

# Contract Review Sheet

**PW-5387-23**

 A&E Standard Prof Svcs Agmnt #: PW-5387-23 Amendment #: \_\_\_\_\_

 Contact: Alicia Henry Department: Public Works Department

 Phone #: 503-373-4320 Date Sent: Thursday, July 6, 2023

 Title: Santiam Meadows

 Contractor's Name: AKS Engineering & Forestry, LLC

 Term - Date From: May 1, 2023 Expires: May 1, 2024

 Original Contract Amount: \$106,837.80 Previous Amendments Amount: \$0.00

 Current Amendment: \$0.00 New Contract Total: \$0.00 Amd% 0%
 Incoming Funds   
  Federal Funds   
  Reinstatement   
  Retroactive   
  Amendment greater than 25%

 Source Selection Method: 20-0260 Request for Proposal RFP# 1301

### Description of Services or Grant Award

Professional engineering and related services for the development of "Santiam Meadows", a 58-lot single family and duplex subdivision of affordable owner-occupied housing in Mill City Oregon. Land-use planning and permitting, Land surveying, Environmental studies and permitting, including the HUD NEPA Environmental Assessment process., Traffic engineering, All aspects of subdivision design, Pump station design, Structural design, Highway design, and Landscape design.

 Desired BOC Session Date: 8/2/2023 BOC Planning Date: 7/20/2023


 Files submitted in CMS: 7/13/2023 Printed packet & copies due in Finance: 7/18/2023

 BOC Session Presenter(s) Brian Nicholas, Chris Einmo
**FOR FINANCE USE**


 Date Finance Received: 7/13/2023 Date Legal Received: \_\_\_\_\_

 Comments: Y
**REQUIRED APPROVALS**

 DocuSigned by:  
  
C5B2E3DF257E444...  
7/17/2023  
 Finance - Contracts Date

 DocuSigned by:  
  
DA7EBDCC1E7B47D...  
7/21/2023  
 Contract Specialist Date

 DocuSigned by:  
  
D0CFEC5B04B9E483...  
7/21/2023  
 Legal Counsel Date

 DocuSigned by:  
  
BC16351248DE4EE...  
7/21/2023  
 Chief Administrative Officer Date



## MARION COUNTY BOARD OF COMMISSIONERS

## Board Session Agenda Review Form

Meeting date: Wednesday, August 2, 2023 at 9:00 am

Department: Public Works

Agenda Planning Date: July 19, 2023

Time required: 10 min.

 Audio/Visual aids

Contact: Chris Einmo

Phone: x4119

Department Head Signature:

DocuSigned by:

Brian Nicholas

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**TITLE**

Contract PW-5387-23; Santiam Meadows - Consultant Services Agreement for Engineering and Related Services

**Issue, Description & Background**

Marion County anticipates award of state or federal funding from various sources for the development and construction of affordable housing to serve communities impacted by the 2020 Beachie Creek and Lionshead wildfires. To facilitate the development project, Marion County purchased two parcels located within and adjacent to Mill City, Oregon, as designated by the following tax lot numbers: 093E30C000601 and 093E30CA01400. The County intends to work with Oregon Housing and Community Services (OHCS) with the goal of constructing a 58-lot single family and multifamily subdivision currently named "Santiam Meadows" to provide workforce and wildfire recovery housing.

In October 2022, AKS Engineering & Forestry prepared a Preliminary Site Development Analysis Report for the Santiam Meadows. The intent of this analysis was to prepare a pathway for Marion County and the Marion County Housing Authority to develop the property under HUD LMI (Low-Moderate Income) affordability guidelines. Proceeds from the sale of these properties might go to the Marion County Housing Authority to fund other affordable housing initiatives.

A request for proposals for PW1301-23 was issued in April, 2023, and AKS Engineering & Forestry was selected as the qualified engineering consultant to provide engineering design, land use planning, environmental permitting and related services necessary to deliver the project. This initial contract focuses on field investigations and the preparation of reports needed to document compliance with the National Environmental Policy Act (NEPA).

**Financial Impacts:**

The value of this contract is \$106,837.80, which is a budgeted expense in the current year Community Services Department budget. These funds will serve as local match for any federal grants that may be obtained during future project phases.

**Impacts to Department & External Agencies**

Public Works will provide project management and oversight. No impacts to external agencies are anticipated as part of this project.

**Options for Consideration:**

1. Approve Contract PW-5387-23 with AKS Engineering & Forestry.
2. Take no action at this time.

**Recommendation:**

Staff recommends the Board approve Contract PW-5387-23, enabling environmental compliance documentation work to begin.

**List of attachments:**

Contract PW-5387-23



MARION COUNTY BOARD OF COMMISSIONERS

## Board Session Agenda Review Form

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Presenter:

Chris Einmo; Brian Nicholas

*Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)*

Copies to:

Chris Eppley, ceppley@co.marion.or.us  
Debbie Gregg, dgregg@co.marion.or.us  
Scott Norris, Legal Counsel, snorris@co.marion.or.us  
Alicia Henry, Public Works, ahenry@co.marion.or.us

**MARION COUNTY  
ENGINEERING AND RELATED SERVICES CONTRACT  
Contract Number: PW-5387-23**

<b>Project Title: Santiam Meadows</b>	<b>County Project Number: PW-5387-23</b>
<b>Project Location: Mill City, OR</b>	<b>Associated RFP Number: PW1301-23</b>
<b>Total Not-to-Exceed (“NTE”) amount for this Contract.</b> This total includes: a) all allowable costs and expenses, profit, and fixed-fee amount, if any; and b) \$0 for contingency tasks, each of which must be separately authorized by County.	<b>\$ 106,837.80</b>

This Contract is between Marion County, hereafter called “County” and AKS Engineering & Forestry, LLC, a corporation, hereafter called “Consultant.” County and Consultant together are also referred to as “Parties” and individually referred to as “Party.” The primary contacts for this Contract are identified in Exhibit F, Contact Information and Key Persons.

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 Marion County Public Contracting Rules section 30-0110); and
- d) “Related Services” has the meaning provided in Marion County Public Contracting Rules section 10-0110.

If specified below, county’s payments to Consultant under this agreement will be paid in whole or in part with federal funds. If so specified, by signing this agreement, Consultant 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, Consultant shall comply with Exhibit G: Appendix II To Part 200—Contract Provisions For Non-Federal Entity Contracts Under Federal Awards

In accordance with 2 CFR 200.331, Consultant has been designated:

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

Assistance Listing Number (ALN) #(s): of federal funds to be paid through this Grant: N/A.

**TERMS AND CONDITIONS**

- 1. Contract Effective Date and Term.** This Contract is effective on the date it has been signed by the parties and all required approvals have been obtained. No work or compensation under the Contract is authorized until notice to proceed has been issued in writing (email acceptable) by the County. Unless otherwise amended or terminated, this Contract shall expire December 31, 2025.
- 2. Statement of Work.** Consultant shall perform all Services and deliver all deliverables as described in Exhibit A, Statement of Work (the “Services”). The required schedule for performance under the Contract is specified in the Statement of Work.
- 3. Compensation.** The maximum NTE amount, which includes the total of all allowable and reimbursable costs and expenses (and contingency tasks, if any) payable to Consultant under this Contract, is set forth in the table above and detailed further in Exhibit B, Compensation. County reserves the right, in its sole discretion, to amend this Contract to

increase this amount for additional Services within the scope of the procurement. The payment methodology and basis for payment to Consultant is described in Exhibit B, Compensation.

**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 – Special Terms and Conditions (Reserved)
- Exhibit E – Errors & Omissions (“E&O”) Claims Process
- Exhibit F – Contact Information and Key Persons
- Exhibit G – Required Federal Terms and Conditions
- Exhibit H – Consultant’s Hourly Rates

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

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

- a. Consultant, by its signature on the Contract, certifies that it is an independent contractor as defined in ORS 670.600 and as described in IRS Publication 1779, which is available at the following link: <https://www.irs.gov/pub/irs-pdf/p1779.pdf>. Consultant shall perform all required Services as an independent contractor. Although County reserves the right (i) to determine the delivery schedule (as mutually acceptable to County and Consultant) for the Services to be performed and (ii) to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Consultant's performance. Consultant is responsible for determining the appropriate means and manner of performing the Services. Consultant is not an "officer", "employee", or "agent" of County.
- b. Consultant shall be responsible for all Federal or State of Oregon (“State”) taxes applicable to compensation or payments paid to Consultant under the Contract and, unless Consultant is subject to backup withholding, County will not withhold from such compensation or payments any amount(s) to cover Consultant's Federal or State tax obligations. Throughout the duration of the Contract, Consultant shall submit an updated W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>) to County whenever Consultant’s backup withholding status or any other information changes. Consultant is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Consultant under the Contract, except as a self-employed - individual.
- c. Consultant shall not be responsible for or have control over the means, manner, methods or techniques required of or used by other consultants or contractors under contract with County, unless otherwise expressly agreed to in writing by the Parties. The Parties agree, however, that these Section 6.d. provisions do not in any way revise or adjust Consultant’s professional responsibility to report to County any information that comes to Consultant’s attention (during performance of this Contract) pertaining to a project, or to performance by other consultants or contractors on a project, that would adversely affect County or a particular project.

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

- a. Consultant shall obtain County's written consent prior to entering into any subcontracts for any of the Services required by the Contract, or in any manner assigning, selling or transferring any of its rights or interest under the Contract or delegate any of its duties or performance under the Contract. In addition to any other provisions County may require, Consultant shall include, in any permitted subcontract under the Contract, contractual provisions that shall require any subcontractor (which may also be referred to as “subconsultant”) to comply with Sections 9, 10, 11, 12, 13, 16, 17,18,19, 23, 27 and 29 of these Contract provisions, the limitations of **Exhibit B** - Compensation, and the requirements and sanctions of ORS Chapter 656, Workers’ Compensation, in the performance of the subcontractor’s Services on the project that is the subject of the Contract, as if the subcontractor were the Consultant. County’s consent to any subcontract shall not relieve Consultant of any of its duties or

obligations under the Contract, including with respect to any Services, whether performed or to be performed by Consultant or a subcontractor.

- b. The provisions of the Contract shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective successors and permitted assigns, if any.
- c. Any purported assignment, delegation or disposition in violation of subsection “a.” above is void.

**8. Third Party Beneficiaries.** There are no third-party beneficiaries of the Contract.

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

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

**a. Professional Standard of Care.**

Consultant shall perform all Services under the Contract in accordance with the degree of skill and care ordinarily used by competent practitioners of the same professional discipline when performing similar services under similar circumstances, taking into consideration the contemporary state of the practice and the project conditions.

**b. Responsibility of Consultant.**

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

**c. Reserved.**

**11. Ownership of Work Product**

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

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

**b. Work Product.** All Work Product created by Consultant pursuant to the Contract, including derivative works and compilations, and whether or not such Work Product is considered a “work made for hire,” shall be the exclusive property of County. County and Consultant agree that Work Product that constitutes original works of authorship (the “Original Work Product”) is “work made for hire” of which County is the author within the meaning of the United States Copyright Act. If for any reason Original Work Product created pursuant to the Contract is not “work made for hire,” Consultant hereby irrevocably assigns to County any and all of its rights, title, and interest in all Original Work Product created pursuant to the Contract, whether arising from copyright, patent, trademark, trade secret, or any other State or Federal intellectual property law or doctrine. Upon County’s reasonable request,

Consultant shall execute such further documents and instruments necessary to fully vest such rights in Original Work Product in County. Consultant forever waives any and all rights relating to Original Work Product created pursuant to the Contract, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. However, see Sections 11.c and 11.d immediately below, for provisions applicable to Consultant Intellectual Property, Third Party Intellectual Property, Consultant Intellectual Property derivative works and Third Party Intellectual Property derivative works.

- c. **Consultant and Third Party Intellectual Property.** In the event that any Work Product is Consultant Intellectual Property or Third Party Intellectual Property (Consultant Intellectual Property or Third Party Intellectual Property that is applicable to the Services being performed by Consultant under the Contract or included in Work Product deliverable to County under the Contract), or in the event any Consultant Intellectual Property or Third Party Intellectual Property is needed by County to reasonably enjoy and use any Work Product, Consultant hereby agrees that it will grant to, or obtain for, the County an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Consultant Intellectual Property and or Third Party Intellectual Property, including the right of County to authorize contractors, consultants and others to do the same on County's behalf. This obligation of the Consultant does not apply to a situation involving a third party who enters a license agreement directly with the County. At the request of Consultant, County shall take reasonable steps to protect the confidentiality and proprietary interests of Consultant in any Consultant Intellectual Property licensed under this Section, within the limits of the Oregon Public Records Law (ORS 192.410 through 192.505) and the Oregon Uniform Trade Secrets Act (ORS 646.461 to 646.475).
- d. **Consultant and Third Party Intellectual Property-Derivative Work.** In the event that Work Product created by Consultant under the Contract is a derivative work based on Consultant Intellectual Property or Third Party Intellectual Property, or is a compilation that includes Consultant Intellectual Property or Third Party Intellectual Property, Consultant hereby agrees to grant to, or obtain for, County an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of Consultant Intellectual Property or Third Party Intellectual Property employed in the Work Product, including the right of County to authorize others to do the same on County's behalf.
- e. **Consultant Use of Work Product.** Notwithstanding anything to the contrary in this Section 11, Consultant may refer to the Work Product in its brochures or other literature that Consultant utilizes for advertising purposes and, unless specified otherwise in Exhibit A – Statement of Work, County hereby grants to Consultant a non-exclusive, non-transferable, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display County-owned Work Product on other unrelated projects, except for any "Confidential Information" protected from disclosure under the provisions of Section 12 below, pertaining to Confidentiality and Non-Disclosure.

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

### **13. Indemnity**

- a. **Claims for Other Than Professional Liability.** Consultant shall indemnify, defend, save, and hold harmless County, and its officers, agents, and employees, from and against claims, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature resulting from or arising out of the errors or omissions of Consultant or its sub-consultants, subcontractors, agents, or employees under this contract.
- b. **Claims for Professional Liability.** Consultant shall indemnify, save, and hold harmless County, and its officers, agents, and employees, from and against 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.

- c. **Indemnity for Infringement Claims.** *Without limiting the generality of section 13(a) or 13(b), Consultant expressly agrees to indemnify, defend, save and hold harmless the County and its officers, agents, and employees from any and all claims, suits, actions, losses, damages, liabilities, costs and expenses, including attorney fees, arising out of or relating to any claims that Consultant's services, the Work Product or any other tangible or intangible items delivered to the County by Consultant that may be the subject of protection under any state or federal intellectual property law or doctrine, or the County's use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party; provided, County shall provide Consultant with prompt written notice of any infringement claim. Provided, however, Consultant shall not be obligated to indemnify, defend, save and hold harmless the County (or other entities identified above) under this section 13(c), based solely on the following: Consultant's compliance with County specifications or requirements, including, but not limited to the required use of tangible or intangible items provided by County.*
- d. **Defense Qualification.** *Neither Consultant nor any attorney engaged by Consultant shall defend or purport to defend a claim in the name of the County, without first receiving from the applicable entity, authority to act as legal counsel, nor shall Consultant settle any claim on behalf of the foregoing entities without the approval of these entities. The County may any time and at its election and expense, assume their own defense and settlement.*
- e. **County's Acts or Omissions.** *This section 13 does not include indemnification by Consultant of the County or its officers, agents and employees, for the acts or omissions of the County or its officers, agents and employees, whether within the scope of the Contract or otherwise.*

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

#### 15. **Termination**

- a. **Termination by Mutual Consent.** The Contract may be terminated at any time, in whole or in part, by mutual written consent of the Parties.
- b. **County's Right to Terminate for Convenience.** County may, at its sole discretion, terminate the Contract, in whole or in part, by written notice to Consultant specifying the termination date of the Contract.
- c. **County's Right to Terminate for Cause.** County may terminate the Contract, in whole or in part, immediately upon written notice to Consultant or at such later date as County may establish in such notice, upon the occurrence of any of the following events:
  - (i) In the event the Board of Commissioners of the County, 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;
  - (ii) Federal, State or local laws, regulations or guidelines are modified or interpreted in such a way that either the Services under the Contract are prohibited or County is prohibited from paying for such Services from the planned funding source;
  - (iii) Consultant no longer holds any license or certificate that is required to perform the Services; or
  - (iv) Consultant commits any material breach or default of any covenant, warranty, obligation or agreement under the Contract, fails to perform the Services under the Contract within the time specified or any extension thereof, or so fails to perform the Services as to endanger Consultant's performance under the Contract in accordance with its terms, and such breach, default or failure is not cured within 10 calendar days after County's notice to Consultant, or such longer period as County may specify in such notice.
- d. **Cessation of Services.** Upon receiving a notice of termination of the Contract, Consultant shall immediately cease all activities under the Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of the Contract, Consultant shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed. Upon County's request, Consultant shall surrender to anyone County designates, all documents, information, research, works-in-progress, Work Product and other property, that are deliverables or would be deliverables had the Contract been completed, that are in Consultant's possession or control and may be needed by County to complete the Services.
- e. **Consultant's Right to Terminate for Cause.**
  - (i) Consultant may terminate the Contract by giving written notice to County if County fails to pay Consultant pursuant to the terms of the Contract and if County fails to cure within 15 calendar days after receipt of Consultant's written notice, or such longer period of cure as Consultant may specify in such notice.



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

**f. 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 and accepted by County up to the time of termination, less previous amounts paid and any claim(s) which County 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 Fiscal Year. If previous amounts paid to Consultant exceed the amount due to Consultant under this subsection, Consultant shall pay all excess to County upon demand.
- (ii) In the event of termination pursuant to Section 15(c)(iii) or 15(c)(iv), County shall have any remedy available to it in law or equity. 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 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).

**16. Records Maintenance; Access.** For not less than ten (10) years after the Contract's expiration or termination, County, 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 County and the other entities referenced above with full access to these records in preparation for and during litigation.

**17. Performance Evaluations.** County will conduct performance evaluation(s) on the Consultant and its subconsultants during the term of the Contract, which will be compiled and maintained by County, and become a written record of Consultant's performance. Generally, the performance evaluations will include criteria related to, but not limited to, quality and technical performance, adherence to contract scope and budget, schedule performance, and business relations (including communications and negotiations performance). County will provide a copy of the performance evaluation results to Consultant within 14 calendar days following completion. Consultant may respond, in writing, or may request a meeting to address any or all findings contained in the completed performance evaluation within 30 calendar days following receipt. County may adjust evaluation score(s) upon County's finding of good cause. County may use performance evaluation findings and conclusions in any way deemed necessary, including, but not limited to, corrective action, requiring submittal of performance improvement plan by Consultant and withholding of retainage. County 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 laws, 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. County's performance under the Contract is conditioned upon Consultant's compliance with, and Consultant shall comply with, the obligations applicable to public contracts and intended for contractors under ORS 279C.505, 279C.515, 279C.520 and 279C.530, which are incorporated by reference herein. All rights and remedies available to County under applicable federal, state and local laws are also incorporated by reference herein and are cumulative with all rights and remedies under the Contract. If Consultant discovers a conflict among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Contract, Consultant shall in writing request County to resolve the conflict. Consultant shall specify if the conflict(s) create a problem for the design or other Services required under the Contract. If County concludes there is a conflict among the applicable laws, Federal laws shall govern among the others; State laws shall govern over the others except Federal. The resolution of the conflict of the applicable laws by County shall be final and not subject to further review or challenge.

**19. Permits and Licenses**

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

**20. Foreign Contractor.** If Consultant is not domiciled in or registered to do business in the State of Oregon as of the Effective Date, 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. Consultant shall demonstrate its legal capacity to perform the Services under this Contract in the State of Oregon prior to executing this Contract.

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

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

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

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

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

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

- a. Errors & Omissions Related.** In the event those good faith efforts do not resolve disputes related to potential Errors and Omissions, the Parties agree to make good faith efforts to resolve the matter pursuant to **Exhibit E**, 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.

**27. Governing Law; Venue; Consent to Jurisdiction.** The Contract shall be governed by, and construed and enforced in accordance with, the laws of the State of Oregon, without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between County and Consultant that arises from or relates to the Contract shall be brought and conducted solely and exclusively within the Circuit Court located in the County in which the Project is located; provided, however, if a Claim must be brought in a Federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the County of any form or defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution, or otherwise. **CONSULTANT, BY EXECUTION OF THE CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

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

**29. False Claims**

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

**30. 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. Such a waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. Either Party's failure to enforce any provision of the Contract shall not constitute a waiver by that Party of that or any other provision. The characterization of provisions of the Contract as material provisions or the failure to comply with certain provisions as a material breach of the Contract shall in no way be construed to mean that any other provisions of the Contract are not material or that failure to comply with any other provisions is not a material breach of the Contract.

## CONSULTANT CERTIFICATIONS

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

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

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

- (1) **Consultant has read this Contract, understands it, and agrees to be bound by its terms and conditions.**
- (2) Consultant understands and agrees that various documents are not physically attached, but are incorporated by reference and have the same force and effect as if fully set forth herein.
- (3) Consultant is an independent contractor as defined in ORS 670.600 and as described in IRS Publication 1779.
- (4) In the event that Consultant is a general partnership or joint venture, Consultant signature(s) on this Contract constitutes certifications to the above statements pertaining to the partnership or joint venture, as well as certifications of the above statements as to any general partner or joint venturer signing this Contract.

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

PW-5387-23


**MARION COUNTY SIGNATURES  
BOARD OF COMMISSIONERS:**

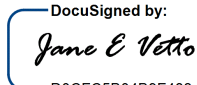
Chair \_\_\_\_\_ Date \_\_\_\_\_

Commissioner \_\_\_\_\_ Date \_\_\_\_\_

Commissioner \_\_\_\_\_ Date \_\_\_\_\_

Authorized Signature:  DocuSigned by:  
9793BA7ACD6D443... \_\_\_\_\_ 7/19/2023  
Department Director or designee \_\_\_\_\_ Date \_\_\_\_\_

Authorized Signature:  DocuSigned by:  
DG46264248DE4EC... \_\_\_\_\_ 7/21/2023  
Chief Administrative Officer \_\_\_\_\_ Date \_\_\_\_\_

Reviewed by Signature:  DocuSigned by:  
D0CF65904B9F493... \_\_\_\_\_ 7/21/2023  
Marion County Legal Counsel \_\_\_\_\_ Date \_\_\_\_\_

Reviewed by Signature:  DocuSigned by:  
C5B2F3DF257E444... \_\_\_\_\_ 7/17/2023  
Marion County Contracts & Procurement \_\_\_\_\_ Date \_\_\_\_\_

**CONSULTANT SIGNATURE(S)**

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

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

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

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

## EXHIBIT A – STATEMENT OF WORK

### A. PROJECT DESCRIPTION and OVERVIEW of SERVICES

Santiam Meadows is a planned 58-lot single-family and multi-family subdivision of affordable owner-occupied housing in Mill City, Oregon. The County may receive Community Development Block Grant Disaster Recovery (CDBG-DR) funding for the development and construction of affordable housing to serve communities impacted by the 2020 Beachie Creek and Lionshead wildfires.

Consultant will provide professional engineering and related services for the advancement of the project in anticipation of further funding.

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

#### Acronyms and Definitions

CPM – County Project Manager

CPD – **Community Planning and Development**

DEQ – Department of Environmental Quality

DSL – Department of State Lands

HEROS – **HUD Environmental Review Online System**

HUD – Housing and Urban Development

JPA – Joint Permit Application

PDT – Project Development Team

PM – Project Manager

SOW – Statement of Work

QA/QC – Quality Assurance and Quality Control

ODOT – Oregon Department of Transportation

PCSMP – Post-Construction Stormwater Management Plan

USACE – United States Army Corps of Engineers

### B. STANDARDS and GENERAL REQUIREMENTS

#### 1. Software and Format Requirements

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

- Each draft and final text-based or spreadsheet-based deliverable shall be provided in MS Office file formats (i.e., MS Word, Excel, etc.) and must be fully compatible with the version used by County.
- Consultant shall submit draft and final deliverables in electronic format via e-mail (and hard copy if requested).

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

#### 2. Professional Licenses, Registrations and Qualifications

- Consultant and its subconsultants must be duly licensed where required by law to perform the Services and must be under the "responsible charge" (as that term is defined under ORS Chapter 672) of a person so licensed, as required by the applicable Oregon Revised Statutes and Oregon Administrative Rules, and other applicable laws (or must be otherwise exempt from any licensing requirements applicable to the Services being performed).

- County may require Consultant's Personnel to demonstrate competency in the particular area/discipline to which they are assigned. This may include, but is not limited to, submittal of license number, resume, and work samples from previously completed projects.

### 3. General Requirements

- **Endorsement of Data.** Consultant shall place their official Oregon Registered Engineer seal and signature on all engineering design drawings and specifications furnished to County, as well as any other materials where professional standards require such seal and signature.
- **Safety Equipment.** Consultant shall provide and use all safety equipment including (but not limited to) hard hats, safety vests and clothing if required by State and Federal regulations and County policies and procedures for the Services under the Contract.

### C. REVIEW, COMMENT and SCHEDULE OVERVIEW

- Consultant shall coordinate with County staff as necessary and shall revise draft deliverables to incorporate draft review comments.
- Consultant shall incorporate comments within 15 business days from receipt by County for reports, narratives, and non-engineering graphical exhibits, and 25 business days for engineering drawings and specifications; and return the revised deliverables to County staff, unless a different timeframe is specified for specific tasks or otherwise agreed to in writing by County.

### D. PROJECT COOPERATION

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

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

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

### E. TASKS, DELIVERABLES and SCHEDULE

#### TASK 1 – PROJECT MANAGEMENT

Consultant shall provide management, subconsultant management, and coordination of Services under this scope of work (SOW) for delivery of Tasks and Deliverables according to the agreed-upon delivery schedule. Services that do not fall within this scope of work are excluded from this agreement.

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

Consultant shall:

- Prepare a Project schedule for the deliverables listed in the SOW. The Project schedule must fit within the overall project schedule developed by the County, and it is assumed that the County will coordinate with the Consultant to ensure the overall project schedule allows sufficient time to prepare, review, submit, and get approvals for the deliverables listed in this SOW. Updates to the Project schedule shall be made during the course of the Project if milestone dates are modified by the County. For budgeting purposes, it is assumed that up to (1) Project schedule update will be necessary;
- Prepare invoices and progress reports consistent with requirements and standard practices. 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.
  - Itemize costs by project.

For budgeting purposes, it is assumed that up to (8) progress reports will be necessary.

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

Consultant shall provide:

- QA/QC plan submitted electronically to County within 14 business days of Notice to Proceed (NTP).
- QA/QC documentation available upon request.
- Project Delivery Schedule for NEPA compliance-related tasks submitted within 7 business days after coordination with the County on the overall design schedule.
- One update to Project Delivery Schedule, as necessary per timeline agreed to by Consultant and County.
- Progress reports and invoices submitted to County no later than the 20th calendar day of the month following the reporting period.

### **1.2 Coordination**

Consultant shall:

- Coordinate with the County as the main point of contact for coordination and management of Consultant Services under this SOW;
- Contact other County staff, and regulatory agency staff, to gather any additional information needed for completion of the tasks detailed in this SOW;
- Provide overall management, direction and coordination of staff (including subconsultants) to include any necessary internal Consultant staff meetings;
- Contact County PM via telephone or email periodically as needed to provide Project status updates
- Coordinate with Subconsultants as necessary to review and conform with the Project schedule and provide updates to the County during Project Meetings.
- Review the Beech Street Apartment Development Plan and highlight any potential issues requiring coordination between the projects connecting streets, utilities, grading, and site improvements.

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

Consultant shall provide:

- On-going coordination and communication as needed to appropriately manage the Services under this SOW (no tangible deliverables for this task).
- One set of Beech Street Apartment Development plan review comments

### **1.3 Project Meetings**

Consultant shall:



- Prepare for and attend one Project kickoff meeting. The Project kickoff meeting will be held at Marion County Public Works office. Consultant shall prepare meeting agenda and meeting notes and respond to comments/edits if necessary. For budgeting purposes, it is assumed that up to (4) Consultant staff shall attend the 1-hour Project kickoff meeting, drive time excluded.

Prepare for and attend bi-monthly Project Development Team (PDT) Meetings via telephone or video call (assumed total of three (3) PDT meetings over the anticipated 8-month Project). Consultant shall prepare meeting agenda and meeting notes and respond to comments/edits if necessary. For budgeting purposes, it is assumed that up to (2) Consultant staff shall attend each PDT meeting, and all meetings will not exceed 1 hour.

**Consultant Deliverables and Schedule**

For each meeting, Consultant shall provide:

- Attendance, feedback, comments, and schedule updates as necessary during meeting discussions (no tangible deliverables for this task)
- Draft Meeting Minutes

**TASK 2 – HUD Environmental Review Preparation and Coordination**

**2.1 HEROS Coordination**

The HUD Environmental Review Online System (HEROS) is an enterprise system that can be used to complete Environmental Reviews for all HUD programs, in-lieu of a paper-based review process. The Consultant recommends that this process be used to streamline the Environmental Review, as it is assumed that the HUD Regional Office of Community Planning and Development (CPD) will allow the use of this system for this project. For this task, Consultant shall:

- Coordinate with the CPM to get Responsible Entity account set up, identify Certifying Officer, and any other coordination necessary to activate the project on HEROS and begin the Environmental Review.
- Set-up active Partner accounts for each Consultant staff member that will need to provide input/assist with the completion of the Environmental Review.

**2.2 Wetland and Waters Delineation Fieldwork**

Consultant shall conduct one (1) site visit to confirm previously identified wetland and waters boundaries, confirm no wetlands or waters are located within the remainder of the Project area not previously assessed, and confirm presence/absence of resources that meet the HUD definition of “wetlands”.

Once fieldwork is completed, the Consultant shall prepare an updated Wetland and Waters Delineation Map and finalize Wetland Determination Data Forms for submittal with the Environmental Assessment under Task 2.5. Consultant will not prepare any Wetland and Waters Delineation Report under this task.

**Consultant Deliverables and Schedule:**

Consultant shall prepare and submit:

- Complete necessary field work and update Wetland Determination Data Forms (no tangible deliverables for this task).

**2.3 Wetland Functional Assessment**

Consultant shall assess the functions and values currently provided by the impacted resources that meet HUD’s definition of a wetland. The assessment will be conducted using the Best Professional Judgment method (“BPJ”), since impacts to DSL-jurisdictional wetlands are not anticipated to exceed 0.2 acres and this method will be accepted by DSL and USACE once permit applications are prepared and submitted in Phase 2 of the project. The results of the assessment will be included in the deliverables prepared under Task 2.4 and Task 2.5.

**2.4 HUD Wetland 8-Step Process**

The project will result in unavoidable impacts to several on-site resources that meet HUD’s definition of a wetland. As a result, the 8-Step Decision-Making Process will need to be completed. Consultant shall:

- Coordinate with CPM to prepare the required Early Notice to notify the public that the proposed project will result in wetland impacts. The notification will be published in a local newspaper, if applicable, or posted on the post-office bulletin board for 15 days, postmarking the notice at posting and removal.
- Identify and evaluate at least three alternatives, including, when possible, alternative sites outside the wetland, alternative actions, and the “no action” option.
- Identify adverse and beneficial impacts, including direct and indirect support of other wetland development that might result from the project. This will include an analysis of the following factors:
  - Natural environment (topography, habitat, hazards);
  - Social concerns (aesthetics, historic and cultural values, land use patterns);
  - Economic aspects (costs of construction, transportation and relocation); and
  - Legal considerations (deeds, leases).
- Identify and evaluate methods to mitigate adverse impacts, including ways to minimize the impacts identified and restore and preserve the beneficial functions and values served by the wetlands.
- Re-evaluate alternatives in light of the information gained during the analysis to determine if the proposed project is still practicable.
- Coordinate with CPM to announce and explain the decision to the public. The notification will be published in a local newspaper, if applicable, or posted on the post-office bulletin board for 7 days, postmarking the notice at posting and removal.
- Coordinate with the CPM to ensure that the project is implemented as proposed and appropriate mitigation is provided.

Consultant will prepare the 8-step analysis in Word format to facilitate internal review and review by the CPM. Once the documentation is finalized, it will either be uploaded to HEROS, or a final PDF will be created.

**Consultant Deliverables and Schedule:**

Consultant shall prepare and submit:

- Electronic copy (in Word format) of the draft Wetland 8-Step documentation to CPM for review per the schedule in Task 1.1.
- Electronic copy (in .pdf format) of the final Wetland 8-Step documentation to CPM two (2) weeks following receipt of draft review comments (if paper process required).

**2.5 Environmental Assessment**

Consultant shall:

- Review and update, as necessary, the Partner Worksheets completed during the feasibility, and transfer information to HEROS if this system is available for this project.
- Evaluate and document the qualitative and quantitative significance of the effects of the project on the character, features and resources of the project area. This would include the assessment of the following Environmental Assessment Factors:
  - Land Development
  - Socioeconomic
  - Community Facilities and Services

Consultant will prepare the Environmental Assessment in Word format to facilitate internal review and review by the CPM. Once the documentation is finalized, it will either be uploaded to HEROS, or a final PDF will be created.

**Consultant Deliverables and Schedule:**

Consultant shall prepare and submit:

- Electronic copy (in Word format) of the draft Environmental Assessment to CPM for review per the schedule in Task 1.1.
- Electronic copy (in .pdf format) of the final Environmental Assessment to CPM two (2) weeks following receipt of draft review comments (if paper process required).

## **TASK 3 – Preliminary Civil Engineering**

### **3.1 Post-Construction Stormwater Management Plan**

Consultant shall:

- a. Prepare for and attend a quarterly HUD Project Meeting. For budgeting purposes, it is assumed that up to 2 Consultant staff shall attend the 1-hour meeting.
- b. Provide a signed, stamped, and completed Post-Construction Stormwater Management Plan (PCSMP) that complies with HUD/NMFS, City, and ODOT requirements based on the Conceptual Design. Prepare a PCSMP design that is compliant with a HUD accepted standard (Portland SWMM or CWS Stormwater and Treatment standards), City Public Work design standards, and JPA approval criteria complying with DEQ, DSL, and NMFS
- c. No coordination with ODOT or City staff will be provided under this task in Phase 1.

### **Consultant Deliverables and Schedule**

Consultant shall provide:

- The PCSMP will be prepared consistent with the HUD/NMFS stormwater events (half the two-year, 10-year, 24-hour design storm events), the anticipated Joint Permit Application stormwater events (Water Quality, 50% of the 2-year, 2-year, and 10-year, 24-hour design storm events), and City/County stormwater requirements.

## **TASK 4 – Noise Analysis and Abatement**

### **4.1 Design Review and Data Acquisition**

Prior to obtaining any existing conditions noise levels, a review of the site and site design will be conducted. Therefore, before the noise analysis can begin, detailed site design drawing of the proposed layout is required in AutoCAD or MicroStation. The layout will identify the location of each structure, placement of the structure (front yard and backyard), layout of the structures (interior room locations) and general site overview of access roadways, sidewalks, and any exterior shared uses if part of this development. This information will be used to inform the locations of the measurements in Task 4.2 below.

### **4.2 Site Inspection and Determining Existing Noise Levels**

A site inspection will be performed to better understand the area's topographical conditions and how noise from the North Santiam Highway propagates into the proposed site. During the initial site visit, two noise terminals will be installed on the property and left in place for at least 48 hours to obtain two 2-hour DNL readings. The measurements will be taken at different distances from the highway and used to establish the existing noise level throughout the site. Short term noise monitoring will also be performed at two to three locations on the site following installation of the two terminals and again just before removing the two terminals. The short-term monitoring, performed concurrently with the long-term terminal, will allow for noise predictions at any of the proposed buildings and provide a better understanding of noise propagation around the site. Photos will be taken of all noise monitoring sites.

### **4.3 Technical Noise Analysis for Interior Noise Levels**

The area will be mapped for existing noise levels and to identify any buildings that are located in areas with exterior DNL noise levels of 65 dBA or higher. Building with DNL above the HUD standard will have calculations of interior noise levels performed and compared to the HUD interior criteria of 45 dBA DNL. To provide these calculations, detailed structural design drawings are required and will include exterior wall details, window details (size and manufacture), ceiling type, insulation levels in all exterior partitions, and the location of the structures related to the property and highway. Interior noise levels will be calculated in noise sensitive areas several worst-case representative structures. Interior noise levels will be reviewed and compared to HUD requirements. If noise levels are found not to meet the acceptable HUD criteria, appropriate noise mitigation measures will be recommended that could include inoperable or upgraded windows, additional wall insulation or any other potential mitigation that is deemed reasonable and feasible.

Exterior noise levels will be predicted for outdoor uses at the properties and any shared outdoor use, and those levels should also meet the HUD 65 dBA DNL. MM&A may assist with the layout to make sure the exterior noise levels meet the HUD standards.

#### **4.4 Noise Technical Reporting**

A detailed Noise Technical Report will be prepared. The contents will include land use, existing noise, methodology, noise at the units and outdoor spaces, and any recommended mitigation measures. The noise and vibration analysis will provide conformity for the development with the HUD standards or identify why the standards could not be met. Construction noise impacts will be discussed. The noise and vibration section will include details of the proposed development on a vicinity scale map. Noise sources and sensitive receivers will be shown on area maps at an appropriate scale. Tables will be prepared to aid in the understanding of project impacts and mitigation. The following are required for the Detailed analysis:

- Development and CAD Data: Detailed drawings in CAD of the proposed development, showing the following:
  - Elevations details
  - Locations of all exterior uses, balconies, and shared spaces
  - Proposed exterior wall details, e.g., framing, insulation, layers of wall board and types.
  - Window details, size, type, manufacture.
  - Detailed information on heating, ventilation, and air conditioning systems
  - Parking information, spots, garage, and structural layout.
  - Site access from Highway 22

### **TASK 5 – Archaeological and Built Environment Survey**

The following cultural resource base tasks have been identified for this project. The included scope of work assumes that evaluative testing of an archaeological site will not be necessary, and that a more intensive level of documentation for the properties outside of the project area adjacent to the Santiam Highway will not be required. If additional studies are required, an amendment to this Contract will be necessary to cover the additional cultural resource surveys.

#### **5.1 Management and Logistics**

The Project team will provide quality control of deliverables, status of project costs, scheduling, and invoicing, as well as execute SHPO uploads as necessary.

#### **5.2 Background Research and SHPO Permit**

The Project team reviewed the online records of the Oregon State Historic Preservation Office (SHPO) to obtain copies of previous reports and other records for the proposed project location and immediate vicinity. We will also examine historic maps and records to identify possible past uses of and impacts to this location and conduct a focused review of the literature on the environmental history, prehistory, Native peoples, and historical development of the project location for archaeological and historic built environment contextual background. We would apply for and obtain one SHPO excavation permit for exploratory probes on public land. SHPO permit applications are subject to a 30-day review period.

#### **5.3 Archaeological Survey**

The Project team will conduct an archaeological survey of approximately 20 acres of the proposed project area. In addition to a pedestrian survey, we will excavate a maximum of 80 shovel probes; however, the maximum may not be necessary. Probes will be excavated to a minimum of 50 cm below surface and two culturally sterile levels. Sediment from shovel probes will be screened through ¼-inch mesh. Under the terms of a SHPO permit, we will collect all artifacts found within shovel probes.

#### **5.4 Historic Built Environment Fieldwork**

The Project team will conduct one site visit to the project and conduct a reconnaissance level survey of the subject property and the 11 tax lots adjacent to the Project area along the Santiam Highway with standing structures.

#### **5.5 Laboratory and Curation**

The Project team will perform laboratory analysis of collected artifacts and prepare the collection for permanent curation at the University of Oregon Museum of Natural and Cultural History

#### **5.6 Section 106 Historic Built Environment Documentation**

The Project team will complete one Section 106 documentation form for the subject property. This will be a standalone document separate from the reconnaissance level survey included in the technical report (Task 5.7).

#### **5.7 Reporting and Resource Forms**

The Project team will provide the results of the above tasks for both Archaeology and Historic Built Environment in a single technical report.

- *Archaeology* - The report will include all appropriate archaeological resource documentation forms and recommendations for any additional work that may be needed to meet state and federal cultural resources requirements.
- *Historic Built Environment* - The report will include a survey photo table of the surveyed tax lots and a summary of NRHP eligibility recommendations for built environment resources as appropriate.

## EXHIBIT B – COMPENSATION

### Definitions:

**CPFF** – Cost Plus Fixed Fee

**FCCM** – Facilities Capital Cost of Money

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

**NTE** – Not to Exceed Amount

**T&M** – Time and Materials

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

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

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

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

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

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

- **Loaded Costs**– the NBR (which is inclusive of profit and overhead costs); or the actual direct salary rate paid to the specific employee(s) (up to the maximum rate approved in the Contract for the employee's classification) productively engaged in work to complete the Services required under the Contract, plus profit and the approved overhead.
- **Direct Non-Labor Costs** (without mark-up) - Approved travel costs (up to the rates established in Section B of this Exhibit) and other approved direct-non labor expenses that are not included in overhead.
- **Subcontractor Costs** (without mark-up, unless County notifies Consultant otherwise in writing) - the hourly labor rates and direct non-labor costs (as described above) that have been billed to Consultant and recognized by Consultant as valid, undisputed and payable.

<b>The dollar amount for T&amp;M non-contingency Services is: \$106,837.80.</b>
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### B. PAYMENT OPTIONS

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

**Progress Payments for Acceptable Progress.** County will pay Consultant monthly progress payments for actual costs, up to the Contract NTE amount, for Consultant's acceptable (and verifiable) progress on tasks and deliverables included in the invoice.

### C. TRAVEL

Travel costs are allowable only if they are authorized under the Contract and if the travel is essential to the normal discharge of County's responsibilities and is related to official County business. **All travel shall be conducted in the most efficient and cost-effective manner that results in the best value for the County.** Personal expenses shall not be authorized at any time. The following guidelines shall apply to the Contract:

- The travel, lodging, and per diem rates referenced in this Section C are the maximums that Consultant's estimate (or reimbursement, if applicable) may be based on. Travel rates other than those referenced in this Section C may be negotiated in the Contract, however, under no circumstance shall travel, lodging and per diem rates exceed the maximums set forth by the State Controller at <https://www.oregon.gov/DAS/SCD/SARS/policies/oam/40.10.00.PO.pdf>.
- Mileage - For compensation based on Cost-Plus-Fixed-Fee or Time and Materials (or Fixed Price or Price Per Unit when travel reimbursement is approved and mileage is compensated separately), all mileage approved by County will be reimbursed according to the rates set forth by the State Controller at <https://www.oregon.gov/DAS/SCD/SARS/policies/oam/40.10.00.PO.pdf> that are in effect on the date when the travel occurs.
- For compensation based on Cost-Plus-Fixed-Fee or Time and Materials, Consultant shall submit receipts for travel-related expenses billed to County, such as but not limited to, lodging, rental vehicles, and air fare. If lodging is shared by two or more travelers, the lodging receipt must indicate the names of any travelers on official State business who shared the room.

### D. INVOICES

Consultant shall submit invoices in the format required by County (and with supporting documentation to substantiate charges on the invoice, including a detailed line-item breakdown of labor and direct non-labor costs by task/subtask) no more frequently than once per month. The address for invoice submittal is set forth in Exhibit F. In addition to all other applicable invoice requirements in this section D, each invoice must include the following information:

- The County's Contract number
- The County's project number

**Progress Reports:** Each monthly invoice must include a progress report. The monthly progress report must cover the period invoiced and, at minimum, must:

- Describe the previous month's project activities and the planned activities for the next month;
- For each task/deliverable identify the percentage completed during the month and the cumulative percentage completed;
- Reconcile progress of each task/deliverable with the schedule identified for each.
- Identify issues/concerns that may affect the project Statement of Work, schedule or budget.

### CPFF and T&M Compensation:

- Consultant shall prepare invoices based on the actual hourly rates, up to the maximums for each respective classification approved in the Contract, of the employees (or subconsultants) that performed the Services.
- Consultant shall provide documentation in each invoice to itemize all reimbursable actual labor costs and direct non-labor expenses for which Consultant seeks reimbursement, including a breakdown by task of the number of labor hours for each employee, employee names and classifications. Include receipts for any items purchased or equipment rentals for the Project that exceed \$100. Include copies of all invoices, similarly detailed, from authorized subconsultants.
- County will reimburse Consultant for approved travel expenses incurred in accordance with **Exhibit B**, Section C of the Contract, if County has agreed to reimburse Consultant for travel expenses. For travel expense claims include receipts for lodging, rental cars, airfare.

### E. PAYMENT TERMS

Payment will be made to Consultant no later than 30 calendar days from receipt of invoice completed in conformance with all contractual requirements. County will endeavor to notify Consultant within 10 business days of receipt of invoice regarding any necessary revisions or corrections to the invoice. If revisions are necessary, payment will be made no later than 30 calendar days from receipt of the revised invoice. Any interest for overdue payment will be in conformance with Oregon law.

#### **F. CORRECTIVE WORK**

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

#### **H. PAYMENT REDUCTION**

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

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

##### **Specific Limitations**

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

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

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

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

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

##### **Unallowable Charges**

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

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

- Costs for negotiation of the Contract or Contract amendments, including but not limited to proposal preparation, BOC preparation, preparation for negotiations, and negotiation of level of effort/budget.



- Costs related to disputes or E&O Claims, including but not limited to discussions, meetings and preparation of any dispute or claim related documentation.
- Mark-up on subcontractors or direct non-labor costs.
- Transfer of knowledge and information related to Key Person replacements.
- Correcting or making adjustments to incorrect or improper invoices.
- Direct compensation for items included in firm's indirect costs (unless properly credited back to indirect cost).
- Premium costs incurred as a result of working overtime or holidays. (Premium time should normally be charged to overhead. In accordance with ORS 279C.520, employees shall be paid at not less than time and one-half for all overtime worked and for work on legal holidays, except for individuals who are excluded from receiving overtime under personal services contracts pursuant to ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209.)

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

**1. Approved cost data** - Consultant will submit rate schedules and any required certifications 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 to County. Consultant Certification of compliance with Federal Cost Principles is required. A signed [Certification of Final Indirect Costs form](#) must be submitted with the overhead schedule.

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

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

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

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

**Negotiated Billing Rate Schedule** - may be required for Consultants or subconsultants that do not have a cognizant or acceptable independent audit for overhead rates (or do not calculate overhead as part of their normal accounting practice) and County determines it is in the public's best interest to negotiate specific billing rates. Instead of calculating a billing rate using a formula that applies overhead, profit, and Facilities Capital Cost of Money 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.

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

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

## **K. RATE REVISIONS**

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

case basis). The hourly rates shall be automatically adjusted each year on July 1 using the Portland Consumer Price Index for Wage Earners (Index), except that the hourly rates shall never decrease from the previous year's hourly rate even if the Index is reduced.

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

Prior to execution of the Contract or any amendments that add Services, Consultant shall prepare and submit a BOC including the 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, names and fully burdened hourly rates) hours per task and sub-task;
- b) an itemization with documentation (estimates from vendors shall be provided upon request) to support rental equipment, flaggers, travel and other direct non-labor expenses; and
- c) the estimate for Services as provided by each subconsultant that shows the assigned staff classifications, names, and fully burdened hourly rates; hours per task and sub-task; and itemized direct non-labor costs. County may ask for qualifications of any staff assigned to work on a project if they were not included in Statement of Proposal originally submitted for solicitation; and
- 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.

**EXHIBIT C**  
**INSURANCE PROVISIONS**

A. **REQUIRED INSURANCE.** Consultant or shall obtain at Consultant'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. Consultant 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 County:

i. **WORKERS COMPENSATION.** All employers, including Consultant, 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). Consultant shall require and ensure that each of its subconsultants 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. Consultant shall provide proof of insurance of not less than the following amounts as determined by the County:

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

- Required by County**  **Not required by County.**

**Bodily Injury/Death:**

- \$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

iv. **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"). Consultant shall provide proof of insurance of not less than the following amounts as determined by the County:

- Required by County**  **Not required by County.**

**Bodily Injury/Death:**

- 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 Consultant'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 Consultant or its insurer(s) to County. 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 County.

D. **CERTIFICATE(S) OF INSURANCE.** Consultant shall provide to County 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). Consultant shall pay for all deductibles, self-insured retention and self-insurance, if any.

**EXHIBIT D – SPECIAL TERMS AND CONDITIONS**

[Reserved]

## **EXHIBIT E – ERRORS & OMISSIONS (E&O) CLAIMS PROCESS**

### ***E&O CLAIMS PROCESS***

The goals of the E&O claims process are to:

- Identify E&O issues and associated costs early
- Require timely notification to the Consultant of problem issues
- Establish a requirement to work together to correct, mitigate, or minimize the effects on the construction project's quality, schedule and budget and
- To identify associated costs when the standard of care has not been met and provide resolution of responsibility for "Premium" Costs incurred.

The process is focused on resolving issues at the lowest possible administrative levels in a spirit of collaboration. If the County Contract Administrator (CA) cannot reach resolution with the Consultant regarding E&O issues, however, the CA may request a standard of care determination from the Chief Engineer.

### ***Procedure for resolution of disagreements***

#### **GENERAL**

When either Party discovers or determines actions, omissions, or deliverables by the other Party to be incorrect or outside the terms of the contract, the following steps shall be followed:

- Provide oral and written notice of the issue (email, fax, or hard copy) to the other Party,
- Consultant shall provide CA requested records and documents pertaining to the issue and will participate in a technical review committee to determine if standard of care was met, at the request of the Chief Engineer.
- Work together to correct, mitigate or minimize the effects of the issue
- When the standard of care has not been met, work together to determine responsibility for any Premium Costs incurred as a result of the issue

#### **INITIAL VERBAL NOTICE AND WRITTEN LETTER OF CONCERN**

When either Party discovers or determines actions, omissions, or work products by either Party to be incorrect or outside the terms of the Contract, the discovering Party shall give timely oral notice and a written Letter of Concern to the other Party.

If the Consultant disagrees with any written or oral order of the County that in the opinion of the Consultant would entitle the Consultant to additional compensation, the Consultant shall provide oral notice and written Letter of Concern to the CA within seven (7) days of receiving the order from the County. The Letter of Concern must include an explanation of why the Consultant believes the requirements of the oral or written order are outside of the agreed scope of services. The CA shall acknowledge in writing receipt of the Consultant Letter of Concern.

If the County believes the Consultant has not performed with the required Standard of Care, the County shall provide the Consultant oral notice and written Letter of Concern. The Consultant shall acknowledge in writing receipt of the County's Letter of Concern and provide to the County all project related requested information.

#### **INFORMATION EXCHANGE AND RESOLUTION MEETING**

**The Consultant and CA shall meet within seven (7) calendar days of sending or receiving a Letter of Concern, or on a mutually agreed, to discuss the issue of concern and provide to the CA all requested information pertaining to the issue.**

The primary purpose of this meeting is to determine how, at the County's sole discretion, to correct, mitigate, or minimize the effects of the issue, including impacts of the issue on the construction project's work quality, schedule, and costs.

Following the County's determination of the appropriate corrective action, the Consultant and the CA shall work

together to resolve responsibility and corresponding Premium Costs related to the issue.

If the CA is unable to reach satisfactory resolution of responsibility and corresponding Premium Costs with the Consultant, the CA will request the Chief Engineer to initiate an internal review.

#### **CLAIMS PROCEDURE**

The County, upon request of the CA and at the discretion and direction of the Chief Engineer, will undertake an internal review for the purpose of determining if the standard of care was met. The Consultant will cooperate with the internal review as requested.

If the Chief Engineer determines that standard of care has been met, then all parties are to continue to work together to correct, minimize or mitigate effects of the issue and it is the County's responsibility to cover Premium Costs.

If the Chief Engineer determines that standard of care has not been met, then Cost Evaluation and Recovery will be pursued.

The County may, at any time during the course of this Contract, and up to the time allowable by law following the final payment for any work on the contract, present the Consultant with a Claim for actual damages incurred due to any disagreement concerning standard of care issues and all subsequent damages suffered by the County arising from such issues.

#### **COST EVALUATION AND RECOVERY**

The Premium Costs incurred by the County and/or construction project resulting from the Consultant's failure to meet the standard of care will be evaluated and quantified. Any extenuating or mitigating factors in relation to cost recovery, such as limitations on fee and scope of services, time constraints for performance of services, unforeseen or changed conditions, third party requirements, responsibility and comparative fault of other parties, or other circumstances or constraints affecting the Consultant's performance will be considered.

Utilizing cost information generated by the County's internal investigation, the CA will meet with the Consultant in an attempt to reach agreement for resolution of responsibility and corresponding Premium Costs. If resolution is not reached, then the Chief Engineer or designee will meet with the Consultant and pursue one of all of the following actions:

- Negotiate a resolution with the Consultant
- Agree with the Consultant to share equally the cost to jointly present the issue to a creditable, neutral third party panel to obtain a non-binding recommendation
- Pursue other Alternate Dispute Resolution methods as agreed to with the Consultant, or
- Escalate the issue to litigation.

#### **ALTERNATE METHODS OF RECOVERY**

When the parties reach agreement on cost recovery for a failure to meet the standard of care determination, the Consultant may make restitution to the County in the following methods as agreed to by both Parties:

- Making direct payments to the County
- Correcting the deficient services
- Re-performing the deficient services
- Forfeiting payments for other services on other County Contracts
- Providing in-kind services at no cost to County
- Utilizing other methods acceptable to both parties

#### **Documentation**

The CA or designee shall document the contract file with all correspondence, notices, meeting notes and Letters of Concern related to E&O issues, claims, or potential claims. The file must include a written statement summarizing the findings of the claims process and the outcome, including:

- The determination of whether or not the Consultant met Contract requirements and met the standard of care;

- The determination of responsibility and whether there were mitigating circumstances beyond the reasonable control of the Consultant;
- The determination of whether or not the work requested by the County was within the scope of services of the Contract;
- If the Consultant was not required to correct deficiencies at no cost to the County, provide the reasons for that decision.
- A record of negotiation for any negotiated settlement subject to the rules regarding confidentiality of mediations in OAR 731 division 001.

## ***DEFINITIONS***

**County** – Marion County, Oregon

**CA** – County’s Contract Administrator overseeing the consultant contract and deliverables.

**County TI** – County Technical Investigator. A County manager familiar with the technical discipline at issue who independently reviews records and interviews personnel pertinent to the claim to determine if the standard of care was met.

**Consultant** – Private Sector entity, which has entered into a Contract with the County to provide Architectural or Engineering services and which employs, or engages the services of, the Professional of Record.

**Contract** - The project specific Contract between County and Consultant.

**Error** – Plan or specification details or contract administration actions which are incorrect, conflicting, insufficient or ambiguous.

**E&O** – Errors and Omissions

**Omission** – The plans or specifications or contract administration actions are silent on an issue that should otherwise be addressed in the documents.

**Parties** – Refers to County and Consultant collectively.

**Party** – Refers to County and Consultant separately.

**Premium Costs** – The additional costs incurred by the County and/or a construction project which result from the Consultant’s failure to meet the Standard of Care. Premium Costs are dollar amounts paid for non-value-added work. Premium costs are not reimbursed by the federal government on federal aid projects. Delays, inefficiencies, rework, or extra work as shown below, caused by the Consultant’s failure to meet the standard of care, will be considered as non-value added work. Non- value-added work can occur in three distinct situations:

- Work delays or inefficiencies.  
The Premium Costs are the total delay/inefficiency damages paid to the construction contractor.
- Rework  
The Premium Costs are the dollar amount of the original items of work that have to be removed and the costs to remove these items.
- Extra Work  
The Premium Costs are computed as the net difference between the final agreed prices paid to the construction contractor and what the cost would have been had the extra work been included in the original bid at letting.

**Standard of Care** – For the standard of care that applies to your project, refer to the standard of care language included in the Contract for the project.

**TRC** – Technical Review Committee. A committee convened by the County Chief Engineer, chaired by the Agency TI and staffed by at least 3 technical experts chosen by the Agency TI from a list of Agency, ACEC and other technical experts. The committee is charged with reviewing records and interviewing personnel pertinent to the claim to determine if standard of care was met.



**EXHIBIT F – CONTACT INFORMATION and KEY PERSONS****1. Party Contact Information.****a.1 \* County’s Project Manager (CPM)**

<b>Name:</b>	Chris Einmo
<b>Ph:</b>	503.566.4119
<b>E-mail:</b>	<a href="mailto:ceinmo@co.marion.or.us">ceinmo@co.marion.or.us</a>

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

<b>Name:</b>	Alicia Henry
<b>Ph:</b>	503.373.4320
<b>E-mail:</b>	<a href="mailto:ahenry@co.marion.or.us">ahenry@co.marion.or.us</a>

**a.3 County’s address for invoicing:**

<b>Mailing Address:</b>	5155 Silverton Rd NE, Salem, OR 97305
<b>E-mail:</b>	<a href="mailto:PWAccounting@co.marion.or.us">PWAccounting@co.marion.or.us</a>

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

<b>Name:</b>	Mark AuClair
<b>Ph:</b>	503.563.6151
<b>E-mail:</b>	<a href="mailto:marka@aks-eng.com">marka@aks-eng.com</a>

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

<b>Name:</b>	Dominica LoPrete
<b>Address:</b>	12965 SW Herman Road, Suite 100 Tualatin, OR 97062
<b>Ph:</b>	503.563.6151
<b>E-mail:</b>	<a href="mailto:finance@aks-eng.com">finance@aks-eng.com</a>

\* County may change the Contract Administrator or Project Manager designation by promptly sending written notice (e-mail acceptable) to Consultant.

\*\*Any changes to Consultant’s Project Manager must be approved in writing (e-mail acceptable) by County.

**2. Key Persons**

Consultant acknowledges and agrees that County selected Consultant, and is entering into the Contract because of the special qualifications of Consultant’s key personnel (“Key Persons” or “Key Personnel”), which may include specific staff agreed to

during Contract negotiations. In particular, County, through the Contract is engaging the expertise, experience, judgment and personal attention of the Key Persons identified in the Contract.

Each Key Person shall not delegate performance of any management powers or other responsibilities he or she is required to provide under the Contract to another of Consultant's or subconsultant's personnel without first obtaining the written consent of County. Further, Consultant shall not re-assign or transfer any Key Person to other duties or positions such that the Key Person is no longer available to provide County with his or her expertise, experience, judgment, and personal attention according to any schedule established under the Contract without first obtaining County's prior written consent to such re-assignment or transfer. Notification of request to change a Key Person shall be in writing (via e-mail or other form as may be required by County.) Throughout the term of the Contract, Consultant shall provide updated information (if requested by County) to demonstrate the continuing qualifications of any staff working on County projects, including those approved as Key Persons.

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

<b>Name</b>	<b>Role</b>
J. Michael Poissant	Principal in Charge
Mark AuClair	Project Manager/Project Engineer
Michael Minor	Noise, Vibration, and Air Quality
Kanani Paraso	Archaeologist – Project Manager
Julie Wirth-McGee	Natural Resources lead

### **3. Reassignment or Transfer of Key Person**

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

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

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

**EXHIBIT G****APPENDIX II TO PART 200—CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS**

- Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian County Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.
- Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- See §200.322 Domestic preference for procurements.
- Audit Requirements of 2 CFR §200.5XX (Subpart F)
- Subrecipient must comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law.
- If Subrecipient expends federal awards in excess of \$750,000 in a fiscal year, Subrecipient is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Copies of all audits must be submitted to the County within 30 days of completion.
- Subrecipient must save, protect and hold harmless the County from the cost of any audits or special investigations performed by the Secretary of State with respect to the funds expended under this Agreement. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Subrecipient and the County.
- System for Award Management. Subrecipient must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at <https://www.sam.gov>. This includes applicable requirements regarding registration with SAM, as well as maintaining current information in SAM. Subrecipient must also comply with applicable restrictions on subawards ("subgrants") to first tier subcontractors (first-tier

"Subcontractors"), including restrictions on subawards to entities that do not acquire and provide (to the County) the unique entity identifier required for SAM registration.

- Whistleblower Protection Act. Subrecipient must comply and ensure the compliance by subcontractors, with 41 U.S.C. 4712, Program for Enhancement of Employee Whistleblower Protection. Subrecipient must inform subcontractors, contractors and employees, in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 USC § 4712.
- See § 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.
- See § 200.323 Procurement of recovered materials.
- Recordkeeping Requirements. Subrecipient must maintain records and financial documents for five years after all funds have been expended or returned to the County. The County may request transfer of records of long-term value at the end of such period. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats.
- Subrecipient must agree to provide or make available such records to the County upon request, and to the Government Accountability Office (“GAO”), U.S. Treasury’s Office of Inspector General (“OIG”), and their authorized representative in order to conduct audits or other investigations.
- Civil Rights Compliance. Recipients of Federal financial assistance from the U.S. Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the U.S. Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Subrecipient's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Subrecipient's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Subrecipient implementing regulations at 31 CFR part 23.
- In order to carry out its enforcement responsibilities under Title VI of the Civil Rights Act, U.S. Treasury will collect and review information from non-Tribal recipients to ascertain their compliance with the applicable requirements before and after providing financial assistance. U.S. Treasury’s implementing regulations, 31 CFR part 22, and the Department of Justice (DOJ) regulations, Coordination of Non-discrimination in Federally Assisted Programs, 28 CFR part 42, provide for the collection of data and information from recipients (see 28 CFR 42.406). U.S. Treasury may request that recipients submit data for post-award compliance reviews, including information such as a narrative describing their Title VI compliance status. This collection does not apply to Tribal governments.
- Real Property, Equipment and Other Capital Expenditures. County shall, and shall cause its Subrecipients to, maintain policies and procedures for the management of property and equipment that comply with all requirements of the applicable Uniform Guidance at 2 CFR Part 200, Subpart D, 2 CFR Part 200.310 – 200.316 and 200.439, and specific requirements of the source of funds. These regulations shall apply to all real property, equipment, and other capital expenditures purchased with the federal funding.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014; 85 FR 49577, Aug. 13,2020]

**EXHIBIT H**  
**CONSULTANT'S HOURLY RATES**

Role	Hourly Rate
Principal/Sr. Project Manager	\$225.00
Project Manager	\$210.00
Sr. Natural Resources Manager	\$220.00
Engineering Designer	\$150.00
Natural Resource Specialist	\$155.00
Natural Resource Technician	\$120.00
Project Coordinator/Clerical	\$90.00
Technical Editor	\$120.00
Engineering Technician	\$130.00