

Contract Review Sheet

PW-5476-23

Professional A&E Services Agreement #: PW-5476-23 Amendment #: _____

Contact: Chalyce MacDonald Department: Public Works Department

Phone #: (503) 566-4139 Date Sent: Wednesday, July 26, 2023

Title: Marion County Engineering Standards Update

Contractor's Name: Kittelson & Associates, Inc.

Term - Date From: Execution Expires: December 31, 2026

Original Contract Amount: \$558,955.50 Previous Amendments Amount: \$0.00

Current Amendment: \$0.00 New Contract Total: \$558,955.50 Amd% 0%

Incoming Funds Federal Funds Reinstatement Retroactive Amendment greater than 25%

Source Selection Method: 20-0260 Request for Proposals PW1257-22

Description of Services or Grant Award

Update current Marion County Department of Public Works Engineering Standards adopted in April 1990 to better align with current industry design standards such as those published by the American Association of State Highway Transportation Officials (AASHTO), the Oregon Department of Transportation (ODOT) and selected Local Public Agencies within Oregon. The end product will be a document, ready for adoption by the County's Board of Commissioners, that contains fully updated design standards, tables and figures.

These Standards are the principal documents for design and construction of all public works related infrastructure throughout the County, providing guidance to various stakeholders, both public and private, to develop and maintain high-quality facilities.

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

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

BOC Session Presenter(s) Max Hepburn

FOR FINANCE USE

Date Finance Received: _____ Date Legal Received: _____

Comments: Y

REQUIRED APPROVALS

Finance - Contracts _____ Date _____ Contract Specialist _____ Date _____

Legal Counsel _____ Date _____ Chief Administrative Officer _____ Date _____



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: August 23, 2023

Department: Public Works Agenda Planning Date: August 10, 2023 Time required: Consent

Audio/Visual aids N/A

Contact: Max Hepburn, PE Phone: 503-566-4157

Department Head Signature:

TITLE Engineering Standards Update - Professional Engineering and Related Services Contract #PW-5476-23 with Kittelson & Associates, Inc.

Issue, Description & Background The 1990 Marion County Public Works Engineering Standards require modernization to better align the County with current industry standards. Under the proposed contract, Kittelson & Associates will develop modern comprehensive engineering standards for the County over approximately two years.

Financial Impacts: The total not-to-exceed cost of this Engineering and Related Services Contract is \$558,955.50.

Impacts to Department & External Agencies The Engineering Standards are the principal documents for the design and construction of all public works related infrastructure throughout the County, providing guidance to various stakeholders, both public and private, to develop and maintain high-quality, safe facilities.

Options for Consideration: 1. Approve and sign Engineering and Related Services Contract #PW-5476-23 between Marion County and Kittelson & Associates, Inc.
2. Take no action at this time.

Recommendation: The Public Works Department recommends that the Board choose option 1, allowing the Engineering Standards Update project to commence in Fall of this year.

List of attachments: 1. Professional Services Contract #PW-5476-23

Presenter: Max Hepburn

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

Copies to: Chalyce MacDonald, cmacdonald@co.marion.or.us; Max Hepburn, MHepburn@co.marion.or.us; Lani Radtke, LRadtke@co.marion.or.us;

**MARION COUNTY
ENGINEERING AND RELATED SERVICES CONTRACT
Contract Number: PW-5476-23**

Project Title: Marion County Engineering Standards Update	County Project Number: 105790
Project Location: N/A	Associated RFP Number: PW1257-22
Total Not-to-Exceed (“NTE”) amount for this Contract. This total includes: a) all allowable costs and expenses, profit, and fixed-fee amount, if any; and b) \$0 for contingency tasks, each of which must be separately authorized by County.	\$ 558,955.50

This Contract is between Marion County, hereafter called “County” and Kittelson & Associates, Inc., an Oregon corporation, hereafter called “Consultant.” County and Consultant together are also referred to as “Parties” and individually referred to as “Party.” The primary contacts for this Contract are identified in Exhibit F, Contact Information and Key Persons.

For purposes of this Contract:

- a) “business days” means calendar days, excluding Saturdays, Sundays and all State of Oregon recognized holidays;
- b) “calendar days” means any day appearing on the calendar, whether a weekday, weekend day, national holiday, State of Oregon holiday or other day;
- c) “Engineering” Services means architectural, engineering, photogrammetric mapping, transportation planning or land surveying services that must be procured using qualifications-based selection procedures (see Marion County Public Contracting Rules section 30-0110); and
- d) “Related Services” has the meaning provided in Marion County Public Contracting Rules section 10-0110.

TERMS AND CONDITIONS

- 1. Contract Effective Date and Term.** This Contract is effective on the date it has been signed by the parties and all required approvals have been obtained. No work or compensation under the Contract is authorized until notice to proceed has been issued in writing (email acceptable) by the County. Unless otherwise amended or terminated, this Contract shall expire December 31, 2026.
- 2. Statement of Work.** Consultant shall perform all Services and deliver all deliverables as described in Exhibit A, Statement of Work (the “Services”). The required schedule for performance under the Contract is specified in the Statement of Work.
- 3. Compensation.** The maximum NTE amount, which includes the total of all allowable and reimbursable costs and expenses (and contingency tasks, if any) payable to Consultant under this Contract, is set forth in the table above and detailed further in Exhibit B, Compensation. County reserves the right, in its sole discretion, to amend this Contract to increase this amount for additional Services within the scope of the procurement. The payment methodology and basis for payment to Consultant is described in Exhibit B, Compensation.
- 4. Contract Exhibits.** This Contract includes the following exhibits, each of which is incorporated into this Contract as though fully set forth herein:
 - Exhibit A – Statement of Work
 - Exhibit B – Compensation
 - Exhibit C – Insurance
 - Exhibit D – Special Terms and Conditions (RESERVED)
 - Exhibit E – Errors & Omissions (“E&O”) Claims Process
 - Exhibit F – Contact Information and Key Persons

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

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

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

7. Subcontracts and Assignment; Successors and Assigns

- a. Consultant shall obtain County's written consent prior to entering into any subcontracts for any of the Services required by the Contract, or in any manner assigning, selling or transferring any of its rights or interest under the Contract or delegate any of its duties or performance under the Contract. In addition to any other provisions County may require, Consultant shall include, in any permitted subcontract under the Contract, contractual provisions that shall require any subcontractor (which may also be referred to as "subconsultant") to comply with Sections 9, 10, 11, 12, 13, 16, 17, 18, 19, 23, 27 and 29 of these Contract provisions, the limitations of **Exhibit B** - Compensation, and the requirements and sanctions of ORS Chapter 656, Workers' Compensation, in the performance of the subcontractor's Services on the project that is the subject of the Contract, as if the subcontractor were the Consultant. County's consent to any subcontract shall not relieve Consultant of any of its duties or obligations under the Contract, including with respect to any Services, whether performed or to be performed by Consultant or a subcontractor.
- b. The provisions of the Contract shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective successors and permitted assigns, if any.
- c. Any purported assignment, delegation or disposition in violation of subsection "a." above is void.

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

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

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

a. Professional Standard of Care.

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

b. Responsibility of Consultant.

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

c. Reserved.

11. Ownership of Work Product

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

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

b. Work Product. All Work Product created by Consultant pursuant to the Contract, including derivative works and compilations, and whether or not such Work Product is considered a "work made for hire," shall be the exclusive property of County. County and Consultant agree that Work Product that constitutes original works of authorship (the "Original Work Product") is "work made for hire" of which County is the author within the meaning of the United States Copyright Act. If for any reason Original Work Product created pursuant to the Contract is not "work made for hire," Consultant hereby irrevocably assigns to County any and all of its rights, title, and interest in all Original Work Product created pursuant to the Contract, whether arising from copyright, patent, trademark, trade secret, or any other State or Federal intellectual property law or doctrine. Upon County's reasonable request, Consultant shall execute such further documents and instruments necessary to fully vest such rights in Original Work Product in County. Consultant forever waives any and all rights relating to Original Work Product created pursuant to the Contract, including without limitation, any and all rights arising under 17 USC §106A or

any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. However, see Sections 11.c and 11.d immediately below, for provisions applicable to Consultant Intellectual Property, Third Party Intellectual Property, Consultant Intellectual Property derivative works and Third Party Intellectual Property derivative works.

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

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

13. Indemnity

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

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

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

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

15. Termination

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

deliverables or would be deliverables had the Contract been completed, that are in Consultant's possession or control and may be needed by County to complete the Services.

e. Consultant's Right to Terminate for Cause.

- (i) Consultant may terminate the Contract by giving written notice to County if County fails to pay Consultant pursuant to the terms of the Contract and if County fails to cure within 15 calendar days after receipt of Consultant's written notice, or such longer period of cure as Consultant may specify in such notice.
- (ii) Consultant may terminate the Contract, for reasons other than nonpayment, if County commits any material breach or default of any covenant, warranty, obligation or agreement under the Contract, fails to perform under the Contract within the times specified, or so fails to perform as to endanger Consultant's performance under the Contract, and such breach, default or failure is not cured within 30 calendar days after Consultant's notice to County, or such longer period as Consultant may specify in such notice.

f. Remedies.

- (i) In the event of termination pursuant to Sections 15(a), 15(b), 15(c)(i), 15(c)(ii) or 15(d), Consultant's sole remedy (except as otherwise required by applicable State or Federal law) shall be a claim for payment of the satisfactory Services actually rendered and accepted by County up to the time of termination, less previous amounts paid and any claim(s) which County has against Consultant, except in the event of a termination under Section 15(c)(i) where no payment will be due and payable for Services performed or costs incurred after the last day of the current Fiscal Year. If previous amounts paid to Consultant exceed the amount due to Consultant under this subsection, Consultant shall pay all excess to County upon demand.
- (ii) In the event of termination pursuant to Section 15(c)(iii) or 15(c)(iv), County shall have any remedy available to it in law or equity. Such remedies may be pursued separately, collectively or in any order whatsoever. If it is determined for any reason that Consultant was not in default under Section 15(c)(iii) or 15(c)(iv), the rights and obligations of the Parties shall be the same as if the Contract was terminated pursuant to Section 15(b).

16. Records Maintenance; Access. For not less than ten (10) years after the Contract's expiration or termination, County, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Consultant and the Sub-consultants which pertain to the Contract for the purpose of making audits, examination, excerpts, and transcripts. If, for any reason, any part of this Contract, any Project-related consultant contract or any Project-related construction contract(s) is involved in litigation, Consultant shall retain all pertinent records for not less than seven (7) years or until all litigation is resolved, whichever is longer. Consultant shall provide County and the other entities referenced above with full access to these records in preparation for and during litigation.

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

18. Compliance with Applicable Law. Consultant shall comply with all federal, state and local laws, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Contract, in effect at the time the Contract is executed and as may be amended, revised, enacted or adopted thereafter. Changes in these legal requirements after the execution of the Contract may or may not be the basis

for modifications to Consultant's schedule, scope, and fee, depending on a reasonable assessment of the nature of the change, the extent to which the change was anticipated by Consultant or the Parties, and other circumstances then existing. County's performance under the Contract is conditioned upon Consultant's compliance with, and Consultant shall comply with, the obligations applicable to public contracts and intended for contractors under ORS 279C.505, 279C.515, 279C.520 and 279C.530, which are incorporated by reference herein. All rights and remedies available to County under applicable federal, state and local laws are also incorporated by reference herein and are cumulative with all rights and remedies under the Contract. If Consultant discovers a conflict among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Contract, Consultant shall in writing request County to resolve the conflict. Consultant shall specify if the conflict(s) create a problem for the design or other Services required under the Contract. If County concludes there is a conflict among the applicable laws, Federal laws shall govern among the others; State laws shall govern over the others except Federal. The resolution of the conflict of the applicable laws by County shall be final and not subject to further review or challenge.

19. Permits and Licenses

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

20. Foreign Contractor. If Consultant is not domiciled in or registered to do business in the State of Oregon as of the Effective Date, Consultant shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to the Contract. Consultant shall demonstrate its legal capacity to perform the Services under this Contract in the State of Oregon prior to executing this Contract.

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

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

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

24. Notice. Except as otherwise expressly provided in the Contract, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by e-mail, by personal delivery, facsimile, or mailing the same, postage prepaid, to Consultant or County at the e-mail address, the delivery address or facsimile number set forth in the Contract, or to such other addresses or numbers as either Party may hereafter indicate in writing to the other. Any notice or day-to-day communication sent by e-mail shall be deemed

received when it is sent. **The recipient of any notice sent by e-mail shall reply by e-mail to confirm receipt of such notice.** Any communication or notice made by personal delivery shall be deemed to be received when actually delivered. Any communication or notice properly addressed and mailed shall be deemed received 5 calendar days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed received on the date of the notice of successful transmission generated by the transmitting machine. To be effective, such facsimile transmission must be confirmed by telephone notice to County's Contract Administrator or Consultant's representative, as applicable.

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

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

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

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

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

29. False Claims

- a.** Consultant understands and acknowledges it is subject to the Oregon False Claims Act ([ORS 180.750](#) to [180.785](#)) and to any liabilities or penalties associated with the making of a false claim under that Act. By its execution of the Contract, Consultant certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or cause to be made that pertains to the Contract or the Project for which the Services are being performed, including but not limited to Consultant's statement of proposal and any invoices, reports, or other deliverables.
- b.** Consultant shall immediately disclose (in writing) to County whenever, in connection with the award, performance or closeout of the Contract, or any subcontract thereunder, Consultant has credible evidence that a principal, employee, agent, or subcontractor of Consultant has committed:

- (i) A violation of the Oregon False Claims Act; or
 - (ii) A violation of State or Federal criminal or civil law involving fraud, conflict of interest, bribery, gratuity, or similar misconduct.
- c. Consultant must include subsections (a) and (b) of this section in each subcontract Consultant may award in connection with the performance of the Contract. In doing so, Consultant may not modify the terms of those subsections, except to identify the subcontractors or sub grantee that will be subject to those provisions.

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

CONSULTANT CERTIFICATIONS

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

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

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

- (1) Consultant has read this Contract, understands it, and agrees to be bound by its terms and conditions.
- (2) Consultant understands and agrees that various documents are not physically attached, but are incorporated by reference and have the same force and effect as if fully set forth herein.
- (3) Consultant understands and has provided to all Associates the COI Disclosure Form available at: <https://www.oregon.gov/ODOT/Business/Procurement/Pages/LPA.aspx>. Consultant and (to the best of the undersigned's information, knowledge and belief) Consultant's Associates are in compliance with the disclosure requirements of the COI Disclosure Form and have no conflicts of interest to disclose. If disclosures regarding this Contract or the related Project are required per the COI Disclosure Form, Consultant has made such disclosures to County on a properly prepared and submitted form and, if determined necessary by County, a mitigation plan has been approved by County.
- (4) Consultant is an independent contractor as defined in ORS 670.600 and as described in IRS Publication 1779.
- (5) In the event that Consultant is a general partnership or joint venture, Consultant signature(s) on this Contract constitutes certifications to the above statements pertaining to the partnership or joint venture, as well as certifications of the above statements as to any general partner or joint venturer signing this Contract.

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

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

**MARION COUNTY SIGNATURES
BOARD OF COMMISSIONERS:**

Chair Date

Commissioner Date

Commissioner Date

Authorized Signature: _____
Department Director or designee Date

Authorized Signature: _____
Chief Administrative Officer Date

Reviewed by Signature: _____
Marion County Legal Counsel Date

Reviewed by Signature: _____
Marion County Contracts & Procurement Date

CONSULTANT SIGNATURE

Signature: _____ Date: _____

Name: _____ Title: _____

EXHIBIT A – STATEMENT OF WORK

A. PROJECT DESCRIPTION and OVERVIEW of SERVICES

Marion County is updating its current [Marion County Department of Public Works Engineering Standards](#), adopted in April 1990, to better align with current industry design standards such as those published by the American Association of State Highway Transportation Officials (AASHTO), the Oregon Department of Transportation (ODOT) and selected Local Public Agencies within Oregon. The end product will be a document, ready for adoption by the County's Board of Commissioners, that contains fully updated design standards, tables and figures.

These Standards are the principal documents for design and construction of all public works related infrastructure throughout the County, providing guidance to various stakeholders, both public and private, to develop and maintain high-quality facilities.

The Standards apply to public works related infrastructure which will be ultimately owned, operated, and maintained by Marion County. These facilities can be designed and constructed as part of a privately funded development project, or a capital improvement project managed by County staff.

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

Project Phasing

This Project is divided into two phases:

- Phase 1 – Develop Annotated Outline for the Engineering Standards Update
- Phase 2 – Develop Engineering Standards Update

This Statement of Work addresses both Phases of the project.

County Responsibilities

- Coordination and communication with internal County staff.
- Provide access to available project information, recommendations and goals.
- Review of Consultant progress to verify adherence to this Scope of Work (SOW) and delivery schedule.
- Notify Consultant of any known delays above and beyond the control of Consultant.
- Provide appropriate and timely review of Project deliverables supplied by Consultant to verify they are consistent with Project objectives and the requirements of the SOW;

Acronyms and Definitions

AASHTO	American Association of State Highway Transportation Officials	ODOT	Oregon Department of Transportation
ADA	Americans with Disabilities Act	ORS	Oregon Revised Statutes
County	Marion County	PM	Consultant's Project Manager
CPM	County's Project Manager	QA	Quality Assurance
MUTCD	Manual on Uniform Traffic Control Devices	QC	Quality Control
NTE	Not to Exceed	SOW	Statement of Work
NTP	Notice to Proceed	TAC	Technical Advisory Committee

B. STANDARDS and GENERAL REQUIREMENTS

1. **Standards**

The latest edition of the following standards may be considered and incorporated where applicable when preparing deliverables under this Contract:

- AASHTO A Policy on Geometric Design of Highways and Streets
- AASHTO Roadside Design Guide
- Manual on Uniform Traffic Control Devices (MUTCD)
- Marion County ADA Design Standards and Requirements
- Marion County Water Quality Standards
- ODOT Pavement Design Guide
- ODOT Geotechnical Design Manual
- ODOT Hydraulics Manual

2. **Software and Format Requirements**

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

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

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

3. **Professional Licenses, Registrations and Qualifications**

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

4. **General Requirements**

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

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

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

D. PROJECT COOPERATION

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

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

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

E. TASKS, DELIVERABLES and SCHEDULE

PHASE 1 - DEVELOP ANNOTATED OUTLINE FOR THE ENGINEERING STANDARDS UPDATE

This phase is to establish a baseline for the Engineering Standards by developing the Annotated Outline for the standards. This approach will be informed by stakeholders and other task activities throughout Phase 1 and be the foundation for developing the Engineering Standards in Phase 2. Task 1.2 will be the primary foundation for Phase 1 and this task will be informed by input from Tasks 1.3 and 1.4.

Task 1.1 Phase 1 Project Management

The purpose of this task is to prepare for and attend project check-in/coordination meetings with County staff and conduct project management activities for the duration of Phase 1.

Consultant shall:

- Organize, prepare for and facilitate a two-hour in-person Project Kick-off Meeting with County staff. Consultant shall prepare the meeting agenda with input from the County. The purpose of the meeting is to present an overview of project tasks, establish communication protocol, discuss existing County documents, and gather initial input on Engineering Standards content and objectives. Consultant shall prepare a meeting summary and distribute to all attendees.
- Prepare for and participate in up to ten (10) one-hour video conference coordination calls (at least once a month with additional as needed) with County Project Manager to provide project status update, discuss specific project topics and obtain County direction. Prepare emails summarizing conversation, including action items, and provide to County for review and comment.
- Prepare a detailed project schedule, in MS Project format, showing all major tasks and subtasks for Phase 1, project team meetings, and milestone dates. The project schedule will be revisited monthly for the duration of the contract and updated as needed.
- Establish file sharing approach and file management structure.
- Prepare a Quality Management Plan (QMP) to establish project-specific QA/QC processes. The QMP

will be made available to the County for review and reference throughout the project.

- Prepare monthly 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 7 progress reports will be necessary for Phase 1.

1.1 Consultant Deliverables and Schedule:

Consultant shall provide:

- Meeting agenda submitted electronically to CPM and meeting participants 2 business days prior to meeting.
- Project Kick-off Meeting Summary submitted electronically to CPM and all meeting participants within one week of the kick-off meeting.
- Summary emails of coordination calls (up to 10) submitted to CPM within 5 business days of the video conference calls.
- Project schedule for Phase 1 work (MS Project and .PDF format) submitted to CPM within one month of NTP.
- File Sharing Link for document submittals within two weeks of project NTP
- Draft Quality Management Plan (in Word format) submitted to CPM within one month of NTP
- Final Quality Management Plan (in Word and .PDF format) submitted to CPM within 1 week of receipt of County comments.
- Monthly invoices and progress reports to CPM no later than the 20th calendar day of the month following the reporting period.

Task 1.2 Establish Baseline for Engineering Standards Update

The purpose of this task is to review existing information, develop a table of contents, annotated outline, and sample chapter layout for the standards.

1. Consultant shall review existing Marion County documents and other County standards, including the following:
 - Marion County Engineering Standards
 - Engineering Standards – 1990
 - Engineering Standard Details
 - Roadway Design Exception Request Form
 - Marion County Americans with Disabilities Act (ADA) Design Standards and Forms
 - ADA Design Standards and Requirements – 2021
 - ADA Standard Details – 2023
 - City of Salem Mailbox in Sidewalk Detail
 - ADA Curb Ramp Design Checklist
 - ADA Curb Ramp Design Exception Request Form
 - Crosswalk Closure Request Form
 - Marion County Stormwater Quality Treatment Engineering Standards
 - Stormwater Quality Treatment Engineering Standards – 2022
 - Stormwater Quality Treatment Engineering Standard Details
 - Marion County Design Memorandums

- o 1988 Clear Zone Memorandum
 - o 2005 Transportation System Plan Chapter 10
 - o 1981 Cordon Road Limited Access Resolution
 - o 2022 Secondary Access Memorandum
 - Marion County Standard Drawings
 - Up to three additional County standards, such as Clackamas County and Washington County.
 - Review up to five other agency affordable housing policies and standards to inform information developed for the County.
2. Consultant shall develop a Draft Table of Contents (TOC) for the Engineering Standards and develop a list of documents and supporting information to reference in the standards (e.g., in appendices and/or web links). Submit the Draft TOC and list of documents to the County and TAC at least two weeks prior to the work session. County to provide comments on the Draft TOC prior to the work session.
 3. Consultant shall conduct a two-hour in-person work session with the County and TAC to discuss the Draft TOC and confirm the organization of topics. Prepare a work session summary and provide to County via email within one week of the meeting.
 4. Consultant shall prepare a Draft Annotated Outline (up to 50 pages) for the Engineering Standards providing a “story board” of the flow through the chapters reflecting the following:
 - Topics from existing County documents
 - Topics from other agency standards
 - Input from affordable housing standard review
 - Topics from current research
 - Information and recommendations related to affordable housing infrastructure (described in Task 1.3)
 - Input based on external and TAC outreach (described in Task 1.3)
 - Initial list of references for each chapter
 - Location and title of expected primary exhibits in each chapter
 - Initial list of potential appendices
 5. Consultant shall submit the Draft Annotated Outline to the County and TAC at least three weeks prior to the work session. County to provide review comments prior to the work session.
 6. Consultant shall prepare a Draft Sample Chapter Layout using information from an existing County document. The sample chapter layout shall include the font and heading styles, tables, figures, and other supporting material. The sample chapter layout will not include actual content that will be included in the standards. The sample chapter layout will be submitted with the Draft Annotated Outline.
 7. Consultant shall conduct a three-hour in-person work session with the County and TAC to discuss the Draft Annotated Outline and Draft Sample Chapter Layout. Consultant shall prepare a work session summary and provide to County via email within one week of the meeting.
 8. Consultant shall prepare a Final Annotated Outline and Final Sample Chapter Layout based on County and TAC input.

1.2 Consultant Deliverables and Schedule:

Consultant shall provide:

- Draft Table of Contents (in Word format) to the CPM per the approved schedule developed in Task 1.1 and at least two weeks prior to the work session.
- Meeting Summary from Draft TOC Work Session. Submit electronically to the CPM within one week of the meeting.
- Draft Annotated Outline and Draft Sample Chapter Layout (in Word format) submitted to the

CPM per the approved schedule developed in Task 1.1 and at least three weeks prior to the work session.

- Meeting Summary from Draft Annotated Outline and Sample Layout Work Session submitted electronically to the CPM within one week of the meeting.
- Final Annotated Outline and Final Sample Chapter Layout (in Word and .PDF format) submitted to the CPM per the approved schedule developed in Task 1.1.

Task 1.3 Develop Stakeholder Engagement Plan and Gather Input

The purpose of this task is to develop a Stakeholder Engagement Plan that outlines the external stakeholders and TAC engagement and describes the approach for sharing information and gathering input from each group.

1. Collaborate with the County to identify external stakeholders and TAC members. The County and Consultant will work together to develop a Stakeholder List to be included in the Stakeholder Engagement Plan. This assumes that the County will provide contact information (e.g., email addresses) for the stakeholders identified.
 - External stakeholders are intended to be a broad group that provides overarching feedback. This may include:
 - o Public and community leaders (e.g., citizens, business associations, school districts, home builders associations, freight, emergency services, neighborhood associations, agriculture leaders, local contractors, local utility companies)
 - o Consultants (those involved with and leading private development and public projects)
 - o Local agencies (e.g., city, state, and service districts)
 - The TAC is intended to include 8 to 12 people to provide ongoing input (review deliverables) to the standards development throughout the project. This may include:
 - o County staff not directly involved with the project (from various departments)
 - o Local agencies
 - o Consultant representatives
 - o Community leaders
 - o Local contractor representatives
 - o Local utility company representatives
2. Consultant shall prepare a draft and final Stakeholder Engagement Plan to outline stakeholders, engagement approach, objectives, and timeline. This will include:
 - Developing a Draft Stakeholder Engagement Plan and submitting to the County for review and input at least two weeks prior to the review meeting. County to provide comments prior to the review meeting.
 - Conducting a two-hour video conference review meeting with the County to discuss the Draft Stakeholder Plan and gather input. Prepare a meeting summary and send to the County within one week of the meeting.
 - Preparing a Final Stakeholder Engagement Plan and submit to the County for reference throughout the project.
3. Consultant shall prepare and deliver an online survey to external stakeholders. This will include:
 - Preparing a draft online survey and submitting to the County for review and input.
 - Conducting a one-hour video conference meeting with the County to discuss online survey. Prepare a meeting summary and send to the County within one week of the meeting.
 - Delivering the online survey to external stakeholders.
 - Preparing a survey summary and submitting to the County for review. The summary is intended to inform the development of the annotated outline in Task 1.2.

4. Consultant shall conduct two in-person TAC meetings to share information and gather input. This will include:
 - Conducting one (1) two-hour in-person Kick-off Meeting with TAC to outline project objectives and the plan for engagement. Background information will be sent to the TAC at least one week prior to the meeting.
 - Conducting one (1) two-hour in-person meeting with the TAC to review the Draft Annotated Outline to gather input on topics and content organization for the standards. Outline information will be sent to the TAC at least one week prior to the meeting. Prepare a meeting summary and send to the County within one week of the meeting.
5. Consultant shall conduct one (1) two-hour in-person public meeting with external stakeholders to provide project updates and gather feedback on the Draft Annotated Outline. The public meeting presentation will be recorded and provided to the County for posting on the County website to allow other stakeholders to view the meeting and provide additional feedback. Prepare a meeting summary and send to the County within one week of the meeting.

1.3 Consultant Deliverables and Schedule:

Consultant shall provide:

- Draft Stakeholder Engagement Plan (in Word Format) to the CPM per the approved schedule developed in Task 1.1 and at least two weeks prior to the work session.
- Final Stakeholder Engagement Plan (in Word and .PDF format) to the CPM within one week following receipt of County review comments.
- Draft Online Survey submitted electronically to the CPM per the schedule to be identified in the Stakeholder Engagement Plan
- Final Online Survey posted within one week following receipt of County comments.
- Online Survey Summary submitted electronically to the CPM within one week of survey closing.
- Information prepared for two TAC meetings submitted electronically to the CPM at least one week prior to the TAC meetings.
- Information prepared for one public meeting submitted electronically to the CPM at least two weeks prior to the public meeting.
- Public meeting presentation recording to the CPM within one week of the meeting.
- Meeting Summaries (5) (in Word format) for all meetings in Task 1.3 within one week of the scheduled meetings

Task 1.4 Board of Commissioners Work Sessions

The purpose of this task is to collaborate with the County Board of Commissioners to share information and gather input throughout Phase 1.

Consultant shall prepare for and attend up to two (2) two-hour in-person work sessions with the Board of Commissioners. Consultant shall prepare meeting summaries for each of the meetings. The work sessions will be determined based on direction from the County and may include the following topics:

- Project Overview and Approach, including stakeholder engagement approach
- Draft Annotated Outline

1.4 Consultant Deliverables and Schedule:

Consultant shall provide:

- Meeting Summaries from Board Work Sessions (in Word format) to the CPM within one week of each meeting.

PHASE 2: DEVELOP THE ENGINEERING STANDARDS UPDATE

The purpose of Phase 2 is developing the Engineering Standards through collaboration with the County, stakeholders, and the Board of Commissioners. Phase 2 also includes updating the Engineering Standard Drawings to align with the new standards document.

Consultant shall use the Annotated Outline from Phase 1 as the framework to develop Engineering Standards. The Engineering Standards will be grouped into three chapter bundles to create smaller, more reasonable deliverables (volume/size) for review. This approach spreads the deliverables over several months rather than one large deliverable (entire standards document) towards the end of the project. With this approach, Consultant and County staff can stagger preparation and review timeframes to be efficient throughout the project duration. In addition, the objective is to accept each chapter as a final draft deliverable, with only minor modifications when the chapters are combined into the Assembled Draft Engineering Standards. All chapters of Engineering Standards will be prepared in the accepted sample chapter layout described in Phase 1, Task 1.2.

Task 2.1 Phase 2 Project Management

The purpose of this task is to prepare for and attend project check-in/coordination meetings with County staff and conduct project management activities for the duration of Phase 2.

Consultant shall:

- Organize, prepare for and facilitate a two-hour in-person Phase 2 Kick-off Meeting with County staff. Consultant shall prepare the meeting agenda with input from the County. The purpose of the meeting is to confirm the project approach, project schedule, and execution of tasks. Consultant shall prepare a meeting summary and distribute to all attendees.
- Prepare for and participate in up to twenty (20) one-hour video conference coordination calls (at least once a month with additional as needed) with CPM to provide project status update, discuss specific project topics and obtain County direction. Prepare emails summarizing conversation, including action items, and provide to County for review and comment.
- Prepare a detailed project schedule (in MS Project format) showing all major tasks and subtasks for Phase 2, project team meetings, and milestone dates. The project schedule will be revisited monthly for the duration of the contract and updated as needed.
- Prepare monthly 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 17 progress reports will be necessary for Phase 2.

2.1 Consultant Deliverables and Schedule:

Consultant shall provide:

- Meeting agenda submitted electronically to CPM and meeting participants 2 business days prior to meeting.
- Project Kick-off Meeting Summary submitted electronically to CPM and all meeting participants within one week of the kick-off meeting.
- Summary emails of coordination calls submitted to CPM within 5 business days of the video conference calls.
- Project schedule for Phase 2 work (MS Project and .PDF format) submitted to CPM within two weeks of Phase 2 NTP.
- Monthly invoices and progress reports to CPM no later than the 20th calendar day of the month following the reporting period.

Task 2.2 Development of Chapter Bundle #1

The purpose of this task is to prepare and submit chapters in this bundle (assume 2-3 chapters) for concurrent review as well as prepare for and participate in one (1) in-person work session.

Consultant shall:

- Prepare a Draft Chapter Bundle #1 of the Engineering Standards and provide County and TAC with a Draft Chapter Bundle prior to the work session.
- Prepare for and participate in a four-hour in-person work session with County staff and TAC to discuss the Draft Bundle #1. The meeting can be scheduled and discussion topics organized to include discipline specific technical staff related to the chapter topics. Prepare a meeting summary and submit to the County within one week of the meeting.
- Provide Revised Draft Chapter Bundle #1 reflecting the review comments and outcomes of the work session for a second review by County staff.
- Conduct a one-hour video conference call with the County to confirm final comments to Draft Chapter Bundle #1.
- Incorporate comments and submit Final Draft Chapter Bundle #1 to be used in Task 2.5: Assemble the Engineering Standards.

2.2 Consultant Deliverables and Schedule:

Consultant shall prepare and submit:

- Draft Chapter Bundle #1 to the CPM (in WORD format) per the approved schedule developed in Task 2.1
- Meeting Summary for work session to the CPM within one week of the work session
- Revised Draft Chapter Bundle #1 to the CPM (in Word format) per the approved schedule developed in Task 2.1
- Final Draft Chapter Bundle #1 to the CPM (in Word and .PDF format) per the approved schedule developed in Task 2.1

Task 2.3 Development of Chapter Bundle #2

The purpose of this task is to prepare and submit chapters in this bundle (assume 2-3 chapters) for concurrent review as well as prepare for and participate in one (1) in-person work session.

Consultant shall:

- Develop Draft Chapter Bundle #2 of the Engineering Standards and provide County and TAC with a Draft Chapter Bundle prior to the work session.
- Prepare for and participate in a four-hour in-person work session with County staff and TAC to discuss Draft Bundle #2. The meeting can be scheduled and discussion topics organized to include discipline specific technical staff related to the chapter topics. Prepare a meeting summary and submit to the County within one week of the meeting.
- Provide Revised Draft Chapter Bundle #2 reflecting the review comments and outcomes of the work session for a second review by County staff.
- Conduct a one-hour video conference call with the County to confirm final comments to Draft Chapter Bundle #2.
- Incorporate comments and submit Final Draft Chapter Bundle #2 to be used in Task 2.5: Assemble the Engineering Standards.

2.3 Consultant Deliverables and Schedule:

Consultant shall prepare and submit:

- Draft Chapter Bundle #2 to the CPM (in WORD format) per the approved schedule developed in Task 2.1
- Meeting Summary for work session to the CPM within one week of the work session
- Revised Draft Chapter Bundle #2 to the CPM (in Word format) per the approved schedule developed in Task 2.1
- Final Draft Chapter Bundle #2 to the CPM (in Word and .PDF format) per the approved schedule developed in Task 2.1

Task 2.4 Development of Chapter Bundle #3 and Appendices

The purpose of this task is to prepare and submit chapters in this bundle (assume 2-3 chapters) for concurrent review as well as prepare for and participate in one (1) in-person work session. This also includes developing appendices for the Engineering Standards.

Consultant shall:

- Develop Draft Chapter Bundle #3 of the Engineering Standards and provide County and TAC with a Draft Chapter Bundle prior to the work session.
- Develop Draft Appendices of the Engineering Standards and provide County and TAC with a Draft Chapter Bundle prior to the work session.
- Prepare for and participate in a four-hour in-person work session with County staff and TAC to discuss Draft Bundle #3 and the Appendices. The meeting can be scheduled and discussion topics organized to include discipline specific technical staff related to the chapter topics. Prepare a meeting summary and submit to the County within one week of the meeting.
- Provide Revised Draft Chapter Bundle #3 and Appendices reflecting the review comments and outcomes of the work session for a second review by County staff.
- Conduct a one-hour video conference call with the County to confirm final comments to Draft Chapter Bundle #3 and Appendices.
- Incorporate comments and submit Final Draft Chapter Bundle #3 and Appendices to be used in Task 2.5: Assemble the Engineering Standards.

2.4 Consultant Deliverables and Schedule:

Consultant shall prepare and submit:

- Draft Chapter Bundle #3 to the CPM (in Word format) per the approved schedule developed in Task 2.1
- Draft Appendices to the CPM (In Word format) per the approved schedule developed in Task 2.1
- Meeting Summary for work session to the CPM within one week of the work session
- Revised Draft Chapter Bundle #3 to the CPM (in Word format) within two weeks of receipt of County and work session comments.
- Revised Appendices to the CPM (in Word format) within two weeks of receipt of County and work session comments.
- Final Draft Chapter Bundle #3 to the CPM (in Word Format) per the approved schedule developed in Task 2.1
- Final Draft Appendices to the CPM (in Word format) per the approved schedule developed in Task 2.1

Task 2.5 Assemble the Engineering Standards

This task will assemble the Final Draft deliverables produced in Tasks 2.2 through 2.4 to develop the Draft Engineering Standards. The intent is not to produce new information, but to provide minor modifications to reflect cohesive standards, rather than independent chapters. Consultant shall prepare and submit the entire

Draft Engineering Standards for review, as well as prepare for and participate in two (2) in-person work sessions.

Consultant shall:

- Assemble Draft Engineering Standards produced in Tasks 2.2 through 2.4 and develop a cohesive Engineering Standards. Provide the County and TAC with Draft Engineering Standards at least one month prior to the in-person work session. County will provide comments to the assembled Draft Standards at least one week in advance of the work session.
- Prepare for and participate in two (2) four-hour in-person work sessions with County staff and the TAC to discuss the Draft Engineering Standards. The work sessions can be tailored to include discipline specific staff based on the various technical topics in the standards. The intent is to have each of the work session scheduled within the same week (back-to-back days) to maintain the overall schedule and progress with developing the standards. Prepare a meeting summary and submit to the County within one week of the meeting.
- Develop a Revised Draft Engineering Standards reflecting the review comments from the County and TAC and outcome of the work sessions. Provide Revised Draft Engineering Standards to the County for review and confirmation of final edits.
- Conduct a two-hour video conference call to discuss the final comments to the standards. Prepare and submit a meeting summary within one week of the.
- Develop Final Engineering Standards based on final input from the County.

2.5 Consultant Deliverables and Schedule:

Consultant shall prepare and submit:

- Draft Engineering Standards per the approved schedule developed in Task 2.1 and at least one month prior to the work session
- Work Session Summary to the CPM within one week of the work session
- Revised Draft Engineering Standards per the approved schedule developed in Task 2.1
- Call Summary within 5 business days of the call
- Final Engineering Standards per the approved schedule developed in Task 2.1

Task 2.6 Standard Drawing Review and Updates

This task will review the Standard Drawings (also described as Engineering Standard Details) and identify updates needed to align with the new Engineering Standards document. This task will also include updating the Standard Drawings to be consistent and include information based on the Engineering Standards. This may include developing new Standard Drawings based on new content in the Engineering Standards.

Consultant shall:

- Review existing Standard Drawings and identify updates and additional drawings needed to align with and support the updated Engineering Standards.
- Develop a Standard Drawings Review Summary that includes recommendations for updates and new drawings based on the review of the existing Standard Drawings. Provide the summary to the County and TAC for review at least two weeks in advance of the work session.
- Prepare for and participate in one (1) two-hour in-person work session with County staff and the TAC to discuss the Standard Drawing Review Summary recommendations. Prepare a meeting summary and submit to the County within one week of the meeting.
- Develop Draft Standard Drawings reflecting the new Engineering Standards and based on input from the County and TAC. Provide Draft Standard Drawings to the County and TAC for review at least two (2) weeks prior to the review work session. Of the 83 existing standard drawings/details on the County website, it is assumed that some will be removed, some will be maintained, some new drawings will

be developed and others will require modifications. In some cases, the modifications may only require minor revisions and reformatting.

It is assumed the following will be completed as part of this task:

- Up to twenty (20) new standard drawings
- Up to forty (40) modified standard drawings
- Up to twenty-five (25) reformatted standard drawings

It is also assumed that the County will provide their established drafting standards for the standard drawings (e.g., layer management system, plot styles, line type and colors).

- Conduct a three-hour in-person work session with the County and the TAC to discuss the Draft Standard Drawings and review draft comments. Prepare a meeting summary and submit to the County within one week of the meeting.
- Develop Revised Draft Standard Drawings based on the work session and provide to the County for final review.
- Conduct a one-hour video conference call to discuss the final comments to Standard Drawings. Prepare and submit a meeting summary within one week of the meeting.
- Develop Final Standard Drawings based on final input from the County.

2.6 Consultant Deliverables and Schedule:

Consultant shall prepare and provide:

- Standard Drawing Review Summary to the CPM per the approved schedule developed in Task 2.1 and at least two weeks prior to the work session.
- Draft Standard Drawings to the CPM (in .pdf format) per the approved schedule developed in Task 2.1 and at least two weeks prior to the work session.
- Revised Draft Standard Drawings to the CPM (in .pdf format) per the approved schedule developed in Task 2.1
- Final Standard Drawings to the CPM (in .dwg and .pdf format) per the approved schedule developed in Task 2.1
- Meeting Summaries (3) within one week of each meeting

Task 2.7 Stakeholder Input

This task will continue the stakeholder engagement by conducting public meetings with external stakeholders to share project updates and gather input on the Draft Engineering Standards.

Consultant shall:

- Conduct up to four (4) two-hour in-person public meetings with external stakeholders to provide project updates and gather feedback on the Draft Chapter Bundles and the assembled Draft Engineering Standards. The public meeting presentations shall be recorded and provided to the County for posting on the County website to allow other stakeholders to view the meeting and provide additional feedback. Prepare meeting summaries and send to the County within one week of the meeting.
- Provide an email summary update to the external stakeholders once the Final Engineering Standards are completed and published. Draft email content shall be shared with the County for review prior to distributing information to the external stakeholders.

2.7 Consultant Deliverables and Schedule:

Consultant shall provide:

- Public Meeting Summaries (4 each) to the CPM within one week of the meeting.
- Public meeting presentation recordings (4 each) to the CPM within one week of the meeting
- Email summary update to the CPM within one month of completing the Final Engineering

Standards

Task 2.8 Board of Commissioners Work Sessions and Presentation

The purpose of this task is to collaborate with the County Board of Commissioners to share information and gather input throughout Phase 2.

Consultant shall:

- Prepare for and attend up to three (3) two-hour in-person work sessions with the Board of Commissioners. The work sessions will be determined based on direction from the County and may include the following topics:
 - o Development of Draft Chapter Bundles
 - o Review of Draft Engineering Standards
 - o Review of Standard Drawing Updates
- Prepare for and facilitate an in-person presentation with the Board of Commissioners to outline the Final Draft Engineering Standards and gather final input. Develop and provide materials in advance of the presentation, based on direction from the County. Prepare a meeting summary and send to the County within one week of the meeting.
- Conduct one (1) one-hour video conference call with the County to confirm final input on the Engineering Standards prior to publication.
- Develop Final Engineering Standards files based on final input from the County.

2.8 Consultant Deliverables and Schedule:

Consultant shall provide:

- Presentation and associated materials, as directed by the CPM at least two weeks prior to Board Work Sessions and at least four weeks prior to Adoption Board Sessions
- Presentation Meeting Summary to the CPM within one week of the meeting
- Final Standards for publication per the approved schedule developed in Task 2.1

Task 2.9 Publish Updated Engineering Standards

This will be the final task of the project and include supporting the County with publishing the Final Engineering Standards and Standard Drawings on the County website. This will also include providing all final project files to the County.

Consultant shall:

- Verify Americans with Disabilities Act (ADA) Reader capabilities and alt text for Final Engineering Standards.
- Support County staff with publishing the standards on the County website. This includes providing appropriate project files for the County to upload onto the website.
- Provide the County with final electronic project files for all materials associated with the Engineering Standards and Standard Drawings. This includes Word files, PDF files, CAD files, image files, and presentation files.

2.9 Consultant Deliverables and Schedule:

Consultant shall provide:

- Final project files for Standards and Standard Drawings per the approved schedule developed in Task 2.1 and per the direction of the County.

F. CONTINGENCY TASKS (RESERVED)

EXHIBIT B – COMPENSATION

Definitions:

FCCM – Facilities Capital Cost of Money

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

NTE – Not to Exceed Amount

T&M – Time and Materials

A. METHOD of COMPENSATION for NON-CONTINGENCY TASKS

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

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

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

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

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

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

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

The dollar amount for T&M non-contingency Services is: \$ 558,955.50

B. PAYMENT OPTIONS

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

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

C. TRAVEL

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

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

D. INVOICES

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

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

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

- Describe the previous month's project activities and the planned activities for the next month;
- For each task/deliverable identify the percentage completed during the month and the cumulative percentage completed;
- Reconcile progress of each task/deliverable with the schedule identified for each.

- Identify issues/concerns that may affect the project Statement of Work, schedule or budget.

T&M Compensation:

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

E. PAYMENT TERMS

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

F. CORRECTIVE WORK

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

G. WITHHOLDING/RETAINAGE

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

H. PAYMENT REDUCTION

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

I. SPECIFIC LIMITATIONS and UNALLOWABLE CHARGES

Specific Limitations

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

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

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

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

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

Unallowable Charges

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

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

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

J. INDIRECT COSTS; SALARY and BILLING RATE SCHEDULES

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

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

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

In order to assess the adequacy of an audited overhead rate for use in fair and reasonable price negotiation, County and/or ODOT may evaluate a firm's financial capability, internal control structure, and overhead

schedule. This includes a determination as to the applicability of historical overhead rates to the anticipated future contract period, performing financial ratio analysis, evaluating overhead account trends and utilization rates for reasonableness.

3. Salary and Billing Rate Schedules

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

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

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

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

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

K. RATE REVISIONS

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

L. BREAKDOWN OF COSTS (BOC)

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

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

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

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

The final BOC, dated 06/20/2023, is not physically attached, but is incorporated into this Contract by this reference with the same force and affect as though fully set forth herein. A copy of the final BOC has been provided to the Consultant prior to execution of this Contract.

EXHIBIT C
INSURANCE PROVISIONS

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

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

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

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

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

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

Bodily Injury/Death:

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

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

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

Bodily Injury/Death:

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

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

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

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

EXHIBIT D – SPECIAL TERMS AND CONDITIONS (RESERVED)

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

E&O CLAIMS PROCESS

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

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

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

Procedure for resolution of disagreements

GENERAL

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

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

INITIAL VERBAL NOTICE AND WRITTEN LETTER OF CONCERN

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

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

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

INFORMATION EXCHANGE AND RESOLUTION MEETING

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

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

Following the County's determination of the appropriate corrective action, the Consultant and the CA shall work together to resolve responsibility and corresponding Premium Costs related to the issue.

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

CLAIMS PROCEDURE

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

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

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

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

COST EVALUATION AND RECOVERY

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

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

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

ALTERNATE METHODS OF RECOVERY

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

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

Documentation

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

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

DEFINITIONS

County – Marion County, Oregon

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

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

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

Contract - The project specific Contract between County and Consultant.

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

E&O – Errors and Omissions

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

Parties – Refers to County and Consultant collectively

Party – Refers to County and Consultant separately

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

- Work delays or inefficiencies.
The Premium Costs are the total delay/inefficiency damages paid to the construction contractor.
- Rework
The Premium Costs are the dollar amount of the original items of work that have to be removed and the costs to remove these items.

- **Extra Work**

The Premium Costs are computed as the net difference between the final agreed prices paid to the construction contractor and what the cost would have been had the extra work been included in the original bid at letting.

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

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

EXHIBIT F – CONTACT INFORMATION and KEY PERSONS

1. Party Contact Information.

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

Name:	Max Hepburn, PE
Ph:	503-566-4157
E-mail:	mhepburn@co.marion.or.us cc: Lani Radtke, PE: lrادتke@co.marion.or.us

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

Name:	Chalyce MacDonald, Sr, Contracts Specialist
Ph:	503-566-4139
E-mail:	cmacdonald@co.marion.or.us

a.3 County's address for invoicing:

Mailing Address:	Marion County Public Works Department 5155 Silverton Road NE, Building 1 Salem, OR 97305 Attn: Max Hepburn
E-mail:	mhepburn@co.marion.or.us cc: Lani Radtke, PE: lrادتke@co.marion.or.us

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

Name:	Julia Knudsen, PE
Ph:	503-319-1568
E-mail:	jknudsen@kittelson.com

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

Name:	
Address:	Kittelson & Associates, Inc. 851 SW 6 th Avenue, Suite 600 Portland, OR 97204
Ph:	
E-mail:	

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

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

2. Key Persons

Consultant acknowledges and agrees that County selected Consultant, and is entering into the Contract because of the special qualifications of Consultant's key personnel ("Key Persons" or "Key Personnel"), which may include

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

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

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

Name	Role
Julia Knudsen, PE	Project Manager
Hermanus Steyn, PE	Project Principal
Tony Roos, PE	Quality Manager
Wade Scarbrough, PE	Traffic Lead
Caleb Cox, PE	Geometric Design Lead
Cedomir Jesic, PE	Stormwater Lead
Anthony Davies, PE	Structures Lead
Fred Wismer, PE	Lighting and Utilities Lead
Richard Walker, PE	Landscaping and Environmental Lead
Lyle Misbach, PE, CFM	Landscaping and Environmental Lead
Krey Younger, PE, GE	Pavement Lead

3. Reassignment or Transfer of Key Person

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

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

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