



**DAN JOHNSON**  
DIRECTOR

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

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of a Contract with Harper Houf Peterson Righellis, Inc. for the  
Lolo Pass Road Stabilization and Surface Preservation**

<b>Purpose/Outcomes</b>	Execution of the contract allows Clackamas County to proceed with the design of roadwork and bank stabilization along Lolo Pass Road.
<b>Dollar Amount and Fiscal Impact</b>	The contract amount is not to exceed \$292,216.49
<b>Funding Source</b>	Western Federal Lands (WFL): \$72,216.49 County Road Funds: \$220,000
<b>Duration</b>	December 31, 2021.
<b>Previous Board Action</b>	09/05/19 BCC Approval of Project Grant Agreement with Western Federal Lands 06/28/16: BCC Authorization to Apply for Federal Land Access Program Funding 02/15/18: BCC Authorization of the Federal Lands Access Program Match Agreement 07/11/19: BCC Authorization of Western Federal Lands Highway Division Memorandum of Agreement.
<b>Strategic Plan Alignment</b>	This project will "Build a strong infrastructure".
<b>Counsel Review</b>	June 22, 2020
<b>Contact Person</b>	Mike Ward, Project Manager 503-742-4688

**Background:**

The County obtained Western Federal Lands funding to make improvements to Lolo Pass Road. Lolo Pass Rd is a minor arterial in a rural area and the length of improvements is approximately 4 miles. These improvements include a two-inch lift of asphalt along the length and bank stabilization on County owned property immediately downstream of previous stabilization work. Services are to include preliminary and final roadway and bank stabilization designs, construction cost estimates, identify all necessary environmental permits, identify right of entry requirements, and perform all services necessary to acquire environmental permits and identification of temporary easements if necessary.

**Procurement Process:**

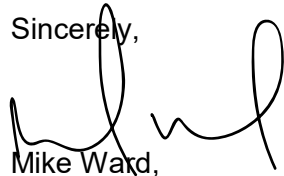
This project was advertised in accordance with ORS and LCRB Rules on December 18, 2019. Proposals were opened on January 16, 2020. The County received two (2) Proposals: Cardno, Inc., and Harper Houf Peterson Righellis. An evaluation committee of three DTD personnel scored Harper Houf Peterson Righellis, Inc.'s proposal the highest. Upon Contract award, the final

statement of work was negotiated and finalized. Project fees were negotiated and based upon existing Oregon Department of Transportation (“ODOT”) Negotiated Billing Rates.

**Recommendation:**

Staff respectfully recommends that the Board approve and execute the Engineering and Related Services Contract with Harper Houf Peterson Righellis, Inc. for the Lolo Pass Road Stabilization and Surface Preservation project.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mike Ward', with a large, stylized initial 'M'.

Mike Ward,  
Civil Engineer

Placed on the BCC Agenda July 9, 2020 by Procurement and Contract Services

**ENGINEERING AND RELATED SERVICES CONTRACT**  
**Contract Number: 2313**

<b>Project Title:</b> Lolo Pass Road Stabilization & Surface Preservation	<b>County Project Number:</b> 22275-01
<b>Project Location:</b> Clackamas County	<b>Associated RFP Number:</b> 2019-94
<b>Federal Aid Number:</b> OR Clack 37005(2)	<b>DBE Goal:</b> 0% (see Exhibit E)
<b>Total Not-to-Exceed (“NTE”) amount for this Contract.</b> This total includes: a) all allowable costs and expenses, profit, and fixed-fee amount, if any; and b) <b>\$32,276.43</b> for contingency tasks, each of which must be separately authorized by County.	<b>\$ 292,216.49</b>

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

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

For purposes of this Contract:

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

**TERMS AND CONDITIONS**

- 1. 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 **December 31, 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/Small Purchase, amendments to increase the maximum amount payable are subject to limitations and additional requirements as set forth in applicable Federal, State and local laws. The payment methodology and basis for payment to Consultant is described in Exhibit B, Compensation. Consultant and any subconsultants are subject to the requirements and limitations of 48 CFR Part 31 - Contract Cost Principles and Procedures.
- 4. Contract Exhibits.** This Contract includes the following exhibits, each of which is incorporated into this Contract as though fully set forth herein:

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

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

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

- a. Consultant, by its signature on the Contract, certifies that it is an independent contractor as defined in ORS 670.600 and as described in IRS Publication 1779, which is available at the following link: <https://www.irs.gov/pub/irs-pdf/p1779.pdf>. Consultant shall perform all required Services as an independent contractor. Although County reserves the right (i) to determine the delivery schedule (as mutually acceptable to County and Consultant) for the Services to be performed and (ii) to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Consultant's performance. Consultant is responsible for determining the appropriate means and manner of performing the Services. Consultant is not an "officer", "employee", or "agent" of County, as those terms are used in ORS 30.265.
- b. Consultant, by its signature on the Contract, certifies that: (i) Consultant and, to the best of its information, knowledge and belief, its Associates have made any disclosures required under the COI Disclosure Form (available at: <https://www.oregon.gov/ODOT/Business/Procurement/Pages/LPA.aspx> ) 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 \$3,221,992.00.** Consultant shall promptly advise County's Contract Administrator if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable project within these limitations. Upon receipt of such information, the Contract Administrator will review Consultant's revised estimate of construction cost. County may, if it determines that the estimated construction contract price set forth in this Section is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in this Section, or County may adjust such estimated construction contract price.

- (ii) Prior to releasing the bid for the construction contract, County will prepare an estimate of constructing the design submitted. If County's estimator(s) determines Consultant's design exceeds County's budget for the construction contract as set forth in Section (i) above {and as may be revised per Section (i) above}, then Consultant shall perform such redesign and other Services as are necessary to permit contract award within the funding limitation. These additional Services shall be performed at no increase in the price of the Contract. However, Consultant shall not be required to perform such additional Services at no cost to County if Consultant's design exceeds County's budget {as set forth in Section (i) above} as a result of conditions beyond Consultant's reasonable control.

## 11. Ownership of Work Product

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

- (i) "Consultant Intellectual Property" means any intellectual property owned by Consultant and developed independently from the Contract.
- (ii) "Third Party Intellectual Property" means any intellectual property owned by parties other than County or Consultant.
- (iii) "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item, and all intellectual property rights therein, that Consultant is required to deliver to County pursuant to the Contract.

b. **Work Product.** All Work Product created by Consultant pursuant to the Contract, including derivative works and compilations, and whether or not such Work Product is considered a "work made for hire," shall be the exclusive property of County. County and Consultant agree that Work Product that constitutes original works of authorship (the "Original Work Product") is "work made for hire" of which County is the author within the meaning of the United States Copyright Act. If for any reason Original Work Product created pursuant to the Contract is not "work made for hire," Consultant hereby irrevocably assigns to County any and all of its rights, title, and interest in all Original Work Product created pursuant to the Contract, whether arising from copyright, patent, trademark, trade secret, or any other State or Federal intellectual property law or doctrine. Upon County's reasonable request, Consultant shall execute such further documents and instruments necessary to fully vest such rights in Original Work Product in County. Consultant forever waives any and all rights relating to Original Work Product created pursuant to the Contract, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. However, see Sections 11.c and 11.d immediately below, for provisions applicable to Consultant Intellectual Property, Third Party Intellectual Property, Consultant Intellectual Property derivative works and Third Party Intellectual Property derivative works.

c. **Consultant and Third Party Intellectual Property.** In the event that any Work Product is Consultant Intellectual Property or Third Party Intellectual Property (Consultant Intellectual Property or Third Party Intellectual Property that is applicable to the Services being performed by Consultant under the Contract or included in Work Product deliverable to County under the Contract), or in the event any Consultant Intellectual Property or Third Party Intellectual Property is needed by County to reasonably enjoy and use any Work Product, Consultant hereby agrees that it will grant to, or obtain for, the County an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Consultant Intellectual Property and or Third Party Intellectual Property, including the right

of County to authorize contractors, consultants and others to do the same on County's behalf. This obligation of the Consultant does not apply to a situation involving a third party who enters a license agreement directly with the County. At the request of Consultant, County shall take reasonable steps to protect the confidentiality and proprietary interests of Consultant in any Consultant Intellectual Property licensed under this Section, within the limits of the Oregon Public Records Law (ORS 192.410 through 192.505) and the Oregon Uniform Trade Secrets Act (ORS 646.461 to 646.475).

- d. **Consultant and Third Party Intellectual Property-Derivative Work.** In the event that Work Product created by Consultant under the Contract is a derivative work based on Consultant Intellectual Property or Third Party Intellectual Property, or is a compilation that includes Consultant Intellectual Property or Third Party Intellectual Property, Consultant hereby agrees to grant to, or obtain for, County an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of Consultant Intellectual Property or Third Party Intellectual Property employed in the Work Product, including the right of County to authorize others to do the same on County's behalf.
- e. **Consultant Use of Work Product.** Notwithstanding anything to the contrary in this Section 11, Consultant may refer to the Work Product in its brochures or other literature that Consultant utilizes for advertising purposes and, unless specified otherwise in Exhibit A - Statement of Work, County hereby grants to Consultant a non-exclusive, non-transferable, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display County-owned Work Product on other unrelated projects, except for any "Confidential Information" protected from disclosure under the provisions of Section 12 below, pertaining to Confidentiality and Non-Disclosure.

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

### **13. Indemnity**

- a. **Claims for Other Than Professional Liability.** Consultant shall indemnify, defend, save, and hold harmless the County, State of Oregon, the OTC and ODOT, and their respective officers, members, agents and employees from any and all claims, suits, actions, losses, liabilities, damages, costs and expenses, including attorney fees, of whatsoever nature, resulting from or arising out of the acts or omissions of Consultant or its subcontractors, or their respective agents or employees, under the Contract.
- b. **Claims for Professional Liability.** Consultant shall indemnify, defend, save, and hold harmless the County, State of Oregon, the OTC and ODOT, and their respective officers, members, agents and employees from any and all claims, suits, actions, losses, liabilities, damages, costs and expenses, including attorney fees, of whatsoever nature, resulting from or arising out of the professionally negligent acts, errors or omissions of Consultant or its subcontractors, or their respective agents or employees, in the performance of Consultant's professional services under the Contract.
- c. **Indemnity for Infringement Claims.** Without limiting the generality of section 13(a) or 13(b), Consultant expressly agrees to indemnify, defend, save and hold harmless the County, State of Oregon, the OTC and ODOT, and their respective officers, members and their agencies,

subdivisions, officers, directors, agents, and employees from any and all claims, suits, actions, losses, liabilities, damages, costs and expenses, including attorney fees, arising out of or relating to any claims that Consultant's services, the Work Product or any other tangible or intangible items delivered to the County by Consultant that may be the subject of protection under any state or federal intellectual property law or doctrine, or the County's use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party; provided, County shall provide Consultant with prompt written notice of any infringement claim. Provided, however, Consultant shall not be obligated to indemnify, defend, save and hold harmless the County (or other entities identified above) under this section 13(c), based solely on the following: Consultant's compliance with County specifications or requirements, including, but not limited to the required use of tangible or intangible items provided by County.

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

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

15. **Termination**

- a. **Termination by Mutual Consent.** The Contract may be terminated at any time, in whole or in part, by mutual written consent of the Parties.
- b. **County's Right to Terminate for Convenience.** County may, at its sole discretion, terminate the Contract, in whole or in part, upon 30 calendar 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.505-580, the terms of which are incorporated by reference herein. All rights and remedies available to County under applicable federal, state and local laws are also incorporated by reference herein and are cumulative with all rights and remedies under the Contract. If Consultant discovers a conflict among Federal, State and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Contract, Consultant shall in writing request County to resolve the conflict (in collaboration with ODOT and FHWA as applicable). Consultant shall specify if the conflict(s) create a problem for the design or other Services required under the Contract. If County concludes there is a conflict among the applicable laws, Federal laws shall govern among the others; State laws shall govern over the others except Federal. The resolution of the conflict of the applicable laws by County shall be final and not subject to further review or challenge.

**19. Permits and Licenses**

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

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

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

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

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

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

**25. Severability.** The Parties agree that if any term or provision of the Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

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

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

**27. Governing Law; Venue; Consent to Jurisdiction.** The Contract shall be governed by, and construed and enforced in accordance with, the laws of the State of Oregon, without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between County (or any agency or department of the State of Oregon) and Consultant that arises from or relates to the Contract shall be brought and conducted solely and exclusively within the Circuit Court located in the County in which the Project is located; provided, however, if a Claim must be brought in a Federal forum, then it shall be

brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the County or State of Oregon of any form or defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution, or otherwise. **CONSULTANT, BY EXECUTION OF THE CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

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

**29. False Claims**

- a. Consultant understands and acknowledges it is subject to the Oregon False Claims Act (ORS 180.750 to 180.785) and to any liabilities or penalties associated with the making of a false claim under that Act. By its execution of the Contract, Consultant certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or cause to be made that pertains to the Contract or the Project for which the Services are being performed, including but not limited to Consultant's statement of proposal and any invoices, reports, or other deliverables.
- b. Consultant shall immediately disclose (in writing) to County whenever, in connection with the award, performance or closeout of the Contract, or any subcontract thereunder, Consultant has credible evidence that a principal, employee, agent, or subcontractor of Consultant has committed—
  - (i) A violation of the Oregon False Claims Act; or
  - (ii) A violation of State or Federal criminal or civil law involving fraud, conflict of interest, bribery, gratuity or similar misconduct.
- c. Consultant must include subsections (a) and (b) of this section in each subcontract Consultant may award in connection with the performance of the Contract. In doing so, Consultant may not modify the terms of those subsections, except to identify the subcontractors or sub grantee that will be subject to those provisions.

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

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

provisions or the failure to comply with certain provisions as a material breach of the Contract shall in no way be construed to mean that any other provisions of the Contract are not material or that failure to comply with any other provisions is not a material breach of the Contract.

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## 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: \_\_\_\_\_

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

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

**CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS**

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

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

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

**COUNTY LEGAL REVIEW (Approved as to Form):**

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

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

**EXHIBIT A**  
**STATEMENT of WORK and DELIVERY SCHEDULE**  
**Lolo Pass Rd Stabilization & Surface Preservation**

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

Clackamas County (the “County” or “Agency”) is contracting with Consultant for Services in connection with the following project (the “Project”): Lolo Pass Rd Stabilization & Surface Preservation Project.

Agency obtained \$3,221,992 in Western Federal Lands (WFL) funds to make improvements to Lolo Pass Rd. Lolo Pass Rd is a minor arterial in a rural area and the length of improvements is approximately 4 miles. These improvements include spot repair of existing asphalt, a two-inch lift of asphalt along the length. The total estimated project cost is \$4,067,403. Additionally, the project includes bank stabilization of tax lot 27E34BA02501 adjacent to the Sandy River.

Agency is contracting with Consultant for Services to prepare preliminary and final roadway and bank stabilization designs, construction cost estimates, identify all necessary environmental permits, identify right of entry requirements, and perform all services necessary to acquire environmental permits and right of entries and temporary easements.

The tasks associated with this Statement of Work (SOW) include providing project management, surveying, geotechnical, hydraulic analysis, bank stabilization design, roadway design, right-of-way acquisition, environmental (wetlands, endangered species, archaeological and historical), and final engineering design services for the Project. The work covered by this SOW includes the preparation of reports, and final engineering documents. All documents and other deliverables are to be completely described in the English system unit of measure. A Project location map of the surface preservation is attached as Exhibit A, and a location map of the bank stabilization is attached as Exhibit B.

**TASK 1 – PROJECT MANAGEMENT**

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

**1.1 Administration & Record Keeping**

Consultant shall:

- Prepare a Project design schedule using the Critical Path Method (“CPM”). The Project schedule must include, but is not limited to: all major authorized tasks as agreed upon by the Parties, Project design team meetings, and milestones (type and date) specified in this SOW and required to complete all Services under this Contract. Updates to the Project schedule shall be made during the course of the Project if milestone dates are modified. For budgeting purposes, it is assumed that up to two (2) Project schedule updates will be necessary;
- Prepare invoices and progress reports according to the Invoice Requirements Guide referenced in the Contract under Section H.5 - Invoices. Each progress report must:
  - 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 12 progress reports will be necessary.

- Develop and maintain a Project file to include survey and engineering computations, assumptions, meeting agendas and minutes, working drawings, quality control and review documentation, correspondence, and memoranda. (See Price Agreement Part II Terms & Conditions No. 12 Records Maintenance; Access).

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

Consultant shall provide:

- Project Design Schedule. Submit electronically to the APM (PDF).
- Updated Project Design Schedule, as necessary, via timeline agreed to by APM. Submit electronically to the APM (PDF).

### **1.2 Coordination**

Consultant shall:

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

### **1.2 Consultant Deliverables and Schedule**

Consultant shall provide:

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

### **1.3 Project Meetings**

#### **1.3.1 Project Kickoff Meeting**

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

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

Consultant shall organize, conduct, prepare for and attend up to 2 Project Development Team (PDT) Meetings in-person at a location agreeable to the APM 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 described in Section A of this SOW unless otherwise noted in specific tasks. Deliverables are to be scheduled as per Task 1 Project Management.

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

Consultant shall notify land owners as required by ORS 672.047 (Right of Entry by Land Surveyor). Entry notifications by mail require 7 days advance notice from time of mailing.

### **2.1 Research**

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

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

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

Clackamas County to identify property ownership within and adjacent to the Project site by investigating county tax records and providing this information to the Consultant.

#### **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.

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

### **2.1 Consultant Deliverables and Schedule**

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

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

The purpose of this task is to provide the means by which the Project can be located relative to horizontal and vertical datum, map projection, and coordinate systems. Consultant shall establish a horizontal and vertical control network using the datum associated with the Project area or as approved by the 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 caps, or other Agency 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 point number, northing, easting, elevations, and descriptions on all network points and/or an ASCII file showing the level rod readings.
  - Original field notes for the control network and one scanned copy of the original field notes in ".pdf" format.
  - An AutoCAD design file (\*.dwg) containing all the set and tied control points to show elevations.
  - An AutoCAD file (\*.dwg) containing all vertical and horizontal control points stored as Autodesk Civil 3D points to show elevations.

### **2.3 Monument Recovery**

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

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

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

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

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

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

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

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

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

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

#### **Topographic Data Collection**

Consultant shall collect topographic data between the boundaries described in Section A of this SOW. Vehicle based mobile LiDAR scanning will be used for the project.

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 any hydraulic or culvert information in accordance with the "ODOT Hydraulics Manual" on streams and rivers that pass under or are parallel to any roadways in the area. Consultant shall tie environmental and archaeological features that have been identified within the Project area. These features include, but are not limited to, wetlands, high water mark, T&E species, hazmat sites, archaeology sites and sensitive plants.

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

#### 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 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 in the area of the proposed work, which is identified as the limits of the pavement overlay, driveway connections, and the area of bank stabilization work.

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

Consultant shall provide:

- The following deliverables and submit them electronically (.PDF) to the APM within 60 calendar days of NTP:
  - 1 copy of field notes
  - Copy of the AutoCAD Files (\*.dwg) Detailed Base Map with Civil 3D DTM

### **2.5 Existing ROW & Boundary Resolution (CONTINGENCY TASK)**

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. Property and property boundaries abutting the roadway will be established using available GIS data unless the roadway is found not to be within the ROS. . 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.

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

County shall pay for County ROS filing fee, up to \$600.

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

Consultant shall provide:

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

## **TASK 3 ENVIRONMENTAL SERVICES**

Consultant shall complete necessary field and literature investigations to provide the Agency 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 Agency and Consultant's written agreement on cost and receipt of NTP from Agency:

- Final NEPA CE and PCE Documentation
- Archaeological Resources Literature Review/Field Reconnaissance/Baseline Report
- Phase 1 Archaeological Investigation with Technical Report
- Historic Resources Baseline Report
- Hazardous Materials Study and Services
- Surface and Subsurface Soil Samples (CONTINGENCY)
- Endangered Species Act (ESA) Analysis and Biological Assessment (BA)
- Wetland/Waters of the U.S./State Fieldwork and Determination Memo
- Wetland/Waters of the U.S./State Delineation Report
- 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.

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

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

Agency will obtain the ROE's required for Consultant's field reconnaissance work, estimated to be needed for a maximum of 10 properties. Agency and Consultant acknowledge that once requests to owners are sent out, it can take up to 3 to 4 weeks to receive the ROE authorization back from the landowners due to schedules and availability.

If ROEs are required for geotechnical boring outside the right of way, Consultant shall provide a map (see Task 6.2) identifying the approximate location of the proposed boring(s) on the parcel. This map will be included in the 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.

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

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

#### **3.1.1 RESERVED**

### **3.1.2 RESERVED**

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

Consultant shall compile data completed in tasks 3.2 through 3.7 to complete a draft PCE Approval or CE Closeout Document and submit to Agency for review and approval. Consultant 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](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 WFL Environmental staff will review all draft PCE Approval and CE Closeout documents, send back to Consultant for any revisions needed. WFL staff will approve, on behalf of FHWA, the accepted PCE Approval document as per the PCE Agreement, or WFL will submit the accepted CE Closeout Document to FHWA Oregon Division for FHWA review and approval.

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

Consultant shall prepare and submit:

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

### **3.2 Archaeological Resources**

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

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

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

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

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

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

Field Reconnaissance must include a pedestrian survey. Consultant shall conduct pedestrian surveys within the APE and must include areas where ground will be disturbed by Project construction including temporary access roads, as well as staging areas, material sources, disposal sites, detours, etc. Pedestrian survey methods must be consistent with the latest updated [SHPO guidelines](#). The recommended maximum spacing of transects 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. Up to 24 discovery probes shall be excavated if requested by Agency, and shall be conducted under Contingency Task 3.2.2.

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

- A completed Oregon SHPO Archaeological Report Cover Page
- A purpose statement and full Project description including:
  1. 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.

### **3.3 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 up to 15 historic resources will be identified in the baseline report.

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

Consultant shall prepare and submit:

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

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

A DOE is a finding that a property meets the eligibility criteria (A-D) for inclusion in the NRHP. A DOE shall include a brief physical description, history, context, significance, map (the historic boundary included) and photographs of resources that possess integrity of one or all of the following: location, design, setting, materials, workmanship, feeling, and association. If requested by Agency staff, then



Consultant shall prepare draft and final DOE Reports for each historic resource that is considered potentially eligible for the NRHP. For authorized DOE Report(s), Consultant shall also prepare a Project Submittal Letter in Agency-approved format.

Consultant shall prepare each DOE using the most recent Agency form.

The DOE must include but is not limited to:

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

DOE will be prepared for up to 2 resources. Agency Cultural/Historic Resource Specialist will transmit the final DOE(s) to SHPO and will obtain the necessary concurrence documentation from SHPO.

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

Consultant shall prepare and submit:

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

### **3.3.3 Section 106 Finding of Effect (“FOE”)**

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

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

Consultant shall prepare FOE using the most current Agency form.

The FOE(s) must:

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

FOE(s) will be prepared for up to 2 resources. Agency Historic Resource Specialist will transmit the final FOE(s) to SHPO and will obtain the necessary concurrence documentation from SHPO.

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

Consultant shall prepare and submit:

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

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

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

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

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

#### **Task 3.4.1 Hazardous Materials Corridor Study**

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

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

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

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

Environmental Database	Search Radius
State-Equivalent NPL List (ECSIS)	0.25 mile
Oregon Permitted Landfill List	0.25 mile
State Leaking (L)UST List	0.25 mile
Federal RCRA Generators List	Site and Adjoining

Environmental Database	Search Radius
State Fire Marshal's Spill Response List	Site and Adjoining
State Certified UST List	Site and Adjoining

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

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

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

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

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

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

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

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

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

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

**Deliverables/Schedule:**

Consultant shall provide:

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

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

Consultant shall collect surface soil samples within the limits of the project corridor for laboratory analysis. The results of those analyses will be compared with Oregon Department of Environmental

Quality (DEQ) guidelines to determine if surface material excavated for project construction can be handled and disposed as clean fill.

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

- Draft DAP Narrative two weeks prior to DAP Completion milestone
- Final DAP Narrative within one week following receipt of Agency comments.

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

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

#### **3.5.1 Endangered Species Act (ESA) Biological Assessment**

The proposed project is expected to result in impacts to federally listed fish species that reside in the Sandy River from bank stabilization activities that require in-water work. As such, given the presence of WFLHD funding, the project will be required to demonstrate compliance with Section 7 of the federal ESA. Consultant shall prepare a Biological Assessment (BA) to document project impacts on federally listed fish species and conservation measures for minimizing adverse impacts on listed species. Project-related impacts on federally listed plant and wildlife species are not anticipated. If the project is determined by Consultant and County to result in impacts on federally listed plant and wildlife species, a WOC amendment would be required to authorize preparation of a BA that addresses project impacts on federally listed plant and wildlife species. The BA 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 fish species with the potential to be present in the API and their potential suitable habitats following standard/appropriate field survey techniques.
- Contact the 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.
- 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.
- Coordinate with design staff and County to develop appropriate measures (i.e., construction special provisions) to minimize impacting listed species proposed for coverage in the BA (Task 15.1).
- Prepare draft BA for the Project area; provide to County and WFLHD for review and comment.
- Prepare final BA for County and WFLHD acceptance.

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

Consultant shall prepare and submit:

- One electronic PDF copy of the Draft BA to County for review per Task 1 Project Design Schedule.

- One electronic PDF copy of the Final BA to County within 2 weeks following receipt of draft review comments.

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

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

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

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

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

Consultant shall:

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

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

Consultant shall prepare appropriate graphics required by USACE and DSL to accompany the Wetland Delineation Report. This shall include a site location map, tax lot map, National Wetland Inventory or Local Wetland Inventory map (if available), soil survey map, and aerial overlay map. Consultant's Wetland Delineation Report must also include wetland delineation boundary mapping (figures) as finalized by Consultant and as per the requirements of DSL, and a color photographic record depicting existing conditions.

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

Consultant shall submit the Wetland Delineation Report to DSL and USACE. Consultant shall be responsible for signing the wetland delineation report cover page. Consultant shall be responsible for payment of associated fees, anticipated to total \$454. Agency and WFL shall review the draft Wetland

Delineation Report and shall provide comments to Consultant within three weeks of receipt of the draft. Consultant shall make appropriate modifications to the draft Wetland Delineation Report in response to the comments and shall prepare the final for submittal.

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

Consultant shall prepare and submit:

- Electronic copies of the Draft Wetland Delineation Report to Agency for review per the schedule in Task 1.
- Electronic copy (PDF) of the Final Wetland Delineation Report to Agency two weeks following receipt of draft review comments per the schedule in Task 1.
- Final Wetland Delineation Report to DSL and the USACE per the schedule in Task 1.
- Sketch map of approximate wetland and waters boundaries to 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 to APM for review per the schedule in Task 1.
- Electronic copy (PDF) of the Final Wetland Determination to APM 2 weeks following receipt of draft review comments.

### **3.6.2 Functional Assessments**

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

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

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

Consultant shall prepare and submit:

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

## **3.7 Environmental Permits and Clearances**

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

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

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.

### **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 Oregon Department of Environmental Quality (DEQ) 1200-C Permit Application**

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

Consultant shall provide pre-submittal coordination with representatives of the DEQ and LPA to confirm permitting requirements and application procedures. Consultant coordination includes correspondence in the form of telephone calls, e-mail, letters, and memos to document permit needs.

Consultant shall assemble permit application materials including the application forms, plans, drawings, memos, details, and specifications to support the permit application.

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

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

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

Consultant shall prepare and submit:

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

## **TASK 4 PUBLIC INVOLVEMENT SUPPORT**

Not included in Consultant Scope.

## **TASK 5 - UTILITIES**

Consultant shall perform the coordination of all utility facilities within the Project limits. If any utility is nonresponsive or uncooperative, Consultant shall notify Agency upon completing the level of effort defined by the BOC, 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. This work includes reviewing utilities that may be in conflict with the Project work and utility relocation coordination with the utility owners to resolve those potential conflicts. Additionally, Consultant shall obtain system mapping from utilities located within the Project limits and shall conduct a utility reconnaissance of the project areas to determine visual evidence of underground and aboveground utility facilities.

It is anticipated that there will be limited utility relocation work. The roadway will be overlaid and within the area of the bank stabilization work, the soils were washed and replaced, therefore, we do not anticipate utility conflicts with the proposed work.

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

Consultant shall provide:

- Existing utility information gathered in Task 5.1 to be included in the survey map/base map/Record of communications with each utility within the Project limits.
- Copies of communication record must be provided to APM and LAPM within 3 business days of request.



## **5.2 Utility Report**

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

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

## **5.2 Consultant Deliverables and Schedule**

Consultant shall provide:

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

## **5.3 RESERVED**

## **5.4 RESERVED**

## **5.5 RESERVED**

## **5.6 Utility Certification**

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

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

## **5.6 Consultant Deliverables and Schedule**

Consultant shall provide:

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

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

Note included in Consultant scope. The pavement will be a 2 inch overlay and the previous geotechnical work will be used as a basis for the bank stabilization design.

## **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.
- Obtain effective FEMA hydraulic model for use in FEMA “No-Rise” Analysis
- Review local floodplain ordinances to determine if there are any applicable to this water body.
- Determine channel and floodplain hydraulic roughness values (document with photographs).
- Visit the bank stabilization site and record observations with respect to the following:
  - Lateral channel stability.
  - Stream channel hydraulic roughness.
  - Aggradation or degradation of bed material.
  - Existing evidence of scour and/or erosion.
- Obtain 2 bed material sediment samples and provide to geotechnical engineer for development of sieve analysis to determine sample gradations.
- Coordinate with Geotechnical Engineer and review geotechnical report with regard to lateral stream stability and scour potential and coordinate with geotechnical engineer for bed material sample testing.

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

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

### **7.2 Hydrologic Analysis**

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

Consultant shall:

- Review ODOT Hydraulic Manual and available hydrologic data sources to determine the most appropriate 2-, 10-, 25-, 50-, 100-, and 500-year design flow for the proposed Project.
- Analyze available stream gauge records to calculate flood frequency and flow duration values to support hydraulic analysis and design.  
In the absence of stream specific data, consultant shall 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 or utilize the peak discharges published in the FEMA FIS.
- 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 5.0.7) software or later.
- Create a “Duplicate Effective Model” (DEM) to ensure model results match the effective FEMA FIS regulatory and floodway elevations within the required tolerances.
- Create a “Corrected Effective Model” (CEM) to correct any errors in the DEM and add additional cross sections needed to obtain additional detailed hydraulic information at the Project site.
- Create an “Existing Conditions Model” (ECM) to simulate the current hydraulic conditions at the proposed bank stabilization site to determine current water surface profiles, velocities, depths, and flow area for the various design flows.
- Create a “Proposed Conditions Model” (PCM) at the proposed bank stabilization site to determine proposed conditions water surface profiles, velocities, depths, and flow area for the various design flows.
- Compare ECM and PCM model output for determining compliance with a FEMA “No-Rise” requirements.

### **Open Channel Hydraulics**

Consultant shall:

- Design revetment and bank stabilization for up to 2 alternatives following Agency/LPA 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.

### **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. A FEMA “No-Rise” certification shall be provided in the final Hydraulics Report, if appropriate.

#### **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 3 hard copies, due with the Design Acceptance Package.
- Final Hydraulics Report, PDF file of complete report, and 3 hard copies, due with the Final Plans.

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

Not included in scope.

### **TASK 9 RESERVED**

### **TASK 10 ROADWAY DESIGN**

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

#### **10.1 Design Criteria**

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

- Determine cross slope, horizontal curves, and super-elevation
- Determine maximum grade, vertical curves
- Determine cross section elements:
  - Number and width of travel lanes
  - Shoulders
  - Curbs
  - Side slopes
  - Ditches or swales (drainage facilities)

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

Consultant shall provide:

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

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

The existing Roadway will be overlaid with new AC without any changes to vertical or horizontal alignments with the exception of minor pavement overlay of some area.

### **TASK 11 RESERVED**

### **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 Permit Research**

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

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

- Clackamas County Floodplain Development

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

## **12.1 Consultant Deliverables and Schedule**

Consultant shall provide:

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

## **12.2 Local Permit Acquisition**

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

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

Upon submittal of permit application materials to Agency, Agency PM 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/LPA will provide all required signatures on application forms.

## **12.2 Consultant Deliverables and Schedule**

Consultant shall provide:

- Draft Permit Applications; electronic copies for Agency review due per Task 1 Project Schedule.
- Final Permit Applications; 2 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 prepare a DAP that includes design plans (30%), cost estimate and a design narrative that addresses the following:

- Description of the purpose, need, and design solution for the Project;
- Summary of existing conditions, (i.e., Project location, roadway classification, lanes, ADT, posted speed, and other design standards pertinent to the Project);
- Summary of design exceptions that will be necessary
- Summary of roadway alignment and typical section alternatives considered, including recommendations;
- Outline of Project constraints such as topography, environmental, permits, ROW, utilities and cost (NOTE: these may be executive summaries prepared by Consultant for other deliverables associated with this Project);
- Environmental impacts and mitigation measures;
- Environmental permitting requirements;
- Utility conflicts;
- 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:

<b>Name of Sheet</b>	<b>Estimated # of Sheets</b>
Title sheet	1
Typical sections	1
Details	2
Roadway plans	7
Roadway cross sections	1
Bank Stabilization plan/profiles	4

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

For budgeting purposes it is assumed that Consultant staff shall attend the DAP Plan Review Meeting, including travel time, per Task 1.3.2.

**13 Consultant Deliverables and Schedule:**

Consultant shall provide:

- 1 electronic copy of DAP in PDF format to APM within 20 weeks of NTP.
- 1 electronic copy of written responses to DAP review comments to APM within 2 week of the DAP Plan Review Meeting.

**TASK 14 RIGHT OF WAY (ROW)** Not included in contract. If services are required, they will be completed by County ROW Staff.

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

Consultants shall prepare plan sheets according to the following table:

Table 15

<b>Name of Sheet</b>	<b>Estimated # of Sheets</b>	<b>Advanced Submittal</b>	<b>Final Submittal</b>
Title sheet	1	X	X
Layout of sheets	1	X	X
General notes, Legend & Abbreviations	1	X	X
Typical sections	1	X	X
Civil details	5	X	X
Roadway plan (1"=50')	10	X	X
Roadway cross sections	4	X	X
Driveway profiles/elevations	5	X	X
Bank Stabilization plan/profiles (1"=30')	5	X	X
Erosion control cover & notes	1	X	X
Erosion control plans (1"=40')	5	X	X
Erosion control details	1		
Temporary traffic control standard detail sheet	1	X	X
Sign and striping details	1	X	X

## **15.1 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 DAP 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:

[https://www.oregon.gov/ODOT/Business/Pages/Standard\\_Specifications.aspx](https://www.oregon.gov/ODOT/Business/Pages/Standard_Specifications.aspx)

Consultant shall obtain concurrence from the proper Agency technical resource for any unique special provisions or changes made to the boilerplate special provisions, beyond fill-in-the-blank changes. Consultant shall document the changes made to the Special Provisions and technical resource concurrence using Agency’s Special Provision Summary Form. The list of Agency technical resources and corresponding special provision can be found at the following website:

<http://www.oregon.gov/ODOT/HWY/SPECS/Pages/index.aspx>

Consultant shall submit the 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;

Consultant shall submit the Agency risk assessment form to the APM and incorporate the resulting insurance information into the Special Provisions.

### **Advance Cost Estimate:**

Consultant shall update the construction cost estimate quantities and unit costs utilizing 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 Spring of 2021 bid letting. Consultant shall prepare the final cost estimate using an electronic format (native file and \*.pdf) version using Microsoft® Excel software.

### **Construction Schedule:**

Consultant shall prepare a construction schedule, using the Critical Path Method (MS Project and PDF format) that outlines a reasonable Project construction sequence and time frames. The schedule must include anticipated material lead times, Project milestones and anticipated construction phasing and staging.



Advance PS&E Revisions/Corrections:

The APM will submit a single electronic file of Advance PS&E Comment Log review comments to Consultant.

Consultant shall address comments received and communicate with the APM the proposed resolution to the comments. Consultant shall provide written response to address review comments received from the APM on the Advance PS&E.

**15.1 Consultant Deliverables and Schedule**

Consultant shall submit the following to the APM within 8 weeks of the APM’s written approval (e-mail acceptable) of the Preliminary PS&E (60%) (Task 15.1):

- Advance Plans (PDF)
- Advance Special Provisions in electronic format (MS Word, utilizing “Track Changes”)
- Advance Construction Cost Estimate in electronic format (Excel and PDF)
- Construction schedule in electronic format (MS Project format and PDF)
- Comment response log for plans and specifications (In an Excel document)
- Agency risk assessment form
- Special Provisions summary form
- Civil Rights request for goals worksheet

Consultant shall submit Advance PS&E Review Comment Log with initial responses to the APM and LAPM within 2 weeks of receipt of comments.

**15.2 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](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. Consultant Deliverables and Schedule**

Consultant shall submit the following, 4 weeks prior to the PS&E Due Date to the Agency Office of Project Letting:

Description	To APM		To WFL LAL	
	Electronic	Paper	Electronic	Paper
Un-signed Final Design Plans (11 x 17)	PDF	X	PDF	X
Project Special Provisions	Word & PDF	X	PDF	X

POR Certification with all Special Provisions sections stamped	PDF		PDF	
NEPA Approval Documentation (delivered under Task 3)	PDF	X	PDF	
Utilities Certification (delivered under Task 5)	PDF	X	PDF	

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

- POR-signed Final Plans printed on 11 x 17 paper, 4 copies
- POR-signed Final Plans in PDF format

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

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

## **TASK 16 BID AND AWARD ASSISTANCE**

This task includes the preparation of addenda, as needed, and responding to questions during the bidding phase. Consultant shall respond to questions from 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

<http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/Pages/CAIndex.aspx>. This document is revised and updated from time to time. Review this chapter to ensure that the scope of work adequately reflects the responsibilities of the PM as detailed in Chapter 6 of the ODOT Construction Manual and revise the scope of work as necessary to fit the needs of the project.

Consultant shall prepare all required Contract addenda to provide clarification to the bid documents. Consultant shall submit the addenda to Agency for distribution to bidders.

### **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 3 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 Agency.

### **16.1 Consultant Deliverables and Schedule**

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

### **16.2 Reserved**

**F. CONTINGENCY TASKS**

The Agency, at its discretion, may authorize Consultant to perform Contingency Tasks as outlined in the SOW. Details of the contingency tasks and associated deliverables are stated in the Task section of the SOW. Consultant shall complete only the specific contingency task(s) identified and authorized via written (email acceptable) Notice-to-Proceed (“NTP”) issued by Agency's Project Manager. If requested by Agency, Consultant shall submit a detailed cost estimate for the agreed-to contingency Services {within the not-to-exceed or “NTE” amount(s) in the Contingency Task Summary Table} within the scope of the contingency task.

If Agency chooses to authorize some or all of these tasks, Consultant shall complete the authorized tasks and deliverables per the schedule identified for each task. The NTP will include the contingency task name and number, agreed-to due date for completion and NTE for the authorized contingency task.

Each contingency task is only billable (up to the NTE amount identified for the task) if specifically authorized per NTP. In the table below, the “NTE for Each” amount for a contingency task includes all labor, overhead, profit, and expenses for the task. The funds budgeted for contingency tasks may not be applied to non-contingency tasks without an amendment to the Contract. The total amount for all contingency tasks authorized shall not exceed the maximum identified in the table below. Each authorized contingency task must be billed as a separate line item on Consultant’s invoice.

**Contingency Task Summary Table**

Contingency Task Description	NTE for Each	Max Quantity	Method of Comp.	Total NTE Amount
2.6 Staking	\$14,525.13	1	T&M	\$14,525.13
3.2.2 Phase 1 Archeology Shovel Probes	\$17,751.30	1	T&M	\$17,751.30
<b>Total for contingency tasks:</b>				<b>\$ 32,276.43</b>

## EXHIBIT B - COMPENSATION

### Definitions:

**CPFF** - Cost Plus Fixed Fee

**FCCM** - Facilities Capital Cost of Money

**NBR** - Negotiated Billing Rates. NBRs are fully loaded billing rates used by firms that do not have an audited, approved overhead rate. NBRs are inclusive of direct salary, indirect expenses and profit.

**NTE** - Not to Exceed Amount

**T&M** - Time and Materials

### A. METHOD of COMPENSATION for NON-CONTINGENCY TASKS

Payment will be made for completion of, or acceptable monthly progress on, tasks and deliverables in conformance with Contract requirements and all applicable standards. Consultant shall complete all Services and provide all deliverables as defined in the Contract. If the applicable compensation is exhausted, but Services and deliverables are not complete, Consultant shall complete the Services and provide the deliverables to County's satisfaction without additional compensation.

The amount payable under the Contract may be adjusted by County or renegotiated to:

- Reduce the NTE, Fixed-Price or Fixed-Fee amount associated with Tasks/Deliverables that were not authorized by County or not performed by Consultant;
- Reduce the NTE, Fixed-Price or Fixed-Fee amount commensurate with deductive amendments to reduce the risk associated with the project or to reduce the scope of work required under the Contract;
- Increase the NTE, Fixed-Price or Fixed-Fee amount for additional Tasks/Deliverables added to the scope of work via amendment to the Contract.

{The method(s) of compensation for contingency tasks, if any, is specified in Exhibit A, Contingency Task Summary Table.}

#### 1. 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 non-contingency Services is: \$ 259,940.06
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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.

**OPTION 1 (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.

### **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 receipts for any items purchased or equipment rentals for the Project that exceed \$100. Include copies of all invoices, similarly detailed, from authorized subconsultants.
- County will reimburse Consultant for approved travel expenses incurred in accordance with **Exhibit B**, Section C of the Contract, if County has agreed to reimburse Consultant for travel expenses. For travel expense claims include receipts for lodging; rental cars, airfare.

**Fixed-Price Compensation.** Consultant shall prepare invoice(s) based on the payment option identified in Section B of this Exhibit:

- For Contracts using “Payment upon Full Completion” payment option, Consultant shall submit a single invoice requesting payment for the full Fixed-Price amount after all Services have been completed and all Deliverables have been accepted by County.
- For Contracts using “Progress Payments for Percentage of Services Completed” payment option, Consultant invoices shall be limited to an amount commensurate with the percentage of the total Services (including Deliverables) that were completed in the month invoiced.

County may request a full written itemization of and receipts for, but not limited to, any or all labor and direct costs billed by Consultant. Consultant shall provide written itemization and receipts to County within 5 business days of County’s request. County will not make payment to Consultant under the applicable invoice until County has received all requested supporting documentation from Consultant and County has approved the invoiced amounts. Any overdue payments to Consultant by County for an approved invoice are subject to ORS 293.462.

**E. PAYMENT TERMS**

Payment will be made to Consultant no later than 45 calendar days from receipt of invoice completed in conformance with all contractual requirements. County will endeavor to notify Consultant within 10 business days of receipt of invoice regarding any necessary revisions or corrections to the invoice. If revisions are necessary, payment will be made no later than 45 calendar days from receipt of the revised invoice. Any interest for overdue payment will be in conformance with Oregon law.

**F. CORRECTIVE WORK**

Consultant shall complete all Services, including Deliverables, as required in the Contract to County’s satisfaction. If County, using reasonable discretion, determines that the Services or associated deliverables, or both, are unacceptable, County shall notify Consultant in writing of the deficiency. Within 7 calendar days (unless a different timeframe is agreed to by the Parties) of receipt of the deficiency notification Consultant shall respond to County outlining how the deficiency shall be corrected. Consultant shall correct any deficiencies in the Services and Deliverables to County’s satisfaction without further compensation. County will not unreasonably withhold payment.

**G. WITHHOLDING/RETAINAGE**

County reserves the right to initiate, at any time during the Contract, withholding of payment equal to 5% of the amount of each invoice submitted to County under the Contract. County will make final payment of any balance due to Consultant promptly upon verification of completion and acceptance of all Services by County and will pay interest as required on retainage.

## **H. PAYMENT REDUCTION**

County, or its duly authorized agents, may audit Consultant's fiscal records, including certified payroll and overhead records at any time. If County finds previously undisclosed inaccurate or improper costs have been invoiced and paid, County will notify Consultant and seek clarification. County, in its sole discretion, may reduce the payment for Services by withholding the inaccurate or improper amounts from any future payment to Consultant, withhold the inaccurate or improper amounts from final payment to Consultant, or may use any other means to seek recovery of already paid but improperly calculated amounts.

## **I. SPECIFIC LIMITATIONS and UNALLOWABLE CHARGES**

### **Specific Limitations**

For cost reimbursement compensation such as CPFF or T&M, Consultant shall invoice County only for actual productive time Consultant personnel spend on Services by any level of Consultant's staff (up to the established not-to-exceed amount). Consultant's general supervisors or personnel who are responsible for more than one County project shall charge only for actual productive time spent directly on the project identified in the Contract.

County will pay Consultant only up to the hourly rates set forth in the Contract that are commensurate with the type of Services performed regardless of the classification, title, or level of experience of the individual performing those Services. However, under no circumstances shall Consultant invoice County based on higher direct salary rates than the actual amount paid to its employees.

**Discriminatory Pricing.** Direct and indirect costs as applied to work performed under County contracts and subcontracts may not be discriminatory against the County. It is discriminatory against the County if employee (or owner/sole proprietor) compensation (in whatever form or name) is in excess of that being paid for similar non-County work under comparable circumstances.

**Discriminatory Wage Rates.** Pursuant to ORS 279C.520, Consultant shall comply with the prohibitions set forth in ORS 652.220. Failure to comply is a breach that entitles the County to terminate the Contract for cause.

**Employee Discussions Regarding Compensation.** Consultant shall not prohibit any of its employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person {see ORS 279C.520(1)}.

### **Unallowable Charges**

County will not pay for direct or indirect costs that are unallowable under the provisions of [48 CFR Part 31](#).

Costs or direct charges for, but not limited to, the following are not reimbursable:

- Costs for negotiation of the Contract or Contract amendments, including but not limited to proposal preparation, BOC preparation, preparation for negotiations, and negotiation of level of effort/budget.
- Costs related to disputes or E&O Claims, including but not limited to discussions, meetings and preparation of any dispute or claim related documentation.
- Mark-up on subcontractors or direct non-labor costs.
- Transfer of knowledge and information related to Key Person replacements.
- Correcting or making adjustments to incorrect or improper invoices.
- Direct compensation for items included in firm's indirect costs (unless properly credited back to indirect cost).

- Premium costs incurred as a result of working overtime or holidays. (Premium time should normally be charged to overhead. In accordance with ORS 279C.520, employees shall be paid at not less than time and one-half for all overtime worked and for work on legal holidays, except for individuals who are excluded from receiving overtime under personal services contracts pursuant to ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209.)

## **J. INDIRECT COSTS; SALARY and BILLING RATE SCHEDULES**

**1. Approved cost data on file with ODOT** - If Consultant or its subconsultants have current, approved overhead, salary, or NBR rate schedules on file at ODOT, Consultant and its subconsultants will submit those approved rate schedules and any required certifications (or County may obtain rate schedules from ODOT) as required in subsections 2 and 3 below for use under the Contract.

**2. Overhead Schedule** - If Consultant or subconsultants calculate overhead as part of their normal business practice, the overhead schedules shall be prepared and submitted in accordance with ODOT's Billing Rate Policy (as may be revised from time to time by ODOT) available at: <https://www.oregon.gov/ODOT/Business/Procurement/DocsPSK/brPolicy.pdf>. Consultant Certification of compliance with Federal Cost Principles is required per FHWA directive 4470.1a: <https://www.fhwa.dot.gov/legsregs/directives/orders/44701a.htm>. A signed [Certification of Final Indirect Costs form](#) must be submitted with the overhead schedule.

In order to assess the adequacy of an audited overhead rate for use in fair and reasonable price negotiation, County and/or ODOT may evaluate a firm's financial capability, internal control structure, and overhead schedule. This includes a determination as to the applicability of historical overhead rates to the anticipated future contract period, performing financial ratio analysis, evaluating overhead account trends and utilization rates for reasonableness.

### **3. Salary and Billing Rate Schedules**

Consultant shall, and shall cause all of its subconsultants to submit electronically to County the applicable rate schedules described below.

**Direct Salary Rate Schedule** - includes the name, classification and actual direct salary rate as approved for each employee that may be used under the Contract. This schedule is required for firms that calculate an overhead rate. This schedule will not be included in the Contract but will be retained by County.

**Negotiated Billing Rate Schedule** - may be required for Consultants or subconsultants that do not have a cognizant or acceptable independent audit for overhead rates (or do not calculate overhead as part of their normal accounting practice) and County determines it is in the public's best interest to negotiate specific billing rates. Instead of calculating a billing rate using a formula that applies overhead, profit, and FCCM to the direct salary rate, this schedule lists negotiated rates that are fully inclusive of profit, overhead and any cost of living or merit raises. The billing rates invoiced under the Contract must not exceed the rates per classifications listed in the schedule and may be no greater than the lowest rates charged to other public or private clients.

**Direct Non-Labor Rate Schedule** - is an optional schedule used to list actual costs of reimbursable items that are not included in the firm's overhead rate (or that are properly applied as a credit in overhead calculation).

**Approved Rate Schedules** - The rate schedules approved for the Contract and the BOC are incorporated into this Contract by this reference. Prior to approval of additional subconsultants, Consultant shall provide to County any requested documentation of qualifications and experience of the prospective subconsultant and its staff.



#### **K. RATE REVISIONS**

The hourly rates (including escalations, if any) approved for use under this Contract shall remain in effect throughout the duration of the Contract unless revisions are approved by County. Any approved revisions to the hourly rates allowable under the Contract shall not cause an increase in the Contract NTE amount (exceptions may be approved by County on a case by case basis).

#### **L. BREAKDOWN OF COSTS (BOC)**

Prior to execution of the Contract or any amendments that add Services, Consultant shall prepare and submit a BOC based on the approved overhead and actual direct salary rates (and approved NBRs as applicable) for each classification to be used under the Contract. Consultant shall include names of proposed staffing in the BOC.

The BOC must include a detailed breakdown of the costs for each element of the work regardless of compensation method. The BOC must identify:

- a) the proposed staff assignments (classifications and names) and hours per task and sub-task;
- b) an itemization with documentation (estimates from vendors shall be provided upon request) to support rental equipment, flaggers, travel and other direct non-labor expenses; and
- c) the estimate for Services as provided by each subconsultant that shows the assigned staff and hours per task and sub-task and itemized direct non-labor costs. County may ask for qualifications of any staff assigned to work on a project if they were not included in Statement of Proposal originally submitted for solicitation.
- d) the certification status of any disadvantaged business enterprise, minority-owned business, woman-owned business, service-disabled veteran-owned business or emerging small business subcontractors included in the BOC.
- e) **Contingency Tasks.** Amounts for any contingency tasks must be shown as a separate line-item for each task. The amount for a contingency task must include all labor, overhead, profit, and expenses for the task. Expenses for contingency tasks must not be included in an overall amount for direct non-labor expenses applied to the budget for the non-contingency tasks. Enter the agreed to unit and extended amounts for contingency tasks in the Contingency Task Summary table.

**The final BOC agreed to by the Parties is incorporated by this reference.**

## EXHIBIT C - INSURANCE

All insurance required by this Contract shall be maintained with insurers with an A.M. Best Financial Strength Rating of no less than A-. Insurers must be legally authorized to transact the business of insurance and issue coverage in the State of Oregon. Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions and self-insurance. Prior to beginning work and during the term of this Contract, including any extensions or warranty period, Consultant shall maintain in force at its own expense each insurance set forth below:

1. **Workers' Compensation** insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (Consultants with one or more employees, unless exempt under ORS 656.027).
2.  **Required by County**  **Not required by County.**  
**Professional Liability** insurance with a per claim, incident or occurrence limit, or the equivalent, of not less than  **\$1,000,000**, or  **\$2,000,000**. Any annual aggregate limits must not be less than  **\$1,000,000**, or  **\$2,000,000**. This insurance must cover damages caused by negligent acts, errors or omissions of Consultant and Consultant's subcontractors, agents, officers or employees related to the professional Services to be provided under the Contract. If this insurance is provided on a "claims made" basis, Consultant shall continue the same coverage for  **2 years**,  **3 years**, or  **6 years** after completion of the Services or acquire "tail" coverage or an Extended Reporting Period endorsement for the foregoing extended period beyond Contract expiration or termination. Evidence of any required extended period coverage will be a condition of final payment under the Contract.
3.  **Required by County**  **Not required by County.**  
**Commercial General Liability** insurance must be issued on an occurrence basis with per occurrence limit, or the equivalent, of not less than \$1,000,000 covering "bodily injury" and "property damage." Any annual aggregate limits shall not be less than \$2,000,000.
4.  **Required by County**  **Not required by County.**  
**Automobile Liability** insurance covering Consultant's business-related automobile use, with a combined single limit, or the equivalent, of not less than \$1,000,000 each occurrence for "bodily injury" and "property damage," including coverage for all owned, non-owned, rented or hired vehicles.
5. **Notice of change or cancellation.** There shall be no cancellation, material change (one that would adversely impact the protection of County provided through the insurance coverages required in this **Exhibit C**), reduction of limits or intent not to renew the insurance coverage(s) without 30 calendar days prior written notice from Consultant or its insurer(s) to County. **All policies and certificates of insurance, including Workers' Compensation, must include a notice of cancellation or nonrenewal clause as required under ORS 742.700 to 742.710.**
6. **Certificates of Insurance.** As evidence of the insurance coverages required by this Contract, Consultant shall furnish acceptable insurance certificates to County prior to Contract execution. Throughout the life of this Contract, Consultant shall submit updated certificates of insurance prior to the policy expiration date(s) indicated for the required coverages. If requested by County, Consultant shall either: a) provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to County; or b) make such insurance policies, endorsements, self-insurance documents and related insurance documents available for inspection by County's representatives at a location in the State of Oregon that is reasonably convenient for County's representatives responsible for verification of the insurance coverages required under the Contract.
7. **Additional Insureds.** Insurance certificates for Automobile and Commercial General Liability must include an endorsement physically attached to the certificate specifying the County, the State of Oregon, the OTC, the Oregon Department of Transportation, and their respective officers, members, agents and employees as Additional Insureds and must expressly provide that the interest of the Additional Insureds shall not be affected by Consultant's breach of policy provisions.

8. **Subcontractors.** Consultant shall: (i) obtain proof of the above insurance coverages, as applicable, from any subcontractor providing Services related to this Contract, or (ii) include subcontractors within Consultant's coverage for the duration of the subcontractor's Services related to this Contract.

## EXHIBIT D - TITLE VI NON-DISCRIMINATION PROVISIONS

During the performance of this Contract, Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "Consultant") agrees as follows:

- a. **Compliance with Regulations:** Consultant shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
- b. **Nondiscrimination:** Consultant, with regard to the work performed by it during the Contract, shall not discriminate on the grounds or race, color, sex, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment. Consultant shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
- c. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by Consultant of Consultant's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.
- d. **Information and Reports:** Consultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County, ODOT, FHWA or the Federal Transit Administration (FTA) as appropriate, to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to County, ODOT, FHWA or FTA as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. **Sanctions for Noncompliance:** In the event of Consultant's noncompliance with the nondiscrimination provisions of this Contract, County shall impose such Contract sanctions as it, ODOT, FHWA or FTA may determine to be appropriate, including, but not limited to:
  - (i) Withholding of payments to Consultant under the Contract until Consultant complies, and/or
  - (ii) Cancellation, termination or suspension of the Contract, in whole or in part.
- f. **Incorporation of Provisions:** Consultant shall include the provisions of paragraphs (a) through (e) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as County, ODOT, FHWA or FTA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event Consultant becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, Consultant may request County, ODOT, and, in addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

## EXHIBIT E.1 - DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROVISIONS (No-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 section e for specific 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 Contracts and 6% (proposed) for FTA funded Contracts. 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 DBE participation goal has not been established 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 USDOT-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. **Prompt Payment and Retainage:** Contractor shall pay each subcontractor for satisfactory performance of its contract no later than 10 calendar days from receipt of each payment Consultant receives from ODOT (or local agency when applicable). In addition, Contractor shall return any retainage payments to each subcontractor within 10 calendar days after the subcontractor’s work is satisfactorily completed.
- e. **Reporting Requirements:** Contractor shall complete and submit initial, interim and final Paid Summary Reports [form 734-2882] per the instructions on the form. Contractor must report payment information for all subcontractors and suppliers used under the Contract throughout the period of performance.
- f. **Commercially Useful Function:** For Contracts with no DBE goal assigned, ODOT may count race-neutral DBE participation toward its overall goal, provided the DBE is performing a commercially useful function (“CUF”) as set forth in 49CFR § 26.55. A DBE performs a commercially useful function 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. ODOT may perform a CUF review at any time during the performance of the Contract.

- g. **Termination of DBE Notification Requirement:** Contractor must promptly notify ODOT whenever a DBE subcontractor performing work related to this Contract is terminated or fails to complete its work. See additional requirements of 49 CFR § 26.53(f) regarding termination of a DBE.
- h. **Remedies:** Contractor's failure to comply with these DBE Provisions and the requirements of 49 CFR Part 26 may result in one or more of the following administrative actions as deemed appropriate by ODOT: non-compliance documented in ODOT evaluation of Contractor performance, a corrective action plan prepared by Contractor, ODOT (or local agency when applicable) withholding of retainage, suspension of work, reporting of non-compliance to the federal System for Award Management ("SAM") available at <https://sam.gov/SAM/>, any other remedies provided under the Contract.
- i. **Information/Questions:** The DBE program is administered by the ODOT Office of Civil Rights ("OCR"). Questions related to the DBE Program may be sent via email to [ocrinforequest@odot.state.or.us](mailto:ocrinforequest@odot.state.or.us) or otherwise directed to: Oregon Department of Transportation Office of Civil Rights 3930 Fairview Industrial Drive SE (MS 23), Salem, OR 97302; Phone: 503-986-4350 Fax: 503-986-6382.
- j. **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 CFRs 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.1

APM	ODOT's or local agency's Project Manager
CFR	Code of Federal Regulations
CUF	Commercially useful function
DBE	Disadvantaged Business Enterprise
OCR	ODOT Office of Civil Rights
ODOT	Oregon Dept. of Transportation
RFP	Request for Proposals
SSUR	Subcontractor Solicitation and Utilization Report
USDOT	United States Department of Transportation

## **EXHIBIT F - SPECIAL TERMS & CONDITIONS**

Provisions in this Exhibit F are in addition to and do not supersede the terms and conditions set forth in the Contract.

**NEPA Decision Documents and Final Design.** Agency is not obligated to proceed with final design for any alternative; all reasonable alternatives will be evaluated and given appropriate consideration, and the Consultant under the Contract may not proceed with final design until the relevant NEPA decision documents have been issued.

## **EXHIBIT G - RESERVED**

## **EXHIBIT H - RESERVED**

## **EXHIBIT I - ERRORS & OMISSIONS (“E&O”) CLAIMS PROCESS**

**Exhibit I** is not physically attached but is incorporated into this Contract with the same force and effect as though fully set forth herein. For purposes of this Contract, the term “Agency”, 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.

<b>a.1 * County's Project Manager (APM) Name:</b>	Mike Ward
<b>Ph:</b>	503-742-4688
<b>E-mail:</b>	<a href="mailto:mward@clackamas.us">mward@clackamas.us</a>

### a.2 County's address for invoicing:

<b>Mailing Address:</b>	150 Beaver creek Road, Oregon City, Oregon 97045
<b>E-mail:</b>	<a href="mailto:mward@clackamas.us">mward@clackamas.us</a>

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

<b>Name:</b>	Daniel S. Houf, PE
<b>Ph:</b>	503-221-1131
<b>E-mail:</b>	<a href="mailto:Dan@hhpr.com">Dan@hhpr.com</a>

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

<b>Name:</b>	Harper Houf Peterson Righellis, Inc.
<b>Address:</b>	205 SE Spokane Street, Suite 200, Portland, Oregon 97202
<b>Ph:</b>	503-221-1131

\* 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 LPA A&E Contract (1/15/20)



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
Daniel S. Houf, PE	Professional Engineer
John Campbell, PLS	Land Surveyor

### 3. Reassignment or Transfer of Key Person

In the event Consultant requests that County approve a reassignment or transfer of a Key Person:

- Consultant shall provide a resume for the proposed substitute demonstrating that the proposed replacement has qualifications that are equal to or better than the qualifications of the person being replaced.
- County shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Key Person.
- Any substitute or replacement for a Key Person must be approved in writing (e-mail acceptable) and shall be deemed to be a Key Person under the Contract.

Consultant agrees that the time/costs associated with the transfer of knowledge and information for a Key Person replacement is not a cost borne by County and shall not be billed to County. This includes labor hours spent reviewing project documentation, participation in meetings with personnel associated with the Contract/project, and participating in site visits to become familiar with the project.