Contract Review Sheet

A&E Standard Prof Svcs Agmnt **PW-7186-26**

Title: **Santiam Rail Trail**

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

Department: **Public Works Department** Contact: **Alicia Jones**

Analyst: **Kathleen George** Phone #: **-4320**

Term - Date From: **November 4, 2026** Expires: **December 31, 2029**

Original Contract Amount: **$ 807,071.97** Previous Amendments Amount: **$ -**

Current Amendment: **$ -** New Contract Total: **$ 807,071.97** Amd% **0%**

Outgoing Funds ☑ Federal Funds ☐ Reinstatement ☐ Retroactive ☐ Amendment greater than 25%

Source Selection Method: **30-0220 Formal Selection A&E** **PW1746-26**

Description of Services or Grant Award

Land survey, conceptual analysis and design, draft environmental studies, right of way determination, preliminary engineering, design and related services for the Santiam Rail Trail project funded primarily through the Opal Creek Wilderness Grant from Oregon Business Development Department (OBDD).

Desired BOC Session Date:	**11/4/2026**	Contract should be in DocuSign by:	**10/14/2026**
Agenda Planning Date	**10/22/2026**	Printed packets due in Finance:	**10/20/2026**
Management Update	**10/20/2026**	BOC upload / Board Session email:	**10/21/2026**

BOC Session Presenter(s) **Ryan Crowther** Code: **Y**

REQUIRED APPROVALS

	10/13/2026		10/13/2026
Finance - Contracts	Date	Contract Specialist	Date
	10/14/2026	Jan Fritz (Oct 14, 2026 09:06:59 PDT)	10/14/2026
Legal Counsel	Date	Chief Administrative Officer	Date

MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: 11/04/2026

Department: Public Works

Title: Santiam Rail Trail - Contract PW-7186-26 for Preliminary Engineering with David Evans and Associates, Inc.

Management Update/Work Session Date: 10/13/2026 **Audio/Visual aids** ☐

Time Required: 5 min **Contact:** Jill Ogden **Phone:** 503-365-3152

Requested Action:
Approve Contract PW-7186-26 with David Evans and Associates, Inc. (DEA) in the not-to-exceed amount of $807,071.97 for feasibility analysis and preliminary design of the Santiam Rail Trail.

Issue, Description & Background:
This A&E services contract for a 30% feasibility analysis will cover the entire 6.2 miles of the proposed rail trail, from Fisherman's Bend to Mill City, Gates, and the Maples Rest Area. This agreement engages David Evans and Associates and an experienced consultant team to design the trail including historic interpretive displays as key elements specifically engaging the Warm Springs and Grand Ronde tribes for their contributions. A modular, phased approach to this project will be implemented such that it will be completed as funds are made available, and will be funded initially by a Community Services Oregon Business Development Department grant of $650,000, as well as a Public Works ODOT- Oregon Community Paths (OCP) grant in the amount of $560,000, which will be obligated in the coming months.

Financial Impacts:
The total Not-to-Exceed amount of this contract is $807,071.97 of which $57,512 (10.27% of the OCP grant) will be paid with County Funds and the remaining $749,559.97 will be paid with Federal Funds from the two sources described above.

Impacts to Department & External Agencies:
There are no impacts to other Departments, but this project will benefit the public by increasing access in the area and stimulating local economies.

List of attachments: Contract PW-7186-26

Presenter: Ryan Crowther, Capital Projects Manger

Department Head Signature: BNicholas

Digitally signed by BNicholas
Date: 2026.09.28 10:03:42 -07'00'

ENGINEERING AND RELATED SERVICES CONTRACT
Contract Number: PW-7186-26

Project Title: Santiam Rail to Trail	**Agency Project Number: 105934**
Project Location: Fisherman's Bend, Mill City, Gates and the Maples Rest Ares	**Associated RFP Number: PW1746-26**
Federal Aid Number: N/A	**No DBE Goal (see Exhibit E.1)**
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) $0 for contingency tasks, each of which must be separately authorized by Agency.	**$ 807,071.97**

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

This Contract anticipates two funding sources, with funds from Oregon Business Development Department Opal Creek Wilderness Grant and Federal Highway Administration ("FHWA") coordinated through the Oregon Department of Transportation ("ODOT") Community Paths Grant. See Section 18 - Compliance with Applicable Law.

For purposes of this Contract:

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

If specified below, Agency's payments to Consultant under this agreement will be paid in whole or in part with federal funds. If so specified, by signing this agreement, Consultant certifies neither it, nor its employees, contractors, subcontractors or subgrantees who will perform the Project activities are currently employed by a Agency, or by a department of the federal government. If applicable, Consultant shall comply with Exhibit K: Appendix II To Part 200–Contract Provisions For Non-Federal Entity Contracts Under Federal Awards.

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

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

Assistance Listing Number (ALN) #(s): of federal funds to be paid through this Grant: 10.726.

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 Agency. Unless otherwise amended or terminated, this Contract shall expire December 31, 2029.

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

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

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

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

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

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

a. Consultant, by its signature on the Contract, certifies that it is an independent contractor as defined in ORS 670.600 and as described in IRS Publication 1779, which is available at the following link: https://www.irs.gov/pub/irs-pdf/p1779.pdf. Consultant shall perform all required Services as an independent contractor. Although Agency reserves the right (i) to determine the delivery schedule (as mutually acceptable to Agency and Consultant) for the Services to be performed and (ii) to evaluate the quality of the completed performance, Agency cannot and will not control the means or manner of Consultant's performance. Consultant is responsible for determining the appropriate means and manner of performing the Services. Consultant is not an "officer", "employee", or "agent" of Agency, as those terms are used in ORS 30.265.

b. Consultant, by its signature on the Contract, certifies that: (i) Consultant and, to the best of its information, knowledge and belief, its Associates have made any disclosures required under the COI Disclosure Form (available at: https://www.oregon.gov/ODOT/Business/Procurement/Pages/LPA.aspx) or any applicable law; and (ii) if a conflict of interest is discovered during the term of the Contract, Consultant shall timely submit a COI Disclosure Form to Agency disclosing the conflict(s).

c. Consultant shall be responsible for all Federal or State of Oregon ("State") taxes applicable to compensation or payments paid to Consultant under the Contract and, unless Consultant is subject to backup withholding, Agency will not withhold from such compensation or payments any amount(s) to cover Consultant's Federal or State tax obligations. Throughout the duration of the Contract, Consultant shall submit an updated W-9 form (https://www.irs.gov/pub/irs-pdf/fw9.pdf) to Agency whenever Consultant's backup withholding status or any other information changes. Consultant is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Consultant under the Contract, except as a self-employed individual.

d. Consultant shall not be responsible for or have control over the means, manner, methods or techniques required of or used by other consultants or contractors under contract with Agency, unless otherwise expressly agreed to in writing by the Parties. The Parties agree, however, that these Section 6.d. provisions do not in any way revise or adjust Consultant's professional responsibility to report to Agency any information that comes to Consultant's attention (during performance of this Contract) pertaining to a project, or to performance by other consultants or contractors on a project, that would adversely affect Agency or a particular project.

7. Subcontracts and Assignment; Successors and Assigns

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

b. The provisions of the Contract shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective successors and permitted assigns, if any.

c. Any purported assignment, delegation or disposition in violation of subsection "a." above is void.

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

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

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

a. Professional Standard of Care.
Consultant shall perform all Services under the Contract in accordance with the degree of skill and care ordinarily used by competent practitioners of the same professional discipline when

performing similar services under similar circumstances, taking into consideration the contemporary state of the practice and the project conditions.

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

c. **Design Within Funding Limit. "RESERVED"**

11. **Ownership of Work Product**

a. **Definitions.** The following terms have the meanings set forth below:
   (i) "Consultant Intellectual Property" means any intellectual property owned by Consultant and developed independently from the Contract.
   (ii) "Third Party Intellectual Property" means any intellectual property owned by parties other than Agency or Consultant.
   (iii) "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item, and all intellectual property rights therein, that Consultant is required to deliver to Agency pursuant to the Contract.

b. **Work Product.** All Work Product created by Consultant pursuant to the Contract, including derivative works and compilations, and whether or not such Work Product is considered a "work made for hire," shall be the exclusive property of Agency. Agency and Consultant agree that Work Product that constitutes original works of authorship (the "Original Work Product") is "work made for hire" of which Agency is the author within the meaning of the United States Copyright Act. If for any reason Original Work Product created pursuant to the Contract is not "work made for hire," Consultant hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all Original Work Product created pursuant to the Contract, whether arising from copyright, patent, trademark, trade secret, or any other State or Federal intellectual property law or doctrine. Upon Agency's reasonable request, Consultant shall execute such further documents and instruments necessary to fully vest such rights in Original Work Product in Agency. Consultant forever waives any and all rights relating to Original Work Product created pursuant to the Contract, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. However, see Sections 11.c and 11.d immediately below, for provisions applicable to Consultant Intellectual Property, Third Party Intellectual Property, Consultant Intellectual Property derivative works and Third-Party Intellectual Property derivative works.

c. **Consultant and Third-Party Intellectual Property.** In the event that any Work Product is Consultant Intellectual Property or Third Party Intellectual Property (Consultant Intellectual Property or Third Party Intellectual Property that is applicable to the Services being performed by Consultant under the Contract or included in Work Product deliverable to Agency under the Contract), or in the event any Consultant Intellectual Property or Third Party Intellectual Property is needed by Agency to reasonably enjoy and use any Work Product, Consultant hereby agrees that it will grant to, or obtain for, the Agency an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Consultant Intellectual Property and or Third Party Intellectual Property, including the right of Agency to authorize contractors, consultants and others to do the same on Agency's behalf.

This obligation of the Consultant does not apply to a situation involving a third party who enters a license agreement directly with the Agency. At the request of Consultant, Agency shall take reasonable steps to protect the confidentiality and proprietary interests of Consultant in any Consultant Intellectual Property licensed under this Section, within the limits of the Oregon Public Records Law (ORS 192.410 through 192.505) and the Oregon Uniform Trade Secrets Act (ORS 646.461 to 646.475).

d. **Consultant and Third-Party Intellectual Property-Derivative Work.** In the event that Work Product created by Consultant under the Contract is a derivative work based on Consultant Intellectual Property or Third Party Intellectual Property, or is a compilation that includes Consultant Intellectual Property or Third Party Intellectual Property, Consultant hereby agrees to grant to, or obtain for, Agency an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of Consultant Intellectual Property or Third Party Intellectual Property employed in the Work Product, including the right of Agency to authorize others to do the same on Agency's behalf.

e. **Consultant Use of Work Product.** Notwithstanding anything to the contrary in this Section 11, Consultant may refer to the Work Product in its brochures or other literature that Consultant utilizes for advertising purposes and, unless specified otherwise in Exhibit A – Statement of Work, Agency hereby grants to Consultant a non-exclusive, non-transferable, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Agency-owned Work Product on other unrelated projects, except for any "Confidential Information" protected from disclosure under the provisions of Section 12 below, pertaining to Confidentiality and Non-Disclosure.

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

13. *Indemnity*

a. ***Claims for Other Than Professional Liability.*** *Consultant shall indemnify, defend, save, and hold harmless the Agency, State of Oregon, the OTC and ODOT, and their respective officers, members, agents and employees from any and all claims, suits, actions, losses, liabilities, damages, costs and expenses, including attorney fees, of whatsoever nature, resulting from or arising out of the acts or omissions of Consultant or its subcontractors, or their respective agents or employees, under the Contract.*

b. ***Claims for Professional Liability.***
To the fullest extent permitted by law, and except to the extent prohibited under ORS 30.140(4), Consultant shall indemnify, defend, save, and hold harmless Agency, and its officers, agents, and employees, from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses 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 Agency, State of Oregon, the OTC and ODOT, and their respective officers, members and their agencies, subdivisions, officers, directors, agents, and employees from any and all claims, suits, actions,*

losses, liabilities, damages, costs and expenses, including attorney fees, arising out of or relating to any claims that Consultant's services, the Work Product or any other tangible or intangible items delivered to the Agency by Consultant that may be the subject of protection under any state or federal intellectual property law or doctrine, or the Agency's use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party; provided, Agency shall provide Consultant with prompt written notice of any infringement claim. Provided, however, Consultant shall not be obligated to indemnify, defend, save and hold harmless the Agency (or other entities identified above) under this section 13(c), based solely on the following: Consultant's compliance with Agency specifications or requirements, including, but not limited to the required use of tangible or intangible items provided by Agency.

d. ***Defense Qualification.*** *Neither Consultant nor any attorney engaged by Consultant shall defend or purport to defend a claim in the name of the Agency, the State of Oregon, the OTC or ODOT without first receiving from the applicable entity, authority to act as legal counsel, nor shall Consultant settle any claim on behalf of the foregoing entities without the approval of these entities. The Agency, the State of Oregon, the OTC or ODOT may, at their election and expense, assume their own defense and settlement.*

e. ***Agency's Acts or Omissions.*** *This section 13 does not include indemnification by Consultant of the Agency, the State of Oregon, the OTC and ODOT, and their respective officers, members, agents and employees, for the acts or omissions of these entities and their respective officers, members, agents and employees, whether within the scope of the Contract or otherwise.*

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

15. Termination

a. **Termination by Mutual Consent**. The Contract may be terminated at any time, in whole or in part, by mutual written consent of the Parties.

b. **Agency's Right to Terminate for Convenience**. Agency may, at its sole discretion, terminate the Contract, in whole or in part, upon 30 calendar days prior written notice to Consultant.

c. **Agency's Right to Terminate for Cause**. Agency may terminate the Contract, in whole or in part, immediately upon written notice to Consultant or at such later date as Agency may establish in such notice, upon the occurrence of any of the following events:
   (i) In the event the Board of Commissioners of the AGENCY, 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 Agency is prohibited from paying for such Services from the planned funding source;
   (iii) Consultant no longer holds any license or certificate that is required to perform the Services; or
   (iv) Consultant commits any material breach or default of any covenant, warranty, obligation or agreement under the Contract, fails to perform the Services under the Contract within the time specified or any extension thereof, or so fails to perform the Services as to endanger Consultant's performance under the Contract in accordance with its terms, and such breach, default or failure is not cured within 14 calendar days after Agency's notice to Consultant, or such longer period as Agency may specify in such notice.

d. **Consultant's Right to Terminate for Cause**.
   (i) Consultant may terminate the Contract by giving written notice to Agency if Agency fails to pay Consultant pursuant to the terms of the Contract and if Agency fails to cure within 14 calendar days after receipt of Consultant's written notice, or such longer period of cure as Consultant may specify in such notice.
   (ii) Consultant may terminate the Contract, for reasons other than nonpayment, if Agency commits any material breach or default of any covenant, warranty, obligation or agreement under the Contract, fails to perform under the Contract within the times specified, or so fails to perform as to endanger Consultant's performance under the Contract, and such breach,

default or failure is not cured within 14 calendar days after Consultant's notice to Agency, or such longer period as Consultant may specify in such notice.

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

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

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

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

of retainage. Agency and ODOT may use Consultant performance under previous contracts as a selection criterion for future contracts.

18. Compliance with Applicable Law. Consultant shall comply with all Federal, State and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Contract, in effect at the time the Contract is executed and as may be amended, revised, enacted or adopted thereafter. Changes in these legal requirements after the execution of the Contract may or may not be the basis for modifications to Consultant's schedule, scope and fee, depending on a reasonable assessment of the nature of the change, the extent to which the change was anticipated by Consultant or the Parties, and other circumstances then existing. Without limiting the generality of the foregoing, Consultant expressly agrees to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659a.142; (iv) the Clean Air Act (42 U.S.C. 7401-7671q); (v) the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387); (vi) Executive Order 11738; (vii) Environmental Protection Agency regulations (40 CFR part 15); (viii) and all applicable standards, orders, regulations and administrative rules established pursuant to the foregoing laws. Agency's performance under the Contract is conditioned upon Consultant's compliance with, and Consultant shall comply with, the obligations applicable to public contracts and intended for contractors under ORS 279C.520 and 279C.530, which are incorporated by reference herein. All rights and remedies available to Agency under applicable federal, state and local laws are also incorporated by reference herein and are cumulative with all rights and remedies under the Contract. If Consultant discovers a conflict among Federal, State and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Contract, Consultant shall in writing request Agency to resolve the conflict (in collaboration with ODOT and FHWA as applicable). Consultant shall specify if the conflict(s) create a problem for the design or other Services required under the Contract. If Agency concludes there is a conflict among the applicable laws, Federal laws shall govern among the others; State laws shall govern over the others except Federal. The resolution of the conflict of the applicable laws by Agency shall be final and not subject to further review or challenge.

19. Permits and Licenses

a. **Permits and licenses to conduct business.** Unless otherwise specified in **Exhibit A**, Statement of Work, Consultant shall obtain, hold, maintain and fully pay for during the term of the Contract all permits and licenses required by law for Consultant to conduct its business and perform the Services under the Contract.

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

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

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

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

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

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

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

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

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

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

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

29. False Claims

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

b. Consultant shall immediately disclose (in writing) to Agency whenever, in connection with the award, performance or closeout of the Contract, or any subcontract thereunder, Consultant has credible evidence that a principal, employee, agent, or subcontractor of Consultant has committed–

(i) A violation of the Oregon False Claims Act; or

(ii) A violation of State or Federal criminal or civil law involving fraud, conflict of interest, bribery, gratuity or similar misconduct.

c. Consultant must include subsections (a) and (b) of this section in each subcontract Consultant may award in connection with the performance of the Contract. In doing so, Consultant may not modify the terms of those subsections, except to identify the subcontractors or sub grantee that will be subject to those provisions.

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

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

CONSULTANT CERTIFICATIONS

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

(1) Consultant has provided its correct TIN to Agency;

(2) Consultant is not subject to backup withholding because (a) Consultant is exempt from backup withholding, (b) Consultant has not been notified by the IRS that Consultant is subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified Consultant that Consultant is no longer subject to backup withholding; and

(3) The undersigned is authorized to act on behalf of Consultant, s/he has authority and knowledge regarding Consultant's payment of taxes, and to the best of the undersigned's knowledge, Consultant is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a State tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250, ORS Chapters 118, 314, 316, 317, 318, 321, and 323; and local taxes administered by the Department of Revenue under ORS 305.620.

B. Any individual (the undersigned) signing on behalf of Consultant hereby certifies the undersigned is authorized to sign this Contract and that:

(1) Consultant has read this Contract, understands it, and agrees to be bound by its terms and conditions.

(2) Consultant understands and agrees that various documents are not physically attached, but are incorporated by reference and have the same force and effect as if fully set forth herein.

(3) Consultant understands and has provided to all Associates the COI Disclosure Form available at: https://www.oregon.gov/ODOT/Business/Procurement/Pages/LPA.aspx. Consultant and (to the best of the undersigned's information, knowledge and belief) Consultant's Associates are in compliance with the disclosure requirements of the COI Disclosure Form and have no conflicts of interest to disclose. If disclosures regarding this Contract or the related Project are required per the COI Disclosure Form, Consultant has made such disclosures to Agency on a properly prepared and submitted form and, if determined necessary by Agency or ODOT, a mitigation plan has been approved by Agency and ODOT.

(4) **(a)** No Federal appropriated funds have been paid or will be paid, by or on behalf of Consultant, to any person for influencing or attempting to influence an officer or employee of any Agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(c) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

(d) Consultant shall require that the language of this certification be included in all subcontracts in excess of $100,000 at all tiers and that all such subcontractors shall certify and disclose accordingly.

(5) Consultant is an independent contractor as defined in ORS 670.600 and as described in IRS Publication 1779.

(6) In the event that Consultant is a general partnership or joint venture, Consultant signature(s) on this Contract constitutes certifications to the above statements pertaining to the partnership or joint

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

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

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

MARION COUNTY SIGNATURES
BOARD OF COMMISSIONERS:

_____
Chair Date

_____
Commissioner Date

_____
Commissioner Date

Authorized Signature: Brian Nicholas Brian Nicholas (Oct 13, 2026 12:37:24 PDT) 10/13/2026
Department Director or designee Date

Authorized Signature: Jan Fritz Jan Fritz (Oct 14, 2026 09:06:59 PDT) 10/14/2026
Chief Administrative Officer Date

Reviewed by Signature: 10/14/2026
Marion County Legal Counsel Date

Reviewed by Signature: 10/13/2026
Marion County Contracts & Procurement Date

CONSULTANT SIGNATURE(s)

Signature: _____ Date: _____

Name: _____ Title: _____

Signature: _____ Date: _____

Name: _____ Title: _____

EXHIBIT A – STATEMENT OF WORK

A. PROJECT DESCRIPTION and OVERVIEW of SERVICES

In 1996, the Omnibus Parks and Public Lands Management Act designated 37,500 acres of timberland in the Upper North Santiam Canyon region as the Opal Creek Wilderness and Scenic Recreation Area. As part of the overall agreement to transfer these lands, the legislation authorized $15 million to support economic development activities for the economically depressed communities in the area. The lands were designated and taken off Marion County's tax rolls, but the promised federal funding never arrived.

In 2020, the already economically distressed North Santiam Canyon communities were devastated by the impacts of the Beachie Creek & Lionshead fires, burning 193,573 and 204,469 acres respectively. These fires caused unimaginable damage to the tight-knit communities already dealing with the unique development challenges of the North Santiam Canyon. The fires affected or destroyed a total of 1,067 properties in Marion County for a total improvement value loss of $142,587,740. This stretched the abilities of local governments to provide essential services to their communities.

In 2021, with the establishment of Congressionally Directed Spending (previously known as earmarks), Marion County realized the potential to achieve the promised Opal Creek funding and submitted a request through Oregon Business Development Department / Business Oregon for the $15 million in promised funds. In 2022, The State of Oregon was issued a first installment of $2 million, and this funding was allocated towards a Marion County-led "Rails to Trails" project.

A Project Refinement grant of $560,000 for preliminary engineering has also been awarded to begin design through ODOT's Community Paths Program, which is funded by FHWA. The project will be required to meet all FHWA requirements as well as requirements of the Oregon Business Development Department (OBDD) Opal Creek Wilderness Grant of $650,000.

The objective of the Santiam Rail Trail project is to support the economy of the North Santiam Canyon through the strategic development of the publicly owned rail bed running along the south side of Highway 22. This action will create a 12' wide, 6.1-mile-long pedestrian/bicycle path from Fishermen's Bend Recreation Site through Mill City, the City of Gates and the County-owned Minto Park, eastward to the bustling rest area. The goal is to provide valuable economic development opportunities by drawing new recreational users to the corridor, and in particular, to Gates and Mill City. The project may also include at least three pedestrian bridges, interpretive and wayfinding signage, furnishings and various other visual elements.

The County's goal for the project will be to provide Santiam Canyon residents and visitors with opportunities to redevelop community quality of life, increase recreation opportunities, and promote economic vitality and stability.

Phase 1 of the proposed project will identify the most impactful section of trail to begin construction. Consultant shall perform due diligence work to assist the County in effectively utilizing available funding and creating a full plan to use for future grant applications in order to secure additional construction funding as it becomes available. County assumes that the rail bed is owned by ODOT unless shown otherwise on current tax assessor maps.

The project location is along Highway 22 from Fishermen's Bend Recreation Site through Mill City and Gates to the Maples Rest Area. The approximate project limits are shown below:

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

Project Phasing

This Project is divided into three phases:

- Phase 1 – Corridor Planning (Feasibility Analysis and Concept Development). This phase will include survey, right of way determination, draft environmental studies, conceptual design, cost estimates and related services for the approximately 6 ¼ miles of trail from Fishermen's Bend Park to the intersection of Wall St. and 1st Ave. in Mill City, and from the existing pedestrian bridge east of 5th Ave in Mill City to the Maples Rest Area east of Gates.
- Phase 2 – Preliminary Engineering through Final Design (PS&E) of the portion of the trail segment above as chosen by the Agency limited to the available construction funding. Additional segments may be added if supplemental funding for construction is secured. Authorization of this phase is solely dependent on available funding.
- Phase 3 - Construction contract administration, construction engineering and inspection ("CA/CEI") for construction of the trail segments chosen during Phase 2. Authorization of this phase is solely dependent on available funding.

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

Agency Responsibilities

- Coordination and communication of internal Agency staff;
- Provide access to available Project information, recommendations and goals;
- Review of Consultant progress to verify adherence to this 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;
- Coordinate with ODOT for approval of NEPA documentation.

Acronyms and Definitions

The acronyms and definitions that may be found in the SOW include, but are not limited to, those set forth in the following list:

https://www.oregon.gov/odot/Business/Procurement/DocsSOW/clpa_SOWdefs.docx.

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

B. STANDARDS and GENERAL REQUIREMENTS

1. Standards

a. Preliminary Engineering and Design Phase Services – The current edition of the following standards shall apply to this contract:

- AASHTO Geometric Design of Highways and Streets
- AASHTO Roadside Design Guide
- AASHTO Guide for the Development of Bicycle Facilities, 2024
- AASHTO LRFD Bridge Design Specifications
- Marion County Public Works Engineering Standards
- Guide for the Planning, Design and Operation of Pedestrian Facilities
- Manual on Uniform Traffic Control Devices (MUTCD)
- AASHTO Guide for Design of Pavement Structures
- ODOT Pavement Design Guide
- ODOT Geotechnical Design Manual
- ODOT Hydraulics Manual
- ODOT Bridge Design Manual
- National Environmental Policy Act (NEPA), 23 CFR 771
- Sections 401 and 404 of the Clean Water Act, 33 USC 1251
- Oregon Removal - Fill Law, ORS 196.800 through 196.990
- U.S. Army Corps of Engineers Wetland Delineation Manual
- Endangered Species Act (ESA), 16 USC 1531
- Oregon Fish Passage Law (OAR 635-412-0005(9)(d))
- ORS Chapters 209 and 672 Marion County Survey Standards
- ODOT Global Navigation Satellite System ("GNSS") Guidelines

b. **Construction phase Services** RESERVED

2. **Software and Format Requirements**

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

- Each draft and final text-based or spreadsheet-based deliverable shall be provided in MS Office file formats (i.e., MS Word, Excel, etc.) and must be fully compatible with version used by Agency.
- Consultant shall submit draft and final deliverables in electronic format via e-mail (and hard copy if requested).
- Consultant shall also submit any graphic files accompanying reports separately in .jpg or .tif formats unless specified differently by Agency.
- Consultant shall submit final design plans in AutoCAD Civil 3D 2024 .dwg format. The design plans must also be submitted in .pdf format.

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

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

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

4. **General Requirements**

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

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

- Consultant shall coordinate with Agency staff as necessary and shall revise draft deliverables to incorporate draft review comments.
- Consultant shall incorporate comments within 15 business days from receipt by Agency and return the revised deliverables to Agency staff, unless a different timeframe is specified for specific tasks or otherwise agreed to in writing by Agency.

D. **PROJECT COOPERATION**

Consultant shall only be responsible for those obligations and deliverables identified as being assigned to Consultant (or its subconsultants) in this Contract and the Statement of Work. All work assigned to other entities, other than subconsultants, is not subject to this Contract, but shall be the subject of separate Intergovernmental Agreements or contracts which will contain the obligations of those entities.

Any tasks or deliverables assigned to a subconsultant shall be construed as being the responsibility of Consultant. Any Consultant tasks or deliverables which are contingent upon receiving information, resources, assistance, or cooperation in any way from another entity (other than subconsultants) as described in this Statement of Work shall be subject to the following guidelines:

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

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

E. TASKS, DELIVERABLES and SCHEDULE

TASK 1 PROJECT MANAGEMENT

Consultant shall provide management and coordination of Services under this SOW for delivery of Tasks and Deliverables according to the agreed upon delivery schedule.

1.1 Administration & Record Keeping

Consultant shall:

- Prepare a Project design schedule using the Critical Path Method, prepared with MS Project software or approved equal. The Project schedule must include, but is not limited to: all major authorized tasks as agreed upon by the Parties, Project design team meetings, and milestones (type and date) specified in this SOW and required to complete all Services under this Contract. Consultant shall update the Project schedule during the Project if milestone or deliverable due dates are modified. For budgeting purposes, it is assumed that up to five (5) Project schedule updates will be necessary;
- Prepare invoices and progress reports according to the requirements set forth in the Compensation Exhibit 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 12 progress reports, representing a project schedule of 12 months, will be necessary
- Develop and maintain a Project file to include survey and engineering computations, assumptions, meeting agendas and minutes, working drawings, quality control and review

documentation, correspondence, and memoranda. (See Contract Terms & Conditions, Records Maintenance; Access)

1.1 Consultant Deliverables and Schedule

Consultant shall provide:

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

1.2 Coordination

Consultant shall:

- Coordinate with the APM as the main point of contact for coordination and management of Consultant Services under the Contract;
- Contact other Agency staff and regulatory Agency staff, if necessary throughout the Contract, to gather any additional information needed for the Project, Project site, regulations and guidance;
- Provide overall management, direction and coordination of staff (including sub-consultants, if any) to include any necessary internal Consultant staff meetings;
- Contact APM via telephone or other agreed upon communication means on a weekly basis to provide Project status information

1.2 Consultant Deliverables and Schedule

Consultant shall provide:

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

1.3 Project Meetings

1.3.1 Project Kickoff Meeting

Consultant shall organize, conduct, prepare for and attend a 2 hour Project kickoff meeting. The Project kickoff meeting will be held at Marion County Public Works Department with Agency Consultant's PM and other necessary Consultant staff in attendance. Consultant shall prepare the meeting agenda with input from the Agency. The purpose of the Project kickoff meeting is to review Project issues such as SOW; work products and deliverables; schedules; budgets; right of way; utility coordination/design; design criteria; guidance documents; standards and quality control. Consultant shall schedule Project kickoff meeting within 10 business days of Notice to Proceed (NTP). Consultant shall prepare draft meeting minutes for review by Agency. For budgeting purposes, it is assumed that up to six (6) Consultant staff shall attend the two (2) hour Project kickoff meeting.

1.3.2 Project Development Team Meetings

Consultant shall organize, conduct, prepare for and attend up to four (4) Project Development Team ("PDT") Meetings in-person. Each in-person PDT meeting will be 2 hours and held at Marion County Public Works Department with Agency, Consultant's PM and other necessary Consultant staff in attendance. Consultant shall prepare the meeting agenda with input from the Agency. Consultant shall prepare draft and final meeting minutes to be distributed to Agency and

all other meeting participants. For budgeting purposes, it is assumed that up to five (5) Consultant staff shall attend each in-person PDT meeting.

1.3 Consultant Deliverables and Schedule

For each meeting, Consultant shall provide:

- Meeting agenda submitted electronically to APM and all other meeting participants three (3) business days prior to meeting.
- Draft meeting minutes submitted electronically to APM and all other meeting participants within 2 business days of meeting.
- Final meeting minutes submitted electronically to APM and all other meeting participants within 7 business days of meeting.

TASK 2 SURVEY

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

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

The work in this task must be accomplished according to Agency standards.

2.1 Research (RESERVED)

2.2 Horizontal and Vertical Control Network

The purpose of this task is to provide the means by which the Project can be located relative to horizontal and vertical datum, map projection, and coordinate systems. Consultant shall establish a horizontal and vertical control network using the datum associated with the Project area or as approved by the Agency.

Existing Horizontal/Vertical Control Stations

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

Consultant shall establish horizontal control according to Agency standards using GNSS Static Observation and adjusted through a least-squares adjustment. . Differential leveling between control points is not included for Phase 1.

Consultant shall establish approximately 20 GNSS control points through the length of the survey.

2.2 Consultant Deliverables and Schedule

Consultant shall:

- Incorporate the information listed below into the deliverables listed in Tasks 2.4 and 2.5 as required for delivery of documents in subsequent tasks.
    - An adjustment report for one or more of the following, Least Squares adjustment for networks, an approved traverse adjustment method for traverses and/or a GNSS adjustment report when using GNSS.

- An ASCII file containing the coordinates for every network point set and found.
- If the levels were electronically processed then one copy each of the following: original raw level file as collected in the field, ASCII file showing level closure data, ASCII file with elevations on all network points and/or an ASCII file showing the level rod readings.
- Original field notes for the control network and one scanned copy of the original field notes in ".pdf" format.

2.3 Monument Recovery(RESERVED)

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

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

Topographic Data Collection

Consultant shall perform a LiDAR flight to collect topographic surface data between the boundaries described in Section A of this SOW. Consultant shall collect and tie additional topographic data of man-made and/or natural features using a variety of Agency approved methods. These methods include but are not limited to: collecting the data using terrestrial (Total Station), GNSS (RTK), 3D Laser Scanning (Mobile or Static), or station and offset.

Basemap

Consultant shall extract linework for road locations and driveway entrances, as well as significant existing structures within the project limits. Detailed linework in developed areas will be limited to edge of main roads, curb, or sidewalk. Detailed landscaping sections, improvements, and other infrastructure will not be extracted from the LiDAR data.

Digital Terrain Model ("DTM")

Consultant shall create a 3-dimensional digital terrain surface using the LiDAR point cloud collected in this subtask. Consultant shall generate a DTM at 1-foot contour intervals.

2.4 Assumptions

- Project datum will be OCRS (Salem Zone) NAD83, International Feet; NAVD88 (Geo unless otherwise specified by the Client at notice to proceed. Datum transformation of after notice-to-proceed will be considered additional services.
- Individual trees will not be located.
- Linework will include existing roadway, driveway entries, and major structures (visible from aerial) along the proposed trail alignment.
- A full detailed topographic basemap is not included.
- Topographic basemap linework will not cover entire flight corridor but will cover a 100-foot swath of the proposed trail alignment. Point cloud density of approximately 60ppm.
- No DTM points will be collected in the river or wetlands.

2.4 Consultant Deliverables and Schedule

Consultant shall provide the following deliverables electronically (PDF) to the APM per Task 1 Project Design Schedule:

- 1 copy of field notes
- Copy of the Civil 3D CADD Files (*.dwg) Base Map with Civil 3D DTM
- A geo-referenced orthometric aerial photo of the corridor.
- A point cloud of LiDAR data gathered (.las format).
- All files for the network control points in (ASCII) format

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

2.5 R/W - Boundary Resolution

The purpose of this task is to compile publicly available GIS tax lot linework in a CAD basemap.

2.5.1 Preliminary ROW Research

Consultant shall perform additional right-of-way resolution tasks to enhance the GIS-quality right-of-way linework, in selected areas to support design including up to 4 property lines or right of way lines within the project corridor that require higher accuracy linework to support design decisions and alternative analysis.

2.5.1 Assumptions

- No monuments will be set and a record of survey will not be filed with the Agency.
- GIS tax lot linework for the right of way basemap will not be confirmed or verified in its entirety and is intended for preliminary design and is not intended to replace a formal right-of-way resolution.
- Subtask 2.5.1 will include (up to) five (5) mobilizations of survey field crew to perform monument search and recovery in select areas of focused right of way resolution.

2.5.1 Consultant Deliverables and Schedule

Consultant shall provide the following deliverables electronically per Task 1 Project Design Schedule:

- Consultant will provide a basemap with the publicly available GIS tax lot linework and any additional right-of-way resolution performed per Subtask 2.5.1.

2.6 Record of Survey / Control, Recovery, Retracement (RESERVED)

2.7 R/W Engineering (Mapping & Descriptions) (RESERVED)

TASK 3 ENVIRONMENTAL SERVICES

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

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

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

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

3.2 Archaeological Resources

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

3.2.1 Literature Review/Site Visit/Technical Memo

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

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

Consultant shall examine the following:

- the State Historic Preservation Office ("SHPO") database in General Land Office ("GLO") maps;
- U.S. Geological Survey (USGS) topographic data
- the Oregon Historic Properties database
- Sanborn Fire Insurance Maps;
- Other records archives (i.e. historical societies; tribal archives) for known/potential prehistoric and historic archaeological resources within a 0.5 mile radius of the APE.

Additionally, Consultant will utilize a high-probability model informed by the Literature Review and the site visit (see below) to determine locations of high risk of encountering cultural resources.

http://www.oregon.gov/oprd/HCD/ARCH/docs/Master_Final_FieldGuidelines_June2015.pdf Consultant will conduct a site visit of the project area totaling approximately 6 ¼ miles of proposed trail. The site visit will focus on visiting resources within the APE identified during the Literature Review or in consultation with agencies or tribes to determine locations of high risk for resources or that will require additional archaeological fieldwork, avoidance or mitigation. All locations visited will be photographed. No cultural materials will be collected under this scope of work. Consultant field staff will take photos of the project area property and take notes of the landscape, foliage, and evidence of previous ground-disturbance for the purposes of formulating the probability of archaeological resources within the project area. Consultant will provide project proponent with all photos taken of the property with an associated photo log if requested.

Consultant shall prepare a Technical Memo that will include photos and information from the site visit, results of the Literature Review and probability model. The report will include recommendations for future work (i.e. coordination with the Oregon State Historic Preservation Office, coordination with relevant Tribal entities, conducting cultural resources surveys, etc.) and address any fatal flaws in initial project design from the perspective of cultural resources. Consultant will submit the draft document for review. Upon receipt of any comments on the draft document, Consultant will finalize the draft into a final preliminary cultural resources report for submittal to relevant Tribal entities or any applicable federal agency authorized by the Agency.

The Technical Memo will contain the following:

- A purpose statement and full Project description including:
  1. Location and legal description
  2. General environmental description
  3. Historic context
  4. Proposed construction activities
  5. Defined APE and APE map
  6. Total acreage of impact
- Results of SHPO/THPO database search including:

1. Brief summary of previous archaeological research completed within one mile of APE
2. Brief summary of recorded archaeological features within one mile of APE; include eligibility discussion if available.

- Results of map reviews including:
  1. Brief summary of features (trails, buildings, etc.) depicted on maps and within APE; include eligibility discussion if available.
- Description of site visit including date of survey, sites visited, and names and duties of personnel present on site visit
- Findings of site visit including ground conditions (percent visibility) and difficulties encountered, if any
- Identification of areas of high and low probability for archaeological resources within APE
- Recommendations for appropriate level of additional survey and subsurface exploratory probing, if any
- List of references cited
- Location map at 1:24,000 scale; aerial image (Google map acceptable) showing APE; and representative digital images of current conditions within APE

3.2.1 Consultant Deliverables and Schedule

Consultant shall prepare and submit:

- One electronic copy (in WORD format) of the Technical Memo to Agency for review per Task 1 Project Design Schedule.
- One electronic copy (in Word and PDF format) of the Technical Memo to Agency 2 weeks following receipt of draft review comments.

3.3 Historic Resources

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

3.3.1 Historic Resources Technical Memo

The purpose of the Historic Resource Technical Memo is to identify and characterize the historic resources to determine what may be impacted by the project. The Historic Resource Technical Meno is a scoping report that is not intended to be a comprehensive technical report. As part of developing the Historic Resource Baseline Report, Consultant shall examine the following in preparing the Historic Resources Baseline Report:

- the State Historic Preservation Office (“SHPO”) database General Land Office (“GLO”) maps;
- U.S. Geological Survey (USGS) topographic data
- the Oregon Historic Properties database
- National Register of Historic Places (NRHP), and National Historic Landmarks databases
- Sanborn Fire Insurance Maps;
- U.S. Geological Survey (USGS) topographic data
- Other records archives (i.e. historical societies; tribal archives) for known historic resources within a one-mile radius of the APE.

Consultant will conduct a site visit of the project area totaling approximately 6 ¼ miles of proposed trail. The site visit will focus on visiting resources within the APE identified during the Literature Review or in consultation with agencies or tribes to determine locations of high risk for resources or that may require additional documentation and assessment, avoidance or mitigation. All locations visited will be photographed. Consultant will provide project proponent with all photos taken of the property with an associated photo log if requested.
Consultant shall prepare the Historic Resources Technical Memo which includes:

- A purpose statement and full Project description including:
  1. Location and legal description
  2. General environmental description
  3. Historic context
  4. Proposed construction activities
  5. Defined APE and APE map
  6. Total acreage of impact
- Results of database search including:
- Photographs of resources that are eligible resources adjacent to or overlapping the APE
- Brief summary description of historic resources within and adjacent to the APE
- Results of map reviews including:
  1. Brief summary of features (trails, buildings, etc.) depicted on maps and within APE; include eligibility discussion if available.
- Description of site visit including date of survey, sites visited, and names and duties of personnel present on site visit
- Recommendations for appropriate level of additional survey, if any
- List of references cited
- Location map at 1:24,000 scale; aerial image showing APE; and representative digital images of current conditions within APE

3.3.1 Consultant Deliverables and Schedule

Consultant shall prepare and submit:

- One electronic copy (in WORD format) of the Draft Historic Resources Technical Memo to Agency for review per Task 1 Project Design Schedule.
- One electronic copy (in WORD and PDF format) of the Final Historic Resources Technical Memo to Agency 2 weeks following receipt of draft review comments.

3.4 Hazardous Materials

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

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

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

- Conduct a Hazardous Materials Desktop Review to identify potential sources of contamination that could impact property acquisition or construction.

3.4.1 Hazardous Materials Corridor Study

Consultant shall conduct a Hazardous Materials Desktop Review in general accordance with the following standards and guides:

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

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

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

Consultant shall review DEQ files, available using DEQ's Your DEQ Online Database https://ordeq-edms-public.govonlinesaas.com/pub/login, to determine whether contamination from adjacent facilities is likely to impact project construction. Alternatively, this review may be conducted using commercially available database reports such as provided by EDR.

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

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

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

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

The resource(s) selected must, if possible, provide historic information regarding land use back to 1935 at 10-year intervals, or the Consultant must demonstrate that such information is not readily available. Consultant shall review pertinent records that may be made available by the Agency as they relate to the environmental condition of the project corridor.

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

Consultant shall prepare a memorandum summarizing the information obtained through the activities listed above. The memorandum must include conclusions that identify specific sources of contamination that could impact project construction and recommendations for further investigation, if needed. The memorandum will not constitute a full HMCS in accordance with the standards listed above, as no site reconnaissance is included in the scope and the resulting memorandum will not fulfill the requirements of an HMCS, thus the terminology "Limited HMCS Memo" is used below.

3.4.1 Consultant Deliverables and Schedule:

Consultant shall prepare and submit:

- Draft Limited HMCS Memo to APM per Task 1 Project Design Schedule.
- Final Limited HMCS Memo to APM within 2 weeks following receipt of draft review comments.

3.5 Biological Resources Compliance and Permitting

Consultant shall complete the appropriate biological resources tasks presented below based on the Preferred Alternative. General biological work must be executed by a qualified biologist who meets the following minimum qualifications: 3 full years of environmental analysis or resource Project management experience and a Bachelor's degree that included 30-quarter or 20-semester hours in biology, environmental science, natural science, or closely related field. An individual who makes determinations of effect under the ESA and prepares ESA documentation must also be an ESA qualified biologist as per ODOT Technical Services Bulletin GE14-03(B) or most current (http://www.oregon.gov/ODOT/Engineering/Doc_TechnicalGuidance/GE14-03b.pdf).

3.5.1 Endangered Species Act (ESA) Plant Survey and No Effect Memorandum

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

Consultant shall:

- Use a qualified ESA biologist(s) to conduct 2 field surveys of the area of API at the appropriate time for each ESA listed plant and wildlife species with the potential to be present in the API and their potential suitable habitats following standard/appropriate field survey techniques.
- Conduct Oregon Department of Agriculture ("ODA"), Oregon Department of Fish and Wildlife ("ODFW"), National Marine Fisheries Service ("NMFS"), and U.S. Fish and Wildlife Service ("USFWS") database searches to acquire ESA information for the Project area.
- Contact ODOT or Oregon Biodiversity Information Center ("ORBIC") or both, as needed, to obtain data regarding listed threatened and endangered species as well as those proposed for listing under the federal and state ESA that may occur within the API. Consultant shall determine if Federally-listed species and their habitat will be affected by the Project.
- Communicate with local ODA, ODFW, NMFS and USFWS staff via phone or email to acquire additional specific ESA information for the Project area. Make ESA effects determinations following the analysis of gathered ESA information. If a determination is No Effect for at least one listed or proposed species, obtain ODOT concurrence on the No Effects determination.
- Coordinate with design staff and Agency to develop appropriate measures (i.e., construction special provisions) to avoid impacting listed species proposed for coverage in the NE Memo if avoidance measures are necessary to obtain the No Effect determination.
- Prepare draft NE Memo for the Project area using the most recent ODOT provided form; provide to ODOT and Agency for review and comment.
- Prepare final NE Memo for ODOT and Agency acceptance.
- Notify ODOT and Agency immediately if Consultant determines that an ESA determination of No Effect is no longer appropriate.

3.5.1 Consultant Deliverables and Schedule

Consultant shall prepare and submit:

- One electronic PDF copy of the Draft No Effect Memo to ODOT and Agency for review per Task 1 Project Design Schedule.
- One electronic PDF copy of the Final No Effect Memo to ODOT and Agency within 2 weeks following receipt of draft review comments.

3.5.2 Federal-Aid Highway Program ("FAHP") ESA Programmatic Documentation (RESERVED – FUTURE TASK)

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

If the Project area is within current or historic Native Migratory Fish ("NMF") habitat and if a fish passage trigger identified in the law (OAR 635-412-0005(9) (d)) will occur, then the Project must address fish passage. Consultant shall scope to determine whether or not the proposed Project must address the Oregon Fish Passage Law.

Consultant shall:

- Determine if proposed Project is within current or historic NMF habitat -
  - Consultant shall make use of existing information resources on NMF fish distribution and location of identified fish passage barriers (e.g., ODOT, County and ODFW GIS mapping, presence/absence databases and models).
  - Consultant shall contact ODOT biologist and ODFW district biologist for site specific and watershed information on the distribution of NMF and the presence of identified fish passage barriers to determine if NMF as defined in (OAR 635-412-0005(32)) are present or were historically present within the Project API or upstream or downstream of the Project area.
- Determine and document if proposed Project will trigger the Oregon fish passage law -
  - Consultant shall review information provided by ODOT and County and or previous tasks, including baseline and background reports, Project purpose and need, and available design information.
  - Consultant shall evaluate the Project for all work below ordinary high water within a road crossing of a stream and, if applicable, in-channel work to determine if the fish passage law applies to the Project. Common triggers for fish passage law include culvert and bridge construction, removal, replacement or major repair, or in-channel work for scour protection or grade control.
  - Based on the above, Consultant shall determine if the Project will trigger the Oregon fish passage law and Consultant shall include all findings (including fish presence, historic fish presence, and fish passage triggers, as appropriate) in a Fish Passage Scoping Memo.

3.5.3 Consultant Deliverables and Schedule

Consultant shall prepare and submit:

- Draft Fish Passage Scoping Memo to ODOT and Agency for review per Task 1 Project Design Schedule
- Final Fish Passage Scoping Memo to ODOT and Agency within 2 weeks of receiving comments.

3.5.4 Fish Passage Scoping Field Visit

Consultant shall conduct 1 field visit(s) to gather information missing from desk scoping that is necessary to determine whether or not the Project will trigger the Oregon Fish Passage Law.

3.5.4 Consultant Deliverables and Schedule

Consultant shall prepare and submit:

- Draft Fish Passage Scoping Field Visit Notes to ODOT and Agency for review per Task 1 Project Design Schedule
- Final Fish Passage Scoping Field Visit Notes to ODOT and Agency within 2 weeks of receiving comments

3.5.5 Determine Appropriate Approach to Meet Fish Passage Requirements

Consultant shall collect necessary data to determine the appropriate approach to meet fish passage requirements.

Consultant shall:

- Conduct up to three (3) visits to the Project area to document existing site conditions and, if applicable, confirm background information.

- Field work to complete this task shall be accomplished by a qualified fish biologist with a Bachelor's degree in biology, fisheries or equivalent, and a minimum of 2 years of experience in the Pacific Northwest evaluating fish passage conditions, fish presence and habitat use by species and life stage, and fish habitat quality.
- If available, Consultant shall utilize maps with existing NMF fish distribution and fish passage barrier information and confirm this information in the field.
- If existing maps are incomplete or inaccurate, Consultant shall collect information on locations of fish passage barriers, potential NMF fish distributions, and habitat quantity and quality as described below.
- If necessary to collect the above information, Consultant shall obtain right of entry to private property to walk the watercourse over suitable distances upstream and downstream of the Project site.

- Determine the number and locations of artificial obstructions and natural barriers above and below the Project site.
  - Consultant shall map locations and document distances of all natural and artificial barriers upstream of the Project site to the first full barrier or to the end of fish use.
  - Consultant shall map locations and document distances of all natural and artificial barriers downstream of the Project site to the first full barrier or to the location of documented fish use downstream of the Project area, whichever is closer.
  - A qualified fish biologist, as described above, shall determine the level of barrier to NMF according to the definitions in the ODFW Fish Passage Priority List (Loffink 2013 or current version).
- Determine the amount and quality of habitat and potential NMF species use above the artificial obstruction occurring at the Project site.
  - Consultant shall determine the distance and map the amount of suitable habitat to the next full fish passage barrier or the end of fish use upstream of the Project site.
  - Consultant shall take average active channel widths above and below the road crossing outside of the influence of the crossing.
  - A qualified fish biologist shall evaluate the amount and quality of the habitat to support the life stages and life cycle needs of NMF that would use the habitat if they had full access to area between the Project site and the next full fish passage barrier (including spawning, rearing, sheltering and feeding, migration).
  - Consultant shall document the species and life stages of NMF that would use the habitat above the Project area if full volitional access were provided.
- Incorporate analysis of the field assessment data and conclusions into the Fish Passage Scoping Memo.
  - Consultant shall evaluate the field information in the context of meeting fish passage requirements and amend the analyses to the Fish Passage Scoping Memo
  - In consultation with ODFW and ODOT, Consultant will develop a recommendation on the appropriate way to meet fish passage requirements at each site with a fish passage trigger in the Project location and include the recommendation(s) in the Fish Passage Scoping Memo using the following guidelines:
    - If the habitat for NMF upstream of the Project site is limited and poor quality or NMF cannot currently access the Project area, then there may be no appreciable benefit to providing fish passage at the Project site and a Fish Passage Exemption may be appropriate.
    - If there would be a benefit to NMF if passage was provided at the Project location, but the cost of providing passage outweighs the benefits to NMF, then a Fish Passage Waiver may be appropriate. Fish Passage Waivers require that the Project mitigate for lack of passage at the Project site by providing a net benefit to NMF elsewhere that exceed the benefits of providing passage at the Project location.
    - If providing passage at the Project site would provide a significant or cost effective benefit to NMF, or there is no appropriate mitigation option, then meeting Fish Passage Criteria at the Project site may be appropriate.

- Coordinate and attend 1 on-site visit with the ODFW District Fish Biologist (or their designated representative), NMFS Liaison (if appropriate), and ODOT Biologist to discuss the Project and the appropriate strategy to address fish passage (i.e., exemption, waiver, or fish passage plan).
  - If fish passage will be provided on site, Consultant shall discuss the appropriate fish passage design methodology with ODFW and ODOT, including whether "Larger-Scale Crossing Design," "Hydraulic Design," or "Stream Simulation Design" will be used to meet passage requirements.
  - If the passage standard can be met with Project modifications or design exceptions, Consultant shall discuss applicable fish passage standards, Project challenges, and possible modifications to the Project to meet Oregon Fish Passage Law and ODFW/NMFS fish passage standards.
  - If the Project contains a culvert that could be repaired under the conditions of the ODOT-ODFW Culvert Repair Programmatic Agreement, Consultant shall discuss this approach to address the culvert deficiencies.
  - Consultant shall prepare site visit meeting notes that include topics discussed and recommendations from ODFW/NMFS for the Project to address fish passage requirements.
  - Following the site visit and dissemination of meeting notes, Consultant shall coordinate with ODFW/NMFS via email and phone to verify ODFW/NMFS Project design requirements, expectations and documentation necessary to address fish passage to the approval of ODOT and ODFW.
  - Consultant shall document the fish passage approach recommendation in the Fish Passage Scoping Memo with inclusion of the following information:
    - Description of the Project location and proposed in-water work activity(s) triggering fish passage requirements
    - Confirmation of current or historic NMF presence or absence at the Project site and if present, a map identifying existing or historic NMF distribution above and below the Project area
    - Description of evaluation methods, including any field survey dates, field personnel and qualifications, background information reviewed, and summary of meetings or other communications with ODFW and ODOT and Agency
    - Summary of amount and quality of stream habitat types and conditions upstream of the Project area to the next full barrier, if appropriate
    - A map and quantification of potential NMF distribution upstream of the Project area to the next full barrier, if appropriate
    - A table with fish passage barriers upstream of the Project to the first full barrier and fish passage barriers downstream of the Project to the first full barrier or to documented fish presence. The table shall contain:
      - Barrier location (latitude and longitude)
      - Distance upstream or downstream from the triggering action in the Project area
      - Barrier description and status
      - Level of passage provided at the barrier
    - A map of barriers identified in the above table
    - An analysis and recommendation of appropriate fish passage approach

3.5.5 Consultant Deliverables and Schedule

Consultant shall prepare and submit:

- Draft Fish Passage Scoping Memo (1 electronic MS Word copy) to ODOT and Agency for review per Task 1 Project Design Schedule
- Final Fish Passage Scoping Memo (1 electronic PDF copy) to ODOT and Agency within 2 weeks of receiving comments.

3.5.6 Fish Passage Exemption Application (RESERVED)

3.5.7 Fish Passage Waiver (RESERVED)

3.5.8 Fish Passage Plan (RESERVED)

3.5.9 Scientific Take Permit for Fish Salvage Operations (RESERVED)

3.5.10 Bird Protection (RESERVED)

3.6 Wetland and Water Resources

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

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

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

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

- Determine wetland boundaries within the PSA in accordance with the criteria and methods described in the *1987 Corps of Engineers Wetland Delineation Manual (Environmental Laboratory Technical Report Y-87-1)* and appropriate Regional Supplements.
- Collect GPS data to show wetland and upland sample plot locations, and the wetland boundaries. Consultant shall provide data point locations to City/County/Survey Consultant. Prepare maps of approximate wetland boundaries using GPS data collection.
- Ensure that field methods used and data collected meet the U.S. Army Corps of Engineers ("USACE") and DSL technical requirements for wetland delineations and ordinary high-water demarcations. Collect and record wetland delineation data on approved wetland determination data sheets for possible inclusion with a wetland delineation report.
- Assess the OHWM elevation using ODOT accepted field indicators. Consultant shall notify Agency if wetlands are present and will be impacted.

If wetland(s) or waters(s) are impacted, Consultant shall collect field data during this task and use it for the deliverables for Tasks 3.6.2, 3.6.3, or 3.6.4 if these tasks are triggered.

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

- Description of the PSA;
- Summary of existing available information, noting the standard information that is not available (i.e., if no County soil survey coverage exists for the area, then it must be stated);
- Field reconnaissance methods;
- Results of field reconnaissance;
- Data Sheets;
- Color photographic record depicting on-the-ground conditions; and
- Sketch mapping depicting locations of wetlands or waterways within the study area.

3.6.1 Consultant Deliverables and Schedule

Consultant shall prepare and submit:

- Sketch map of approximate wetland and waters boundaries to Agency (if present) per Task 1 Project Design Schedule.
- Electronic copy (Word) of the draft Wetland Determination Technical Memo to Agency for review per Task 1 Project Design Schedule

3.6.2 Wetland/Waters of the U.S./State Delineation Report (RESERVED)

3.6.3 Wetland Functional Assessment Report (RESERVED)

3.6.4 Stream Functional Assessment (RESERVED)

3.7 Environmental Permits and Clearances (RESERVED)

TASK 4 PUBLIC INVOLVEMENT SUPPORT

Consultant shall assist Agency with public involvement and outreach, as defined below, for the planning and design phase of the Project. Agency will have overall responsibility for the Project public involvement and outreach program.

Applicable Standards:

- ODOT's NEPA Manual addresses public involvement requirements for FHWA funded NEPA projects, specifically for Categorical Exclusions and Programmatic Categorical Exclusions in Oregon. The requirement, as interpreted for Oregon in the ODOT NEPA Manual, was approved in 2017 by FHWA Oregon Division. The ODOT NEPA Manual is available at: https://www.oregon.gov/odot/GeoEnvironmental/Docs_NEPA_Manual/412.NEPA_Manual.pdf
- All electronic materials must be finalized in an ADA accessible format (EPA Section 508). https://www.section508.gov/

Task 4.1 Public Involvement Plan ("RESERVED")

Task 4.2 Public Involvement Meetings

Consultant shall attend up to four (4) meetings or Open Houses, as listed below, to provide Project information and address specific questions and concerns related to the Project.

- Community Open Houses (2).
- Marion County Board of Commissioners meetings (2).

Consultant shall document input received from the meetings and prepare written summaries.

Consultant shall prepare the following:

- Project fact sheets.
- Up to three (3) Roll maps.
- One (1) project Video
- Meeting summary

Agency will schedule, coordinate the location and advertise all the meetings. The following is assumed for budgeting purposes:

- Community open house – it is assumed that up to three (3) Consultant staff shall attend each two (2) hour public meeting.
- Marion County Board of Commissioners meetings – it is assumed that up to two (2) Consultant staff shall attend each two (2) hour meeting.

4.2 Consultant Deliverables and Schedule:

Consultant shall provide the following:

- Written meeting summaries electronically (in Word (.docx) format) within 5 working days of each meeting to APM.
- An electronic copy of each Project information item prepared under Task 4.2 and a minimum of 30 hard copies of handouts and a single copy of roll maps or project boards to be presented at each meeting.

TASK 5 UTILITIES

Consultant shall perform the coordination of all utility facilities within the Project limits in accordance with the Oregon Utility Relocation Manual (available at: https://www.oregon.gov/ODOT/ROW/Pages/Utilities.aspx under "Policies and Guidance").

If any utility is nonresponsive or uncooperative, Consultant shall notify Agency, and Agency will communicate with the utility to affect a solution.

5.1 Utility Location and Coordination

Consultant shall perform utility coordination and liaison activities with utility owners/operators for the Project. Consultant shall comply with the current version of the utility coordination policy requirements as described in the Oregon Utility Relocation Manual. This work includes reviewing utilities that may be in conflict with the Project work and utility relocation coordination with the utility owners to resolve those potential conflicts. Additionally, Consultant shall obtain system mapping from utilities located within the Project limits. Consultant shall use this information to confirm the survey map as developed under Task 2, Surveying. Where potential conflicts exist, Consultant shall work with the utility owner to acquire their "pothole" information for verification of utility size and depth.

5.1 Consultant Deliverables and Schedule

Consultant shall provide:

- Existing utility information gathered in Task 5.1 to be included in the survey map / base map
- Record of communications with each utility within the Project limits. Copies of communication record must be provided to APM within 3 days of request.

5.2 Utility Report

Consultant shall prepare a draft and final "Utility Report" for those utilities located within the Project limits. The "Utility Report" must include as many of the following items that are known and applicable:

- Description of utilities located within the Project limits
- Utility facility's structure dimension
- Probable buried depth of cover or aerial lowest height of wire
- General description of utility facility structure material
- Reliance upon other utilities in the vicinity (joint use facility)
- Description of the means used to verify facility location and limits of conflict (test hole data a.k.a. "pothole" verification)
- Proposed project construction requirements
- Potential utility conflicts
- Probable conflict resolution (relocation, adjustment concept, or protect in place)

5.2 Consultant Deliverables and Schedule

Consultant shall provide:

- Draft Utility Report to be submitted per Task 1 Project Design Schedule.

5.3 Utility Coordination Meetings

To facilitate the development of each utility relocation plan, Consultant shall organize, conduct, prepare for and attend the following utility coordination meetings with utilities within the Project limits:

- Up to 2 virtual individual meetings with potentially affected utilities.

Consultant shall prepare a meeting agenda, and meeting minutes summarizing the discussions at the group meeting. For budgeting purposes it is assumed that up to 2 Consultant staff shall attend each 1 hour meeting.

5.3 Consultant Deliverables and Schedule

For each meeting Consultant shall provide to APM:

- Meeting Agenda and Meeting Minutes for each meeting; agenda due within 2 business days prior to meeting; meeting minutes due within 5 business days after meeting

https://www.oregon.gov/ODOT/ROW/Pages/Utility-Forms.aspxhttps://www.oregon.gov/ODOT/ROW/Pages/Utility-Forms.aspxmailto:UtilityandRailProgra@odot.state.or.ushttp://www.oregon.gov/ODOT/ROW/Docs_UtilityForms/utility_billing_memo.doc

TASK 6 GEOTECHNICAL SERVICES

Consultant shall conduct geotechnical site reconnaissance and desktop study to advise the design team on the following:

- Typical surface and subsurface conditions in proposed improvement areas, including bridge foundations, retaining walls, and grading;
- Surface and subsurface conditions in area of existing and potential slope instability; and
- Risk to existing infrastructure and improvements.

Consultant shall provide documentation which summarizes and presents the results of the site reconnaissance, desktop study, evaluations, and concept-level recommendations.

6.1 Data Review / Reconnaissance

Data Review:
Consultant shall review available existing information to evaluate the following:

- Geologic conditions along the proposed Project alignment, such as geologic units, historic land use, fill materials, and geologic hazards.

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

- Existing published and unpublished literature from County, ODOT, federal, city, or county records
- Published geologic literature including geologic or hazard maps
- Previous geological and geotechnical reports from County, ODOT, federal, city, , or other officials, consultants, groups or individuals pertinent to the Project
- As-built roadway plans (as available)
- Bridge plans and Foundation or Geotechnical Data Sheets
- Maintenance records

Site Reconnaissance:
Consultant shall conduct a geologic, and geotechnical reconnaissance of the site consisting of up to 2 separate site visits. Consultant shall identify the following:

- Geologic conditions at the Project site, any geologic hazards present and their impacts to the proposed Project elements; and
- General condition of the existing infrastructure.

As part of the site reconnaissance work, Consultant shall:

- Observe surface conditions that may be indicative of subsurface conditions of concern, as well as past or ongoing geologic processes (e.g., areas of seeps or springs, erosion, unstable slopes, shallow groundwater, roadway settlement, offsets and depressions, existing earthwork performance, exposed soil and bedrock units).
- Identify site constraints, staging concerns (for exploration and construction).
- Identify potential exploration and monitoring locations.

6.1 Consultant Deliverables and Schedule:

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

6.2 Concept-Level Geotechnical Desktop Study

Consultant will prepare concept-level evaluations of proposed project elements. Consultant will evaluate the geotechnical aspects of design alternatives.

Consultant assume up to six (6) coordination meetings with the design team to work through various alternatives and advise on the geotechnical aspects of design decisions.

Consultant shall prepare a Concept-Level Geotechnical Desktop Study. The Concept-Level Geotechnical Desktop Study must:

- Include findings of site reconnaissance;
- Include findings of desktop study;
- Provide pros and cons of design alternatives;
- Summarize the concept-level geotechnical recommendations; and
- Provide recommendations for future tasks.

6.2 Consultant Deliverables and Schedule:

Consultant shall provide:

- Concept-Level Geotechnical Desktop Study in PDF format per Task 1 Project Design Schedule.

TASK 7 HYDRAULICS RELATED SERVICES

Consultant shall provide stormwater management and hydraulic related design services under this SOW for delivery of tasks and deliverables according to the agreed upon delivery schedule.

7.1 Hydraulic Site Investigation

The purpose of this subtask is to identify existing information and field conditions.

Consultant shall:

- Obtain the Flood Insurance Study ("FIS") report and if available the Flood Insurance Rate Map using the Federal Emergency Management Agency ("FEMA") web site.
- Review local floodplain ordinances to determine if there are any applicable to this water body.
- Determine if applicable stream gauge records exist, and obtain them, if possible.
- Locate and obtain existing topographic maps of the tributary drainage basin.
- Visit the bridge/culvert Project site to observe site conditions, physical properties, and collect data needed to perform a thorough hydraulic study.
- Evaluate the site and determine survey data requirements for hydraulic analysis.
- Determine channel and floodplain hydraulic roughness values (document with photographs).
- Record observations with respect to the following:
  - Lateral channel stability.
  - Stream channel hydraulic roughness.
  - Aggradation or degradation of bed material.
  - Existing evidence of scour and/or erosion.

7.1 Consultant Deliverables and Schedule:

Consultant shall incorporate the information from this task into deliverables for Task 7.4.

7.2 Hydrologic Analysis

The purpose of this subtask is to perform hydrologic analysis to determine appropriate flow rates for design of various Project elements.

Consultant shall:

- Review the ODOT Hydraulic Manual and available hydrologic data sources to determine the most appropriate 2-, 10-, 25-, 50-, 100-, and 500-year design flow for the proposed bridge/culvert.
- Analyze available stream gauge records to calculate flood frequency and flow duration values to support hydraulic analysis and design.

  In the absence of stream specific data, Consultant shall delineate the tributary drainage basin utilizing available topographic maps and utilize the regional regression equations described in the U.S. Geological Survey ("USGS") magnitude and frequency of floods in Western Oregon to predict design flows.

7.2 Consultant Deliverables and Schedule:

Consultant shall incorporate information from this task into deliverables for Task 7.4

7.3 Hydraulic Analysis

The purpose of this subtask is to perform a variety of hydraulic analysis in support of design, and provide hydraulic design recommendations related to bridges and culverts.

Consultant shall:

- Simulate hydraulic conditions of the stream using FlowMaster (Connection Edition) and HY-8 software for culvert crossings and HEC-RAS for Bridge crossings.
- Create a model to simulate "Existing Conditions" at the proposed bridge site to determine current water surface profiles, velocities, depths, and flow area for the various design flows.

Bridge Hydraulics

Consultant shall:

- Create a model for up to 1 alternative to simulate "Proposed Bridge" at water way crossing to determine water surface profiles, velocities, depths, and flow area for the various design flows.
- Provide waterway opening design recommendations.

Culvert Hydraulics

Consultant shall:

- Create a model for up to 1 alternative to simulate "Proposed Culvert" at 14 anticipated water way crossings to determine water surface profiles, velocities, depths, and flow area for the various design flows
- Provide culvert size and material recommendation.

7.3 Consultant Deliverables and Schedule:

Consultant shall incorporate information from this task into deliverables for Task 7.4.

7.4 Hydraulics Recommendation Memo

The purpose of this subtask is to summarize the findings of the hydraulic related services and document the design recommendations.

Consultant shall prepare a draft version of the Project Hydraulics Recommendation Memo per Marion County and Federal-Aid Highway Program guidelines summarizing the hydraulic site investigation.

- Consultant shall prepare a final Hydraulics Recommendation Memo containing preliminary design recommendations for hydraulic related services and to reflect Agency's and ODOT review comments and to include changes to hydraulic related design recommendations that need to be modified due to advancement of the overall Project design.

7.4 Consultant Deliverables and Schedule:

Consultant shall provide:

- Draft Hydraulics Recommendation Memo in PDF file format, along with an MS Word file containing the report narrative, due with the Task 17.3 Draft Path Alternatives Feasibility Report.
- Final Hydraulics Recommendation Memo, PDF file of complete report, and, due with Task 18.1 Draft Conceptual Design Package.

7.5 Stormwater Management Design

The purpose of this subtask is to design stormwater systems for treatment of drainage in the Project.

Stormwater Quality and Quantity Design

The purpose of this subtask is to provide design of stormwater management facilities that provide water quality treatment of highway runoff per Local Agency standards and/or Federal Aid Highway Program Programmatic Biological Opinion, whichever standard is most strict.

Consultant shall:

- Define Contributing Impervious area.
- Delineate on-site drainage subbasins.
- Identify treatment Best Management Practice ("BMP") types applicable for the site.
- Identify potential locations to site facilities within and outside the existing R/W.
- Evaluate constraints to siting a stormwater facility (i.e.-drainage area, adjacent grades, roadway safety, presence of existing utilities, protected resource areas, etc.)
- Prepare up to 1 stormwater management strategy that combines potential stormwater facilities into a comprehensive solution for meeting the needs of the Project.

7.5 Consultant Deliverables and Schedule:

Information from this task shall be incorporated into deliverables for Tasks 7.6.

7.6 Stormwater Design Recommendation Memo

The purpose of this subtask is to provide preliminary stormwater design recommendations.

- Consultant shall prepare a preliminary version of the Project Stormwater Design Recommendation Memo per Marion County and Federal-Aid Highway Program guidelines containing preliminary stormwater facility design recommendations.

7.6 Consultant Deliverables and Schedule:

Consultant shall provide:

- Draft Stormwater Design Recommendation Memo in PDF file format, along with an MS Word file containing the report narrative, due with Task 18.1 Draft Conceptual Design Package.

7.7 Stormwater Operation and Maintenance (O&M) Manual (RESERVED)

7.8 Temporary Water Management Design (RESERVED)

7.9 Floodplain Impact Analysis (RESERVED)

TASK 8 TRAFFIC ENGINEERING & MANAGEMENT (RESERVED)

TASK 9 RAILROAD COORDINATION AND SUPPORT (RESERVED)

TASK 10 ROADWAY DESIGN

Consultant shall provide roadway and trail design Services under this SOW for delivery of tasks and deliverables according to the agreed upon delivery schedule.

10.1 Design Criteria

Consultant shall prepare draft and final design criteria. Design criteria must be consistent with AASHTO Geometric Design of Highways and Street, 2018 and AASHTO Guide for the Development of Bicycle Facilities, 2024 and Marion County Public Works Engineering Standards. Consultant shall present the design criteria in a table or matrix format listing all conditions, assumptions and minimum standards for the roadway and multi-use trail design elements of the Project. This includes the following:

- Determine the following multi-use trail design criteria elements
    - Determine bicycle design speed
    - Determine stopping sight distance considerations
    - Determine minimum horizontal and vertical clearances
    - Determine minimum and maximum cross slope and minimum horizontal curve radius
    - Determine maximum grade and vertical curves
    - Determine multi-use trail cross section elements:
        - Minimum trail width
        - Shoulder width/shy distance
        - Pedestrian railing criteria
        - Curb ramps
        - Side slopes
        - Ditches or swales (drainage facilities)
- Determine each of the following for all roadways crossed by or potentially impacted by the multi-use trail alternatives:
    - Obtain functional classification facility based on current Transportation System Plan (“TSP”)
    - Determine design vehicles
    - Obtain existing and design year average daily traffic (“ADT”) from traffic report or Project Prospectus
    - Determine design speed
    - Determine pedestrian and ADA design considerations
    - Determine bicycle design considerations
    - Review crash data / history
    - Determine roadside design requirements (clear zone)
    - Determine sight distance considerations
    - Determine cross slope, horizontal curves, and super-elevation
    - Determine maximum grade, vertical curves
    - Determine cross section elements as needed based on anticipated impacts from multi-use trail:
        - Number and width of travel lanes
        - Shoulders
        - Curbs
        - Sidewalks/Parallel Multi-use Trail
        - Curb ramps
        - Side slopes
        - Ditches or swales (drainage facilities)
        - Parking

10.1 Consultant Deliverables and Schedule:

Consultant shall provide:

- Draft design criteria electronically to APM per Task 1 Project Design Schedule.
- Final design criteria electronically to APM within 2 weeks from receipt of Agency comments.

10.2 Concept Plans/Alternative Analysis

Consultant shall work with Agency to develop up to 2 separate alignment alternatives for multi-use trail based on initial solutions from the scoping notes and Project prospectus, suggestions from the Agency, and current Agency and AASHTO design standards.

The trail corridor will be broken into up to 5 separate segments with up to 2 unique alignment alternatives developed for each segment. Consultant shall develop each alternative to concept level design sufficient to establish construction limits, quantities and major construction activities. Each alternative must have horizontal and vertical alignment developed that meets minimum design standards. Consultant shall prepare a conceptual drawing for each alternative that communicates both the character defining and functional elements of the trail alternative. Trail features identified for each alternative may include the following:

a. Fences, barriers, railing types and locations
b. General wall types and locations
c. Proposed bridge types and locations
d. Roadway crossing elements
e. Major drainage elements, culverts, etc.
f. Proposed site furnishings or amenities

The drawings must utilize aerial flown topographic survey data or corridor roll plot on an aerial map at a scale of 1"=100' (or similar useful scale). Autodesk InfraWorks software design visualizations of the proposed alignment alternatives will be developed to support team meetings and decision making for the design alternatives. Geometric and trail design elements that do not meet design standards must be identified as needing a design exception. Consultant shall analyze each alternative and determine the potential benefits and impacts associated with construction of the proposed alternative. Potential benefits and impacts to be considered include, but are not limited to, right of way, costs, access, safety, utilities, constructability, permitting and environmental. The benefits and impacts will be documented in the Draft Path Alternatives Feasibility Report developed under Task 17.3.

Consultant shall prepare a construction cost estimate for each alternative and segment that includes the major construction items and quantities that can be identified at this level of design detail. The alternative cost estimates will be documented in the Draft Path Alternatives Feasibility Report developed under Task 17.3.

10.2 Consultant Deliverables and Schedule:

Consultant shall provide:

- Corridor roll plot Drawings to APM electronically (PDF) per Task 1 Project Design Schedule.

10.3 Roadway Design Exceptions (RESERVED)

TASK 11 BRIDGE DESIGN

Consultant shall perform preliminary structural analysis and design. Consultant shall base the general design upon the applicable sections of the AASHTO LRFD Bridge Design Specifications. Consultant shall address other design requirements and costs conforming to AASHTO and Agency standards.

Deviations from these standards require prior approval by the Agency.

11.1 Phase I: Feasibility Analysis Structural Support

Consultant shall provide technical support to characterize the structure needs along the alignments being considered. Consultant shall provide qualitative assessments of the relative advantages and disadvantages of each alignment as relates to those structure needs to help inform the final alignment selection. Consultant shall characterize these recommendations in Task 17.3 Feasibility Report.

11.2 Phase II: Concept Development - Ravine Crossings Type, Size and Location ("TS&L)

Consultant shall perform an alternatives analysis to determine the preferred crossing type to accommodate a pathway at the following locations:

Minto Creek
Roland Creek
Ravine near OR22 milepost 33.7.

Consultant shall evaluate up to 3 alternatives consisting of a bridge, a retained structure over a culvert extension, and an embankment over culvert extension, in order to develop a recommended crossing type. Consultant shall develop recommendations by using evaluation criteria such as cost, stage construction, speed of construction, environmental impacts, right-of-way requirements and durability. Crossings shall be sized as determined by environmental permitting and hydraulic requirements, and foundations shall be in agreement with geotechnical findings and recommendations.

Consultant shall address the findings and recommendations in the Ravine Crossings TS&L narrative:

- Type, size and location recommendation for the preferred crossing.
- Outline of site-specific constraints, including but not limited to; topography, geology, hydrology, environmental constraints and requirements, permits, R/W, utilities, geotechnical and cost

Consultant shall prepare concept exhibits for any preferred bridge or wall structures.
Consultant shall prepare quantity-based cost estimates for the alternatives considered with a 30% contingency applied.

Consultant shall resolve any comments received on draft Ravine Crossings TS&L into the final Ravine Crossings TS&L.

11.2 Consultant Deliverables and Schedule

Consultant shall provide:

- Draft Ravine Crossings TS&L including narrative, cost estimates, and concept exhibits for the preferred alternatives with Task 18.1 – Draft Conceptual Design Package.
- Final Ravine Crossings TS&L including narrative, cost estimates, and concept exhibits for the preferred alternative with Task 18.1 – Draft Conceptual Design Package.

11.3 Phase II: Concept Development - Structures Alternative Analysis (Fish Bearing Streams)

Consultant shall perform an alternatives analysis to determine the preferred structure type to accommodate a pathway over fish bearing streams. This scope assumes 4 locations are fish bearing streams, not including the locations covered by section 11.2.

Consultant shall evaluate up to 3 alternatives for each location consisting of the following: construction of a new culvert structure, construction of a bridge, or preservation of an existing culvert structure. Consultant shall develop recommendations by using evaluation criteria such as cost, stage construction, speed of construction, environmental impacts, right-of-way requirements and existing condition. Crossings shall be sized as determined by environmental permitting and hydraulic requirements.

Consultant shall address the findings and recommendations in the Fish Bearing Stream TS&L narrative:

- Type, size and location recommendation for the preferred alternative.
- Outline of site specific constraints, including but not limited to; topography, geology, hydrology, environmental constraints and requirements, permits, R/W, utilities, geotechnical and cost

Consultant shall prepare concept exhibits for any preferred bridge structures.

Consultant shall prepare quantity based cost estimates for the alternatives considered with a 30% contingency applied.

Consultant shall resolve any comments received on draft Fish Bearing Streams TS&L into the final Fish Bearing Streams TS&L.

11.3 Consultant Deliverables and Schedule

Consultant shall provide:

- Draft Fish Bearing Streams TS&L including narrative, cost estimates, and concept exhibits as appropriate with Task 18.1 – Draft Conceptual Design Package.
- Final Fish Bearing Streams TS&L including narrative, cost estimates, and concept exhibits as appropriate with Task 18.1 – Draft Conceptual Design Package.

11.4 Phase II: Concept Development - Structures Alternatives Analysis (Minor Streams)

Consultant shall perform an alternatives analysis to determine the preferred structure type to accommodate a pathway over minor streams. This scope assumes 14 locations are minor streams. Consultant shall evaluate up to 2 alternatives for each location consisting of either construction of a new culvert structure or preservation of an existing culvert structure. Consultant shall develop recommendations by using evaluation criteria such as cost, stage construction, speed of construction, environmental impacts, right-of-way requirements and existing condition. Crossings shall be sized as determined by hydraulic requirements.

Consultant shall address the findings and recommendations in the Draft and Final Hydraulics Report narrative:

- Recommendation for the preferred alternative.
- Outline of site-specific constraints, including but not limited to; topography, geology, hydrology, environmental constraints and requirements, permits, R/W, utilities, geotechnical and cost

TASK 12 PERMITS (RESERVED)

TASK 13 DESIGN ACCEPTANCE PACKAGE (60%) (RESERVED)

TASK 14 RIGHT OF WAY ("R/W")

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

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

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

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

Total number of anticipated ROW files for the project will be determined in a later phase.

14.1 Obtain Right-of-Entry Agreements

Consultant shall prepare, negotiate, and obtain property owner signatures for temporary right-of-entry documents for the purposes of preliminary engineering, and environmental investigations for up to 6 parcels. Consultant shall use templates provided by Agency. Consultant shall document conversations with property owners in the Report of Personal Interview form. Consultant does not guarantee acquisition of right-of-entries.

14.1 Consultant Deliverables and Schedule

Consultant shall provide:

- Right-of-entry documents for signature to APM per Task 1 Project Design Schedule.
- Signed right-of-entry documents to APM prior to onsite work occurring.

14.2 Title Reports and Document Requests

Consultant shall prepare and assemble all title documents, including vesting deeds, necessary to allow Agency to determine current vested owner for up to three (3) parcels.
Consultant shall review title reports for complete documentation of title vesting and notify APM of any major title encumbrances. Consultant shall notify Agency if any acquisitions fall outside of Agency jurisdiction.

14.2 Consultant Deliverables and Schedule

Consultant shall provide:

- Up to three (3) Title Plant Records Reports documenting the Chain of Title from the current ownership back to the last owner preceding railroad ownership per Task 1 Project Design Schedule.

14.3 Right of Way Engineering, Maps & Descriptions

Consultant shall perform data research and document property ownership along the proposed corridor to incorporate into an overall GIS database. Consultant's work may involve research beyond Title Report acquisition and review, and may require on-site property visits as well as meetings with ODOT and Agency to verify vested owners.

14.3 Consultant Deliverables and Schedule

Consultant shall provide:

- Miscellaneous parcel ownership documentation separate from Task 14.2 per Task 1 Project Design Schedule.

14.4 Right of Way Programming Estimate

Consultant shall prepare a R/W programming estimate for use by Agency to program funds for property acquisition. A programming estimate will not be prepared for the ODOT Rail owned ROW. Consultant shall obtain the most current version of the Programming Estimate form to be used on all State and federally funded projects from Agency. The programming estimate must include the Project name and county in which the Project is located and all Project R/W costs, including separate Consultant, Agency, and ODOT R/W costs as provided by Agency. The R/W programming estimate must include dollar amounts for the following items: Land & Improvements; Damages/Cost to Cure; Relocation; Demolition; Personnel & Administration; Legal & Contingencies and totals for all Items. The programming estimate must be submitted to the APM for review. Consultant shall alert Agency if the estimate exceeds the Project budget and evaluate impacts to the R/W schedule.

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

14.4 Consultant Deliverables and Schedule

Consultant shall provide:

- 1 draft Programming Estimate for delivery electronically APM per Task 1 Project Design Schedule.
- 1 final Programming Estimate for delivery electronically to APM per Task 1 Project Design Schedule.

TASK 15 PLANS, SPECIFICATIONS, AND ESTIMATE ("PS&E") (RESERVED)

TASK 16 ADVERTISE AND AWARD ASSISTANCE (RESERVED)

TASK 17 FEASIBILITY ANALYSIS

17.1 Opportunities and Constraints Evaluation

Consultant shall summarize available information from prior studies and preliminary environmental data to help define the preferred alternative. Topographic data will be based on data obtained through Task 2. Consultant shall incorporate the information obtained into the project alternatives GIS maps developed in Task 17.2. Consultant shall incorporate Agency and LPA feedback into the Alternatives Evaluation Memorandum in Task 17.3.

Consultant shall provide support for Geographical Information Systems (GIS) field data collection and prepare project-specific online GIS database using ArcGIS Online (AGOL). Consultant shall create database at project NTP and populate with existing conditions data as it is collected. The database must also be used, as appropriate, to determine potential impacts for environmental resources.

Consultant shall perform a cursory high-level "context areas" evaluation of the corridor. A diagram will be produced that identifies boundaries of distinct corridor subareas reflective of the unique conditions (topography, vegetation, views, natural vs. man-made features, etc.) that affect the qualitative experience of corridor users. This diagram will be useful to facilitate conversations about the 'big picture' planning vision for the trail and inform Task 17.2 Path Design Alternatives and 17.3 Alternative Evaluation.

17.2 Path Design Alternatives

Following review of the Project Area and discussions with the Agency and LPA regarding the opportunities and constraints, Consultant shall use the InfraWorks model developed as part of Task 10.2 to produce up to twelve (12) different still views of various segments of the project.

Consultant shall provide GIS maps illustrating the plan and bridge locations of the alternatives, with the property boundaries and environmental constraints (e.g., wetlands, buffers) identified. Up to six (6) cross sectional views shall be prepared for each of the two alignments for a total of twelve (12) cross sectional views.

17.2 Consultant Deliverables and Schedule

- Two (2) Alternatives GIS Maps (ArcGIS Online) due to APM per Task 1 Project Design Schedule.

17.3 Alternative Evaluation

Following the development of alternatives, Consultant shall provide a draft and final Path Alternatives Feasibility Report. Consultant shall incorporate comments on the GIS maps developed in Task 17.2 into the Path Alternatives Feasibility Report. Consultant shall consider the following criteria areas for comparing concepts and alternatives:

- Safety
- Built environment impacts (public and private)
- Compatibility with existing land uses and context (as described in 17.1)
- Natural and cultural resource impacts
- Resources assessment for future federal funding request
- Transportation and utility impacts
- Cost
- Path/Bridge Design and aesthetics to enhance the path
- Input received from project stakeholders.
- Path user experience, including connectivity and comfort of travel between popular origins and destinations

17.3 Consultant Deliverables and Schedule

- Draft Path Alternatives Feasibility Report (.pdf) due to APM per Task 1 Project Design Schedule.
- Final Path Alternatives Feasibility Report (.pdf) due to APM per Task 1 Project Design Schedule.

TASK 18 CONCEPTUAL DESIGN PACKAGE

18.1 – Conceptual Design Package ("CDP") Submittal

The purpose of the CDP Submittal is to confirm the scope of the Project and to provide the needed information to determine the approximate limits of any proposed ROW takes. The major elements of design must be addressed including, but not limited to, the following:

- Path geometry and footprint (other project elements that would require ROW or have impact on project footprint)
- Structure recommendations (bridges, walls, culverts, etc.)
- Preliminary hydraulics analysis including culvert locations and sizes
- Drainage and water quality concepts, including footprint
- Geotechnical memorandum on conceptual structural foundation recommendations.
- High level impacts to ROW and environmental resources
- Conceptual landscape treatments for typical corridor segments and/or unique features such as trailheads.

Consultant shall compile a comprehensive CDP layout, narrative, and construction cost estimate based on the design efforts in the tasks included in the scope of the Project. The CDP shall include:

- Project Summary Narrative
- 15% recommended bridge and path design
- 15% concept plans including plan view, profiles, and cross-sections
- Cost estimate
- Funding, phasing & implementation plan
- Appendices of related deliverables, including technical scope sheet and design criteria sheet

The CDP layout must document the proof-of-concept design and key elements influencing scope, footprint, impacts to ROW or environmental resources known at the time, and potential design exceptions.

18.1 Consultant Deliverables and Schedule

- Draft CDP package submittal due to APM per Task 1 Project Design Schedule.
- Final CDP package submittal due to APM per Task 1 Project Design Schedule.

EXHIBIT B – COMPENSATION

Definitions:
CPFF – Cost Plus Fixed Fee
FCCM – Facilities Capital Cost of Money
NBR – Negotiated Billing Rates. NBRs are fully loaded billing rates inclusive of direct salary, indirect expenses and profit.
NTE – Not to Exceed Amount
T&M – Time and Materials

A. METHOD of COMPENSATION for NON-CONTINGENCY TASKS

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

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

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

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

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

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

The dollar amount for T&M non-contingency Services is: $ 807,071.97

B. PAYMENT OPTIONS

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

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

C. TRAVEL

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

- The travel, lodging, and per diem rates referenced in this Section C are the maximums that Consultant's estimate (or reimbursement, if applicable) may be based on. Travel rates other than those referenced in this Section C may be negotiated in the Contract, however, under no circumstance shall travel, lodging and per diem rates exceed the maximums set forth by the State Controller at https://www.oregon.gov/das/Financial/Acctng/Documents/40.10.00.pdf .

- Mileage - For compensation based on Cost-Plus-Fixed-Fee or Time and Materials (or Fixed Price or Price Per Unit when travel reimbursement is approved and mileage is compensated separately), all mileage approved by Agency will be reimbursed according to the rates set forth by the State Controller at https://www.oregon.gov/das/Financial/Acctng/Documents/40.10.00.pdf that are in effect on the date when the travel occurs.

- For compensation based on Cost-Plus-Fixed-Fee or Time and Materials, Consultant shall submit receipts for travel-related expenses billed to Agency, such as but not limited to, lodging, rental vehicles, and air fare. If lodging is shared by two or more travelers, the lodging receipt must indicate the names of any travelers on official State business who shared the room.

D. INVOICES

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

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

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

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

E. PAYMENT TERMS

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

F. CORRECTIVE WORK

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

G. WITHHOLDING/RETAINAGE

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

H. PAYMENT REDUCTION

Agency, or its duly authorized agents, may audit Consultant's fiscal records, including certified payroll and overhead records at any time. If Agency finds previously undisclosed inaccurate or improper costs have been invoiced and paid, Agency will notify Consultant and seek clarification. Agency, in its sole discretion, may reduce the payment for Services by withholding the inaccurate or improper amounts

from any future payment to Consultant, withhold the inaccurate or improper amounts from final payment to Consultant, or may use any other means to seek recovery of already paid but improperly calculated amounts.

I. SPECIFIC LIMITATIONS and UNALLOWABLE CHARGES

Specific Limitations

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

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

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

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

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

Unallowable Charges

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

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

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

J. INDIRECT COSTS; SALARY and BILLING RATE SCHEDULES

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

2. Overhead Schedule - If Consultant or subconsultants calculate overhead as part of their normal business practice, the overhead schedules shall be prepared and submitted in accordance with ODOT's Billing Rate Policy (as may be revised from time to time by ODOT) available at: https://www.oregon.gov/ODOT/Business/Procurement/DocsPSK/brPolicy.pdf. Consultant Certification of compliance with Federal Cost Principles is required per FHWA directive 4470.1a: https://www.fhwa.dot.gov/legsregs/directives/orders/44701a.htm. A signed Certification of Final Indirect Costs form must be submitted with the overhead schedule.

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

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

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

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

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

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

K. RATE REVISIONS

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

L. BREAKDOWN OF COSTS (BOC)

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

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

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

Notes:

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

The final BOC, dated 9/4/2026, is not physically attached, but is incorporated into this Contract by this reference with the same force and affect as though fully set forth herein. A copy of the final BOC has been provided to the Consultant prior to execution of this contract.

EXHIBIT C - INSURANCE

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

1. **Workers' Compensation** insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (Consultants with one or more employees, unless exempt under ORS 656.027).

2. ☒ **Required by** Agency ☐ **Not required by** Agency.
Professional Liability insurance with a per claim, incident or occurrence limit, or the equivalent, of not less than ☒ **$1,000,000**, or ☐ **$2,000,000.**
Any annual aggregate limits must not be less than ☐ **$1,000,000** ☒ **$2,000,000** ☐ **$4,000,000** ☐ **$10,000,000.**
This insurance must cover damages caused by negligent acts, errors or omissions of Consultant and Consultant's subcontractors, agents, officers or employees related to the professional Services to be provided under the Contract. If this insurance is provided on a "claims made" basis, Consultant shall continue the same coverage for ☒ **2 years**, ☐ **3 years, or** ☐ **6 years** after completion of the Services or acquire "tail" coverage or an Extended Reporting Period endorsement for the foregoing extended period beyond Contract expiration or termination. Evidence of any required extended period coverage will be a condition of final payment under the Contract.

3. ☒ **Required by** Agency ☐ **Not required by** Agency.
Commercial General Liability insurance must be issued on an occurrence basis with per occurrence limit, or the equivalent, of not less than $1,000,000 covering "bodily injury" and "property damage." Any annual aggregate limits shall not be less than $2,000,000.

4. ☒ **Required by** Agency ☐ **Not required by** Agency.
Automobile Liability insurance covering Consultant's business-related automobile use, with a combined single limit, or the equivalent, of not less than $1,000,000 each occurrence for "bodily injury" and "property damage," including coverage for all owned, non-owned, rented or hired vehicles.

5. **Notice of change or cancellation.** There shall be no cancellation, material change (one that would adversely impact the protection of Agency provided through the insurance coverages required in this **Exhibit C**), reduction of limits or intent not to renew the insurance coverage(s) without 30 calendar days prior written notice from Consultant or its insurer(s) to Agency. **All policies and certificates of insurance, including Workers' Compensation, must include a notice of cancellation or nonrenewal clause as required under ORS 742.700 to 742.710.**

6. **Certificates of Insurance.** As evidence of the insurance coverages required by this Contract, Consultant shall furnish acceptable insurance certificates to Agency prior to Contract execution. Throughout the life of this Contract, Consultant shall submit updated certificates of insurance prior to the policy expiration date(s) indicated for the required coverages. If requested by Agency, Consultant shall either: a) provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency; or b) make such insurance policies, endorsements, self-insurance documents and related insurance documents available for inspection by Agency's representatives at a location in the State of Oregon that is reasonably convenient for Agency's representatives responsible for verification of the insurance coverages required under the Contract.

7. **Additional Insureds.** Insurance certificates for Automobile and Commercial General Liability must include an endorsement physically attached to the certificate specifying the Agency, the State of

Oregon, the OTC, the Oregon Department of Transportation, and their respective officers, members, agents and employees as Additional Insureds and must expressly provide that the interest of the Additional Insureds shall not be affected by Consultant's breach of policy provisions.

8. **Subcontractors.** Consultant shall: (i) obtain proof of the above insurance coverages, as applicable, from any subcontractor providing Services related to this Contract, or (ii) include subcontractors within Consultant's coverage for the duration of the subcontractor's Services related to this Contract.

EXHIBIT D - TITLE VI NON-DISCRIMINATION PROVISIONS

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

a. **Compliance with Regulations:** Consultant shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

b. **Nondiscrimination:** Consultant, with regard to the work performed by it during the Contract, shall not discriminate on the grounds or race, color, sex, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment. Consultant shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

c. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by Consultant of Consultant's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.

d. **Information and Reports:** Consultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Agency, ODOT, FHWA or the Federal Transit Administration (FTA) as appropriate, to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to Agency, ODOT, FHWA or FTA as appropriate, and shall set forth what efforts it has made to obtain the information.

e. **Sanctions for Noncompliance:** In the event of Consultant's noncompliance with the nondiscrimination provisions of this Contract, Agency shall impose such Contract sanctions as it, ODOT, FHWA or FTA may determine to be appropriate, including, but not limited to:
   (i) Withholding of payments to Consultant under the Contract until Consultant complies, and/or
   (ii) Cancellation, termination or suspension of the Contract, in whole or in part.

f. **Incorporation of Provisions:** Consultant shall include the provisions of paragraphs (a) through (e) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as Agency, ODOT, FHWA or FTA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event Consultant becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, Consultant may request Agency, ODOT, and, in addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

EXHIBIT E - DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROVISIONS (No-Goal)

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

"Consultant" and "Contractor" are hereinafter referred to as "Contractor". **See section e for specific reporting requirements of Contractor.**

In accordance with the U.S. Department of Transportation's Interim Final Rule, effective October 3, 2025 and published at 90 Fed Reg 47,969 (2025), modifying the certification, compliance and reporting requirements of the Disadvantaged Business Enterprise program (DBE IFR), ODOT's DBE requirements that were applicable to federally funded projects prior to the 10/03/2025 effective date of the rule are no longer in effect, and the associated DBE contractual requirements have been suspended pending implementation of the DBE IFR. Contractor acknowledges and agrees that it will cooperate in processing any contractual revisions ODOT deems necessary or appropriate to effectuate the updated DBE Program requirements that may result from the DBE IFR implementation or future modifications to the DBE Program and corresponding regulations.

a. **Policy and Program Authorities:** Reserved.
b. **DBE Goals:** Reserved.
c. **Nondiscrimination Requirement:** Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this USDOT-assisted Contract. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Agency deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
d. **Prompt Payment and Retainage**: Contractor shall pay each subcontractor for satisfactory performance of its contract no later than 10 calendar days from receipt of each payment Consultant receives from Agency. In addition, Contractor shall return any retainage payments to each subcontractor within 10 calendar days after the subcontractor's work is satisfactorily completed.
e. **Reporting Requirements:** Contractor shall complete and submit initial, interim and final Paid Summary Reports [an ODOT form] to Agency per the instructions on the form provided by Agency. Contractor must report payment information for all subcontractors and suppliers used under the Contract throughout the period of performance.
f. **Commercially Useful Function**: Reserved.
g. **Termination of DBE Notification Requirement:** Reserved.
h. **Remedies:** Contractor's failure to comply with these DBE Provisions and the requirements of 49 CFR Part 26 may result in one or more of the following administrative actions as deemed appropriate by Agency: non-compliance documented in Agency's evaluation of Contractor performance, a corrective action plan prepared by Contractor, Agency withholding of retainage, suspension of work, reporting of non-compliance to the Federal System for Award Management ("SAM") available at https://sam.gov/SAM/, any other remedies provided under the Contract.
i. **Information/Questions:** The DBE program is administered by the ODOT Office of Engagement and Civil Rights ("OECR"). Questions related to the DBE Program may be sent via email to ocrinforequest@odot.oregon.gov or otherwise directed to: Oregon Department of Transportation Office of Engagement and Civil Rights, ODOT Materials Laboratory Building, 800 Airport Road SE, Rm 61, Salem, OR 97301; Phone: 503-986-4350.
j. **Directory of Certified Firms:** Reserved.

Related Web Sites:

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

- **Forms:** https://www.oregon.gov/ODOT/Business/OCR/Pages/Forms.aspx
- **Documents:** https://www.oregon.gov/ODOT/Business/OCR/Pages/Disadvantaged-Business-Enterprise.aspx
- **49 CFR Part 26:** https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=34ea04c7ed3d45b0e41f82a5646f1c15&rgn=div5&view=text&node=49:1.0.1.1.20&idno=49
- **Interim Final Rule,** 90 Fed Reg 47,969 (2025): https://www.transportation.gov/mission/civil-rights/disadvantaged-business-enterprise/DBE-IFR-10-03-2025.

Acronyms & Definitions Applicable to Exhibit E.1

APM	ODOT's or local agency's Project Manager
CFR	Code of Federal Regulations
CUF	Commercially useful function
DBE	Disadvantaged Business Enterprise
OECR	ODOT Office of Engagement and Civil Rights
ODOT	Oregon Dept. of Transportation
RFP	Request for Proposals
SSUR	Subcontractor Solicitation and Utilization Report
USDOT	United States Department of Transportation

EXHIBIT F – SPECIAL TERMS & CONDITIONS

Provisions in this Exhibit F are in addition to and do not supersede the terms and conditions set forth in the Contract.

1. **NEPA Decision Documents and Final Design.** Agency is not obligated to proceed with final design for any alternative; all reasonable alternatives will be evaluated and given appropriate consideration, and the Consultant under the Contract may not proceed with final design until the relevant NEPA decision documents have been issued.

2. **NEPA Document Objectivity.** If Agency concludes, at any time during the term of this Contract, that the Environmental Impact Statement, Environmental Assessment or Categorical Exclusion (as applicable) was not prepared with objectivity in accordance with 23 USC 112 (f), the Consultant shall not be eligible to complete the remaining tasks associated with this Contract.

[Use this Exhibit to include any special provisions or requirements of the LPA, provided the special provisions are not in conflict with Federal regs, FHWA policy or directive, or State laws. **Submit any special provisions to OPO for a one-time approval before using.**

- No requirements regarding utilization of local firms, MWESBs or other firms certified under ORS 200.055 are allowed per FHWA.
- Citations from ORS 279B are not applicable and may not be included
- Citations related to overtime pay are not applicable to consultants (overtime should be charged to overhead).

EXHIBIT G - RESERVED

EXHIBIT H - RESERVED

EXHIBIT I – 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 Agency 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 Agency 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 Agency. 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 Agency believes the Consultant has not performed with the required Standard of Care, the Agency shall provide the Consultant oral notice and written Letter of Concern. The Consultant shall acknowledge in writing receipt of the Agency's Letter of Concern and provide to the Agency 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 Agency'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 Agency'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 Agency, 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 Agency'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 Agency 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 Agency arising from such issues.

COST EVALUATION AND RECOVERY

The Premium Costs incurred by the Agency 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 Agency'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 Agency in the following methods as agreed to by both Parties:

- Making direct payments to the Agency
- Correcting the deficient services
- Re-performing the deficient services
- Forfeiting payments for other services on other Agency Contracts
- Providing in-kind services at no cost to Agency
- 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 Agency was within the scope of services of the Contract;
- If the Consultant was not required to correct deficiencies at no cost to the Agency, 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

CA – Agency's Contract Administrator overseeing the consultant contract and deliverables.

Agency TI – Agency Technical Investigator. A Agency 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 Agency to provide Architectural or Engineering services and which employs, or engages the services of, the Professional of Record.

Contract – The project specific Contract between Agency 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 Agency and Consultant collectively

Party – Refers to Agency and Consultant separately

Premium Costs – The additional costs incurred by the Agency 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 Agency 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 J – CONTACT INFORMATION and KEY PERSONS

1. **Party Contact Information.**

a.1 * Agency's **Project Manager (APM)**

Name:	Scot Tencza
Ph:	503.588.7919
E-mail:	stencza@co.marion.or.us

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

Name:	Alicia Jones
Ph:	503.373-4320
E-mail:	ajones@co.marion.or.us

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

Mailing Address:	Marion County Public Works 5155 Silverton Road NE, Building 1 Salem, OR 97305 Attn: Jeniffer Scales
E-mail:	pwap@co.marion.or.us

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

Name:	Cameron Grile
Ph:	503.499.0398
E-mail:	Cameron.Grile@deainc.com

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

Name:	Stephanie Yutzie
Address:	David Evans and Associates, Inc. P O Box 511777 Los Angeles, CA 90051-1777
Ph:	503.480.1348
E-mail:	Stephanie.Yutzie@deainc.com

* Agency may change the Contract Administrator or Project Manager designation by promptly sending written notice (e-mail acceptable) to Consultant.
**Any changes to Consultant's Project Manager must be approved in writing (e-mail acceptable) by Agency.

2. Key Persons

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

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

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

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

Name	Role
Cameron Grile	Project Manager
Dan Iliyn	Roadway Lead
Brett Karnes	Structural Lead
Loren Stucker	Environmental Lead
Gordon Wilson	Survey Lead

3. Reassignment or Transfer of Key Person

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

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

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

EXHIBIT K – Marion County Requirements for Non-Federal Entity Contracts

Section 1: Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or Consultant must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for

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

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

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

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

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

(J) See § 200.323. Procurement of recovered materials.

(K) See § 200.216. Prohibition on certain telecommunications and video surveillance services or equipment.

(L) See § 200.322. Domestic preference for procurements.

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

Section 2: Additional Requirements for Non-Federal Entity Contracts

1. Audit Requirements

- Consultants must comply with the federal regulations set forth in 2 CFR §200.5XX Subpart F.
- Consultant must comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law as set forth in 2 CFR §200.501(h).
- If Consultant expends federal awards in excess of $1,000,000 in a fiscal year, Consultant is subject to audit conducted in accordance with the provisions of 2 CFR §200.5XX Subpart F. Copies of all audits must be submitted to the Agency within 30 days of completion.
- Consultant must save, protect and hold harmless the Agency from the cost of any audits or special investigations performed by the Secretary of State with respect to the funds expended under this Agreement. Consultant acknowledges and agrees that any audit costs incurred by Consultant as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Consultant and the Agency.

2. System for Award Management - 2 CFR Part 25 - Consultant must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at https://www.sam.gov. This includes applicable requirements regarding registration with SAM, as well as maintaining current information in SAM. Consultant must also comply with applicable restrictions on subawards ("subgrants") to first tier subcontractors (first-tier "Subcontractors"), including restrictions on subawards to entities that do not acquire and provide (to the Agency) the unique entity identifier required for SAM registration.

3. Whistleblower Protection Act - 2 CFR § 200.217 - Consultant must comply and ensure the compliance by subcontractors, with 41 U.S.C. 4712, Program for Enhancement of Employee Whistleblower Protection. Consultant must inform subcontractors, contractors and employees, in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 USC 4712.

4. Recordkeeping Requirements - Consultant must maintain records and financial documents for five years after all funds have been expended or returned to the Agency. The Agency may request transfer of records of long-term value at the end of such period. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats.

Consultant must agree to provide or make available such records to the Agency upon request, and to the Government Accountability Office (“GAO”), U.S. Treasury’s Office of Inspector General (“OIG”), and their authorized representative in order to conduct audits or other investigations.

6. Civil Rights Compliance - Recipients of Federal financial assistance from the U.S. Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the U.S. Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964

(Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Consultant's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Consultant's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Consultant implementing regulations at 31 CFR part 23.

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

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