

# Contract Review Sheet

**PW-5438-23**

 A&E Standard Prof Svcs Agmnt #: PW-5438-23 Amendment #: \_\_\_\_\_

 Contact: Alicia Henry Department: Public Works Department

 Phone #: 503-373-4320 Date Sent: Tuesday, May 16, 2023

 Title: State Street: 4106 State Street to 46th Avenue

 Contractor's Name: HDR

 Term - Date From: June 15, 2023 Expires: October 30, 2025

 Original Contract Amount: \$614,110.14 Previous Amendments Amount: \_\_\_\_\_

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

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

**Description of Services or Grant Award**

State Street is an east/west Major Arterial, and an identified core CMP corridor, that connects rural lands east of Salem all the way to downtown Salem, providing key links between Cordon Road, Lancaster Drive and the Salem city center. The Salem Transportation System Plan identifies State Street as a Regional Goods Movement Pipeline.

State Street will be improved from its current two-lane configuration and widened to three lanes, consisting of one through travel lane in each direction (east and west) with a center-turn lane, complete with new bike lane, sidewalk, and ADA ramps on the south side of the roadway.

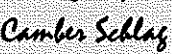



 Desired BOC Session Date: 6/14/2023 BOC Planning Date: 6/1/2023

 Files submitted in CMS: 5/24/2023 Printed packet & copies due in Finance: 5/30/2023

 BOC Session Presenter(s) Ryan Crowther
**FOR FINANCE USE**

 Date Finance Received: 5/17/2023 Date Legal Received: \_\_\_\_\_

 Comments: Y
**REQUIRED APPROVALS**

DocuSigned by:  <small>6692F2DF267F444...</small> Finance - Contracts _____ Date <u>5/24/2023</u>	DocuSigned by:  <small>DA7E9DCC1E7B47D...</small> Contract Specialist _____ Date <u>5/26/2023</u>
DocuSigned by:  <small>D9CF6692490F483...</small> Legal Counsel _____ Date <u>5/26/2023</u>	DocuSigned by:  <small>DC16361248DE4E5...</small> Chief Administrative Officer _____ Date <u>5/26/2023</u>



## MARION COUNTY BOARD OF COMMISSIONERS

**Board Session Agenda Review Form**

Meeting date: June 14, 2023

Department: Public Works      Agenda Planning Date: June 1, 2023      Time required: 10

 Audio/Visual aids      Powerpoint

Contact: Ryan Crowther      Phone: 503-365-3112

Department Head Signature:

DocuSigned by:

Brian Melulas

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**TITLE**

State Street: 4106 State Street to 46th Avenue - Engineering and Related Services Contract #PW-5438-23 with HDR Engineering, Inc.

**Issue, Description & Background**

State Street is an east/west Major Arterial and an identified core congestion management program (CMP) corridor in the SKATS Regional Transportation System Plan. State Street connects rural lands east of Salem to downtown Salem, providing key links between Cordon Road, Lancaster Drive and the Salem city center.

There is a considerable volume of bicycle and pedestrian usage on this section of State Street. Paved shoulders provide bike lanes adjacent to highly trafficked travel lanes. The absence of sidewalks along much of this section results in the paved shoulders also serving pedestrians. The lack of a center turn lane is an issue as it causes vehicles, avoiding left-turning vehicles, to swerve onto the shoulder and into conflict with bicyclists and pedestrians. Inadequate pedestrian facilities along this corridor hampers its use for localized pedestrian trips and poses significant safety concerns for those pedestrians who make use of the existing shoulder due to parked vehicles obstructing the shoulder.

Marion County applied for and was granted federal funding to improve State Street from its current two lane configuration to a widened three lane section with pedestrian facilities on the south side of the roadway. The project is currently only funded in the 2021-2024 STIP cycle for the preliminary engineering and right of way phases. However, the project will ultimately include construction of one through travel lane in each direction (east and west) with a center-turn lane, complete with new bike lane, sidewalk, and ADA ramps on the south side of the roadway. Rectangular rapid flashing beacons (RRFBs) with pedestrian refuge islands will also be installed at two crosswalk locations along State St. Widening the right of way will only occur on the south side of roadway (an average of 15 feet +/-).

With the execution of IGA #35121 between Marion County and ODOT in November 2021, funds were obligated to begin the preliminary engineering phase of the project. Actual construction of the project is slated for 2027. This project will be designed in-house with the support of consultant services for land survey, environmental permitting, geotechnical engineering, and right-of-way acquisition. Through RFP PW1250-22, HDR Engineering Inc. was selected as the prime consultant to provide the needed support services.

**Financial Impacts:**

The total not-to-exceed cost of this Engineering and Related Services Contract is \$614,110.14 which includes \$91,901.58 in contingency tasks that must be individually authorized (if needed). This Project is federally funded with Marion County providing the required matching funds under Supplemental Project Agreement 35121. The total estimated cost for this project is \$7,765,340 of which \$6,967,839.58 will be paid for with federal funds and Marion County will provide matching funds in the amount of \$797,500.42. This is a budgeted expense in the proposed FY2023-24 budget.



MARION COUNTY BOARD OF COMMISSIONERS

**Board Session Agenda Review Form**

Impacts to Department & External Agencies

This contract does not directly impact any other Marion County departments and will benefit the public at large (bicyclists and pedestrians in particular) by providing the much needed improvements to State Street.

Options for Consideration:

1. Approve and sign Engineering and Related Services Contract #PW-5438-23 between Marion County and HDR Engineering, Inc.
2. Take no action at this time.

Recommendation:

The Public Works Department recommends that the Board choose option 1, allowing design of the State St: 4106 State St to 46th Ave project to proceed early in June of 2023.

List of attachments:

1. Engineering and Related Services Contract #PW-5438-23
2. Contract Review Sheet
3. Subrecipient vs. Contractor/Vendor Analysis
4. Approved Solicitation Award Transmittal

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

**ENGINEERING AND RELATED SERVICES CONTRACT****Contract Number: PW-5438-23**

<b>Project Title: State St: 4106 State St to 46<sup>th</sup> Ave</b>	<b>Agency Project Number: 105746</b>
<b>Project Location: State Street (Salem)</b>	<b>Associated RFP Number: PW1250-22</b>
<b>Federal Aid Number: C047(108)</b>	<b>DBE Goal: 3% (see Exhibit E)</b>
<b>Total Not-to-Exceed ("NTE") amount for this Contract.</b> This total includes: a) all allowable costs and expenses, profit, and fixed-fee amount, if any; and b) \$91,901.58 for contingency tasks, each of which must be separately authorized by Agency.	<b>\$ 614,110.14</b>

This Contract is between Marion County, hereafter called "Agency" and HDR Engineering, Inc., a Nebraska corporation, hereafter called "Consultant." Agency and Consultant together are also referred to as "Parties" and individually referred to as "Party." The primary contacts for this Contract are identified in Exhibit J, Contact Information and Key Persons.

This Contract includes Federal Highway Administration ("FHWA") funding coordinated through the Oregon Department of Transportation ("ODOT"). See Section 18 - Compliance with Applicable Law.

For purposes of this Contract:

- a) "business days" means calendar days, excluding Saturdays, Sundays and all State of Oregon recognized holidays;
- b) "calendar days" means any day appearing on the calendar, whether a weekday, weekend day, national holiday, State of Oregon holiday or other day;
- c) "Engineering" Services means architectural, engineering, photogrammetric mapping, transportation planning or land surveying services that must be procured using qualifications based selection procedures [see ORS 279C.100 and ORS 279C.110]; and
- d) "Related Services" has the meaning provided in ORS 279C.100.

**TERMS AND CONDITIONS**

**Contract Effective Date and Term.** This Contract is effective on the date it has been signed by the parties and all required approvals have been obtained. No work or compensation under the Contract is authorized until notice to proceed has been issued in writing (email acceptable) by the Agency. Unless otherwise amended or terminated, this Contract shall expire October 31, 2025.

**2. Statement of Work.** Consultant shall perform all Services and deliver all deliverables as described in Exhibit A, Statement of Work (the "Services"). The required schedule for performance under the Contract is specified in the Statement of Work.

**3. Compensation.** The maximum NTE amount, which includes the total of all allowable and reimbursable costs and expenses (and contingency tasks, if any) payable to Consultant under this Contract, is set forth in the table above and detailed further in Exhibit B, Compensation. Agency reserves the right, in its sole discretion, to amend this Contract to increase this amount for additional Services within the scope of the procurement. If this Contract was awarded as a Direct Appointment/Small Purchase, amendments to increase the maximum amount payable are subject to limitations and additional requirements as set forth in applicable Federal, State and local laws. The payment methodology and basis for payment to Consultant is described in Exhibit B, Compensation. Consultant and any subconsultants are subject to the requirements and limitations of 48 CFR Part 31 - Contract Cost Principles and Procedures.

**4. Contract Exhibits.** This Contract includes the following exhibits, each of which is incorporated into this Contract as though fully set forth herein:

- Exhibit A - Statement of Work

- Exhibit B - Compensation
- Exhibit C - Insurance
- Exhibit D - Title VI Non-Discrimination Provisions
- Exhibit E - Disadvantaged Business Enterprise ("DBE") Provisions
- Exhibit E.1 - Disadvantaged Business Enterprise (DBE) Provisions, No-Goal (RESERVED)
- Exhibit F -Special Terms & Conditions (RESERVED)
- Exhibit G - (RESERVED)
- Exhibit H - (RESERVED)
- Exhibit I - Errors & Omissions ("E&O") Claims Process
- Exhibit J - Contact Information and Key Persons

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

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

- a. Consultant, by its signature on the Contract, certifies that it is an independent contractor as defined in ORS 670.600 and as described in IRS Publication 1779, which is available at the following link: <https://www.irs.gov/pub/irs-pdf/p1779.pdf>. Consultant shall perform all required Services as an independent contractor. Although Agency reserves the right (i) to determine the delivery schedule (as mutually acceptable to Agency and Consultant) for the Services to be performed and (ii) to evaluate the quality of the completed performance, Agency cannot and will not control the means or manner of Consultant's performance. Consultant is responsible for determining the appropriate means and manner of performing the Services. Consultant is not an "officer", "employee", or "agent" of Agency, as those terms are used in ORS 30.265.
- b. Consultant, by its signature on the Contract, certifies that: (i) Consultant and, to the best of its information, knowledge and belief, its Associates have made any disclosures required under the COI Disclosure Form (available at: <https://www.oregon.gov/ODOT/Business/Procurement/Pages/LPA.aspx>) or any applicable law; and (ii) if a conflict of interest is discovered during the term of the Contract, Consultant shall timely submit a COI Disclosure Form to Agency disclosing the conflict(s).
- c. Consultant shall be responsible for all Federal or State of Oregon ("State") taxes applicable to compensation or payments paid to Consultant under the Contract and, unless Consultant is subject to backup withholding, Agency will not withhold from such compensation or payments any amount(s) to cover Consultant's Federal or State tax obligations. Throughout the duration of the Contract, Consultant shall submit an updated W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>) to Agency whenever Consultant's backup withholding status or any other information changes. Consultant is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Consultant under the Contract, except as a self-employed individual.
- d. Consultant shall not be responsible for or have control over the means, manner, methods or techniques required of or used by other consultants or contractors under contract with Agency, unless otherwise expressly agreed to in writing by the Parties. The Parties agree, however, that these Section 6.d. provisions do not in any way revise or adjust Consultant's professional responsibility to report to Agency any information that comes to Consultant's attention (during performance of this Contract) pertaining to a project, or to performance by other consultants or contractors on a project, that would adversely affect Agency or a particular project.

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

- a. Consultant shall obtain Agency's written consent prior to entering into any subcontracts for any of the Services required by the Contract, or in any manner assigning, selling or transferring any of its

rights or interest under the Contract or delegate any of its duties or performance under the Contract. In addition to any other provisions Agency may require, Consultant shall include, in any permitted subcontract under the Contract, contractual provisions that shall require any subcontractor (which may also be referred to as "subconsultant") to comply with Sections 9, 10, 11, 12, 13, 16, 17, 18, 19, 23, 27 and 29 of these Contract provisions, the limitations of **Exhibit B - Compensation**, **Exhibit D - Title VI Nondiscrimination Provisions**, and the requirements and sanctions of ORS Chapter 656, Workers' Compensation, in the performance of the subcontractor's Services on the project that is the subject of the Contract, as if the subcontractor were the Consultant. Agency's consent to any subcontract shall not relieve Consultant of any of its duties or obligations under the Contract, including with respect to any Services, whether performed or to be performed by Consultant or a subcontractor.

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

**8. Third Party Beneficiaries.** The State of Oregon, the Oregon Transportation Commission (OTC) and ODOT, are intended third-party beneficiaries of the Contract with express independent authority to enforce the terms and conditions of the Contract. Otherwise, there are no third-party beneficiaries of the Contract.

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

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

**a. Professional Standard of Care.**

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

**b. Responsibility of Consultant.**

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

**c. Design Within Funding Limit. (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 Agency or Consultant.
  - (iii) "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item, and all intellectual property rights therein, that Consultant is required to deliver to Agency pursuant to the Contract.
- b. **Work Product.** All Work Product created by Consultant pursuant to the Contract, including derivative works and compilations, and whether or not such Work Product is considered a "work made for hire," shall be the exclusive property of Agency. Agency and Consultant agree that Work Product that constitutes original works of authorship (the "Original Work Product") is "work made for hire" of which Agency is the author within the meaning of the United States Copyright Act. If for any reason Original Work Product created pursuant to the Contract is not "work made for hire," Consultant hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all Original Work Product created pursuant to the Contract, whether arising from copyright, patent, trademark, trade secret, or any other State or Federal intellectual property law or doctrine. Upon Agency's reasonable request, Consultant shall execute such further documents and instruments necessary to fully vest such rights in Original Work Product in Agency. Consultant forever waives any and all rights relating to Original Work Product created pursuant to the Contract, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. However, see Sections 11.c and 11.d immediately below, for provisions applicable to Consultant Intellectual Property, Third Party Intellectual Property, Consultant Intellectual Property derivative works and Third Party Intellectual Property derivative works.
- c. **Consultant and Third Party Intellectual Property.** In the event that any Work Product is Consultant Intellectual Property or Third Party Intellectual Property (Consultant Intellectual Property or Third Party Intellectual Property that is applicable to the Services being performed by Consultant under the Contract or included in Work Product deliverable to Agency under the Contract), or in the event any Consultant Intellectual Property or Third Party Intellectual Property is needed by Agency to reasonably enjoy and use any Work Product, Consultant hereby agrees that it will grant to, or obtain for, the Agency an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Consultant Intellectual Property and or Third Party Intellectual Property, including the right of Agency to authorize contractors, consultants and others to do the same on Agency's behalf. This obligation of the Consultant does not apply to a situation involving a third party who enters a license agreement directly with the Agency. At the request of Consultant, Agency shall take reasonable steps to protect the confidentiality and proprietary interests of Consultant in any Consultant Intellectual Property licensed under this Section, within the limits of the Oregon Public Records Law (ORS 192.410 through 192.505) and the Oregon Uniform Trade Secrets Act (ORS 646.461 to 646.475).
- d. **Consultant and Third Party Intellectual Property-Derivative Work.** In the event that Work Product created by Consultant under the Contract is a derivative work based on Consultant Intellectual Property or Third Party Intellectual Property, or is a compilation that includes Consultant Intellectual Property or Third Party Intellectual Property, Consultant hereby agrees to grant to, or obtain for, Agency an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of Consultant Intellectual Property or Third Party Intellectual Property employed in the Work Product, including the right of Agency to authorize others to do the same on Agency's behalf.
- e. **Consultant Use of Work Product.** Notwithstanding anything to the contrary in this Section 11, Consultant may refer to the Work Product in its brochures or other literature that Consultant utilizes for advertising purposes and, unless specified otherwise in Exhibit A - Statement of Work, Agency hereby grants to Consultant a non-exclusive, non-transferable, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Agency-owned Work Product on other unrelated projects, except for any "Confidential Information"



protected from disclosure under the provisions of Section 12 below, pertaining to Confidentiality and Non-Disclosure.

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

**13. Indemnity**

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



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

15. **Termination**

- a. **Termination by Mutual Consent.** The Contract may be terminated at any time, in whole or in part, by mutual written consent of the Parties.
- b. **Agency's Right to Terminate for Convenience.** Agency may, at its sole discretion, terminate the Contract, in whole or in part, upon 30 calendar days prior written notice to Consultant.
- c. **Agency's Right to Terminate for Cause.** Agency may terminate the Contract, in whole or in part, immediately upon written notice to Consultant or at such later date as Agency may establish in such notice, upon the occurrence of any of the following events:
  - (i) Agency fails to receive appropriations, limitations or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to make payments for Consultant's Services. Payments under this Contract and continuation of this Contract beyond the current biennium are subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available from current funding sources. The Agency may terminate this Contract, and Consultant waives any and all claims for damages, effective immediately upon receipt of written notice, or any date specified therein, if for any reason the Agency's funding from local, state and/or federal sources is not appropriated or is withdrawn, limited or impaired;
  - (ii) Federal, State or local laws, regulations or guidelines are modified or interpreted in such a way that either the Services under the Contract are prohibited or Agency is prohibited from paying for such Services from the planned funding source;
  - (iii) Consultant no longer holds any license or certificate that is required to perform the Services; or
  - (iv) Consultant commits any material breach or default of any covenant, warranty, obligation or agreement under the Contract, fails to perform the Services under the Contract within the time specified or any extension thereof, or so fails to perform the Services as to endanger Consultant's performance under the Contract in accordance with its terms, and such breach, default or failure is not cured within 14 calendar days after Agency's notice to Consultant, or such longer period as Agency may specify in such notice.
- d. **Consultant's Right to Terminate for Cause.**
  - (i) Consultant may terminate the Contract by giving written notice to Agency if Agency fails to pay Consultant pursuant to the terms of the Contract and if Agency fails to cure within 14 calendar days after receipt of Consultant's written notice, or such longer period of cure as Consultant may specify in such notice.
  - (ii) Consultant may terminate the Contract, for reasons other than nonpayment, if Agency commits any material breach or default of any covenant, warranty, obligation or agreement under the Contract, fails to perform under the Contract within the times specified, or so fails to perform as to endanger Consultant's performance under the Contract, and such breach, default or failure is not cured within 14 calendar days after Consultant's notice to Agency, or such longer period as Consultant may specify in such notice.
- e. **Remedies.**
  - (i) In the event of termination pursuant to Sections 15(a), 15(b), 15(c)(i), 15(c)(ii) or 15(d), Consultant's sole remedy (except as otherwise required by applicable State or Federal law) shall be a claim for payment of the satisfactory Services actually rendered up to the time of termination, less previous amounts paid and any claim(s) which State has against Consultant, except in the event of a termination under Section 15(c)(i) where no payment will be due and payable for Services performed or costs incurred after the last day of the current biennium. If previous amounts paid to Consultant exceed the amount due to Consultant under this subsection, Consultant shall pay all excess to Agency upon demand.
  - (ii) In the event of termination pursuant to Section 15(c)(iii) or 15(c)(iv), Agency shall have any remedy available to it in law or equity. If it is determined for any reason that Consultant was not in default under Section 15(c)(iii) or 15(c)(iv), the rights and obligations of the Parties shall be the same as if the Contract was terminated pursuant to Section 15(b).

- f. **Consultant's Tender Upon Termination/Retained Remedies of Agency.** Upon receiving a notice of termination of the Contract, Consultant shall immediately cease all activities under the Contract, unless Agency expressly directs otherwise in such notice of termination. Upon termination of the Contract, Consultant shall deliver to Agency all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed. Upon Agency's request, Consultant shall surrender to anyone Agency designates, all documents, information, research, works-in-progress, Work Product and other property, that are deliverables or would be deliverables had the Contract been completed, that are in Consultant's possession or control and may be needed by Agency to complete the Services.

**16. Records Maintenance; Access.** Consultant, and its subconsultants, shall maintain all fiscal records relating to the Contract in accordance with generally accepted accounting principles. In addition, Consultant shall maintain all other records pertinent to the Contract and the project and shall do so in such a manner as to clearly document Consultant's performance. The Agency, ODOT, the Oregon Secretary of State's Office (OSS), FHWA and the Comptroller General of the United States (CGUS) and their respective, duly authorized representatives shall have access, and Consultant shall permit the aforementioned entities and individuals access, to such fiscal records and other books, documents, papers, plans and writings of Consultant that are pertinent to the Contract to perform examinations and audits and make excerpts and transcripts. Consultant shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of 6 years, or such longer period as may be required by applicable law, following final payment and expiration or termination of the Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later. Any cost data submitted by Consultant pursuant to this Contract may be shared with ODOT, FHWA, OSS and CGUS, as necessary, for audit purposes. Agency, ODOT and FHWA shall have the right to review or examine the work in progress for any Services performed under the Contract.

**17. Performance Evaluations.** Agency will conduct performance evaluation(s) on the Consultant and its subconsultants during the term of the Contract, which will be compiled and maintained by Agency, and become a written record of Consultant's performance. Generally, the performance evaluations will include criteria related to, but not limited to, quality and technical performance, adherence to contract scope and budget, schedule performance, and business relations (including communications and negotiations performance). Agency will provide a copy of the performance evaluation results to Consultant within 14 calendar days following completion. Consultant may respond, in writing, or may request a meeting to address any or all findings contained in the completed performance evaluation within 30 calendar days following receipt. Agency may adjust evaluation score(s) upon Agency's finding of good cause. Agency may provide copies of any performance evaluation documentation to ODOT, FHWA, and other parties unless lawfully exempt from disclosure. Agency may use performance evaluation findings and conclusions in any way deemed necessary, including, but not limited to, corrective action, requiring submittal of performance improvement plan by Consultant and withholding of retainage. Agency and ODOT may use Consultant performance under previous contracts as a selection criterion for future contracts.

**18. Compliance with Applicable Law.** Consultant shall comply with all Federal, State and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Contract, in effect at the time the Contract is executed and as may be amended, revised, enacted or adopted thereafter. Changes in these legal requirements after the execution of the Contract may or may not be the basis for modifications to Consultant's schedule, scope and fee, depending on a reasonable assessment of the nature of the change, the extent to which the change was anticipated by Consultant or the Parties, and other circumstances then existing. Without limiting the generality of the foregoing, Consultant expressly agrees to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659a.142; (iv) the Clean Air Act (42 U.S.C. 7401-7671q); (v) the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387); (vi) Executive Order 11738; (vii) Environmental Protection Agency regulations (40 CFR part 15); (viii) and all applicable standards, orders, regulations and administrative

rules established pursuant to the foregoing laws. Agency's performance under the Contract is conditioned upon Consultant's compliance with, and Consultant shall comply with, the obligations applicable to public contracts and intended for contractors under ORS 279C.520 and 279C.530, which are incorporated by reference herein. All rights and remedies available to Agency under applicable federal, state and local laws are also incorporated by reference herein and are cumulative with all rights and remedies under the Contract. If Consultant discovers a conflict among Federal, State and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Contract, Consultant shall in writing request Agency to resolve the conflict (in collaboration with ODOT and FHWA as applicable). Consultant shall specify if the conflict(s) create a problem for the design or other Services required under the Contract. If Agency concludes there is a conflict among the applicable laws, Federal laws shall govern among the others; State laws shall govern over the others except Federal. The resolution of the conflict of the applicable laws by Agency shall be final and not subject to further review or challenge.

#### **19. Permits and Licenses**

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

**20. Foreign Contractor.** If Consultant is not domiciled in or registered to do business in the State of Oregon, Consultant shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to the Contract.

**21. Force Majeure.** Neither Agency nor Consultant shall be held responsible for delay or default in the performance of its obligations due to a cause beyond its reasonable control, including, but not limited to, fire, riot, acts of God, terrorist acts or other acts of political sabotage, or war where such cause was beyond the reasonable control of Agency or Consultant, respectively. Consultant shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the Contract.

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

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

**24. Notice.** Except as otherwise expressly provided in the Contract, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by e-mail, by personal delivery, facsimile, or mailing the same, postage prepaid, to Consultant or Agency at the e-mail address, the delivery address or facsimile number set forth in the Contract, or to such other addresses or numbers as either Party may hereafter indicate in writing to the other. Any notice or day-to-day communication sent by e-mail shall be deemed received when it is sent. **The recipient of any notice sent by e-mail shall reply by e-mail to confirm receipt of such notice.** Any communication or notice made by personal delivery shall be deemed to be received when actually delivered. Any communication or notice properly

addressed and mailed shall be deemed received 5 calendar days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed received on the date of the notice of successful transmission generated by the transmitting machine. To be effective, such facsimile transmission must be confirmed by telephone notice to Agency's Contract Administrator or Consultant's representative, as applicable.

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

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

- a. **Errors & Omissions Related.** In the event those good faith efforts do not resolve disputes related to potential Errors and Omissions, the Parties agree to make good faith efforts to resolve the matter pursuant to Exhibit I, Errors & Omissions Claims Process.
- b. **Other Disputes.** In the event good faith efforts do not resolve disputes unrelated to Errors & Omissions, the Parties agree to make a good faith effort to resolve any such dispute through fact finding and non-binding mediation prior to resorting to litigation. The mediator shall be selected by mutual agreement of the Parties. If the Parties fail to agree on a mediator, each Party shall select a mediator and those two persons shall agree on a third-party, who will be the sole mediator. The cost of the mediator shall be split equally between the Parties.
- c. **Notification to ODOT.** Agency shall immediately notify ODOT of any disputes that seek resolution with the Errors & Omissions Claims Process or mediation.

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

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

**29. False Claims**

- a. Consultant understands and acknowledges it is subject to the Oregon False Claims Act (ORS 180.750 to 180.785) and to any liabilities or penalties associated with the making of a false claim under that Act. By its execution of the Contract, Consultant certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or cause to be made that pertains to the Contract or the Project for which the Services are being performed, including but not limited to Consultant's statement of proposal and any invoices, reports, or other deliverables.

- b. Consultant shall immediately disclose (in writing) to Agency whenever, in connection with the award, performance or closeout of the Contract, or any subcontract thereunder, Consultant has credible evidence that a principal, employee, agent, or subcontractor of Consultant has committed—
  - (i) A violation of the Oregon False Claims Act; or
  - (ii) A violation of State or Federal criminal or civil law involving fraud, conflict of interest, bribery, gratuity or similar misconduct.
- c. Consultant must include subsections (a) and (b) of this section in each subcontract Consultant may award in connection with the performance of the Contract. In doing so, Consultant may not modify the terms of those subsections, except to identify the subcontractors or sub grantee that will be subject to those provisions.

**30. Certified Small Businesses.** Respecting certification as a disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns or an emerging small business under ORS 200.055, as and when applicable, the Consultant shall maintain the certifications, and require in its subcontracts that subcontractors maintain the certifications required by Section 2, Chapter 325, Oregon Laws 2015, as amended by Section 26, Chapter 565, Oregon Laws 2015 as a material condition of the Contract. If the Consultant or subcontractor was awarded the Contract or subcontract, as applicable, in the course of Agency carrying out an affirmative action goal, policy or program under ORS 279A.100, and fails to maintain the required certification, Agency may terminate the Contract, require the Consultant to terminate the subcontractor, or exercise any of remedies reserved for breach of the Contract.

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

## CONSULTANT CERTIFICATIONS

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

- (1) Consultant has provided its correct TIN to Agency;
- (2) Consultant is not subject to backup withholding because (a) Consultant is exempt from backup withholding, (b) Consultant has not been notified by the IRS that Consultant is subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified Consultant that Consultant is no longer subject to backup withholding; and
- (3) The undersigned 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 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 (the undersigned) signing on behalf of Consultant hereby certifies the undersigned is authorized to sign this Contract and that:**

- (1) Consultant has read this Contract, understands it, and agrees to be bound by its terms and conditions.
- (2) Consultant understands and agrees that various documents are not physically attached, but are incorporated by reference and have the same force and effect as if fully set forth herein.
- (3) Consultant understands and has provided to all Associates the COI Disclosure Form available at: <https://www.oregon.gov/ODOT/Business/Procurement/Pages/LPA.aspx>. Consultant and (to the best of the undersigned's information, knowledge and belief) Consultant's Associates are in compliance with the disclosure requirements of the COI Disclosure Form and have no conflicts of interest to disclose. If disclosures regarding this Contract or the related Project are required per the COI Disclosure Form, Consultant has made such disclosures to Agency on a properly prepared and submitted form and, if determined necessary by Agency or ODOT, a mitigation plan has been approved by Agency and ODOT.
- (4) (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of Consultant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.  
 (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.  
 (c) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.  
 (d) Consultant shall require that the language of this certification be included in all subcontracts in excess of \$100,000 at all tiers and that all such subcontractors shall certify and disclose accordingly.
- (5) Consultant is an independent contractor as defined in ORS 670.600 and as described in IRS Publication 1779.
- (6) In the event that Consultant is a general partnership or joint venture, Consultant signature(s) on this Contract constitutes certifications to the above statements pertaining to the partnership or joint

venture, as well as certifications of the above statements as to any general partner or joint venturer signing this Contract.

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



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

**CONSULTANT SIGNATURE(S)**

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

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

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

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

**AGENCY SIGNATURES  
BOARD OF COMMISSIONERS:**

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

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

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

Authorized Signature: DocuSigned by:  
*Brian Melodas* \_\_\_\_\_ 9793BAZACD6D443... 5/24/2023

Department Director or designee \_\_\_\_\_ Date \_\_\_\_\_

Authorized Signature: DocuSigned by:  
*Jan Fritz* \_\_\_\_\_ DC16351248DE4EC... 5/26/2023

Chief Administrative Officer \_\_\_\_\_ Date \_\_\_\_\_

Reviewed by Signature: DocuSigned by:  
*Jane E Vetto* \_\_\_\_\_ D9CF65B04B0F483... 5/26/2023

Marion County Legal Counsel \_\_\_\_\_ Date \_\_\_\_\_

Reviewed by Signature: DocuSigned by:  
*Camber Schlay* \_\_\_\_\_ C6B2F3DF257F444... 5/24/2023

Marion County Contracts & Procurement \_\_\_\_\_ Date \_\_\_\_\_

## EXHIBIT A - STATEMENT OF WORK

### A. PROJECT DESCRIPTION and OVERVIEW of SERVICES

State Street is an east/west Major Arterial, and an identified core CMP corridor, that connects rural lands east of Salem all the way to downtown Salem, providing key links between Cordon Road, Lancaster Drive and the Salem city center. It provides numerous connections to much of the developed East Salem area, connecting people with schools, neighborhoods, transit stops, and commercial development. The Salem Transportation System Plan identifies State Street as a Regional Goods Movement Pipeline.

There is a considerable volume of bicycle and pedestrian usage on this section of State Street. Paved shoulders provide bike lanes adjacent to high trafficked travel lanes. The absence of sidewalks along much of this section results in the paved shoulders also serving pedestrians. The lack of a center turn lane is an issue as it causes vehicles, avoiding left-turning vehicles, to swerve onto the shoulder and into conflict with bicyclists and pedestrians. Inadequate pedestrian facilities along this corridor severely hampers its use for localized pedestrian trips and poses significant safety concerns for those pedestrians who make use of the existing shoulder, due to vehicles parked on the shoulder or preference of a paved walking surface.

State Street will be improved from its current two-lane configuration and widened to three lanes, consisting of one through travel lane in each direction (east and west) with a center-turn lane, complete with new bike lane, sidewalk, and ADA ramps on the south side of the roadway. Rectangular rapid flashing beacons (RRFBs) with pedestrian refuge islands will also be installed at two crosswalk locations along State St. The work will be accomplished by widening the right of way only on the south side of roadway (an average of 15 feet +/-). The project will require tree removal within the proposed ROW on the south side. The improvement will begin east of the existing commercial property known as The Yard, and extend to 46th Ave, resulting in approximately 2,700 lineal feet of new sidewalk and pavement.

Stormwater facilities will be part of the project to accommodate the street enhancements, and two new pedestrian crosswalks will be constructed within the project limits. On the north side of the existing centerline, the existing pavement and roadway will be ground and inlaid. Right-of-way acquisition (approximately 20 files) and construction will only take place on the south side of the roadway. For this Contract, Consultant shall provide land surveying, environmental studies and documentation, geotechnical engineering, and right-of-way acquisition services to support the Agency's design efforts.

**General Expectation.** Consultant commits to provide, oversee and direct Services 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 Agency 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 (CA/CEI)

This Statement of Work addresses the work required for Phase 1 of the Project. Each subsequent phase is optional, at Agency's discretion, and may be added via amendment(s) to this Contract.

## Agency Responsibilities

- Overall management and design of the Project.
- Coordination and communication of internal Agency staff.
- Provide access to available Project information, recommendations and goals.
- Review of 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.
- Coordinate with ODOT for approval of environmental and right-of-way activities.

## Acronyms and Definitions

APE	Area of Potential Effect	NEPA	National Environmental Policy Act
CFR	Code of Federal Regulations	NTE	Not to Exceed
Agency	Marion County	NTP	Notice to Proceed
APM	Agency's Project Manager	OCR	ODOT Office of Civil Rights
DBE	Disadvantaged Business Enterprises	ODOT	Oregon Department of Transportation
DEQ	Oregon Department of Environmental Quality	ORS	Oregon Revised Statutes
DOE	Determination of Eligibility	PM	Consultant's Project Manager
DSL	Oregon Division of State Lands	SHPO	State Historic Preservation Office
DTM	Digital Terrain Model	QA	Quality Assurance
EEO	Equal Employment Opportunity	QC	Quality Control
ESA	Endangered Species Act	ROE	Right of Entry
FAHP	Federal-Aid Highway Program	ROS	Record of Survey
FEMA	Federal Emergency Management Agency	REC	ODOT's Regional Environmental Coordinator
FHWA	Federal Highway Administration	ROW	Right of Way
FOE	Finding of Effect	SOW	Statement of Work
GPS	Global Positioning System	USACE	US Army Corps of Engineers
IGA	Intergovernmental Agreement		

## B. STANDARDS and GENERAL REQUIREMENTS

### 1. Standards

**Preliminary Engineering and Design Phase Services** - The following standards shall apply to this Contract:

- ORS Chapters 92, 93, 209 and 672
- Marion County Survey Standards
- ODOT Global Navigation Satellite System ("GNSS") Guidelines
- National Environmental Policy Act (NEPA), 23 CFR 771
- Sections 401 and 404 of the Clean Water Act, 33 USC 1251
- Oregon Removal - Fill Law, ORS 196.800 through 196.990
- U.S. Army Corps of Engineers Wetland Delineation Manual
- Endangered Species Act (ESA), 16 USC 1531
- FAHP ESA Guidance Programmatic Biological Opinion
- Oregon Fish Passage Law (OAR 635-412-0005(9)(d))
- ODOT Geotechnical Design Manual
- ASTM Testing Requirements

- ODOT Pavement Design Guide.
- AASHTO Guide for Design of Pavement Structures
- ODOT Right of Way Manual
- ODOT Global Navigation Satellite System ("GNSS") Guidelines
- ODOT Guide to Appraising Real Property
- ORS 35, with reference to the "Uniform Appraisal Standards for Federal Land Acquisitions"
- Federal Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Uniform Act), as amended
- All other applicable laws, rules, and regulations

## **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 Agency.
- 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 Agency.

Consultant's software shall produce deliverables that are fully compatible, readable and useable by Agency 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).
- Agency 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 Agency, 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 Agency policies and procedures for the Services under the Contract.

## **C. REVIEW, COMMENT and SCHEDULE OVERVIEW**

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

## **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 Agency'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. Agency'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 Agency be responsible or liable for any damages to Consultant as the result of such non-cooperation by other entities. Agency'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 and coordination of Services under this SOW for delivery of Tasks and Deliverables according to the agreed upon delivery schedule.

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

Consultant shall:

- Prepare or Submit a Quality Assurance/Quality Control ("QA/QC") Plan for Agency review and approval. The QA/QC Plan must be developed consistent with requirements of ODOT's "Guidance/Template for Consultants" available online at:  
[http://www.oregon.gov/ODOT/HWY/OPL/docs/SEOPL/Consultant\\_Quality\\_Plan\\_Model.doc](http://www.oregon.gov/ODOT/HWY/OPL/docs/SEOPL/Consultant_Quality_Plan_Model.doc);
- Prepare a Project design schedule using the Critical Path Method, prepared with MS Project software or approved equal. The Project schedule must include, but is not limited to: all major authorized tasks as agreed upon by the Parties, Project design team meetings, and milestones (type and date) specified in this SOW and required to complete all Services under this Contract. Consultant shall update the Project schedule during the Project if milestone or deliverable due dates are modified. For budgeting purposes, it is assumed that up to 5 Project schedule updates will be necessary;
- Prepare invoices and progress reports according to the requirements set forth in Exhibit B (Compensation), Subsection D (Invoices) of the Contract.. Each progress report must:
  - Include a summary of previous period's activities and the planned activities for the upcoming period;
  - Identify percentage completed of each Task/Deliverable;
  - Reconcile the budget with the actual amount billed to date;

- Identify unresolved issues and concerns that may affect the SOW, schedule and/or budget for Services.

For budgeting purposes, it is assumed that up to 16 progress reports will be necessary

- Develop and maintain a Project file to include survey and engineering computations, assumptions, meeting agendas and minutes, working drawings, quality control and review documentation, correspondence, and memoranda. (See Contract Terms & Conditions, Records Maintenance; Access)

### **1.1 Consultant Deliverables and Schedule:**

Consultant shall provide:

- QA/QC plan submitted electronically to APM within 7 calendar days of Notice to Proceed ("NTP").
- Project Draft Design Schedule submitted within 14 calendar days of NTP. Submit an electronic file (MS Project and PDF) format to the APM.
- Updated Project Design Schedule, as necessary, via timeline agreed to by APM, an electronic file (MS Project and PDF) format to the APM.
- Progress reports and invoices submitted electronically to APM no later than the 20th calendar day of the month following the reporting period.

### **1.2 Coordination**

Consultant shall:

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

### **1.2 Consultant Deliverables and Schedule:**

Consultant shall provide:

- On-going coordination and communication as needed to appropriately manage the Services under this Contract (no tangible deliverables for this task).
- Meeting minutes and phone memoranda as agreed with the APM.

### **1.3 Project Meetings**

#### **1.3.1 Project Kickoff Meeting**

Consultant shall organize, conduct, prepare for and attend a Project kickoff meeting. The Project kickoff meeting will be held in-person or virtually with Agency, Consultant's PM and other necessary Consultant staff in attendance. Consultant shall prepare the meeting agenda with input from the Agency. The purpose of the Project kickoff meeting is to review Project issues such as SOW; work products and deliverables; schedules; budgets; right of way; guidance documents; standards and quality control. Consultant shall schedule Project kickoff meeting within 10 business days of Notice to Proceed (NTP). Consultant shall prepare draft meeting minutes for review by Agency. For budgeting purposes, it is assumed that up to 4 Consultant staff shall attend the 2-hour Project kickoff meeting.

#### **1.3.2 Project Development Team Meetings**

Consultant shall organize, conduct, prepare for and attend up to 10 Project Development Team ("PDT") Meetings; 7 via telephone lasting up to one (1) hour and 3 in-person or virtually lasting up to two (2) hours. Each in-person PDT meeting will be held at Marion County Public Works or virtually with Agency, Consultant's PM and other necessary Consultant staff in attendance. . Consultant shall prepare draft and final meeting minutes for the 7 virtual meetings to be distributed to Agency and all other meeting participants. One of these PDT meetings will be

reserved for a right-of-way kickoff meeting to occur prior to ROW obligation. For budgeting purposes, it is assumed that up to 4 Consultant staff shall attend each PDT meeting.

### **1.3 Consultant Deliverables and Schedule:**

For each meeting, Consultant shall provide:

- Draft meeting minutes submitted electronically to APM and all other meeting participants within 2 business days of meeting.
- Final meeting minutes submitted electronically to APM and all other meeting participants within 7 business days of meeting.

## **TASK 2 - SURVEY**

Consultant shall survey this Project for the areas as described in Section A of this SOW unless otherwise noted in specific tasks. Deliverables are to be scheduled as per task 1 Project Management.

Consultant shall adhere to the standards stipulated by the Oregon Revised Statute ("ORS") 672. Consultant's Professional Land Surveyor, registered in the State of Oregon, shall review and stamp as "Approved" all survey related deliverables and shall be responsible for all land surveying services including conformance to all state statutes pertaining to survey and land boundary laws under this SOW. These include, but are not limited to, the following state statutes: ORS Chapters 92, 93, 209 and 672.

### **2.1 Research**

Consultant shall obtain the research data for the area as described in Section A of this SOW.

Consultant shall perform data research as necessary to prepare for and support Project activities, and to produce Project maps and reports as called for in subsequent tasks. The typical records required for research are, but not limited to; vesting deeds, land sales contracts, County assessor plats and road records, subdivision plats, General Land Office plats, Agency or ODOT ROW drawings, as applicable, railroad maps, county surveys, road dedications and vacations.

### **2.1 Consultant Deliverables and Schedule:**

Consultant shall incorporate information from this task into the deliverables listed in Tasks 2.2, 2.4, 2.5 and 2.7 as required for delivery of documents in subsequent tasks.

### **2.2 Horizontal and Vertical Control Network**

The purpose of this task is to provide the means by which the Project can be located relative to horizontal and vertical datum, map projection, and coordinate systems. Consultant shall establish a horizontal and vertical control network using the datum associated with the Project area or as approved by the Agency. The Consultant shall use the Oregon Coordinate Reference System (ORCS) Salem Zone coordinate system and the NAVD88 vertical datum unless directed otherwise.

#### **Existing Horizontal/Vertical Control Stations**

Consultant shall research and obtain data about horizontal and vertical control points as required for the Project area including triangulation stations, Global Positioning Satellite ("GPS") stations, benchmarks, and prior Project control surveys from Agency, Federal, State and other governmental agencies.

Consultant shall establish horizontal control according to Agency standards using Terrestrial (Theodolite and EDM), GPS (Static or Rapid Static) or a combination of both. Consultant shall set and adjust control points in conformance with local standards of practice.

Consultant shall use 5/8" Rebar with plastic caps, or other Agency approved control point, for the GPS and network points. Consultant shall establish a minimum of 3 GPS control points through the length of the survey. A minimum of at least 3 inter-visible control points is required through the Project area.



Consultant shall establish vertical control using differential leveling. Consultant shall get Agency approval before using other methods such as trigonometric leveling and elevations derived from GPS and identify with Agency the accuracies of determined methods prior to proceeding.

## **2.2 Consultant Deliverables and Schedule:**

Consultant shall:

- Place control points in the ground at the Project location.
- Incorporate the information listed below into the deliverables listed in Tasks 2.4 and 2.5 as required for delivery of documents in subsequent tasks.
  - An adjustment report for one or more of the following, Least Squares adjustment for networks, an approved traverse adjustment method for traverses and/or a GPS adjustment report when using GPS.
  - An ASCII file containing the coordinates for every network point set and found.
  - If the levels were electronically processed then one copy each of the following: original raw level file as collected in the field, ASCII file showing level closure data, ASCII file with elevations on all network points and/or an ASCII file showing the level rod readings.
  - Original field notes for the control network and one scanned copy of the original field notes in ".pdf" format.
  - An AutoCAD/Civil 3D design file (\*.dwg) containing all the set and tied control points to show elevations.

## **2.3 Monument Recovery**

The purpose of this task is to address the requirements of ORS 209.140, ORS 209.150 and 209.155, and other survey related statutes for construction Projects.

Consultant shall survey for but not limited to: Government corners, geodetic control stations, bench marks, ROW monuments, property boundary markers, and roadway alignment markers.

### **Identify, Search and Recover Monuments**

Consultant shall recover existing monuments to preserve the locations of any monuments of record that are endangered by any activity related to the Project and to resolve roadways and property lines. Consultant shall provide a record (field notes) of monuments searched for, the date of the search and the results of the search.

### **Field Survey of Recovered Monuments**

Consultant shall locate, measure and document the location of survey markers and monuments of record for property boundaries and/or ROW needed within the areas.

## **2.3 Consultant Deliverables and Schedule:**

Consultant shall incorporate the information gathered in this task including field notes into the deliverables listed in Tasks 2.4 and 2.5 as required for delivery of documents in subsequent tasks.

## **2.4 Topographic Data, Detailed Base Map And Digital Terrain Model (DTM)**

The purpose of this task is to collect the existing topographic features and create a detailed basemap and DTM for the Project.

### **Existing Utility Records**

Consultant shall research and obtain available facility maps and as-built construction plan data pertaining to utilities in or near the Project area from the Agency, One-Call Service, State or other governmental agencies and utility companies.

### **Topographic Data Collection**

Consultant shall collect topographic data between the boundaries described in Section A of this SOW. Consultant shall collect and tie topographic data of man-made and/or natural features using a variety of Agency approved methods. These methods include but are not limited to: collecting the data using terrestrial (Theodolite and EDM), GPS (RTK), 3D Laser Scanning, or station and offset.

Consultant shall contact Oregon Utility Notification Center to request a pre-survey utility locates. Consultant shall keep the locate request number and ticket information within the Project file.

Consultant shall record in the field notes the utility ownership when describing the line data points. Consultant shall record all visible utility identifications in the field notes, such as numbers shown on power and/or telephone poles, vault tags, telephone pedestals (aka risers), cabinets, meters, fences or screened enclosures for gas regulators, and sanitary sewer pump stations. This data is needed for the Agency or Consultant to communicate where the facility may be in conflict with the Project.

Consultant shall measure and record all utility facility structures (e.g. concrete pads, top slab of vaults, pump station housing, barrier screens or fenced enclosures). Consultant shall make a request to the utility owner to pull the cover whenever a manhole is found locked or bolted.

Consultant shall tie environmental and archaeological features that have been identified within the Project area. These features include, but are not limited to, wetlands, high water mark, T&E species, hazmat sites, archaeology sites and sensitive plants.

#### Detailed Basemap

Consultant shall take applicable topographic data collected in this subtask and create a detailed basemap file. A detailed basemap has all features drafted to Agency provided criteria.

#### Digital Terrain Model ("DTM")

Consultant shall create a 3-dimensional digital terrain surface using all relevant topographical data collected in this subtask.

Consultant shall collect the topographical data to create points and break lines in adequate quantity and in proper placement, to accurately represent the surface of the ground. Consultant shall collect confidence points in the field and generate a confidence point report. The topographical data and confidence points must meet Agency Criteria. Consultant shall generate 0.2 foot minor contours and 1 foot major contours throughout the DTM for a QC analysis of the surface.

### **2.4 Consultant Deliverables and Schedule:**

Consultant shall provide the following deliverables electronically (.PDF) to the APM per the schedule developed in Task 1:

- 1 copy of field notes
- Copy of the AutoCAD/Civil 3D CADD Files (\*.dwg) Detailed Base Map with Civil 3D DTM
- All files for the network control points in (ASCII) format
- Files of listing kits
- Files of survey research
- Files of tax maps
- Confidence Point Report

Control Point Worksheet within construction documents showing locations of identified control points in relation to the Project, including datum, description, and whether found or set.

### **2.5 ROW - Boundary Resolution**

The purpose of this task is to identify the location of the existing Centerline(s), ROW lines and property line(s) as necessary, to perpetuate the location of the monuments found, to document the control used

for this Project area, and establish property lines for area calculations when new ROW is acquired. This task addresses the requirements of ORS 209.150 and 209.155 and other survey related statutes.

#### Existing Vesting Deeds and Property Ownerships

Consultant shall obtain a "Trio listing kit" (typically provided by a Title Company). Consultant shall identify property ownership within and adjacent to the Project site by investigating property deeds and county tax records. Consultant shall itemize and report property ownership and owner contact information to Agency. Consultant shall submit each deed in its own electronic file. Consultant shall include all vesting deeds referenced in the Property Vesting Deeds if needed to resolve the property boundary.

#### Existing ROW Records

Consultant shall research and obtain copies of surveys, subdivision plats, and land partition plats filed in the county surveyor's office related to the properties potentially impacted by the Project. This information is used to find monuments that might be impacted from the Project and establish property lines for area calculations when new ROW is acquired.

Consultant shall research and obtain copies of county assessor maps, General Land Office plats, and county road records related to the properties potentially impacted by the Project.

Consultant shall research and obtain available data about Government Public Lands Survey Corners and their references in the Project area as defined in the SOW.

#### Resolve ROW and Property Boundaries

Consultant shall resolve the location of the ROW within the present limits as described in this SOW. Consultant shall resolve identified ROW centerlines alignments, ROW lines and property boundaries abutting the roadway and along the proposed route of construction, using accepted concepts and rationale methods of survey professional judgment. Consultant shall evaluate the available evidence for relevance, adequacy, and reliability; use professional judgment in determining the type and quantity of evidence available, and the influence given each factor; and determine a best-fit with the evidence and probable location of ROW alignments and property boundaries for the area as described.

#### **2.5. Consultant Deliverables and Schedule:**

Consultant shall provide the following deliverables electronically (.PDF) to the APM in accordance with the schedule developed in Task 1:

- Itemized property ownership and owner contact information to Agency. Consultant shall submit each deed in its own electronic file.
- A detailed narrative of available evidence, desirable evidence not available, rationale for decisions made, and a summary of the conclusions in the establishment of the ROW centerline, ROW lines (including all jogs) and property boundary lines.

#### **2.6 Record of Survey / Control, Recovery, Retracement**

The destruction of found monuments necessitates a record of survey (ORS 209.150,155). If the Project will impact property or existing survey monuments, Consultant shall create a Record of Survey ("ROS") which meets County and ORS requirements. The survey(s) must be prepared for 18-inch by 24-inch sheet plots. The "Control" survey must consist of Geodetic and Terrestrial points set for the Project. The "Recovery" is the documentation of the monuments recovered for the Project. The "Retracement" is a record of resolved ROW centerlines, ROW lines and/or property boundaries. These surveys may be combined or separate surveys as directed by Agency.

Consultant shall submit a draft ROS to Agency for review. Consultant shall address comments received from Agency and submit the final ROS for filing to the appropriate County in the format required.

**2.6 Consultant Deliverables and Schedule:**

Consultant shall provide:

- Draft ROS to APM in accordance with the schedule developed in Task 1.
- Final ROS to the appropriate County for filing within 2 weeks of receipt of comments from the Agency.
- Copy of Final ROS to APM upon submittal to County for filing.

**2.7 ROW Engineering (Mapping & Descriptions)**

The purpose of this subtask is to prepare ROW engineering products used in the acquisition of property. The estimated number of ROW files is 20. These products are:

- ROW acquisition map
- Autocad file (\*.dwg) used to prepare the acquisition map
- Prior to written descriptions and after draft acquisitions are placed on map, Consultant shall have one meeting with County and County's right of way Consultant staff to refine the areas of acquisition.
- ROW legal descriptions and exhibits
- ROW basemap and alignment file (\*.dwg)
- Stake, delineate and flag in the field ROW / easement areas for appraising.

Consultant shall prepare the ROW acquisition map, exhibits and legal descriptions in accordance with County requirements. Consultant shall collect and review general Project background documentation, recorded surveys and conveyance documents, and shall follow all statutes. The right of way acquisition map exhibits and legal descriptions shall be prepared in accordance with County requirements.

**2.7 Consultant Deliverables and Schedule:**

Consultant shall provide the following deliverables in accordance with the approved schedule developed in Task 1.

- Legal descriptions and exhibits in electronic (.PDF) and hard copy to the APM.
- ROW/Easement staking.
- Final ROW acquisition map in electronic (.PDF and .dwg) and hard copy to the APM.
- A copy of the vesting documents for each property owner and ROW in \*.pdf format to APM per the schedule developed in Task 1.

**TASK 3 - ENVIRONMENTAL SERVICES**

Consultant shall complete necessary field and literature investigations to provide Agency and ODOT environmental documentation and permits required for completion of this Project. Consultant shall complete the following environmental investigations, documentation, and permits for this Project, unless marked as a CONTINGENCY TASK, which Consultant shall complete only following receipt of Contingency Task NTP from Agency:

- Archaeological Resources Baseline Report
- Phase I Archaeological Investigation (Contingency)
- Historic Resources Baseline Report
- Determination of Eligibility (DOE)/Finding of Effect (FOE) (Contingency)
- Hazardous Material Corridor Assessment
- Surface and Subsurface Soil Samples (Contingency)
- ESA No Effect Memorandum
- Federal-Aid Highway Program (FAHP) Environmental Species Act (ESA) document
- Wetland/Waters of the U.S./State Delineation Report (Contingency)
- USACE/DSL Joint Permit Application ("JPA") and DEQ Section 401 Certification (Contingency)

The following required environmental tasks shall be completed by the Agency:

LPA A&E Contract **Form C017-B070620-Rev3**

- Schedule and conduct two community open house meetings
- Prepare public outreach documentation

For all of Task 3, the Project Area is the same as described in Section A of this SOW unless otherwise noted and described in specific Task 3 subtasks.

Consultant is responsible for obtaining all Rights-of Entry ("ROE"). Consultant shall not conduct any fieldwork outside of Agency right-of-way or property until all ROEs for private property have been obtained and are in field staff's possession.

### **3.1 NEPA Categorical Exclusion ("CE") and Programmatic CE ("PCE") and Supporting Documentation (RESERVED)**

### **3.2 Archaeological Resources**

All archaeological sub tasks must be completed by professional archaeologists and supervised by a professional archaeologist who meets the Secretary of the Interior's professional standards for Archaeology (36 CFR 61, Appendix A) and who have been "qualified" through the ODOT Cultural Resources Consultant Qualification Training Program.

#### **3.2.1 Literature Review/Field Reconnaissance/Baseline Report**

The purpose of this task is for Consultant to conduct archival and background research in combination with field reconnaissance to determine the presence or absence of high probability landforms or archaeological sites within the Area of Potential Effect ("APE") and to make recommendations for further archaeological review.

Consultant shall conduct a Literature Review for the APE, and include a description of the APE, detailed historic context and ethno-historic information, methodology, recommendations for future work, detailed bibliography, maps, and photos. Consultant shall provide the ODOT Archaeologist with a minimum of 5 days advance notice prior to Field Reconnaissance.

Consultant shall examine the following:

- the State Historic Preservation Office ("SHPO") database in Salem, OR; appropriate Tribal Historic Preservation Office ("THPO") database if APE is within a recognized reservation boundary.
- General Land Office ("GLO") maps.
- Sanborn Fire Insurance Maps.
- Other records archives (i.e. historical societies; tribal archives) for known/potential prehistoric and historic archaeological resources within a one mile radius of the APE.

Field Reconnaissance must include a pedestrian survey. Consultant shall conduct pedestrian surveys within the APE and must include areas where ground will be disturbed by Project construction including temporary access roads, as well as staging areas, material sources, disposal sites, detours, etc.

Pedestrian survey methods must be consistent with the latest updated SHPO guidelines. The recommended maximum spacing of transects is 20 meters apart and may vary depending on terrain features or ground visibility. Consultant shall determine transect spacing based on professional judgment to ensure that all probable site locations are discovered. All cultural resources observable on the surface and in exposed subsurface profiles must be identified and recorded. Field Reconnaissance must enable Consultant to identify areas of high and low probability for archaeological resources and to determine the appropriate level of survey or subsurface exploratory probing.

Consultant shall prepare a Baseline Report that must contain the following:

- A completed Oregon SHPO Archaeological Report Cover Page
- A purpose statement and full Project description including:
  1. ODOT Key Number and Federal Aid Number
  2. Location and legal description
  3. General environmental description
  4. Historic context
  5. Proposed construction activities
  6. Defined APE and APE map
  7. Total acreage of impact
- Results of SHPO/THPO database search including:
  1. Brief summary of previous archaeological research completed within one mile of APE
  2. Brief summary of recorded archaeological features within one mile of APE; include eligibility discussion if available.
- Results of GLO and Sanborn map review including:
  1. Brief summary of features (trails, buildings, etc.) depicted on maps and within APE; include eligibility discussion if available.
- Description of pedestrian survey methods including date of survey, types of transects used, and names and duties of personnel conducting the survey
- Findings of pedestrian survey including ground conditions (percent visibility) and difficulties encountered, if any
- Identification of areas of high and low probability for archaeological resources within APE
- Recommendations for appropriate level of additional survey and subsurface exploratory probing, if any
- Site and isolate forms (hard copies) for newly discovered archaeological sites and isolates. Consultant shall also complete the SHPO online site form.
- List of references cited
- Location map at 1:24,000 scale; aerial image (Google map acceptable) showing APE; and representative digital images of current conditions within APE

### **3.2.1 Consultant Deliverables and Schedule:**

Consultant shall prepare and submit:

- One electronic copy (in WORD format) of the Draft Baseline Report to ODOT and Agency for review per the schedule developed in Task 1.
- One electronic copy (in Word and PDF format) of the Final Baseline Report to ODOT and Agency 2 weeks following receipt of draft review comments.

### **3.2.2 Phase I Archaeological Investigation with Technical Report (CONTINGENCY TASK)**

The purpose of this task is for Consultant to establish the presence or absence of archaeological sites in, or eligible for the National Register of Historic Places ("NRHP"), which may be in the APE for the Project. Investigations under this task must comply with Guidelines for Conducting Field Archaeology in Oregon, The Phase I investigation must comply with the latest updated SHPO guidelines and the latest updated SHPO guidelines for Reporting on Archaeological Investigations. These investigations must include pedestrian survey or subsurface exploratory probing or both, as applicable. Subsurface probing must be conducted in areas where ground visibility is low and in areas of high probability for archaeological resources, unless documented proof of previous fill is available i.e. as-builts/geomorphological work.

Consultant shall conduct record searches and literature review for the APE provided by Agency and a one-mile radius, prior to any fieldwork. Consultant shall, at a minimum, examine the following databases and documents:

- the SHPO database in Salem, OR.

- General Land Office maps.
- historic topographic maps.
- Sanborn Fire Insurance Maps.
- Other records archives (i.e. historical societies; tribal archives) for known/potential prehistoric and historic archaeological resources within a one mile radius of the APE.

Consultant shall conduct pedestrian field surveys within the APE and must include areas where ground will be disturbed by Project construction including temporary access roads, as well as staging areas, material sources, disposal sites, detours, etc. Consultant shall provide the ODOT Archaeologist with a minimum of 5 days advance notice prior to conducting a pedestrian survey. Pedestrian survey methods must be consistent with the latest updated SHPO guidelines. The recommended maximum spacing of transects is 20 meters apart and no more than 30 meters apart; and may be as close as 10 meters apart vary depending on terrain features or ground visibility. Consultant shall determine transect spacing based on professional judgment to ensure that all probable sites are discovered. All cultural resources observable on the surface and in exposed subsurface profiles during the inventory must be identified and recorded.

Consultant shall obtain all required excavation permits and conduct subsurface exploratory probing in the APE. Copies of the draft excavation permits must be provided to the ODOT Archaeologist prior to submittal to SHPO. Consultant shall provide the ODOT Archaeologist with a minimum of 5 days advance notice of exploratory probing. Subsurface Exploratory Probing field methodology must be consistent with the latest updated SHPO guidelines.

Probing must be based on an established research design. Up to 40 probes must be at least 30cm in diameter and dug to a minimum depth of 50cm and two consecutive sterile (void of cultural material) levels where possible, or as appropriate based on varying field conditions. Materials must be screened with a 1/4-inch mesh screen (1/8-inch as needed, see SHPO guidelines).

Auguring may be used, to establish soil stratigraphy or depth of archeological deposits and may be incorporated into the research design, if approved by ODOT Archaeologist. Materials must be screened with a 1/8-inch mesh screen.

Consultant shall prepare Phase I Archaeological Investigation Report. The Report must include:

- A purpose statement and full Project description including:
  1. ODOT Key Number and Federal Aid Number
  2. Location and legal description
  3. General environmental description
  4. Historic context
  5. Proposed construction activities
  6. Defined APE and APE map
  7. Total acreage of impact
  8. Anticipated direct, indirect and cumulative impacts
- Results of SHPO/THPO data base searches including:
  1. Brief summary of previous archaeological research completed within one mile of APE with eligibility description if available.
  2. Brief summary of recorded archaeological features within one mile of APE with an eligibility description if available.
- Results of GLO and Sanborn map review including:
  1. Brief summary of features (trails, buildings, etc.) depicted on maps and within APE



- Discussion of ethno-historic information and historic context of APE and surrounding environment
- Description of pedestrian survey methods including date(s) of survey, types of transects used, and names and duties of personnel conducting the survey
- Results of pedestrian survey including ground conditions (percent visibility) and difficulties encountered, if any; descriptions of any archaeological artifacts encountered and other pertinent information
- Description of subsurface exploratory probing methodology including date(s) of probing, and names and duties of personnel completing probes
- Results of subsurface exploratory probing, including descriptions of soil conditions and any archaeological artifacts encountered and other pertinent information. Negative findings must be reported also
- Summary of Tribal consultation(s), to be provided by ODOT.
- A summary with recommendations that must include a discussion of the site(s) identified and whether or not they meet NRHP criteria and maintain integrity
- List of references cited
- Location map at 1:24,000 scale; aerial image (Google map acceptable) showing APE; and representative digital images of current conditions within APE
- Site forms and isolate forms (hard copies) for newly discovered archaeological sites and isolates. Consultant shall also complete the SHPO Online Site Form
- Site update forms for previously identified archaeological sites
- A modified Determination of Eligibility (DOE), a maximum of 2-3 pages long, must be included in the Appendix for historic sites with no subsurface component. This Appendix must include a short discussion on Boundaries (vertical and horizontal), Integrity as well as Statement of Significance and discussion of the NRHP Criteria. Consultant shall provide enough information to write a detailed DOE.
- Maps, photos and an artifact catalogue

Establishing eligibility without testing for prehistoric sites may be difficult; however, this is possible with historic sites if sufficient historic documentation is provided. Please refer to SHPO guidelines.

Consultant shall provide final Phase I Technical Report and site forms in PDF format; digital images of each photo and illustration; raw GPS files (\*.ssf and \*.cor), and edited GIS files (\*.shp, \*.shx, and \*.dbf).

### **3.2.2 Consultant Deliverables and Schedule:**

Consultant shall prepare and submit:

- One electronic copy (in WORD format) of the Draft Phase I Technical Report with site forms (and isolate forms, if applicable) to ODOT and Agency for review per Task 1 Project Design Schedule.
- One electronic copy (in PDF format) of the Final Phase I Technical Report with site forms (and isolate forms, if applicable) to ODOT and Agency 2 weeks following receipt of draft review comments.

### **3.2.3 Phase II Archaeological FIELD Investigation (RESERVED)**

### **3.3 Historic Resources**

All historic sub tasks must be completed by professional historians who meet the Secretary of the Interior's professional standards for architectural history or history (36 CFR 61, Appendix A) and who have been "qualified" through the ODOT Cultural Resources Consultant Qualification Training Program.

### **3.3.1 Historic Resources Baseline Report**

The purpose of the ODOT Historic Resource Baseline Report is to identify and characterize the historic resource issues using APE to determine what may be impacted by a transportation project. The Historic Resource Baseline Report is a scoping report that is not intended to be a comprehensive technical report. As part of developing the Historic Resource Baseline Report, Consultant shall review the SHPO Statewide Inventory and conduct an on-site reconnaissance of the Project area.

Consultant shall prepare the Historic Resources Baseline Report which must include, but is not limited to:

- Project description and a description of the APE;
- Photographs of resources that are 45 years old or older;
- Descriptions of historic resources that are 45 years old or older, including a discussion of each potential NRHP eligibility (A-D); and
- Map that identifies the location of each potential historic resource within the APE

It is anticipated that up to twenty two (22) resources will be identified in the baseline report.

#### **3.3.1 Consultant Deliverables and Schedule:**

Consultant shall prepare and submit:

- One electronic copy (in WORD format) of the Draft Historic Resources Baseline Report to ODOT and Agency for review per the schedule developed in Task 1.
- One electronic copy (in WORD and PDF format) of the Final Historic Resources Baseline Report to ODOT and Agency 2 weeks following receipt of draft review comments.

### **3.3.2 Section 106 Determination of Eligibility ("DOE") (CONTINGENCY TASK)**

A DOE is a finding that a property meets the eligibility criteria (A-D) for inclusion in the NRHP. If requested by ODOT and Agency staff, then Consultant shall prepare draft and final DOE Reports for each historic resource that is considered potentially eligible for the NRHP..

Consultant shall prepare each DOE using the most recent ODOT form.

The DOE must include but is not limited to:

- Brief physical description of the resource and contributing and non-contributing features, including the history, significance and context of the resource, the design, setting, materials, workmanship, feeling, and association.
- Map showing the location and orientation of the resource and its historic boundary; and
- Photographs of the resource, including historic photographs and current photographs.

Consultant shall prepare DOE(s) for up to seven (7) resources. ODOT Cultural/Historic Resource Specialist will transmit the final DOE(s) to SHPO and will obtain the necessary concurrence documentation from SHPO.

#### **3.3.2 Consultant Deliverables and Schedule:**

Consultant shall prepare and submit:

- Draft DOE(s) (in electronic WORD format) for each resource that is potentially eligible for the NRHP to ODOT and Agency for review per the schedule developed in Task 1.
- Final DOE(s) (in electronic PDF format) for each resource that is potentially eligible for the NRHP to APM and LAPM 2 weeks following receipt of draft review comments.

### **3.3.3 Section 106 Finding of Effect ("FOE") (CONTINGENCY TASK)**

Following coordination with ODOT and Agency staff, Consultant shall prepare a FOE Report for each resource that is listed or has been determined eligible for the NRHP following the format provided by the ODOT. When requested by ODOT and Agency, Consultant shall coordinate with Agency Project Designer or Project Team Leader to discuss available options to avoid or minimize adverse effects to listed or eligible historic resources. Consultant shall coordinate with ODOT to ensure concurrence with the proposed FOE on the resources prior to transmittal to SHPO.

Consultant shall coordinate with ODOT and Agency to obtain concurrence with the proposed FOE on the resource(s), prior to submittal to SHPO.

Consultant shall prepare FOE using the most current ODOT form. The FOE(s) must include:

- Narrative assessment of the Project's potential effects of the Project to the historic resource's qualities that make it significant and/or eligible or listed, including: physical destruction or damage; alteration or rehabilitation; removal; change of setting; introduction of visual, atmospheric or audible elements; neglect of a property; or transfer or sale of ownership; and
- Discuss alternatives to avoid or minimize adverse effects to the resource.

Consultant shall prepare FOE(s) for up to five (5) resources. ODOT Historic Resource Specialist will transmit the final FOE(s) to SHPO and will obtain the necessary concurrence documentation from SHPO.

### **3.3.3 Consultant Deliverables and Schedule:**

Consultant shall prepare and submit:

- Draft FOE(s) (in electronic WORD format) for each effected resource that is listed or eligible for the NRHP to ODOT and Agency for review per the schedule developed in Task 1.
- Final FOE(s) (in electronic WORD and PDF format) for each effected resource that is listed or eligible for the NRHP to ODOT and Agency 2 weeks following receipt of draft review comments.

## **3.4 Hazardous Materials**

This work is intended to identify potential sources of environmental contamination (hazardous waste, hazardous substances, toxic substances and other hazardous materials regulated under federal and State statutes and regulations/administrative rules) that could impact the Project.

Performance of this task must be in accordance with ODOT's HazMat Program Manual (see Section B list) and applicable industry standards. Deliverable submittals must be in an electronic format (Word and PDF).

The purpose of this task is to facilitate Agency compliance with environmental regulations pertaining to site cleanup and waste management. The Services to be provided shall include:

- Conduct a Hazardous Materials Corridor Study to identify potential sources of contamination that could impact property acquisition or construction.
- Conduct geophysical surveys to identify potential underground storage tanks or buried debris.
- Collect surface soil samples from road shoulders to determine if the soil meets Oregon Department of Environmental Quality ("DEQ") standards for clean fill.
- Conduct site-specific subsurface investigations to determine if soil or groundwater are contaminated within the project corridor.
- Prepare contract bid documents for handling and disposal of contaminated materials.

- "Hazardous Waste Guide for Project Development", by the American Association of State Highway and Transportation Officials ("AASHTO") Special Committee on Environment, Archaeology and Historic Preservation.
- "ODOT Hazmat Program Procedures Guidebook," Oregon Department of Transportation.
- "Level 1 Corridor Study" report template, Oregon Department of Transportation.
- And the requirements listed below.

Consultant shall conduct a site reconnaissance to identify potential sources of contamination that could impact construction or result in Agency acquiring contaminated property.

Consultant shall review available federal and State environmental databases to identify sites that could potentially impact the project, using the minimum search radii listed below.

Environmental Database	Search Radius
State-Equivalent NPL List (ECSIS)	0.5 mile
Oregon Permitted Landfill List	0.5 mile
State Leaking (L)UST List	0.25 mile
Federal RCRA Generators List	Site and Adjoining
State Fire Marshal's Spill Response List	Site and Adjoining
Oregon Motor Carrier Spill List	Site and Adjoining
State Certified UST List	Site and Adjoining

Consultant shall review DEQ files, available using DEQ's Facility Profiler web site at <http://deq12.deq.state.or.us/fp20/>, to determine whether contamination from adjacent facilities is likely to impact project construction. Alternatively, this review may be conducted using commercially available database reports such as provided by EDR.

Consultant shall review the Oregon Water Resources Department on-line database at [http://apps.wrd.state.or.us/apps/gw/well\\_log/Default.aspx](http://apps.wrd.state.or.us/apps/gw/well_log/Default.aspx) to determine if water wells or monitoring wells are located on or adjacent to the project corridor.

Consultant shall review project files at the appropriate DEQ Region office, based on the project location, for all facilities considered to be high risk for impacting project construction. Consultant shall use DEQ file information to delineate contaminated areas within the project corridor and identify if that information is sufficient to develop construction plans and specifications without additional sampling.

Consultant shall conduct historical research to identify past uses of the project corridor and adjacent properties, using one or more of the following resources:

- Sanborn Fire Insurance Maps
- Aerial Photographs
- Reverse Agency Directories
- Historic property ownership/occupancy records or building permits

The resource(s) selected must, if possible, provide historic information regarding land use back to 1935 at 10 year intervals, or the Consultant must demonstrate that such information is not readily available.

Consultant shall review pertinent records that may be made available by the Agency as they relate to the environmental condition of the project corridor.

Consultant shall assess if soil sampling is necessary to determine if soil excavated from the project corridor shall meet DEQ clean fill screening levels for contaminants-of-concern including pesticides, herbicides, metals, polynuclear aromatic hydrocarbons, petroleum hydrocarbons, and solid waste.

Consultant shall prepare a HMCS report summarizing the information obtained through the activities listed above, using ODOT's Corridor Report Template available under "Guidance Materials" at <https://www.oregon.gov/odot/GeoEnvironmental/Pages/Haz-Mat.aspx>. The report shall include photographs documenting project corridor observations. The report must include conclusions that identify specific sources of contamination that could impact project construction and recommendations for further investigation, if needed.

#### **3.4.1 Consultant Deliverables and Schedule:**

Consultant shall prepare and provide:

- Draft HMCS report to REC and APM per the schedule developed under Task 1.
- Final HMCS report to REC and APM within 2 weeks following receipt of draft review comments.

#### **3.4.2 American Society for Testing and Materials ("ASTM") Phase I Environmental Site Assessment ("ESA") (RESERVED)**

#### **3.4.3 Level 1 Initial Site Assessment ("ISA") (RESERVED)**

#### **3.4.4 Minimal Assessment Memorandum ("MAM") (RESERVED)**

#### **3.4.5 Shoulder Soil Investigation**

Consultant shall perform the following tasks to evaluate handling and disposal options for surface and near-surface shoulder soil within Project limits. This evaluation may involve the collection of surface and near-surface soil samples within the limits of the Project corridor for laboratory analysis. Comparison of the results of the analyses with the DEQ guidelines will determine whether surface soil excavated for Project construction can be handled and disposed as clean fill.

Shoulder Soil Investigations must be completed in accordance with the ODOT HazMat Program Manual (see Section B list).

##### **3.4.5.1 - Shoulder Soil Investigation Work Plan and Health and Safety Plan ("HASP") (RESERVED)**

##### **3.4.5.2 Sample Collection and Reporting**

Consultant shall collect surface soil samples from up to 5 locations. Consultant shall provide flagging and traffic control as needed to complete sample collection. At each location, Consultant shall collect samples as specific site conditions allow. Consultant shall obtain soil samples from 0 to 0.5 feet, from 0.5 to 1.0 feet, and from 1 to 1.5 feet below ground surface. Consultant shall mark the proposed sample locations in white paint and obtain utility locates for all locations. Consultant shall backfill sample locations with excavation spoils and shall not generate any IDW. Consultant may dispose of equipment decontamination water on-site, unless indications of contamination (i.e., staining, sheen) were observed during sampling or equipment decontamination.

Consultant shall ship the discrete samples to a laboratory that is accredited by the Oregon Environmental Laboratory Accreditation Program. The laboratory must be capable of compositing processing samples according to Agency's October 2016

Sampling and Analysis Plan - Statewide Highway Shoulder Soil Evaluation (see Section B list), using Incremental Sampling Method sample processing methods. The laboratory must be capable of generating analytical results where the detection limits for each analysis must be below the clean fill criteria set forth in DEQ's Clean Fill Determination Internal Management Directive document (see Section B list).

Analysis of the samples must be for contaminants-of-concern that include the following:

- Method 8270 SIM PAHs, Method 8151 herbicides, Method 8081 pesticides, Method 8082 polychlorinated biphenyls ("PCBs"), and total metals according to Methods 6020 and 7471A (see Section B list)
- Total metals analyses that include arsenic, cadmium, chromium, copper, lead, and zinc

Consultant shall submit discrete samples using the state's chain-of-custody form, which must indicate that the laboratory shall bill Agency directly and must request a turnaround time of 10 business days. Consultant shall ship samples under chain-of-custody procedures, such that the samples arrive at the laboratory undamaged. Agency will pay all shipping costs directly to the laboratory.

Consultant shall prepare a 3- to 7-page technical memorandum with attachments that summarizes the results of this task. The technical memorandum must include the following:

- Field observations, photographs, detailed sample locations, description of sampling methods, laboratory reports, figures showing Project site location and sample locations, and tables summarizing the analytical results
- Tabulation of the laboratory results compared to DEQ's clean fill screening levels

#### **3.4.5.2 Consultant Deliverables and Schedule:**

Consultant shall provide:

- Draft SSI technical memorandum to REC and APM within 4 weeks following completion of Task 3.4.5.1 - Shoulder Soil Investigation Work Plan and HASP.
- Final SSI technical memorandum to REC and APM within 1 week following receipt of draft review comments.

#### **3.4.6 Asbestos Survey (RESERVED)**

#### **3.4.7 Asbestos Abatement Specification (RESERVED)**

#### **3.4.8 Asbestos Abatement Oversight and Clearance Monitoring (RESERVED)**

#### **3.4.9 Structure Survey (RESERVED)**

#### **3.4.10 Geophysical Survey (RESERVED)**

#### **3.4.11 Site-Specific Investigation (RESERVED)**

#### **3.4.12 NEPA Hazardous Materials Technical Memorandum or Report for EA and EIS Projects (RESERVED)**

### **3.5 Biological Resources Compliance and Permitting**

Consultant shall complete the appropriate biological resources tasks presented below based on the Design Acceptance Plans. General biological work must be executed by a qualified biologist who meets

the following minimum qualifications: 3 full years of environmental analysis or resource Project management experience and a Bachelor's degree that included 30-quarter or 20-semester hours in biology, environmental science, natural science, or closely related field. An individual who makes determinations of effect under the ESA and prepares ESA documentation must also be an ESA qualified biologist as per ODOT Technical Services Bulletin GE14-03(B) or most current ([http://www.oregon.gov/ODOT/Engineering/Doc\\_TechnicalGuidance/GE14-03b.pdf](http://www.oregon.gov/ODOT/Engineering/Doc_TechnicalGuidance/GE14-03b.pdf)).

### **3.5.1 Endangered Species Act (ESA) No Effect Memorandum**

When ODOT determines or approves Consultant's determination that a proposed action will not affect state or federal ESA listed or proposed species or critical habitat, a No Effects Memorandum ("NE Memo") is prepared to document compliance with the state and federal ESAs. The NE Memo must be completed by an ESA qualified biologist as described above.

Consultant shall:

- Use a qualified ESA biologist(s) to conduct 1 field survey of the area of API at the appropriate time for each ESA listed plant and wildlife species with the potential to be present in the API and their potential suitable habitats following standard/appropriate field survey techniques.
- Conduct Oregon Department of Agriculture ("ODA"), Oregon Department of Fish and Wildlife ("ODFW"), National Marine Fisheries Service ("NMFS"), and U.S. Fish and Wildlife Service ("USFWS") database searches to acquire ESA information for the Project area.
- Contact ODOT to obtain data regarding listed threatened and endangered species as well as those proposed for listing under the federal and state ESA that may occur within the API. Consultant shall determine if Federally-listed species and their habitat will be affected by the Project.
- Communicate with local ODA, ODFW, NMFS and USFWS staff via phone or email to acquire additional specific ESA information for the Project area.
- Make ESA effects determinations following the analysis of gathered ESA information. If a determination is No Effect for at least one listed or proposed species, obtain ODOT concurrence on the No Effects determination.
- Coordinate with ODOT and APM to develop appropriate measures (i.e., construction special provisions) to avoid impacting listed species proposed for coverage in the NE Memo if avoidance measures are necessary to obtain the No Effect determination.
- Prepare draft NE Memo for the Project area using the most recent ODOT provided form; provide to ODOT and APM for review and comment.
- Prepare final NE Memo for ODOT and Agency acceptance.
- Notify ODOT and Agency immediately if Consultant determines that an ESA determination of No Effect is no longer appropriate.

### **3.5.1 Consultant Deliverables and Schedule:**

Consultant shall prepare and submit:

- One electronic PDF copy of the Draft No Effect Memo to ODOT and Agency for review per the schedule developed in Task 1.
- One electronic PDF copy of the Final No Effect Memo to ODOT and Agency within 2 weeks following receipt of draft review comments.
- One electronic PDF copy of the Draft construction special provisions relevant to NE determination to ODOT and Agency for review per the schedule developed in Task 1.
- Final construction special provisions relevant to NE determination to ODOT and Agency within 2 weeks following receipt of draft review comments.

### 3.5.2 Federal-Aid Highway Program ("FAHP") ESA Programmatic Documentation

Consultant shall coordinate and document compliance with the federal ESA for NMFS trust species using the FAHP ESA Programmatic. The FAHP ESA Programmatic is appropriate for most Projects with Federal-Aid funding. ESA documentation must be completed by a qualified biologist (as per Section B.3 of this SOW). All documentation for the Project design phase must follow procedures contained in the most recent version of the ODOT FAHP Programmatic User's Guide available on the ODOT Biology ESA website:

(<http://www.oregon.gov/ODOT/GeoEnvironmental/Pages/ESA.aspx>). FAHP ESA programmatic documentation must be completed by an ESA qualified biologist as described above. Agency will provide stormwater figures complying with the ODOT FAHP Programmatic User's Guide.

Consultant shall:

- Facilitate early coordination with NMFS (and USFWS if applicable) according to Section 2.3 of the FAHP Programmatic User's Guide.
- Coordinate with the APM and ODOT biologist to complete the FAHP Project Stakeholder list as shown in Table 4 of the FAHP Programmatic User's Guide.
- Utilizing the latest template available on the FAHP Programmatic website, prepare and submit the Project Initiation Form to the REC for the Project.
- Contact the ODOT biologist via phone or email for site-specific information on ESA species including but not limited to background reports and ORBIC special status species lists.
- Contact via phone or email ODA, ODFW, NMFS (and USFWS if applicable) for additional site-specific information on ESA species.
- Review all ESA information provided or obtained.
- Facilitate and attend 1 site visit with the ODOT, Agency (and USFWS if applicable), and NMFS to discuss Project impacts, applicable FAHP Programmatic standards, and possible modifications to the Project to meet FAHP Programmatic standards; Consultant shall prepare site visit meeting notes that include topics discussed and recommendations.
- Prepare and submit all required FAHP Programmatic forms to Agency and ODOT REC for the Project, utilizing the latest templates available on the ODOT ESA website. In addition to the Stakeholder List and Initiation Form detailed above, the following forms are required as part of the FAHP Project Notification documents:
  - Notification Form
  - Additional Info
  - Additional Stormwater
  - Change Form

### 3.5.2 Consultant Deliverables and Schedule:

Consultant shall prepare and submit:

- Draft Site Visit Meeting Notes within 1 week of the meeting to APM and REC
- Final Site Visit Meeting Notes within 1 week of receiving comments to APM and REC
- Draft FAHP Programmatic Project Initiation Form within 2 weeks of Kickoff Meeting to APM and REC
- Final FAHP Programmatic Project Initiation Form within 1 week of receiving comments to APM and REC
- Draft FAHP Programmatic Project Notification documents per the schedule developed in Task 1 to APM and REC
- Final FAHP Programmatic Project Notification documents 2 weeks of receiving comment to APM and REC



3.5.3 Scope to Determine if Project Must Address the Oregon Fish Passage Law (OARs 635-412-0005 to 625-412-0040) (RESERVED)

3.5.4 Fish Passage Scoping Field Visit (RESERVED)

3.5.5 Determine Appropriate Approach to Meet Fish Passage Requirements (RESERVED)

3.5.6 Fish Passage Exemption Application (RESERVED)

3.5.7 Fish Passage Waiver (RESERVED)

3.5.8 Fish Passage Plan (RESERVED)

3.5.9 Scientific Take Permit for Fish Salvage Operations (RESERVED)

3.5.10 Bird Protection (RESERVED)

**PLEASE NOTE:** Consultant shall not perform any Services described in Task CE3.5.11 below until Agency issues NTP for the Construction phase of the Project.

**CE 3.5.11 Endangered Species Consultation for the Federal-Aid Highway Program ("FAHP")**

This task involves conducting FAHP Programmatic environmental inspection site visits during the construction phase of the Project and post construction phase.

If the project utilized the FHWA Programmatic Endangered Species Consultation for the FAHP Environmental Inspections shall conform to the FAHP User's Guide.

FAHP Environmental inspections site visits are required of all projects implemented under the FAHP Programmatic Biological opinion.

For the FAHP, this includes at least 1 FAHP environmental inspection site visit and environmental inspection report for the Project for each construction year, and a FAHP environmental completion inspection site visit at Project completion and a Project Completion Report, and As-Built Report.

FAHP environmental inspections by Consultant shall be completed by a qualified Biologist or when approved by the ODOT Region Environmental Unit, an ODOT CECL.

**Professional Licenses, Registrations and Qualifications**

For Services under CE Task 3.5.11, the Consultant is the Professional of Record for the environmental work, which shall be executed by a qualified Biologist or other qualified professional meeting the following minimum qualifications: 3 full years of environmental analysis or resource project management experience and a Bachelor's degree that included 30-quarter or 20-semester hours in biology, environmental science, physical science, natural science, or closely related field. Individuals who make determinations of effect under the Endangered Species Act ("ESA") and prepare ESA documentation must also have ODOT Biologist certification (as per Technical Services Bulletin GE12-01(B) or updated). Additional qualifications may be required for certain tasks.

The number of FAHP environmental inspection site visits shall correspond with construction stages that include high risk environmental items and best management practices. The

Consultant, through the Biologist or approved CECl, shall review high risk items related to the following:

- Erosion and Sediment Control
- Pollution Control/ Containment
- Sensitive Areas (No work zones)
- Fish and Wildlife Protection

Consultant shall conduct a minimum of 1 FAHP environmental inspection site visit and up to 3\_\_ FAHP environmental inspection site visits and prepare an environmental inspection report summarizing site conditions and providing recommendations of measures to facilitate permit compliance and correct deficiencies

Consultant shall conduct 1 FAHP environmental completion inspection site visit and prepare the final Project Completion Report summarizing site conditions and providing recommended measures to facilitate permit compliance and documentation of any corrected deficiencies

**ASSUMPTIONS FOR BUDGETING PURPOSES:** This task assumes no more than 3\_\_ environmental site inspection(s) for Endangered Species Consultation for the FAHP. Assume up to \_\_9\_\_ hours for each FAHP environmental site inspection(s) and environmental inspection report by either an ODOT certified Biologist or, if approved by a CECl.

**CE3.5.11 Consultant Deliverables and Schedule:**

Consultant shall prepare and submit:

- A draft and final Environmental Inspection Report for each inspection site visit using Agency's template report 734-2902 (for the FAHP, it is available on the [FAHP website](#) - and submitted to the Agency and the REC. The draft Environmental Inspection Report due no later than 14 calendar days after each inspection. Final Environmental Inspection Report due no later than 14 calendar days after receiving final comments from Agency and REC.
- Final Project Completion Report - Summarizing site conditions, recommended measures to facilitate permit compliance and documentation of any corrected deficiencies. Submitted to the REC within 60 calendar days of Second Notification.
- As-Built Report - Submit 1 electronic (PDF copy) each to APM, REC within 30 calendar days of conducting the final site visit. The As-Built drawings can be handwritten markups of the plan sheets.

**3.6 Wetland and Water Resources**

Consultant shall research and prepare documentation necessary to satisfy the requirements of Section 404 of the Clean Water Act and Oregon's Removal Fill Law (ORS 196.795-196.990).

**3.6.1 Wetland/Waters of the U.S./State Fieldwork and Determination Memo.**

Consultant shall complete a wetland field determination and ordinary high water mark "(OHWM)" demarcation for the Project Study Area ("PSA").

Consultant shall use available data (including but not limited to: soil surveys, aerial photos, National/Local Wetland Inventory maps ("NWI/LWI")) as well as data gathered in the field to document the presence or absence of wetlands within the PSA.

Consultant shall:

- Determine wetland boundaries within the PSA in accordance with the criteria and methods described in the *1987 Corps of Engineers Wetland Delineation Manual*

(*Environmental Laboratory Technical Report Y-87-1*) and appropriate Regional Supplements.

- Place flags in the field to show wetland and upland sample plot locations, and the wetland boundaries. Label and number the flags to identify their function. Consultant shall collect the flag locations with a GPS unit and provide data point locations to Agency.
- Prepare sketch maps of approximate wetland boundaries with numbering of flags or stakes.
- Ensure that field methods used and data collected meet the U.S. Army Corps of Engineers ("USACE") and DSL technical requirements for wetland delineations and ordinary high water demarcations. Collect and record wetland delineation data on approved wetland determination data sheets for possible inclusion with a wetland delineation report.
- Place flags in the field to show the OHWM elevation of all jurisdictional surface waters. Assess the OHWM elevation using ODOT accepted field indicators. The 2 year flood event elevation (calculated) may be used in the absence of field indicators.
- Prepare sketch map of approximate OHWM boundaries concurrently with the wetland and OHWM field work with sequential numbering of flags or stakes to be provided prior to site survey for Project base mapping.
- Consultant shall notify ODOT and Agency if wetlands are present and will be impacted.

If wetland(s) or waters(s) are impacted, Consultant shall collect field data during this task and use it for, and submit it with, the deliverables for Tasks 3.6.2, 3.6.3, or 3.6.4 as applicable.

Upon completion of the wetland and waters determination field work, Consultant shall assess bullets 1 through 4 below and determine which numbered bullet is the most appropriate for the Project based on the results of the wetland and waters field work. Consultant shall contact ODOT and Agency for concurrence on which of the four numbered bullets below to proceed with. Upon email concurrence from the ODOT and Agency, Consultant shall complete the deliverables described for the agreed upon numbered bullet below.

- 1) If **both wetlands and waters are not present**, or, they are present and it has been determined by the design team and concurred with by ODOT and Agency that **both the wetland(s) and water(s) will not be impacted by the Project**, Consultant shall prepare one (1) Wetland Determination Technical Memo. The memo must include:
  - Description of the PSA.
  - Summary of existing available information, noting the standard information that is not available (i.e., if no County soil survey coverage exists for the area, then it must be stated);
  - Field reconnaissance methods.
  - Results of field reconnaissance.
  - Data Sheets.
  - Color photographic record depicting on-the-ground conditions; and
  - Sketch mapping depicting locations of wetlands or waterways within the study area.
- 2) If both wetlands and waters are present and it has been determined by the design team and concurred with by ODOT and Agency that **the wetland(s) will be impacted by the Project and the water(s) will not be impacted by the Project**, Consultant shall request that CONTINGENCY TASKS 3.6.2 and 3.6.3 be released. No Determination Memorandum is required; Task 3.6.2 and 3.6.3 will address wetlands and waters.

- 3) If both wetlands and waters are present and it has been determined by the design team and concurred with by ODOT and Agency that the wetland(s) will not be impacted by the Project and the water(s) will be impacted by the Project, Consultant shall request that CONTINGENCY TASK 3.6.4 be released.

Consultant shall prepare a Wetland Determination Technical Memo. The memo must include:

- o Description of the PSA.
  - o Summary of existing available information, noting the standard information that is not available (i.e., if no County soil survey coverage exists for the area, then it must be stated).
  - o Field reconnaissance methods.
  - o Results of field reconnaissance.
  - o Data Sheets.
  - o Color photographic record depicting on-the-ground conditions; and
  - o Sketch mapping depicting locations of wetlands or waterways within the study area.
- 4) If both wetlands and waters are present and it has been determined by the design team and concurred with by ODOT and Agency that both the wetland(s) and the water(s) will be impacted by the Project, Consultant shall request that CONTINGENCY TASKS 3.6.2, 3.6.3, and 3.6.4 be released. No Determination Memorandum is required; Task 3.6.2, 3.6.3, and 3.6.4 will address wetlands and waters.

#### **3.6.1 Consultant Deliverables and Schedule:**

Consultant shall prepare and submit:

- Sketch map of approximate wetland and waters boundaries to ODOT and Agency (if present).
- Notification to ODOT and Agency (via email) if wetlands are present and will be impacted.
- Electronic copy (Word) of the draft Wetland Determination Technical Memo to ODOT and Agency for review. [TO BE COMPLETED ONLY IF CONTINGENCY TASKS 3.6.2 AND 3.6.3 ARE NOT RELEASED].
- Electronic copy (PDF) of the Final Wetland Determination Technical Memo to ODOT and Agency 2 weeks following receipt of draft review comments. [TO BE COMPLETED ONLY IF CONTINGENCY TASKS 3.6.2 AND 3.6.3 ARE NOT RELEASED].

#### **3.6.2 Wetland/Waters of the U.S./State Delineation Report (CONTINGENCY TASK)**

Consultant shall prepare a Wetland/Waters of the U.S./Delineation Report (Wetland Delineation Report) in accordance with DSL and USACE requirements and standards. The Wetland Delineation Report must include all required information outlined in Oregon Administrative Rules (OAR) 141-090-035, as well as all wetland data sheets obtained in the field under Task 3.6.1.

Consultant shall prepare appropriate graphics required by USACE and DSL to accompany the Wetland Delineation Report. This shall include a site location map, tax lot map, National Wetland Inventory or Local Wetland Inventory map (if available), soil survey map, and aerial overlay map. Consultant's Wetland Delineation Report must also include wetland delineation boundary mapping (figures) as finalized by Consultant and as per the requirements of DSL, and a color photographic record depicting existing conditions.

Consultant shall also complete the appropriate DSL cover page for submitting the Wetland Delineation Report to for review and approval. Consultant shall attend one site visit with ODOT and Agency representatives if determined necessary by USACE or DSL, and shall respond to their comments.

Consultant shall submit the Wetland Delineation Report to DSL and USACE. Consultant shall sign the wetland delineation report cover page. Agency will make payment of any associated fees. ODOT and Agency will review the draft Wetland Delineation Report and will provide comments to Consultant within 2 weeks of receipt of the draft. Consultant shall make appropriate modifications to the draft Wetland Delineation Report in response to the comments and shall prepare the final for submittal.

### **3.6.2 Consultant Deliverables and Schedule:**

Consultant shall prepare and submit:

- Electronic copy (Word) of the Draft Wetland Delineation Report to ODOT and Agency for review per the schedule developed under Task 1.
- Electronic copy (PDF) of the Final Wetland Delineation Report to ODOT and Agency 2 weeks following receipt of draft review comments.
- Final Wetland Delineation Report to DSL and the USACE per the schedule developed under Task 1.

### **3.6.3 Wetland Functional Assessment Report (CONTINGENCY TASK)**

Consultant shall prepare a Wetland Functional Assessment Report if wetland impacts are unavoidable. The report must be submitted as a component of the Joint Permit Application to both USACE and DSL.

Consultant shall calculate wetland impact areas by wetland type, including permanent and temporary impacts, based on the wetland survey and Project design. If the impacted wetlands are classified under the Hydro geomorphic ("HGM") classification as tidal or riverine impounding wetlands, or are within the slopes/flats subclass, the assessment must be conducted in accordance with the methodologies outlined in the appropriate guidebook for HGM-based assessments. Consultant shall assess all other wetlands using the methodologies outlined in the Oregon Rapid Wetland Assessment Protocol ("ORWAP"). The Best Professional Judgment method ("BPJ") may be used if impacts to non-tidal wetlands do not exceed 0.2 acre.

Consultant shall prepare a standalone Functional Assessment Report that includes, at minimum, the following information:

- A description of the impacted wetlands, including the HGM and Cowardin classifications.
- A discussion of the proposed Assessment Unit for each wetland.
- A summary table depicting the results of the HGM or ORWAP assessment.
- A discussion of each assessed function, including rationale for the resulting scores.
- A wetland values assessment for each impacted wetland.
- A discussion of the anticipated functions and values impacts, and the appropriate means by which to mitigate for those impacts.
- A copy of all prepared data sheets for the HGM or ORWAP assessment.

ODOT and Agency will review the draft Wetland Functional Assessment Report and provide comments to Consultant within 2 weeks of receipt of the draft. Consultant shall make appropriate modifications to the draft report in response to the draft document comments.

### **3.6.3 Consultant Deliverables and Schedule:**

Consultant shall prepare and submit:

- Electronic copy (Word) of the draft Wetland Functional Assessment Report to ODOT and Agency for review per the schedule in Task 1.
- Electronic copy (PDF) of the final Wetland Functional Assessment Report to ODOT and Agency 2 weeks following receipt of draft review comments.

### **3.6.4 Stream Functional Assessment (CONTINGENCY TASK)**

Consultant shall complete a Stream Functional Assessment if impacts to non-wetland waters are unavoidable. The assessment must be function-based per the current DSL requirements outlined in OAR 141-085-0765(3). This must include an assessment of the current hydrologic, geomorphic, biological, and chemical and nutrient functions and values provided by all on-site non-wetland waters that will be impacted. The assessment must be subjective and qualitative, and must include a discussion of the anticipated changes in stream function and value post-construction to determine if a net gain, net loss, or no net change in the assessed functions and values will occur as a result of the Project. The results of the assessment must be included in the Joint Permit Application document prepared under Task 3.7.1.

#### **3.6.4 Consultant Deliverables and Schedule:**

Consultant shall prepare and submit:

- Electronic copy (Word) of the draft Stream Functional Assessment results with Task 3.7.1 to ODOT and Agency for review per the schedule in Task 1.
- Electronic copy (PDF) of the final Stream Functional Assessment results to ODOT and Agency 2 weeks following receipt of draft review comments.

### **3.7 Environmental Permits and Clearances**

Consultant shall research and prepare state and federal permit applications required for the Project as described in the subtasks listed below.

#### **3.7.1 USACE/DSL Joint Permit Application ("JPA") and DEQ Section 401 Certification (CONTINGENCY TASK)**

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 and USACE permit application standards. Consultant shall submit the JPA and Stormwater Management Plan to the Oregon Department of Environmental Quality (DEQ) to obtain Section 401 Water Quality Certification.

Agency will select the preferred design for the Project prior to the preparation of the JPA. Agency will provide all required drawings and the Stormwater Management Plan.

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. Conduct pre-submittal coordination by phone and email. No pre-submittal site visit will be required.
- Verify that features and impacts are correctly identified for the permit application.
- Prepare all JPA required drawings, maps, photographs, site descriptions, and any additional information required by DSL or the USACE for inclusion in the JPA.
- Prepare narratives and descriptions on Project purpose and need and Project alternatives using Project development information provided by Agency as necessary to complete the JPA.

- Respond to questions or comments raised by the USACE and DSL following the submission of the JPA. This task may include correspondence and clarification of the JPA in the form of telephone calls, letters, or e-mails, to clarify regulatory Agency concerns and to facilitate the issuance of the USACE and DSL permits for this Project. No regulatory Agency site visit or in person meetings will be required.
- Submit the complete JPA package to the DSL and USACE on behalf of Agency.
- Submit to DEQ a copy of the complete Joint Permit Application, Stormwater Management Plan, and provide a transmittal letter to DEQ requesting Section 401 Water Quality Certification for the Project. If the Stormwater Management Plan is being developed by others, it will be provided by Agency

Due to the varied nature of post-submittal coordination, it is expected that Consultant shall not expend more than (8) hours for office review and coordination time for post-submittal coordination with DSL, USACE, and DEQ. Agency will be responsible for obtaining Land Use Planning Signature on the JPA. Agency will be responsible for payment of any associated fees for DSL, USACE, and DEQ to review and approve the submittals.

### **3.7.1 Consultant Deliverables and Schedule:**

Consultant shall prepare and submit:

- Electronic copy of the Draft JPA Submittal Package to ODOT and Agency for review per schedule developed under Task 1.
- Electronic copy (PDF) of the Final JPA Submittal Package to ODOT and Agency 2 weeks following receipt of draft review comments.
- Paper copy of the Final JPA Submittal Package to both the DSL and USACE 2 weeks following receipt of draft review comments.
- Paper copy of the Final JPA and Final Stormwater Management Plan to DEQ 2 weeks following receipt of draft review comments on the JPA.

### **TASK 4 - PUBLIC INVOLVEMENT (RESERVED)**

### **TASK 5 - UTILITY COORDINATION (RESERVED)**

### **TASK 6 - GEOTECHNICAL / PAVEMENT SERVICES**

Consultant shall conduct pavement field investigation(s) to explore the following:

- Areas of pavement preservation, rehabilitation and new pavement construction, as applicable

Consultant shall provide documentation which summarizes and presents the results of the investigation, analyses, and recommendations.

### **6.1 Data Review / Reconnaissance**

#### **Data Review:**

Consultant shall review available existing information to evaluate the following:

- Pavement construction history

Consultant shall review available information from the following sources (as applicable):

- Existing published and unpublished literature from Agency records
- Previous geological and geotechnical reports from Agency.
- As-built roadway plans (as available)
- Maintenance records

#### **Reconnaissance:**

Consultant shall conduct a pavement reconnaissance of the site consisting of up to 2 site visits.

Consultant shall identify the following:

- General condition of the existing pavement

As part of the site reconnaissance work, Consultant shall:

- Identify site constraints, staging concerns (for exploration).
- Identify areas for core samples, dynamic cone penetration ("DCP") testing, rut measurements, photographs, and laboratory testing.
- Locate potential pavement core explorations and paint on the ground proposed core locations.
- Locate geotechnical explorations and infiltration test locations and stake or paint on the ground proposed boring locations.

### **6.1 Consultant Deliverables and Schedule:**

Consultant shall incorporate information from this task into deliverables for tasks 6.2 and 6.5.

### **6.2 Exploration and Testing Work Plan ("ETWP")**

Consultant shall prepare an ETWP prior to beginning field work. No field work is to be performed, other than initial site reconnaissance, before review and approval by Agency of the ETWP.

The ETWP shall address the proposed drilling (geotechnical borings and/or pavement cores), , DCP test probes,, site access; exploration and sampling procedures; rut measurements; preliminary laboratory testing plan; safety plan; and the traffic control plan. The traffic control plan must address minor road encroachments as well as any lane or shoulder closures for activities associated with cores, borings, test pits, rut measurements, and restoration of pavements, shoulders, and other areas disturbed due to subsurface exploration activities, including erosion control measures.

Consultant shall comply with any and all environmental permits, including archeology clearance, and approvals prior to any geotechnical drilling work (as per ODOT Geotechnical Design Manual sections 3.8 and 3.8.4).

Consultant shall obtain required Right-of-Way Permits from Agency for exploration locations in public ROW prior to beginning field work.

### **6.2 Consultant Deliverable and Schedule:**

Consultant shall provide:

- Draft ETWP in MS Word format to APM
- Final ETWP in MS Word format at least 5 business days prior to beginning field work to APM

### **6.3 Geotechnical and Pavement Explorations**

Consultant shall conduct field investigation work in accordance with the most current versions of the ODOT Geotechnical Design Manual and the ODOT Pavement Design Guide.

Consultant shall perform all field explorations in conformance with the approved ETWP developed in task 6.2. Consultant shall follow all environmental permits and approvals prior to performing any exploration Services by drilling subcontractors. Consultant or their drilling contractor shall locate all underground utilities.

Consultant shall perform appropriate pavement explorations and tests in order to estimate the following:

- Subgrade conditions for new or existing roadway alignments
- Thickness of the existing pavement section
- Visual condition of the existing pavement



The pavement field investigation program will include:

- Dynamic penetrometer testing
- Pavement core explorations
- Shallow boring or soil probe explorations
- Visual condition survey of the existing pavement
- Rut depth measurement of the existing pavement

Consultant shall perform a pavement field investigation program which includes the tests and explorations shown in the following table:

TEST METHODS	EST #	TEST INTERVALS
Pavement core explorations	8	As specified in <u>ODOT Pavement Design Guide</u>
Shallow borings (5ft minimum) with 4 Infiltration Tests	5	As needed per site conditions
Dynamic cone penetrometer (DCP) testing	8	As specified in <u>ODOT Pavement Design Guide</u>
<b>EXPLORATIONS</b>		
Visual condition survey of the existing pavement within Project limits		

Consultant shall provide an experienced engineer or geologist, as applicable, to supervise the field operations and conduct a detailed visual pavement condition survey to identify the type, extent and severity of the distress present.

Consultant shall perform the exploration work while following additional requirements as follows:

- Boring locations that have restrictions must be performed in conformance with the permit requirements.
- Collect the drill cuttings and drilling mud in sealable steel drums and remove from the site, unless otherwise coordinated with Agency.
- The borings must be abandoned and backfilled according to Oregon Water Resources Department ("OWRD") regulations.
- All borings and core holes through pavement must be patched with cold patch asphalt emulsion, quick set PCC, or as approved by Agency.
- Borings must be completed by drillers appropriately licensed by OWRD
- Core samples of the pavement must be retrieved using a diamond bit core drill.
- Pavement cores must be logged according to the ODOT Pavement Design Guide and photographed for inclusion in the report.

### **6.3 Consultant Deliverables and Schedule:**

Information from this task shall be incorporated into deliverables for Task 6.5.

### **6.4 Laboratory Testing**

Consultant shall perform laboratory tests on disturbed and undisturbed soil samples obtained from the explorations in order to:

- Characterize the subgrade and subsurface soils
- Determine index properties

Develop engineering soil parameters for the design and construction of pavement.

- Assist with determining engineering geologic unit boundaries
- Check field soil classification.

The laboratory testing program must be performed in accordance with standard ASTM, AASHTO, Agency, and ODOT practices to include the following:

- Moisture/density;
- Atterberg limits;
- Percent fines;
- Field vane shear strength test
- Other standard tests as required

#### **6.4 Consultant Deliverables and Schedule:**

Information from this task shall be incorporated into deliverables for task 6.5.

#### **6.5 Pavement Design Report**

Consultant shall prepare a Pavement Design Report indicating pavement design criteria, pavement design, and subgrade stabilization recommendations to be used for the Project, based on data and analysis provided or collected. Consultant shall provide alternative pavement design recommendations for 2 pavement sections for:

- New pavement for areas of widening or reconstruction
- Rehabilitation of the existing pavement

Consultant shall develop a cost estimate for each of the design alternatives. Consultant shall evaluate up to the 2 alternative designs and provide to the Agency.

The pavement designs must be developed for design periods as provided in the current version of the ODOT Pavement Design Guide. Pavement section design must be performed in accordance with the most current versions of the ODOT Pavement Design Guide and AASHTO Guide for Design of Pavement Structures. Mechanistic design method(s) may also be used as stated in the current version of the ODOT Pavement Design Guide.

#### **6.5 Consultant Deliverables and Schedule:**

Consultant shall provide:

- Draft Pavement Design Report in MS Word and PDF format to the APM per the schedule developed under Task 1.
- Final Pavement Design Report in PDF format to the APM within 2 weeks of receipt of comments from Agency.

#### **6.6 Geotechnical Report and Foundation/Geotechnical Data Sheets (RESERVED)**

#### **6.7 Infiltration Testing**

##### **6.7.1 Basic Method Infiltration Testing**

Consultant shall perform infiltration testing at four locations off the southerly road shoulder of State Street between 4106 State Street and 46th Avenue SE. The test locations will be selected by the Agency. Utility locates will be performed by the Consultant.

The tests shall be conducted in accordance with the Open Pit Infiltration Test Basic method outlined in Chapter 109, Division 004, Appendix C of the City of Salem Public Works Design Standards (PWDS). A 6-inch diameter hole will be dug using a portable gas-powered auger to a depth of 2.5 feet, or refusal. Water level observations will be recorded for a minimum of one hour or until all the water has infiltrated (a maximum of 2 hours has been assumed). The test will be performed 3 times at each location.

**6.7.1 Consultant Deliverables and Schedule:**

Consultant shall prepare and submit:

- Electronic (.pdf) documentation of test results to APM within 30 days of NTP.

**6.7.2 Professional Method Infiltration Testing (CONTINGENCY TASK)**

If the results from Task 3.8.1 indicate infiltration rates are greater than 0.5 inches per hour, Consultant shall perform infiltration testing at four locations off the southerly road shoulder of State Street between 4106 State Street and 46th Avenue SE. The test locations will be selected by the Agency and all will be located within the Agency's right-of-way. The Consultant will perform utility locates.

The tests shall be conducted in accordance with the Open Pit Falling Head Professional test method outlined in Chapter 109, Division 004, Appendix C of the City of Salem Public Works Design Standards (PWDS). The testing requires field saturating the test locations for at least 4 hours (or overnight if clay soils are present) prior to completing the test. Overnight soaking has been assumed for this scope and test pits will be covered with plywood, cones, and caution tape overnight. Test pits will be dug with excavation equipment and field saturation shall be initiated at the time of excavation. Water level observations shall be completed the following day and will be recorded for a minimum of one hour or until all the water has infiltrated (a maximum of 2 hours has been assumed). Three trials will be conducted at each location, per Agency direction.

**6.7.2 Consultant Deliverables and Schedule:**

Consultant shall prepare and submit:

- Electronic (.pdf) documentation of test results to APM within 30 days of NTP.

**TASK 7 - HYDRAULICS (RESERVED)**

**TASK 8 - TRAFFIC ENGINEERING AND MANAGEMENT (RESERVED)**

**TASK 9 - RAILROAD COORDINATION (RESERVED)**

**TASK 10 - ROADWAY DESIGN (RESERVED)**

**TASK 11 - BRIDGE DESIGN (RESERVED)**

**TASK 12 - PERMITS (RESERVED)**

**TASK 13 - DESIGN ACCEPTANCE PACKAGE (RESERVED)**

**TASK 14 - RIGHT OF WAY ("ROW")**

Consultant shall conduct the ROW activities for all properties in accordance with the most current version of the following:

- Right of Way Services Agreement specific to the Project
- "ODOT Right of Way Manual"
- "ODOT Guide to Appraising Real Property"
- "ODOT Local Agency Guidelines (LAG), Section C, Chapter 7"
- ORS 35, with reference to the "Uniform Appraisal Standards for Federal Land Acquisitions"
- Federal Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Uniform Act), as amended
- All other applicable laws, rules, and regulations

Consultant shall utilize all forms, spreadsheets, brochures and pamphlets referenced in the "ODOT Right of Way Manual" or as provided by Agency. Consultant shall use Agency letterhead and contact information to all the documents that are sent out.

Consultant shall track status for all parcel files to be acquired for ROW purposes in the format provided by Agency. Consultant shall coordinate the details of this process with the APM or Designee at the Project kickoff meeting.

For estimating purposes, up to 20 files are anticipated for this Project.

#### **14.1 Obtain Right-of-Entry Agreements**

Consultant shall prepare, negotiate, and obtain property owner signatures for temporary right-of-entry documents for the purposes of preliminary engineering, and environmental investigations for up to 20 parcels. Consultant shall use templates and project specific information provided by Agency. Consultant shall document conversations with property owners in the Report of Personal Interview form

##### **14.1 Consultant Deliverables and Schedule:**

Consultant shall provide:

- Right-of-entry documents for signature to APM within 6 weeks of NTP.
- Signed right-of-entry documents to APM prior to onsite work occurring.

#### **14.2 Title Reports and Document Requests**

Consultant shall prepare and assemble all title documents, including vesting deeds, necessary to accomplish acquisition of ROW for each impacted property.

Consultant shall obtain preliminary title reports for all permanent takes/acquisitions. Consultant shall review preliminary title reports for complete documentation of title vesting and notify APM of any major title encumbrances. Consultant shall notify Agency if any acquisitions fall outside of Agency jurisdiction.

##### **14.2 Consultant Deliverables and Schedule:**

Consultant shall provide:

- Preliminary Title Reports and Title Documents per the schedule developed in Task 1 Project Management.
- Clearance Documents from Lenders and/or Lessees per the schedule developed in Task 1 Project Management

#### **14.3 Right of Way Engineering, Maps & Descriptions (RESERVED see Task 2.7)**

#### **14.4 Right of Way Programming Estimate**

Consultant shall prepare a ROW programming estimate for use by Agency to program funds for property acquisition. Consultant shall obtain the most current version of the Programming Estimate form to be used on all State and federally funded projects from Agency. The programming estimate must include the Project name and county in which the Project is located and all Project ROW costs, including separate Consultant, Agency, and ODOT ROW costs as provided by Agency. The ROW programming estimate must include dollar amounts for the following items: Land & Improvements; Damages/Cost to Cure; Relocation; Demolition; Personnel & Administration; Legal & Contingencies and totals for all Items. The programming estimate must be submitted to the APM for review. Consultant shall alert Agency if the estimate exceeds the Project budget and evaluate impacts to the ROW schedule.

Consultant shall revise and re-submit programming estimate, incorporating comments received from Agency and ODOT.

##### **14.4 Consultant Deliverables and Schedule:**

Consultant shall provide:

- 1 draft Programming Estimate for delivery electronically APM per the schedule developed in Task 1.

- 1 final Programming Estimate for delivery electronically to APM per the schedule developed in Task 1.

**PLEASE NOTE: Consultant shall not perform any Services described in Tasks 14.5 through 14.10 below until Agency issues NTP for the ROW phase of the Project.**

#### **14.5 Preliminary Activities**

Upon receipt of authorization to proceed with ROW Acquisition, Consultant shall set up ROW parcel files and deliver a General Information Notice ("GIN"), acquisition and relocation brochures, and a copy of the applicable portion of the ROW Acquisition map (marked Preliminary and showing the parcel(s) to be purchased/acquired to all owners and occupant(s) of affected/impacted properties. Consultant shall send GIN by certified mail with proof of delivery kept in the parcel file. The mailing of all GINs must be included in the Report of Personal Interview.

Consultant shall prepare and maintain a Report of Personal Interview for each file. The Report of Personal Interview must include proof of delivery of all notices, date and place of contact, parties of interest contacted, a statement that brochures were delivered and explained, and record of other activities conducted during the Personal Interview.

#### **14.5 Consultant Deliverables and Schedule:**

Consultant shall provide:

- GINs, 1 hard copy to each property owner and affected occupant(s) and 1 electronic copy each to City/County within 20 business days following NTP for the ROW acquisition phase.
- Proof of receipt for each notice sent to each property owner and occupant(s) by sending Agency the return receipt card(s) or USPS tracking printout(s) and documenting delivery information in the Report of Personal Interview. NOTE: If proof of delivery is not received from USPS, verbal confirmation of receipt by the owner/tenant must be documented in the Report of Personal Interview.

#### **14.5.1 Donation Agreements (CONTINGENCY TASK)**

Prior to commencing discussions with a property owner regarding a potential property donation, Consultant shall confirm Agency has received ODOT clearance to make early contact with the property owner. For each property that is donated Consultant shall prepare a closing packet to include written documentation informing the property owner of their right to just compensation, the executed Donation Agreement and Conveyance Document. The County will be responsible for recording all pertinent documents.

#### **14.5.1 Consultant Deliverables and Schedule:**

Consultant shall provide:

- Closing Packet (Executed Donation Agreement and Conveyance Documents), acquired through donation, 1 hard copy to Agency no later than 14 weeks prior to bid date.

#### **14.6 Appraisal and Appraisal Review**

Consultant shall use appraisers who are licensed or certified in the State of Oregon, competent in eminent domain appraising, and on ODOT's Qualified Appraisers List. Consultant shall provide the name(s) of the appraiser(s) to Agency prior to beginning work on this Task. The County reserves the right to retain some of the appraisals and/or the appraisal review work.

Consultant shall provide one real estate appraisal for each property (or properties that constitute the "larger parcel" as described in the *ODOT Right of Way Manual*) from which an interest is to be acquired. If identification of the larger parcel is problematic, Consultant shall resolve the issue in consultation with the Agency and ODOT.

All real estate appraisals provided by Consultant shall be prepared using forms or formats of, or approved by, Agency. The types of appraisal reports must fall into the following categories:

- Abbreviated or short form (Taking & Damages) appraisals for simple takings.
- Detailed (Before & After) appraisals for complex takings.

Consultant shall require appraisers to provide no less than fifteen calendar day's written notice to owners of a planned appraisal inspection and shall provide the property owner or designated representative, if any, an invitation to accompany the appraiser on inspection of the property for appraisal purposes. This notice must be sent as specified by the *ODOT Right of Way Manual*.

Special Benefits, if any, must be quantified by the appraiser whether or not there are any compensable damages to the property.

Specialty reports, if necessary, must be provided to review appraiser for review and approval prior to incorporation in appraisal reports.

Consultant shall perform independent reviews of appraisals. Consultant shall ensure that the same firm does not perform both the appraisals and the appraisal reviews. Consultant shall forward both appraisal and review to Agency for final approval.

Agency will establish just compensation for each property owner and will notify the Consultant.

Consultant shall continue documentation in the Report of Personal Interview for each file.

#### **14.6 Consultant Deliverables and Schedule:**

Consultant shall provide:

- 15 Day Notice of Appraisal Inspection to each property owner within 8 weeks of NTP for the ROW acquisition phase.
- Report of Personal Interview, including date and place of contact, parties of interest contacted, a statement that a 15-Day Notice of Appraisal Inspection was mailed and received, and record of other activities conducted during the Appraisal to APM within 3 business days of request.
- 1 electronic file of the Real Estate Appraisal of each of the properties in an Agency approved format to APM within 16 weeks of NTP for the ROW acquisition phase.
- The following Appraisal and Appraisal Review documentation, as applicable, in electronic format for each file to APM within 20 weeks of NTP for the ROW acquisition phase:
  - Value Finding/Taking and Damages Appraisal (for simple takings),
  - Detailed Before & After Appraisal (for complex takings),
  - Specialty reports, if necessary, prior to incorporation in appraisal reports.

#### **14.7 Acquisition Services**

All ROW must be acquired in the name of Agency. Consultant shall conduct negotiations, on behalf of Agency, in good faith and in compliance with all federal and state laws and regulations. Consultant shall conduct negotiations for acquisition of real property based on Appraisal Review and in accordance with the *ODOT Right of Way Manual* and all applicable state and federal laws and regulations.

Consultant is responsible for clearing title encumbrances identified on the Preliminary Title Report or making the offer subject to clearing title encumbrances. Consultant shall present any requests for taking title subject to one or more outstanding interests to Agency for approval. Fee owners' and contract purchasers' ownership interests must be cleared. When impacted by the taking, lessees' interests must also be cleared.

Offer Packets must include, but are not limited to, acquisition and relocation brochures, offer-benefit letter, acquisition and relocation summary statements, copy of appraisal, map of acquisition, instruments of conveyance, and W-9 form. Each Offer Packet must contain all components necessary to fully compensate the property owner for rights taken and to convey adequate rights to Agency in order to clear the ROW for the Project.

If possible, Consultant shall make offers in person, especially where the acquisition involves either a major impact to the property or the displacement of persons occupying the property. If this is deemed not possible, Consultant shall send offer(s) by certified mail. Proof of delivery must be documented in the Report of Personal Interview and file.

Consultant shall make every reasonable effort to acquire the ROW expeditiously by negotiation. Consultant shall give property owners reasonable opportunity to consider the offer (statutorily 40 calendar days) and to present material the owner believes is relevant to determining the value of the property. Consultant shall attempt to negotiate an approved administrative settlement, but shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court or take any other coercive action in order to induce an agreement on the price to be paid for the property (49 CFR 24.102(h)).

- IF the OFFER is ACCEPTED, Consultant shall present a Final Report Packet covering the acquisition of ROW to Agency for final approval, payment, conveyance of title and recording.
- IF a COUNTEROFFER is received, Consultant shall contact Agency for discussion and approval or rejection. If accepted, Consultant shall generate a Final Report Packet for Agency final approval, payment, conveyance of title, and recording and a justification letter justifying the amount over just compensation.
- IF an acceptable agreement is not reached, Consultant shall prepare and submit a Recommendation for Condemnation.

Consultant shall maintain written Report of Personal Interview with property owners and tenants to document all verbal and written communication and events, such as: delivery of required notices, efforts to achieve amicable settlements, owner's suggestions for changes in plans, and responses to owner's counterproposals.

#### **14.7 Consultant Deliverables and Schedule:**

Consultant shall provide the following to APM per the schedule developed under Task 1.:

- Final Offer Packet for review and signature to APM.
- Final Offer Packet sent certified mail or delivered in person for each file.
- Final Report Packet for each file for payment, conveyance of title and recording to APM.
- If applicable, proposed counter offers with justification information for review and approval to APM.
- If applicable, Recommendation for Condemnation to APM.
- Report of Personal Interview to APM with 3 business days of request.

#### **14.8 Relocation (CONTINGENCY TASK)**

Consultant shall use the forms, formats and brochures in relocation advisory assistance and the preparation of relocation studies, reports and claims available on ODOT's ROW Guidance webpage (<https://www.oregon.gov/ODOT/ROW/Pages/ROW.aspx>).

Consultant shall ensure that relocations take place in accordance with regulatory notification time frames and terms. Consultant shall inform Agency as soon as schedule issues are known, if applicable.

If authorized, relocations shall take place in a timely manner in accordance with regulatory notification time frames and terms, and are completed following the Uniform Act, State law (ORS 35.500-35.530),

the ODOT Right-of-Way Manual. If authorized, Consultant shall assess eligibility for up to 10 personal property only relocations.

Consultant requirements under relocation include but are not limited to the following:

- Conduct occupant interviews, provide relocation advisory assistance and determine/present relocation benefits.
- Prepare relocation reports, studies, moving agreements and claims using Agency forms/formats and submit to Agency for review, approval and payment.
- Relocation studies required for presentation of benefits at the time of offer must be pre-approved by Agency
- A Moving Agreement, pre-approved by Agency, must be on file prior to submission of relocation claims.
- Support and assist Agency with Relocation Appeals according to the Right-of-Way Manual
- Prepare and independently review for accuracy and compliance, relocation claims using Agency forms/formats, and submit claims to Agency for payment.
- Maintain Report of Personal Interview.

**Assumptions:**

- Personal property relocations only, no business or residential relocations will be required.

**14.8 Consultant Deliverables and Schedule:**

Consultant shall provide the following deliverables to the APM per the schedule developed under Task 1:

- Relocation Move Plan and Move Agreement for individual displaces
- Occupant Interview Documentation
- Relocation Studies, Reports and Claims
- Replacement Housing Study and Calculation
- Type and amount of Move Claims including Move Estimates
- Inventory of Personal Property to be moved
- Relocation Appeals Documentation (if requested by Agency)
- Attendance at pre-hearing appeal and/or appeal conference (if requested by Agency)
- Relocation Diary

**14.8.1 Relocation Appeals Process (RESERVED)**

**14.9 Condemnation Process Assistance (CONTINGENCY TASK)**

After good faith effort has been made to acquire ROW at Agency's determination of just compensation, if settlement with the property owner(s) is NOT reached, Consultant shall:

- With Agency authorization, send Final Offer letter to the property owner in accordance with the *ODOT Right of Way Manual*.
- Provide information and clarification to Agency in support of mediation and condemnation proceedings and assist property owner with any relocation according to the Consultant Services Guide.

*Note: Agency will initiate Condemnation proceedings.*

**14.9 Consultant Deliverables and Schedule:**

Consultant shall provide:

- Final Offer letter to property owner (s), with a copy to Agency per the schedule stated in the NTP for this contingency task.



- Support and assist Agency with mediation and condemnation proceedings and assist property owner with necessary relocation.

#### **14.10 ROW Certification**

Consultant shall certify to Agency on the most current approved Certification form from ODOT that;

- Agency has legal and physical possession of needed ROW.
- Relocation assistance has been completed for all displaced persons and businesses, all personal property relocations are complete or will be complete by bid let date and that all displaced residential occupants have relocated and have been offered decent, safe and sanitary housing.
- All acquisition of ROW and relocation activities have been completed in full compliance with the Uniform Relocation and Real Property Acquisition Policies Act of 1970 as currently amended as well as Oregon state laws, civil rights laws, and other applicable federal and state regulations and policies.

Consultant, in cooperation with Agency, shall submit the draft ROW Certification form to ODOT for review prior to Agency signature. Final ROW Certification will be signed by Agency and sent to ODOT for co-certification and processing.

#### **14.10 Consultant Deliverables and Schedule:**

Consultant shall provide:

- Draft ROW Certification form, 1 electronic copy (email acceptable) to APM no later than 10 weeks prior to Project PS&E date.
- ROW Certification form, 1 electronic copy (email acceptable) to APM no later than 8 weeks prior to Project PS&E date.
- Access to completed files for ODOT review. The nature and depth of the review is determined by ODOT. All files must be well organized and in auditable condition. Access to files shall be given at least two weeks prior to expected certification date.

#### **TASK 15 - PLANS, SPECIFICATION & ESTIMATE (RESERVED)**

#### **TASK 16 - ADVERTISEMENT AND AWARD ASSISTANCE (RESERVED)**

#### **F. CONTINGENCY TASKS**

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

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

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

**Contingency Task Summary Table**

Contingency Task Description	NTE for Each	Max Quantity	Method of Comp.	Total NTE Amount
3.2.2 Phase 1 Archaeological Investigation with Technical Report	\$ 13,236.98	1	T&M	\$ 13,236.98
3.3.2 Section 106 Determination of Eligibility ("DOE")	\$ 15,580.75	1	T&M	\$ 15,580.75
3.3.3 Section 106 Finding of Effect ("FOE")	\$ 4,272.33	1	T&M	\$ 4,272.33
3.6.2 Wetland/Waters of the U.S./State Delineation Report	\$ 8,605.28	1	T&M	\$ 8,605.28
3.6.3 Wetland Functional Assessment Report	\$ 5,731.28	1	T&M	\$ 5,731.28
3.71. USACE/DSL Joint Permit Application ("JPA") and DEQ Section 401	\$ 8,835.60	1	T&M	\$ 8,835.60
3.6.4 Stream Functional Assessment	\$ 5,134.83	1	T&M	\$ 5,134.83
6.7.2 Professional Method Infiltration Testing	\$ 5,700.89	1	T&M	\$ 5,700.89
14.5.1 Donation Agreements	\$ 7,537.87	1	T&M	\$ 7,537.87
14.8 Relocation	\$ 7,537.87	1	T&M	\$ 7,537.87
14.9 Condemnation Process Assistance	\$ 9,727.90	1	T&M	\$ 9,727.90
<b>Total for contingency tasks:</b>				<b>\$ 91,901.58</b>

## EXHIBIT B - COMPENSATION

### Definitions:

**FCCM** - Facilities Capital Cost of Money

**NBR** - Negotiated Billing Rates. NBRs are fully loaded billing rates inclusive of direct salary, indirect expenses and profit.

**NTE** - Not to Exceed Amount

**T&M** - Time and Materials

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

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

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

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

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

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

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

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

**The dollar amount for T&M non-contingency Services is: \$ 522,208.56**

### B. PAYMENT OPTIONS

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

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

### **C. TRAVEL**

The Fixed Price amount(s) in this Contract includes all travel, lodging, per diem, and mileage expenses. Agency will not reimburse Consultant separately for travel, lodging, per diem, or mileage expenses.

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

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

### **D. INVOICES**

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

- The project name (per the STIP)
- Invoice number
- Invoice date
- Billing period
- The Agency's Contract number
- The Agency's Project number
- The County project manager's name
- Remit address
- Consultant project manager's name
- Overhead and FCCM rates
- Notice to proceed date
- 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.

**"Paid Summary Report"**

Consultant shall complete and submit to APM **Paid Summary Report(s)** [form 734-2882] per the instructions on the form. Consultant must report payment information for all subcontractors and suppliers used under the Contract throughout the period of performance. **This reporting is required for all Contracts that include subs, regardless of funding or whether or not a DBE goal or Certified Small Business Aspirational Target is assigned.**

**T&M Compensation:**

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

Agency may request a full written itemization of and receipts for, but not limited to, any or all labor and direct costs billed by Consultant. Consultant shall provide written itemization and receipts to Agency within 5 business days of Agency's request. Agency will not make payment to Consultant under the applicable invoice until Agency has received all requested supporting documentation from Consultant and Agency has approved the invoiced amounts. Any overdue payments to Consultant by Agency for an approved invoice are subject to ORS 293.462.

**E. PAYMENT TERMS**

Payment will be made to Consultant no later than 45 calendar days from receipt of invoice completed in conformance with all contractual requirements. Agency will endeavor to notify Consultant within 10 business days of receipt of invoice regarding any necessary revisions or corrections to the invoice. If revisions are necessary, payment will be made no later than 45 calendar days from receipt of the revised invoice. Any interest for overdue payment will be in conformance with Oregon law.

**F. CORRECTIVE WORK**

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

**G. WITHHOLDING/RETAINAGE**

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

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

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

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

##### **Specific Limitations**

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

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

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

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

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

##### **Unallowable Charges**

Agency will not pay for direct or indirect costs that are unallowable under the provisions of 48 CFR Part 31.

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

- Costs for negotiation of the Contract or Contract amendments, including but not limited to proposal preparation, BOC preparation, preparation for negotiations, and negotiation of level of effort/budget.
- Costs related to disputes or E&O Claims, including but not limited to discussions, meetings and preparation of any dispute or claim related documentation.
- Mark-up on subcontractors or ODCs.
- Transfer of knowledge and information related to Key Person replacements.

- Correcting or making adjustments to incorrect or improper invoices.
- Direct compensation for items included in firm's indirect costs (unless properly credited back to indirect cost).
- Premium costs incurred as a result of working overtime or holidays. (Premium time should normally be charged to overhead. In accordance with ORS 279C.520, employees shall be paid at not less than time and one-half for all overtime worked and for work on legal holidays, except for individuals who are excluded from receiving overtime under personal services contracts pursuant to ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209.)

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

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

**2. Overhead Schedule** - If Consultant or subconsultants calculate overhead as part of their normal business practice, the overhead schedules shall be prepared and submitted in accordance with ODOT's Billing Rate Policy (as may be revised from time to time by ODOT) available at: <https://www.oregon.gov/ODOT/Business/Procurement/DocsPSK/brPolicy.pdf>. Consultant Certification of compliance with Federal Cost Principles is required per FHWA directive 4470.1a: <https://www.fhwa.dot.gov/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, Agency and/or ODOT may evaluate a firm's financial capability, internal control structure, and overhead schedule. This includes a determination as to the applicability of historical overhead rates to the anticipated future contract period, performing financial ratio analysis, evaluating overhead account trends and utilization rates for reasonableness.

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

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

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

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

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

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

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

#### **J. BILLING RATE SCHEDULES**

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

**Negotiated Billing Rate Schedule** -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** for Consultant and its approved subconsultants/subcontractors are not physically attached but are on file electronically with Agency. The approved rate schedules are incorporated herein by reference and shall apply for cost estimating and invoicing purposes with the same force and effect as though fully set forth herein. Consultant may obtain copies of currently approved rate schedules on file with Agency by emailing a request to Agency's Contract Administrator for this Contract.

#### **K. RATE REVISIONS**

The hourly rates (including escalations, if any) approved for use under this Contract shall remain in effect throughout the duration of the Contract unless revisions are approved by Agency. Requests for rate revisions will not be considered prior to 12 months after Contract execution. Any approved revisions to the hourly rates allowable under the Contract shall not cause an increase in the Contract NTE amount (exceptions may be approved by Agency on a case by case basis).

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

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

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

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



**Notes:**

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

**The final BOC, dated May 3, 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**

All insurance required by this Contract shall be maintained with insurers with an A.M. Best Financial Strength Rating of no less than A-. Insurers must be legally authorized to transact the business of insurance and issue coverage in the State of Oregon. Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions and self-insurance. Prior to beginning work and during the term of this Contract, including any extensions or warranty period, Consultant shall maintain in force at its own expense each insurance set forth below:

1. **Workers' Compensation** insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (Consultants with one or more employees, unless exempt under ORS 656.027).
2.  **Required by Agency**  **Not required by Agency.**
  - **Professional Liability** insurance with a per claim, incident or occurrence limit, or the equivalent, of not less than  \$1,000,000, or  \$2,000,000.
  - Any annual aggregate limits must not be less than  \$1,000,000  \$2,000,000  \$4,000,000  \$10,000,000.

This insurance must cover damages caused by negligent acts, errors or omissions of Consultant and Consultant's subcontractors, agents, officers or employees related to the professional Services to be provided under the Contract. If this insurance is provided on a "claims made" basis, Consultant shall continue the same coverage for  2 years,  3 years, or  6 years after completion of the Services or acquire "tail" coverage or an Extended Reporting Period endorsement for the foregoing extended period beyond Contract expiration or termination. Evidence of any required extended period coverage will be a condition of final payment under the Contract.
3.  **Required by Agency**  **Not required by Agency.** **Commercial General Liability** insurance must be issued on an occurrence basis with per occurrence limit, or the equivalent, of not less than \$1,000,000 covering "bodily injury" and "property damage." Any annual aggregate limits shall not be less than \$2,000,000.
4.  **Required by Agency**  **Not required by Agency.** **Automobile Liability** insurance covering Consultant's business-related automobile use, with a combined single limit, or the equivalent, of not less than \$1,000,000 each occurrence for "bodily injury" and "property damage," including coverage for all owned, non-owned, rented or hired vehicles.
5. **Notice of change or cancellation.** There shall be no cancellation, material change (one that would adversely impact the protection of Agency provided through the insurance coverages required in this Exhibit C), reduction of limits or intent not to renew the insurance coverage(s) without 30 calendar days prior written notice from Consultant or its insurer(s) to Agency. All policies and certificates of insurance, including Workers' Compensation, must include a notice of cancellation or nonrenewal clause as required under ORS 742.700 to 742.710.
6. **Certificates of Insurance.** As evidence of the insurance coverages required by this Contract, Consultant shall furnish acceptable insurance certificates to Agency prior to Contract execution. Throughout the life of this Contract, Consultant shall submit updated certificates of insurance prior to the policy expiration date(s) indicated for the required coverages. If requested by Agency, Consultant shall either: a) provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency; or b) make such insurance policies, endorsements, self-insurance documents and related insurance documents available for inspection by Agency's representatives at a location in the State of Oregon that is reasonably convenient for Agency's representatives responsible for verification of the insurance coverages required under the Contract.
7. **Additional Insureds.** Insurance certificates for Automobile and Commercial General Liability must include an endorsement physically attached to the certificate specifying the Agency, the State of Oregon, the OTC, the Oregon Department of Transportation, and their respective officers, members, agents and employees as Additional Insureds and must expressly provide that the interest of the Additional Insureds shall not be affected by Consultant's breach of policy provisions.
8. **Subcontractors.** Consultant shall: (i) obtain proof of the above insurance coverages, as applicable, from any subcontractor providing Services related to this Contract, or (ii) include subcontractors within Consultant's coverage for the duration of the subcontractor's Services related to this Contract.

**EXHIBIT D - TITLE VI NON-DISCRIMINATION PROVISIONS**

During the performance of this Contract, Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "Consultant") agrees as follows:

- a. **Compliance with Regulations:** Consultant shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
- b. **Nondiscrimination:** Consultant, with regard to the work performed by it during the Contract, shall not discriminate on the grounds or race, color, sex, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment. Consultant shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
- c. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by Consultant of Consultant's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.
- d. **Information and Reports:** Consultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Agency, ODOT, FHWA or the Federal Transit Administration (FTA) as appropriate, to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to Agency, ODOT, FHWA or FTA as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. **Sanctions for Noncompliance:** In the event of Consultant's noncompliance with the nondiscrimination provisions of this Contract, Agency shall impose such Contract sanctions as it, ODOT, FHWA or FTA may determine to be appropriate, including, but not limited to:
  - (i) Withholding of payments to Consultant under the Contract until Consultant complies, and/or
  - (ii) Cancellation, termination or suspension of the Contract, in whole or in part.
- f. **Incorporation of Provisions:** Consultant shall include the provisions of paragraphs (a) through (e) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as Agency, ODOT, FHWA or FTA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event Consultant becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, Consultant may request Agency, ODOT, and, in addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

## EXHIBIT E - DISADVANTAGED BUSINESS ENTERPRISE ("DBE") PROVISIONS (Goal)

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

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

- a. **Policy and Program Authorities:** ODOT and Contractor agree to abide by and take all necessary and reasonable steps to comply with these DBE Provisions and the following, which are incorporated in this Contract with the same force and effect as though fully set forth in this Contract:

- o ODOT DBE Policy Statement
- o ODOT DBE Program Plan, and
- o Requirements of Title 49, Code of Federal Regulations, Part 26 - Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

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

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

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

- c. **Nondiscrimination Requirement:** Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Contract. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as ODOT deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR § 26.13(b)).
- d. **Documentation of Proposed Participation:** Contractor shall document sufficient DBE participation to meet an assigned Contract goal or, alternatively, document adequate good faith efforts to do so (see 49 CFR § 26.53). All work committed to a DBE firm toward meeting the assigned participation goal must be performed under a written subcontract. The subcontract must fully describe any work committed to be performed by the DBE and shall include all required flow-down provisions of the primary Contract. Contractor must complete and submit the following documentation, as applicable:
1. **Subcontractor Solicitation and Utilization Report (SSUR)** - submitted with proposal in response to formal and informal Requests for Proposals (RFPs).
  2. **Breakdown of Costs ("BOC") or ("BOC-NBR"), as applicable** - submitted prior to negotiation and execution of the Contract and each amendment that changes the scope of work and costs under the Contract. The BOC forms and BOC Requirements are available from the Internet at:

<https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx>. The BOC or BOC-NBR must clearly list any tasks or subtasks to be performed by subcontractors (DBEs and non-DBEs), each subcontractor's Federal Tax ID and identification of any required personnel. Include in the Expense Detail tab any required equipment and supplies furnished by the DBE, any of the prime contractor's resources that will be provided for the DBE's use, and identification of any second or lower tier subcontractors with the dollar amounts for each.

3. **Committed DBE Breakdown and Certification Form(s)-AE.** Required for all Contracts with assigned goals and completed prior to Contract execution and any proposed substitution. See submittal instructions on the Instructions tab of the form.
  4. **Subcontractor Reporting:** Complete and submit an initial **Paid Summary Report** [form 734-2882] per the instructions on the form.
- e. **Good Faith Efforts:** Contractor shall make good faith efforts, as set forth in 49 CFR § 26.53, Appendix A to Part 26, and ODOT DBE Program Plan, to obtain and support DBE participation that could reasonably be expected to produce and maintain a level of DBE participation sufficient to meet the Contract goal. Good faith efforts are required during solicitation, upon Contract award, and continue throughout the performance of the Contract to maximize DBE participation. The Agency (or local agency when applicable) Project Manager ("APM") may request Contractor to submit evidence of good faith efforts prior to Contract execution or at any time during the course of the Contract and Contractor shall promptly submit such evidence. Contractor shall use the specific DBEs listed in the Committed DBE Breakdown and Certification form(s) to perform the work and supply the materials for which each is listed unless the contractor obtains ODOT's prior written consent to terminate and replace a DBE as provided in section j. below. Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBEs as required by this provision.
- f. **Commercially Useful Function ("CUF"):** Contractor is responsible to ensure the DBE performs a commercially useful function on the Contract. A DBE performs a CUF when it is responsible for execution of the work of the Contract/subcontract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. Additional detail regarding CUF requirements and other conditions for counting participation by DBE contractors is set forth in 49CFR § 26.55. The APM will review the proposed DBE participation and may provide written comments as to whether the activities and type of work identified for DBEs complies with program regulations. In those instances where proposed activity and type of work violates applicable regulations, written comments will be offered as to corrective action required in order to comply with the regulations. ODOT may perform a CUF review at any time during the performance of the Contract.
- g. **Changes in Work Committed to DBE:** ODOT will consider the impact on DBE participation in instances where the prime Contract is amended to reduce, or delete work committed to the DBE. In such instances, Contractor shall not be required to replace the work but is encouraged to do so to the maximum extent practicable.
- h. **Prompt Payment and Retainage:** Contractor shall pay each subcontractor for satisfactory performance under its contract no later than 10 calendar days from receipt of each payment Contractor receives from ODOT (or local agency when applicable) for the subcontracted work. In addition, within 10 calendar days of receipt of retainage from ODOT (or local agency when applicable), Contractor shall pay to each subcontractor the retainage that pertains to the work of that subcontractor.
- i. **Reporting Requirements:** Contractor must report payment information for all subcontractors and suppliers used under the Contract throughout the period of performance. Contractor shall complete and submit initial, interim and final Paid Summary Report(s) [form 734-2882] per the instructions included on the form.
- j. **Termination of DBE Notification Requirement:** Contractor shall comply with all requirements set forth in 49 CFR § 26.53 regarding termination of DBEs including, without limitation, documentation of good cause, 5-day notice to the DBE subcontractor and ODOT, DBE

responses, ODOT's prior written consent of DBE termination, and replacement of DBEs. ODOT will provide such written consent only if it agrees the prime contractor has good cause to terminate the DBE in accordance with 49 CFR 26.53(f)(3).

- k. **Remedies:** Contractor's failure to comply with these DBE Provisions and the requirements of 49 CFR Part 26 may result in one or more of the following administrative actions as deemed appropriate by ODOT: non-compliance documented in ODOT evaluation of Contractor performance, a corrective action plan prepared by Contractor, ODOT (or local agency when applicable) withholding of retainage, suspension of work, reporting of non-compliance to the federal System for Award Management ("SAM") available at <https://sam.gov/SAM/>, any other remedies provided under the Contract.
- l. **Information/Questions:** The DBE program is administered by the ODOT Office of Civil Rights ("OCR"). Questions related to the DBE Program may be sent via email to [ocrinforequest@odot.state.or.us](mailto:ocrinforequest@odot.state.or.us) or otherwise directed to: Oregon Department of Transportation Office of Civil Rights ODOT Materials Laboratory Building, 800 Airport Road SE, Rm 61, Salem, OR 97301; Phone: 503-986-4350.
- m. **Directory of Certified Firms:** A searchable database for active certified firms (by NAICS code, NIGP code, ODOT code, certification type, location or project ethnicity goals) is available on line at: <https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp>.

#### Related Web Sites:

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

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

#### Acronyms & Definitions Applicable to Exhibit E

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

#### COMMITTED DBE BREAKDOWN and CERTIFICATION FORM(s)

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

#### EXHIBIT E.1 - DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROVISIONS (No-Goal) (RESERVED)

**EXHIBIT F - SPECIAL TERMS & CONDITIONS (RESERVED)**

**EXHIBIT G - (RESERVED)**

**EXHIBIT H - (RESERVED)**

**EXHIBIT I - ERRORS & OMISSIONS ("E&O") CLAIMS PROCESS**

**Exhibit I** is not physically attached but is incorporated into this Contract with the same force and effect as though fully set forth herein. For purposes of this Contract, the term "Agency", as used in the E&O Claims Process, means "local public agency". The E&O Claims Process (as may be revised from time to time by ODOT) is available at the following Web address as Exhibit I:

<http://www.oregon.gov/ODOT/Business/Procurement/DocsPSK/xbti.pdf>

**EXHIBIT J - CONTACT INFORMATION and KEY PERSONS****1. Party Contact Information.****a.1 \* Agency's Project Manager (APM)**

<b>Name:</b>	Shane Ottosen, PE
<b>Ph:</b>	503-365-3104
<b>E-mail:</b>	<a href="mailto:sottosen@co.marion.or.us">sottosen@co.marion.or.us</a>

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

<b>Name:</b>	Alicia Henry, Grant/Contracts Compliance Analyst
<b>Ph:</b>	503-365-3100
<b>E-mail:</b>	<a href="mailto:ahenry@co.marion.or.us">ahenry@co.marion.or.us</a>

**a.3 Agency's address for invoicing:**

<b>Mailing Address:</b>	Marion County Public Works 5155 Silverton Road NE, Bldg. 1 Salem, OR 97305 Attn: Shane Ottosen
<b>E-mail:</b>	503-365-3104

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

<b>Name:</b>	Brian Bauman
<b>Ph:</b>	503-289-1722
<b>E-mail:</b>	<a href="mailto:Brian.bauman@hdrinc.com">Brian.bauman@hdrinc.com</a>

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

<b>Name:</b>	Mary Anne Lowe
<b>Address:</b>	HDR Engineering, Inc. 1050 SW 6 <sup>th</sup> Avenue, Suite 1800 Portland, OR 97204
<b>Ph:</b>	503-423-3750
<b>E-mail:</b>	<a href="mailto:Maryanne.lowe@hdrinc.com">Maryanne.lowe@hdrinc.com</a>

\* Agency 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 Agency.

**2. Key Persons**

Consultant acknowledges and agrees that Agency selected Consultant, and is entering into the Contract because of the special qualifications of Consultant's key personnel ("Key Persons" or "Key Personnel"), which may include specific staff agreed to during Contract negotiations. In particular, Agency, through the



Contract is engaging the expertise, experience, judgment and personal attention of the Key Persons identified in the Contract.

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

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

Name	Role
Brian Bauman	Project Manager & Biologist
Rachel Barksdale	Environmental Lead
Bill Nickels, PE, GE	Geotechnical / Pavement
Pat Thayer, SR / WA	Right-of-Way Lead
Marcus Reedy, PLS	Survey Lead

### 3. Reassignment or Transfer of Key Person

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

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

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