



Contract Review Sheet

CS-5872-24

A&E Standard Prof Svcs Agmnt #: CS-5872-24 Amendment #: _____

Contact: Krista Ulm Department: Community Services Department

Phone #: (503) 373-4447 Date Sent: _____

Title: ARPA - Detroit Marinas Phases 2 and 3

Contractor's Name: Maul Foster & Alongi, Inc.

Term - Date From: February 7, 2024 Expires: December 31, 2026

Original Contract Amount: \$ 221,554.00 Previous Amendments Amount: _____

Current Amendment: \$ _____ - _____ New Contract Total: \$ _____ - _____ Amd% _____

Incoming Funds Federal Funds Reinstatement Retroactive Amendment greater than 25%

Source Selection Method: 20-0255 Invitation to Bid ITB# CS1137-22

Description of Services or Grant Award

The Detroit Marinas Excavation and Resiliency Project consists of the proposed excavation of ~162,000 cubic yards of sediment from below the two commercial marinas at the Detroit Lake Reservoir and the beneficial reuse of this sediment within the lake bed. On August 24, 2023, the Marion County Board of Comissioners approved Resolution 23R-25 to adopt the Alternative 2 project concept, an extension of the existing Osprey Point Peninsula from the Detroit Flats Day Use Area. This action marked the transition between 'Phase 1 Concept Planning' and 'Phase 2 Engineering and Permitting'. Marion County contracted with Maul Foster and Alongi, Inc. for Phase 1 for \$228,603 to conduct community outreach and a cost benefit analysis to recommend a preferred alternative.

Desired BOC Session Date: 2/7/2024 Files submitted in CMS for Approval: 1/17/2024

Agenda Planning Date: 1/25/2024 Printed packets due in Finance: 1/23/2024

Management Update: 1/23/2024 BOC upload / Board Session email: 1/24/2024

BOC Session Presenter(s): _____

FOR FINANCE USE

Date Finance Received: _____ Date Legal Received: _____

Comments: Y

REQUIRED APPROVALS

Finance - Contracts _____ Date _____ Contract Specialist _____ Date _____

Legal Counsel _____ Date _____ Chief Administrative Officer _____ Date _____



MARION COUNTY BOARD OF COMMISSIONERS Board Session Agenda Review Form

February 7, 2024

Meeting date:

Department:

Community Services



Title

Detroit Marinas Excavation and Resiliency Project - Phase 2 Engineering and Permitting Contract

Agenda Planning Date: 1/24/24

Management Update/Work Session Date: 1/23/24

Audio/Visual aids

Time Required 10 minutes

Contact: Lari Rupp

Phone: 503-588-7975

Requested Action:

Consider approval of a contract with Maul Foster & Alongi, Inc for Engineering and Permitting for the Detroit Marinas Excavation and Resiliency Project.

Issue, Description & Background:

The Detroit Marinas Excavation and Resiliency Project consists of the proposed excavation of ~162,000 cubic yards of sediment from below the two commercial marinas at the Detroit Lake Reservoir and the beneficial reuse of this sediment within the lake bed.

On August 24, 2023, the Marion County Board of Commissioners approved Resolution 23R-25 to adopt the Alternative 2 project concept, an extension of the existing Osprey Point Peninsula from the Detroit Flats Day Use Area. This action marked the transition between 'Phase 1 Concept Planning' and 'Phase 2 Engineering and Permitting'. Marion County contracted with Maul Foster and Alongi, Inc. for Phase 1 for \$228,603 to conduct community outreach and a cost benefit analysis to recommend a preferred alternative.

Financial Impacts:

The proposed contract for engineering and permitting services with Maul Foster & Alongi is \$221,554. The project is currently being funded from a combination of federal, state, and local sources.

Impacts to Department & External Agencies:

The City of Detroit is directly impacted by the engineering and construction of an approximately 2,400-foot-long by 120-foot-wide curved peninsula extending southwest of Detroit Flats Day Use Area northeast of Piety Island and Osprey Point.

List of attachments:

Proposed Contract with Maul Foster & Alongi, Inc.

Presenter:

Lari Rupp, Economic Development Specialist

Department Head Signature:

DocuSigned by:

CS4889DD24B041A...

MARION COUNTY
STANDARD PROFESSIONAL SERVICES CONTRACT

(Architectural, Engineering, Land Surveying and Related Services)

THIS PROFESSIONAL SERVICES CONTRACT (the “Contract”) is between Marion County, a political subdivision of the State of Oregon, by and through its Community Services Department, (the “Owner”), and:

Company: Maul Foster & Alongi, Inc.
Address: 3140 NE Broadway Street,
City, State Zip: Portland, **Oregon, 97232**
Phone: 208-664-7895

Contract # **CS-5872-24**
Email: sfrost@maulfoster.com

(the “Consultant”) (collectively Owner and Consultant are referred to as the "Parties"). This Contract is for all Services related to completion of the project more particularly described as follows (the “Project”):

RECITALS

- A. On May 25, 2022, Owner entered into Coronavirus State Fiscal Recovery Fund Memorandum of Understanding BO-4570-22 with the Marion County Board of Commissioners Office for development of a project entitled the Detroit Marinas Excavation and Resiliency Project.
- B. On July 1, 2022, Owner issued Request for Proposals RFP CS1137-22 for Phases 1, 2, and 3 of a project entitled by Owner the Detroit Marinas Excavation and Resiliency Project (the "Project").
- C. On November 4, 2022, Owner entered into ARPA-Detroit Marinas Excavation and Resiliency Project Contract CS-4931-22 with Consultant for Phase 1 Sediment location cost-benefit analysis.
- D. On September 6, 2023, Owner adopted Resolution 23R-25 to approve the Detroit Marinas Excavation and Resiliency Project Preferred Alternative.
- E. Project will look to support the economy of the North Santiam Canyon through the strategic excavation and placement of ~162,000 cubic yards of sediment underneath the existing boat docks of the Detroit and Kane’s Marinas.
- F. Project consists of three (3) phases, which are expected to be performed consecutively. After completion of site analysis and selection, Owner may choose to exercise the option to utilize Consultant’s services for subsequent tasks including engineering, permitting, and construction management support. The Project phases are as follows:
 - a. **Phase 1** – Sediment location cost-benefit analysis and selection
 - b. **Phase 2** – Project Engineering and Permitting- Engineering studies, design, permitting, and bid support.
 - c. **Phase 3** – Sediment Removal and Placement – Construction oversight.

AGREEMENT

This Contract shall become effective on the date that the Contract is fully executed by the Parties and all required Marion County approvals have been obtained (the “Effective Date”). No Services shall be performed prior to the Effective Date. The Contract shall expire, unless otherwise terminated or extended, on December 31, 2026.

Generally, the Services to be performed by Consultant on the Project consist of the following (the “Services”):

Civil and environmental engineering analysis and design; environmental and construction permit consultation and acquisition; natural, archaeological and historic resource studies, investigation and reporting; NEPA compliance; public involvement and communications; preparation of construction plans, specifications and estimates; bid support; construction administrative and observation support.

Owner agrees to pay Consultant a sum not to exceed **\$221,554** for performance of Phase 2 Services, which shall include all allowable expenses, more specifically described in EXHIBIT A, Statement of Work. Progress payments shall be made in accordance with EXHIBIT B, Consultant Compensation.

A. If specified below, Owner’s payments to Contractor under this agreement will be paid in whole or in part with federal funds. If so specified, by signing this agreement, Contractor certifies neither it nor its employees, contractors, subcontractors or subgrantees who will perform the Project activities are currently employed by an agency or department of the federal government. If applicable, Contractor shall comply with Exhibit H: Appendix II To Part 200—Contract Provisions For Non-Federal Entity Contracts Under Federal Awards

In accordance with 2 CFR 200.330, Contractor has been designated:

- Subrecipient
- Contractor/Vendor
- Not applicable – (there are no federal funds tied to the contract)

Assistance Listing #(s) of federal funds to be paid through this Grant: **21.027 American Rescue Plan Act Coronavirus State Fiscal Recovery Fund**

This Contract consists of these introductory provisions and the signature page(s), Section 1-Relationship of the Parties, Section 2-Consultant’s Responsibilities; Representations and Warranties, Section 3- Responsibilities of Owner; Special Contract Provisions, Section 4-General Contract Provisions and the following exhibits attached hereto and incorporated herein by this reference:

- | | |
|----------------------------------------|---------------------------------------|
| EXHIBIT A: Statement of Work | EXHIBIT E: Critical Date Schedule |
| EXHIBIT B: Consultant Compensation | EXHIBIT F: Rate Schedule |
| EXHIBIT C: Insurance Provisions | EXHIBIT G: Assumptions and Exclusions |
| EXHIBIT D: Special Contract Provisions | |

THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES ON THE SUBJECT MATTERS ADDRESSED HEREIN. THE TERMS OF THIS CONTRACT CANNOT BE WAIVED, ALTERED, MODIFIED, SUPPLEMENTED OR AMENDED, IN ANY MANNER

WHATSOEVER, EXCEPT BY WRITTEN INSTRUMENT SIGNED BY THE PARTIES AND CONTAINING ALL REQUIRED APPROVALS. ANY SUCH WAIVER, ALTERATION, MODIFICATION, SUPPLEMENTATION OR AMENDMENT SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, REGARDING THIS CONTRACT EXCEPT AS CONTAINED, INCORPORATED, OR REFERENCED HEREIN. CONSULTANT, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS CONTRACT, UNDERSTANDS THIS CONTRACT, AND AGREES TO BE BOUND BY ALL OF THIS CONTRACT'S TERMS AND CONDITIONS. THIS CONTRACT, AND ANY AMENDMENTS TO IT, MAY BE EXECUTED IN COUNTERPARTS (EACH OF WHICH SHALL BE AN ORIGINAL AND ALL OF WHICH SHALL CONSTITUTE BUT ONE AND THE SAME INSTRUMENT) OR IN MULTIPLE ORIGINALS.

**MARION COUNTY SIGNATURES
BOARD OF COMMISSIONERS:**

Chair Date

Commissioner Date

Commissioner Date

Authorized Signature: _____
Department Director or designee Date

Authorized Signature: _____
Chief Administrative Officer Date

Reviewed by Signature: _____
Marion County Legal Counsel Date

Reviewed by Signature: _____
Marion County Contracts & Procurement Date

SIGNATURE

Authorized Signature: _____
Date

Title: _____

1 RELATIONSHIP OF THE PARTIES

- 1.1** Consultant shall provide the Services for the Project in accordance with the terms and conditions of this Contract. Consultant's performance of Services shall be as a professional consultant to Owner to carry out the Project and to provide the technical documents and supervision to achieve Owner's Project objectives.
- 1.2** In administering this Contract, Owner may retain the services of an independent project manager and other consultants as needed to fulfill Owner's objectives.
- 1.3** Consultant shall provide a list of all sub-consultants which Consultant intends to utilize on the Project (the "Sub-consultants"). This list shall include such information on the qualifications of the Sub-consultants as may be requested by Owner. Owner reserves the right to review the Sub-consultants proposed. Consultant shall not retain a Sub-consultant to which Owner has a reasonable objection.
- 1.4** Consultant acknowledges that this Contract was awarded on the basis of the unique background and abilities of the key personnel of Consultant and Sub-consultants identified by Consultant (collectively, the "Key Personnel" and individually, the "Key Person"). Therefore, Consultant shall make available Key Personnel as identified in its proposal. Consultant shall provide to Owner a list of the proposed Key Personnel to be assigned to the Project. This list shall include such information on the professional background of each Key Person as may be requested by Owner. If any Key Person becomes unavailable to Consultant, the Parties shall mutually agree upon an appropriate replacement. Without prior notice to, and the written consent of, Owner, Consultant shall not: (i) re-assign or transfer any Key Person to other duties or positions so that the Key Person is unable to fully perform his or her responsibilities under the Contract; (ii) allow any Key Person to delegate to anyone his or her performance of any management authority or other responsibility required under the Contract; or (iii) substitute any Key Person. Any of these actions shall constitute a material breach of the Contract. Consultant shall remove any individual or Sub-consultant from the Project if so directed by Owner in writing following discussion with Consultant, provided that Consultant shall have a reasonable time period within which to find a suitable replacement.

2 CONSULTANT'S RESPONSIBILITIES; REPRESENTATIONS AND WARRANTIES

- 2.1** Consultant agrees that:
 - 2.1.1** The phrase "Standard of Care" that is used in this Contract is defined as follows: the same professional skill, care, diligence and standards as other professionals performing similar services under similar conditions (the "Standard of Care");
 - 2.1.2** Consultant shall perform all Services in accordance with the Standard of Care;
 - 2.1.3** Consultant shall prepare, in accordance with the Standard of Care, all drawings, specifications, deliverables and other documents so that they accurately reflect, fully comply with and incorporate all applicable laws, rules, and regulations, and so that they are complete and functional for the purposes intended, except as to any deficiencies which are due to causes beyond the control of Consultant;

- 2.1.4** Consultant shall be responsible for correcting any inconsistencies, errors or omissions in the drawings, specifications, deliverables and other documents prepared by Consultant at no additional cost to Owner;
 - 2.1.5** Owner's review or acceptance of documents shall not be deemed as approval of the adequacy of the drawings, specifications, deliverables, and other documents. Any review or acceptance by Owner will not relieve Consultant of any responsibility for complying with the Standard of Care;
 - 2.1.6** Except as provided in Supplemental Services addressed within Exhibits A and B, Consultant shall, at no additional cost to Owner, render assistance to Owner in resolving problems or other issues relating to the Project design or to specified materials;
 - 2.1.7** During the term of the Contract, Consultant shall obtain, hold, maintain and fully pay for all licenses and permits required by law for Consultant to conduct its business and perform the Services. During the term of the Contract, Owner shall pay for, and Consultant shall obtain, hold and maintain all licenses and permits required for the Project, unless otherwise specified in the Contract. Consultant shall review the Project site and the nature of the Services and advise Owner 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; and
 - 2.1.8** Consultant shall pay all Sub-consultants and other subcontractors as required by Consultant's contracts with those Sub-consultants and subcontractors. Consultant agrees that Owner has no direct or indirect contractual obligation or other legal duty whatsoever to pay the Sub-consultants and other subcontractors of Consultant or otherwise ensure that Consultant makes full and timely payment to those Sub-consultants and subcontractors for services performed on the Project.
- 2.2** Consultant represents and warrants to Owner that:
- 2.2.1** Consultant has the power and authority to enter into and perform this Contract; the persons executing this Contract on behalf of Consultant have the actual authority to bind Consultant to the terms of this Contract;
 - 2.2.2** When executed and delivered, this Contract shall be a valid and binding obligation of Consultant enforceable in accordance with its terms; the provisions of this Contract do not conflict with or result in a default under any agreement or other instrument binding upon Consultant and do not result in a violation of any law, regulation, court decree or court order or other legal process applicable to Consultant;
 - 2.2.3** Consultant shall, at all times during the term of this Contract, be duly licensed to perform the Services, and if there is no licensing requirement for the profession or Services, be duly qualified and competent;
 - 2.2.4** Consultant is an experienced firm having the skill, legal capacity, and professional ability necessary to perform all the Services required under this Contract and to design and administer a project having the scope and complexity of the Project;

- 2.2.5 Consultant has the capabilities and resources necessary to perform Consultant's obligations under this Contract;
 - 2.2.6 Consultant is, or shall become, in a manner consistent with the Standard of Care, familiar with all current laws, rules, and regulations which are applicable to the design and construction of the Project;
 - 2.2.7 All Services shall be performed in accordance with the Standard of Care;
 - 2.2.8 The Project, when completed and if constructed in accordance with the intent established by the drawings, specifications, deliverables and other documents prepared by Consultant pursuant to this Contract, shall be structurally sound and a complete and properly functioning facility suitable for the purposes for which it is intended; and
 - 2.2.9 The published specifications of the "Automated Systems" that Consultant has specified, designated, and planned pursuant to this Contract conform to the Contract requirements. For the purposes of this subsection, "Automated Systems" shall mean any computers, software, firmware, HVAC systems, elevators, electrical systems, fire or life safety systems, security systems and any other electrical, mechanized, or computerized devices serving the Project.
- 2.3 The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided in this Contract or at law.

3 RESPONSIBILITIES OF OWNER; SPECIAL CONTRACT PROVISIONS

Owner's responsibilities under this Contract, and certain additional responsibilities of Consultant, are set forth in Exhibit D-Special Contract Provisions.

4 GENERAL CONTRACT PROVISIONS

- 4.1 **Contract Performance.** Consultant shall at all times perform the Services diligently and without delay and shall punctually fulfill all Contract requirements consistent with the schedule for the performance of Services set forth in Exhibits A and E. Expiration or termination of the Contract shall not extinguish, prejudice, or limit either party's right to enforce this Contract with respect to any default or defect in performance. Time is of the essence in the performance of this Contract.
- 4.2 **Access to Records.** For not less than ten (10) years after the Contract's expiration or termination, Owner, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Consultant and the Sub-consultants which pertain to the Contract for the purpose of making audits, examination, excerpts, and transcripts. If, for any reason, any part of this Contract, any Project-related consultant contract or any Project-related construction contract(s) is involved in litigation, Consultant shall retain all pertinent records for not less than seven (7) years or until all litigation is resolved, whichever is longer. Consultant shall provide Owner and the other entities referenced above with full access to these records in preparation for and during litigation.
- 4.3 **Funds Available and Authorized.** Owner reasonably believes as of the Effective Date that sufficient funds are available and authorized for expenditure to finance the cost of this Contract within Owner's

appropriation or limitation. Consultant understands and agrees that, to the extent that sufficient funds are not available and authorized for expenditure to finance the cost of this Contract, Owner's payment of amounts under this Contract attributable to Services performed after the last day of the current budget cycle is contingent upon Owner budgeting and appropriating funds or other expenditure authority sufficient to allow Owner, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

4.4 Insurance. Consultant shall maintain in effect for the duration of this Contract, or any other time periods required herein, the insurance set forth in Exhibit C-Insurance Provisions.

4.5 Indemnity.

4.5.1 CLAIMS FOR OTHER THAN PROFESSIONAL LIABILITY. CONSULTANT SHALL INDEMNIFY, DEFEND, SAVE, AND HOLD HARMLESS OWNER, AND ITS OFFICERS, AGENTS, AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF WHATSOEVER NATURE RESULTING FROM OR ARISING OUT OF THE ACTS OR OMISSIONS OF CONSULTANT OR ITS SUB-CONSULTANTS, SUBCONTRACTORS, AGENTS, OR EMPLOYEES UNDER THIS CONTRACT.

4.5.2 CLAIMS FOR PROFESSIONAL LIABILITY. CONSULTANT SHALL INDEMNIFY, DEFEND, SAVE, AND HOLD HARMLESS OWNER, AND ITS OFFICERS, AGENTS, AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF WHATSOEVER NATURE ARISING OUT OF THE PROFESSIONALLY NEGLIGENT ACTS, ERRORS OR OMISSIONS OF CONSULTANT OR ITS SUB CONSULTANTS, SUBCONTRACTORS, AGENTS, OR EMPLOYEES IN THE PERFORMANCE OF PROFESSIONAL SERVICES UNDER THIS CONTRACT.

4.5.3 Owner Defense Requirements. Notwithstanding the obligations under Sections 4.5.1 and 4.5.2, neither Consultant nor any attorney engaged by Consultant shall defend any claim in the name of Marion County, nor purport to act as legal representative of Marion County or any of its agencies, without the prior written consent of Marion County Legal Counsel. Owner may, at any time and at its election, assume its own defense and settlement of any claims in the event that: it determines that Consultant is prohibited from defending Marion County; Consultant is not adequately defending Marion County's interests; an important governmental principle is at issue; or it is in the best interests of Marion County to do so, Marion County reserves all rights to pursue any claims it may have against Consultant if Marion County elects to assume its own defense.

4.5.4 Owner's Actions. This Section 4.5 does not include indemnification by Consultant of Owner or their officers, agents, and employees, for the acts or omissions of the Owner or their officers, agents, and employees, whether within the scope of the Contract or otherwise.

4.6 Consultant's Status.

4.6.1 Consultant shall perform all Services as an independent contractor. Although Owner reserves the right to set the delivery schedule for the Services to be performed and to evaluate the quality of

the completed performance, Owner cannot and will not control the means and manner of Consultant's performance. Consultant is responsible for determining the appropriate means and manner of performing the Services. Consultant, Consultant's employees and the Sub-consultants are not "officers, employees, or agents" of Owner, as those terms are used in ORS 30.265.

4.6.2 Consultant shall not have control or charge of, and shall not be responsible for, the acts or omissions of other consultants or contractors under contract with Owner who are performing services or construction work on the Project. However, this provision does not in any way change Consultant's professional responsibility to report to Owner any information, including information on the performance of consultants or contractors outside the control or charge of Consultant, concerning activities or conditions that have or could have an adverse effect on Owner or the Project.

4.6.3 Consultant is not a contributing member of the Public Employee's Retirement System and will be responsible for any federal, state, or other taxes applicable to any compensation or payments paid to Consultant under this Contract. Consultant will not be eligible for any benefits from any payments made under this Contract for federal Social Security, unemployment insurance, or worker's compensation, except as a self-employed individual. If any payment under this Contract is to be charged against federal funds, Consultant certifies that it is not currently employed by the federal government.

4.7 ***Successors & Assignments.*** The provisions of this Contract shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. After the original Contract is executed, Consultant shall not enter into any Sub-consultant agreements for any of the Services or assign or transfer any of its interest in this Contract, without the prior written consent of Owner.

4.8 ***Compliance with Applicable Law.*** Consultant shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Services. Owner's performance under this Contract is conditioned upon Consultant's compliance with the provisions of ORS 279C.505, 279C.515, 279C.520, and 279C.530, which are hereby incorporated by reference. Consultant, the Sub-consultants, if any, and all employers providing Services, labor or materials under this Contract are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017.

4.9 ***Governing Law; Jurisdiction; Venue.*** This Contract shall be governed by and construed 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 Owner and Consultant that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; 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 "Governing Law; Jurisdiction; Venue" section be construed as a waiver by Marion County of any form of 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 THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

4.10 ***Tax Compliance Certification.***

- 4.10.1** By signature on this Contract, the undersigned certifies under penalty of perjury that the undersigned is authorized to act on behalf of Consultant and that Consultant is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws.
- 4.10.2** For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 401.792 to 401.816 (Tax For Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 320 (Amusement Device and Transient Lodging Taxes), 321 (Timber and Forestland Tax), 323 (Cigarettes and Tobacco Products Tax), the elderly rental assistance program under ORS 310.630 to 310.706, and any local taxes administered by the Department of Revenue under ORS 305.620.
- 4.11** *Severability.* The Parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 4.12** *Force Majeure.* Neither party 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 war where such cause was beyond such party's reasonable control. Each party 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.
- 4.13** *Waiver.* The failure of Owner to enforce any provision of this Contract shall not constitute a waiver by Owner of that or any other provision.
- 4.14** *Third Party Beneficiaries.* Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against Owner or Consultant. Consultant's Services under this Contract shall be performed solely for Owner's benefit and no other entity or person shall have any claim against Consultant because of this Contract for the performance or nonperformance of Services hereunder.
- 4.15** *Ownership of Work Product; Confidentiality.*
- 4.15.1** Definitions. As used in this Contract, the following terms have the meanings set forth below:
- 4.15.1.1 "Consultant Intellectual Property" means any intellectual property that is owned by Consultant and developed independently from this Contract and that is applicable to the Services or included in the Work Product.
- 4.15.1.2 "Third Party Intellectual Property" means any intellectual property that is owned by parties other than Owner or Consultant and that is applicable to the Services or included in the Work Product.
- 4.15.1.3 "Work Product" means the Services Consultant delivers or is required to deliver to Owner under this Contract. Work Product includes every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein, and

all copies of plans, specifications, reports, and other materials, whether completed, partially completed or in draft form.

- 4.15.2** Work Product. Except as provided in Sections 4.15.3 and 4.15.4, all Work Product created by Consultant pursuant to this Contract, including derivative works and compilations, and whether or not such Work Product is considered a “work made for hire” or an employment to invent, shall be the exclusive property of Owner. Owner and Consultant agree that such original works of authorship are “work made for hire” of which Owner is the author within the meaning of the United States Copyright Act. To the extent that Owner is not the owner of the intellectual property rights in such Work Product, Consultant hereby irrevocably assigns to Owner any and all of its rights, title, and interest in all original Work Product created pursuant to this Contract, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Owner’s reasonable request, Consultant shall execute such further documents and instruments necessary to fully vest such rights in Owner. Consultant forever waives any and all rights relating to original Work Product created pursuant to this 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.
- 4.15.3** Consultant Intellectual Property. In the event that Consultant Intellectual Property is necessary for the use of any Work Product, Consultant hereby grants to Owner an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use Consultant Intellectual Property, including the right of Owner to authorize contractors, consultants and others to use Consultant Intellectual Property, for the purposes described in this Contract.
- 4.15.4** Third Party Intellectual Property. In the event that Third Party Intellectual Property is necessary for the use of any Work Product, Consultant shall secure on Owner’s behalf and in the name of Owner, an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the Third-Party Intellectual Property, including the right of Owner to authorize contractors, consultants and others to use the Third Party Intellectual Property, for the purposes described in this Contract.
- 4.15.5** Consultant Intellectual Property-Derivative Work. In the event that Work Product created by Consultant under this Contract is a derivative work based on Consultant Intellectual Property or is a compilation that includes Consultant Intellectual Property, Consultant hereby grants to Owner an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the pre-existing elements of Consultant Intellectual Property employed in the Work Product, including the right of Owner to authorize contractors, consultants and others to use the pre-existing elements of Consultant Intellectual Property employed in a Work Product, for the purposes described in this Contract.
- 4.15.6** Third Party Intellectual Property-Derivative Work. In the event that Work Product created by Consultant under this Contract is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Consultant shall secure on Owner’s behalf and in the name of Owner an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the pre-existing elements of the Third Party Intellectual Property employed in a Contract Work Product, including the right to authorize contractors,

consultants and others to use the pre-existing elements of the Third Party Intellectual Property employed in a Contract Work Product, for the purposes described in this Contract.

- 4.15.7** Limited Owner Indemnity. To the extent permitted by the Oregon Constitution, Article XI, Section 7, and by the Oregon Tort Claims Act, ORS 30.260 through 30.397, Consultant shall be indemnified and held harmless by Owner from liability arising out of re-use or alteration of the Work Product by Owner which was not specifically contemplated and agreed to by the Parties in this Contract or under separate contract.
- 4.15.8** Consultant Use of Work Product. Consultant may refer to the Work Product in its brochures or other literature that Consultant utilizes for advertising purposes and, unless otherwise specified, Consultant may use standard line drawings, specifications, and calculations on other, unrelated projects.
- 4.15.9** Confidential Information. Consultant acknowledges that it or its employees, Sub-consultants, subcontractors or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is the confidential information of Owner or Owner's clients. Any and all information provided by Owner and marked confidential, or identified as confidential in a separate writing, that becomes available to Consultant or its employees, Sub-consultants, subcontractors or agents in the performance of this Contract shall be deemed to be confidential information of Owner ("Confidential Information"). Any reports or other documents or items, including software, that result from Consultant's use of the Confidential Information and any Work Product that Owner designates as confidential are deemed Confidential Information. Confidential Information shall be deemed not to include information that: (a) is or becomes (other than by disclosure by Consultant) publicly known; (b) is furnished by Owner to others without restrictions similar to those imposed by this Contract; (c) is rightfully in Consultant's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (d) is obtained from a source other than Owner without the obligation of confidentiality; (e) is disclosed with the written consent of Owner; or (f) is independently developed by employees or agents of Consultant who can be shown to have had no access to the Confidential Information.
- 4.15.10** Non-Disclosure. Consultant agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Consultant uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to Owner under this Contract, and to advise each of its employees, Sub-consultants, subcontractors and agents of their obligations to keep Confidential Information confidential. Consultant shall use its best efforts to assist Owner in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Consultant shall advise Owner immediately in the event Consultant learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and Consultant will at its expense cooperate with Owner in seeking injunctive or other equitable relief in the name of Owner or Consultant against any such person. Consultant agrees that, except as directed by Owner, Consultant will not at any time during or after the term of this Contract disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Contract, and that upon termination of

this Contract or at Owner's request, Consultant will turn over to Owner all documents, papers, and other matter in Consultant's possession that embody Confidential Information.

- 4.15.11** Injunctive Relief. Consultant acknowledges that breach of this Section 4.15, including disclosure of any Confidential Information, will give rise to irreparable injury to Owner that is inadequately compensable in damages. Accordingly, Owner may seek and obtain injunctive relief against the breach or threatened breach of this Section 4.15, in addition to any other legal remedies that may be available. Consultant acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Owner and are reasonable in scope and content.
- 4.15.12** Publicity. Consultant agrees that news releases and other publicity relating to the subject of this Contract will be made only with the prior written consent of Owner.
- 4.15.13** Security. Consultant shall comply with all virus-protection, access control, back-up, password, and other security and other information technology policies of Owner when using, having access to, or creating systems for any of Owner's computers, data, systems, personnel, or other information resources.

4.16 *Termination.*

- 4.16.1** Parties Right to Terminate by Agreement. This Contract may be terminated at any time, in whole or in part, by written mutual consent of the Parties.
- 4.16.2** Owner's Right to Terminate for Convenience. Owner may, at its sole discretion, terminate this Contract, in whole or in part, by written notice to Consultant specifying the termination date of the Contract.
- 4.16.3** Owner's Right to Terminate for Cause. Owner may terminate this Contract immediately, in whole or in part, upon written notice to Consultant, or such later date as Owner may establish in such notice, upon the occurrence of any of the following events:
- 4.16.3.1 In the event the Board of Commissioners of the Owner, in the exercise of its reasonable discretion, reduces, changes, eliminates, or otherwise modifies the funding for any of the services identified, the Consultant agrees to abide by any such decision including termination of service;
 - 4.16.3.2 Federal, state or local laws, regulations or guidelines are modified or interpreted in such a way that either the Services under this Contract are prohibited or Owner is prohibited from paying for such Services from the planned funding source;
 - 4.16.3.3 Consultant no longer holds all licenses or certificates that are required to perform the Services; or
 - 4.16.3.4 Consultant fails to provide Services within the times specified or allowed under this Contract; fails to perform any of the provisions of this Contract; or so fails to perform the Services as to endanger performance of this Contract in accordance with its terms, and after receipt of

written notice from Owner, does not correct such failures within the time that Owner specifies (which shall not be less than 10 calendar days, except in the case of emergency).

4.16.4 Cessation of Services. Upon receiving a notice of termination, and except as otherwise directed in writing by Owner, Consultant shall immediately cease all activities related to the Services or the Project.

4.16.5 Consultant's Right to Terminate for Cause.

4.16.5.1 Consultant may terminate this Contract if Owner fails to pay Consultant pursuant to this Contract, provided that Owner has failed to make such payment to Consultant within fifteen (15) calendar days after receiving written notice from Consultant of such failure.

4.16.5.2 Consultant may terminate this Contract, for reasons other than non-payment, if Owner commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform under the Contract within the time specified, or so fails to perform as to endanger Consultant's performance under this Contract, and such breach, default or failure is not cured within thirty (30) calendar days after delivery of Consultant's notice, or such longer period as Consultant may specify in such notice.

4.16.6 Delivery of Work Product/Retained Remedies of Owner. As directed by Owner, Consultant shall, upon termination, promptly deliver to Owner all documents, information, works in progress and other property that are deliverables or would be deliverables if the Contract had been completed. By Consultant's signature on this Contract, Consultant allows Owner to use Work Product and other property for Owner's intended use. The rights and remedies of Owner provided in this Section 4.16 are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

4.16.7 Payment upon Termination.

4.16.7.1 In the event of termination pursuant to Sections 4.16.1, 4.16.2, 4.16.3.1, 4.16.3.2 or 4.16.5, Consultant's sole remedy shall be a claim for the sum designated for accomplishing the Services multiplied by the percentage of Services completed and accepted by Owner plus Consultant's reasonable Contract close-out costs, less previous amounts paid and any claim(s) which Owner has against Consultant, except in the event of a termination under Section 4.16.3.1, where no payment will be due and payable for Services performed or costs incurred after the last day of the current biennium, consistent with Section 4.3. Within thirty (30) days after termination, Consultant shall submit an itemized invoice for all un-reimbursed Services completed before termination and all Contract close-out costs actually incurred by Consultant. Owner shall not be obligated to pay for any such costs invoiced to and received by Owner later than thirty (30) days after termination. If previous amounts paid to Consultant exceed the amount due to Consultant under this subsection, Consultant shall promptly refund any excess amount upon demand.

4.16.7.2 In the event of termination pursuant to Sections 4.16.3.3 or 4.16.3.4, Owner shall have any remedy available to it in law or equity. Such remedies may be pursued separately, collectively or in any order whatsoever. If it is determined for any reason that Consultant was

not in default under Sections 4.16.3.3 or 4.16.3.4, the rights and obligations of the Parties shall be the same as if the Contract was terminated pursuant to Section 4.16.2.

- 4.17 *Foreign Contractor.*** If Consultant is not domiciled in or registered to do business in the State of Oregon as of the Effective Date, Consultant shall promptly provide to the Oregon Department of Revenue and the Secretary of State's Corporation Division all information required by those agencies relative to this Contract. Consultant shall demonstrate its legal capacity to perform the Services under this Contract in the State of Oregon prior to executing this Contract.
- 4.18 *Notice.*** Except as otherwise expressly provided in this Contract, any notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mail, postage prepaid, to Consultant or Owner at the address or number set forth on Exhibit A, or to such other address or number as either party may provide pursuant to this "Notice" section. Any notice delivered by mail shall be deemed to be given five (5) calendar days after the date of mailing. Any notice delivered by facsimile shall be deemed to be given when the transmitting machine generates a receipt of the transmission. To be effective against Owner, any facsimile communication or notice must be confirmed by telephone notice to Owner's Representative for the Project as indicated in Exhibit A and shall not be deemed to be given until such confirmation is completed. Any notice by personal delivery shall be deemed to be given when actually delivered. Regular, day-to-day communications between the Parties may be transmitted through one of the methods set forth above, in person, by telephone, by e-mail, or by other similar electronic transmission.
- 4.19 *Media Contacts; Confidentiality.*** Consultant shall provide no news release, press release, or any other statement to a member of the news media regarding this Project, without Owner's prior written authorization.
- 4.20 *Conflict of Interest.*** Except with Owner's prior written consent, Consultant shall not engage in any activity, or accept any employment, interest or contribution that would, or would reasonably appear to, compromise Consultant's professional judgment with respect to this Project, including, without limitation, concurrent employment on any project in direct competition with the Project.

Exhibits A through G are attached.

**MARION COUNTY
STANDARD PROFESSIONAL SERVICES CONTRACT**

EXHIBIT A - STATEMENT OF WORK

Owner and Consultant agree that the following Services shall be provided by Consultant for the design and construction administration of the Project. Additional services may be added by amendment.

PROJECT DESCRIPTION: The Project will strategically excavate sediment from underneath the existing boat docks of Detroit Lake Marina and Kane's Marina in the North Santiam Canyon of Marion County in Oregon. Project will design and permit for the construction of a new land feature in the Detroit Lake Reservoir. Project will excavate the marinas and construct the proposed land feature.

Tasks within this Statement of Services are organized as follows:

100-Level Tasks – Project Management – Overall project management, administration and coordination of Consultant Services, meetings, communication, general engineering and related Services.

200-Level Tasks – Phase 2 Services – Engineering studies, design, permitting, and bid support.

300-Level Tasks – Phase 3 Services – Construction administration.

Consultant may provide Services for some or all Project components according to the tasks described herein and as later amended. Consultant's role and the Services provided by Consultant for each Project phase may depend on the availability of Project funding.

PROJECT PHILOSOPHY: Consultant shall perform professional services for the design of the Project to obtain the greatest long-term value for Marion County, and to result in the prudent expenditure of public funds within the constraints of the Project program, context, and budget. In pursuing these goals, Consultant, with Owner's assistance, shall:

- a. Perform Services which are appropriate for the context of the Project and the nature of its function, both present and future.
- b. Avoid expenditures for aesthetic effect which are disproportionate when compared to the additional benefit to the Project as a whole.
- c. Help assure the Project is completed on time and within budget.
- d. Strive to reduce the construction cost of the Project while keeping life-cycle costs low.
- e. Apprise Owner throughout the Project concerning the economic impact of all design decisions.
- f. Document all Project requirements and verify, to Owner's satisfaction, that requirements are included in the Construction Documents.

Representatives of the Parties for this Contract and the Project are:

Consultant: **Stacy Frost, PE, Principal in Charge**

Telephone: 208.664.7895

Owner: **Chris Eppley, Community Services Director**

Telephone: 503.566.3963

The Services that Consultant shall perform for each phase of the Project are described below:

Task 100: Project Management

Consultant Responsibilities:

- 100.1 General Project Administration. General project administration services include contract administration, monthly invoicing, community engagement, maintaining project schedule, and internal project administration.
- 100.2 Project Coordination. Consultant shall prepare progress reports and lead project coordination meetings with Owner and other stakeholders to be determined by Owner.
- 100.3 Communications and Coordination with Permitting Agencies. Consultant will attend up to 5 site visits/meetings with permitting agencies. Consultant will prepare presentation materials and/or handouts as directed.

Owner Responsibilities:

- Administer project funding.

Assumptions:

- Submit documents electronically, unless directed otherwise.
- Task 1 includes biweekly meetings assumed at 1 hour each of project management services.
- Should Owner request additional meetings or require an extended schedule, project management budget will be increased accordingly.

Deliverables:

- Monthly invoices – electronic copy
- Meeting agenda and minutes – electronic copy

PHASE 2 – PROJECT ENGINEERING AND PERMITTING

Task 200: Phase 2 Services

Task 200.1 – Permitting Support

Consultant Responsibilities:

- 200.1.1. Section 404 and Section 10 Permits – U.S. Army Corps of Engineers (USACE), including:
 - Section 401 Water Quality Certification – Oregon Department of Environmental Quality (DEQ),
 - Endangered Species Act Consultation (informal or formal) – National Marine Fisheries Service and U.S. Fish and Wildlife Service,
 - National Historic Preservation Act Section 106 Compliance – Oregon State Historic Preservation Office and Tribes,
 - Section 408 Review – USACE.
- 200.1.2. Removal/Fill Permit – Oregon Department of State Lands (DSL).

- 200.1.3. Prepare a Joint Permit Application, permit application narrative, and permit drawings. Prepare a biological evaluation describing the endangered species potentially present and evaluating potential impacts on these endangered species resulting from the work. Prepare a functionality assessment to be included with the application to DSL.
- 200.1.4. Perform a topographic survey and utility location of the two marinas and the sediment placement location. This will refine the volumes proposed for excavation and placement (to be included in the permit applications) to avoid the need for revision to the permit application later and be used in developing the bid documents.
- 200.1.5. Prepare the planting design plans for the Joint Permit Application.
- 200.1.6. Revise the grading design for the two marinas and the sediment placement location based on the updated topographic survey and input provided by the U.S. Forest Service during stakeholder outreach.
- 200.1.7. Review the previous archeological survey performed for the marinas, perform a review of the potential to encounter cultural resources along the haul path to and within the sediment placement footprint (including a site survey if indicated), and prepare an inadvertent discovery plan should artifacts and/or cultural resources be encountered during construction.
- 200.1.8. SWPP Permit and Permit Drawings, if necessary.

Owner Responsibilities:

- Provide input, review, signature, and approval of this section.
- Provide funding administration services, if any.

Assumptions:

- The scope of work assumes that Section 408 can be completed at the USACE district level.
- Owner is the generator of any solid or hazardous waste or materials, as defined under the federal Resource Conservation and Recovery Act and state hazardous/dangerous waste regulations.
- Payment of any agency application, permit, or plan check fees is not included in this scope of work.
- Wetland delineation is not included in this scope of work.
- Biweekly (once per two weeks) meetings with Owner during the permitting support phase are assumed at 1 hour each for six months.

Deliverables:

- Permitting schedule and strategic permitting plan.
- Section 404 and Section 10 Permits
- Joint Permit Application with permit application narrative, and permit drawings.
- SWPP Permit and Permit Drawings, if necessary.

Task 200.2 – Pre-Final 90% Design

Consultant Responsibilities:

- 200.2.1. Pre-final design drawings including:
 - Existing Conditions Plans, including but not limited to existing utilities,
 - Erosion and Sediment Control Plans,
 - Access and Staging Plans,
 - Sediment Excavation Plans and Cross Sections,

- Sediment Placement Plans and Cross Sections,
 - Habitat Entrenchment Plans and Details,
 - Planting Plans.
- 200.2.2. Pre-final technical specifications including:
- Temporary Erosion and Sediment Control,
 - Environmental Protection,
 - Mobilization and Site Preparation,
 - Excavation,
 - Sediment Placement,
 - Planting.
- 200.2.3 Water quality monitoring plan.
- 200.2.4 Site specific safe work plan.
- 200.2.5 Updated Project Critical Path Schedule.
- 200.2.6 Updated Engineer's Opinion of Probable Construction Costs.
- 200.2.7 Construction quality assurance plan.
- 200.2.8 Consultant-led 1-day design presentation.

Owner Responsibilities:

- Provide input, review, and approval of this section.
- Provide funding administration services, if any.
- Provide access to facilities and records.

Assumptions:

- All technical specifications will be per Construction Specification Institute format.
- Structural, geotechnical, mechanical, or electrical engineering services are not included in this scope of work.
- Design of retaining walls or structural calculations are not included in this phase but could potentially be included in a future project phase, contingent on the availability of project funding.
- Design of temporary traffic signals or appurtenances is not included in this scope of work.
- Any storm drainage redesign or recheck of calculations due to the contractor's failure to construct the facilities per the plan design and specifications is not included in this scope of work.
- Biweekly (once per two weeks) meetings with Owner during the Pre-Final Design phase are assumed at 1 hour each for three months.

Deliverables:

- Pre-Final Design Drawing Package
- Pre-Final Design Specification Package
- Water Quality Monitoring Plan
- Site Specific Safe Work Plan
- Updated Project Critical Path Schedule
- Updated Engineer's Opinion of Probable Construction Cost
- Construction Quality Assurance Plan

Task 200.3 – Final Design/Bid Documents

Consultant Responsibilities:

- 200.3.1 Incorporate Owner comments on the pre-final design documents and any other relevant permitting requirements received following preparation of the pre-final design into the final design documents. Additional document review meetings will occur at Owner's discretion.
- 200.3.2 Assist Owner's procurement staff with prepare the invitation to bid document and assemble the combined bid documents.

Owner Responsibilities:

- Provide input, review, and approval of this section.
- Provide funding administration services, if any.
- Final Design Acceptance

Assumptions:

- All technical specifications will be per Construction Specification Institute format.
- Structural, geotechnical, mechanical, or electrical engineering services are not included in this scope of work.
- Design of retaining walls or structural calculations are not included in this phase but could potentially be included in a future project phase, contingent on the availability of project funding.
- Design of temporary traffic signals or appurtenances is not included in this scope of work.
- Any storm drainage redesign or recheck of calculations due to the contractor's failure to construct the facilities per the plan design and specifications is not included in this scope of work.
- Biweekly (once per two weeks) meetings with Owner during the Final Design/Bid Documents phase are assumed at 1 hour each for two months.

Deliverables:

- Final design documents – a single construction plan set and a single set of specifications; stamped PDF and two copies of full-size drawings
- Draft Invitation to Bid document
- Combined bid documents
- Final Engineer's Opinion of Probable Construction Cost

Task 200.4 – Bid Phase Assistance

Consultant Responsibilities:

- 200.4.1 Reviewing and providing responses to contractor bid questions.
- 200.4.2 Attendance at up to two (2) pre-bid site conferences/site walks.
- 200.4.3 Review of contractor bid submittals.
- 200.4.4 Prepare bid addenda, as needed.

Owner Responsibilities:

- Review and comment on draft documents.
- Participate and provide meeting location for pre bid site conferences/site walks.
- Posting the Invitations to Bid to Oregon Buys.

Assumptions:

- Consultant's project manager shall assist owner with communications for prospective bidders and suppliers with questions regarding the bid documents and bid process.
- Consultant shall assist Owner with recording all questions and responses in writing and deliver the resulting written document to Owner within five (5) days.
- Biweekly (once per two weeks) meetings with Owner during the Bid Phase Assistance phase are assumed at 1 hour each for one month.

Deliverables:

- Written log of, questions, and answers.
- Bid analysis memo, including Bid Price Analysis, and an Engineer's Recommendation of Award.

**MARION COUNTY
STANDARD PROFESSIONAL SERVICES CONTRACT**

EXHIBIT B - CONSULTANT COMPENSATION

B.1 BASIS OF COMPENSATION

B.1.01 Owner shall compensate Consultant for the performance of Services set forth in Exhibit A, as follows:

The maximum, not to exceed total amount payable under this Contract is \$221,554 for the combination of Basic Services, Supplemental Services, and Reimbursable Expenses.

Consultant shall perform the Services for: a maximum, not-to-exceed price of \$221,554.00

Although individual task budgets may be exceeded, the total authorized budget amount shall not be exceeded without written authorization from Owner. For time and materials tasks, compensation will be according to Maul Foster & Alongi’s standard billing rates updated annually in January.

| TASK | Cost | Type |
|-----------------------------------------|-------------------|------|
| Task 200.1 – Permitting Support | \$ 150,887 | NTE |
| Task 200.2 – Pre-Final Design | \$ 38,681 | NTE |
| Task 200.3 – Final Design/Bid Documents | \$ 16,865 | NTE |
| Task 200.4 – Bid Phase Assistance | \$ 15,121 | NTE |
| Total | \$ 221,554 | |

B.1.02 Payments for Services and Reimbursable Expenses shall be made monthly, following Owner’s review and approval of detailed invoices submitted by Consultant and acceptance of the Services or approval of Reimbursable Expenses by Owner. Payment for all Services performed and for Reimbursable Expenses shall not exceed the amounts indicated in Section B.1.03, below. Owner shall make payments only after Owner’s receipt and approval of (i) Consultant’s detailed monthly invoice as described in Section B.1.07, and (ii) all reports, designs, certificates, and documents covered by the invoice. Payments are subject to the provisions of ORS 293.462.

B.1.03 Consultant shall not submit invoices for, and Owner will not pay, any amount in excess of the maximum, not to exceed amount payable under this Contract set forth in Section B.1.01. If this amount is increased by Contract amendment, the amendment must be effective before Consultant performs Services subject to the amendment. Consultant shall notify Owner’s Representative identified in this Contract in writing of the expiration of the Contract, thirty (30) days prior to such expiration. No payment will be made for any Services performed prior to the Effective Date or after the expiration date of the Contract.

- B.1.04 Consultant shall submit monthly invoices for Services performed. To be processed for payment by Owner, the invoices shall include the following basic information:
- a. The correct name of Owner's authorized representative
 - b. Invoice date
 - c. Date range during which the Services being invoiced for were provided
 - d. The last invoice submitted on the Project must be clearly labeled "Final Invoice"
 - e. Original Contract total, not to exceed amount broken out by: Basic Services, Supplemental Services released to date by line item, and Reimbursable Expenses separated by two categories of Travel Expenses and General Reimbursables
 - f. Statement of changes to the original total, not to exceed amount by amendment(s) and broken out in the same way as in item F, showing the revised Contract amounts
 - g. Paid to date amounts showing the amounts submitted for prior to the current invoice (regardless of payment status) and broken out the same way as in item F
 - h. Amounts being invoiced for in the current invoice and broken out the same way as in item F, with a roll up of a "Total Amount Billed For This Invoice" line item amount
 - i. Balances Remaining after receipt of payment for the current invoice broken out the same way as in item F

Consultant shall describe all Services performed with particularity and by whom it was performed and shall itemize and explain all expenses for which reimbursement is claimed. Reimbursable Expenses shall be broken out into to line-item categories, 1) Travel Expenses and 2) General Reimbursable Expenses. Invoices for Basic Services under a specific Phase shall be for completed Basic Services only and shall indicate the percentage of the total Basic Services for that Phase that the amount invoiced represents. Invoice amounts for authorized fixed price Supplemental Services shall indicate the Supplemental Service, its contract reference number, the total amount of the fixed price Supplemental Service, and the total percentage and related dollar amount of the fixed price Supplemental Service completed by the end of the current invoice period, less the total dollar amount previously billed for, with the balance representing the total amount being currently billed for. Invoices for authorized Supplemental Services based on a not to exceed amount shall set forth the number of hours worked by Consultant's personnel on the identified Service, describe the Services performed by each such personnel in detail on a daily basis, and set forth the rate of compensation for each of such personnel as set forth in EXHIBIT F.

Consultant shall send invoices to Owner's Representative identified in this Contract, using the following address:

Marion County Community Services Department
Attn: Chris Eppley
555 Court Street NE Ste 3120
Salem, OR 97301

Consultant shall not indicate or invoice for any past due amounts in the current invoice. All such notifications of a past due amount must be handled by a separate Statement of Account.

Owner shall have the right to reject any invoice which does not have the proper information as required by this section without incurring penalty liabilities for late payment.

- B.1.05 Owner and Consultant agree in accordance with the terms and conditions of this Contract that:
- a. If the scope of the Project or the Services are changed materially, Consultant shall request in writing an amendment to the Contract before additional Services are provided and before compensation is adjusted. All legally required approvals must be obtained for any Contract amendment before the amendment is effective and before Services may be performed or payment made under the amendment.
 - b. Consultant's fee for preparing routine change orders adding or deleting Services from the Project shall be included in the maximum not-to-exceed amount for Basic Services stated in Section B.1.03.
 - c. Upon Owner's request and without additional compensation, Consultant shall make such revisions to completed Contract Documents as are necessary to correct errors or omissions appearing therein, in accordance with the standard of care described in Section 2.1.1 of Consultant's Responsibilities; Representations and Warranties.

B.2 REIMBURSABLE EXPENSES

B.2.01 Reimbursable Expenses are in addition to compensation for Services and shall not exceed the maximum amount stated in Section B.1.05 without prior authorization by Owner. This amount is separated into two categories, Travel Expenses and General Reimbursable Expenses, as outlined below. Reimbursable Expenses include actual, allowable and reasonable expenditures made by Consultant and Consultant's employees in performing the Services required in Exhibit A. Reimbursable Expenses must be evidenced by copies of actual third-party invoices or receipts delivered to Owner to qualify for reimbursement and are limited to the types of actual expenses listed below.

- a. General Reimbursable Expenses consist of:
 - i. Long distance communications.
 - ii. Reproductions, postage and handling of drawings and specifications and other documents, excluding reproductions of drawings, specifications and other documents used by Consultant and Consultant's subconsultants.
 - iii. Data processing and photographic production techniques when used in connection with Supplemental Services.
 - iv. Third-party models and mockups requested by Owner.
 - v. The printing of master or reproducible sets of plans and project manuals including specifications.
 - vi. Plan check fees.
- b. Travel Expenses:

All travel shall be allowed only when the travel is essential to the normal discharge of Consultant's responsibilities under the Contract. All travel shall be conducted in the most efficient and cost-effective manner resulting in the best value to the Owner. The travel must comply with all the requirements set forth in this section and must be for official Marion

County business only. Personal expenses shall not be authorized at any time. All expenses are included in the total maximum Contract amount stated in Section B.1.01.

Current approved rates are as follows:

- i. Mileage. Mileage for travel in a private automobile, while Consultant is acting within the course and scope of his/her duties under this Contract and driving over the most direct and usually traveled route, will be reimbursed at a rate of 62.5 cents per mile. To qualify for mileage reimbursement, Consultant must hold a valid, current driver's license for the class of vehicle to be driven and carry personal automobile liability insurance in amounts not less than those required by (i) the Oregon Financial Responsibility Law (ORS 806.060) or (ii) the jurisdiction in which the vehicle is being operated, whichever is greater. No mileage reimbursement will be paid for the use of motorcycles or mopeds.
- ii. Meals. Receipts are required for reimbursement.

Owner will not pay any mark up over actual allowable reimbursement costs. Any costs associated with recordkeeping or labor to create reproductions of receipts is considered indirect overhead and therefore part of Consultant's Professional Hourly Rates.

**MARION COUNTY
STANDARD PROFESSIONAL SERVICES CONTRACT**

EXHIBIT C - INSURANCE PROVISIONS

A. **REQUIRED INSURANCE.** Contractor shall obtain at Contractor's expense the insurance specified in this section prior to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract and all warranty periods. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in Oregon and that are acceptable to Owner:

i. **WORKERS COMPENSATION.** All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.

ii. **PROFESSIONAL LIABILITY.** Covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract. Contractor shall provide proof of insurance of not less than the following amounts as determined by the Owner:

- Required by Owner Not required by Owner.
- \$1,000,000 Per occurrence limit for any single claimant; and
- \$2,000,000 Per occurrence limit for multiple claimants
- Exclusion Approved by Risk Manager

iii. **CYBER LIABILITY.** Covering network security, breach of data, and coverage for regulatory fines and fees imposed against Owner due to failures in products and services provided under this Contract. Cyber Liability coverage must include errors, omissions, negligent acts, denial of service, media liability (including software copyright), dishonesty, fraudulent or criminal acts by a person or persons whether identified or not, intellectual property infringement, computer system attacks, unauthorized access and use of computer system, regulatory actions, and contractual liability.

- Required by Owner Not required by Owner.
- \$2,000,000 Per occurrence limit for any single claimant; and
- \$5,000,000 Per occurrence limit for multiple claimants
- Exclusion Approved by Information Technology Director and Risk Manager

iv. **COMMERCIAL GENERAL LIABILITY.** Covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to the Owner. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence basis. Contractor shall provide proof of insurance of not less than the following amounts as determined by the Owner:

- Required by Owner Not required by Owner.
- Minimum Limits:
- \$1,000,000 Per occurrence limit for any single claimant; and

- \$2,000,000 Per occurrence limit for multiple claimants
- Exclusion Approved by Risk Manager
- \$500,000 Per occurrence limit for any single claimant
- \$1,000,000 Per occurrence limit for multiple claimant

v. AUTOMOBILE LIABILITY INSURANCE. Covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for “Commercial General Liability” and “Automobile Liability”). Contractor shall provide proof of insurance of not less than the following amounts as determined by the Owner:

- Required by Owner Not required by Owner.

Minimum Limits:

- Oregon Financial Responsibility Law, ORS 806.060 (\$25,000 property damage/\$50,000 bodily injury \$5,000 personal injury).
- \$500,000 Per occurrence limit for any single claimant; and
- \$1,000,000 Per occurrence limit for multiple claimants
- Exclusion Approved by Risk Manager

B. ADDITIONAL INSURED. The Commercial General Liability insurance required under this Contract shall include Marion County, its officers, employees, and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

C. NOTICE OF CANCELLATION OR CHANGE. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without 30 days written notice from this Contractor or its insurer(s) to Owner. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract by Owner.

D. CERTIFICATE(S) OF INSURANCE. Contractor shall provide to Owner Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Contractor shall pay for all deductibles, self-insured retention, and self-insurance, if any.

**MARION COUNTY
STANDARD PROFESSIONAL SERVICES CONTRACT**

EXHIBIT D - SPECIAL CONTRACT PROVISIONS

D.1 RESPONSIBILITIES OF OWNER

- D.1.01 Owner's Project budget shall include contingencies for design, bidding, changes in the Work during construction, and other costs described below.
- D.1.02 Owner, at Owner's sole option, may retain an inspector to inspect the Project in order to protect Owner's interests. The costs of the inspector are to be paid by Owner and the inspector shall serve at the pleasure of Owner. When retained by Owner, the inspector's duties are not to be interpreted as conflicting with the duties of Consultant or relieving Consultant of any responsibility or duty incurred under this Contract, nor may the inspector act as Consultant's agent.
- D.1.03 Owner shall furnish to Consultant a Hazardous Material Survey, and any subsequent testing and/or abatement as may be required.
- D.1.04 Owner shall furnish to Consultant structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents.
- D.1.05 Owner shall be responsible for payment of all plan check fees, review fees, permit fees, taxes, development charges, or any other costs related to obtaining governing bodies' approval for construction of the Project.

D.2 PROJECT RESPONSIBILITIES

- D.2.01 Consultant shall prepare a schedule of its activities through all phases of the Project. Consultant shall schedule and prepare agendas for all meetings which involve Consultant's Services. Consultant shall chair such meetings and shall record and distribute minutes, in a format and level of detail acceptable to Owner, of decisions and actions to attendees.
- D.2.02 Consultant shall confirm firsthand, through site investigations of the observable circumstances and existing conditions, the critical issues that may impact design criteria and shall not rely solely on furnished As Built documents. Consultant shall be liable, at Owner's discretion, for any cost change impacts as a result of using inaccurate As Built drawings which, if used solely for the design process without confirmation, create conflicts on site.
- D.2.03 The "maximum allowable construction cost" shall be the total cost or estimated cost to Owner of all elements of the Project designed or specified by Consultant in the Construction Documents Phase Statement of Probable Construction Costs prepared pursuant to Section A.4. PHASE 4 of Exhibit A, excluding equipment supplied by Owner, and delineated in outline form according to the industry standard CSI 16 divisions of the Work, excluding equipment supplied by Owner. Construction cost does not include the compensation of Consultant and Sub-consultants, the cost of the land, rights of way, or other costs which are the responsibility of Owner. If the fixed limit of the maximum allowable construction cost is exceeded by the lowest bona fide bid for construction of the Project, Owner, at its discretion, shall (i) give written approval of an increase in such fixed limit, (ii) authorize

re-bidding of the Project within a reasonable time, (iii) if the Project is abandoned, terminate the bid process, or (iv) cooperate in revising the Project scope and quality as required to reduce the construction cost. In the case of (iv), Consultant, without additional charge, shall modify the drawings and specifications as necessary to comply with the fixed limit. The providing of such Service shall be the limit of Consultant's responsibility arising from the establishment of such fixed limit, and having done so, Consultant shall be entitled to compensation for all Services performed in accordance with this Contract, whether or not the Construction Phase is commenced.

**MARION COUNTY
STANDARD PROFESSIONAL SERVICES CONTRACT**

EXHIBIT E - CRITICAL DATE SCHEDULE

| | |
|----------------------------------------|----------|
| Task 200.1: Permitting Support | 6 Months |
| Task 200.2: Pre-Final Design | 3 Months |
| Task 200.3: Final Design/Bid Documents | 2 Months |
| Task 200.4: Bid Phase Assistance | 2 Months |
| | |
| | |
| | |
| | |

Rates are for calendar year 2024 (updated annually).

**MARION COUNTY
STANDARD PROFESSIONAL SERVICES CONTRACT**

EXHIBIT F - RATE SCHEDULE

| | Max Hourly Rate |
|-----------------------------------|-----------------|
| Principal Engineer | \$280 |
| Senior Engineer | \$250 |
| Project Engineer | \$205 |
| Project Communications Specialist | \$195 |
| Project Planner | \$190 |
| Staff Engineer | \$165 |
| Staff Communications Specialist | \$160 |
| Staff Planner | \$160 |
| CAD Drafter | \$140 |
| Administrative Support | \$135 |
| | |
| | |
| | |
| | |
| | |

**MARION COUNTY
STANDARD PROFESSIONAL SERVICES CONTRACT**

EXHIBIT G - ASSUMPTIONS AND EXCLUSIONS

- Consultant shall be entitled to rely on the accuracy and completeness of the information provided by Owner, Owner's consultants and Contractors, information from public records, and information ordinarily or customarily furnished by others, including, but not limited to specialty Contractors, manufacturers, suppliers, and publishers of technical standards. This assumption applies to this task and subsequent tasks.
- Planning criteria will not be changed once established. Changing planning criteria may result in rework which can be completed as an additional service.
- Consultant's opinions of probable cost represent Consultant's judgment as an experienced and qualified design professional. Since Consultant has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Owner's and other contractor's methods of determining prices, or over competitive bidding or market conditions, the Consultant does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable cost prepared by the Consultant.