine whether an overhead rate schedule will be required or a negotiated non-provisional billing rate will be used. If a firm does calculate overhead, the information must be submitted to County and updates must be provided annually.
- (iii) **Cognizant Audit** - If an audit for the most recent fiscal year has been completed for your firm (or any sub-contractors) by the appropriate federal cognizant agency, this must be submitted with the billing rate information (either hard copy or electronic scanned copy).
- (iv) **Independent Audit** - If an audit for the most recent fiscal year has been completed for your firm (or any sub-consultants) by an independent, third party accounting firm, this must be submitted with the billing rate information (either hard copy or electronic scanned copy).
- (v) **Certification of Indirect Rate** - [FHWA directive 4470.1A](#) requires firms to submit a signed certification of compliance with [48CFR Part 31 Federal Cost Principles](#). If your firm calculates overhead, submit a signed copy of the [Certification of Final Indirect Costs form](#).

- b. **Negotiated Billing Rate Schedule (NBR):** This schedule is used by firms that do not have an acceptable overhead rate with independent audit as part of their normal accounting practice and County determines it is in the best interest of the government to negotiate fully loaded billing rates. The negotiated billing rate schedule includes rates that are fully loaded with direct salary, indirect expenses and profit. Provide name, classification (project role) and fully loaded rate for each employee. Use of a negotiated billing rate schedule may be required by County (or ODOT) for consultants or subcontractors that do not have audited overhead rates or that, upon cursory review, appear not to be calculating overhead correctly and in conformance with [Federal Cost Principles](#).

- 4.1.4 **Cost Estimate Breakdown.** The cost estimate must include a detailed breakdown of the costs for each element of the work regardless of compensation method. Unless specified otherwise in the solicitation, contract, or by County, the estimate must identify:
 - the proposed staff assignments (job classifications, and names if requested) and hours per task and sub-task.
 - an itemization of any necessary rental equipment, flaggers, travel and other direct non-labor expenses (estimates from vendors or other documentation shall be provided upon request);
 - hours per task and sub-task for each subconsultant with job classifications (and names if requested), and itemized direct non-labor costs.
 - **Contingency Tasks.** Each contingency task, if any, must be shown as a separate line-item on the estimate with same requirements for breakdown of costs as non-contingency tasks. The total amount for a contingency task must include all labor, overhead, profit, and direct non-labor expenses for the contingency task. Do not include expenses for contingency tasks in the amounts or totals for non-contingency tasks; they must be reported separately on the estimate.

Notes:

- Consultant must submit their initial cost estimate breakdown without profit included. Profit will be negotiated and added to cost estimates following agreement on the SOW, labor costs and expenses.
- Do not add profit to costs based on fully-loaded NBR billing rates. Profit is already included in the hourly rate.

4.2 CERTIFICATION REGARDING DEBARMENT & OTHER RESPONSIBILITY MATTERS

Within 5 business days of receipt of notice of intent to award, for contracts that will exceed \$150,000 (including as may be amended) the selected Proposer shall submit a signed Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters form available on line at: <https://www.oregon.gov/ODOT/Business/Procurement/DocsPSK/CertFederal.pdf>

(ref 48CFR 52.209-5) 4.3 CERTIFICATES OF INSURANCE

Prior to Contract execution, selected Proposer shall provide certificates of insurance (hard copy or electronically via e-mail or fax) for insurance coverage required in Exhibit C of the Sample Contract (RFP Attachment C).

4.4 COMMITTED DBE BREAKDOWN & CERTIFICATION FORM

The selected Proposer must submit, prior to execution of the Contract (during negotiations), a completed and signed Committed DBE Breakdown and Certification Form (one for each DBE sub). Instructions for submittal are on the "Instructions" tab of the form. The **Committed DBE Breakdown and Certification Form-AE** is available at: <https://www.oregon.gov/ODOT/Business/OCR/Pages/Forms.aspx>. For additional information, see Exhibit E of the Sample Contract (RFP Attachment C).

4.5 TAX ID NUMBER

The selected Proposer shall provide their Taxpayer Identification Number (TIN) and backup withholding status on a completed [W-9 form](#) if either of the following apply:

- When requested by County prior to Contract execution, or
- When the backup withholding status or any other information of Proposer has changed since the last submitted W-9 form, if any.

4.6 BUSINESS REGISTRY NUMBER/REGISTERED AGENT

If selected for Contract award, Proposer must be duly authorized by the State to transact business in the State before executing the Contract. The selected Proposer shall submit a current Oregon Secretary of State business registry number (unless operating as your real and true name). See [process for obtaining a business registry number](#). All Corporations and other business entities (domestic and foreign) must have a Registered Agent in Oregon. See requirements and exceptions regarding [Registered Agents](#). For more information, see [Oregon Business Guide, How to Start a Business in Oregon](#) and [Laws and Rules](#). The titles in this subsection are available at the following Internet site: https://www.filinginoregon.com/pages/business_registry/laws_rules.html.

4.7 NEGOTIATIONS

County will negotiate in the best interest of the government, the SOW, costs, and any provision(s) County has indicated in the RFP or any Addenda it will negotiate. County will, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if County and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. County may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on until negotiations result in a Contract. County may end this solicitation if negotiations do not result in a Contract within a reasonable amount of time, as determined in the sole discretion of County.

5.0 GENERAL TERMS & CONDITIONS FOR THIS RFP

5.1 NON-DISCRIMINATION

County, in accordance with the Title VI of the Civil Rights Act of 1964, 78 Stat. 252. 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted programs of the Department of

Transportation issued pursuant to such Act, hereby notifies all Proposers that it will affirmatively ensure that all business enterprises will be afforded full opportunity to submit proposals in response to this solicitation and will not be discriminated against on the grounds of race, color, sex, or national origin in consideration for an award.

5.2 FUTURE WORK LIMITATIONS

(For these purposes, “Affiliate” or “Affiliates” of a consultant means any Person or entity that controls, is controlled by or is under common ownership or control with that consultant.)

- If preliminary engineering and final design will be performed under the prospective contract, County is not obligated to proceed with final design for any alternative. All reasonable alternatives will be evaluated and given appropriate consideration, and consultant may not proceed with final design until the relevant NEPA decision documents have been issued (e.g., Categorical Exclusion, Finding of No Significant Impact, or Record of Decision).
- If a consultant or any Associate of consultant enters into personal services contract(s) with County for the purpose of advising or assisting in developing specifications, a scope or statement of work, an invitation to bid, a request for proposals or other solicitation documents and materials related to a given procurement, the consultant may not be eligible to propose/bid on the prospective procurement (based on a case-by-case assessment by County, ODOT or FHWA). See [Oregon Laws 2012, Chapter 53](#).

5.3 ELECTRONIC FILES LINKED OR ATTACHED TO RFP

This RFP document must be viewed electronically to access files, attachments, forms, provisions or other documents that are attached electronically (shown as icons) or provided via hyperlinks from the Internet in this RFP. All files, attachments forms, provisions or other documents attached electronically or linked from the Internet are incorporated in this RFP with the same force and effect as though fully set forth in this RFP.

5.4 PUBLIC RECORDS

Proposals shall be open to public inspection in accordance with [ORS 279C.107](#). If a Proposal contains any information that may be considered exempt from disclosure as a trade secret under either ORS 192.501(2) or ORS 646.461(4), or under other grounds specified in Oregon Public Records Law, ORS 192.410 through 192.505, the Proposer must clearly designate on or with the Proposal the portions of its Proposal which Proposer claims are exempt from disclosure, along with a justification and citation to the authority relied upon. **Identifying the Proposal in whole as trade secret, confidential or otherwise exempt from disclosure is not acceptable. In such circumstances County will require Proposer to submit a memorandum citing the statutory justification for each specific area of the Proposal that Proposer claims to be exempt.** If Proposer fails to identify, on or with the Proposal, the portions of the Proposal Proposer claims are exempt from disclosure and the authority used to substantiate that claim, Proposer is deemed to have waived any later claim of an exemption or request for nondisclosure of that information. County will not be held liable for any disclosure of information which Proposer considers to be exempt from disclosure if required by a Public Records Order. Notwithstanding any rights under 17 USC 101 et seq., (the United States Copyright Act), when County is required to provide copies of the non-exempt portion of the Proposal pursuant to a Public Records Order, Proposer hereby grants a license to County to copy those portions of the Proposal that are subject to disclosure.

5.5 USE of RECYCLED PRODUCTS

Consultants/contractors shall use recyclable products to the maximum extent economically feasible in the performance of the Contract work set forth in this document.

5.6 RFP CANCELLATION

County may reject any or all Proposals and may cancel this RFP at any time if doing either would be in the public interest as determined by County. In no event shall County have any liability for the cancellation of this solicitation.

ATTACHMENT A - PROPOSAL COVER SHEET

Part I - Proposer Information and References

RFP#: 22235-01 / 2018-62

Legal Name of Firm as provided to IRS: _____

DBA Name (if different than legal name): _____

DUNS Number: _____		Is Proposer registered as a foreign corporation in Oregon? <input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/> Corporation	<input type="checkbox"/> Professional Corporation	<input type="checkbox"/> Ltd. Liability Company	<input type="checkbox"/> Partnership
<input type="checkbox"/> Liability Partnership	<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Other: _____	<input type="checkbox"/> Limited Partnership
State of Incorporation/Organization: _____			
Mailing Address: _____			
Type name of authorized contact for this RFP: _____			
Email address: _____			
Telephone: _____		Fax: _____	
Type name of person(s) authorized to sign Contract: _____			

MINIMUM QUALIFICATIONS

- Registered Professional Engineer per requirements of RFP section 2.3.1:

Name	Registration Number

- Registered Professional Land Surveyor (PLS) per requirements of RFP section 2.3.2:

Name	Registration Number

REFERENCES

Provide references for 3 clients for which Proposer has provided, in the last 3 years, similar services to those described in this RFP (please verify contact information):

1) Name of Firm: _____		Reference Contact Person _____	
Telephone: _____		email _____	
Project Title: _____			
Scheduled Contract Completion Date: _____		Actual Contract Completion Date: _____	
Contract Est. Cost: _____		Contract Actual Cost: _____	
Project Delivery Method: <input type="checkbox"/> DBB; <input type="checkbox"/> CMGC; <input type="checkbox"/> DB; <input type="checkbox"/> _____			
2) Name of Firm: _____		Reference Contact Person _____	
Telephone: _____		email _____	
Project Title: _____			
Scheduled Contract Completion Date: _____		Actual Contract Completion Date: _____	
Contract Est. Cost: _____		Contract Actual Cost: _____	
Project Delivery Method: <input type="checkbox"/> DBB; <input type="checkbox"/> CMGC; <input type="checkbox"/> DB; <input type="checkbox"/> _____			
3) Name of Firm: _____		Reference Contact Person _____	
Telephone: _____		email _____	
Project Title: _____			
Scheduled Contract Completion Date: _____		Actual Contract Completion Date: _____	
Contract Est. Cost: _____		Contract Actual Cost: _____	
Project Delivery Method: <input type="checkbox"/> DBB; <input type="checkbox"/> CMGC; <input type="checkbox"/> DB; <input type="checkbox"/> _____			

ATTACHMENT A - PROPOSAL COVER SHEET

Part II - Proposer Certifications

By signing below, the authorized representative on behalf of Proposer certifies that:

1. Proposer agrees to and shall comply with the terms and conditions of the sample contract associated with this RFP and all requirements, specifications and terms and conditions contained within the RFP (and all Addenda, if any).
2. All contents of the Proposal (including any other forms or documentation, if required under this RFP) and this Proposal Cover Sheet, are truthful and accurate and have been prepared independently from all other Proposers, and without collusion, fraud, or other dishonesty. No attempt has been made or will be made by Proposer to induce any other person to submit or not submit a Proposal. Proposer understands that any statement or representation it makes, in response to this solicitation, if determined to be false or fraudulent, a misrepresentation, or inaccurate because of the omission of material information could result in a "claim" {as defined by the **Oregon False Claims Act**, ORS 180.750(1)}, made under the resulting Contract being a "false claim" {ORS 180.750(2)} 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.
3. Proposer has available the appropriate material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to demonstrate the capability of the firm to meet all contractual responsibilities.
4. Proposer is not experiencing financial distress or having difficulty securing financing, and has sufficient cash flow to fund day-to-day operations throughout the proposed Contract period.
 - a. Within the last 3-year period, has your firm filed a bankruptcy action, filed for reorganization, made a general assignment of assets for the benefit of creditors, or had an action for insolvency instituted against it? YES ☐ / NO ☐.
 - b. If "YES" above, indicate the filing dates, jurisdictions, type of action, ultimate resolution, and dates of judgment or dismissal, if applicable:
5. Proposer has not been notified within the last 3-year period of any delinquent Federal, State or local taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.
6. Proposer, its principals and major subcontractors (major subcontractor is defined as receiving 10% or more of the total Contract amount) have not presently, or within the last 3 years, been convicted of, indicted for, or otherwise criminally or civilly charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of bids or Proposals; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property.
7. Proposer has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation or national origin. And, pursuant to ORS 279A.110, Proposer has not and Proposer will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business certified under ORS 200.055.
8. Proposer has an operating policy supporting equal employment opportunity. If proposing firm has 50 or more people, Proposer also has a formal equal opportunity program.
 - o Does Proposing firm have 50 or more employees? ☐ Yes, ☐ No.
 - o Does Proposing firm have a formal equal employment opportunity program? ☐ Yes, ☐ No

Firms of 49 people or less do not need to have a formal equal employment opportunity program, but shall have an operating policy supporting equal employment opportunity. Firms of 50 people or more shall also have a formal equal employment opportunity program.
9. Proposer's employees and agents are not included on the list entitled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the

Treasury and currently found at <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>

10. Proposer and its Principals, and any of its prospective subcontractors for this award are not presently debarred, suspended, disqualified, proposed for debarment or declared ineligible for the award of contracts by any federal agency or agency of the State of Oregon, and does not have an Active Exclusion on the System for Award Management (SAM) which is available at <https://sam.gov/>.
11. Proposer, acting through its authorized representative, has read and understands the RFP instructions, specifications, and terms and conditions contained within the RFP (including the sample contract) and all Addenda, if any. The Proposal submitted is in response to the specific language contained in the RFP, and Proposer has made no assumptions based upon either (a) verbal or written statements not contained in the RFP, or (b) a previously-issued RFP, if any.

Signature: _____ Date: _____
(President or Authorized Representative of Proposer)

Print Name: _____ Title: _____

ATTACHMENT B - STATEMENT of WORK

RFP 22235-01

Attachment B

STATEMENT of WORK and DELIVERY SCHEDULE

Canby (M.J. Lee) Ferry Bank Stabilization and ITS Project

A. PROJECT DESCRIPTION and OVERVIEW of SERVICES

Clackamas County (the “County”) is contracting with Consultant for Services in connection with the following project (the “Project”): The Canby Ferry provides an important link across the Willamette River between the cities of Canby and Wilsonville/West Linn. Access to the Ferry’s southerly termini is on Holly Street as it exits the City of Canby. Access to the northerly termini is on Mountain Road, which provides a link to I-205 and to I-5 by way of Advance Road. These roads carry a county functional classification of Rural Minor Arterials and are on the National Highway System. The following upgrades are needed for the Ferry to enhance its operation:

1. Extend fiber optic cable from the County’s CBX system on the north side of the Willamette River to the ferry location and south to connect ferry OPEN/CLOSED electronic signs with a potential connection to City of Canby Offices.
2. Add up to two pan/tilt/zoom cameras to view the ferry and have images posted on the County’s Travel Information site and potentially on the ODOT Tripcheck site. Camera images will be transferred via the fiber optic network which is fully secure.
3. Upgrade Ferry notification signs to display green “OPEN” and red “CLOSED” and be access via a smart phone application over via a computer linkup. The signs are proposed to be located on Advance Road east of Stafford Road (replacement), Mountain Road south of Stafford Road (replacement), Holly Avenue north of Territorial Road (replacement) and on Territorial Road west of Highway 99E (new installation). These signs will need electrical connections and wireless capabilities for receiving signals.
4. Switch to electronic fare collection via a tablet application to speed up fee collection and reduce the risk of having cash to carry and transport.
5. Enhance the bank on the north side roadway approach by removing some hazard trees and providing bank stabilization measures to protect the roadway that is eroding due to previous trees falling over.

General Expectations Consultant commits to oversee and direct the design the Project to obtain the greatest long-term value for the County, and which reflects the prudent expenditure of public funds within the constraints of the Project, program, context and budget. In pursuing this goal, Consultant commits to:

- Develop a design that is appropriate for the context of the Project and the nature of its function, both present and future;
- Avoid expenditures for aesthetic effect which are disproportionate to the Project as a whole;
- Manage and facilitate all facets of the Project that are reasonably within Consultant’s control to ensure the Project is completed on or ahead of time and within budget;
- Strive to reduce the construction cost of the Project while keeping life-cycle costs low;

- Use recycled/recyclable products to the maximum extent economically feasible in the performance of the Contract; and
- Apprise Agency throughout the Project concerning the economic impact of all design decisions; and embody sound and cost-effective sustainability principles in the Services performed under the Contract in accordance with the Department of Administrative Services Sustainable State Facilities Standards and Guidelines.

Project Phasing

This Project is divided into two (2) phases:

- Preliminary Design, Right of Way and Final Design Phase
- Construction Phase

This statement of work (“SOW”) addresses the first phase of the Project. Following completion of a given phase, Agency 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.

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

Agency Responsibilities

- Agency review periods do not exceed three (3) weeks.
- Agency will be primary point of contact with ODOT regarding Contract and design aspects of this Project.

Acronyms and Definitions

AASHTOAmerican Association of State
Highway and Transportation
Officials

AgencyClackamas County

APMAgency Project Manager
(Clackamas County)

APWAAmerican Public Works
Association

BABiological Assessment

BOBiological Opinion

CADDComputer Automated Drafting
and Design

CBRCalifornia Bearing Ratio

CFRCode of Federal Regulations

Draft SOW June 2018

Contract: 22235-01/ #2018-62; Key #19641

Consultant ...To be determined

CorpsUS Army Corps of Engineers

DEQDepartment of Environmental
Quality

DOEDetermination of Eligibility

DSLDepartment of State Lands

DTMDigital Terrain Model

EFHEssential Fish Habitat

ESAEndangered Species Act

FHWAFederal Highway
Administration

HAERHistoric American Engineering
Record

HECHydraulic Engineering Circular

HEC-RAS ...Hydrologic Engineering Center – River Analysis System	OHWMOrdinary High Water Mark
LPALocal Public Agency (Clackamas County)	ONHDOregon Natural Heritage Database
LRFDLoad and Resistance Factor Design	ORBICOregon Biodiversity Information Center
NENo Effects	SHPOState Historic Preservation Office
NEPANational Environmental Policy Act	SLOPES IV .Standard Local Operating Procedures for Endangered Species (SLOPES) IV
NMFS.....National Marine Fisheries Service	SOWStatement of Work
ODAOregon Department of Agriculture	T&E.....Threatened & Endangered
ODFWOregon Department of Fish and Wildlife	TS&LType, Size & Location
ODOTOregon Department of Transportation	USACEU.S. Army Corps of Engineers
	USFSUnited States Forest Service
	USFWSUnited States Fish and Wildlife Service

B. STANDARDS and GENERAL REQUIREMENTS

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

1. Standards

General and Administrative

- 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
- HEC-18 Evaluating Scour at Bridges, FHWA
- HEC-20 Stream Stability at Highway Bridges, FHWA

Roadway

- 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 Requirements

The Contractor shall develop the design utilizing AutoCAD Civil 3D version 2015 or later.

3. Licenses, Registrations and Qualifications

4. General Requirements

- The APM (or such other individual identified in specific tasks or as designated in writing to Consultant) is the primary contact on behalf of Agency for this Project.
- To the extent possible, all transmittals from Consultant to Agency must include as applicable the Contract#, PA#, Project name and the Project key number.
- Consultant shall represent Project and Agency in an appropriate and professional manner in public.

5. Compliance with Applicable Law

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

- 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
- 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 WOC 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.

7. Reserved

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 Agency review comments and submit revised deliverable(s) to APM within 10 business days of receipt of Agency review comments, unless a different timeframe is specified for specific tasks or otherwise agreed to in writing by Agency.

D. FORMAT REQUIREMENTS

- Consultant shall submit draft deliverables in electronic format via email (and up to three hard copies of deliverables, if requested).
- Consultant shall also submit all graphic files and accompanying reports in PDF.
- Consultant shall provide AutoCAD files of the final design in .dwg format.
- 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 Agency.
- Additional format requirements may be listed with specific tasks/deliverables throughout the SOW or in the PA/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.

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.

1.1 Administration & Record Keeping

Consultant shall:

- If Consultant does not have a [QA/QC plan on file with ODOT](#), Prepare a Quality Assurance/Quality Control ("QA/QC") Plan for Agency review and approval. The

QA/QC Plan must be developed consistent with requirements of ODOT's "Guidance/Template for Consultants" available online

at: http://www.oregon.gov/ODOT/HWY/OPL/docs/SEOPL/Consultant_Quality_Plan_Model.doc;

- 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. 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 3 Project schedule updates will be necessary;
- Prepare invoices and progress reports according to the Contract. 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 30 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.

1.1 Consultant Deliverables and Schedule

Consultant shall provide:

- QA/QC plan submitted electronically to APM within 7 calendar days of Notice to Proceed (NTP).
- 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 WOC;
- Contact other Agency staff, , ODOT staff, and regulatory agency staff, if necessary throughout the WOC, 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 WOC (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 Agency's office (150 Beavercreek Road, Oregon City) with Agency, ODOT LAL, Consultant's PM and other necessary Consultant staff in attendance. Consultant shall prepare the meeting agenda with input from the Agency and ODOT LAL. 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 7 business days of Notice to Proceed (NTP). Consultant shall prepare draft meeting minutes for review. For budgeting purposes, it is assumed that up to 3 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 4 Project Development Team (PDT) Meetings; 2 via telephone (90% and 100% milestones) and 2 in-person (30% and 60% milestones). Each in-person PDT meeting will be held at Agency's office (150 Beavercreek Road, Oregon City) with Agency, Consultant's PM and other necessary Consultant staff in attendance. Consultant shall prepare the meeting agenda with input from the Agency. Consultant shall prepare draft and final meeting minutes to be distributed to Agency 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.

TASK 2 SURVEY

Consultant shall survey this Project for the areas as shown in the Attached Exhibit for areas related to the embankment stabilization work on the north and south banks of the proposed project limits unless otherwise noted in specific tasks. Consultant shall obtain aerial and contour mapping related to the ITS improvements of the project. Deliverables are to be scheduled as per task 1 Project Management.

Right of Entry

Agency will obtain the one Right of Entry required for Consultant's survey and other field reconnaissance work. Agency and Consultant acknowledge that once requests to owners are sent out, it can take up to 3 weeks to receive the authorization (ROE) back from the landowners due to schedules and availability.

If ROE's are required for geotechnical boring outside the right of way, Consultant shall provide a map identifying the approximate location of the proposed boring(s) on the parcel. This map will be included in the Agency'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.

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, 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.

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 Agency, 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 Agency, One-Call Service, county, city, or other governmental agencies and utility companies.

Existing Water Way Data

Consultant shall research and obtain maps and data about rivers, creeks, and streams, springs or flowing water in or near the Project area from Agency, Federal, county, city, 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 and 2.5 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 Agency.

Consultant shall establish horizontal control according to Agency 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 Agency guidelines.

Consultant shall use 5/8" Rebar with plastic or brass caps, or other LPA 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 Agency 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 elevations 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 cogo 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.

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 Agency 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 Agency 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 the hydraulic, bridge and 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 provide for the hydraulic feature, a profile of the thread 300 feet up and 200 feet down stream of the Project. Consultant shall provide cross sections 300 feet up and down stream of the structure or utilize hydrographic surveying techniques to collect required data (7 total cross sections required). A DTM is also acceptable.

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.

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 LPA or Agency 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. The topographical data and confidence points must meet Agency Criteria. Consultant shall generate 0.2 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 LAPM within 60 days of NTP:
 - 1 copy of field notes
 - Copy of the AutoCAD Files (*.dwg) Detailed Base Map with 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 Agency.

Consultant shall submit a draft ROS to Agency for review. Consultant shall address comments received from the Agency and submit the final ROS for filing to the appropriate County in the format required.

2.5. Consultant Deliverables and Schedule

Consultant shall provide:

- Draft ROS to Agency within 60 days of NTP.
- Final ROS to the appropriate County for filing within 2 weeks of receipt of comments from Agency.
- Copy of Final ROS to Agency upon submittal to County for filing.

2.6 Right Of Way Engineering (Mapping & Descriptions)

The purpose of this subtask is to prepare right of way engineering products used in the acquisition of property. The estimated number of right of way files is 1. These products are:

1. Right of Way acquisition map; the 1 file will be a Temporary Construction Easement
2. Autocad *.dwg file used to prepare the acquisition map
3. Right of Way legal description and exhibit

The right of way acquisition map, exhibit and legal description shall be prepared in accordance with Agency requirements. Agency will provide an example for consultant to follow.

2.6 Consultant Deliverables and Schedule

Consultant shall provide in accordance with Project Schedule developed in Task 1:

- Legal descriptions and exhibits in electronic (.PDF) and hard copy to the APM.
- Final Right of Way acquisition map in electronic (.PDF and CADD).

TASK 3 ENVIRONMENTAL SERVICES

Consultant shall complete necessary field and literature investigations to provide County and ODOT 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:

- Final NEPA CE and Programmatic CE Documentation
- Archaeological Literature Review/Field Reconnaissance/Baseline Report
- Phase 1 Archaeological Investigation with Technical Report (Contingency)
- Historic Resources Baseline Report
- Hazardous Materials Corridor Assessment
- Endangered Species Act No Effect Memorandum
- Federal-Aid Highway Programmatic Documentation
- Wetland/Waters of the U.S./State Fieldwork and Determination Memo
- USACE/DSL Joint Permit Application and DEQ 401 Certification

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 right-of-way 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").

3.1.3 Final NEPA CE and PCE Documentation

Consultant shall compile data completed in tasks 3.2 through 3.8 to complete a draft PCE Approval or CE Closeout Document and submit to Agency for review and approval. Consultant
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shall coordinate with Agency on compiling data completed during Project development to deliver the draft PCE Approval or CE Closeout Document to Agency to finalize and approve.

Only after all relevant tasks 3.2 through 3.7 have been completed and approved by Agency 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 Agency 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)
- 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.

Agency and ODOT will review all draft PCE Approval and CE Closeout documents, send back to Consultant for any revisions needed. ODOT will approve, on behalf of FHWA, the accepted PCE Approval document as per the PCE Agreement, or Agency 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 and LAPM for review per Task 1 Project Design Schedule.
- One electronic copy of the Final Agency accepted Draft PCE Approval or CE Closeout Document and supporting documentation to APM and LAPM 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 Agency Archaeologist with a minimum of five 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 will be 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.

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. Agency 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.

3.2.2 Phase I Archaeological Investigation with Technical Report (CONTINGENCY)

The purpose of this task is for Consultant to establish the presence or absence of archaeological sites in, or eligible for the National Register of Historic Places (“NRHP”), which may be in the APE for the Project. Investigations under this task must comply with Guidelines for Conducting Field Archaeology in Oregon, The Phase I investigation must comply with the latest updated SHPO guidelines and the latest updated SHPO guidelines for Reporting on Archaeological Investigations. These investigations must include pedestrian survey and/or subsurface exploratory probing. Subsurface probing must be conducted in areas where ground visibility is low and in areas of high probability for archaeological resources, unless documented proof of previous fill is available i.e. as-builts/geomorphological work.

Consultant shall conduct record searches and literature review for the APE provided by Agency and a one mile radius, prior to any fieldwork. Consultant shall, at a minimum, examine the following databases and documents:

- the SHPO database in Salem, OR;
- appropriate Tribal Historic Preservation Office (“THPO”) database if APE is within a recognized reservation boundary;
- General Land Office maps;
- historic topographic 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.

Consultant shall conduct pedestrian field 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. Consultant shall provide the Agency Archaeologist with a minimum of five days advance notice prior to conducting a pedestrian survey. Pedestrian survey methods must be consistent with the latest updated SHPO guidelines. The recommended maximum spacing of transects will be 20 meters apart and no more than 30 meters apart; and may be as close as 10 meters apart vary depending on terrain features and/or ground visibility. Consultant shall determine transect spacing based on professional judgment to ensure that all probable sites are discovered. All cultural resources observable on the surface and in exposed subsurface profiles during the inventory must be identified and recorded.

Consultant shall obtain all required excavation permits and conduct subsurface exploratory probing in the APE. Copies of the draft excavation permits must be provided to the Agency Archaeologist prior to submittal to SHPO. Consultant shall provide the Agency Archaeologist with a minimum of five days advance notice of exploratory probing. Subsurface Exploratory Probing field methodology must be consistent with the latest updated SHPO guidelines. Probing must be based on an established research design. Probes must be at least 30cm in diameter and dug to sterile (at least two levels void of cultural material) or to 50cm and two sterile levels where possible, or as appropriate based on varying field conditions. Materials must be screened with a 1/8-inch mesh screen (1/4-inch as needed, see SHPO guidelines).

Auguring may be used, to establish soil stratigraphy or depth of archeological deposits and may be incorporated into the research design, if approved by Agency Archaeologist. Materials must be screened with a 1/8-inch mesh screen.

Consultant shall prepare Phase I Archaeological Investigation Report. The Report must include:

- A purpose statement and full Project description including:
 1. Agency 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
 8. Anticipated direct, indirect and cumulative impacts
- Results of SHPO/THPO data base searches including:
 1. Brief summary of previous archaeological research completed within one mile of APE with eligibility description if available.
 2. Brief summary of recorded archaeological features within one mile of APE with an eligibility description if available.
- Results of GLO and Sanborn map review including:
 1. Brief summary of features (trails, buildings, etc.) depicted on maps and within APE
- Discussion of ethno-historic information and historic context of APE and surrounding environment
- Description of pedestrian survey methods including date(s) of survey, types of transects used, and names and duties of personnel conducting the survey
- Results of pedestrian survey including ground conditions (percent visibility) and difficulties encountered, if any; descriptions of any archaeological artifacts encountered and other pertinent information
- Description of subsurface exploratory probing methodology including date(s) of probing, and names and duties of personnel completing probes

- Results of subsurface exploratory probing, including descriptions of soil conditions and any archaeological artifacts encountered and other pertinent information. Negative findings must be reported also
- Summary of Tribal consultation(s), to be provided by Agency
- A summary with recommendations that must include a discussion of the site(s) identified and whether or not they meet NRHP criteria and maintain integrity
- 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
- Site forms and isolate forms (hard copies) for newly discovered archaeological sites and isolates. Consultant shall also complete the SHPO Online Site Form
- Site update forms for previously identified archaeological sites
- A modified [Determination of Eligibility \(DOE\)](#), a maximum of 2-3 pages long, must be included in the Appendix for historic sites with no subsurface component. This Appendix must include a short discussion on Boundaries (vertical and horizontal), Integrity as well as Statement of Significance and discussion of the NRHP Criteria. Consultant shall provide enough information to write a detailed DOE.
- Maps, photos and an artifact catalogue

Establishing eligibility without testing for prehistoric sites may be difficult; however, this is possible with historic sites if sufficient historic documentation is provided. Please refer to SHPO guidelines.

Consultant shall provide final Phase I Technical Report and site forms in PDF format; digital images of each photo and illustration; raw GPS files (*.ssf and *.cor), and edited GIS files (*.shp, *.shx, and *.dbf).

3.2.2 Consultant Deliverables and Schedule

Consultant shall prepare and submit:

- One electronic copy (in WORD format) of the Draft Phase I Technical Report with site forms and/or isolate forms to APM and LAPM for review per Task 1 Project Design Schedule.
- One electronic copy (in PDF format) of the Final Phase I Technical Report with site forms and/or isolate forms 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 Agency 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 fewer than 2 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 ODOT 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 ODOT 2 weeks following receipt of draft review comments.

3.4 Hazardous Materials

This work is intended to identify potential sources of environmental contamination (hazardous waste, hazardous substances, toxic substances and other hazardous materials regulated under federal and State statutes and regulations/administrative rules) that could impact the Project.

3.4.1 Hazardous Materials Corridor Assessment (“HMCA”)

Consultant shall perform the HMCA within the Project area of project impact (“API”) and according to accepted environmental procedures as outlined in the 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, and the 2010 ODOT Hazardous Materials Program Procedures Guide available on the Agency website at:

<https://www.oregon.gov/ODOT/HWY/GEOENVIRONMENTAL/docs/HazMat/HazMatProgramProcedures1.pdf>

Consultant shall prepare the HMCA report per the most recent version of the Agency Level 1 Hazardous Materials Corridor Study report template.

Consultant shall:

- Review available federal and State environmental records for hazardous waste generators, documented leaking or permitted underground storage tanks (“USTs”), sites with known or suspected releases, landfill sites, and Superfund sites using government web-based databases or using a commercial database search report. Consultant shall use the search radii set forth in American Society for Testing and Materials (“ASTM”) Standard E1527-05 for these database searches. Consultant shall review DEQ files for all sites that could impact the Project Corridor to determine the nature and extent of contamination.

- Conduct a site reconnaissance of the Project API that consists of systematically traversing the Project API and viewing adjacent properties from roadways and public access areas. Consultant shall include photographs documenting Project API observations in the HMCA Report. Consultant shall use the reconnaissance to identify potential sources of contamination that could impact the proposed Project during construction or that could result in local Agency acquiring contaminated property.
- Conduct historical research to assess past uses of the Project API and adjacent properties starting in 1920 and at 10-year intervals to present time. Consultant shall note data gaps in the HMCA report. Consultant shall make recommendations for additional research if the historical resources are insufficient in describing the Project API land use history for the last fifty years. The historical research must include a review of historic aerial photographs and at least one or more of the following:
 - Sanborn Fire Insurance maps
 - Historic property ownership/occupancy records
 - Interview available key Agency personnel familiar with the site history
 - Review chain-of-ownership documents if provided by Agency
- Contact local Agency Maintenance and Engineering staff to get an accounting and records relating to prior maintenance activities that have occurred in the Project area that may relate to hazardous materials.
- Prepare an AASHTO Initial Site Assessment Checklist according to AASHTO guidelines. Consultant shall incorporate the checklist into the HMCA Report.
- Prepare a draft and final HMCA Report to include a description of field observations, information from state and federal environmental databases, DEQ file review information, historic land use; a scaled map showing the location of all identified potential sources of contamination and sample locations and depths (as applicable), photographs, copies of historic data, copies of state and federal databases, results of any testing, and any other relevant documentation. The Report must include conclusions that identify specific sources of contamination that could impact the Project or the proposed construction work and recommendations for further investigation or remediation. Consultant shall use the Agency's report template to structure the Report.

Consultant shall prepare a draft HMCA Report for APM and ODOT review and comment. Consultant shall prepare a final HMCA Report based on APM and ODOT review comments and acceptance of the draft document.

3.4.1 Consultant Deliverables and Schedule

Consultant shall prepare and submit:

- 1 electronic copy (in WORD format) of the Draft Hazardous Material Corridor Assessment to APM and LAPM for review per Task 1 Project Design Schedule.
- 1 electronic copy (in PDF format) of the Final Hazardous Material Corridor Assessment to APM and ODOT 2 weeks following receipt of draft review comments.

3.5 Biological Resources Compliance and Permitting

Consultant shall complete the appropriate biological resources tasks presented below based on the Design Acceptance 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).

3.5.1 Endangered Species Act (ESA) No Effect Memorandum

When the Agency 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, fish 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 Agency 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.
- Communicate with local ODA, ODFW, NMFS and USFWS staff via phone or email to acquire additional specific ESA information for the Project area.
- 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 Agency concurrence on the No Effects determination.
- Coordinate with design staff, Agency and ODOT 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 Agency provided form; provide to Agency and APM for review and comment.
- Prepare final NE Memo for Agency acceptance.
- Notify Agency 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 and LAPM for review per Task 1 Project Design Schedule.

- One electronic PDF copy of the Final No Effect Memo to APM and LAPM 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 Agency 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 Agency 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 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 Agency 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.
- Coordinate with NMFS to determine if NMFS has any fish passage concerns on the Project and obtain verification from NMFS on the average active channel width in instances where the active channel width is not readily determinable; facilitate communication between ODFW and NMFS to document agreement on fish passage requirements for the Project.
- Prepare and submit all required FAHP Programmatic forms to the Agency REC for the Project, utilizing the latest templates available on the Agency 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

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

3.5.8 Fish Passage Plan

Consultant shall prepare 1 Fish Passage Plan. Meeting fish passage criteria is appropriate and practical at the Project site when:

- There are current or were historic NMF present at the Project site.
- Oregon's fish passage law will be triggered (OARs 635-412-0005 to 625-412-0040).
- There is habitat for NMF upstream of the Project site and providing passage at the Project location would provide a significant or cost effective benefit to NMF.
- The Project will not trigger the need for fish passage mitigation or a fish passage waiver.
- The Project will meet stream simulation or hydraulic fish passage criteria.

Consultant shall:

- Determine and document Hydraulic Design" or "Stream Simulation Design" fish passage criteria in the Fish Passage Plan.
- Prepare 1 draft fish passage plan in ODFW's form format and submit to Agency for review.
- Revise the draft plan and submit the final fish passage plan to Agency for approval of changes.
- Submit Agency approved final fish passage plan to ODFW for review and concurrence; also submit plan to DSL.
- If ODFW requests changes to the plan, revise plan, get Agency's approval to changes, and resubmit plan to ODFW and DSL.
- Provide ODFW concurrence documentation to Agency.
- Incorporate fish passage requirements and ODFW concurrence documentation into permit documents and Project PS&E as applicable.

3.5.8 Consultant Deliverables and Schedule

Consultant shall prepare and submit:

- Draft Fish Passage Plan (1 electronic MS Word copy) to APM and LAPM for review per Task 1 Project Design Schedule
- Final Fish Passage Plan (1 electronic PDF copy) to APM and LAPM within 2 weeks of receiving comments.
- Agency approved Final Fish Passage Plan to ODFW at least 1 month prior to triggering even if the plan is straight forward; Agency approved Final Fish Passage Plan to ODFW at least 3 months prior to the triggering action if it is a non-stream Fish Passage Plan or if the plan requires design exceptions.
- ODFW concurrence documentation to Agency within 1 week of receiving concurrence from ODFW and include with permits as applicable.

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 Fieldwork and Determination Memo

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.
- Place flags in the field to show wetland and upland sample plot locations, and the wetland boundaries. Label and number the flags to identify their function.
- Prepare sketch maps of approximate wetland boundaries with numbering of flags or stakes.
- 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 OHWM elevation of all jurisdictional surface waters. Assess the OHWM elevation using Agency accepted field indicators. The two (2) year flood event elevation (calculated) may be used in the absence of field indicators
- Prepare sketch map of approximate OHWM boundaries concurrently with the wetland and OHWM field work with sequential numbering of flags or stakes to be provided prior to site survey for Project base mapping.
- Consultant shall notify Agency and LAPM if wetlands are present and will be impacted.

If wetland(s) and/or waters(s) are impacted, field data collected during this task will be used for, and submitted with, the deliverables for Tasks 3.6.2, 3.6.3, or 3.6.4 as applicable.

Consultant shall prepare one Wetland Determination Technical Memo. The memo must include:

- Description of the PSA;
- Summary of existing available information, noting the standard information that is not available (i.e., if no County soil survey coverage exists for the area, then it must be stated);
- Field reconnaissance methods;
- Results of field reconnaissance;
- Data Sheets;
- Color photographic record depicting on-the-ground conditions; and
- Sketch mapping depicting locations of wetlands or waterways within the study area.

3.6.1 Consultant Deliverables and Schedule

Consultant shall prepare and submit:

- Sketch map of approximate wetland and waters boundaries to Agency (if present) per the schedule in Task 1.
- Notification to Agency (via email) if wetlands are present and will be impacted per the schedule in Task 1.
- Electronic copy (Word) of the draft Wetland Determination Technical Memo to APM and LAPM for review per the schedule in Task 1.
- Electronic copy (PDF) of the Final Wetland Determination Technical Memo to APM and LAPM two weeks following receipt of draft review comments.

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

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 Agency concerns and to facilitate the issuance of the USACE and DSL permits for this Project. No regulatory Agency 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. Agency will be responsible for payment of any associated fees for DSL, USACE, and DEQ to review and approve the submittals.

3.7.1 Consultant Deliverables and Schedule

Consultant shall prepare and submit:

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

3.7.2 TASK 4 PUBLIC INVOLVEMENT SUPPORT

Consultant shall assist Agency, as defined below, for the design phase of the Project through Final PS&E. Agency will have overall responsibility for the Project public involvement and outreach program.

4.1 Public Involvement Plan (Reserved)

4.2 Public Involvement Meetings

Consultant shall attend up to 2 meetings, as listed below, to provide Project information and address specific questions and concerns related to the Project.

- community open house
- stakeholder meeting

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

Consultant shall prepare:

- project fact sheets,
- flyers,
- aerial graphics,
- roll maps,

Agency will schedule, coordinate the location and advertise the meetings. 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 written meeting summaries within 5 working days of each meeting to APM.
- Provide up to 1 fact sheet, 1 flyer, 1 aerial graphic and 2 roll maps to be presented at each meeting. The files will be provided in draft and final forms in PDF. The PDF's will be placed on the County's website.

TASK 5 - UTILITIES

Consultant shall perform the coordination of all utility facilities within the Project limits in accordance with Chapter 10 of the *ODOT Right of Way Manual*.

If any utility is nonresponsive or uncooperative, Consultant shall notify Agency, and Agency 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 Chapter 10 of 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. The Consultant shall use this information to confirm the survey map as developed under Task 2, Surveying.

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 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 and LAPM 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:

- 1 on-site group utility meeting, 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 2 Consultant staff shall attend the 2 hour meeting, including travel time.

5.3 Consultant Deliverables and Schedule

For each meeting Consultant shall provide to APM and LAPM:

- Meeting Agenda and Meeting Minutes for each meeting; agenda due within 2 business days prior to meeting; meeting minutes due within 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 Notices

For those Utilities where no conflict is anticipated, Consultant shall provide a Project Notification (first notice per OAR 734-055-045). Consultant shall use the Project Notification letter template located at:

http://www.oregon.gov/odot/hwy/row/pages/utility_form_library.aspx#LPA_Projects_Involving_Uilities. 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 the Conflict Notice located at:

http://www.oregon.gov/odot/hwy/row/pages/utility_form_library.aspx#LPA_Projects_Involving_Uilities.

Consultant's coordination schedule must allow each utility a 30-day 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 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 Agency.
- 1 *.pdf of Project Notification/ Utility Conflict letters with enclosures to APM, LAPM and, State Utility Liaison (SUL).

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.

For those utilities that propose to attach to structures, Consultant shall provide guidance (e-mail acceptable) to the utility regarding Agency bridge accommodation policies and request protocol for bridge accommodation (ref. Agency's Bridge Design/Drafting Manual sec. 3.14.10.3-4

http://www.oregon.gov/ODOT/HWY/BRIDGE/docs/bddm/oct2014_finals/sec_3_oct2014.pdf.)

Consultant shall obtain acceptance or rejection of the utilities request for bridge accommodation from APM or LAPM.

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 LPA within 10 days after acceptance.
- Time Requirement Letter(s) submitted to each utility, APM, LAPM and SUL within 20 business days after submittal of Advance Plans to Agency.

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 LAPM'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:

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

TASK 6 GEOTECHNICAL / PAVEMENT SERVICES

Consultant shall conduct a geotechnical field investigation to explore the following:

- Surface and subsurface conditions in proposed bank stabilization improvement areas.

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, historic land use, and fill materials

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

- Existing published and unpublished literature from Agency records
- Previous geology and/or geotechnical reports from Agency, federal, city, county, or other officials, consultants, groups or individuals pertinent to the Project
- As-built roadway plans (as available)
- Maintenance records

Reconnaissance:

Consultant shall conduct a geologic and geotechnical reconnaissance of the site consisting of up to 2 separate site visits. Consultant shall identify the following:

- Geologic conditions at the Project site, any geologic hazards present and their impacts to the proposed Project elements.

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 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. No field work is to be performed, other than initial site reconnaissance, before review and approval by Agency and LPA of the ETWP.

The ETWP shall address the proposed drilling boring locations; site access; exploration and sampling procedures; preliminary laboratory testing plan; safety plan; and the traffic control plan. The traffic control plan must address minor road encroachments as well as lane and/or shoulder closures for activities associated with cores, borings, or drive probes, and restoration of

pavements, shoulders, and other areas disturbed due to subsurface exploration activities, including erosion control measures.

Consultant shall obtain required Right-of-Entry Permits from the Agency for exploration locations in public ROW prior to beginning field work.

Agency shall obtain any required Right-of-Entry Agreements from the adjacent property owner under Task 14.1 prior to beginning field work. Agency will need a minimum of 3 weeks to obtain the ROE.

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 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:

- Slope stability

The anticipated subsurface explorations to be performed for the Project are shown in the following table:

TEST METHOD	EST # OF TESTS	DEPTH(S) OF EXPLORATION(S)
Drilled Borings	2	30-40 feet each

Consultant shall provide an experienced engineer or geologist to supervise the field operations for in situ data gathering.

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 Agency.

- 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 Agency.

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 the embankment 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 Agency practices to include the following:

- Moisture/density;
- Atterberg limits;
- Gradation (minus No. 200 sieve wash);

6.4 Consultant Deliverables and Schedule:

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

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 Agency 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 slope stability design.

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 and LAPM within 2 weeks of receipt of comments from Agency and LPA.

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 if applicable stream gauge records exist, and obtain them, if possible.
- Locate and obtain existing topographic maps of the tributary drainage basin.
- Visit the bridge/culvert Project site to observe site conditions, physical properties, and collect data needed to perform a thorough hydraulic study.
- Evaluate the site and determine survey data requirements for hydraulic analysis.
- Conduct a pebble count at two locations and collect 2 streambed sediment samples in the vicinity of the bridge for grain size analysis.
- Determine channel and floodplain hydraulic roughness values (document with photographs).
- 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.

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 bridge/culvert.
- 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 delineate the tributary drainage basin utilizing available topographic maps and utilize the regional regression equations described in the U.S. Geological Survey (“USGS”) magnitude and frequency of floods in Western Oregon to predict design flows.

- Determine the temporary water management discharge estimates for the portion of the year when construction will take place to be used in temporary water management design recommendations and included in the technical specifications for the Project.
- Determine the fish passage high flow and fish passage low flow

7.2 Consultant Deliverables and Schedule:

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

7.3 Hydraulic Analysis

The purpose of this subtask is to perform a variety of hydraulic analysis in support of design, and provide hydraulic design recommendations related to bridge, culvert, scour, and open channel.

Consultant shall:

- Simulate hydraulic conditions of the stream using Hydrologic Engineering Centers (“HEC”)-River Analysis System (“RAS”) (version X.Y) software.
- Create a model to simulate “Existing Conditions” at the proposed bridge site to determine current water surface profiles, velocities, depths, and flow area for the various design flows.
- Create a model to simulate “Natural Conditions” at the proposed bridge site to determine natural water surface profiles, velocities, depths, and flow area for the various design flows when there was not a bridge or culvert.

Open Channel Hydraulics

Consultant shall:

- Design revetment and bank stabilization for up to 3 alternatives following ODOT guidelines and methods as described in Federal Highway Administration (FHWA) publication HEC-11, Design of Riprap Revetment, and HEC-18, Evaluating Scour at Bridges.
- Evaluate hydraulic conditions under fish passage high flow and fish passage low flow, provide fish passage design recommendations, and demonstrate compliance with Oregon Fish Passage Laws (ORS 509.580 through 910).
- Develop a streambed material gradation recommendation and prepare a material specification.
- Provide waterway enhancement design recommendations for stream boulders, large woody debris, and/or bioengineered stream bank restoration.
- Perform calculations to predict the stability of waterway enhancements.

Sediment Transport Analysis and Channel Stability Analysis

Consultant shall:

- Evaluate the vertical and lateral stability of the Project reach of Willamette River under existing conditions and to evaluate problems (i.e. aggradation, degradation, erosion) under Project conditions.
- Evaluate the results of the hydraulic site investigation to determine the dominate sediment transport mechanisms that are occurring within the Project reach.

- Utilize the information from the hydraulic site investigation to define geomorphic sub-reaches to be used in the sediment transport calculations.
- Evaluate upstream sediment supply conditions.
- Utilize the results of the hydraulic modeling (HEC-RAS) to perform sediment transport calculations for the Project reach under existing and Project conditions.
- Complete one of the following, depending upon the dominate sediment transport mechanisms that are occurring within the reach, as determined through hydraulic site investigation (Task 7.1). Consultant shall either:
 - 1) Calculate erosive flow energy under existing and Project conditions for comparison and describe the potential risk for channel stability problems caused by the design. This occurs if sediment transport is low and channel stability is observed to be governed by the stability of the channel boundary sediments (i.e. threshold channel).
 - OR**
 - 2) Perform a sediment continuity analysis to determine the aggradation/degradation potential by geomorphic sub-reach and how that potential would change between existing and Project conditions. This occurs if sediment transport is observed to be significant and channel stability is governed by a balance in bedload transport rates (i.e. alluvial channel).

7.3 Consultant Deliverables and Schedule:

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

Consultant shall provide:

- A*.ZIP file containing HEC-RAS model files for Existing Conditions, Natural Conditions, and Proposed Conditions to the APM within 10 days following submittal of the Final Hydraulics Report.

7.4 Hydraulics Report

The purpose of this subtask is to summarize the findings of the hydraulic related services and document the design recommendations.

Consultant shall prepare a draft version of the Project Hydraulics Report per ODOT Hydraulics Manual guidelines containing preliminary design recommendations for the hydraulic related services.

Consultant shall prepare a final Hydraulics Report to reflect Agency review comments and to include changes to hydraulic related design recommendations that need to be modified due to advancement of the overall Project design.

7.4 Consultant Deliverables and Schedule:

Consultant shall provide:

- Draft Hydraulics Report in PDF file format, along with an MS Word file containing the report narrative, and 2 hard copies, due with the Design Acceptance Package.

- Final Hydraulics Report, PDF file of complete report, and 2 hard copies, due with the Final Plans.

7.8 Temporary Water Management Design

The purpose of this task is to prepare temporary water management design recommendations, special provisions, and plan for inclusion in the construction documents.

Consultant shall:

- Identify the construction activities requiring temporary water management
- Determine the timeframe for which each temporary water management effort will need to be in place (often the in-water work period)
- Summarize the requirements for temporary water management due to the chosen environmental permitting method
- Prepare a plan and special provisions for flow and sediment control of surface water and groundwater seepage during construction activities based on site conditions.

7.8 Consultant Deliverables and Schedule:

Information from this task shall be incorporated into report deliverables for Task 7.6, and Technical Specifications and Plan Sheet deliverables for Advanced Plans Task 15.X.

7.9 Floodplain Impact Analysis

Projects requiring work in a mapped Special Flood Hazard Area (100-year floodplain) are usually required to demonstrate compliance with the local floodplain development requirements. When a project requires work in a mapped floodway and cannot achieve a No-Rise condition, then the local agency is supposed to require that FEMA's Letter of Map Revision process is followed in order to remain in compliance with the National Flood Insurance Program. The purpose of this task is to evaluate and prepare documentation commensurate with the level of Project impacts on the 100-year water surface elevation.

Floodplain Development Permit Application

Grading work and/or a structure proposed as part of this Project will be located within a mapped Special Flood Hazard Area and is subject to Clackamas County Floodplain Development requirements.

Consultant shall complete supporting information, prepare a No-Rise Analysis Memorandum, prepare a Floodplain Development Permit application, and submit to APM.

Consultant shall:

- Request detailed study data from FEMA, including a copy of the "Effective" model used in the most recent FIS.
- Update and run the Effective model using HEC-RAS to create a "Duplicate Effective Model" to be used in the CLOMR application. This may require adjustments to the model to run on the latest version of the HEC-RAS software.
- Tie the existing conditions HEC-RAS geometry file into the Effective model upstream and downstream of the Project reach.
- Run the updated existing conditions HEC-RAS model for the 10-year, 50-year, 100-year, and 500-year hydrographs from the Clackamas County Effective FIS (FEMA xxxx). This

model forms the “Corrected Effective Model” as well as the “Existing Conditions Model” for the CLOMR application.

- Tie the Project conditions HEC-RAS geometry file into the Effective FIS model upstream and downstream of the Project reach.
- Run the extended Project conditions HEC-RAS model for the 10-, 50, 100, and 500-year events. This model forms the “Post-Project Conditions Model.” Consultant shall provide design alternatives that will not require a CLOMR application.

Application and application Fees will be paid for and sent by Agency.

7.9 Consultant Deliverables and Schedule:

Consultant shall provide:

- No-Rise Analysis Memorandum in PDF file format and 2 hard copies, due with Advanced Plans.
- Floodplain Development Permit Application for Clackamas County in PDF file format, due with Advanced Plans.

TASK 12 LOCAL PERMITS

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 Local Permit Acquisition

Consultant shall initiate and attend one pre-application conference with local permitting agency planning staff to determine the scope of drawings and supporting documentation required for a local agency permit application for required local permits, which are anticipated to be Floodplain Development and Environmental/Natural Resource Area Development.

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

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

Consultant shall provide coordination with Agency. 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:

- Agency will provide all required signatures on application forms.
- Agency will provide payment of all required application or filing fees to permitting agency.

C.12.1 Consultant Deliverables and Schedule

Consultant shall provide:

- Draft Permit Applications; 2 electronic or hard copies for Agency review due per Task 1 Project Schedule.
- Final Permit Applications; 2 electronic or hard copies filed with the permitting agency due 14 days after receiving Agency 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 develop the alternative chosen in Task 7.3 by the Agency to prepare the DAP.

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 bank stabilization measures and ITS plans 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;
- Description of geotechnical subsurface conditions;
- Draft Geotechnical Report;
- Draft Hydraulics Report;
- ROW needs;
- Local permit needs;
- Construction staging, temporary detours, and temporary protection and direction of traffic during construction;

Consultants shall prepare DAP plan sheets according to the following table:

Name of Sheet	Scale	Estimated # of Sheets
Title sheet		1
Typical sections and notes		1
Details		2

Slope Stability Plans and Details		3
ITS plans and notes		2
ITS/utility profiles and notes		2
Landscaping/Restoration Plans and details		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 Agency standards and provide an index to the drawing set.

Agency and LPA will provide comments on the DAP. Consultant shall address Agency and LPA comments. Consultant shall attend a DAP Plan Review Meeting to communicate and discuss resolution to Agency and LPA review comments. Consultant shall provide written responses to address review comments received from Agency and LPA after attending the DAP Plan Review Meeting.

For budgeting purposes it is assumed that up to 2 Consultant staff shall attend the _2_ hour DAP Plan Review Meeting, including travel time.

13 Consultant Deliverables and Schedule:

Consultant shall provide:

- 1 electronic copy of DAP in PDF format to APM and LAPM within 5 months of NTP.
- 1 electronic copy of written responses to DAP review comments to APM and LAPM within 1 week of the DAP Plan Review Meeting.

TASK 15 - PLANS, SPECIFICATIONS, AND ESTIMATE (PS&E)

Consultants shall prepare plan sheets according to the following table:

Table 15

Name of Sheet	Estimated # of Sheets	60% PS&E Submittal	Advanced Submittal	Final Submittal
Title sheet	1	x	x	x
Typical sections	1	x	x	x
Details	2	x	x	x
Temporary Protection and Direction of Traffic	2	x	x	x
Slope Stability Plans and Profiles	3	x	x	x
ITS Plans and notes	2	x	x	x
ITS/utility profiles and notes	2	x	x	x
Erosion Control	3	x	x	x
Sign Plans and details	3	x	x	x
Landscaping/Restoration Plans and details	3	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 Agency standard drawings and details;
- Prepare construction cost estimate quantities and unit costs utilizing Agency 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 2020 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 and LAPM 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 Agency 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 Preliminary plans and in accordance with 2018 *Oregon Standard Specifications for Construction as amended* and *Agency 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 Agency’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:

http://www.oregon.gov/ODOT/HWY/SPECS/Pages/Boilerplate_Special_Provisions.aspx

Consultant shall submit the Agency Civil Rights Request for Goals Worksheet to the Agency 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;

Advance Cost Estimate:

Consultant shall update the construction cost estimate quantities and unit costs utilizing Agency 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 Agency and Consultant historic bid information and anticipating a 2020 bid letting. Consultant shall prepare the final cost estimate using Agency’s Trns*port Estimator 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 and LAPM 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 Plans (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)
- 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 will be 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

Agency 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 Agency, Consultant shall resolve comments from the Office of Pre-letting.

15.3 Consultant Deliverables and Schedule

Consultant shall submit the following, 5 weeks prior to the PS&E Due Date to the Agency:

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			
Signed Special Provision Integrity Certification	PDF			
Special Provision Summary Form	Excel			
Email from Civil Rights noting Applicable DBE goals, MWESB targets and OJT hours		X		
Cost Estimate	PDF and Excel	X	Excel	X
CPM Construction Schedule (11 x 17 in color)	PDF	X	PDF	X
Fuel Escalation Worksheet	Excel			
Steel Escalation Worksheet	Excel			
Utilities Certification (delivered under Task 5)				

Consultant shall submit the following to APM, no later than 1 week prior to the PS&E Due Date to the Agency:

- POR-signed Final Plans printed on 11 x 17 paper
- POR-signed Final Plans printed on 11 x 17 paper, 2 copies
- POR-signed Final Plans in PDF format

Consultant shall submit the following to ODOT LAL, no later than 1 week prior to the PS&E Due Date to the Agency:

- POR-signed Final Plans printed on 11 x 17 paper, 5 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 Agency 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: . 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.

16.1 Questions During Bidding

Consultant's Project Manager, or Consultant's designee(s) approved by Agency, shall assist Agency with questions regarding the bid documents and bid process. Consultant shall respond to all questions in writing within 2 day(s) to Agency Project Manager.

Consultant shall, during the bidding process, assist the Agency 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 Agency. Consultant shall maintain the written log in the project file and provide upon request of the APM or Local Agency.

16.1 Consultant Deliverables and Schedule

- Written log of conversations, questions and answers, provided to APM or Local Agency upon request.

C16.2 Addenda to the Bid Documents (CONTINGENCY TASK)

This task identifies specific deliverables that the Agency at its discretion may elect to authorize Consultant to produce. Consultant shall only complete this Task 16.2 and the identified deliverables if written (email acceptable) NTP is issued by the Agency. The NTE amount for completing this contingency task is \$\$\$\$ and is only billable if authorized.

Consultant shall prepare up to 1 bid addenda to provide interpretation of construction documents.

If Agency chooses to authorize this work, Consultant shall submit Addendum documents within 3 calendar days from NTP unless a different timeframe is agreed to and stated in the NTP (prior to expiration of WOC).

Consultant shall prepare and deliver the addenda text in a Microsoft Word file. Consultant shall prepare and deliver stamped drawings in PDF and 11" x 17" Mylar. Consultant shall coordinate reviews of addenda by APM or Local Agency prior to submittal. Consultant shall not be responsible for distributing addenda to bidders. Agency will issue and distribute all addenda.

16.2 Consultant Deliverables and Schedule

- Bid document addenda; stamped PDF and Mylar drawings; or special provision revisions

ATTACHMENT C - SAMPLE CONTRACT

RFP 22235-01
Attachment C - Sample Contract
ENGINEERING AND RELATED SERVICES CONTRACT
Contract Number: 2018-62

Project Title: Canby Ferry Bank Stabilization & ITS Project	County Project Number: 22235
Project Location: Clackamas County	Associated RFP Number: 01
Federal Aid Number: 19641	DBE Goal: 8.5% (see Exhibit E)
Total Not-to-Exceed ("NTE") amount for this Contract. This total includes: a) all allowable costs and expenses, profit, and fixed-fee amount, if any; and b) \$ for contingency tasks, each of which must be separately authorized by County.	
\$ 175,000	

This Contract is between , hereafter called "County" and [enter legal company name as provided to IRS (and DBA name if applicable)], a (enter state of incorporation/organization) 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, 2021.

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, 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) 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 \$408,965.** 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 days 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.520 and 279C.530, 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:

- (1) Consultant has provided its correct TIN to County;
- (2) 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
- (3) 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:

- (1) Consultant has read this Contract, understands it, and agrees to be bound by its terms and conditions.
- (2) 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.
- (3) 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.
- (4) (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.

(5) Consultant is an independent contractor as defined in ORS 670.600 and as described in IRS Publication 1779.

(6) 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: _____

CLACKAMAS COUNTY

Chair: _____

Date: _____

Recording Secretary: _____

COUNTY LEGAL REVIEW (Approved as to Form):

Signature: _____ Date: _____

EXHIBIT A - STATEMENT OF WORK

SEE ATTACHED DRAFT STATEMENT OF WORK

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.

B. STANDARDS and GENERAL REQUIREMENTS

1. Standards

a. Preliminary Engineering and Design Phase Services -

b. **Construction phase Services** - Consultant shall complete Construction Engineering, Inspection and Construction Contract Administration ("CEI/CA") Services in accordance with ODOT's Construction Manual, the Manual of Field Test Procedures and the ODOT Inspectors Manual. All Inspection work must be performed by ODOT-certified Inspectors as required by ODOT's Inspection Quality Assurance Program ("IQAP"). Consultant's qualified staff shall diligently monitor the work of the construction contractor in order to determine whether the project is constructed in compliance with the construction contract documents and any applicable current standards and County manuals. Consultant shall immediately advise County of any construction which Consultant knows, or with the exercise of professional care should know, fails to conform to the Federal or State standards applicable to construction of the project.

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.

Consultant's software shall produce deliverables that are fully compatible, readable and useable by County software, requiring no modification or translation of Consultant's deliverables. No loss of data integrity or accuracy shall result from any transfer of data. Compressed data shall be in a "self-expanding executable" format. Additional format requirements may be listed elsewhere in the Statement of Work or in the Contract.

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.

5. **Compliance with Applicable Law** (in addition to those identified elsewhere in the Contract.)

6. **Design Criteria and Project Assumptions/Conditions**

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

- Consultant shall coordinate with County staff as necessary and shall revise draft deliverables to incorporate draft review comments.
- Consultant shall incorporate comments within 10 business days from receipt by County and return the revised deliverables to County staff, 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. **RESERVED**

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 Statement of Work. Consultant shall complete only the specific contingency task(s) identified and authorized via written (e-mail 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 amount 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 Table

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

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.

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. Profit for contingency tasks will be included in the amount negotiated for each contingency task and will not be included in the Fixed-Fee.

The total not-to-exceed for allowable costs is: \$

The total dollar amount for the Fixed Fee is: \$

Consultant acknowledges and agrees that the Fixed-Fee is only due and payable for work authorized by County and satisfactorily completed by Consultant.

2. Fixed Price

County will pay Consultant for the actual Services performed under the Contract according to the Fixed Price amount(s) established in this Contract. The Fixed Price amount(s) includes all labor costs, overhead, profit, and may include expenses (if travel or other expenses are approved). The Fixed Price amount(s) must not include any unallowable indirect or direct costs, including travel which must be based on the allowable travel and lodging rates identified in section B of this Exhibit.

Consultant acknowledges and agrees that the Fixed Price is only due and payable for work authorized by County and satisfactorily completed by Consultant.

The dollar amount for Fixed Price Services is: \$
--

3. Time and Materials with Not-To-Exceed (T&M)

County will pay Consultant for completion of Services required under the Contract on the basis of T&M, up to the NTE amount established in the Contract. Billable items include:

- **Loaded Costs**- the NBR (which is inclusive of profit and overhead costs); or the actual direct salary rate paid to the specific employee(s) (up to the maximum rate approved in the Contract for the employee's classification) productively engaged in work to complete the Services required under the Contract, plus profit and the approved overhead.
- **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.
- **Subcontractor Costs** (without mark-up, unless County notifies Consultant otherwise in writing) - the hourly labor rates and direct non-labor costs (as described above) that have been billed to Consultant and recognized by Consultant as valid, undisputed and payable.

The dollar amount for T&M Services is: \$
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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.

(For Fixed-Price) - Progress Payments for Percentage of Services Completed. County will pay Consultant monthly progress payments based on a percentage of the total agreed fixed price. Monthly progress payments shall be limited to an amount commensurate with the percentage of the total Services and deliverables that were completed in the month invoiced.

Payment upon Milestone (or other Unit) Completion. County will pay Consultant the fixed price per milestone amount(s), or all amounts due as actual costs up to the Contract NTE amount per milestone, but only after Consultant completes and County accepts all Services and deliverables required under the Contract for a given milestone (or other unit) as listed below:

Payment upon Full Completion. County will pay Consultant the fixed price amount, or all amounts due as actual costs up to the Contract NTE amount, but only after Consultant completes and County's accepts all Services and deliverables required under the Contract.

C. TRAVEL

The Fixed Price amount(s) in this Contract includes all travel, lodging, per diem, and mileage expenses. County will not reimburse Consultant separately for travel, lodging, per diem, or mileage expenses.

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 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.

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. 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 of 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:

- o [ODOT DBE Policy Statement](#)
- o [ODOT DBE Program Plan](#), and
- o 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 WOC or project-specific Contract (as applicable), 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 Agency (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>, 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 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.

[The following provision is required for all FHWA-funded contracts that include:

- preliminary and final design services in a single contract for a project with pending NEPA decision documents;
- NEPA Document preparation, preliminary engineering, final design and/or CA/CEI services in a single contract; or

final design services under a single contract for which the final design solicitation will be published prior to the NEPA decision date.]:

The following provision is required if NEPA Document preparation is combined with preliminary engineering, final design and/or CA/CEI services:

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", 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) Name:	
Ph:	
E-mail:	

a.2 *: County Contract Administrator for contractual matters:

Name:	
Ph:	
E-mail:	

a.3 County's address for invoicing:

Mailing Address:	150 Beaver Creek Road, Oregon City, OR 97045
E-mail:	bikramrag@clackamas.us

b. **Consultant's Project Manager (PM) for this Contract is:

Name:	
Ph:	
E-mail:	

c. Consultant's remit address for payments and contact for billings:

Name:	
Address:	
Ph:	
E-mail:	

* 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

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.