



DAN JOHNSON
DIRECTOR

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

July 30, 2020

Board of Commissioners
Clackamas County

Members of the Board:

Approval of Addendum #1 to 2040 Planning and Development Grant
Intergovernmental Agreement with Metro: Clackamas County
Park Ave Development and Design Standards. Contract No. 935012

Purpose/ Outcomes	Approval of Addendum #1 to 2040 Planning and Development Grant Intergovernmental Agreement with Metro: Clackamas County Park Avenue Development and Design Standards. Contract No. 935012 to increase the funding amount by \$10,000 to address unexpected expenses due to COVID-19
Dollar Amount and Fiscal Impact	The increased grant award is for \$10,000, with the total grant award being \$190,000. The departments of Transportation and Development (DTD), and Business and Community Services (BCS) have contributed the required match of staff time during this project.
Funding Source	The Metro 2040 grants are funded through Construction Excise Taxes. The additional grant funds do not require matching funds.
Duration	September 2018 – December 2020
Previous Board Action	BCC Policy Session – Update Phase 2: August 6, 2019 BCC Planning Session – Direction on Next Steps: June 11, 2019 BCC Policy Session – Update on Phase 1: May 22, 2019 BCC Policy Session – IGA Approval: September 4, 2018 BCC Business Meeting – Approval to Apply: June 29, 2017 BCC Policy Session – Approval to Apply: June 13, 2017
Strategic Plan Alignment	1. How does this item align with your department’s Strategic Business Plan goals? The project aligns with the DTD Strategic Plan in that it supports the completion of a project in the adopted Long Range Planning Work Program. 2. How does this item align with the County’s Performance Clackamas goals? The additional funding will support community engagement of a project that is focused on creating a more walkable community, therefore it is in alignment with the Policy Perspectives listed in the Performance Clackamas goals of: <ul style="list-style-type: none"> • Equity, Diversity and Inclusion. • Healthy and Active Lifestyle, guiding housing, transportation and land use policies and decisions.
Counsel Review	<ul style="list-style-type: none"> • Reviewed and approved on 07/21/20
Procurement Review	1. Was this item process through Procurement? No 2. If no, provide a brief explanation: This is an amendment to an IGA
Contact Person	Karen Buehrig, Long Range Planning Manager, DTD 503-742-4683
Contract No.	Contract #2213

BACKGROUND:

In 2017 Clackamas County, in response to a community request, applied for a Metro 2040 Planning and Development Grant for the Park Avenue Development & Design Standards project for unincorporated Clackamas County lands approximately ½ mile from the Park Avenue Light Rail Station. The project is providing an inclusive and innovative public engagement process, an assessment of neighborhood livability and economic vitality, and ultimately revisions to the development and design standards on commercial land and multi-family sites around the light rail station to support a more walkable, transit-oriented environment.

On October 24, 2017, Clackamas County received notice that it was awarded a \$180,000 - 2040 Planning and Development Grant by Metro for the proposed project. The original request for funding was made in partnership with the McLoughlin Area Plan Implementation Team (MAP-IT) to support the 2017-18 Long-Range Planning Work Program. This item included working with the community to submit an application to fund a community outreach process in order to engage property owners about the development and design standards.

Exhibit C outlines the reimbursements the County receives for completion of the project milestones. Milestones 1-4 focused on initial IGA implementation; Milestones 4 – 8 were completed during the Phase 1 contract with Bridge Economic Development; and Milestones 9 – 16 address the work outlined in the Phase 2 contract with SERA Architects.

Since the COVID-19 pandemic has created a public health crisis requiring social distancing, and limiting community gatherings for the immediate future and an unknown period of time, the Metro Chief Operating Officer has approved additional funds of \$10,000 to provide increased financial support to 2040 Planning and Development projects. This additional funding will be used to overcome the challenges posed by the COVID-19 pandemic, and support equitable engagement approaches that should be implemented with special consideration of the region's historically marginalized communities who have been disproportionately impacted by the pandemic and the resulting economic downturn.

Exhibit C of the IGA is updated to reflect the grant milestones for reimbursement of the funds to the County. Details regarding to how the additional funds will be expended have been added to Milestone 17 of Exhibit C.

RECOMMENDATION:

Staff respectfully request that the Board of County Commissioners approve this Addendum #1 to 2040 Planning and Development Grant Intergovernmental Agreement with Metro: Clackamas County Park Ave Development and Design Standards; contract No. 935012.

Respectfully submitted,

Karen Buehrig, Long Range Planning Manager
Transportation and Development

ATTACHMENT:

1. 2040 PLANNING AND DEVELOPMENT GRANT ADDENDUM #1 TO INTERGOVERNMENTAL AGREEMENT Metro – Clackamas County Park Avenue Development and Design Standards Contract 935012

**2040 PLANNING AND DEVELOPMENT GRANT
ADDENDUM #1 TO INTERGOVERNMENTAL AGREEMENT
Metro – Clackamas County
Park Avenue Development and Design Standards**

This is an addendum to the 2040 Planning and Development Grant Intergovernmental Agreement between Metro, and Clackamas County, referred to herein as the “Parties” or each, individually as a “Party”.

RECITALS

WHEREAS, the COVID-19 pandemic has created a public health crisis requiring social distancing and limiting community gatherings in the immediate future and for an unknown period of time; and

WHEREAS, it is important for Grant Project work to continue to the fullest extent practical while adhering to public health guidelines, in order continue to support equitable community engagement in planning and development projects and public decision-making processes; and

WHEREAS, Grant projects underway will need additional resources to overcome the challenges posed by the COVID-19 pandemic; and

WHEREAS equitable engagement approaches should be implemented with special consideration of the region’s historically marginalized communities who have been disproportionately impacted by the pandemic and the resulting economic downturn; and

WHEREAS, the Metro Chief Operating Officer has approved additional funds to provide increased financial support to 2040 Planning and Development grantee.

AGREEMENT

NOW THEREFORE, the Parties hereto agree as follows:

1. Additional Metro Grant Award. Metro shall provide \$10,000 of additional Grant Funds to Grantee for the Project subject to the terms and conditions negotiated by the Parties and set forth in an updated version of Exhibit C.
2. Use of Grant Funds. Additional grant funds will enable grantees to cover unanticipated engagement expenses such as, but not limited to:
 - staff time for consultants or community partner organizations to develop revised public engagement strategies appropriate to the new realities of social distancing
 - participation incentives, stipends, or compensation as appropriate to support the involvement of members of historically marginalized communities in advisory committees, focus groups, relationship-building efforts and decision-making processes
 - additional staff time for community-based liaisons to facilitate outreach and connections with community members through methods in alignment with public health directives
 - direct costs for public engagement, including items such as mailings, telephone surveys or wifi hotspots, to bridge the digital divide with community members who may not have internet access

METRO

CLACKAMAS COUNTY

By: _____
Lisa Miles
2040 Grant Program Manager

By: _____
Jim Bernard
Chair, Clackamas County Board of
Commissioners

Date: _____

Date: _____

935012 Revised Exhibit C

(Amendment #3 July 2020)

IGA for 2040 Planning and Development Grant Park Avenue Development and Design Standards

Milestone and Deliverables Schedule for Release of Funds

Project milestone and specified grant deliverables		Date due*	Matching contributions	Grant payment
1	Execution of Grant IGA. a) Signed IGA document	Sept.15, 2018	Project staff: \$1,000	
2	Phase I Community assessment contract Draft contract with consultant team for Phase I	Sept. 30, 2018	Project staff: \$1,000	
3	Signed contract with consultant team for Phase I.	Oct. 31, 2018	Project staff: \$1,000	
4	Project Kick-off a. Kick-off meeting b. Finalize schedule c. 2 project calls and meetings summaries (2x\$270.41) d. 1 meeting with Community Group for project updates (\$980)	Nov. 30, 2018	Project staff: \$1,500	Phase I Consultants: \$3,511
5	Research a. Market and demographic research b. MAP Review and Policy Review c. Organizational summary d. GIS Property analysis e. Draft Memo 1: Community Overview and Development Trends f. 2 project calls and meeting summaries (2x \$270.41) Final Memo 1 a. Final Memo 1: Community Overview and Development Trends	January 31, 2019	Project staff: \$4,000	Phase I Consultants: \$30,682

Revised Exhibit C

CONTINUED

	<p>Education and Outreach</p> <ul style="list-style-type: none"> a. Presentation Development b. Three Standing Committee meetings c. 5 Roundtable Meetings d. Station Intercept survey e. 2 Project calls and Meeting summaries (2*270.41) 			
6	<p>Draft Memo 2</p> <ul style="list-style-type: none"> a. Draft Memo 2: Summary of Findings of Survey, neighborhood meetings and roundtables b. 1 meeting with Community Group for Project Update (1 * \$980) 	Feb. 28, 2019	Project Staff: \$1,000	Phase I Consultants: \$3,860
7	<p>Final Memo 2</p> <ul style="list-style-type: none"> a. Final Memo 2: Summary of Findings of Survey, neighborhood meetings and roundtables b. 1 meeting with Community Group for Project Update (1 * \$980) c. 2 Project Calls and Meeting Summaries (2*\$270.41) 	March 31, 2019	Project staff: \$1,500	Phase I Consultants: \$2,091
8	<p>Engagement and Governance Recommendations for Phase II</p> <ul style="list-style-type: none"> a. Draft Memo 3: Revised Phase II Scope of Work, including engagement strategies b. Final Memo 3 c. 2 Project calls and Meeting summaries (2*270.41) <p>Direction and Adoption</p> <p>Board of County Commissioners hearings & action</p> <ul style="list-style-type: none"> a) Final Report: Phase 1 b) Presentation to Board c) 2 Project Calls and Meeting Summaries (2*270.41) d) Travel throughout project (\$350) 	June 30, 2019	Project staff: \$9,000	Phase I Consultants: \$9,372

Revised Exhibit C

CONTINUED

9	Phase II Project a) Completed Selection process for Phase II Consultant b) Determine remaining project milestones for Phase II (T1.1) c) Signed contract with Phase II Consultants d) CAC Kickoff Meeting with consultant (T4.2) e) Walking Tour with materials and presentation (T4.1) f) Grant Management Team Meeting (T1.3) g) Determine appropriate grant performance measures	Feb 29, 2020	Project staff: \$25,000	Consultants: \$7,312
10	Equitable Public Engagement Plan a) Equitable Engagement Discovery Process Memo (T2.1) b) Public Engagement Workshop with CAC (T4.2) c) Draft Public Engagement Strategy Memo (T2.2) d) Final Public Engagement Strategy memo (T2.3) e) Grant Management Team meeting (T1.3)	March 31, 2020		Consultants: \$24,668
11	Guiding Principles a) Guiding Principles public workshop with CAC (T4.3) b) Public workshop material compilation (T5.10) c) Guiding Principles Memorandum (T5.2) d) Workshop materials e) Grant management meeting (T.3)	May 31, 2020		Consultants: \$ 15,144
12	Business Anti-Displacement Strategy a) Draft Anti-displacement strategy memo (T3.1) b) Final Anti-displacement Strategy Memo (T3.2) c) Business and property owner outreach (T4.5) d) Meeting summaries and market brief (T4.5) e) Grant Management Meeting (T1.3)	August 31, 2020		Consultants: \$ 17,798
13	Framework Plan a) Framework Plan Workshop and CAC meeting (T4.4) (Additional Framework Plan Deliverables to be completed under direct contract with Metro)	August 31, 2020		Consultants: \$ 7,352
14	Development and Design Standards a) Draft code concepts (T7.1) b) Draft development and design standards (T7.2)	October 31, 2020		Consultants: \$ 45,058

Revised Exhibit C

CONTINUED

	c) Opportunity Site concept (T7.3) d) Refined development and design standards (T7.4) e) Public Workshop #3 – Development and Design Standards (T4.6) f) Grant Management Meeting (T1.3)			
15	Implementation Action Items List a) Implementation action items list (T8.1) b) Implementation action items CAC meeting (T4.7) c) Grant Management Meeting (T1.3)	November 30, 2020		Consultants: \$ 5,520
16	Board of County Commissioners hearings & action a) Grant Management meeting (T1.3) b) Presentation to the Board of County Commissioners (T9.1) c) Action on proposed code changes d) Final reporting on grant and performance measures	December 31, 2020		Consultants: \$ 7,632
17	Services for additional COVID funds a) Project management / client and consultant coordination (T10.1) b) Three additional CAC meetings (T10.2) c) Ten (10) additional Grant Management Meetings (T10.3) d) One (1) public engagement focus group (T10.4)	December 31, 2020		Consultants: \$10,000
GRANT PROJECT COMPLETION <ul style="list-style-type: none"> All grant project deliverables submitted by grantee and approved by Metro All required fiscal documentation submitted or retained on file as appropriate Final reporting on grant performance measures submitted and approved by Metro 			Total Grantee Match Project staff: \$ 45,000 TOTAL: \$ 45,000	Total Grant Funding Phase I Consultants: \$49,515 Phase II: \$130,485 COVID Funding: \$10,000 TOTAL: \$190,000

NOTE: Due dates are intended by the parties to be hard estimates of expected milestone completion dates. Grantee shall not commence work for a new milestone until the prior milestone deliverable(s) has been completed approved, unless Metro’s project manager has provided written approval to continue, or to work on milestones simultaneously. If the Grantee anticipates that a milestone due date cannot be met due to circumstances beyond its control, it shall inform Metro in writing no later than ten (10) days prior to the due date set forth above and provide a revised estimated due date; and Metro and the Grantee shall mutually agree upon a revision to the milestone due dates set forth in this Agreement.

*Note that the total grant award to be provided for this project through this Grant IGA is \$190,000. However, Metro has also approved additional technical assistance funding of \$25,000 to support this project. This supplemental funding will flow to the project through a separate personal services contract directly between Metro and the consultant ultimately selected to implement Phase II.



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

July 30, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a First Amendment to a Disposition Agreement Between Clackamas County and The Blue at Abernethy Creek, LLC Pertaining to Property Located at 902 Abernethy Road

Purpose/Outcome	Agreement authorizing disposition of the Abernethy Transportation Maintenance facility.
Dollar Amount and Fiscal Impact	\$3,344,251 – Appraised Land Value
Funding Source	Not applicable
Duration	The proposed amendment to the sale agreement for the property sets closing on or before May 20, 2022, contingent upon the successful acquisition and occupancy of a replacement site for the Transportation Maintenance Division.
Previous Board Action/Review	Executive Session
Strategic Plan Alignment	<ul style="list-style-type: none"> • Build public trust through good government • Build a strong infrastructure • Ensure safe, healthy and secure communities
County Counsel	Review and approved by Nate Boderman on 07/22/20
Contact Person	Dan Johnson, Transportation and Development – Director 503-742-4325

Since the devastating flooding in February 1996 of the county's property at 902 Abernethy Road in Oregon City, Clackamas County has been working to relocate all operations housed at that facility. At one time the site was the primary location for Water Environment Services (formerly the Utilities Department) and the Department of Transportation Development Services / Transportation Maintenance; currently the site houses a dilapidated office building, Clackamas County Fleet Services, Vector Control, Sheriff's Office Fleet Operations and the Transportation Maintenance Division.

Over the past year, County Administration had made it a goal to prioritize the relocation of Transportation Maintenance from the current site for the following reasons.

- Existing facilities on the site are located within a Federal Emergency Management Agency (FEMA)-designated 100-year flood plain. The risk of flooding was most recently and dramatically demonstrated in 1996 when the property was overwhelmed by floodwater. Abernethy Creek, which is adjacent to the site, has crested above the floor heights of the existing facilities eight times since 1923. When the public needs the vital

operations of the Transportation Maintenance Division most, it is essential that its facilities are not underwater.

- The Transportation Maintenance Division is forced to spend money and time every year to move critical equipment in and out of the flood zone during potential flooding events to try to mitigate the risk of operational disruptions in the event of flooding.
- The Transportation Maintenance Division has outgrown existing facilities and the existing facilities are inefficient, for the following reasons:
 - Many years of growth in the County's Department of Transportation and Development resulting in additional staff and equipment;
 - The shape of the site – long and narrow – does not support efficient and safe movement of equipment
 - The limited size of the site does not allow for proper vehicle circulation.
- There are cost and safety issues stemming from unauthorized camping and property use along the Abernethy Creek on the Subject Property.
- The property is underdeveloped compared to its highest and best use. Redevelopment would create additional assessed value for the County and the City of Oregon City.

With this direction, staff has advanced negotiations with The Blue at Abernethy Creek, LLC, on a rare opportunity to acquire a turnkey facility and to liquidate the Abernethy Road facility to foster more compatible redevelopment opportunities benefitting the local community and the City of Oregon City.

The value of the facility was established by independent appraisal. The revenue from this disposition will be allocated to the acquisition of a future site to house Transportation Maintenance and Fleet Services.

This first amendment adjust timelines to correspond with partnering Disposition Agreement between Clackamas County and Beaver Creek Structures, LLC. Specifically, the next due diligence timeline is extended an additional 90 days, to correspond to the additional due diligence timeline provided to the County related to the Transportation Maintenance facility, and the closing date is amended to reflect updated timelines associated with the closing of the Transportation Maintenance facility, which is now anticipated to close on or before May 20, 2022.

RECOMMENDATION

Staff respectfully recommends the Board of County Commissioners authorize the Chair to execute the attached first amendment to the agreement, any version of the agreement with no material changes, and any subsequent materials needed to facilitate the transaction described in the agreement.

Sincerely,



Dan Johnson – Director of Transportation and Development
Attachment: First Amendment to Disposition Agreement

FIRST AMENDMENT TO DISPOSITION AGREEMENT

THIS FIRST AMENDMENT TO DISPOSITION AGREEMENT (“Amendment”) is entered into effective as of July 30, 2020, between **CLACKAMAS COUNTY**, a corporate body politic (“**County**”), and The Blue at Abernethy Creek, LLC, an Oregon limited liability company or assigns (“**Developer**”).

RECITALS

A. County and Developer are parties to that certain Disposition Agreement dated effective as of April 8, 2019, (the “**Disposition Agreement**”), concerning approximately 22.75 acres of land located at 902 Abernethy Road, Oregon City, Oregon, as more particularly described in the Disposition Agreement (the “**Property**”).

B. The parties desire to modify the Disposition Agreement on the terms and conditions set forth herein. All capitalized terms used in this Amendment and not otherwise defined herein shall have their meanings as set forth in the Disposition Agreement.

AGREEMENT

1. **Amendment to Section 2.4. Section 2.4 of the Disposition Agreement which reads:**

Developer shall have a period of time after the Effective Date (the "**Due Diligence Period**") to conduct its due diligence investigation of the Property and to satisfy itself concerning all aspects of the Property and the suitability of the Property for Developer's intended uses, including without limitation the physical condition of the Property, the amount of land available to support Developer's intended use, zoning, access, and utilities. The Due Diligence Period shall expire upon the earlier of four hundred eighty-five (485) days after the Effective Date or upon the expiration of the Design and Entitlement Due Diligence Period, as that term is specifically defined in the Maintenance Facility Sale Agreement. During the period from the Effective Date until the expiration of the Due Diligence Period, Developer and its employees, agents, consultants, contractors, prospective tenants or purchasers, and lenders may enter the Property to perform such tests, inspections and studies as Developer may deem necessary, including without limitation environmental assessments. Developer hereby indemnifies and holds the County, and their elected officials, officers, agents and employees harmless from any injury or damages arising out of any activity of Developer, its agents, employees and contractors performed and conducted on the Property for the purposes of completing its due diligence. Due diligence may include, without limitations, physical inspections of the Property; soils investigations and coring; Phase I and, as necessary, Phase II environmental assessments; and examination of survey and title exceptions. Developer shall restore the Property to its pre-examination state after conducting such due diligence at its own expense. Developer agrees to provide the County with copies of all third party reports concerning the condition of the Property obtained or produced as a result of its due diligence investigation. On or before expiration of the Due Diligence Period, Developer at its option and in its sole and absolute discretion may provide the County with a notice approving its due diligence investigation of the Property and electing to proceed with acquisition of the Property as provided herein (the "**Approval Notice**"). Alternatively, Developer at its option and in its sole and absolute discretion may provide notice to the County of its election to terminate this Agreement prior to the

expiration of the Due Diligence Period. If Developer fails to provide either the Approval Notice or a termination notice prior to expiration of the Due Diligence Period, Developer shall be deemed to have elected to proceed with this Agreement as if an Approval Notice were given to the County prior to expiration of the Due Diligence Period. Where Developer elects to terminate this Agreement, except as otherwise expressly provided herein, neither party shall have any further rights, duties or obligations hereunder and the Earnest Money shall be fully and immediately refunded to Developer.

Is hereby deleted in its entirety and is replaced with the following:

Developer shall have a period of time after the Effective Date (the "**Due Diligence Period**") to conduct its due diligence investigation of the Property and to satisfy itself concerning all aspects of the Property and the suitability of the Property for Developer's intended uses, including without limitation the physical condition of the Property, the amount of land available to support Developer's intended use, zoning, access, and utilities. The Due Diligence Period shall expire upon the earlier of five hundred seventy-five (575) days after the Effective Date or upon the expiration of the Design and Entitlement Due Diligence Period, as that term is specifically defined in the Maintenance Facility Sale Agreement. During the period from the Effective Date until the expiration of the Due Diligence Period, Developer and its employees, agents, consultants, contractors, prospective tenants or purchasers, and lenders may enter the Property to perform such tests, inspections and studies as Developer may deem necessary, including without limitation environmental assessments. Developer hereby indemnifies and holds the County, and their elected officials, officers, agents and employees harmless from any injury or damages arising out of any activity of Developer, its agents, employees and contractors performed and conducted on the Property for the purposes of completing its due diligence. Due diligence may include, without limitations, physical inspections of the Property; soils investigations and coring; Phase I and, as necessary, Phase II environmental assessments; and examination of survey and title exceptions. Developer shall restore the Property to its pre-examination state after conducting such due diligence at its own expense. Developer agrees to provide the County with copies of all third party reports concerning the condition of the Property obtained or produced as a result of its due diligence investigation. On or before expiration of the Due Diligence Period, Developer at its option and in its sole and absolute discretion may provide the County with a notice approving its due diligence investigation of the Property and electing to proceed with acquisition of the Property as provided herein (the "**Approval Notice**"). Alternatively, Developer at its option and in its sole and absolute discretion may provide notice to the County of its election to terminate this Agreement prior to the expiration of the Due Diligence Period. If Developer fails to provide either the Approval Notice or a termination notice prior to expiration of the Due Diligence Period, Developer shall be deemed to have elected to proceed with this Agreement as if an Approval Notice were given to the County prior to expiration of the Due Diligence Period. Where Developer elects to terminate this Agreement, except as otherwise expressly provided herein, neither party shall have any further rights, duties or obligations hereunder and the Earnest Money shall be fully and immediately refunded to Developer.

2. **Amendment to Section 3.3. Section 3.3 of the Disposition Agreement which reads:**

This transaction shall close (the “**Closing**”) concurrent with the close of the Maintenance Facility Sale Agreement (the “**Closing Date**”). The Closing Date of this Agreement shall be dictated by the closing of the Maintenance Facility Agreement. The County and Developer shall be prepared to close within One Thousand Forty Nine (1,049) days from the Effective Date of this Agreement, except for any extensions which are provided for in the Maintenance Facility Agreement.

Closing shall occur in escrow on or before the Closing Date by and through a mutually acceptable escrow officer (the “**Escrow Officer**”) of First American Title, 9200 SE Sunnyside Road, Suite 400, Clackamas, OR 97015 (the “**Title Company**”), in accordance with the terms and conditions of this Agreement. Developer agrees, subject to the terms and conditions hereunder for its benefit, to accept conveyance of the Subject Property and pay to the County at Closing the Purchase Price for the Subject Property by wire transfer of immediately available funds, subject to the credits, debits, prorations and adjustments provided for in this Agreement, including a credit for the Earnest Money. The County and the Developer agree to perform all acts necessary to close this transaction in accordance with the terms of this Agreement. Each party may submit escrow instructions to the Escrow Officer consistent with this Agreement. Once submitted, instructions may not be withdrawn or altered without the consent of both the County and the Developer.

Is hereby deleted in its entirety and is replaced with the following:

This transaction shall close (the “**Closing**”) concurrent with the close of the Maintenance Facility Sale Agreement (the “**Closing Date**”). The Closing Date of this Agreement shall be dictated by the closing of the Maintenance Facility Agreement. The County and Developer shall be prepared to close on or before the earlier occurrence of the following: 1) May 20, 2022; or 2) fifteen (15) days after issuance of temporary occupancy for the Maintenance Facility by the City of Oregon City. If temporary occupancy for the Maintenance Facility has not been obtained from the City of Oregon City by the Developer on or before May 20, 2022, Developer may extend Closing until temporary occupancy for the Maintenance Facility is obtained pursuant to Section 3.3 of the Maintenance Facility Sales Agreement. Developer’s right to extend the Closing is limited to an additional one hundred eighty (180) days, as set forth in the Maintenance Facility Sales Agreement.

Closing shall occur in escrow on or before the Closing Date by and through a mutually acceptable escrow officer (the “**Escrow Officer**”) of First American Title, 9200 SE Sunnyside Road, Suite 400, Clackamas, OR 97015 (the “**Title Company**”), in accordance with the terms and conditions of this Agreement. Developer agrees, subject to the terms and conditions hereunder for its benefit, to accept conveyance of the Subject Property and pay to the County at Closing the Purchase Price for the Subject Property by wire transfer of immediately available funds, subject to the credits, debits, prorations and adjustments provided for in this Agreement, including a credit for the Earnest Money. The County and the Developer agree to perform all acts necessary to close this transaction in accordance with the terms of this Agreement. Each party may submit escrow instructions to the Escrow Officer consistent with this Agreement. Once submitted, instructions may not be withdrawn or altered without the consent of both the County and the Developer.

3. **Counterpart; Email.** This Amendment may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and

the same Amendment. Facsimile or email transmission of any signed original of this Amendment, and retransmission of any signed facsimile or email transmission, shall be the same as delivery of an original. At the request of either party, the parties shall confirm transmitted signatures by signing an original document.

4. **Confirmation.** The Disposition Agreement is hereby amended and modified in accordance with the terms of this Amendment. Except as expressly modified by this Amendment, the Disposition Agreement and all its terms and provisions are hereby acknowledged, approved, ratified and confirmed and shall be and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment effective as of the date first written above.

AGENCY:

CLACKAMAS COUNTY DEVELOPMENT AGENCY,
a corporate body politic

By: _____

Name: _____

Its: _____

DEVELOPER:

THE BLUE AT ABERNETHY CREEK, LLC,
An Oregon limited liability company

By: _____

Name: _____

Its: _____



DAN JOHNSON
DIRECTOR

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

July 30, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Second Amendment to a Disposition Agreement Between Clackamas County and Beaver Creek Structures, LLC Pertaining to Property Located at 19314 S Beaver Creek Road

Purpose/Outcome	Agreement authorizing acquisition of a turnkey facility to house Transportation Maintenance and Fleet Services
Dollar Amount and Fiscal Impact	\$30,395,135 – a reduction of \$910,761
Funding Source	Land Sale Proceeds and Road Fund
Duration	The proposed sale agreement for the property sets closing on or before May 20, 2022.
Previous Board Action/Review	Executive Session 1 st Amendment- signed by County Administrator May 29, 2019, reviewed by BCC June 6, 2019. March 28, 2019 – Business Meeting
Strategic Plan Alignment	<ul style="list-style-type: none"> • Build public trust through good government • Build a strong infrastructure • Ensure safe, healthy and secure communities
County Counsel	Reviewed and approved by Nate Boderman on 07/22/20
Contact Person	Dan Johnson, Transportation and Development – Director 503-742-4325

Since the devastating flooding in February 1996 on county-owned property at 902 Abernethy Road in Oregon City, Clackamas County has been working to relocate all operations housed at that facility. At one time this site was the primary location for Water Environment Services (formerly the Utilities Department) and the Department of Transportation Development Services / Transportation Maintenance; currently the site houses a dilapidated office building, Clackamas County Fleet Services, Vector Control, Sheriff's Office Fleet Operations and the Transportation Maintenance Division.

Over the past two years, County Administration had made it a goal to prioritize the relocation Transportation Maintenance from the current site as:

- Existing facilities on the site are located within a Federal Emergency Management Agency (FEMA)-designated 100-year flood plain. The risk of flooding was most recently and dramatically demonstrated in 1996 when the property was overwhelmed by

floodwater. Abernethy Creek, which is adjacent to the site, has crested above the floor heights of the existing facilities eight times since 1923. When the public needs the vital operations of the Transportation Maintenance Division most, it is essential that its facilities are not underwater.

- The Transportation Maintenance Division is forced to spend money and time every year to move critical equipment in and out of the flood zone during potential flooding events to try to mitigate the risk of operational disruptions in the event of flooding.
- The Transportation Maintenance Division has outgrown existing facilities and the existing facilities are inefficient, for the following reasons:
 - Many years of growth in the County's Department of Transportation and Development resulting in additional staff and equipment;
 - The shape of the site – long and narrow – does not support efficient and safe movement of equipment
 - The limited size of the site does not allow for proper vehicle circulation.
- There are cost and safety issues stemming from unauthorized camping and property use along the Abernethy Creek on the Subject Property.
- The property is underdeveloped compared to its highest and best use. Redevelopment would create additional assessed value for the County and the City of Oregon City.

With this direction, staff has advanced negotiations with Beaver Creek Structures, LLC on a rare opportunity to acquire a turnkey facility and liquidate the Abernethy Road facility to foster more compatible redevelopment opportunities benefitting the local community and the City of Oregon City.

The Beaver Creek Road Site of approximately 11.76 acres at 19314 Beaver Creek Road meets or exceeds all requirements identified by the County as a potential new location for Transportation Maintenance Division operations. The County criteria for a new site location includes but is not limited to the following:

- a. Close proximity to Clackamas County headquarters on the Red Soils Campus in Oregon City
- b. Signalized access onto a major road – in this case, Beaver Creek Road
- c. Central location within the Transportation Maintenance Division's service area
- d. Proper zoning for County's desired use

The owners of the Beaver Creek Road Site propose to acquire, for fair market value supported by appraisal, the Abernethy Road site for redevelopment, subject to the Transportation Maintenance Division's successful acquisition and occupancy of the Beaver Creek Road Site.

Funding for acquisition of the Beaver Creek Road Site will be secured through land sale proceeds and long-term borrowing. Debt service for any borrowing will be covered by available road funds secured through reallocation of forecasted revenue including adjustments in heavy equipment purchases, material purchases, restructuring service delivery agreements resulting in additional revenues and other measures. No revenue from the recently approved countywide Vehicle Registration Fee will be directed towards this acquisition.

This second amendment recognizes adjustments to the facility to be acquired, adjusts timelines, memorializes a reduction in overall price, and provides financing flexibility. The adjustments to the facility to be acquired are identified in Exhibit A, which is attached to the second amendment. The amendment extends the County's current due diligence period an additional 90 days, and makes a corresponding adjustment to the closing date, which should now occur on or before May 20, 2022. Due to cost adjustments, the amendment reduces the overall purchase price of the facility by \$910,761. Finally, the amendment advances payment of earnest money due by the County, contributing to the reduction of the overall purchase price by reducing the transaction costs associated with the acquisition.

RECOMMENDATION

Staff respectfully recommends the Board of County Commissioners authorize the Chair to execute the attached second amendment to the agreement, any version of the agreement with no material changes and any subsequent materials needed to facilitate the transaction described in the agreement.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dan Johnson', written in a cursive style.

Dan Johnson - Director
Transportation and Development

Attachments: Second amendment to Disposition Agreement

SECOND AMENDMENT TO DISPOSITION AGREEMENT

THIS SECOND AMENDMENT TO DISPOSITION AGREEMENT (“Amendment”) is entered into effective as of July 30, 2020, between **CLACKAMAS COUNTY**, a corporate body politic (“**County**”), and **BEAVERCREEK STRUCTURES, LLC**, an Oregon limited liability company (“**Seller**”).

RECITALS

- A. County and Seller are parties to that certain Disposition Agreement dated effective as of April 8, 2019, and the First Amendment to the Disposition Agreement dated effective as of May 29, 2019 (collectively, the “**Disposition Agreement**”), concerning approximately 11.76 acres of land located at 19314 S. Beaver Creek Road, Oregon City, Oregon, as more particularly described in the Disposition Agreement (the “**Property**”).
- B. The County has deemed it to be vital and in the best interest of the County and the health and safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws to amend the Disposition Agreement. The parties desire to modify the Disposition Agreement on the terms and conditions set forth herein. All capitalized terms used in this Amendment and not otherwise defined herein shall have their meanings as set forth in the Disposition Agreement.
- C. Seller has prepared and the County has approved architectural Design Drawings pursuant to Section 2.5 of the Disposition Agreement. The Design Drawings were submitted to the City of Oregon City for site plan and design review. Seller submitted the Design Drawings to the City of Oregon City for site plan and design review on November 26, 2019. The Design Drawings are subject to BPA, local utility and City planning, engineering and building department approval criteria and conditions (hereafter ‘Governing Jurisdiction’) as well as public appeal on the site plan and design review submittal. It is anticipated that further changes to the Design Drawings may be required subject to Governing Jurisdiction approval criteria. The most recent updates to the Design Drawings are attached hereto. Changes to the contemplated realty improvements that impact the purchase price are outlined in the attached document entitled “Purchase Price – Change Log”, and as more particularly described herein. This Amendment shall, in part, serve to reconcile the purchase price and completion time to accommodate changes to the realty for delivery at Closing, and to memorialize the County’s approval of the amended Design Drawings.
- D. Further, the County desires to reasonably reduce the Purchase Price and to reduce its risk of economic loss, without affecting the realty improvements contemplated for delivery by Seller. Correspondingly, Seller desires to reduce its risk of economic loss in the event the County fails to Close beyond the expiration of the Design and Entitlement Due Diligence Period. Accordingly, the Earnest Money amount and deposit schedule, as well as refund provisions, are modified to meet the Parties aforementioned objectives, which is more particularly described herein.

AGREEMENT

1. **Amendment to Section 2.4. Section 2.4 of the Disposition Agreement which reads:**

The County’s due diligence shall occur over two separate periods. The first due diligence period (the “**Title Commitment Due Diligence Period**”) is as further described in Sections 2.1, 2.2 and 2.3 herein. The Title Commitment Due Diligence Period shall be fifty five (55) days or

less. During the Title Commitment Due Diligence Period, County will investigate all aspects of the Preliminary Commitment, Underlying Documents, and the Survey as set forth in Sections 2.1, 2.2 and 2.3.

The second due diligence period (the “**Design and Entitlement Due Diligence Period**”) is as further described in Sections 2.4 and 2.5 herein. The Design and Entitlement Due Diligence Period shall extend, at a minimum, to the date the County receives and approves the Construction Plans described in Section 2.6, as well as the date the County certifies to the Seller that, in the County’s sole opinion, sufficient appropriations are available to proceed under the terms of this Agreement. Subject to the minimum time requirement in the preceding sentence, the Design and Entitlement Due Diligence Period shall expire upon the earlier of four hundred eighty-five (485) days after the Effective Date or fifteen (15) days from the date the building permit associated with the Maintenance Facility is issued by the city of Oregon City, or as may be extended by mutual agreement of the Parties. During the Design and Entitlement Due Diligence Period, the County shall satisfy itself as to the suitability of the Maintenance Facility for the County’s intended uses, including without limitation consistency with the Scope of Development, the existing physical condition of the Subject Property, zoning, access, utilities, building coverage, possible improvements, development limitations or restrictions. During the Design and Entitlement Due Diligence Period until the termination of this Agreement, County and its employees, agents, consultants, contractors, prospective tenants or purchasers, and lenders may enter the Subject Property to perform such tests, inspections and studies as County may deem necessary, including without limitation environmental assessments provided it is prearranged with Seller and County meets all reasonable safety requirements imposed by Seller and its agents as well as all applicable OSHA safety standards. County’s entry onto the Subject Property shall not be unreasonably withheld by the Seller. County hereby indemnifies and holds the Seller and their respective officers, agents and employees harmless from any injury or damages arising out of any activity of County, its agents, employees and contractors performed and conducted on the Subject Property for the purposes of completing its due diligence. Due diligence may include, without limitations, physical inspections of the Property; soils investigations and coring; Phase I and, as necessary, Phase II environmental assessments; and examination of survey and title exceptions. County shall restore the Subject Property to its pre-examination state after conducting such due diligence at its own expense. County agrees to provide the Seller with copies of all third-party reports concerning the condition of the Property obtained or produced as a result of its due diligence investigation. County may exercise its rights under this paragraph during the Title Commitment Due Diligence Period, in which case all provisions of this paragraph shall apply as if the County were conducting its activities during the Design and Entitlement Due Diligence Period.

Section 2.4 of the Disposition Agreement is hereby deleted in its entirety and is replaced with the following:

The County’s due diligence shall occur over two separate periods. The first due diligence period (the “**Title Commitment Due Diligence Period**”) is as further described in Sections 2.1, 2.2 and 2.3 herein. The Title Commitment Due Diligence Period shall be fifty five (55) days or less. During the Title Commitment Due Diligence Period, County will investigate all aspects of the

Preliminary Commitment, Underlying Documents, and the Survey as set forth in Sections 2.1, 2.2 and 2.3.

The second due diligence period (the “**Design and Entitlement Due Diligence Period**”) is as further described in Sections 2.4 and 2.5 herein. The Design and Entitlement Due Diligence Period shall extend, at a minimum, to the date the County receives and approves the Construction Plans described in Section 2.6, as well as the date the County certifies to the Seller that, in the County’s sole opinion, sufficient appropriations are available to proceed under the terms of this Agreement. Subject to the minimum time requirement in the preceding sentence, the Design and Entitlement Due Diligence Period shall expire upon the earlier of six hundred thirty-five (635) days after the Effective Date or fifteen (15) days from the date the building permit associated with the Maintenance Facility is issued by the city of Oregon City, or as may be extended by mutual agreement of the Parties. During the Design and Entitlement Due Diligence Period, the County shall satisfy itself as to the suitability of the Maintenance Facility for the County’s intended uses, including without limitation consistency with the Scope of Development, the existing physical condition of the Subject Property, zoning, access, utilities, building coverage, possible improvements, development limitations or restrictions. During the Design and Entitlement Due Diligence Period until the termination of this Agreement, County and its employees, agents, consultants, contractors, prospective tenants or purchasers, and lenders may enter the Subject Property to perform such tests, inspections and studies as County may deem necessary, including without limitation environmental assessments provided it is prearranged with Seller and County meets all reasonable safety requirements imposed by Seller and its agents as well as all applicable OSHA safety standards. County’s entry onto the Subject Property shall not be unreasonably withheld by the Seller. County hereby indemnifies and holds the Seller and their respective officers, agents and employees harmless from any injury or damages arising out of any activity of County, its agents, employees and contractors performed and conducted on the Subject Property for the purposes of completing its due diligence. Due diligence may include, without limitations, physical inspections of the Property; soils investigations and coring; Phase I and, as necessary, Phase II environmental assessments; and examination of survey and title exceptions. County shall restore the Subject Property to its pre-examination state after conducting such due diligence at its own expense. County agrees to provide the Seller with copies of all third-party reports concerning the condition of the Property obtained or produced as a result of its due diligence investigation. County may exercise its rights under this paragraph during the Title Commitment Due Diligence Period, in which case all provisions of this paragraph shall apply as if the County were conducting its activities during the Design and Entitlement Due Diligence Period.

2. Amendment to Section 2.6. Section 2.6 of the Disposition Agreement which reads:

Within three hundred fifty (350) days after the expiration of the Title Commitment Due Diligence Period, Seller shall prepare and submit to the County final construction plans of the improvements to be constructed on the Subject Property (“**Construction Plans**”), for County review. The Construction Plans shall be consistent with the Scope of Development, attached hereto as **Exhibit “B”** and the approved Design Drawings. The County shall diligently, in good faith, review the Construction Plans to determine whether they are complete and in substantial conformance with the Scope of Development and the approved Design Drawings. Within thirty (30) days after receipt of the Construction Plans, County may deliver to Seller, in writing, any objections alleging in sufficient detail how the Construction Plans are either incomplete or inconsistent with the Scope of Development and the approved Design Drawings (the “**Construction Objections**”). County’s failure to timely object to any such matters shall be deemed to constitute County’s approval thereof and such shall then become Permitted Exceptions, as defined in Section 2.1. If County timely objects to any omission or inconsistency

related to the Construction Plans, then Seller shall have the right, but not the obligation, to agree in writing to cure such Construction Objections, or to decline to cure such Construction Objections. Seller will have twenty (20) days after receiving County's Construction Objections within which to notify County in writing whether Seller is willing or able to cure the Construction Objections. If Seller agrees to cure the Construction Objections, Seller will be obligated to do so within twenty (20) days after notifying the County of its intent to do so. If Seller is unwilling or unable to cure the Construction Objections, County may terminate this Agreement or elect to accept the Construction Objections and proceed by giving written notice to Seller within ten (10) days of receiving notice from Seller. If County does not provide timely written notice of its election to terminate this Agreement, it will be deemed to have waived its Construction Objections and all of the Construction Objections shall become Permitted Exceptions. County approval shall not be deemed approval by any Clackamas County department or service district. In the event the County terminates this Agreement as provided in this Section 2.6, a portion of the Initial Earnest Money (defined below) shall be refunded to County in accordance with Section 3.2 and neither party shall have any further obligations or liability hereunder, except for those obligations herein that expressly survive such termination.

Section 2.6 of the Disposition Agreement is hereby deleted in its entirety and is replaced with the following:

Within four hundred and ten (410) days after the expiration of the Title Commitment Due Diligence Period, Seller shall prepare and submit to the County final construction plans of the improvements to be constructed on the Subject Property ("**Construction Plans**"), for County review. The Construction Plans shall be consistent with the Scope of Development, attached hereto as **Exhibit "B"** and the approved Design Drawings. The County shall diligently, in good faith, review the Construction Plans to determine whether they are complete and in substantial conformance with the Scope of Development and the approved Design Drawings. Within thirty (30) days after receipt of the Construction Plans, County may deliver to Seller, in writing, any objections alleging in sufficient detail how the Construction Plans are either incomplete or inconsistent with the Scope of Development and the approved Design Drawings (the "**Construction Objections**"). County's failure to timely object to any such matters shall be deemed to constitute County's approval thereof and such shall then become Permitted Exceptions, as defined in Section 2.1. If County timely objects to any omission or inconsistency related to the Construction Plans, then Seller shall have the right, but not the obligation, to agree in writing to cure such Construction Objections, or to decline to cure such Construction Objections. Seller will have twenty (20) days after receiving County's Construction Objections within which to notify County in writing whether Seller is willing or able to cure the Construction Objections. If Seller agrees to cure the Construction Objections, Seller will be obligated to do so within twenty (20) days after notifying the County of its intent to do so. If Seller is unwilling or unable to cure the Construction Objections, County may terminate this Agreement or elect to accept the Construction Objections and proceed by giving written notice to Seller within ten (10) days of receiving notice from Seller. If County does not provide timely written notice of its election to terminate this Agreement, it will be deemed to have waived its Construction Objections and all of the Construction Objections shall become Permitted Exceptions. County approval shall not be deemed approval by any Clackamas County department or service district. In the event the County terminates this Agreement as provided in this Section 2.6, a portion of the Initial Earnest Money (defined below) shall be refunded to County in accordance with Section 3.2 and neither party shall have any further obligations or liability hereunder, except for those obligations herein that expressly survive such termination.

3. **Amendment to Section 3.1. Section 3.1 of the Disposition Agreement which reads after the First Amendment to Disposition Agreement:**

In accordance with, and subject to all the terms, covenants, and conditions of this Agreement, the Seller agrees to sell to the County, and County agrees to purchase from the Seller, the Maintenance Facility, for an amount not to exceed Thirty-One Million Three Hundred Five Thousand Eight Hundred Ninety-Six and 00/100 Dollars (\$31,305,896.00) (the "Purchase Price"), subject to any abatement as set forth in Section 2.9. The Purchase Price may be changed by the Parties from time to time by written amendment as the costs associated with the allowance items identified in the Scope of Development are finalized. All changes to the Purchase Price shall be finalized upon expiration of the Design and Entitlement Due Diligence Period.

Section 3.1 of the Disposition Agreement, as amended by the First Amendment to Disposition Agreement, is hereby deleted in its entirety and is replaced with the following:

In accordance with, and subject to all the terms, covenants, and conditions of this Disposition Agreement and any amendments thereto, the Seller agrees to sell to the County, and County agrees to purchase from the Seller, the Maintenance Facility, for Thirty Million Three Hundred Ninety-Five Thousand One Hundred Thirty-Five and 00/100 Dollars (\$30,395,135.00) (the "Purchase Price"), subject to any abatement as set forth in Section 2.9. The Purchase Price may be changed by the Parties from time to time by written amendment. All changes to the Purchase Price shall be finalized upon expiration of the Design and Entitlement Due Diligence Period. The Purchase Price may be changed by the Parties from time to time by written amendment as the costs associated with the allowance items identified in the Scope of Development are finalized. In the event the Parties agree to amend the purchase price to an amount that is less than the Purchase Price set forth above, the County authorizes the Director of the Department of Transportation and Development to amend this Agreement for purposes of adjusting the Purchase Price. The Board of County Commissioners shall retain authority to authorize all other amendments to this Agreement, including but not limited to any increase to the Purchase Price.

4. **Amendment to Section 3.2. Section 3.2 of the Disposition Agreement which reads, after the First Amendment to Disposition Agreement:**

County shall, within three (3) business days after the Effective Date, deliver to the Title Company (defined below) the sum of One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00) as the initial earnest money in cash or by wire transfer of immediately available funds (the "Initial Earnest Money") to be held and applied in accordance with the terms of this Agreement. If County fails to timely deposit the Initial Earnest Money as provided above, this Agreement shall terminate and neither Seller nor County shall have any further obligations to one another. The Initial Earnest Money is fully refundable during the Title Commitment Due Diligence Period. In the event County elects to exercise its right to terminate this Agreement during the Title Commitment Due Diligence Period pursuant to Sections 2.1, 2.2 or 2.4 herein, except as otherwise provided herein, the Initial Earnest Money Deposit shall be immediately returned to County and neither party shall have any further rights, duties or obligations hereunder. If County elects to proceed beyond the Title Commitment Due Diligence Period, except as provided below, the Initial

Earnest Money shall be released to the Seller and shall be credited to the Purchase Price due by County at Closing.

County at its option may provide notice to Seller of its election to terminate this Agreement prior to the expiration of the Design and Entitlement Due Diligence Period. In the event of termination during the Design and Entitlement Due Diligence Period (or deemed termination), neither party shall have any further rights, duties or obligations hereunder and County and Seller hereby agree that the Initial Earnest Money (defined below) shall be forfeited by Seller and returned to the County, except that the Seller shall be entitled to retain such sums that represent the percentage of work complete by Seller plus any applicable fees paid to the City of Oregon City in connection with the Maintenance Facility that are nonrefundable to the Seller. For purposes of calculating the Initial Earnest Money that Seller may retain relating to the percentage of work complete, if any, the Parties acknowledge that upon termination of the Agreement during the Design and Entitlement Due Diligence Period, Owner's Representative shall promptly and reasonably determine the percent complete of the Design Drawings and the Construction Plans. The percent complete values determined by the Owner's Representative shall be multiplied by Design Drawing cost of \$1,021,189.00 and Construction Plan cost of \$473,215.00, respectively. The resulting amounts shall be retained by Seller. Notwithstanding the foregoing, in no event may the Seller retain more than Six Hundred Thousand and 00/100 Dollars (\$600,000.00) where the County elects to terminate this Agreement during the Design and Entitlement Due Diligence Period within fourteen (14) days of the County receiving a determination from the Bonneville Power Administration to reduce the size of the existing easement, recorded at Book 626, Page 406, on the Subject Property by approximately 125 feet.

The County shall be deemed to be the owner of any Design Drawings and Construction Plans produced and owned by Seller as of the date of termination. Seller shall execute any documents reasonably necessary to transfer to the County the rights it possesses to the Design Drawings and Construction Plans and any permits obtained in connection with the Maintenance Facility.

Within (10) days of County electing to move forward with the Agreement beyond the expiration of the Design and Entitlement Due Diligence Period, County shall deposit with the Title Company the final earnest money deposit of Ten Million One Hundred Thousand and 00/100 dollars (\$10,100,000.00) (the "Final Earnest Money Deposit"). Upon receipt, the Title Company shall immediately release the Final Earnest Money Deposit to Seller. The Final Earnest Money Deposit shall be credited to the Purchase Price due by County at Closing.

Section 3.2 of the Disposition Agreement, as amended by the First Amendment to Disposition Agreement, is hereby deleted in its entirety and is replaced with the following:

County shall, within three (3) business days after the Effective Date, deliver to the Title Company (defined below) the sum of One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00) as the initial earnest money in cash or by wire transfer of immediately available funds (the "Initial Earnest Money") to be held and applied in accordance with the terms of this Disposition Agreement. If County fails to timely deposit the Initial Earnest Money as provided

above, this Disposition Agreement shall terminate and neither Seller nor County shall have any further obligations to one another. The Initial Earnest Money is fully refundable during the Title Commitment Due Diligence Period. In the event County elects to exercise its right to terminate this Disposition Agreement during the Title Commitment Due Diligence Period pursuant to Sections 2.1, 2.2 or 2.4 herein, except as otherwise provided herein, the Initial Earnest Money Deposit shall be immediately returned to County and neither party shall have any further rights, duties or obligations hereunder. If County elects to proceed beyond the Title Commitment Due Diligence Period, except as provided below, the Initial Earnest Money shall be released to the Seller and shall be credited to the Purchase Price due by County at Closing.

County at its option may provide notice to Seller of its election to terminate this Disposition Agreement prior to the expiration of the Design and Entitlement Due Diligence Period. In the event of termination during the Design and Entitlement Due Diligence Period (or deemed termination), neither party shall have any further rights, duties or obligations hereunder and County and Seller hereby agree that the Initial Earnest Money (defined below) shall be forfeited by Seller and returned to the County, except that the Seller shall be entitled to retain such sums that represent the percentage of work complete by Seller plus any applicable fees paid to the City of Oregon City in connection with the Maintenance Facility that are nonrefundable to the Seller. For purposes of calculating the Initial Earnest Money that Seller may retain relating to the percentage of work complete, if any, the Parties acknowledge that upon termination of the Disposition Agreement during the Design and Entitlement Due Diligence Period, Owner's Representative shall promptly and reasonably determine the percent complete of the Design Drawings and the Construction Plans. The percent complete values determined by the Owner's Representative shall be multiplied by Design Drawing cost of \$1,021,189.00 and Construction Plan cost of \$473,215.00, respectively. The resulting amounts shall be retained by Seller. Notwithstanding the foregoing, in no event may the Seller retain more than Six Hundred Thousand and 00/100 Dollars (\$600,000.00) where the County elects to terminate this Disposition Agreement during the Design and Entitlement Due Diligence Period within fourteen (14) days of the County receiving a determination from the Bonneville Power Administration to reduce the size of the existing easement, recorded at Book 626, Page 406, on the Subject Property by approximately 125 feet.

The County shall be deemed to be the owner of any Design Drawings and Construction Plans produced and owned by Seller as of the date of termination. Seller shall execute any documents reasonably necessary to transfer to the County the rights it possesses to the Design Drawings and Construction Plans and any permits obtained in connection with the Maintenance Facility.

Within ten (10) days of County electing to move forward with the Disposition Agreement beyond the expiration of the Design and Entitlement Due Diligence Period, County shall deposit with the Title Company the second earnest money deposit of Seven Million Five Hundred Thousand and 00/100 dollars (\$7,500,000.00) (the "Second Earnest Money Deposit"). Upon receipt, the Title Company shall immediately release the Second Earnest Money Deposit to Seller. The Second Earnest Money Deposit shall be credited to the Purchase Price due by County at Closing.

Within ten (10) days of receiving written notice from the Seller that all of the footings supporting the concrete tilt walls of the main Maintenance Facility building has been completed, as set forth on the Construction Plans, and has passed inspection by the City of Oregon City's Building Department, County shall deposit with the Title Company the third earnest money deposit of Nine Million Seven Hundred Thousand and 00/100 dollars (\$9,700,000.00) (the "Third Earnest Money Deposit"). The footings shall be deemed complete, in writing, by the Architect of Record. Within five (5) business days of receipt of the Architect of Record's notice of completion, the County shall provide either a signed acknowledgement accepting the Architect of Record's determination, or an objection to the Architect of Record's determination that is signed by an architect licensed in the State of Oregon and that sets forth the basis for any such objection. In the event the County provides a written objection, as set forth above, the Parties agree to proceed in good faith to address the basis of any such objection and neither the Architect of Record nor the architect acting on behalf of the County shall unreasonably withhold their written approval. Upon receipt of the written confirmation of completion by the Architect of Record and the signed acknowledgement on behalf of the County accepting the Architect of Record's determination, the Title Company shall immediately release the Third Earnest Money Deposit to Seller. The Third Earnest Money Deposit shall be credited to the Purchase Price due by County at Closing.

Within ten (10) days of receiving written notice from the Seller that the main building roof structure has been completed, as set forth on the Construction Plans, and has passed inspection by the City of Oregon City's Building Department, County shall deposit with the Title Company the final earnest money deposit of Eight Million Eight Hundred Fifty Thousand and 00/100 dollars (\$8,850,000.00) (the "Final Earnest Money Deposit"). The main building roof structure shall be deemed complete when readied to receive roofing as deemed, in writing, by the Architect of Record. Within five (5) business days of receipt of the Architect of Record's notice of completion, the County shall provide either a signed acknowledgement accepting the Architect of Record's determination, or an objection to the Architect of Record's determination that is signed by an architect licensed in the State of Oregon and that sets forth the basis for any such objection. In the event the County provides a written objection, as set forth above, the Parties agree to proceed in good faith to address the basis of any such objection and neither the Architect of Record nor the architect acting on behalf of the County shall unreasonably withhold their written approval. Upon receipt of the written confirmation of completion by the Architect of Record and the signed acknowledgement on behalf of the County accepting the Architect of Record's determination, the Title Company shall immediately release the Final Earnest Money Deposit to Seller. The Final Earnest Money Deposit shall be credited to the Purchase Price due by County at Closing.

In the event the Final Earnest Money Deposit becomes due before July 1, 2021, the County shall have the right to defer payment of the Final Earnest Money Deposit until such date. The County's exercise of its right under this paragraph to defer payment of the Final Earnest Money Deposit until July 1, 2021 shall cause interest to accrue on the amount owing¹ at a rate that represents the actual cost to the Seller to borrow an equivalent amount of funds using commercially reasonable effort, which shall be calculated from the date the Final Earnest Money Deposit is due, as set forth in the preceding paragraph, until the deferred payment is made by the County. In the

¹ Eight Million Eight Hundred Fifty Thousand and 00/100 dollars (\$8,850,000.00).

event the County elects to defer payment of the Final Earnest Money Deposit under this paragraph, both the Final Earnest Money Deposit, together with any accrued interest, shall be due on July 1, 2021.

5. **Amendment to Section 3.3. Section 3.3 of the Disposition Agreement which reads:**

This transaction shall close (the “**Closing**”) within One Thousand Forty Nine (1,049) days from the Effective Date of this Agreement (or as may be extended as provided herein, the “**Closing Date**”). If temporary occupancy has not been obtained from the City of Oregon City by the Seller, Seller may extend Closing until temporary occupancy for the Maintenance Facility is obtained. Seller’s right to extend the Closing is limited to an additional one hundred eighty (180) days, and may be exercised by giving notice thereof to the County prior to the then-current expiration date. Seller’s exercise of its extension right under this paragraph shall cause a corresponding reduction of the Purchase Price of One Hundred Thousand Dollars (\$100,000).

Closing shall occur in escrow on or before the Closing Date by and through a mutually acceptable escrow officer (the “**Escrow Officer**”) of First American Title, 9200 SE Sunnyside Rd. #400, Clackamas, OR 97015 (the “**Title Company**”), in accordance with the terms and conditions of this Agreement. County agrees, subject to the terms and conditions hereunder for its benefit, to accept conveyance of the Subject Property and pay to Seller at Closing the Purchase Price for the Subject Property by wire transfer of immediately available funds, subject to the credits, debits, prorations and adjustments provided for in this Agreement, including a credit for the Initial Earnest Money and the Final Earnest Money Deposit in a total amount of Eleven Million Six Hundred Thousand Dollars (\$11,600,000.00). The County and the Seller agree to perform all acts necessary to close this transaction in accordance with the terms of this Agreement. Each party may submit escrow instructions to the Escrow Officer consistent with this Agreement. Once submitted, instructions may not be withdrawn or altered without the consent of both the County and the Seller.

Section 3.3 of the Disposition Agreement is hereby deleted in its entirety and is replaced with the following:

This transaction shall close (the “**Closing**”) on or before the earlier occurrence of the following: 1) May 20, 2022; or 2) fifteen (15) days after issuance of temporary occupancy for the Maintenance Facility by the City of Oregon City (the “**Closing Date**”). If temporary occupancy has not been obtained from the City of Oregon City by the Seller on or before May 20, 2022, Seller may extend Closing until temporary occupancy for the Maintenance Facility is obtained. Seller’s right to extend the Closing is limited to an additional one hundred eighty (180) days, and may be exercised by giving notice thereof to the County prior to May 1, 2022. In the event Seller exercises its right to extend, the Closing Date shall be set on a date and time within the one hundred eighty (180) day extension timeline that is mutually agreeable to both parties. Seller’s exercise of its extension right under this paragraph shall cause a corresponding reduction of the Purchase Price of One Hundred Thousand Dollars (\$100,000).

Closing shall occur in escrow on or before the Closing Date by and through a mutually acceptable escrow officer (the “**Escrow Officer**”) of First American Title, 9200 SE Sunnyside Rd. #400, Clackamas, OR 97015 (the “**Title Company**”), in accordance with the terms and conditions

of this Disposition Agreement. County agrees, subject to the terms and conditions hereunder for its benefit, to accept conveyance of the Subject Property and pay to Seller at Closing the Purchase Price for the Subject Property by wire transfer of immediately available funds, subject to the credits, debits, prorations and adjustments provided for in this Disposition Agreement, including a credit for the Initial Earnest Money, the Second Earnest Money Deposit, the Third Earnest Money Deposit, and the Final Earnest Money Deposit in a total amount of Twenty Seven Million Five Hundred Fifty Thousand Dollars (\$27,550,000.00). The County and the Seller agree to perform all acts necessary to close this transaction in accordance with the terms of this Disposition Agreement. Each party may submit escrow instructions to the Escrow Officer consistent with this Disposition Agreement. Once submitted, instructions may not be withdrawn or altered without the consent of both the County and the Seller.

6. **Amendment to Section 3.6.2. Section 3.6.2 of the Disposition Agreement which reads:**

County shall pay the entire Purchase Price to Seller by wire transfer or cashier's check of immediately available funds, adjusted for the charges, prorations, adjustments and credits set forth in this Agreement, including a credit for the Initial Earnest Money and the Final Earnest Money Deposit in a total amount of Eleven Million Six Hundred Thousand Dollars (\$11,600,000.00).

Section 3.6.2 of the Disposition Agreement is hereby deleted in its entirety and is replaced with the following:

County shall pay the entire Purchase Price to Seller by wire transfer or cashier's check of immediately available funds, adjusted for the charges, prorations, adjustments and credits set forth in this Disposition Agreement, including a credit for the Initial Earnest Money, the Second Earnest Money Deposit, the Third Earnest Money Deposit, and the Final Earnest Money Deposit in a total amount of Twenty Seven Million Five Hundred Fifty Thousand Dollars (\$27,550,000.00).

7. **Amendment to Section 3.6.9. Section 3.6.9 of the Disposition Agreement which reads:**

Escrow Officer establishes an escrow account (the "**Account**") in the total amount of Three Hundred Thousand and No/100 Dollars (\$300,000.00) (such sum, together with all interest earned thereon, are collectively referred to herein as the "**Escrow Funds**") from a portion of Seller's net sales proceeds withheld at Closing by the Escrow Officer, as security for completion of the final punchlist items, in accordance with the terms of Section 5.2.

Section 3.6.9 of the Disposition Agreement is hereby deleted in its entirety and is replaced with the following:

Escrow Officer, or its designee, establishes an escrow account (the "**Account**") in the total amount of Six Hundred Thousand and No/100 Dollars (\$600,000.00) (such sum, together with all interest earned thereon, are collectively referred to herein as the "**Escrow Funds**") from a portion of Seller's net sales proceeds withheld at Closing by the Escrow Officer, as security for completion of the final punchlist items, in accordance with the terms of Section 5.2.

8. **Amendment to Section 5.2. Section 5.2 of the Disposition Agreement which reads:**

The Seller shall be obligated to complete the Maintenance Facility in accordance with the Construction Plans within one hundred twenty (120) days from the date of Closing. The Escrow Officer may release the Escrow Funds to the Seller after written approval has been provided by either the Owner's Representative or the County that the Maintenance Facility to be constructed on the Subject Property has achieved final completion consistent with the Construction Plans, which approval will not be unreasonably withheld, conditioned or delayed. The sole condition for disbursement of the Escrow Funds to Seller is the final completion of the Maintenance Facility by the foregoing deadline. Notwithstanding the foregoing, if final completion is not achieved within one hundred twenty (120) days from the date of Closing, all Escrow Funds shall be disbursed to the County, subject to the written approval of Seller, which approval will not be unreasonably withheld, conditioned or delayed. The Escrow Funds shall be disbursed by a single payment and shall not be paid on a pro rata basis or otherwise disbursed in installments. The Account shall be terminated upon disbursement of all Escrow Funds in the Account as provided in this Agreement. This section shall survive Closing and not be merged into any documents delivered at Closing.

Section 5.2 of the Disposition Agreement is hereby deleted in its entirety and is replaced with the following:

The Seller shall be obligated to complete the Maintenance Facility in accordance with the Construction Plans within one hundred twenty (120) days from the date of Closing. The Escrow Officer, or its designee, may release the Escrow Funds, or any portion thereof, to the Seller after written confirmation has been provided by either the Owner's Representative or the County that liens associated with any work remaining to be completed have been released. This written confirmation shall not be unreasonably withheld, conditioned or delayed. The Escrow Funds may be disbursed on a pro rata basis or otherwise disbursed in installments in accordance with the direction provided above, except in no case may the amounts owed to the Seller's contractors, subcontractors, or agents, as evidenced by liens filed against the Subject Property, exceed the amount of Escrow Funds held by the Escrow Officer, or its designee. Notwithstanding the foregoing, if final completion is not achieved within one hundred twenty (120) days from the date of Closing, all remaining Escrow Funds shall be disbursed to the County, subject to the written approval of Seller, which approval will not be unreasonably withheld, conditioned or delayed. The Account shall be terminated upon disbursement of all Escrow Funds in the Account as provided in this Agreement. This section shall survive Closing and not be merged into any documents delivered at Closing

9. **Amendment to Section 7.2. Section 7.2 of the Disposition Agreement which reads:**

If this transaction fails to close because of the Seller's default hereunder, the Initial Earnest Money and the Final Earnest Money Deposit shall be returned, if any, to the County as set forth in and pursuant to Section 3.2 herein. The County shall be entitled to such remedies for breach of contract as may be available under applicable law, including (without limitation) the remedy of specific performance, injunctive relief and/or the right to recover its damages.

In the event that any of the following occur prior to the conveyance of title to the Subject Property, then this Agreement, and any rights of the Seller, or any assignee or transferee, in this

Agreement, or the Property, or any portion thereof, shall, at the option of the County, be terminated by the County, in which event the Initial Earnest Money and the Final Earnest Money Deposit, and any interest earned thereon, shall be returned or retained by the County as set forth and pursuant to Section 3.2 herein, and neither the Seller nor the County shall have further rights against or liability to the other under this Agreement:

7.2.1 Seller, or any successor in interest thereto, assigns this Agreement or any rights therein, or to the Subject Property, in violation of this Agreement;

7.2.2 There is a change in the ownership of the Seller contrary to the provisions of Section 1.6 hereof and as a result Seller fails to materially and substantially fulfill its obligations under the Agreement. The Seller shall not take any action to change its managers without the express written consent of the County; or

7.2.3 The Seller does not construct the improvements on the Subject Property generally consistent with the Construction Plans as approved in accordance with the Agreement as reasonably determined by the Owner's Representative pursuant to Section 5.1 provided County has approved the Construction Plans pursuant to Section 2.6, including acceptance of Seller's proposed cure notification and cure of objections, the County deposits the Final Earnest Money, the building permit associated with the Maintenance Facility has been issued by the city of Oregon City, and all other necessary and required governmental permits have been issued by all governing jurisdictions necessary to commence construction of the Maintenance Facility.

Section 7.2 of the Disposition Agreement is hereby deleted in its entirety and is replaced with the following:

If this transaction fails to close because of the Seller's default hereunder, the Initial Earnest Money, the Second Earnest Money Deposit, the Third Earnest Money Deposit and the Final Earnest Money Deposit shall be returned, if any, to the County subject to Section 3.2 herein. The County shall be entitled to such remedies for breach of contract as may be available under applicable law, including (without limitation) the remedy of specific performance, injunctive relief and/or the right to recover its damages.

In the event that any of the following occur prior to the conveyance of title to the Subject Property, then this Disposition Agreement, and any rights of the Seller, or any assignee or transferee, in this Disposition Agreement, or the Property, or any portion thereof, shall, at the option of the County, be terminated by the County, in which event the Initial Earnest Money, the Second Earnest Money Deposit, the Third Earnest Money Deposit, and the Final Earnest Money Deposit, and any interest earned thereon, shall be returned or retained by the County subject to Section 3.2 herein, and neither the Seller nor the County shall have further rights against or liability to the other under this Disposition Agreement:

7.2.1 Seller, or any successor in interest thereto, assigns this Disposition Agreement or any rights therein, or to the Subject Property, in violation of this Disposition Agreement;

7.2.2 There is a change in the ownership of the Seller contrary to the provisions of Section 1.6 hereof and as a result Seller fails to materially and substantially fulfill its obligations under the Disposition Agreement. The Seller shall not take any action to change its managers without the express written consent of the County; or

7.2.3 The Seller does not construct the improvements on the Subject Property generally consistent with the Construction Plans as approved in accordance with the Disposition Agreement as reasonably determined by the Owner's Representative pursuant to Section 5.1 provided County has approved the Construction Plans pursuant to Section 2.6, including acceptance of Seller's proposed cure notification and cure of objections, the County deposits the Second Earnest Money Deposit, the Third Earnest Money Deposit, and the Final Earnest Money Deposit, the building permit associated with the Maintenance Facility has been issued by the city of Oregon City, and all other necessary and required governmental permits have been issued by all governing jurisdictions necessary to commence construction of the Maintenance Facility.

10. **Amendment to Section 8.8. Section 8.8 of the Disposition Agreement which reads:**

Time is of the essence of this Agreement. All obligations of the County and the Seller to each other shall be due at the time specified by the Agreement, or as the same may be extended by mutual agreement of the parties in writing.

Section 8.8 of the Disposition Agreement is hereby deleted in its entirety and is replaced with the following:

Time is of the essence of this Agreement. All obligations of the County and the Seller to each other shall be due at the time specified by the Agreement, or as the same may be extended by mutual agreement of the parties in writing. Notwithstanding the foregoing, the Parties acknowledge that, pursuant to Oregon Local Budget Law (ORS Chapter 294), the County is required to appropriate funds for purposes of fulfilling its monetary obligations under this Disposition Agreement. The County has appropriated an amount equal to the Second Earnest Money Deposit and the Third Earnest Money Deposit² which is eligible for disbursement during the County's fiscal year ending June 30, 2021. The Parties further acknowledge and agree that, in the event that temporary occupancy for the Maintenance Facility is issued by the City of Oregon City on or before June 16, 2021, pursuant to Section 3.3, the Closing Date shall be forty-five (45) days after issuance of temporary occupancy for the Maintenance Facility by the City of Oregon City, which will allow the County sufficient time to process the necessary budget amendment in accordance with Oregon Local Budget Law.

11. **Addition to Exhibit B. The document attached to this Amendment identified as "Purchase Price – Change Log" is added to and supplements the Scope of Development attached to the Disposition Agreement as Exhibit B.**

² The total amount of the Second Earnest Money Deposit and the Third Earnest Money Deposit is Seventeen Million Two Hundred Thousand Dollars (\$17,200,000).

12. **Counterpart; Email.** This Amendment may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Amendment. Facsimile or email transmission of any signed original of this Amendment, and retransmission of any signed facsimile or email transmission, shall be the same as delivery of an original. At the request of either party, the parties shall confirm transmitted signatures by signing an original document.

13. **Confirmation.** The Disposition Agreement is hereby amended and modified in accordance with the terms of this Amendment. Except as expressly modified by this Amendment, the Disposition Agreement and all its terms and provisions are hereby acknowledged, approved, ratified and confirmed and shall be and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment effective as of the date first written above.

AGENCY:

CLACKAMAS COUNTY DEVELOPMENT AGENCY,
a corporate body politic

By: _____

Name: _____

Its: _____

DEVELOPER:

BEAVERCREEK STRUCTURES, LLC,
An Oregon limited liability company

By: _____

Name: _____

Its: Manager _____

Purchase Price - Change Log
Second Amendment to Disposition Agreement (Addition to Exhibit B)

ITEM DESCRIPTION	PURCHASE PRICE CHANGE AMOUNT (\$)	
Mezzanine / Stairs / Roof Access Ladder & Cage // Double Lighting // Power // Electrical	\$	92 970
Enlarged OHDs 1214 to 1614	\$	25 278
Delete Material Lift	\$	(53 500)
Delete Paint Booth / Paint Booth Area	\$	(135 000)
Sheriff Storage Fencing- Approximately 1,000 sf fenced in area with access door	\$	4 950
Increase Structural Capacity for Future Solar Panels // Disconnect	\$	28 000
3 Locker Room Shower Stalls - Framing / Curtain / Tile Walls / Plumbing	\$	18 600
Reduce Total Number of Lockers from 146 to 100	\$	(3 450)
Relite Windows from Hall to Wood and Bridge Areas	\$	3 375
Deletion of CMU partition walls	\$	(16 000)
Metal Fabrication / Welding Area (Mech // Elect)	\$	23 450
Added Demising Wall between Sign and Wood Shop	\$	9 450
Redesign Time // Schematic Layout - Buyer Scope Changes	\$	11 900
Vehicle Scale Equipment	\$	(55 000)
Cost Reduction on Increased Earnest Money	\$	(1 462 900)
Building Area // Type Changes (Enlarge Main Bldg. and Reduce Out Buildings)	\$	597 116
Total Purchase Price Change - Second Amendment	\$	(910 761)

SUMMARY

Purchase Price After First Amendment	Total Purchase Price Change - Second Amendment	Adjusted Purchase Price - Second Amendment
\$31 305 896	-\$910 761	\$30 395 135

Remaining Allowance Items

REMAINING ALLOWANCE ITEMS AFTER SECOND AMENDMENT	ALLOWANCE AMOUNT (\$)
Gas - Fuel Equipment / Containment / Tanks (4 Pump Stations)	\$ 475 000
Decant System / Washout Area / Drive Grates / Separator	\$ 55 000
Propane - Fuel Equipment / 1000 gal Skid Tank & Distribution (1 Pump Station)	\$ 135 000
Water Reservoir & Fill Station	\$ 18 000
Self Service Vehicle Wash - Waste System / Equipment (4 Bays)	\$ 105 000
Special Entry Roadway Entry // Art	\$ 45 000
Door Hardware	\$ 57 923
Beavercreek Intersection (Signalization, Turn Lanes, Pole Burial)	\$ 650 000
Jurisdictional Permits & Fees	\$ 1 900 000
On & Offsite Public Roads & RT. of Way Improvements	\$ 1 597 050
Entry Monuments & Building Signage	\$ 14 500
Bridge Cranes, Bridge Railing & Controls	\$ 250 000
Low Voltage (Data/Telephone/Security)	\$ 350 000

**County Requested Purchase Price Add / Deduct Options
Option Pricing and Consideration prior to the Expiration of the Design
& Entitlement Due Diligence Period**

ITEM DESCRIPTION	PURCHASE PRICE CHANGE AMOUNT (\$)
Containment Area - Magnesium Chloride Tanks	TBD
Hydronic Radiant Floor Heat System (A Portion of Main Building Service Area)	TBD
Ventilation (Parking Area inside Main Building if Required by Code)	TBD
Back up Power / Generator	TBD
Main Building Roofing Upgrade to County Provided Specifications	TBD
Conduits for Potential Future Car Charging Stations	TBD
Special Welding Area Exhaust (Swing Arm)	TBD
Reduce Onsite Pavement Sections	TBD



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 DKS Associates, Inc. for the
Clackamas County Regional Freight Intelligent Transportation System (ITS) Project**

Purpose/Outcomes	This contract will provide design engineering services for Clackamas regional freight related Intelligent Transportation System (ITS) improvements on road infrastructures within Clackamas and Wilsonville industrial areas.
Dollar Amount and Fiscal Impact	The contract amount is not to exceed \$260,133.97
Funding Source	Federal Funds: \$233,418.21 County Road Funds (10.27% match): \$26,715.76
Duration	December 31, 2021.
Previous Board Action	10/17/19 – BCC Approval of Amendment No. 1 to Supplemental Project Agreement No. 33150 03/28/19 – BCC Approval of Supplemental Project Agreement No. 33150 01/01/17 – BCC Approval of Master Certification Agreement No. 30923 for County implementation of federally funded projects. 5/5/2016 – BCC approval of Amendment No. 1 to Agreement No. 29996 10/02/2014 – BCC Approval of Local Agency Agreement No. 29996
Strategic Plan Alignment	1. Grow a vibrant economy 2. Ensure safe, healthy and secure communities
Counsel Review	July 20, 2020 Counsel Initials: AN
Procurement Review	1. Was this item processed through Procurement? YES 2. If no, provide brief explanation:
Contact Person	Bikram Raghubansh, Project Manager 503-742-4706

Background:

The Project will involve design and deployment of Intelligent Transportation System (ITS) technologies on road infrastructures within Clackamas County, ODOT, City of Gladstone, and City of Wilsonville’s jurisdictions. The scope of the Project is to improve the reliability and safety of the regional freight system by managing freight vehicle delay in known congested areas using ITS technologies. This is a federally funded project through Metro’s Regional Flexible Funds allocation with an overall estimated cost of \$2.12 million with 10.27% local (County) match. The initial (Phase 2A) funding of Clackamas Regional Freight ITS Project will deploy selected number of ITS strategies within the Clackamas and Wilsonville industrial areas.

Procurement Process:

This project was advertised in accordance with ORS and LCRB Rules on December 9, 2019. Proposals were opened on January 14, 2020. The County received one (1) Proposal: DKS Associates, Inc. An evaluation committee of four DTD personnel scored DKS Associates, Inc.'s proposal confirmed their capability of performance. 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 DKS Associates, Inc. for the Clackamas County Regional Freight ITS Project

Sincerely,



Bikram Raghubansh
Project Manager

Placed on the BCC Agenda _____ by Procurement and Contract Services

ENGINEERING AND RELATED SERVICES CONTRACT
Contract Number: 2137

Project Title: Clackamas County Regional Freight ITS Project	Agency Project Number: 22235
Project Location: Clackamas County	Associated RFP Number: 2019-86
Federal Aid Number: 18001	Goal: 8.5% (see Exhibit E)
Total Not-to-Exceed (“NTE”) amount for this Contract. This total includes: a) all allowable costs and expenses, profit, and fixed-fee amount, if any; and b) \$22,515.94 for contingency tasks, each of which must be separately authorized by Agency.	\$ 260,133.97

This Contract is between Clackamas County, hereafter called “Agency” and **DKS Associates, Inc.**, an Oregon corporation, hereafter called “Consultant.” Agency 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 Agency. 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. Agency 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 Agency reserves the right (i) to determine the delivery schedule (as mutually acceptable to Agency and Consultant) for the Services to be performed and (ii) to evaluate the quality of the completed performance, Agency 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 Agency, 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 Agency 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, Agency 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 Agency 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

Agency, 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 Agency 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 Agency or a particular project.

7. Subcontracts and Assignment; Successors and Assigns

- a. Consultant shall obtain Agency'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 Agency 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. Agency'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 Agency 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) Agency'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 Agency in accordance with applicable law for all damages to Agency 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 Agency 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 Agency's budget for construction. **Agency's budget for construction of the project is 1,521,600.00.** Consultant shall promptly advise Agency'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. Agency 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 Agency may adjust such estimated construction contract price.
- (ii) Prior to releasing the bid for the construction contract, Agency will prepare an estimate of constructing the design submitted. If Agency's estimator(s) determines Consultant's design exceeds Agency'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 Agency if Consultant's design exceeds Agency'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 Agency 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 Agency 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 Agency. Agency and Consultant agree that Work Product that constitutes original works of authorship (the "Original Work Product") is "work made for hire" of which Agency 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 Agency 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 Agency's reasonable request, Consultant shall execute such further documents and instruments necessary to fully vest

such rights in Original Work Product in Agency. 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 Agency under the Contract), or in the event any Consultant Intellectual Property or Third Party Intellectual Property is needed by Agency to reasonably enjoy and use any Work Product, Consultant hereby agrees that it will grant to, or obtain for, the Agency 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 Agency to authorize contractors, consultants and others to do the same on Agency'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 Agency. At the request of Consultant, Agency 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, Agency 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 Agency to authorize others to do the same on Agency'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, Agency 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 Agency-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 Agency, 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 Agency of such subpoena or other legal process, provide Agency with copies of any subpoena, other legal process and any other written materials supporting the subpoena or other legal process, and otherwise cooperate with Agency in the event Agency decides to oppose the disclosure of the Confidential Information. In the event Agency decides not to oppose such subpoena or other legal process or Agency'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 Agency, 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 Agency, 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 Agency, 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 Agency by Consultant that may be the subject of protection under any state or federal intellectual property law or doctrine, or the Agency'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, Agency 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 Agency (or other entities identified above) under this section 13(c), based solely on the following: Consultant's compliance with Agency specifications or requirements, including, but not limited to the required use of tangible or intangible items provided by Agency.
- d. **Defense Qualification.** Neither Consultant nor any attorney engaged by Consultant shall defend or purport to defend a claim in the name of the Agency, 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 Agency, the State of Oregon, the OTC or ODOT may, at their election and expense, assume their own defense and settlement.
- e. **Agency's Acts or Omissions.** This section 13 does not include indemnification by Consultant of the Agency, 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. **Agency's Right to Terminate for Convenience.** Agency may, at its sole discretion, terminate the Contract, in whole or in part, upon 30 calendar days prior written notice to Consultant.

- c. Agency's Right to Terminate for Cause.** Agency may terminate the Contract, in whole or in part, immediately upon written notice to Consultant or at such later date as Agency may establish in such notice, upon the occurrence of any of the following events:
- (i) Agency fails to receive appropriations, limitations or other expenditure authority sufficient to allow Agency, 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 Agency 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 Agency'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 Agency 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 Agency's notice to Consultant, or such longer period as Agency may specify in such notice.
- d. Consultant's Right to Terminate for Cause.**
- (i) Consultant may terminate the Contract by giving written notice to Agency if Agency fails to pay Consultant pursuant to the terms of the Contract and if Agency 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 Agency 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 Agency, 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 Agency upon demand.
 - (ii) In the event of termination pursuant to Section 15(c)(iii) or 15(c)(iv), Agency 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 Agency.** Upon receiving a notice of termination of the Contract, Consultant shall immediately cease all activities

under the Contract, unless Agency expressly directs otherwise in such notice of termination. Upon termination of the Contract, Consultant shall deliver to Agency all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed. Upon Agency's request, Consultant shall surrender to anyone Agency 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 Agency 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 Agency, 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. Agency, 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. Agency will conduct performance evaluation(s) on the Consultant and its subconsultants during the term of the Contract, which will be compiled and maintained by Agency, 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). Agency 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. Agency may adjust evaluation score(s) upon Agency's finding of good cause. Agency may provide copies of any performance evaluation documentation to ODOT, FHWA, and other parties unless lawfully exempt from disclosure. Agency 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. Agency 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. Agency'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 and 279C.580, which are incorporated by reference herein. All rights and remedies available to Agency 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 Agency 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 Agency 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 Agency 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 Agency 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 Agency 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 Agency 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 Agency 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 Agency 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 Agency'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.** Agency 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 Agency (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 Agency 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. Agency may amend the Contract to the extent permitted by applicable statutes, administrative rules and ordinances and as mutually agreed upon by Agency and

Consultant. Agency may agree to appropriate increases in the maximum compensation payable under the Contract, should any Agency-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 Agency 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 Agency carrying out an affirmative action goal, policy or program under ORS 279A.100, and fails to maintain the required certification, Agency may terminate the Contract, require the Consultant to terminate the subcontractor, or exercise any of remedies reserved for breach of the Contract.

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

CONSULTANT CERTIFICATIONS

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

- (1) Consultant has provided its correct TIN to Agency;
- (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 Agency on a properly prepared and submitted form and, if determined necessary by Agency or ODOT, a mitigation plan has been approved by Agency 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 Agency.

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: _____

AGENCY LEGAL REVIEW (Approved as to From):

Signature: _____ Date: _____

EXHIBIT A - STATEMENT OF WORK
Clackamas County Regional Freight ITS Project

A. PROJECT DESCRIPTION and OVERVIEW of SERVICES

Clackamas County (the “County”) is contracting with Consultant for Services in connection with the following project (the “Project”): The purpose of the Clackamas County Regional Freight ITS project is to improve the reliability and safety of the regional freight system by implementing proven ITS strategies within Clackamas County industrial areas. The project will focus in two geographically distinct areas, the Clackamas Industrial Study Area and the Wilsonville Industrial Study Area. While I-205 and I-5 traverse the two areas, respectively, this project focuses on the first and last mile arterial connections. This project will involve design and deployment of ITS technologies on road infrastructures within Clackamas County, ODOT, City of Gladstone, and City of Wilsonville’s road jurisdiction. See Table 1 through Table 2 for a description of the planned improvements on corridors within the two industrial areas. This information is preliminary and subject to change.

The Clackamas Industrial Study Area is defined by SE 82nd Drive, SE Jennifer St, OR 212, OR 2224, and SE Sunnybrook Blvd. The Wilsonville Industrial Study Area is defined by SW 95th Ave, SW Elligsen Rd, SW Kinsman Rd, and SW Wilsonville Rd.

Proposed ITS technology strategies include:

- Truck signal priority - detects freight vehicles and extends the green and/or red signal phase depending on system programming. This will require traffic signal upgrade to ATC controller.
- UPS Battery Backup - provides emergency power to the traffic signal controller when the input power source or main power fails.
- Traffic Surveillance - monitor and respond to traffic conditions in real-time.
- Count Stations (Wavetronix Matrix Units) - monitor system use and analyze data for improved operations
- Travel Time Measurement - monitor travel time throughout the system to improve operations.

Table 1: Project Locations on Clackamas Industrial Area

CORRIDOR/INTERSECTION	AGENCIES	DESCRIPTION
SE 82 ND Drive: SE Sunnybrook Blvd to Oatfield Rd	Clackamas County, ODOT, City of Gladstone	<ul style="list-style-type: none"> • Install Truck Priority: at OR213, OR212, Evelyn St, and Oatfield Rd • Install ATC Controllers: at OR213 and OR 212 • Install UPS Battery Backup System: at OR213, Tolbert St, Fred Meyer Driveway North, Fred Meyer Driveway South, I-205 NB Ramp, I-205 SB Ramp, and Oatfield Rd. • Install Traffic Surveillance: at Tolbert St, Fred Meyer Driveway South, Evelyn St, and Oatfield Rd. • Install Count Station (Wavetronix Matrix Units): at Evelyn St and Oatfield Rd.

SE Jennifer St: at Evelyn St	Clackamas County	<ul style="list-style-type: none"> Install UPS Battery Backup System
OR 224: I-205 NB Ramp to SE Lake Rd	ODOT	<ul style="list-style-type: none"> Install Truck Priority: at I-205 NB Ramp, I-205 SB Ramp/SE 82nd Ave NB Ramp, SE 82nd Ave SB Ramp, Johnson Rd, SE Pheasant Ct, and SE Lake Rd. Install ATC Controller: at I-205 NB Ramp, I-205 SB Ramp/SE 82nd Ave NB Ramp, SE 82nd Ave SB Ramp, SE Johnson Rd, SE Pheasant Ct, SE Lake Rd.
SE Sunnybrook Blvd: SE Sunnyside Rd to SE 84 th Ave	Clackamas & ODOT	<ul style="list-style-type: none"> Install Truck Priority: at Mall Entrance and 84th Ave. Install UPS Battery Backup System: at Sunnyside Rd, SE 97th Ave, I-205 NB Ramp, I-205 SB Ramp, SE 93rd Ave, SE Oak Bluff Blvd, Mall Entrance, and SE 84th Ave. Install Traffic Surveillance: at SE 97th Ave. Install Count Station (Wavetronix Matrix Units): at SE 97th Ave, SE 93rd Ave, SE Oak Bluff Blvd, Mall Entrance, and SE 84th Ave.

Table 2: Project Locations on Wilsonville Industrial Area

CORRIDOR/INTERSECTION	AGENCIES	DESCRIPTION
SW 95 th Ave: SW Boones Ferry Rd to Boeckman Rd	ODOT & City of Wilsonville	<ul style="list-style-type: none"> Install Truck Priority: at Boones Ferry Rd, Commerce Cir, Ridder Rd, And Boeckman Rd. Install ATC Controller: at Boones Ferry Rd. Install UPS Battery Backup System: at Boones Ferry Rd. Install Traffic Surveillance: at Commerce Cir. Install Count Station (Wavetronix Matrix Units): at Commerce Cir, Ridder Rd, And Boeckman RD.
SW Day Rd: SW Grahams Ferry Rd to SW Boones Ferry Rd	ODOT & City of Wilsonville	<ul style="list-style-type: none"> Install ATC Controller: at Boones Ferry Rd.
SW Elligsen Rd: I-5 SB Ramp to Canyon Creek	ODOT & City of Wilsonville	<ul style="list-style-type: none"> Install Truck Priority: at Parkway Ave and Parkway Center Dr Install ATC Controller: at I-5 SB Ramp and I-5 NB Ramp. Install UPS Battery Backup System: at I-5 SB Ramp, I-5 NB Ramp, SW

		Parkway Ave, and SW Parkway Center Dr. <ul style="list-style-type: none"> • Install Traffic Surveillance: at Parkway Ave and Parkway Center Dr. • Install Count Station (Wavetronix Matrix Units): at Parkway Ave.
SW Wilsonville Rd: Willamette Way East to Stafford/Advance/Boeckman	ODOT & City of Wilsonville	<ul style="list-style-type: none"> • Install ATC Controller: at I-5 SB Ramp and I-5 NB Ramp • Install UPS Battery Backup System: at Kinsman Rd, Boones Ferry Rd, I-5 SB Ramp, I-5 NB Ramp, and Town Center Lp • Install Traffic Surveillance: at Wilamette Way East, Brown Rd, Kinsman Rd, and Town Center Lp

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

- Develop a design that is appropriate for the context of the Project and the nature of its function, both present and future;
- Avoid expenditures for aesthetic effect which are disproportionate to the Project as a whole;
- Manage and facilitate all facets of the Project that are reasonably within Consultant’s control to ensure the Project is completed on or ahead of time and within budget;
- Strive to reduce the construction cost of the Project while keeping life-cycle costs low;
- Use recycled/recyclable products to the maximum extent economically feasible in the performance of the Contract; and
- Apprise Agency throughout the Project concerning the economic impact of all design decisions; and embody sound and cost-effective sustainability principles in the Services performed under the Contract in accordance with the Department of Administrative Services Sustainable State Facilities Standards and Guidelines.

Project Phasing

This Project is divided into two (2) phases:

- Preliminary Design and Final Design Phase
- Construction Phase with signal timing integration

This statement of work (“SOW”) addresses both phases of the Project.

Agency Responsibilities

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

Acronyms and Definitions

AASHTO	American Association of State Highway and Transportation Officials	APM	Agency Project Manager (Clackamas County)
Agency	Clackamas County	APWA	American Public Works Association
		BA	Biological Assessment

BO	Biological Opinion	USFWS	United States Fish and Wildlife Service
CADD	Computer Automated Drafting and Design		
CBR	California Bearing Ratio		
CFR	Code of Federal Regulations		
Consultant...	To be determined		
Corps	US Army Corps of Engineers		
DEQ	Department of Environmental Quality		
DOE	Determination of Eligibility		
DSL	Department of State Lands		
DTM	Digital Terrain Model		
EFH	Essential Fish Habitat		
ESA	Endangered Species Act		
FHWA	Federal Highway Administration		
HAER	Historic American Engineering Record		
HEC	Hydraulic Engineering Circular		
HEC-RAS...	Hydrologic Engineering Center - River Analysis System		
LPA	Local Public Agency (Clackamas County)		
LRFD	Load and Resistance Factor Design		
NE	No Effects		
NEPA	National Environmental Policy Act		
NMFS	National Marine Fisheries Service		
ODA	Oregon Department of Agriculture		
ODFW	Oregon Department of Fish and Wildlife		
ODOT	Oregon Department of Transportation		
OHWM	Ordinary High Water Mark		
ONHD	Oregon Natural Heritage Database		
ORBIC	Oregon Biodiversity Information Center		
SHPO	State Historic Preservation Office		
SLOPES IV	Standard Local Operating Procedures for Endangered Species (SLOPES) IV		
SOW	Statement of Work		
T&E	Threatened & Endangered		
TS&L	Type, Size & Location		
USACE	U.S. Army Corps of Engineers		
USFS	United States Forest Service		

B. STANDARDS and GENERAL REQUIREMENTS

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

1. Standards

General and Administrative

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

Environmental

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

Geotechnical

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

Hydraulic

- Hydraulic Manual, Part I & II, ODOT 2008
- HEC-18 Evaluating Scour at Bridges, FHWA
- HEC-20 Stream Stability at Highway Bridges, FHWA

Roadway

- Manual of Uniform Traffic Control Devices
- Standards Manual of the Oregon Utilities Coordinating Council

Structural

- ODOT Geotechnical Design Manual

Right-of-Way

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

2. Software Requirements

The Contractor shall develop the design utilizing AutoCAD Civil 3D version 2015 or later. Any signal timing conversion and optimization for truck priority shall be based on Intelight Maxtime (controller software).

3. Licenses, Registrations and Qualifications

4. General Requirements

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

5. Compliance with Applicable Law

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

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

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

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

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

7. Design Criteria and Project Assumptions/Conditions

C. REVIEW, COMMENT and SCHEDULE OVERVIEW

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

D. FORMAT REQUIREMENTS

- Consultant shall submit draft deliverables in electronic format via email (and up to three hard copies of deliverables, if requested).
- Consultant shall also submit all graphic files and accompanying reports in PDF.
- Consultant shall provide AutoCAD files of the final design in .dwg format.
- Each draft and final text-based or spreadsheet-based deliverable shall be provided in MS Office file formats (i.e., MS Word, Excel, etc.) and must be fully compatible with version used by Agency.
- Additional format requirements may be listed with specific tasks/deliverables throughout the SOW or in the PA/Contract.

E. TASKS, DELIVERABLES and SCHEDULE

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

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

TASK 1 - PROJECT MANAGEMENT

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

1.1 Administration & Record Keeping

Consultant shall:

- If Consultant does not have a QA/QC plan on file with ODOT, Prepare a Quality Assurance/Quality Control (“QA/QC”) Plan for Agency review and approval. The QA/QC Plan must be developed consistent with requirements of ODOT’s “Guidance/Template for Consultants” available online at: [http://www.oregon.gov/ODOT/HWY/OPL/docs/SEOPL/Consultant Quality Plan Model.com](http://www.oregon.gov/ODOT/HWY/OPL/docs/SEOPL/Consultant%20Quality%20Plan%20Model.com);
- Prepare a Project design schedule using the Critical Path Method (“CPM”). The Project schedule must include, but is not limited to: all major authorized tasks as agreed upon by the Parties, Project design team meetings, and milestones (type and date) specified in this SOW. Updates to the Project schedule shall be made during the course of the Project if milestone dates are modified. For budgeting purposes, it is assumed that up to 3 Project schedule updates will be necessary;
- Prepare invoices and progress reports according to the Contract. Each progress report must:
 - Include a summary of previous period’s activities and the planned activities for the upcoming period;
 - Identify percentage completed of each Task/Deliverable;
 - Reconcile the budget with the actual amount billed to date;
 - Identify unresolved issues and concerns that may affect the SOW, schedule and/or budget for Services.

For budgeting purposes, it is assumed that up to 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.

1.1 Consultant Deliverables and Schedule

Consultant shall provide:

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

1.2 Coordination

Consultant shall:

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

1.2 Consultant Deliverables and Schedule

Consultant shall provide:

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

1.3 Project Meetings

1.3.1 Project Kickoff Meeting

Consultant shall organize, conduct, prepare for and attend a Project kickoff meeting. The Project kickoff meeting will be held at Agency's office (150 Beaver Creek Road, Oregon City) with Agency, ODOT LAL, ODOT engineering staff, City of Gladstone staff, City of Wilsonville engineering staff, 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 7 business days of Notice to Proceed (NTP). Consultant shall prepare draft meeting minutes for review. For budgeting purposes, it is assumed that up to 3 Consultant staff shall attend the 1.5 hour Project kickoff meeting.

1.3.2 Project Development Team Meetings

Consultant shall organize, conduct, prepare for and attend up to 3 Project Development Team (PDT) Meetings; 2 via telephone (60% and 90% milestones) and 1 in-person (30% milestone). The in-person PDT meeting will be held at Agency's office (150 Beaver Creek Road, Oregon City) with Agency, Consultant's PM and other necessary Consultant staff in attendance. Consultant shall prepare the meeting agenda with input from the Agency. Consultant shall prepare draft and final meeting minutes to be distributed to Agency and all other meeting participants. For budgeting purposes, it is assumed that up to 3 Consultant staff shall attend each 1.5 hour 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 and MAPPING (RESERVED)

TASK 3 ENVIRONMENTAL SERVICES (RESERVED)

TASK 4 PUBLIC INVOLVEMENT SUPPORT (RESERVED)

TASK 5 - UTILITIES COORDINATION

Consultant shall perform the coordination of all utility facilities within the Project limits.

If any utility is nonresponsive or uncooperative, Consultant shall notify Agency, and Agency will communicate with the utility to affect a solution.

5.1 Utility Location and Coordination

Consultant shall perform utility coordination and liaison activities with utility owners/operators for the Project. Consultant shall comply with the current version of the Utility coordination policy requirements as described in the ODOT Utility Relocation Manual. This work includes reviewing utilities that may be in conflict with the Project work and utility relocation coordination with the utility owners to resolve those potential conflicts. For this project, it is assumed that coordination will be required with no more than (25) twenty-five utility owners.

5.1 Consultant Deliverables and Schedule

Consultant shall provide:

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

5.2 Utility Report (RESERVED)

5.3 Utility Coordination Meetings (RESERVED)

5.4 Utility Notices

For those Utilities within the project area, Consultant shall provide a Project Notification letter, utilizing an Agency-provided template. The Project Notification letter must include plan sheets indicating location of existing utilities in relationship to proposed project.

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

5.4 Consultant Deliverables and Schedule

Consultant shall provide:

- Project Notification letter(s) with enclosures to Utilities; due within 10 business days after submittal of Advance plans to Agency.
- 1 *.pdf of Project Notification letters with enclosures to APM, LAPM and, State Utility Liaison (SUL).

5.5 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.

5.5 Consultant Deliverables and Schedule

Consultant shall provide:

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

TASK 6 GEOTECHNICAL/GEOLOGIC SERVICES (RESERVED)

TASK 7 HYDRAULICS (RESERVED)

TASK 8 TRAFFIC ENGINEERING & MANAGEMENT

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

8.1 Traffic Analysis (RESERVED)

8.2 Traffic Signal & Intelligent Transportation System (ITS) Design

Consultant shall prepare plans, specifications and construction cost estimate ("PS&E") for the installation of ATC controllers, construction of advance detection for truck priority, radar detection (Wavetronix Matrix units) for traffic data collection, CCTV (Traffic Surveillance) cameras, and UPS battery backup system (including length of backup required) at the locations identified previously in Table 1 and Table 2.

All traffic signal and ITS plans and specifications must conform to Manual on Uniform Traffic Control Devices ("MUTCD"), ODOT, Clackamas County, City of Wilsonville, City of Gladstone, and National Electric Code ("NEC") standards as applicable. Advance detection and stop bar detection will be shown in plan view format, while other improvements will be shown in table or typical detail format. Consultant shall develop cabinet prints according to County or ODOT standards, as applicable, for intersections

where advance detection is being added. Existing basemaps will be obtained from the County or ODOT. Where existing basemaps do not exist, as-constructed plans will be used by inserting PDF's into the CAD drawings.

The Consultant shall schedule, at a minimum, one site visit for field verification at each proposed ITS/signal modification location. A representative from the County should accompany each field visit to confirm the locations and assist in signal cabinet access, if necessary.

The County will make available any existing traffic signal as-builts, where traffic signal modification is required, to the Consultant during the design process.

8.2 Consultant Deliverables and Schedule

Consultant shall provide:

- ITS and Traffic signal modification narrative and costs submitted as part of DAP deliverables (Task 13)
- Advance ITS and Traffic signal modification plans, specification, and cost estimate included in Advance PS&E submittal (Task 15.2)
- Final ITS and Traffic signal modification plans, specification, and cost estimate included in Final PS&E submittal (Task 15.3)

8.3 Traffic Signal Interconnect (Contingency)

Consultant shall prepare PS&E for the construction of new fiber optic or wireless traffic signal interconnect at the following locations along the alignment:

- SE 82nd Drive between I-205 ITS cabinet to Oatfield Rd
- SW 95th Ave between SW Boones Ferry Rd to Boeckman Rd
- SW Elligsen Rd between I-5 ITS cabinet to Parkway Center Dr

The traffic signal interconnect plans and specifications shall conform to MUTCD, ODOT, Clackamas County, City of Wilsonville, and City of Gladstone and NEC standards as applicable. Consultant shall complete field verification of wireless communication path to evaluate line of sight and viability of path, and evaluate condition and availability of existing conduits for use with fiber optic communications (if viable).

8.3 Consultant Deliverables and Schedule

Consultant shall provide:

- Traffic Signal Interconnect narrative and cost estimate included in DAP (Task 13)
- Advance Traffic Signal Interconnect plans, specifications, and cost estimate included in Advance PS&E submittal (Task 15.2)
- Final Traffic Signal Interconnect plans, specifications, and cost estimate included in Final PS&E Package submittal (Task 15.3)

8.4 Traffic Signal Controller Database Conversion

Consultant shall convert the NWS Voyage signal timing databases operating on the existing Type 2070 controllers to Intelight MaxTime operating on ATC controllers at the 13 ODOT-owned project intersections identified in Table 1 and Table 2 that will have controller upgrades.

Consultant shall conduct the following tasks:

8.4.1 Controller Conversion Training

Consultant shall have one key staff attend one training session provided by ODOT signal operations staff on controller database conversion and ODOT guidelines related to controller conversion guidelines and practice.

8.4.2 Local Signal Timing Conversions

Consultant shall translate the local NWS Voyage signal timing databases operating on the existing Type 2070 controllers to Intelight MaxTime operating on ATC controllers. Guidance document, QAQC checklist, and database template from ODOT Region 1 shall be used as reference. The timings will be entered into intersection databases using Intelight MaxTime software (software version will be agreed upon at time of conversions). All Voyage signal timing sheets will be translated. Data not directly transferable will be identified and discussed with Agency and Local Agency to determine an appropriate response. Consultant shall make signal timing changes to update pedestrian crossing time parameters and update coordination plan numbers per ODOT direction. Consultant shall provide and document QAQC process of database conversion. Consultant shall make updates to draft controller databases based on ODOT comments.

8.4 Consultant Deliverables and Schedule

- Draft electronic Intelight MaxTime database created in MaxTime local software for each intersection listed in Task 8.3 to appropriate Agency personnel.
- Revised electronic Intelight MaxTime database to incorporate Agency comments.

8.7 Temporary Traffic Mobility

Consultant shall prepare a draft Project-level Traffic Management Plan (“TMP”) per the requirements of the ODOT TMP Guidance Document located on the Agency web page. The TMP must include such elements as: anticipated lane closures, construction staging, work zone restrictions, mobility issues, mitigation measures, public involvement program, and concurrence from Motor Carrier Transportation Division (MCTD) on the staging approach and lane restrictions. Consultant will provide lane closure charts or supporting traffic analysis showing recommended lane closure restrictions for Project area roadways using traffic volume information provided by the Agency. Consultant shall coordinate with ODOT’s Region Mobility Liaison for any specific restrictions on lane closures. Consultant shall prepare Project Mobility Consideration checklist and provide to APM for review.

8.7 Consultant Deliverables and Schedule

Consultant shall provide:

- Draft TMP and Project Mobility Consideration checklist submitted as part of Task 13 deliverables
- Final TMP submitted as part of Task 15 deliverables

8.8 Traffic Control Plans (TCPs)

Consultant shall prepare and submit special provisions for temporary traffic control to accommodate the public during construction. Specifications shall be developed to accommodate vehicle, bicycle and pedestrian traffic during construction. Traffic control plans will not be developed as part of this task. ODOT standard drawings will be referenced where possible. If needed, TCPs, will be provided by the Contractor during construction.

8.8 Consultant Deliverables and Schedule

Consultant shall provide:

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

Task 9 RAILROAD COORDINATION (RESERVED)

Task 10 ROADWAY DESIGN (RESERVED)

Task 11 BRIDGE DESIGN (RESERVED)

TASK 12 LOCAL PERMITS (RESERVED)

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 narrative, 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 ITS plans including recommendations;
- Outline of Project constraints such as topography, environmental, permits, ROW, utilities and cost (NOTE: these may be executive summaries prepared by Consultant for other deliverables associated with this Project);
- Construction staging and temporary protection and direction of traffic during construction;
- Description of impact to freight mobility
- Design acceptance checklist

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 concepts (if needed) and a cost estimate as appendices to the DAP. The DAP must bear the responsible engineer’s seal.

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

For budgeting purposes it is assumed that up to 3 Consultant staff shall attend the 2 hour DAP Plan Review Meeting, including travel time.

13 Consultant Deliverables and Schedule:

Consultant shall provide:

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

TASK 14 RIGHT OF WAY (RESERVED)

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

Consultants shall prepare plan sheets according to the following table:

Table 15

Name of Sheet	Estimated # of Sheets	Advanced Submittal	Final Submittal
Title sheet	1	x	x
Details	2	x	x

ITS Legend & Symbols	1	x	x
Signal/detector modification, and ITS plans	22	x	x
ITS details	5	x	x

15.1 Preliminary PS&E (60%) (RESERVED)

15.2 Advance PS&E (90%)

This task includes preparation of advance plans, Special Provisions, construction cost estimate, risk assessment, and quality control reviews, as well as incorporating comments from previous reviews.

Advance Plans:

Consultant shall prepare drawings, per Table 15 above and reference Agency standard drawings and details, and other related drawings.

Advance Special Provisions:

Consultant shall update Project Special Provisions based on changes and clarifications to the Project design, as determined at Preliminary plans and in accordance with 2018 *Oregon Standard Specifications for Construction as amended* and *Agency Specification and Writing Style Manual*. Consultant shall prepare the Special Provisions to the 90% level (the "Advance Special Provisions") in MS Word utilizing "Track Changes".

The Advance Special Provisions must incorporate the Agency's boilerplate Special Provisions corresponding with the Project Bid Date. If a bid date has not been identified, Consultant shall use the most current boilerplate Special Provisions. Boilerplates, by bid date, can be found at the following website:

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

Consultant shall submit the Agency Civil Rights Request for Goals Worksheet to the Agency Office of Civil Rights and incorporate the appropriate Disadvantaged Business Enterprise ("DBE") goals, Minority, Women, and Emerging Small Business ("MWESB") aspirational target values, and On the Job Training (OJT) hours into the Project Special Provisions;

Advance Cost Estimate:

Consultant shall update the construction cost estimate quantities and unit costs utilizing Agency standard bid items to support the Advance Plans (the "Advance Cost Estimate"). Consultant shall prepare the estimate to include mobilization, contingencies, and construction engineering. The estimate must be based on unit prices utilizing Agency and Consultant historic bid information and anticipating a 2020 bid letting.

Construction Schedule:

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

Advance PS&E Revisions/Corrections:

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

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

15.2 Consultant Deliverables and Schedule

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

- Advance Plans (PDF)
- Advance Special Provisions in electronic format (MS Word, utilizing "Track Changes")
- Advance Construction Cost Estimate in electronic format (Excel and PDF)
- Construction schedule in electronic format (MS Project format and PDF)
- Comment response log for plans and specifications (In an Excel document)
- Local 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 within 2 weeks of receipt of comments.

15.3 Final PS&E Package (100%)

This task includes preparation of the Final PS&E package for bidding purposes. The final plans, Special Provisions, and construction cost estimate must incorporate all revisions agreed to and documented on the Advance PS&E Comment Log (Task 15.2).

Consultant shall coordinate with the APM to ensure all deliverable 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_formsetc.aspx

Agency will review final plan sheets and note any final revisions needed prior to preparation and submittal of Professional of Record (POR)-signed Final Plans within 2 weeks of receipt of documents from Consultant. Consultant shall incorporate final revisions into POR-signed Final Plans.

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

15.3 Consultant Deliverables and Schedule

Consultant shall submit the following to the Agency:

Description	To APM			
	Electronic	Paper		
Un-signed Final Design Plans (11 x 17)	AutoCAD and PDF	X		
Project Special Provisions	Word & PDF	X		
POR Certification with all Special Provisions sections stamped	PDF			
Signed Special Provision Integrity Certification	PDF			
Special Provisions Summary Form	Excel			

Email from Civil Rights noting Applicable DBE goals, MWESB targets and OJT hours		X		
Cost Estimate	PDF and Excel	X		
CPM Construction Schedule (11 x 17 in color)	PDF	X		
Project Mobility Considerations Checklist	PDF			
Utilities Certification (delivered under Task 5)	PDF			
Cabinet Prints (ODOT Intersections)	Microstation and PDF			

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

15.4 LETTER OF PUBLIC INTEREST FINDINGS (LPIF)

Consultant shall prepare up to six Public Interest Finding Letter. Consultant shall perform due diligence to determine if the items to be specified in the Public Interest Finding Letter meet the requirements of the 'Buy America' clause. Consultant shall follow latest LPIF Guidance located at: http://www.oregon.gov/odot/hwy/opl/docs/pdf/lpif_guidance.pdf

APM will route the draft letter for internal review at the Agency and provide the Consultant with one set of non-conflicting review comments.

Consultant shall prepare the final LPIF and submit to APM.

15.4 Consultant Deliverables and Schedule

Consultant shall provide:

- Up to one electronic copy of the draft LPIF with the Preliminary Plans.
- Up to one final LPIF (one pdf file with the engineer's signature and stamp, one original copy for signatures) with the Advance Plan submittal (Task 15.2).

TASK 16 BID AND AWARD ASSISTANCE (CONTINGENCY)

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.

16.1 Questions During Bidding (CONTINGENCY TASK)

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

Consultant shall, during the bidding process, assist the Agency with the communications with Construction Contractors and suppliers in a manner that assures that no Construction Contractor or supplier is provided with information not in the bidding documents and that could provide a bidding advantage or disadvantage. Consultant shall prepare a written log to document conversations and

questions asked by construction contractors or suppliers and the answers provided to the Agency. Consultant shall maintain the written log in the project file and provide upon request of the APM or Local Agency.

16.1 Consultant Deliverables and Schedule

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

16.2 Addenda to the Bid Documents (*CONTINGENCY TASK*)

This task identifies specific deliverables that the Agency at its discretion may elect to authorize Consultant to produce. Consultant shall only complete this Task 16.2 and the identified deliverables if written (email acceptable) NTP is issued by the Agency. The NTE amount for completing this contingency task is \$22,515.94 and is billable if authorized.

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

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

Consultant shall prepare and deliver the addenda text in a Microsoft Word file. Consultant shall prepare and deliver stamped drawings in PDF and 11"x17" Mylar. Consultant shall coordinate reviews of addenda by APM or Local Agency prior to submittal. Consultant shall not be responsible for distributing addenda to bidders. Agency will issue and distribute all addenda.

16.2 Consultant Deliverables and Schedule

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

The table below is a summary of contingency tasks that Agency, at its discretion, may authorize Consultant to perform. Details of the contingency tasks and associated deliverables are stated in the Task section of the Statement of Work. Consultant shall complete only the specific contingency task(s) identified and authorized via written (e-mail acceptable) Notice-to-Proceed ("NTP") issued by Agency's Project Manager. If requested by Agency, Consultant shall submit a detailed cost estimate for the agreed-to contingency Services (up to the NTE amount(s) in the Contingency Task Summary Table) within the scope of the contingency task.

If 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 amount for the authorized contingency task.

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

Contingency Task Summary Table

Contingency Task Description	NTE for Each	Max Quantity	Method of Comp.	Total NTE Amount
C. 8.3 Traffic Signal Interconnect	\$15,733.74	1	T&M NTE	\$ 15,733.74
C. 16.1 Questions During Bidding	\$ 2,854.74	1	T&M NTE	\$ 2,854.74
C. 16.2 Addenda to the Bid Documents	\$ 3,927.46	1	T&M NTE	\$ 3,927.46
Total for contingency tasks:				\$ 22,515.94

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 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 Agency's satisfaction without additional compensation.

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

- Reduce the NTE, Fixed-Price or Fixed-Fee amount associated with Tasks/Deliverables that were not authorized by Agency 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)

Agency 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.
- **ODCs** (without mark-up) - Approved travel costs (up to the rates allowed 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 Agency notifies Consultant otherwise in writing) - the hourly labor rates and ODCs (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: \$ 237,618.03

B. PAYMENT OPTIONS Payments will occur only after Agency has determined that Consultant has completed, and Agency has accepted, the required Services (including defined deliverables) for which payment is sought via a properly submitted and correct invoice.

(For CPFF and T&M) Progress Payments for Acceptable Progress. Agency 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

Travel costs are allowable only if they are authorized under the Contract and if the travel is essential to the normal discharge of Agency's responsibilities and is related to official Agency 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/Financial/Acctng/Documents/40.10.00.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 Agency will be reimbursed according to the rates set forth by the State Controller at <https://www.oregon.gov/das/Financial/Acctng/Documents/40.10.00.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 Agency, 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 Agency (and with supporting documentation to substantiate charges on the invoice, including a detailed line-item breakdown of labor and ODCs 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 Agency's Contract number
- The Agency'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 ODCs 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.
- Agency will reimburse Consultant for approved travel expenses incurred in accordance with **Exhibit B**, Section C of the Contract, if Agency 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 Agency.
- 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.

Agency 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 Agency within 5 business days of Agency’s request. Agency will not make payment to Consultant under the applicable invoice until Agency has received all requested supporting documentation from Consultant and Agency has approved the invoiced amounts. Any overdue payments to Consultant by Agency 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. Agency 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 Agency’s satisfaction. If Agency, using reasonable discretion, determines that the Services or associated deliverables, or both, are unacceptable, Agency 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 Agency outlining how the deficiency shall be corrected. Consultant shall correct any deficiencies in the Services and Deliverables to Agency’s satisfaction without further compensation. Agency will not unreasonably withhold payment.

G. WITHHOLDING/RETAINAGE

Agency 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 Agency under the Contract. Agency will make final payment of any balance due to Consultant promptly upon verification of completion and acceptance of all Services by Agency and will pay interest as required on retainage.

H. PAYMENT REDUCTION

Agency, or its duly authorized agents, may audit Consultant's fiscal records, including certified payroll and overhead records at any time. If Agency finds previously undisclosed inaccurate or improper costs have been invoiced and paid, Agency will notify Consultant and seek clarification. Agency, 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 Agency 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 Agency project shall charge only for actual productive time spent directly on the project identified in the Contract.

Agency 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 Agency 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 Agency contracts and subcontracts may not be discriminatory against the Agency. It is discriminatory against the Agency if employee (or owner/sole proprietor) compensation (in whatever form or name) is in excess of that being paid for similar non-Agency 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 Agency 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

Agency 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 ODCs.
- 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 Agency 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, Agency 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 Agency 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 Agency.

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 Agency 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.

ODC 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 for Consultant and its approved subconsultants/subcontractors are not physically attached but are on file electronically with Agency. The approved rate schedules are incorporated herein by reference and shall apply for cost estimating and invoicing purposes with the same force and effect as though fully set forth herein. Consultant may obtain copies of

currently approved rate schedules on file with Agency by emailing a request to Agency's Contract Administrator for this Contract.

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 Agency. 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 Agency 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 ODCs; 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 ODCs. Agency 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 ODCs 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.

Notes:

- Vendors for flagging services, testing services or other items that are not personal services are treated as ODCs. The breakdown of costs for ODCs is entered on Expense sheets for prime and subs, with the total expense for each subtask entered on BOC sheet.
- No mark-up is permitted on subconsultants or ODCs.

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 Agency** **Not required by Agency.**
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 Agency** **Not required by Agency.**
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 Agency** **Not required by Agency.**
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 Agency 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 Agency. **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 Agency 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 Agency, Consultant shall either: a) provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency; or b) make such insurance policies, endorsements, self-insurance documents and related insurance documents available for inspection by Agency's representatives at a location in the State of Oregon that is reasonably convenient for Agency'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 Agency, 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 Agency, 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 Agency, 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, Agency 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 Agency, 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 Agency, ODOT, and, in addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

EXHIBIT E – DISADVANTAGED BUSINESS ENTERPRISE (“DBE”) PROVISIONS (Goal)

The DBE program is administered by the ODOT Office of Civil Rights (“OCR”). As the Agency is entering into this Contract under authority granted by ODOT, the DBE Provisions apply the same as if ODOT were the contracting agency.

“Consultant” and “Contractor” are hereinafter referred to as “Contractor”. **See sections d and i for specific documentation and reporting requirements of Contractor.**

- a. Policy and Program Authorities:** ODOT and Contractor agree to abide by and take all necessary and reasonable steps to comply with these DBE Provisions and the following, which are incorporated in this Contract with the same force and effect as though fully set forth in this Contract:
- [ODOT DBE Policy Statement](#)
 - [ODOT DBE Program Plan](#), and
 - Requirements of [Title 49, Code of Federal Regulations, Part 26](#) - Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

ODOT’s DBE Program authorities are set forth in the ODOT DBE Program Plan.

- b. DBE Goals:** ODOT’s overall goal for DBE participation is 11.6% for FHWA funded contracting and 6% (proposed) for FTA funded contracting. For FHWA funded contracting, ODOT may assign DBE Contract goals to increase participation by DBEs. For any Contract with an assigned DBE goal, Contractor shall select a portion of work available under the Contract for DBE participation. Contractor may use DBE subcontractors, suppliers, manufacturers, or Professional Services and Related Services providers to fulfill the assigned DBE Contract goal as long as the DBE is certified in the types of work selected. The assigned DBE Contract goal remains in effect throughout the life of the Contract. Dollar values of participation shall be credited toward meeting the assigned DBE Contract goal based on DBE gross earnings.

- **A separate DBE Contract goal, as set forth on page 1 of the Contract, has been assigned for this procurement.**

- c. Nondiscrimination Requirement:** Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Contract. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as ODOT deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR § 26.13(b)).
- d. Documentation of Proposed Participation:** Contractor shall document sufficient DBE participation to meet an assigned Contract goal or, alternatively, document adequate good faith efforts to do so (see 49 CFR § 26.53). All work committed to a DBE firm toward meeting the assigned participation goal must be performed under a written subcontract. The subcontract must fully describe any work committed to be performed by the DBE and shall include all required flow-down provisions of the primary Contract. Contractor must complete and submit the following documentation, as applicable:
1. **Subcontractor Solicitation and Utilization Report (SSUR)** – submitted with proposal in response to formal and informal Requests for Proposals (RFPs).
 2. **Breakdown of Costs (“BOC”) or (“BOC-NBR”), as applicable** - submitted prior to negotiation and execution of the Contract and each amendment that changes the scope of work and costs under the Contract. The BOC forms and BOC Requirements are available from the Internet at: <https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx>. The BOC or BOC-NBR must clearly list any tasks or subtasks to be performed by subcontractors (DBEs and non-DBEs), each subcontractor’s Federal Tax ID and identification of any required personnel. Include in the Expense Detail tab any required equipment and supplies furnished by the DBE, any of the prime contractor’s resources that will be provided for the DBE’s use, and identification of any second or lower tier subcontractors with the dollar amounts for each.
 3. **Committed DBE Breakdown and Certification Form(s)-AE.** Required for all Contracts with assigned goals and completed prior to Contract execution and any proposed substitution. See submittal instructions on the Instructions tab of the form.

4. **Subcontractor Reporting:** Complete and submit an initial **Paid Summary Report** [form 734-2882] per the instructions on the form.
- e. **Good Faith Efforts:** Contractor shall make good faith efforts, as set forth in 49 CFR § 26.53, Appendix A to Part 26, and ODOT DBE Program Plan, to obtain and support DBE participation that could reasonably be expected to produce and maintain a level of DBE participation sufficient to meet the Contract goal. Good faith efforts are required during solicitation, upon Contract award, and continue throughout the performance of the Contract to maximize DBE participation. The Agency (or local agency when applicable) Project Manager (“APM”) may request Contractor to submit evidence of good faith efforts prior to Contract execution or at any time during the course of the Contract and Contractor shall promptly submit such evidence. Contractor shall use the specific DBEs listed in the Committed DBE Breakdown and Certification form(s) to perform the work and supply the materials for which each is listed unless the contractor obtains ODOT’s prior written consent to terminate and replace a DBE as provided in section j. below. Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBEs as required by this provision.
- f. **Commercially Useful Function (“CUF”):** Contractor is responsible to ensure the DBE performs a commercially useful function on the Contract. A DBE performs a CUF when it is responsible for execution of the work of the Contract/subcontract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. Additional detail regarding CUF requirements and other conditions for counting participation by DBE contractors is set forth in 49CFR § 26.55. The APM will review the proposed DBE participation and may provide written comments as to whether the activities and type of work identified for DBEs complies with program regulations. In those instances where proposed activity and type of work violates applicable regulations, written comments will be offered as to corrective action required in order to comply with the regulations. ODOT may perform a CUF review at any time during the performance of the Contract.
- g. **Changes in Work Committed to DBE:** ODOT will consider the impact on DBE participation in instances where the prime Contract is amended to reduce, or delete work committed to the DBE. In such instances, Contractor shall not be required to replace the work but is encouraged to do so to the maximum extent practicable.
- h. **Prompt Payment and Retainage:** Contractor shall pay each subcontractor for satisfactory performance under its contract no later than 10 calendar days from receipt of each payment Contractor receives from ODOT (or local agency when applicable) for the subcontracted work. In addition, within 10 calendar days of receipt of retainage from ODOT (or local agency when applicable), Contractor shall pay to each subcontractor the retainage that pertains to the work of that subcontractor.
- i. **Reporting Requirements:** Contractor must report payment information for all subcontractors and suppliers used under the Contract throughout the period of performance. Contractor shall complete and submit initial, interim and final Paid Summary Report(s) [form 734-2882] per the instructions included on the form.
- j. **Termination of DBE Notification Requirement:** Contractor shall comply with all requirements set forth in 49 CFR § 26.53 regarding termination of DBEs including, without limitation, documentation of good cause, 5-day notice to the DBE subcontractor and ODOT, DBE responses, ODOT’s prior written consent of DBE termination, and replacement of DBEs. ODOT will provide such written consent only if it agrees the prime contractor has good cause to terminate the DBE in accordance with 49 CFR 26.53(f)(3).
- k. **Remedies:** Contractor’s failure to comply with these DBE Provisions and the requirements of 49 CFR Part 26 may result in one or more of the following administrative actions as deemed appropriate by ODOT: non-compliance documented in ODOT evaluation of Contractor performance, a corrective action plan prepared by Contractor, ODOT (or local agency when applicable) withholding of retainage, suspension of work, reporting of non-compliance to the federal System for Award Management (“SAM”) available at <https://sam.gov/SAM/>, any other remedies provided under the Contract.
- l. **Information/Questions:** The DBE program is administered by the ODOT Office of Civil Rights (“OCR”). Questions related to the DBE Program may be sent via email to ocrinforequest@odot.state.or.us or otherwise directed to: Oregon Department of Transportation Office of Civil Rights 3930 Fairview Industrial Drive SE (MS 23), Salem, OR 97302; Phone: 503-986-4350 Fax: 503-986-6382.
- m. **Directory of Certified Firms:** A searchable database for active certified firms (by NAICS code, NIGP code, ODOT code, certification type, location or project ethnicity goals) is available on line at: <https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp>.

Related Web Sites:

All forms, documents and CFR citations referenced or linked in these DBE Provisions are available on line at:

- **Forms:** <https://www.oregon.gov/ODOT/Business/OCR/Pages/Forms.aspx>
- **Documents:** <https://www.oregon.gov/ODOT/Business/OCR/Pages/Disadvantaged-Business-Enterprise.aspx>
- **49 CFR Part 26:** <https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=34ea04c7ed3d45b0e41f82a5646f1c15&rqn=div5&view=text&node=49:1.0.1.1.20&idno=49>

Acronyms & Definitions Applicable to Exhibit E

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

COMMITTED DBE BREAKDOWN and CERTIFICATION FORM(s)

The signed Committed DBE Breakdown and Certification Form(s) is not physically attached but incorporated into this Contract by this reference with the same force and effect as though fully set forth herein. A copy of the signed Committed DBE Breakdown and Certification Form(s) has been provided to the ODOT Office of Civil Rights (for tracking purposes) prior to Contract execution.

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.

1. 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.

a.1 * Agency's Project Manager (APM) Name:	Bikram Raghubansh
Ph:	503-742-4706
E-mail:	bikramrag@clackamas.us

a.2 Agency's address for invoicing:

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

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

Name:	Jim Peters, PE
Ph:	503-243-3500
E-mail:	Jim.peters@dksassociates.com

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

Name:	DKS Associates, Inc.
Address:	720 SW Washington Street, Suite 500 Portland, Oregon 97205

* Agency 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 Agency.

2. Key Persons

Consultant acknowledges and agrees that Agency 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, Agency, 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 Agency. 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 Agency with his or her expertise, experience, judgment, and personal attention according to any schedule established under the Contract without first obtaining Agency'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 Agency.) Throughout the term of the Contract, Consultant shall provide updated information (if requested by Agency) to demonstrate the continuing qualifications of any staff working on Agency projects, including those approved as Key Persons.

In particular, Agency, through the Contract is engaging the expertise, experience, judgment and personal attention of the following Key Persons:

Name	Role
Nate Schroeder, PE	Project Manager
Dennis Mitchell, PE	Senior Advisor
Pam O'Brien, PE	Signal Timing lead
Kevan Kanten	ITS/Signal Design Lead

3. Reassignment or Transfer of Key Person

In the event Consultant requests that Agency 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.
- Agency 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 Agency and shall not be billed to Agency. 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.