

Contract Review Sheet

PW-5059-22 (1)

Contract for Services #: PW-5059-22 Amendment #: 1

Contact: Chalyce MacDonald Department: Public Works Department

Phone #: (503) 566-4139 Date Sent: Monday, August 7, 2023

Title: On-Call Engineering and Related Services

Contractor's Name: AKS Engineering & Forestry, LLC

Term - Date From: Execution Expires: December 31, 2025

Original Contract Amount: \$100,000.00 Previous Amendments Amount: \$0.00

Current Amendment: \$77,189.53 New Contract Total: \$177,189.53 Amd% 77%

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

Source Selection Method: 20-0260 Request for Proposal RFP# PW1159-22

Description of Services or Grant Award

On-Call Service Agreement for range of consulting services associated with the civil infrastructure of the Environmental Services division, including: General Civil Project Planning and Engineering, Land Surveying Services, Environmental Support Services, Arborist Services, Land Use Planning Services, Landscape Architecture Services.

Amendment 1 adds Federal/ARPA terms and conditions and increases compensation by \$77,189.53

Desired BOC Session Date: 8/30/2023 BOC Planning Date: 8/17/2023

Files submitted in CMS: 8/9/2023 Printed packet & copies due in Finance: 8/15/2023

BOC Session Presenter(s) Brian May

FOR FINANCE USE

Date Finance Received: 8/24/2023 Date Legal Received: _____

Comments: Y

REQUIRED APPROVALS

Finance - Contracts _____ Date _____ Contract Specialist _____ Date _____

Legal Counsel _____ Date _____ Chief Administrative Officer _____ Date _____



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: August 30, 2023

Department: Public Works

Agenda Planning Date: August 17, 2023

Time required: 5 min

☐ Audio/Visual aids N/A

Contact: Brian May

Phone: (503) 365-3147

Department Head Signature:

TITLE

Consider approval of Amendment #1 to On-Call Engineering and Related Services Contract PW-5059-22 with AKS Engineering & Forestry, LLC (AKS).

Issue, Description & Background

AKS was one of several contractors awarded an on-call service contract for restoration projects in Marion County parks in FY 22-23. Including projects in progress, a total of \$177,189.53 in consultant services has been scoped, spread over four (4) individual projects:

1. Parkdale Park ARPA Upgrade project – Concept development, natural resource documentation, 30% design and public engagement services (\$95,520.00)
2. Bear Creek Campground FEMA Wildfire Recovery project – Preliminary engineering and topographic survey (\$29,000.00)
3. Salmon Falls Park OWEB Floodplain Restoration project – Environmental resource surveys, wetland delineation and vegetation restoration design (\$22,169.53)
4. Salmon Falls Park FEMA Wildfire Recovery project – Preliminary engineering and topographic survey (\$30,500.00)

Amendment #1 would increase the original contract value by \$77,189.53, from \$100,000.00 to \$177,189.53 to allow the continuation of these projects, including those involving wildfire recovery in the North Santiam River Canyon.

Financial Impacts:

This is a budgeted expense in the current fiscal year budget.

Impacts to Department & External Agencies

There are no impacts to other departments or agencies.

Options for Consideration:

- 1) Approve Amendment #1 to Contract PW-5059-22 with AKS.
- 2) Take no action at this time.

Recommendation:

Staff recommend the Board approve Amendment #1 to PW-5059-22, allowing AKS to continue work on the four projects listed, above.

List of attachments:

1. Compensation Justification Approval
2. Amendment #1 to PW-5059-22
3. Federal Compliance Exhibits B, C, D, E

Presenter:

Brian May



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

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

Copies to:

Chalyce MacDonald, cmacdonald@co.marion.or.us

REQUEST FOR AUTHORIZATION OF CONTRACT PW-5059-22 (1)

Date: August 7, 2023
To: Chief Administrative Officer
Cc: Contract File
From: Chalyce MacDonald

I. Subject: Amendment Exceeds 25%

DIPS CODE: 310-40-43-432-4306-534600-105737 / 105998 / 105481 / 105482

Budget Authority: ☒ Yes ☐ No

CIP: 23-327 / 22-429 / 23-328

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 AKS Engineering & Forestry, LLC for On-Call Engineering and Related Services with a value of \$100,000.00. An additional \$77,189.53 will be added to the contract for a new contract total of \$177,189.53 upon approval.

A. BACKGROUND

Preparing for many upcoming restoration projects in Marion County parks, a Request for Proposals was issued in August-September 2022 for small and medium-scale projects. Seven companies were awarded on-call service contracts, of which six were executed in the following months. The threshold was expected to be \$100,000 or less per project, with larger-scale projects solicited separately. A total of \$177,189.53 in consultant services has been scoped, spread over four (4) individual projects:

1. Parkdale Park ARPA Upgrade project,
2. Bear Creek Campground FEMA Wildfire Recovery project,
3. Salmon Falls Park OWEB Floodplain Restoration project, and
4. Salmon Falls Park FEMA Wildfire Recovery project.

The individual cost for services for each of these four projects is less than \$100,000, in accordance with the terms of the existing contract. There have been no previous amendments to any of these contracts.

B. CURRENT AMENDMENT PURPOSE

This amendment will increase the contract value based on the negotiated cost for services required for each of the four (4) projects listed above, as follows:

1. Parkdale Park ARPA Upgrade project – Concept development, 30% design and public engagement services (\$95,520.00)
2. Bear Creek Campground FEMA Wildfire Recovery project – Preliminary engineering and topographic survey (\$29,000.00)
3. Salmon Falls Park OWEB Floodplain Restoration project – Environmental resource surveys, wetland delineation and vegetation restoration design (\$22,169.53)
4. Salmon Falls Park FEMA Wildfire Recovery project – Preliminary engineering and topographic survey (\$30,500.00)

C. JUSTIFICATION

For formal procurements, indicate why the need for adding more than 25% of the total contract cost:

The original on-call contract was issued with a NTE value of \$100,000 to provide engineering services to multiple small Parks projects. The contract may be amended to add on-call services and associated consultant fees, up to \$100,000 per project. This amendment would add \$77,189.53 in consultant services to satisfy the project needs listed, above, and would be issued in accordance with the terms of the contract and Marion County's on-call contract procedures.

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 \$1,490,974 Program / Account 4306/534600

Submitted by:

Chalyce MacDonald
Public Works Department

Acknowledged by:

Department Head

Reviewed by:

Contracts & Procurement

Acknowledged by:

Jan Fritz, CAO



**AMENDMENT 1 to PW-5059-22
the CONTRACT FOR SERVICES
between**

MARION COUNTY and AKS ENGINEERING & FORESTRY, LLC

This Amendment No. 1 to the Contract for Services (as amended from time to time, the “Contract”), dated January 11, 2023 between Marion County, a political subdivision of the State of Oregon, hereafter called County, and AKS Engineering & Forestry, LLC, hereafter called Contractor.

The Contract is hereby amended as follows (new language is indicated by underlining and deleted language is indicated by brackets):

This Agreement includes the following exhibits which are incorporated herein:

- A. Exhibit B (Required Federal Terms and Conditions)
- B. Exhibit C (Federal Funding Accountability and Transparency Act Certification)
- C. Exhibit D (Capital Justification)
- D. Exhibit E (Reporting Requirements)

2. CONSIDERATION.

- A. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is \$177,189.53 ~~\$100,000.00~~.
- C. If specified below, county’s payments to Contractor under this agreement will be paid in whole or in part with federal funds. If so specified, by signing this agreement, Contractor certifies neither it nor its employees, contractors, sub-contractors or subgrantees who will perform the Project activities are currently employed by an agency or department of the federal government. If applicable, Contractor shall comply with Exhibit B: Appendix II To Part 200 – Contract Provisions For Non-Federal Entity Contracts Under Federal Awards.

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

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

On March 11, 2021, the American Rescue Plan Act (“ARPA”) was signed into law and established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund, together which make up the Coronavirus State and Local Fiscal Recover Funds (“SLFRF”) program with the Assistance Listing Number (ALN) to be paid through this contract is 21.027.

28. RELATIONSHIPS OF THE PARTIES

- 28.1 Contractor shall provide the Services for the Project in accordance with the terms and conditions of this Contract. Contractor's performance of Services shall be as a professional Contractor to Owner to carry out the Project and to provide the technical documents and supervision to achieve Owner's Project objectives.
- 28.2 In administering this Contract, Owner may retain the services of an independent project manager and other consultants as needed to fulfill Owner’s objectives.
- 28.3 Contractor shall provide a list of all sub-contractors which Contractor intends to utilize on the

Project (the "sub-contractors"). This list shall include such information on the qualifications of the sub-contractors as may be requested by Owner. Owner reserves the right to review the sub-contractors proposed. Contractor shall not retain a sub-contractor which Owner has a reasonable objection.

28.4 Contractor acknowledges that this Contract was awarded on the basis of the unique background and abilities of the key personnel of Contractor and sub-contractors identified by Contractor (collectively, the "Key Personnel" and individually, the "Key Person"). Therefore, Contractor shall make available Key Personnel as identified in its proposal. Contractor shall provide to Owner a list of the proposed Key Personnel to be assigned to the Project. This list shall include such information on the professional background of each Key Person as may be requested by Owner. If any Key Person becomes unavailable to Contractor, the Parties shall mutually agree upon an appropriate replacement. Without prior notice to, and the written consent of, Owner, Contractor shall not: (i) re-assign or transfer any Key Person to other duties or positions so that the Key Person is unable to fully perform his or her responsibilities under the Contract; (ii) allow any Key Person to delegate to anyone his or her performance of any management authority or other responsibility required under the Contract; or (iii) substitute any Key Person. Any of these actions shall constitute a material breach of the Contract. Contractor shall remove any individual or sub-contractor from the Project if so directed by Owner in writing following discussion with Contractor, provided that Contractor shall have a reasonable time period within which to find a suitable replacement.

29. CONTRACTOR'S RESPONSIBILITIES; REPRESENTATIONS AND WARRANTIES

29.1 Contractor agrees that:

29.1.1 The phrase "Standard of Care" that is used in this Contract is defined as follows: the same professional skill, care, diligence and standards as other professionals performing similar services under similar conditions (the "Standard of Care");

29.1.2 Contractor shall perform all Services in accordance with the Standard of Care;

29.1.3 Contractor shall prepare, in accordance with the Standard of Care, all drawings, specifications, deliverables and other documents so that they accurately reflect, fully comply with and incorporate all applicable laws, rules, and regulations, and so that they are complete and functional for the purposes intended, except as to any deficiencies which are due to causes beyond the control of Contractor;

29.1.4 Contractor shall be responsible for correcting any inconsistencies, errors or omissions in the drawings, specifications, deliverables and other documents prepared by Contractor at no additional cost to Owner, unless such corrective action is attributable to deficiencies in Owner furnished information;

29.1.5 Owner's review or acceptance of documents shall not be deemed as approval of the adequacy of the drawings, specifications, deliverables, and other documents. Any review or acceptance by Owner will not relieve Contractor of any responsibility for complying with the Standard of Care;

29.1.6 During the term of the Contract, Contractor shall obtain, hold, maintain and fully pay for all licenses and permits required by law for Contractor to conduct its business and perform the Services. During the term of the Contract, Owner shall pay for, and Contractor shall obtain, hold and maintain all licenses and permits required for the Project, unless otherwise specified in the Contract. Contractor shall review the Project site and the nature of the Services and advise Owner throughout the course of the Project as to the necessity of obtaining all Project permits and licenses, the status of the issuance of any such permits and licenses, and any issues or impediments related to the issuance or continuation of any such permits and licenses; and

29.1.7 Contractor shall pay all sub-consultants and other sub-contractors as required by Contractor's contracts with those sub-consultants and sub-contractors. Contractor agrees

that Owner has no direct or indirect contractual obligation or other legal duty whatsoever to pay the sub-consultants and other sub-contractors of Contractor or otherwise ensure that Contractor makes full and timely payment to those sub-consultants and sub-contractors for services performed on the Project.

29.2 Contractor represents and warrants to Owner that:

- 29.2.1 Contractor has the power and authority to enter into and perform this Contract; the persons executing this Contract on behalf of Contractor have the actual authority to bind Contractor to the terms of this Contract;
- 29.2.2 When executed and delivered, this Contract shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; the provisions of this Contract do not conflict with or result in a default under any agreement or other instrument binding upon Contractor and do not result in a violation of any law, regulation, court decree or court order or other legal process applicable to Contractor;
- 29.2.3 Contractor shall, at all times during the term of this Contract, be duly licensed to perform the Services, and if there is no licensing requirement for the profession or Services, be duly qualified and competent;
- 29.2.4 Contractor is an experienced firm having the skill, legal capacity, and professional ability necessary to perform all the Services required under this Contract and to design and administer a project having the scope and complexity of the Project;
- 29.2.5 Contractor has the capabilities and resources necessary to perform Contractor's obligations under this Contract;
- 29.2.6 Contractor is, or shall become, in a manner consistent with the Standard of Care, familiar with all current laws, rules, and regulations which are applicable to the design and construction of the Project;
- 29.2.7 All Services shall be performed in accordance with the Standard of Care;
- 29.2.8 The Project, when completed and if constructed in accordance with the intent established by the drawings, specifications, deliverables and other documents prepared by Contractor pursuant to this Contract, shall be structurally sound and a complete and properly functioning facility suitable for the purposes for which it is intended; and

29.3 Compliance with Coronavirus State Fiscal Recovery Fund. Contractor shall comply with the requirements of the federal American Rescue Plan Act Coronavirus State Fiscal Recovery Fund (codified as 42 U.S.C. 802), including all implementing regulations (31CFR 35.1 et seq.) and other guidance promulgated by the U.S. Department of the Treasury in the execution of the Services.

29.4 Employee Whistleblower Protection. Contractor shall comply with 41 U.S.C. 4712, Program for Enhancement of Employee whistleblower Protection. Refer to 41 U.S.C. 4712 for employee whistleblower rights and protections afforded under this Contract.

30. RESPONSIBILITIES OF OWNER; SPECIAL CONTRACT PROVISIONS

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

31. 28. CERTIFICATIONS AND SIGNATURE. THIS CONTRACT MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF CONTRACTOR.

**EXHIBIT A
STATEMENT OF WORK**

2. COMPENSATION. The total amount available for payment to Contractor under Exhibit A, section 2.A and for authorized reimbursement to Contractor under Exhibit A, section 2.C is \$177,189.53 ~~\$100,000.00~~.

Except as expressly amended above, all other terms and conditions of the original contract are still in full force and effect. Contractor certifies that the representations, warranties and certifications contained in the original Contract are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

**MARION COUNTY SIGNATURES
BOARD OF COMMISSIONERS:**

	Date
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	Date
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	Date
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Authorized Signature:		Date
	Department Director or designee	

Authorized Signature:		Date
	Chief Administrative Officer	

Reviewed by Signature:		Date
	Marion County Legal Counsel	

Reviewed by Signature:		Date
	Marion County Contracts & Procurement	

AKS ENGINEERING & FORESTRY, LLC SIGNATURE

Authorized Signature:		Date
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Title: _____

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

- Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.
- Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours

worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

- **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—**Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- **Debarment and Suspension (Executive Orders 12549 and 12689)—**A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—**Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

- See §200.322 Domestic preference for procurements.

- Audit Requirements of 2 CFR §200.5XX (Subpart F)

- Subrecipient must comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law.

- If Subrecipient expends federal awards in excess of \$750,000 in a fiscal year, Subrecipient is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Copies of all audits must be submitted to the County within 30 days of completion.
- Subrecipient must save, protect and hold harmless the County from the cost of any audits or special investigations performed by the Secretary of State with respect to the funds expended under this Agreement. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Subrecipient and the County.
- System for Award Management. Subrecipient must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at <https://www.sam.gov>. This includes applicable requirements regarding registration with SAM, as well as maintaining current information in SAM. Subrecipient must also comply with applicable restrictions on subawards ("subgrants") to first tier subcontractors (first-tier "Subcontractors"), including restrictions on subawards to entities that do not acquire and provide (to the County) the unique entity identifier required for SAM registration.
- Whistleblower Protection Act. Subrecipient must comply and ensure the compliance by subcontractors, with 41 U.S.C. 4712, Program for Enhancement of Employee Whistleblower Protection. Subrecipient must inform subcontractors, contractors and employees, in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 USC § 4712.
- See § 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.
- See § 200.323 Procurement of recovered materials.
- Recordkeeping Requirements. Subrecipient must maintain records and financial documents for five years after all funds have been expended or returned to the County. The County may request transfer of records of long-term value at the end of such period. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats.
- Subrecipient must agree to provide or make available such records to the County upon request, and to the Government Accountability Office ("GAO"), U.S. Treasury's Office of Inspector General ("OIG"), and their authorized representative in order to conduct audits or other investigations.
- Civil Rights Compliance. Recipients of Federal financial assistance from the U.S. Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the U.S. Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Subrecipient's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Subrecipient's implementing regulations, 31 CFR part 28; Age

Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Subrecipient implementing regulations at 31 CFR part 23.

- In order to carry out its enforcement responsibilities under Title VI of the Civil Rights Act, U.S. Treasury will collect and review information from non-Tribal recipients to ascertain their compliance with the applicable requirements before and after providing financial assistance. U.S. Treasury's implementing regulations, 31 CFR part 22, and the Department of Justice (DOJ) regulations, Coordination of Non-discrimination in Federally Assisted Programs, 28 CFR part 42, provide for the collection of data and information from recipients (see 28 CFR 42.406). U.S. Treasury may request that recipients submit data for post-award compliance reviews, including information such as a narrative describing their Title VI compliance status. This collection does not apply to Tribal governments.

- Real Property, Equipment and Other Capital Expenditures. County shall, and shall cause its Subrecipients to, maintain policies and procedures for the management of property and equipment that comply with all requirements of the applicable Uniform Guidance at 2 CFR Part 200, Subpart D, 2 CFR Part 200.310 – 200.316 and 200.439, and specific requirements of the source of funds. These regulations shall apply to all real property, equipment, and other capital expenditures purchased with the federal funding.

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

Federal Funding Accountability and Transparency Act (FFATA) Certification*

Organization Name:	AKS Engineering & Forestry, LLC	CMS Number:	PW-5059-22
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Did your organization have a gross income, from all sources, of less than \$300,000 in your previous tax year?

- ☐ Yes (Skip questions "A" and "B" and finish the certification)
- ☒ No (Proceed to questions "A" and "B")

A. Certification Regarding % and Amount of Annual Gross Revenue from Federal Awards

Did your organization (1) receive 80% or more of its annual gross revenue **AND** (2) \$25 million or more from federal awards and contracts during the preceding fiscal year?

- ☐ Yes If "Yes," proceed to question "B".
- ☒ No If "No," skip question "B" and finish the certification.

B. Certification Regarding Public Access to Compensation Information.

Does the public have access to information about the compensation of the senior executives in your business or organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?

- ☐ Yes If "Yes", where can this information be accessed?
- ☐ No If "No", you must provide the names and total compensation of the top five highly compensated executives below. (For example: *John Blum: \$500,000; Mary Redd: \$50,000; etc.*)

1	_____	\$	_____
2	_____	\$	_____
3	_____	\$	_____
4	_____	\$	_____
5	_____	\$	_____

As the duly authorized representative (Signor) for the Organization, I hereby certify that the statements made by me in this certification form are true, complete and correct to the best of my knowledge.

Richard Walker

Print Name of Authorized Representative

Principal

Print Title of Authorized Representative

Richard Walker

Signature of Authorized Representative

8/7/23

Date

Federal Funding Accountability and Transparency Act (FFATA) Certification*

Background on FFATA Requirements

Under the requirements of the Federal Funding Accountability and Transparency Act (Pub. L. No. 109-282), as amended by Section 6202 of Public Law 110-252, that are codified in 2 CFR Part 170, direct recipients of federal grants or cooperative agreements are required to report first-tier subawards and subcontracts of \$30,000 or more to the Federal Funding Accountability and Transparency Act (FFATA) Subaward Reporting System (FSRS).

Organizations that are requested to complete the FFATA Certification have been identified by Marion County as either a first tier subaward or subcontract and therefore, FFATA requirements are applicable.

Definition of Compensation

Total compensation means the cash and noncash dollar value earned by the executive during the Organizations preceding fiscal year and includes the following: (1) Salary and bonus; (2) Awards of stock, stock options, and stock appreciation rights; (3) Earnings for services under non-equity incentive plans; (4) Change in pension value; (5) Above-market earnings on deferred compensation which is not tax-qualified; and (6) Other compensation, as further defined in FAR 52.204-10(a) and 17 CFR 229.402(c)(2).

**Organizations that receive first tier subawards or subcontracts >\$30,000 are required to comply with FFATA requirements per 2 CFR Part 170 and FAR 52.204-10.*

**American Rescue Plan Act (ARPA) /
Coronavirus State and Local Fiscal Recovery Funds (SLFRF)
Capital Expenditure Justification Form**

Purpose: To ensure recipient complies with the terms, conditions and requirements of the U.S. Treasury 31 CFR Part 35 SLFRF Final Rule. Recipients must complete and meet the requirements of a written justification for capital expenditures equal to or greater than \$1 million.

Capital Expenditures: Per the Uniform Guidance 2 CFR 200.1, the term “*capital expenditures*” means “expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.”

Organization Name:	Marion County - Public Works		
Organization Contact Completing Form:	Chalyce MacDonald		
Date:	7-Aug-23		
Project Name:	On-Call Engineering and Related Services		
Expenditure Category:	1.7 Other COVID-19 Public Health Expenses (including Communications, Enforcement, Isolation/Quarantine)		
Type of Capital Expenditure ¹ :	Parks, green spaces, recreational facilities, sidewalks		
Specify "Other" Expenditure Type:			
Project Amount:	\$		177,190
Project Threshold Per Table 1:	< \$1M		
CMS # (Marion County to Complete)	PW-5059-22		

Black shaded cells DO NOT need to be filled out.

1 Describe the harm or need to be addressed.

2 Explanation of why a capital expenditure is appropriate. (*For example, recipients should include an explanation of why existing equipment and facilities, or policy changes or additional funding to pertinent programs or services, would be inadequate.*)

3 Was there a comparison performed of the approved capital project against at least two alternative capital expenditures?

☐ YES

☒ NO

a) If yes, please demonstrate why the approved capital expenditure is superior.

b) If no, please explain why.

¹ Coronavirus State and Local Fiscal Recovery Funds Project and Expenditures Report User Guide - Appendix H

Marion County to complete this section	
Grant Reviewer:	
Date Reviewed:	
Comments:	

Table 1 (U.S. Treasury Final Rule, General Provisions: Other, b. Capital Expenditures)

If a project has total expected capital expenditures of	and the use is enumerated in (b)(3), then	and the use is not enumerated in (b)(3), then
Less than \$1 million	No Written Justification required	No Written Justification required
Greater than or equal to \$1 million, but less than \$10 million	Written Justification required but recipients are not required to submit as part of regular reporting to Treasury	Written Justification required and recipients must submit as part of regular reporting to Treasury
\$10 million or more	Written Justification required and recipients must submit as part of regular reporting to Treasury	

EXHIBIT E

ARPA/SLFRF REPORTING REQUIREMENTS FORM

A.1 Project and Expenditure Report

Department shall complete the Project and Expenditure Report as outlined in the Project and Expenditure Report User Guide dated April 1, 2022, according to the awarded eligibility category. The Board and Designee shall provide the Project and Expenditure Report template to the Department no later than June 15, 2022. Once the Department's total project expenditures have been occurred and the project has completed, a final report shall be submitted, and quarterly reporting requirements will no longer be required.

Project and Expenditure Reports are due according to the following table:

Report	Year	Quarter	Period Covered	Due Date
1	2022	2	Project Commence – June 30	July 15, 2022
2	2022	3	July 1 – September 30	October 15, 2022
3	2022	4	October 1 – December 31	January 15, 2023
4	2023	1	January 1 – March 31	April 15, 2023
5	2023	2	April 1 – June 30	July 15, 2023
6	2023	3	July 1 – September 30	October 15, 2023
7	2023	4	October 1 – December 31	January 15, 2024
8	2024	1	January 1 – March 31	April 15, 2024
9	2024	2	April 1 – June 30	July 15, 2024
10	2024	3	July 1 – September 30	October 31, 2024
11	2024	4	October 1 – December 31	January 15, 2025
12	2025	1	January 1 – March 31	April 15, 2025
13	2025	2	April 1 – June 30	July 15, 2025
14	2025	3	July 1 – September 30	October 15, 2025
15	2025	4	October 1 – December 31	January 15, 2026
16	2026	1	January 1 – March 31	April 15, 2026
17	2026	2	April 1 – June 30	July 15, 2026
18	2026	3	July 1 – September 30	October 15, 2026
19	2026	4	October 1 – December 31	March 15, 2027

A.2 Recovery Plan Performance Report

Department shall complete the Recovery Plan Performance Report. The Board and designee shall provide the Recovery Plan Performance Report template to the Department no later than June 15, 2022.

Recovery Plan Performance Reports are due according to the following table:

Report	Period Covered	Due Date
1	Award Date – June 30, 2022	July 15, 2022
2	July 1, 2022 – June 30, 2023	July 15, 2023
3	July 1, 2023 – June 30, 2024	July 15, 2024
4	July 1, 2024 – June 30, 2025	July 15, 2025
5	July 1, 2025 – June 30, 2026	July 15, 2026
6	July 1, 2026 – December 31, 2026	March 15, 2027

A.3 Federal Funding Accountability and Transparency Act Certification

Department shall require its contractor(s) and subcontractor(s), to complete and include Exhibit

D. Federal Funding Accountability and Transparency Act Certification as part of the contract.

A.4 ARPA/SLFRF Capital Expenditure Justification Form

Department shall require its contractor(s) and subcontractor(s) to complete and include Exhibit E.

ARPA/SLFRF Capital Expenditure Justification Form as part of the contract.



Marion County
OREGON
FINANCE DEPARTMENT

Contract Review Sheet

PW-5059-22

Contract for Services #: **PW-5059-22** Amendment #: _____

Contact: **MacDonald, Chalyce** Department: **Public Works Department**

Phone #: **(503) 566-4139** Date Sent: **Friday, December 30, 2022**

Title: **On-Call Engineering and Related Services**

Contractor's Name: **AKS Engineering & Forestry, LLC**

Term - Date From: **Execution** Expires: **December 31, 2025**

Contract Total: \$ **100,000.00** Amendment: \$ **-** New Total: \$ **100,000.00**

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

Source Selection Method: **20-0260 Request for Proposal** RFP# **1159**

Description of Services or Grant Award

On-Call Service Agreement for range of consulting services associated with the civil infrastructure of the Environmental Services division, including:

- 1.1 General Civil Project Planning and Engineering
- 1.2 Land Surveying Services
- 2.1 Environmental Support Services
- 2.2 Arborist Services
- 2.5 Land Use Planning Services
- 2.6 Landscape Architecture Services

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:

A3538E7AEC704E4
1/6/2023
Date

DocuSigned by:

2A961867586140F
1/12/2023
Date

DocuSigned by:

00CEC5B048BE483
1/11/2023
Date

DocuSigned by:

DC16351248DE4EC
1/11/2023
Date

Legal Counsel

Chief Administrative Officer

Date

**MARION COUNTY
CONTRACT FOR SERVICES
PW-5059-22**

This contract is between Marion County (a political subdivision of the State of Oregon) hereinafter called County, and AKS Engineering & Forestry, LLC, an Oregon Corporation hereinafter called Contractor.

Contractor agrees to perform, and County agrees to pay for, the services and deliverables described in Exhibit A (the "Work").

1. TERM

This Contract is effective on the date it has been signed by all parties and all required County approvals have been obtained. This Contract expires on **December 31, 2025**. The parties may extend the term of this Contract provided that the total Contract term does not extend beyond December 31, 2027.

2. CONSIDERATION

- A. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is \$100,000.00. County will not pay Contractor any amount in excess of the not-to-exceed compensation of this Contract for completing the Work and will not pay for Work performed before the date this Contract becomes effective or after the termination of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.
- B. Interim payments to Contractor shall be made in accordance with the payment schedule and requirements in Exhibit A.
- C. If specified below, county's payments to Contractor under this agreement will be paid in whole or in part with federal funds. If so specified, by signing this agreement, Contractor certifies neither it nor its employees, contractors, subcontractors or subgrantees who will perform the Project activities are currently employed by an agency or department of the federal government.

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

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

3. COMPLIANCE WITH STATUTES AND RULES

- A. County and the Contractor agree to comply with the provisions of this contract, its exhibits and attachments and all applicable federal, state, and local statutes and rules.

Unless otherwise specified, responsibility for all taxes, assessment, and any other charges imposed by law upon employers shall be the sole responsibility of the Contractor. Failure of the Contractor or the County to comply with the provisions of this contract and all applicable federal, state, and local statutes and rules shall be cause for termination of this contract as specified in sections concerning recovery of funds and termination.

County's performance under this Contract is conditioned upon Contractor's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Contract),

279B.230, 279B.235 (if applicable to this Contract) and ORS 652, which are incorporated by reference herein.

- B. Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this Section, "tax laws" includes all the provisions described in subsection 27. C. (i) through (iv) of this Contract.

Any violation of subsection B of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty, in subsection 27.3 of this Contract, that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle the County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

- i. Termination of this Contract, in whole or in part;
 - ii. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to State's setoff right, without penalty; and
 - iii. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. The County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Services.
- C. These remedies are cumulative to the extent the remedies are not inconsistent, and the County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

4. CIVIL RIGHTS, REHABILITATION ACT, AMERICANS WITH DISABILITIES ACT AND TITLE VI OF THE CIVIL RIGHTS ACT

Contractor agrees to comply with the Civil Rights Act of 1964, and 1991, Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973, and Title VI as implemented by 45 CFR 80 and 84 which states in part, No qualified person shall on the basis of disability, race, color, or national origin be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which received or benefits from federal financial assistance.

5. TIME IS OF THE ESSENCE

Contractor agrees that time is of the essence in the performance of this Contract.

6. FORCE MAJEURE

Neither County nor Contractor shall be responsible for any failure to perform or for any delay in the performance of any obligation under this Contract caused by fire, riot, acts of God, terrorism, war, or any other cause which is beyond the breaching party's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate the cause of Contractor's delay or breach and shall, upon the cessation of the cause, continue performing under this Contract. County may terminate this Contract upon written notice to Contractor after reasonably determining that the delay or breach will likely prevent successful performance of this Contract.

7. FUNDING MODIFICATION

- A. County may reduce or terminate this contract when state or federal funds are reduced or eliminated by providing written notice to the respective parties.
- B. In the event the Board of Commissioners of the County reduces, changes, eliminates, or otherwise modifies the funding for any of the services identified, the Contractor agrees to abide by any such decision including termination of service.

8. RECOVERY OF FUNDS

Expenditures of the Contractor may be charged to this contract only if they (1) are in payment of services performed under this contract, (2) conform to applicable state and federal regulations and statutes, and (3) are in payment of an obligation incurred during the contract period.

Any County funds spent for purposes not authorized by this contract and payments by the County in excess of authorized expenditures shall be deducted from future payments or refunded to the County no later than thirty (30) days after notice of unauthorized expenditure or notice of excess payment.

Contractor shall be responsible to repay for prior contract period excess payments and un-recovered advanced payments provided by the County. Repayment of prior period obligations shall be made to the County in a manner agreed on.

9. ACCESS TO RECORDS

- A. Contractor shall permit authorized representatives of the County, State of Oregon, or the applicable audit agencies of the U.S. Government to review the records of the Contractor as they relate to the contract services in order to satisfy audit or program evaluation purposes deemed necessary by the County and permitted by law.
- B. Contractor agrees to establish and maintain financial records, which indicate the number of hours of work provided, and other appropriate records pertinent to this contract shall be retained for a minimum of three (3) years after the end of the contract period. If there are unresolved audit questions at the end of the three-year period, the records must be maintained until the questions are resolved.

10. REPORTING REQUIREMENTS

Contractor shall provide County with periodic reports at the frequency and with the information prescribed by County. Further, at any time, County has the right to demand adequate assurances that the services provided by Contractor shall be in accordance with the Contract. Such assurances provided by the Contractor shall be supported by documentation in Contractor's possession from third parties.

11. CONFIDENTIALITY OF RECORDS

- A. Contractor shall not use, release, or disclose any information concerning any employee, client, applicant or person doing business with the County for any purpose not directly connected with the administration of County's or the Contractor's responsibilities under this Contract except upon written consent of the County, and if applicable, the employee, client, applicant or person.
- B. Contractor shall ensure that its agents, employees, officers, and subcontractors with access to County and Contractor records understand and comply with this confidential provision.

- C. If Contractor receives or transmits protected health information, Contractor shall enter into a Business Associate Agreement with County, which shall become part of this Contract, if attached hereto.
- D. Client records shall be kept confidential in accordance with ORS 179.505, OAR 309-11-020, 45 CFR 205.50 and 42 CFR Part 2 as applicable.

12. INDEMNIFICATION AND INSURANCE

- A. Contractor shall defend, save, indemnify, and hold harmless the County, its officers, agents, and employees from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever, including attorney fees, resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this Contract. Contractor shall have control of the defense and settlement of any claim that is subject to this section. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of either County or any department of County, nor purport to act as legal representative of either County or any of its departments, without first receiving from County Legal Counsel authority to act as legal counsel for the County, nor shall Contractor settle any claim on behalf of County without the approval of County Legal Counsel. County may, at its election and expense, assume its own defense and settlement.
- B. Contractor shall obtain the insurance required under section 23 prior to performing under this Contract and shall maintain the required insurance throughout the duration of this Contract and all warranty periods.
- C. County, pursuant to applicable provisions of ORS 30.260 to 30.300, maintains a self-insurance program that provides property damage and personal injury coverage.

13. EARLY TERMINATION

This Contract may be terminated as follows:

- A. County and Contractor, by mutual written agreement, may terminate this Contract at any time.
- B. County in its sole discretion may terminate this Contract for any reason on 30 days written notice to Contractor.
- C. Either County or Contractor may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within 15 days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.
- D. Notwithstanding section 13C, County may terminate this Contract immediately by written notice to Contractor upon denial, suspension, revocation, or non-renewal of any license, permit or certificate that Contractor must hold to provide services under this Contract.

14. PAYMENT ON EARLY TERMINATION

Upon termination pursuant to section 13, payment shall be made as follows:

- A. If terminated under 13A or 13B for the convenience of the County, the County shall pay Contractor for Work performed prior to the termination date if such Work was performed in accordance with the Contract. County shall not be liable for direct, indirect, or consequential damages. Termination shall not result in a waiver of any other claim County may have against Contractor.
- B. If terminated under 13C by the Contractor due to a breach by the County, then the County shall pay the Contractor for Work performed prior to the termination date if such Work was performed in accordance with the Contract.
- C. If terminated under 13C or 13D by the County due to a breach by the Contractor, then the County shall pay the Contractor for Work performed prior to the termination date provided such Work was performed in accordance with the Contract less any setoff to which the County is entitled.

15. INDEPENDENT CONTRACTOR

- A. The Contractor is a separate and independently established business, retains sole and absolute discretion over the manner and means of carrying out the Contractor's activities and responsibilities for the purpose of implementing the provisions of this contract, and maintains the appropriate license/certifications, if required under Oregon Law. This contract shall not be construed as creating an agency, partnership, joint venture, employment relationship or any other relationship between the parties other than that of independent parties. The Contractor is acting as an "independent contractor" and is not an employee of County and accepts full responsibility for taxes or other obligations associated with payment for services under this contract. As an "independent contractor", Contractor will not receive any benefits normally accruing to County employees unless required by applicable law. Furthermore, Contractor is free to contract with other parties for the duration of the contract.
- B. SUBCONTRACTING/NONASSIGNMENT. No portion of the Contract may be contracted or assigned to any other individual, firm or entity without the express and prior approval of the County.

16. GOVERNING LAW AND VENUE

This Contract shall be governed by the laws of the State of Oregon. Any action commenced in connection with this Contract shall be in the Circuit Court of Marion County. All rights and remedies of the County shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of the County according to law.

17. OWNERSHIP AND USE OF DOCUMENTS

All documents, or other material submitted to the County by Contractor shall become the sole and exclusive property of the County. All material prepared by Contractor under this Contract may be subject to Oregon's Public Records Laws.

18. NO THIRD-PARTY BENEFICIARIES

- A. County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms.
- B. Nothing in this contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.

19. SUCCESSORS IN INTEREST

The provisions of this Contract shall be binding upon and inure to the benefit of the parties and their successors and approved assigns.

20. MERGER CLAUSE

This Contract and the attached exhibits constitute the entire agreement between the parties.

- A. All understandings and agreements between the parties and representations by either party concerning this Contract are contained in this Contract.
- B. No waiver, consent, modification or change in the terms of this Contract shall bind either party unless in writing signed by both parties.
- C. Any written waiver, consent, modification, or change shall be effective only in the specific instance and for the specific purpose given.

21. WAIVER

The failure of any Party to enforce any provision of this Contract shall not constitute a waiver by that Party or any other provision. Waiver of any default under this Contract by any Party shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Contract.

22. REMEDIES

In the event of breach of this Contract, the Parties shall have the following remedies:

- A. If terminated under 13C by County due to a breach by the Contractor, the County may complete the Work either itself, by agreement with another Contractor, or by a combination thereof. If the cost of completing the Work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then the Contractor shall pay to the County the amount of the reasonable excess.
- B. In addition to the remedies in sections 13 and 14 for a breach by the Contractor, County also shall be entitled to any other equitable and legal remedies that are available.
- C. If County breaches this Contract, Contractor's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Contractor is entitled.

23. INSURANCE

- A. **REQUIRED INSURANCE.** Contractor shall obtain at Contractor's expense the insurance specified in this section prior to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract and all warranty periods. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in Oregon and that are acceptable to County:
 - i. **WORKERS COMPENSATION.** All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.

- ii. **PROFESSIONAL LIABILITY.** Covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract. Contractor shall provide proof of insurance of not less than the following amounts as determined by the 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. **CYBER LIABILITY.** Covering network security, breach of data, and coverage for regulatory fines and fees imposed against County due to failures in products and services provided under this Contract. Cyber Liability coverage must include errors, omissions, negligent acts, denial of service, media liability (including software copyright), dishonesty, fraudulent or criminal acts by a person or persons whether identified or not, intellectual property infringement, computer system attacks, unauthorized access and use of computer system, regulatory actions, and contractual liability.

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

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

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

Minimum Limits:

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

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

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

Minimum Limits:

- ☒ Oregon Financial Responsibility Law, ORS 806.060 (\$25,000 property damage/\$50,000 bodily injury \$5,000 personal injury).

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

- B. **ADDITIONAL INSURED.** The Commercial General Liability insurance required under this Contract shall include Marion County, its officers, employees, and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
- C. **NOTICE OF CANCELLATION OR CHANGE.** There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without 30 days written notice from this Contractor or its insurer(s) to 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.** Contractor 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). Contractor shall pay for all deductibles, self-insured retention, and self-insurance, if any.

24. **NOTICE**

Except as otherwise expressly provided in this contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing, to Contractor or County at the address or number set forth below or to such other addresses or numbers as either party may hereafter indicate in writing. Delivery may be by personal delivery, or mailing the same, postage prepaid.

- A. Any communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative.
- B. Any communication or notice mailed shall be deemed delivered five (5) days after mailing. Any notice under this Contract shall be mailed by first class postage delivered to:

To Contractor:

AKS Engineering & Forestry, LLC
3700 River Road N, Suite 1
Keizer, OR 97303
Phone No. 503-400-6028
Fax No. 503-400-7722

To County

Procurement & Contracts Manager
555 Court Street NE, Suite 5232
P.O. Box 14500
Salem, Oregon 97309
Fax No. 503-588-5237

25. **SURVIVAL**

All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in sections 2, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25 and 26.

26. SEVERABILITY

If any term or provision of this Contract is declared illegal or in conflict with any law by a court of competent jurisdiction, the validity of the remaining terms and provisions that 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.

27. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

Contractor represents and warrants to the County that:

- A. Contractor has the power and authority to enter into and perform this Contract.
- B. This Contract, when executed and delivered, is a valid and binding obligation of Contractor, enforceable in accordance with its terms.
- C. Contractor (to the best of Contractor's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the effective date of this Contract, faithfully has complied with:
 - i. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
 - ii. Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor;
 - iii. Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and
 - iv. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.
- D. Any Goods granted to the County under this Contract, and Contractor's Services rendered in the performance of Contractor's obligations under this Contract, shall be provided to the County free and clear of any and all restrictions on or conditions of use, transfer, modification, or assignment, and shall be free and clear of any and all liens, claims, mortgages, security interests, liabilities, charges, and encumbrances of any kind.

28. CERTIFICATIONS AND SIGNATURE. THIS CONTRACT MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF CONTRACTOR

The undersigned certifies under penalty of perjury both individually and on behalf of Contractor is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of Contractor.

MARION COUNTY SIGNATURES

Authorized Signature:	<small>DocuSigned by:</small> <i>Brian Melchias</i> <small>9793BA7ACD6D443...</small>	1/11/2023
	Department Director or designee	Date
Authorized Signature:	<small>DocuSigned by:</small> <i>Jan Fritz</i> <small>DC16354248DE4EC...</small>	1/11/2023
	Chief Administrative Officer	Date
Reviewed by Signature:	<small>DocuSigned by:</small> <i>Jane E Vetto</i> <small>D66FC5B04B9F4B3...</small>	1/11/2023
	Marion County Legal Counsel	Date
Reviewed by Signature:	<small>DocuSigned by:</small> <i>[Signature]</i> <small>A3538E7AEC704F4...</small>	1/6/2023
	Marion County Contracts & Procurement	Date

AKS ENGINEERING & FORESTRY, LLC SIGNATURE

Authorized Signature:	<small>DocuSigned by:</small> <i>Richard Walker</i> <small>BAE19D8CA641474...</small>	1/11/2023
		Date

Title: Principal

EXHIBIT A STATEMENT OF WORK

1. STATEMENT OF SERVICES

Contractor shall perform Services as described below.

- A. **GENERAL INFORMATION.** Marion County Environmental Services (County) has an annual need for a wide range of consulting services associated with the civil infrastructure of the division – e.g., the sewer, stormwater, water, and road systems. This agreement shall be used to execute smaller, short-term project-specific Task Orders within these systems.
- B. **REQUIRED SERVICES, DELIVERABLES AND DELIVERY SCHEDULE.** County will issue project specific Task Orders and, if approved by Contractor, Contractor shall perform services for each assigned Task Order including, but not limited to:
 - I. **General Civil Project Planning and Engineering** – Analysis, planning, concept design, cost estimating, final design, bidding, and construction services for roadways, trails, bikeways and utility systems, including wastewater, storm drainage, and drinking water. Also includes ADA, pavement management, signage and markings, MUTCD compliance, street lighting, transmission, distribution, and collection systems, pump stations, treatment systems, and irrigation systems.
 - II. **Land Surveying Services** – Survey monument installations, survey control network establishment, construction staking, topographic survey base maps, boundary line and parcel surveys, Metes and Bounds surveys and legal descriptions for easement and right-of-way acquisitions. Urban Renewal legal descriptions and boundary maps.
 - III. **Environmental Support Services** – Corp of Engineers / Department of State Lands wetland removal and fill permits (Joint Permit Applications), Compensatory Wetland Mitigation Plans, Willamette River Greenway Permits, NPDES waste water discharge and NPDES Phase II (storm water) permit support services. Wetland delineations, archaeological and cultural resource studies, wildlife studies, hazardous materials studies, rare and noxious plant studies, biological assessments field support services.
 - IV. **Arborist Services** – Certified Arborist services, including tree inventory and evaluation, site reconnaissance, risk assessment, urban forest management, tree protection plans and specifications, plan review, construction monitoring, and appraisals.
 - V. **Land Use Planning Services** – Urban and community planning, analysis, assessment, public outreach, development code and comprehensive plan updates, and compliance with local, regional and federal policies associated with land use issues in the county.
 - VI. **Landscape Architecture Services** – Site planning, park design, stormwater management, landscape design, planting plans, environmental planning and restoration.
- C. **SPECIAL REQUIREMENTS.** Contractor shall be solely responsible for and shall have control over the means, methods, techniques, sequences, and procedures of performing the work, subject to the

plans and specifications under this Contract and shall be solely responsible for the errors and omissions of its employees, subcontractors, and agents.

Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence and perform Services in a timely, professional, and workmanlike manner in accordance with standards applicable to Contractor's industry, trade or profession.

2. COMPENSATION

The total amount available for payment to Contractor under Exhibit A, section 2.A and for authorized reimbursement to Contractor under Exhibit A, section 2.C is **\$100,000.00**.

- A. **METHOD OF PAYMENT FOR SERVICES.** County shall pay Contractor the rates specified in Attachment 1: Cost Proposal but not in excess of total compensation for completing all Services required under this Contract.
- B. **BASIS OF PAYMENT FOR SERVICES.** County shall pay Contractor all amounts due for Services completed and accepted by County and for Goods delivered and accepted by County after County's approval of Contractor's invoice to County for those Services and Goods.
- C. **EXPENSE REIMBURSEMENT.** County will not reimburse Contractor for any expenses without prior written approval.
- D. **GENERAL PAYMENT PROVISIONS.** Notwithstanding any other payment provision of this contract, failure of the Contractor to submit required reports when due, or failure to perform or document the performance of contracted services, may result in withholding of payments under this contract. Such withholding of payment for cause shall begin thirty (30) days after written notice is given by the County to the Contractor, and shall continue until the Contractor submits required reports, performs required services or establishes, to the County's satisfaction, that such failure arose out of causes beyond the control, and without the fault or negligence of the Contractor.
- E. **INVOICES.** Contractor shall send all invoices to County's Contract Administrator at the address specified below or to any other address as County may indicate in writing to Contractor.

**Marion County Public Works
Attn: Environmental Services
5155 Silverton Rd NE
Salem , OR 97305**

