

Contract Review Sheet

PW-5323-23 (1)

A&E Standard Prof Svcs Agmnt #: PW-5323-23 Amendment #: 1

Contact: Alicia Henry Department: Public Works Department

Phone #: 503-373-4320 Date Sent: Tuesday, July 25, 2023

Title: Engineering and Related Services Contract with David Evans and Associates, Inc. for Project: Nusom

Contractor's Name: David Evans and Associates, Inc.

Term - Date From: March 10, 2023 Expires: June 30, 2024

Original Contract Amount: \$99,680.23 Previous Amendments Amount: \$0.00

Current Amendment: \$40,035.93 New Contract Total: \$139,716.16 Amd% 40%

☐ Incoming Funds ☐ Federal Funds ☐ Reinstatement ☐ Retroactive ☒ Amendment greater than 25%

Source Selection Method: 30-0200 Direct Appointment A&E icitation Num

Description of Services or Grant Award

Engineering and Related Services Contract with David Evans and Associates (DEA), Inc. for Project: Nusom Rd: Abiqua Creek Bank Stabilization. DEA, Inc. will provide environmental permitting and design services for project construction.

Amendment 1 - changes total Not-to-Exceed Amount to: \$139,716.16. Adds Construction Engineering, Inspection and Construction Contract Administration services in the emergency construction of the Nusom Rd Abiqua Creek Bank Stabilization project.

Desired BOC Session Date: 8/23/2023 BOC Planning Date: 8/10/2023

Files submitted in CMS: 8/2/2023 Printed packet & copies due in Finance: 8/8/2023

BOC Session Presenter(s) Ryan Crowther

FOR FINANCE USE

Date Finance Received: _____ Date Legal Received: _____

Comments: Y

REQUIRED APPROVALS

		DocuSigned by: <u>Alicia Henry</u> DA7EBDCC1E7B47D	8/7/2023
Finance - Contracts	Date	Contract Specialist	Date
Legal Counsel	Date	Chief Administrative Officer	Date



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: August 23, 2023

Department: Public Works

Agenda Planning Date: 8/10/2023

Time required: 5 min

☐ Audio/Visual aids

Contact: Ryan Crowther

Phone: 503-365-3112

Department Head Signature:

TITLE

Nusom Rd. NE, Abiqua Creek Scour Repair

Issue, Description & Background

Consider amending contract PW-5323-23 with David Evans and Associates, Inc. in the amount of \$40,035.93 which includes \$1,905.57 in contingency tasks for a total of \$139,716.16, to add Construction Engineering, Inspection and Construction Contract Administration services in the emergency construction of the Nusom Rd Abiqua Creek Bank Stabilization project.

Marion County declared an emergency June 14th, 2023 via Board Order 23R-10, in order to stabilize the bank by constructing a log and stone embankment.

David Evans and Associates, Inc. is currently contracted with Public Works to provide Plans, Specifications and Estimate for the bank stabilization project. Public Works Capital Projects inspection staff will not have the capacity to inspect this project with current workloads. In addition, this project has specialized permits and plans that DEA has expertise in executing.

Financial Impacts:

Public Works has budgeted the necessary funds to complete the project. The contract is for an additional \$40,035.93 in County Funds for a total of \$139,716.16.

Impacts to Department & External Agencies

There are no impacts to other Marion County Departments.

Options for Consideration:

1. Approve Contract PW-5323-23 with David Evans and Associates, Inc.
2. Take no action at this time

Recommendation:

Public Works staff recommends that the Board choose option one to approve and sign the contract with David Evans and Associates, Inc.

List of attachments:

Contract PW-5323-23
Contract Review Sheet

Presenter:

Ryan Crowther

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

Copies to:

Alicia Henry, Public Works, ahenry@co.marion.or.us

REQUEST FOR AUTHORIZATION OF CONTRACT PW-5323-23

Date: August 3, 2023
To: Chief Administrative Officer
Cc: Contract File
From: Alicia Henry

I. Subject: Amendment Exceeds 25%

DIPS CODE: 130-40-41-441-4402-525355-104900

Budget Authority: ☒ Yes ☐ No,

CIP: N/A

The Marion County Public Works Department is requesting approval to amend a contract as described in Section 20-0265, 20-0270, 30-0320, 40-0160, and 40-0910 of the Marion County Public Contracting Rules. The contract is with David Evans and Associates, Inc. for Engineering and Related Services Contract with David Evans and Associates, Inc. for Project: Nusom Rd: Abiqua Creek Bank Stabilization with a value of \$99,680.23 and an additional \$40,035.93 will be added to the contract for a new contract total of \$139,716.16 upon approval.

A. BACKGROUND

David Evans and Associated, Inc. (DEA) were selected via a Direct Appoint process for the Nusom Rd: Abiqua Creek Bank Stabilization. DEA has provided environmental permitting and design services for project construction. Initial contract was for \$99,680.23. Marion County declared an emergency June 14th, 2023 via Board Order 23R-10, in order to stabilize the bank by constructing a log and stone embankment.

B. CURRENT AMENDMENT PURPOSE

David Evans and Associates, Inc. is currently contracted with Public Works to provide Plans, Specifications and Estimate for the bank stabilization project. Public Works Capital Projects inspection staff will not have the capacity to inspect this project with current workloads. In addition, this project has specialized permits and plans that DEA has expertise in executing.

C. JUSTIFICATION

Marion County declared an emergency June 14th, 2023 via Board Order 23R-10. The A&E Contract was originally entered into using the County's Direct Appointment process, under section 30-0200. The nature of the emergency does not allow for a formal procurement process, and per this section the County may enter into a contract using this procedure if it finds an emergency exists. This amendment is an extension of services that have been substantially described in the original contract and adds construction phase services for the same project. Inspection and permit oversight is required to maintain compliance as the construction contractor completes the work on the project.

D. BUDGET IMPACTS

1. Are the expected expenditures for the current fiscal year under the contract, including any additional funds being requested with this action, already included in the current year adopted budget? ☒ Yes ☐ No
2. If yes, amount \$ 139,716.16 Program / Account 411-525355
3. If no, describe the amount and how the anticipated expenditures will be handled within the budget:
 - a. Amount: \$ _____
 - b. Managed with anticipated savings– explain why and from what costing:

 - c. Will require a supplemental budget request – provide the expected funding source and costing:
 - i. Funding Source: _____
 - ii. Costing: _____

Submitted by:

DocuSigned by:

DA7EBDCC1E7B47D...
Alicia Henry
Public Works Department

Reviewed by:

DocuSigned by:

A3538E7AEC704F4...
Contracts & Procurement

Acknowledged by:

Department Head

Acknowledged by:

Jan Fritz, CAO

**AMENDMENT NO. 1 TO
CONTRACT NO. PW-5323-23
PROJECT TITLE: Nusom Rd: Abiqua Creek Bank Stabilization**

1. This is Amendment No. 1 to Contract No. PW-5323-23 (as amended from time to time) between Marion County, hereafter called County, and David Evans and Associates, Inc. which the Parties agree is synonymous with the defined term "Contractor" or "Consultant" as referenced in the Contract.
2. Amendment Information Table:

Project Title: Nusom Rd: Abiqua Creek Bank Stabilization	Agency Project Number: 104900
Project Location: 2.5 Miles NW of Silverton, OR	Associated RFP Number: N/A

3. The Parties agree that Phase 1 Services - Preliminary Engineering through Final Design (PS&E) shall terminate upon County's award of the construction contract.
4. Except as expressly revised in this Amendment, or as previously amended, all other terms and conditions of the original Contract and any previous amendments remain in full force and effect.
5. The Contract is hereby amended as follows (new language is indicated by underlining and deleted language is indicated by brackets):
 - a. Under **Terms and Conditions 1, Contract Effective Date and Term**, modify the last sentence as follows:
 Unless otherwise amended or terminated, this Contract shall expire [June 30] March 31, 2024.
 - b. Under **Exhibit A – Statement of Work, County Responsibilities**, add the following bullets to the end of the list:
 - Administer and manage all aspects of the construction contract except as described herein.
 - Prepare final as-constructed drawings incorporating information from Consultant (Task CE-5.2).
 - Provide Consultant with copies of all construction contract documents including copies of environmental permits, approved construction schedule and approved submittal documents.
 - c. Under **Exhibit A – Statement of Work, subsection B(1) Standards**, add the following paragraph:

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

- d. Under **Exhibit A – Statement of Work**, subsection **E. Tasks, Deliverables and Schedule**, add the following new tasks:

TASK CE-1 PROJECT MANAGEMENT OF INSPECTION SERVICES

This activity is continuous throughout the duration of these Construction Inspection Services (herein referred to as "Services"). Consultant shall guide and direct the Services and Consultant's team in conformance with all applicable requirements and the Project's goals and objectives. Consultant shall monitor progress of the Project and Services

Task CE-1.1 Coordination

Consultant shall provide leadership, direction and control of these Services.

Consultant shall:

- Direct Consultant's team with regard to overall inspection activities and team meetings.
- Maintain liaison, communication and coordination between Consultant's staff, County's Project Manager (CPM) and Construction Contractor (CC) to facilitate timely, efficient operations for all involved.

Consultant Deliverables and Schedule:

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

Task CE-1.2 Status Reports and Invoices

Consultant shall prepare up to 4 Monthly invoices and Status Reports throughout the duration of the Inspection Services.

The Monthly Status Report must:

- Describe the previous month's Consultant activities. The staffing used must be identified in the invoice backup documentation.
- Describe the planned activities for the next month.
- Identify any issues or concerns that may affect the Inspection Services and budget or the Project schedule and Project budget.

If the construction Project schedule milestones are significantly revised, Consultant shall attach the updated Project schedule and submit with Monthly Status Report. Consultant shall submit the Monthly Status Reports to the County's project manager with the monthly Consultant invoice.

Consultant Deliverables and Schedule:

- Monthly Status Report - Submitted to CPM with the monthly invoice no later than the 10th calendar day of the month following the reporting month.

TASK CE-2 CONSTRUCTION INSPECTION

Consultant shall support the Project's needs by providing Monitoring and Inspection Services required for the Consultant to certify, at Second Notification and Third Notification that the Project was completed according to the Plans and Specifications for the Project. Consultant shall engage the Professional of Record ("POR") as required to administer design changes that may become necessary during the construction phase of the work.

Task CE-2.1 Pre-Construction Conference

Consultant shall attend the Pre-Construction Conference as referenced in the Specifications in 00180.42. The Pre-Construction Conference shall be held on-site. Attendees will include the Construction Contractor (CC), CPM, permitting agencies, local officials and others as may be appropriate to discuss the construction schedule, utility involvement, permit concerns, required documentation submittals, materials, and other items relevant to the construction of the Project.

Consultant shall:

- Attend and participate in Pre-Construction Conference.

Consultant Deliverables and Schedule:

- There are no tangible deliverables for this task

Task CE-2.2 Cooperative Arrangement (Partnering) (RESERVED)

Task CE-2.3 Quality Assurance & Contract Administration Plan (RESERVED)

Task CE-2.4 Construction Contract Administration (RESERVED)

Task CE-2.5 Monthly Preliminary Progress Estimates

Consultant shall prepare all source documents as "paynotes" for the monthly progress estimate and provide them to the Agency's Lead Inspector for entry into the County's Engineering Contract Management System (ECMS) for CC's work performed through the last working day of the month. (Refer to the ODOT Construction Manual Chapter 12D Quantities).

After all paynotes are entered, County will generate the Preliminary Progress Payment Report, print it out and review it with the Consultant and CC for concurrence on quantities being paid for the previous month's work.

Consultant Deliverables and Schedule:

- Following each month in which CC's work was performed, submit all source documents ("Paynotes"), in electronic .pdf format, as necessary for each monthly Progress Estimate for Agency review by the Monday following the Thursday established for the close of the pay period at the pre-construction conference.

Task CE-2.6 Project Progress Meetings (RESERVED)

Task CE-2.7 Shop Drawing and Submittal Review (RESERVED)

Task CE-2.8 Consultation During Construction (RESERVED)

Task CE-2.9 Design Modifications (RESERVED)

Task CE-2.10 Claim(s) Support (CONTINGENCY TASK)

If authorized by CPM, Consultant shall provide support to County to review and respond to any and all claims submitted by the CC as specified in the Specifications in Section 00199 – Disagreements, Protests and Claims. Consultant tasks for claim(s) support may include but are not limited to:

- Prepare memoranda and supporting documentation (photo logs, inspection reports, memos, drawings, etc.) related to claims.
- Provide consultation related to claims (in person, via telephone or email).
- Attend claim resolution meetings.

ASSUMPTIONS FOR BUDGETING PURPOSES: This task assumes no more than 13 hours for claim support. Assume 1 claim submittal, requiring 1 staff to do 1 day of preparation and attend up to 1 one-hour meeting for the claim, plus Consultant Principal and PM reviews and clerical assistance.

Consultant Deliverables and Schedule:

The deliverables for claim support may include but are not limited to:

- Memoranda and supporting documentation (photo logs, inspection reports, memos, drawings, etc.) related to claims
- Consultation related to claim (in person, via telephone or email)
- Attendance at claim resolution meetings

TASK CE-3 Construction, Environmental Compliance and Work Zone Monitoring and Inspection

Consultant shall provide on-site monitoring and inspection of construction for conformance with, and shall enforce compliance with, construction contract documents. Consultant shall coordinate and conduct on-site monitoring and inspections so they do not cause unnecessary adverse impacts to the construction schedule. On-site monitoring and inspections must occur at critical times during the construction process based on Consultant's evaluation of the CC's schedule, construction contract documents and as outlined in the ODOT Construction Manual, the Manual of Field Test Procedures and the ODOT Inspectors Manual.

Consultant shall have certified Inspector(s) on site during all critical times during the construction process. Consultant shall monitor the CC's quality control process for compliance with the construction contract requirements. All persons involved in performing inspection duties must be certified through ODOT's Inspection Quality Assurance Program ("IQAP") in the discipline for the work they will be inspecting. Consultant's Inspectors must be certified prior to commencement of any on-site work by the CC.

If circumstances occur that prevent the use of a Certified Inspector, Consultant may assign specific tasks to a non-certified individual. Refer to the IQAP for a list of limited duties that may be performed by non-certified personnel.

The following are the approved ODOT Inspector Certifications currently in place in the Inspection Quality Assurance Program:

- Certified Bridge Construction Inspector ("CBCI")
- Certified Environmental Construction Inspector ("CECI")
- Certified Traffic Signal Inspector ("CTSI")
- Certified General Inspector ("CGI")
- Certified Asphalt Concrete Pavement Inspector ("ACP")
- Certified Drilled Shaft Inspector ("CDSI")

Consultant shall perform work zone monitoring as required by the ODOT Construction Manual, ODOT Inspectors Manual and the construction contract documents. Accordingly, Consultant shall monitor and enforce the following for compliance to construction contract requirements:

- Permit compliance during construction
- Temporary Traffic Control measures
- Erosion Control installation and maintenance
- Turbidity Monitoring

Consultant shall monitor the CC to verify the following deliverables are completed and submitted (to the extent the deliverables are required by the construction contract documents). If the documents are

not submitted to the Consultant, then the Consultant shall take appropriate action to require compliance by the CC:

- Erosion Control Monitoring Reports
- Turbidity Monitoring Reports

Task CE-3.1 Environmental Compliance and Mitigation Monitoring

This task involves conducting environmental inspection site visits during the construction phase of the Project, typically to document compliance with the environmental permits, including effectiveness of best management practices, avoidance and minimization measures, challenges encountered and corrective actions.

Consultant shall:

- Perform compliance and mitigation monitoring related to environmental conservation measures agreed upon with State and Federal regulatory agencies through permit conditions and as included in the construction contract.
- Conduct site environmental inspections site visits to assist CC and CPM in maintaining compliance with issued regulatory permits and the special provisions.
- Coordinate and schedule monitoring visits coincident with activities that have significant environmental components.
- Evaluate onsite conditions and construction techniques during environmental inspections site visits to assess compliance with Project permits, the Pollution Control Plan, the Erosion and Sediment Control Plan, proposed site rehabilitation measures, and general environmental conservation measures.
- Identify deficiencies and potential permit compliance issues and provide guidance to County and CC to aid in avoiding potential regulatory agency involvement or violations.
- Provide input and clarifications during construction activities to facilitate biological functioning as outlined in Project permits, based on the Project's significant site rehabilitation measures (to offset Project impacts)

In the event that deficiencies are noted, Consultant's Environmental Specialist shall immediately bring the deficiency to the attention of the CC and CPM and recommend a corrective course of action to comply with environmental regulations, performance standards, and permit conditions.

Consultant shall review the CC's following submittals for compliance with the construction contract and permits:

- Temporary Water Management Plan ("TWMP"),
- Erosion and Sediment Control Plan ("ESCP"),
- Pollution Control Plan ("PCP"), and

Consultant shall conduct up to 6 environmental inspection site visits and prepare brief construction environmental inspection e-mail updates summarizing site conditions and providing recommended measures to facilitate permit compliance and correct deficiencies.

Consultant Deliverables and Schedule:

Consultant shall provide:

- Reviewed CC-submitted Erosion Control Monitoring Reports (Form 734-2361) for compliance no later than 14 calendar days after each inspection site visit. Maintain in the Project files and submit with final Project documentation as defined in Task 5.4.
- Completed Consultant construction monitoring memorandums or e-mails– If compliance issues are noted, document the deficiencies, recommendations and

- corrective action taken to correct deficiencies in a memorandum or e-mail. Submit 1 copy to CC and CPM within 5 business days after the monitoring site visit.
- General Daily Progress Reports / Project Diary – Complete daily when performing onsite visits. Maintain in Project files and submit originals with final Project documentation as defined in task 5.4
- Project Photography / Photo Logs – Submit with reports (when applicable) and final Project documentation as defined in task 5.4.

Task CE 3.1.1 Scientific Take Permit for Fish Salvage Operations

Consultant shall obtain a Scientific Take Permit ("STP") from Oregon Department of Fish and Wildlife (ODFW) for fish salvage operations during Project construction. This task assumes no more than 1 STP and 2 fish salvage operations.

Consultant shall:

- Submit the application for 1 STP to ODFW.
- Obtain and provide to CPM a copy of the approved STP for the fish salvage associated with the in-stream isolation area.
- Coordinate as necessary with ODFW and other regulatory agencies to comply with terms of the STP.
- Provide to County required documentation in accordance with NMFS and ODFW guidance and regulations to conduct the fish salvage operations at the Project site.

Consultant Deliverables and Schedule:

Consultant shall provide:

- Receipt of submittal of STP application no later than two weeks from Notice to Proceed on this task.
- Copy of the ODFW approved STP for the Project (1 electronic PDF copy) to CPM within 14 calendar days of receipt from ODFW and prior to salvage operation.

Task CE 3.1.2 Fish and Aquatic Species Inspection and Salvage

Consultant shall complete fish and aquatic species inspections and salvage operations with all necessary fish salvage equipment, providing documentation and reporting according NMFS and ODFW guidance, regulations and permitting requirements for the Project. Aquatic species inspections and salvage work must be conducted by a qualified biologist with a Bachelor's degree in biology, fisheries or equivalent, and with a minimum of 2 years of experience identifying northwest fish and aquatic species. The lead biologist shall be competent with electrofishing procedures and have completed at least 100 hours of fish salvage following NMFS, ODFW, and USFWS, fish salvage/fish removal requirements.

Consultant shall:

- Acquire from County the BA and Biological Opinion ("BO") or other ESA compliance documents for each Project that requires inspections or salvage work for federally listed aquatic species; be familiar with related conservation measures and terms and conditions stipulated in the compliance documents prior to performing activities.
- Contact the CPM to discuss and coordinate timeframes, equipment and staff needs; develop for County review a draft schedule for aquatic species salvage efforts based on the anticipated construction schedule.
- Unless already provided by County or previous task, acquire a STP from ODFW for fish, amphibian or other aquatic species salvage. Each Consultant staff member who

participates in fish removal/fish salvage efforts must review and understand the permit requirements. Ensure sufficient lead time for ODFW to process the permit application.

- If requested, attend 1 preparatory meeting with appropriate construction and environmental personnel and appropriate agencies including ODFW, NMFS and USFWS to ensure compliance with Project's regulatory permits; CPM (or other County representative as directed by County) will schedule and coordinate the meeting with the appropriate attendees.
- Provide staff and all equipment necessary for aquatic species salvage efforts (e.g., electrofishing equipment, thermometer, conductivity meter, multiple sizes of dip and hand nets, multiple buckets with appropriate aeration devices for species storage and transport, at least 1 beach seine, block nets, chest waders/hip boots, appropriate gloves, and other appropriate equipment) at each site; County will provide all equipment for County staff participation in aquatic species salvage efforts.
- Be available upon request by County for up to 2 aquatic inspections or on-site consultations before or during in-water work activities; County will provide at least 5 days of notice for these services.
- Provide technical assistance and services to County during aquatic species salvage efforts conducted prior to, during or after work area isolation and work area isolation activities required for the Project. Salvage efforts must be conducted in accordance with the most current version of the ODFW, NMFS and USFWS guidance and regulations and any other applicable federal and state guidelines and regulations. An abbreviated version of fish salvage guidelines follows:
 - Before and intermittently during pumping, attempt to capture and release fish from the work isolation area as is prudent to minimize risk of injury to fish.
 - Have a qualified fish biologist carry out or monitor all salvage efforts and ensure that staff working with the salvage efforts has the necessary knowledge, skills and abilities to ensure the safe handling of all fish.
 - Handle fish with extreme care and keep them in water to the maximum extent practicable during capture and transfer procedures; transfer fish using a sanctuary net that holds water during transfer whenever appropriate.
 - Release captured fish as near as possible to capture sites.
 - Ensure that any federal, state and local permits and authorizations necessary to conduct salvage activities are obtained before salvage occurs.
 - Maintain a logbook that documents the condition and maintenance of the equipment used; the training and experience of the field staff; and the species, number and condition of fish captured, including the number of fish mortalities.
 - Allow ODFW, NMFS and USFWS or their designated representatives to accompany field personnel during salvage and to inspect the salvage equipment and records.
 - Conduct the aquatic species salvage for species requested by Agency (fish, amphibians or others) in close collaboration with Agency and/or ODFW qualified fish biologist(s), and in accordance with the regulatory permits.
 - Complete the appropriate ODFW Rescue and Salvage reports and online reporting for each salvage effort using the latest template provided by ODOT.

Consultant Deliverables and Schedule:

Consultant shall provide:

- Up to 2 separate days for fish rescue/salvage operations
- Rescue and Salvage Reports to the County, NMFS or USFWS representative (as applicable to the Project), ODFW (fish.research@state.or.us) and appropriate ODFW District Biologist, no later than 2 weeks after completion of each salvage/rescue effort

- Complete the online ODFW Scientific Take Permit reporting requirements the fish salvage operation, as required by ODFW

Task CE-3.2 Construction Activity Monitoring

Consultant shall monitor construction activities during construction of the Project utilizing ODOT-certified Inspectors and require compliance with the construction contract documents. Consultant shall provide inspection concurrently with the CC's operation. Consultant shall coordinate closely with CC to ensure on-site inspections are coordinated with the construction schedule. Consultant shall perform inspections as detailed in the ODOT Construction Manual and the ODOT Inspectors Manual. Consultant shall prepare General Daily Progress Reports of construction for days Consultant is on site. Consultant shall take photos of the various construction activities and keep a current digital photo-log of critical construction activities. The photo-log must be kept up to date throughout construction and available for review by County.

Consultant shall determine and document all pay quantities for work and materials incorporated into the Project. As required by the ODOT Construction Manual, Chapter 12D – Quantities, Consultant shall prepare source documents ("Paynotes") for all pay items and include supporting documentation to support each payment. Consultant shall keep quantity documentation current at all times and available for County review upon request.

Consultant Deliverables and Schedule:

- General Daily Progress Reports – Complete each day Consultant is on-site. Make available for review at Consultant's field office or home office. Originals submitted to County with final Project documentation submittal per task 5.4.
- Current Digital Photo-log of construction activities - Make available for County review at Consultant's field office or home office as needed. Submit photo logs with the final Project documentation in task 5.4.
- Source Documents "Paynotes" - Field notes, calculations, receipts, invoices, reports used to determine Project pay quantities, installation sheets, and other supporting documentation – Complete as work is performed (and submit data monthly per task 2.5). Make available for County review as needed and submit with final Project documentation per task 5.4.

Task CE-3.3 Quality Control Monitoring (Non-Field Tested and Field-Tested Materials) (RESERVED)

TASK CE-4 CONSTRUCTION SURVEYING (RESERVED)

TASK CE-5 PROJECT CLOSE-OUT

Consultant shall complete interim and final on-site inspections and submit all Project Inspection and QA/QC records required for final payment and Project Acceptance.

Task CE-5.1 Final Inspection(s) and Submittals

County will issue Second Notification when all on-site bid item and CCO, EWO and SFO work is completed per the Specifications, in 00150.90(a) and 00180.50(g).

Consultant shall:

- Schedule a review of the Project at a time close to completion of on-site work.
- With County input, prepare a punch-list of items to be corrected by the CC.

- Attend and participate in a Project Final Inspection with CC and CPM. (CPM will schedule and lead the Project Final Inspection within 15 days after receiving notice from the CC that all punch list items, final trimming and cleanup according to the Specifications in 00140.90 have been completed.)

Consultant Deliverables and Schedule:

- Punch list of items to be corrected submitted to the CPM within one (1) week following issuance of second notification.

Task CE-5.2 As-Constructed Plans

Throughout the duration of construction, Consultant shall maintain a clean set of construction plans with any field changes to those plans noted as "redlined" hand-written notations, comments or drawings. The "redlined" set of plans shall be updated within 24-hours of the occurrence of any field change.

County is responsible for preparing the final as-constructed plans.

Consultant Deliverables and Schedule:

- One paper set of the "redlined" construction plans submitted to the CPM within one (1) week of the completion of all punch list items.

Task CE-5.3 Structure Load Rating (RESERVED)

Task CE-5.4 Submittal of Final Project Documentation

Consultant shall:

- Organize and submit the final Project quality and quantity documentation as detailed in the ODOT Construction Manual, Chapter 37 – Submittal of Final Project Documentation.
- Organize and submit all documentation as noted in Task CE-3.2 above.
- Review documentation with the County's QAC.
- Upon issuance of Second Notification, perform a final review with the County's QAC of all Project quality and quantity documentation and mutually agree that all contractual requirements have been met and recommend Acceptance.

Consultant Deliverables and Schedule:

- All final Project quality and quantity, excluding documentation related to plant establishment work. The original documents must be submitted to County within 30 calendar days after Second Notification.
 - All Project quality and quantity documentation related to plant establishment work. The original documents must be submitted to County within 14 calendar days after plant establishment work.
 - All deliverables noted in Task CE-3.2 above within 30 calendar days after Second Notification.
- e. Under **Exhibit A – Statement of Work**, replace subsection **F. Contingency Tasks (Reserved)** with the following:

F. CONTINGENCY TASKS

The table below is a summary of contingency tasks that County, at its discretion, may authorize Consultant to perform. Details of the contingency tasks and associated deliverables are stated in the Task section of the Statement of Work. Consultant shall complete only the specific contingency task(s) identified and authorized via written (e-mail acceptable) Notice-to-Proceed ("NTP") issued by County's Project Manager. If requested by County, Consultant

shall submit a detailed cost estimate for the agreed-to contingency Services (up to the NTE amount(s) in the Contingency Task Summary Table) within the scope of the contingency task.

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

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

Contingency Task Summary Table

<u>Contingency Task Description</u>	<u>NTE for Each</u>	<u>Max Quantity</u>	<u>Method of Comp.</u>	<u>Total NTE Amount</u>
CE 2.10 Claim(s) Support	<u>\$1,905.57</u>	<u>1</u>	<u>T&M</u>	<u>\$1,905.57</u>
<u>Total for contingency tasks:</u>				<u>\$1,905.57</u>

- f. Under **Exhibit B – Compensation**, subsection **A. Method of Compensation for Non-Contingency Tasks**, modify the last sentence as follows:

The dollar amount for [T&M] Phase 1 non-contingency Services is: \$ [48,215.06] 24,253.86. The dollar amount for Phase 2 non-contingency Services is: \$38,130.36.

- g. Under **Exhibit B – Compensation**, subsection **L. Breakdown of Costs (BOC)**, modify the last paragraph as follows:

The final BOC's for the original Contract (Phase 1 Services), dated [February 15] March 06, 2023, and for Amendment 1 (Phase 2 Services), dated July 25, 2023, [is] are not physically attached, but [is] are incorporated into this Contract by this reference with the same force and affect as though fully set forth herein. A copy of the final BOC's [has] have been provided to the Consultant prior to execution of this Contract.

- h. Under **Exhibit F – Contact Information**, replace sections a.2, b and c of the information table with the following:

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

Name:	Alicia Henry, Grant/Contracts Compliance Analyst
Ph:	503-373-4320
E-mail:	ahenry@co.marion.or.us

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

Name:	Loren Stucker
Ph:	503-480-1342
E-mail:	lpst@deainc.com

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

Name:	Stephanie Yutzie
Address:	David Evans and Associates, Inc 5121 Skyline Village Loop S, Suite 200 Salem, OR 97306
Ph:	503-480-1348
E-mail:	stephanie.yutzie@deainc.com

6. Amendment Compensation Table:

1. Prior total not-to-exceed ("NTE") amount for this Contract (including any previous amendments and contingency amounts)		\$99,680.23
2. Amount for T&M	NTE Amount for allowable costs of non-contingency Services added by this Amendment.	\$38,130.36
3. Amount for Fixed-Fee	Total of Fixed-Fee amount (for CPFF only) for non-contingency Services added by this Amendment.	N/A
4. Fixed Price amount	Total of Fixed Price amount(s) for non-contingency	N/A

	Services added by this Amendment.	
5. Total non-contingency amount added by this Amendment (lines 2 through 4):		\$38,130.36
6. Total NTE for contingency tasks, if any, included in this Amendment:		\$1,905.57
7. Credits for deleted contingency and non-contingency tasks, if any		
8. Net Amount of this Amendment (line 5 plus line 6, less any credits in line 7):		\$40,035.93
This amount includes all costs; profit; Fixed-Fee amount (if any); and contingency tasks (if any), each of which must be separately authorized by Agency.		

9. TOTAL NTE AMOUNT of Contract revised to include this Amendment (line 1 plus line 8):	\$139,716.16
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CONSULTANT CERTIFICATIONS

A. Any individual (the undersigned) 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) The undersigned is authorized to act on behalf of Consultant, the undersigned has authority and knowledge regarding Consultant's payment of taxes, and to the best of the undersigned's 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 (the undersigned) on behalf of Consultant hereby certifies the undersigned is authorized to sign this Amendment and that:

- (1) Consultant has read this Amendment, understands it, and agrees to be bound by its terms and conditions.
- (2) Consultant understands and agrees that various documents are not physically attached, but are incorporated by reference and have the same force and effect as if fully set forth herein.
- (3) Consultant understands and has provided to all Associates the COI Disclosure Form available at: <https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx>. Consultant and (to the best of the undersigned's information, knowledge and belief) Consultant's Associates are in compliance with the disclosure requirements of the COI Disclosure Form and have no conflicts of interest to disclose. If disclosures regarding this Amendment or the related Project are required per the COI Disclosure Form, Consultant has made such disclosures to County on a properly prepared and submitted form and, if determined necessary by County, a mitigation plan has been approved by County.

- (4) Consultant is an independent contractor as defined in ORS 670.600 and as described in [IRS Publication 1779](#).
- (5) In the event that Consultant is a general partnership or joint venture, Consultant signature(s) on this Amendment 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 Amendment.

This Amendment shall not become effective and no Payment shall be made for Services that are performed before all necessary governmental approvals have been obtained, the Amendment is fully executed, and Notice-To-Proceed has been issued by County.

Counterparts: The Amendment 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 Amendment so executed shall constitute an original.

CONSULTANT SIGNATURE(s):

Signature: _____ Date: _____

Name: _____ Title: _____

Signature: _____ Date: _____

Name: _____ Title: _____

**MARION COUNTY SIGNATURES
BOARD OF COMMISSIONERS:**

Chair _____ Date _____

Commissioner _____ Date _____

Commissioner _____ Date _____

Authorized Signature: _____
Department Director or designee Date _____

Authorized Signature: _____
Chief Administrative Officer Date _____

Reviewed by Signature: _____
Marion County Legal Counsel Date _____

Reviewed by Signature: _____
Marion County Contracts & Procurement Date _____



Contract Review Sheet

PW-5323-23

A&E Standard Prof Svcs Agmnt #: PW-5323-23 Amendment #: _____

Contact: Nike Neuvenheim Department: Public Works Department

Phone #: (503) 365-3100 Date Sent: Monday, March 6, 2023

Title: Engineering and Related Services Contract with David Evans and Associates, Inc. for Project: Nusom R

Contractor's Name: David Evans & Associates Inc.

Term - Date From: March 10, 2023 Expires: June 30, 2024

Original Contract Amount: \$99,680.23 Previous Amendments Amount: \$0.00

Current Amendment: \$0.00 New Contract Total: \$99,680.23 Amd% 0%

☐ Incoming Funds ☐ Federal Funds ☐ Reinstatement ☐ Retroactive ☐ Amendment greater than 25%

Source Selection Method: 30-0200 Direct Appointment A&E Department Department

Description of Services or Grant Award

Engineering and Related Services Contract with David Evans and Associates (DEA), Inc. for Project: Nusom Rd: Abiqua Creek Bank Stabilization. DEA, Inc. will provide environmental permitting and design services for project construction.

Total Not-to-Exceed Amount: \$99,680, with \$51,465 for contingency tasks.

Desired BOC Session Date: _____ BOC Planning Date: _____

Files submitted in CMS: _____ Printed packet & copies due in Finance: _____

BOC Session Presenter(s) _____

FOR FINANCE USE

Date Finance Received: _____ Date Legal Received: _____

Comments: G

REQUIRED APPROVALS

DocuSigned by:

A3530E7AE6704F4...
Finance - Contracts Date 3/15/2023

DocuSigned by:

69C90A6F708240B...
Legal Counsel Date 3/15/2023

DocuSigned by:

65DAF24000D0471...
Contract Specialist Date 3/20/2023

DocuSigned by:

D616354248DE4E0...
Chief Administrative Officer Date 3/15/2023

**MARION COUNTY
ENGINEERING AND RELATED SERVICES CONTRACT
Contract Number: PW-5323-23**

Project Title: Nusom Rd: Abiqua Creek Bank Stabilization	County Project Number: 104900
Project Location: 2.5 Miles Northwest of Silverton, OR	Associated RFP Number: N/A
Total Not-to-Exceed ("NTE") amount for this Contract. This total includes: a) all allowable costs and expenses, profit, and fixed-fee amount, if any; and b) \$51,465.17 for contingency tasks, each of which must be separately authorized by County.	\$ 99,680.23

This Contract is between Marion County, hereafter called "County" and David Evans and Associates, Inc., an Oregon corporation, hereafter called "Consultant." County and Consultant together are also referred to as "Parties" and individually referred to as "Party." The primary contacts for this Contract are identified in Exhibit 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.

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 June 30, 2024.
- 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

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, by its signature on the Contract, certifies that: (i) Consultant and, to the best of its information, knowledge and belief, its Associates have made any disclosures required under the COI Disclosure Form (available at: https://www.oregon.gov/ODOT/Business/Procurement/DocsLPA/COI_LPA.docx) or any applicable law; and (ii) if a conflict of interest is discovered during the term of the Contract, Consultant shall timely submit a COI Disclosure Form to County disclosing the conflict(s).
- c. Consultant shall be responsible for all Federal or State of Oregon ("State") taxes applicable to compensation or payments paid to Consultant under the Contract and, unless Consultant is subject to backup withholding, County will not withhold from such compensation or payments any amount(s) to cover Consultant's Federal or State tax obligations. Throughout the duration of the Contract, Consultant shall submit an updated W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>) to County whenever Consultant's backup withholding status or any other information changes. Consultant is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Consultant under the Contract, except as a self-employed individual.
- d. Consultant shall not be responsible for or have control over the means, manner, methods or techniques required of or used by other consultants or contractors under contract with County, unless otherwise expressly agreed to in writing by the Parties. The Parties agree, however, that these Section 6.d. provisions do not in any way revise or adjust Consultant's professional responsibility to report to County any information that comes to Consultant's attention (during performance of this Contract) pertaining to a project, or to performance by other consultants or contractors on a project, that would adversely affect County or a particular project.

7. Subcontracts and Assignment; Successors and Assigns

- a. Consultant shall obtain County's written consent prior to entering into any subcontracts for any of the Services required by the Contract, or in any manner assigning, selling or transferring any of its rights or interest under the Contract or delegate any of its duties or performance under the Contract. In addition to any other provisions County may require, Consultant shall include, in any permitted subcontract under the Contract, contractual provisions that shall require any subcontractor (which may also be referred to as "subconsultant") to comply with Sections 9, 10, 11, 12, 13, 16, 17, 18, 19, 23, 27 and 29 of these Contract provisions, the limitations of **Exhibit B** - Compensation, 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 all claims, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature resulting from or arising out of the acts or omissions of Consultant or its sub-consultants, subcontractors, agents, or employees under this contract.
- b. **Claims for Professional Liability.** Consultant shall indemnify, defend, save, and hold harmless County, and its officers, agents, and employees, from and against all claims, suits, actions, losses,

damages, liabilities, costs and expenses of whatsoever nature arising out of the professionally negligent acts, errors or omissions of Consultant or its sub-consultants, subcontractors, agents, or employees in the performance of professional services under this contract.

- 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, hold and maintain during the term of the Contract all permits and licenses required for the project (for example, permits from regulatory authorities and use permits or licenses from owners of real and personal property), but County shall pay for such permits and licenses. Consultant shall review the project site, if applicable, and the nature of the Services that Consultant shall perform under the Contract. Consultant shall advise County throughout the course of the project as to the necessity of obtaining all project permits and licenses, the status of the issuance of any such permits and licenses, and any issues or impediments related to the issuance or continuation of any such permits and licenses.

20. Foreign Contractor. If Consultant is not domiciled in or registered to do business in the State of Oregon 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) 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.

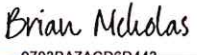
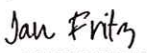
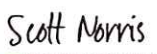

B. Any individual signing on behalf of Consultant hereby certifies they are authorized to sign this Contract and that:

- (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 understands and has provided to all Associates the COI Disclosure Form available at: <https://www.oregon.gov/ODOT/Business/Procurement/Pages/LPA.aspx>. Consultant and (to the best of the undersigned's information, knowledge and belief) Consultant's Associates are in compliance with the disclosure requirements of the COI Disclosure Form and have no conflicts of interest to disclose. If disclosures regarding this Contract or the related Project are required per the COI Disclosure Form, Consultant has made such disclosures to County on a properly prepared and submitted form and, if determined necessary by County, a mitigation plan has been approved by County.
- (4) Consultant is an independent contractor as defined in ORS 670.600 and as described in IRS Publication 1779.
- (5) In the event that Consultant is a general partnership or joint venture, Consultant signature(s) on this Contract constitutes certifications to the above statements pertaining to the partnership or joint venture, as well as certifications of the above statements as to any general partner or joint venturer signing this Contract.

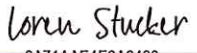
No Payment shall be made for Services that are performed before all necessary governmental approvals have been obtained, the Contract is fully executed, and Notice-To-Proceed has been issued by County.

Counterparts: The Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

MARION COUNTY SIGNATURES:

Authorized Signature:	 <small>0703BA7ACD8D443...</small>	3/15/2023
	Department Director or designee	Date
Authorized Signature:	 <small>DC10351240DE4EC...</small>	3/15/2023
	Chief Administrative Officer	Date
Reviewed by Signature:	 <small>60C90A0F700240B...</small>	3/15/2023
	Marion County Legal Counsel	Date
Reviewed by Signature:	 <small>A3538E7AEC704F4...</small>	3/15/2023
	Marion County Contracts & Procurement	Date

CONSULTANT SIGNATURE(S)

Signature: 
3A71AAE4E3A0400... Date: 3/18/2023

Name: Loren Stucker Title: Project Manager, Biologist

Signature: _____ Date: _____

Name: _____ Title: _____

EXHIBIT A – STATEMENT OF WORK

A. PROJECT DESCRIPTION and OVERVIEW of SERVICES

Abiqua Creek is experiencing significant erosion along the north bank of a tight-radius meander bend adjacent to Nusom Road. The channel has migrated and exposed a portion of a recently constructed trench-fill riprap revetment. The County is concerned that it may not be adequate to stop the bank erosion from threatening the roadway. The top of bank is now approximately 20 to 25 feet from the edge of pavement. Any further migration of the channel is likely to cause a partial collapse of the roadway. Because of this, the County is undertaking a slope stabilization project (rock riprap revetment) that can be implemented in case it becomes necessary to protect the roadway from further bank erosion under emergency conditions.

Consultant Services for the Project will include environmental permitting and preparation of plans, specifications and cost estimate as needed for project construction.

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.

Project Phasing

This Project is divided into two phases:

- Phase 1 – Preliminary Engineering through Final Design (PS&E)
- Phase 2 – Construction Contract Administration, Construction Engineering and Inspection

This Statement of Work addresses design and environmental Services needed for Phase 1 of the project. Each subsequent phase is optional, at County's discretion, and may be added via amendment(s) to this Contract.

County Responsibilities

- Provide access to available Project information.
- Acquire all required rights-of-entry and easements if necessary.
- Pay all applicable resource agency review/permit fees.
- Coordination with franchise utility companies.
- Provide topographic survey of the site in AutoCad .dwg format.
- Provide a copy of the hydraulic analysis prepared by others.
- Cultural resource studies.
- Necessary County permits
- Coordinate and communicate with internal County staff as needed.
- Review Consultant progress to verify adherence to this Statement of Work (SOW) and delivery schedule.
- Notify Consultant of any known delays above and beyond the control of Consultant.
- Provide appropriate and timely review of Project deliverables supplied by Consultant to verify they are consistent with Project objectives and the requirements of the SOW.

Acronyms and Definitions

County	Marion County		ODFW	Oregon Department of Fish and Wildlife
CPM	County's Project Manager		ODOT	Oregon Department of Transportation

DEQ	Oregon Department of Environmental Quality	ORS	Oregon Revised Statutes
DSL	Oregon Division of State Lands	PM	Consultant's Project Manager
EEO	Equal Employment Opportunity	PS&E	Plans, Specifications and Estimates
JPA	Joint Permit Application	QA	Quality Assurance
NMFS	National Marine Fisheries Service	QC	Quality Control
NTE	Not to Exceed	SLOPE S	Standard Local Operating Procedures for Endangered Species
NTP	Notice to Proceed	SOW	Statement of Work
OAR	Oregon Administrative Rules	USACE	United States Army Corps of Engineers

B. STANDARDS and GENERAL REQUIREMENTS

1. Standards

Preliminary Engineering and Design Phase Services – The following standards shall apply to the Contract:

- Standard Local Operating Procedures for Endangered Species (SLOPES V) published by the National Marine Fisheries Service.
- OAR 635-412 relating to fish passage.

2. Software and Format Requirements

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

- Each draft and final text-based or spreadsheet-based deliverable shall be provided in MS Office file formats (i.e., MS Word, Excel, etc.) and must be fully compatible with version used by County.
- Consultant shall submit draft and final deliverables in electronic format via e-mail (and hard copy if requested).
- Consultant shall also submit any graphic files accompanying reports separately in .jpg or .tif formats unless specified differently by County.

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

3. Professional Licenses, Registrations and Qualifications

- Consultant and its subconsultants must be duly licensed where required by law to perform the Services, and must be under the "responsible charge" (as that term is defined under ORS Chapter 672) of a person so licensed, as required by the applicable Oregon Revised Statutes and Oregon Administrative Rules, and other applicable laws (or must be otherwise exempt from any licensing requirements applicable to the Services being performed).
- County may require Consultant's Personnel to demonstrate a competency in the particular area/discipline to which they are assigned. This may include, but is not limited to, submittal of license number, resume, and work samples from previously completed projects.

4. General Requirements

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

C. REVIEW, COMMENT and SCHEDULE OVERVIEW

- Consultant shall coordinate with County staff as necessary and shall revise draft deliverables to incorporate draft review comments.
- Consultant shall incorporate comments within 10 business days from receipt by County and return the revised deliverables to County staff, unless a different timeframe is specified for specific tasks or otherwise agreed to in writing by County.

D. PROJECT COOPERATION

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

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

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

E. TASKS, DELIVERABLES and SCHEDULE

TASK 1 – PROJECT MANAGEMENT

Consultant shall provide management, subconsultant management, and coordination of Services under this statement of work (SOW) for delivery of Tasks and Deliverables according to the agreed upon delivery schedule.

1.1 Project Coordination and Administration

Consultant shall provide project management throughout the duration of the project. This includes the work necessary to guide and direct Consultant's overall processes and Consultant's project team. Consultant shall manage its production efforts including administering the contract, monitoring progress, and directing its quality control activities.

Consultant shall provide leadership, direction, and control of the Consultant's production efforts. Consultant shall:

- Schedule, coordinate, and supervise its project work.
- Maintain liaison and coordination between Consultant and County staff.
- Coordinate with the County for scheduling site visits and overall deliverable schedule.
- Monitor its project budgets and costs.

- Prepare monthly invoice and backup data.

1.1 Consultant Deliverables:

Consultant shall provide:

- On-going coordination and communication as needed to appropriately manage the Services under this SOW (no tangible deliverables for this task).
- Electronic mail to schedule activities with County (electronic copy)
- Ten (10) monthly invoices (electronic copy), and a final invoice.

1.2 Project Meetings

Consultant shall prepare for and attend two (2) virtual project meetings with County staff. Attendees will include Consultant's PM and up to one additional technical staff member. Meetings are assumed to be 1 hour in length on average. Meeting agendas and notes will be prepared by County. Meeting purpose and agendas under this task will be determined by the County. For budgeting purposes, it is assumed that up to 2 Consultant staff will attend each Project meeting.

1.2 Consultant Deliverables:

For each meeting, Consultant shall provide:

- Attendance, feedback, comments, and project services updates as necessary during meeting discussions (no tangible deliverables for this task).
- Review and comments on Draft Meeting Minutes provided by others.

TASK 2 – ENVIRONMENTAL STUDIES

2.1 RESERVED

2.2 Fish Passage Plan (CONTINGENCY TASK)

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

- There are current or were historic Native Migratory Fish (NMF) present at the Project site.
- Oregon's fish passage law will be triggered due to installation of temporary work isolation barrier in the active channel (OARs 635-412-0005 to 625-412-0040).
- There is habitat for NMF upstream of the Project site and providing passage at the Project location would provide a significant or cost effective benefit to NMF.
- The Project will not trigger the need for fish passage mitigation or a fish passage waiver.
- The Project will maintain upstream and downstream fish passage during construction.

Consultant shall:

- Determine and document fish passage criteria in the Fish Passage Plan.
- Prepare 1 draft fish passage plan in ODFW's form format and submit to Agency for review.
- Revise the draft plan and submit the final fish passage plan to Agency for approval of changes.
- Consultant will submit County-reviewed fish passage plan to ODFW for review and concurrence.
- Incorporate fish passage requirements and ODFW concurrence documentation into permit documents as applicable.

2.2 Consultant Deliverables:

Consultant shall prepare and submit:

- Draft Fish Passage Plan (1 electronic MS Word copy) to County for review.

- Final Fish Passage Plan (1 electronic PDF copy) to County within 2 weeks of receiving comments.
- County approved Final Fish Passage Plan to ODFW.

2.3 Joint Permit Application (DSL, USACE, DEQ) and SLOPES Compliance Coordination

Consultant shall prepare a complete JPA meeting all the applicable requirements of the most recent version of the Oregon Department of State Lands Removal-Fill Guide, USACE, and Oregon Department of Environmental Quality (DEQ) permit application standards. Consultant shall submit the JPA, with appropriate attachments, to the USACE, DSL, and DEQ obtain Clean Water Act (CWA) Section 404, Oregon Removal-Fill Law, and CWA Section 401 Water Quality Certification permits, respectively.

County will select the preferred design for the Project prior to the preparation of the JPA.

Consultant shall:

- Prepare JPA for a USACE Section 404 Nationwide Permit and a DSL General Permit, to authorize work within the jurisdictional waters and any wetlands found in the Project area.
- Provide pre submittal coordination with DEQ to inform them of the Project and verify requirements and documentation necessary to apply for Section 401 Water Quality Certification.
- Provide pre-submittal coordination with representatives of the USACE and DSL to confirm permitting requirements and application procedures. Consultant shall coordinate and attend one pre-submittal site visit with DSL and the USACE to discuss the Project and address the resource agencies concerns.
- If only waters will be impacted, document jurisdictional limits in the JPA.
- Verify that features and impacts are correctly identified for the permit application. Consultant shall calculate and provide wetland and waters impacts (permanent and temporary, removal and fill, area and volumes).
- Prepare JPA-required maps, photographs, site descriptions, and additional information required by DSL or the USACE for inclusion in the JPA. Consultant shall provide plan drawings, including, but not limited to, design plans and details, erosion control drawings, work isolation drawings, site restoration drawings, and permit impact drawings (per DSL and USACE permit drawing checklists).
- Prepare narratives and descriptions on Project purpose and need and Project alternatives using Project development information provided by County as necessary to complete the JPA.
- Prepare narrative describing how the project will comply with SLOPES V or most recent programmatic biological opinion.
- Coordinate with NMFS to determine if NMFS has any fish passage concerns on the Project and obtain verification from NMFS they concur with the SLOPES V design. This may include an on-site or virtual meeting with NMFS.
- Document No Effect determination for federally listed or proposed listed wildlife and/or plant species in the JPA.
- Submit to DEQ a Pre-Filing Request Form, Joint Permit Application, and Request for Certification requesting Section 401 Water Quality Certification for the Project. DEQ submittals will be using DEQ's online portal, *Your DEQ Online*.
- Submit the complete JPA package to the DSL and USACE on behalf of the County.
- Respond to questions or comments raised by the DEQ, USACE and DSL following the submission of the JPA, to clarify regulatory Agency concerns and to facilitate the issuance of the DEQ, USACE and DSL permits for this Project.

County will be responsible for obtaining Land Use Planning signature and any necessary property owner signatures on the JPA. County shall be responsible for payment of any associated fees for DSL, USACE, and DEQ to review and approve the submittals. Consultant shall provide post-submittal coordination with DSL, USACE, and DEQ, as necessary.

2.3 Consultant Deliverables:

Consultant shall prepare and submit:

- Electronic copy (Word and compiled PDF) of the Draft JPA Submittal Package to County for review
- Electronic copy (PDF) of the Final JPA Submittal Package to County, USACE, and DEQ 2 weeks following receipt of draft review comments

TASK 3 - PLANS, SPECIFICATIONS AND ESTIMATE

3.1 30% Plans

Consultant shall include 30% level plan for the bank stabilization project. Consultant shall refer to the Hydraulic Analysis memo provided by the County. The proposed design shall meet current SLOPES requirements for bank stabilization projects. The design is anticipated to include approaches that incorporate woody vegetation and/or large wood. The level of effort for this task is budgeted for up to 9 sheets:

- Title sheet
- 1 general construction
- 1 plan view sheet
- 1 profile view sheet
- 1 temporary water management sheet / erosion control sheet
- 1 site restoration (planting) sheet
- 3 detail sheets

Assumption for budgeting purposes:

- The disturbance area is less than 1-acre and will not require a 1200-CA permit.

3.1 Consultant Deliverables:

Consultant shall prepare and submit:

- 30% level, 11" x 17" Digital Plan set in PDF format.

3.2 30% Cost Estimate

Consultant shall develop a contractor-based construction cost estimate of the Project based on the 30% design.

3.2 Consultant Deliverables:

Consultant shall prepare and submit:

- Engineer's itemized construction cost estimate in Excel format.

3.3 75% Plans (CONTINGENCY TASK)

Consultant shall include 75% level plan for the bank stabilization project. The level of effort for this task is budgeted for up to 10 sheets:

- Title sheet
- 1 general construction
- 1 plan view sheet
- 1 profile view sheet
- 1 temporary water management sheet / erosion control sheet
- 1 site restoration (planting) sheet
- 3 detail sheets
- 1 permit drawing

Consultant shall prepare permit drawings, and volume and area calculations necessary to support permit applications. Permit drawings will include plan views and cross sections indicating fill and removal areas within the regulated work area. The permit drawings shall include all items from the USACE Permit Drawing Checklist (USACE, July 2016).

3.3 Consultant Deliverables:

Consultant shall prepare and submit:

- 75% level, 11" x 17" Digital Plan set in PDF format.

3.4. 75% Specifications (CONTINGENCY TASK)

Consultant shall modify the ODOT standard special provisions to produce technical Special Provisions to the ODOT / APWA 2021 Oregon Standard Specifications for Construction.

3.4 Consultant Deliverables

Consultant shall prepare and submit:

- Technical Special Provisions to the ODOT 2021 Standard Specifications in Word format.

3.5. 75% Cost Estimate (CONTINGENCY TASK)

Consultant shall develop a contractor-based construction cost estimate of the Project based on the 75% design.

3.5 Consultant Deliverables

Consultant shall prepare and submit:

- Engineer's Itemized Construction Estimate in Excel format.

3.6. 100% Plans (CONTINGENCY TASK)

Consultant shall include 100% level plan for the bank stabilization project. The level of effort for this task is budgeted for up to 10 sheets:

- Title sheet
- 1 general construction
- 1 plan view sheet
- 1 profile view sheet
- 1 temporary water management sheet / erosion control sheet
- 1 site restoration (planting) sheet
- 3 detail sheets
- 1 permit drawing

3.6 Consultant Deliverables

Consultant shall prepare and submit:

- 100% level, 11" x 17" Digital Plan set in PDF format.

3.7. 100% Specifications (CONTINGENCY TASK)

Consultant shall modify the ODOT standard special provisions to produce technical Special Provisions to the ODOT / APWA 2021 Oregon Standard Specifications for Construction.

3.7 Consultant Deliverables

Consultant shall prepare and submit:

- Technical Special Provisions to the ODOT 2021 Standard Specifications in Word format..

3.8. 100% Cost Estimate (CONTINGENCY TASK)

Consultant shall develop a contractor-based construction cost estimate of the Project based on the 100% design.

3.8 Consultant Deliverables

Consultant shall prepare and submit:

- Engineer's itemized construction cost estimate in Excel format.

F. CONTINGENCY TASKS

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

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

Contingency Task Summary Table

Contingency Task Description	NTE for Each	Max Quantity	Method of Comp.	Total NTE Amount	Fixed Fee
2.2 Fish Passage Plan	\$ 6,623.39	1	T&M	\$ 6,623.39	N/A
3.3 75% Plans	\$ 11,090.94	1	T&M	\$ 11,090.94	N/A
3.4 75% Specifications	\$ 10,084.54	1	T&M	\$ 10,084.54	N/A
3.5 75% Cost Estimate	\$ 3,834.41	1	T&M	\$ 3,834.41	N/A
3.6 100% Plans	\$ 9,373.11	1	T&M	\$ 9,373.11	N/A
3.7 100% Specifications	\$ 7,059.96	1	T&M	\$ 7,059.96	N/A
3.8 100% Cost Estimate	\$ 3,398.82	1	T&M	\$ 3,398.82	N/A
Total NTE For All Contingency Tasks:				\$ 51,465.17	
Total For Any Contingency Fixed-Fee Amounts:					\$ 0
Total NTE for Contingency Cost (and Fixed-Fee Amounts, if any):					\$ 51,465.17

EXHIBIT B – COMPENSATION

Definitions:

FCCM – Facilities Capital Cost of Money

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

NTE – Not to Exceed Amount

T&M – Time and Materials

A. METHOD of COMPENSATION for NON-CONTINGENCY TASKS

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

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

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

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

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

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

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

The dollar amount for T&M non-contingency Services is: \$ 48,215.06

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 State.** Personal expenses shall not be authorized at any time. The following guidelines shall apply to the Contract:

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

D. INVOICES

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

- The project name
- Invoice number
- Invoice date
- Billing period
- The County's Contract number
- The County's project number
- The County project manager's name
- Remit address
- Consultant project manager's name
- Task numbers from contract
- Percent complete of each task/deliverable
- Total amount due for the billing period

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.

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.

G. WITHHOLDING/RETAINAGE

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

H. PAYMENT REDUCTION

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

I. SPECIFIC LIMITATIONS and UNALLOWABLE CHARGES

Specific Limitations

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

County will pay Consultant only up to the hourly rates set forth in the Contract that are commensurate with the type of Services performed regardless of the classification, title, or level of experience of the individual

performing those Services. However, under no circumstances shall Consultant invoice County based on higher direct salary rates than the actual amount paid to its employees.

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

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

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

Unallowable Charges

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

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

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

J. INDIRECT COSTS; SALARY and BILLING RATE SCHEDULES

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

2. Overhead Schedule - If Consultant or subconsultants calculate overhead as part of their normal business practice, the overhead schedules shall be prepared and submitted in accordance with ODOT's Billing Rate Policy (as may be revised from time to time by ODOT) available at:

<https://www.oregon.gov/ODOT/Business/Procurement/DocsPSK/brPolicy.pdf>. Consultant Certification of compliance with Federal Cost Principles is required per FHWA directive 4470.1a: <https://www.fhwa.dot.gov/legregs/directives/orders/44701a.htm>. A signed [Certification of Final Indirect Costs form](#) must be submitted with the overhead schedule.

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

future contract period, performing financial ratio analysis, evaluating overhead account trends and utilization rates for reasonableness.

3. Salary and Billing Rate Schedules

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

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

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

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

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

K. RATE REVISIONS

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

L. BREAKDOWN OF COSTS (BOC)

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

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

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

expenses applied to the budget for the non-contingency tasks. Enter the agreed to unit and extended amounts for contingency tasks in the Contingency Task Summary table.

The final BOC, dated February 15, 2023, is not physically attached, but is incorporated into this Contract by this reference with the same force and affect as though fully set forth herein. A copy of the final BOC has been provided to the Consultant prior to execution of this Contract.

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. 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**1. Party Contact Information.****a.1 * County's Project Manager (CPM)**

Name:	Charles Williams
Ph:	503-365-3110
E-mail:	cwilliams@co.marion.or.us

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

Name:	Nike Neuvenheim, Sr. Contracts Specialist
Ph:	503-365-3100
E-mail:	nneuvenheim@Co.marion.or.us

a.3 County's address for invoicing:

Mailing Address:	Marion County Public Works 5155 Silverton Road NE, Bldg. 1 Salem, OR 97305 Attn: Charles Williams
E-mail:	cwilliams@co.marion.or.us

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

Name:	Loren Stucker
Ph:	503-480-1342
E-mail:	lpst@deainc.com

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

Name:	Heather Bennett
Address:	David Evans and Associates, Inc. 5121 Skyline Village Loop S, Suite 200 Salem, OR 97306
Ph:	503-480-1308 (o); 503-572-9526 (c)
E-mail:	hlb@deainc.com

* 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.