

Contract Review Sheet

A&E Standard Prof Svcs Agmnt

PW-5836-24 - Am1

Title: Santiam Canyon Parks Recovery Project - Design

Contractor's Name: AKS Engineering & Forestry, LLC

Department: Public Works Department

Contact: Janet Wilson

Analyst: Kathleen George

Phone #: (503) 566-4139

Term - Date From: Execution

Expires: December 31, 2027

Original Contract Amount: \$ 157,020.00

Previous Amendments Amount: \$ -

Current Amendment: \$ 59,995.00

New Contract Total: \$ 217,015.00

Amd% 38%

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

Source Selection Method: 20-0260 Request for Proposal

RFP# PW1442-23

Description of Services or Grant Award

Professional engineering, land surveying, environmental permitting, landscape architectural and related services necessary for the design and construction of fire damaged parks in the North Santiam Canyon.

Utilizing OWEB Grant Funds (#222-8502-22732).

This amendment adds tasks for Project G, Niagara Park: grant support, topographic surveying, and geotechnical alternatives as part of our post fire recovery efforts. This amendment increases the contract value by \$59,995.00, bringing the new total contract NTE to \$217,015.00.

Desired BOC Session Date: 4/23/2025

Contract should be in DocuSign by: 4/2/2025

Agenda Planning Date: 4/10/2025

Printed packets due in Finance: 4/8/2025

Management Update: 4/8/2025

BOC upload / Board Session email: 4/9/2025

BOC Session Presenter(s) Kevin Thompson

Code: Y

REQUIRED APPROVALS

Finance - Contracts _____ Date _____

Contract Specialist _____ Date _____

Legal Counsel _____ Date _____

Chief Administrative Officer _____ Date _____



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: 04/23/2025 09:00 am

Department: Public Works

Title: Santiam Canyon Parks Recovery Project - Design

Management Update/Work Session Date: 04/01/2025 09:30 am Audio/Visual aids ☐

Time Required: 10 mins Contact: Kevin Thompson Phone: 503-566-4158

Requested Action: Consider approval of amendment #1 to contract PW-5836-24 with AKS Engineering & Forestry.

Issue, Description & Background: The original contract was created with the goal of providing post-fire redevelopment tasks in all seven of our canyon parks. The intent is for amendments to be issued as additional work is identified and funding is available.

Amendment #1 adds the following tasks for Niagara Park: topographic surveying, and geo-technical alternatives as part of our post fire recovery efforts. This amendment increases the contract value by \$59,995, bringing the new total contract NTE to \$217,015.


Financial Impacts: This work is completely funded through one of our existing OWEB grants. No county funds will be used on these new tasks.

Impacts to Department & External Agencies: Will provide insight into the safety of the site for further post fire rebuilding efforts at Niagara Park.

List of attachments: Amendment 1, Original agreement

Presenter: Kevin Thompson

Department Head Signature: Dennis Mansfield

 Digitally signed by Dennis Mansfield
Date: 2025.03.25 11:28:26 -07'00'

AMENDMENT NO. 1 TO
CONTRACT NO. PW-5836-24
PROJECT TITLE: Santiam Canyon Parks Recovery Project - Design

1. This is Amendment No. 1 to Contract No. PW-5836-24 (as amended from time to time) between Marion County, hereafter called “County”, and AKS Engineering & Forestry, LLC, hereafter called “Consultant” as referenced in the Contract.

2. Amendment Information Table:

Project Title: Santiam Canyon Parks Recovery Project - Design		County Project Number: 105481/105482	
Project Location: Various Marion County Parks		Associated RFP Number: PW1442-23	
A. Prior Total Not-to-Exceed (“NTE”) amount for this Contract. (including any previous amendments and contingency amounts).			\$ 157,020.00
B. Net amount for this Amendment			\$ 59,995.00
C. 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) \$0.00 for contingency tasks, each of which must be separately authorized by County.			\$ 217,015.00

3. Except as expressly revised in this Amendment, or as previously amended, all other terms and conditions of the original Contract and any previous amendments remain in full force and effect.
4. The Contract is hereby amended as follows (new language is indicated by underlining and deleted language is indicated by strikethrough):
- a. Under Terms and Conditions, Section 4, **Contract Exhibits**.
- Exhibit H – Niagara Park
- b. Under **Exhibit A - Statement of Work**, Subsection A, **PROJECT DESCRIPTION and OVERVIEW of SERVICES**:
- North Fork Park (Project C)
 - North Santiam Park (Project D)
 - Minto Park (Project E)
 - Packsaddle Park (Project F)
 - Niagara Park (Project G)
 - Old Rogers Wayside (Project H)
- c. Under **Exhibit A - Statement of Work**, Subsection E, TASKS, DELIVERABLES and SCHEDULE

PROJECT G: NIAGARA PARK ~~{RESERVED}~~

TASK 1 – OWEB GRANT SUPPORT

Consultant shall provide management, subconsultant management, and coordination of Services under this SOW for delivery of Tasks and Deliverables according to the agreed-upon delivery schedule. Services that do not fall within this scope of work are excluded from this agreement.

1.1 Administration, Record Keeping, Coordination, and Project Meetings

Consultant shall:

- Prepare invoices and progress reports consistent with requirements and standard practices.
- Each invoice must:

- o Itemize costs by project;
- o Reconcile the budget with the actual amount billed to date;
- o State the contract number, project number and any other applicable information as provided by the CPM;
- o Be sent to the email address provide by the CPM;
- Up to three (3) progress reports shall be necessary. Each progress report shall include, but not limited to, the following:
 - o A summary of previous period's activities and the planned activities for the upcoming period;
 - o Identification of a percentage of the completion of each Task/Deliverable;
 - o Identification of unresolved issues and concerns that may affect the SOW, schedule and/or budget for Services.

Consultant Deliverables and Schedule

Consultant shall provide:

- QA/QC documentation available upon request.
- Updates to the Project Delivery Schedule, as necessary per timeline agreed to by Consultant and County.
- Progress reports and invoices submitted to County no later than the 20th calendar day of the month following the reporting period.
- On-going coordination and communication as needed to appropriately manage the Services under this SOW (no tangible deliverables for this task).

1.2 Topographic Survey

Consultant shall professionally land survey areas as shown in Exhibit H which includes Priority 1 and 2 areas and the gravel road connecting the two areas. The following items will be completed by AKS within the area shown in Exhibit H:

- Research surveys of record filed with Marion County.
- Locate and survey existing property corner monuments of record.
- Evaluate surveyed monuments of record for conformance with record.
- Map surveyed property lines, right-of-way lines, and easements.
- Review title report.
- Evaluate mappable easements for inclusion in Existing Conditions Map.
- Research and evaluate additional relevant title documents referenced in title report exceptions.
- Research public as-built records.
- Coordinate private utility locating services.
- Coordinate public utility locating services.
- Elevate site to the North American Vertical Datum of 1988 (NAVD 88).
- Establish North American Datum of 1983 (NAD 83) 2011 State Plane coordinates.
- Establish site survey control.
- Coordinate FAA site clearance.
- Collect and process aerial imagery.
- Collect and process aerial lidar data.
- Survey topographic features:
 - o Visible utility structures and lines (e.g. power poles, overhead wires, water meters, manholes)
 - o Underground utility locate marks
 - o Hard surfaces (e.g. curb, sidewalk, concrete, asphalt, driveway drops, ramps)
 - o Traffic signal poles, light poles, and signs
 - o Trees 6-inch diameter at breast height and greater

- o Lines of occupation (e.g. fences, buildings, eaves, walls, significant landscaping)
- o Ground elevations and break lines for 1-foot contours
- o Other significant permanent structures (e.g. bollards, mailboxes, signs, storage tanks)
- Prepare CAD files containing survey data and mapped features suitable for design purposes.
- Prepare an Existing Conditions Map suitable for design purposes.
- Prepare an Aerial Exhibit Map of processed aerial imagery.

The above services are based on the following assumptions:

- Consultant shall coordinate access to the site with County.
- Monuments of record as shown on Exhibit Hare in place.
- The survey area is clear of non-permanent equipment and materials.
- Public and franchise utility owners respond to a public locate request.

The above services are based on the following exclusions:

- Professional traffic control services and coordination.
- Full right-of-way surveying on adjacent streets.
- Record of survey and monumentation services.
- Irrigation system mapping.
- Extensive brush clearing.
- Services that do not fall within the scope of work.

Consultant Deliverables and Schedule

Consultant shall provide:

- CAD files containing survey data and mapped features suitable for design purposes.
- Existing Conditions Map suitable for design purposes.
- Aerial Exhibit Map of processed aerial imagery.

1.3 Geotechnical Alternatives Study

Consultant shall conduct a geological reconnaissance of the site consisting of up to 2 site visits. 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.
- Locate and mark hand-auger boring locations.

Consultant shall utilize the One Call utility notification to locate all underground utilities.

The anticipated subsurface exploration to be performed for the Project are shown in the following table:

TEST METHOD	EST #	DEPTH(S) OF EXPLORATION(S)	INSTRUMENT(S) TO BE INSTALLED
Hand-Auger Borings	4	~5 feet	None

Consultant shall perform four hand auger borings to depths of approximately 5 feet or refusal. The purpose of the hand-dug borings will be to collect bulk samples for laboratory testing.

Consultant shall provide an experienced Professional Engineer or Certified Engineering Geologist, licensed in Oregon to supervise the field operations for the situ data gathering.

Consultant shall perform laboratory tests on recovered bulk soil samples. The laboratory testing program must be performed in accordance with standard ASTM practices to include the following:

- Up to 3 moisture content tests; and
- Up to 3 sieve analysis tests.

The above services are based on the following assumptions

- Subsurface materials are non-hazardous
- Hand auger boring will be backfilled with native material
- County will provide all required permits

Consultant shall prepare a Stabilization Alternatives Memo which presents boring logs of the hand-dug borings, laboratory testing data, and a discussion of stabilization alternatives that can address slope erosion and bank stabilization. The alternatives will be developed to a concept level only. Each alternative will be presented with its pros and cons to facilitate discussion with the County on next steps.

Consultant Deliverables and Schedule

Consultant shall provide:

- Stabilization Alternatives Memo within 4 weeks of notice to proceed.

d. The Contract NTE amount is amended as detailed below in section 5 - Amendment Compensation Table.

5. Amendment Compensation Table:

1. Prior total not-to-exceed ("NTE") amount for this Contract (including any previous amendments and contingency amounts)		\$157,020.00
2. Amount for T&M	NTE Amount for allowable costs of non-contingency Services added by this Amendment.	\$59,995.00
3. Amount for Fixed-Fee	Total of Fixed-Fee amount (for CPFF only) for non-contingency Services added by this Amendment.	N/A
4. Fixed Price amount	Total of Fixed Price amount(s) for non-contingency Services added by this Amendment.	N/A
5. Total non-contingency amount added by this Amendment (lines 2 through 4):		\$59,995.00
6. Total NTE for contingency tasks, if any, included in this Amendment:		N/A
7. Credits for deleted contingency and non-contingency tasks, if any		N/A
8. Net Amount of this Amendment (line 5 plus line 6, less any credits in line 7): This amount includes all costs; profit; Fixed-Fee amount (if any); and contingency tasks (if any), each of which must be separately authorized by County.		\$100,000.00

9. TOTAL NTE AMOUNT of Contract revised to include this Amendment (line 1 plus line 8):	\$217,015.00
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CONSULTANT CERTIFICATIONS

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

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

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

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

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

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

**SIGNATURE PAGE FOR
SANTIAM CANYON PARKS RECOVERY PROJECT - DESIGN - PW-5836-24
between
MARION COUNTY and AKS ENGINEERING & FORESTRY, LLC**

**MARION COUNTY SIGNATURES
BOARD OF COMMISSIONERS:**

Chair	Date
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Commissioner	Date
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Commissioner	Date
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Authorized Signature:	Department Director or designee	Date
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Authorized Signature:	Chief Administrative Officer	Date
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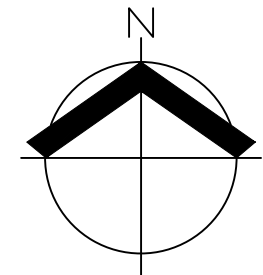
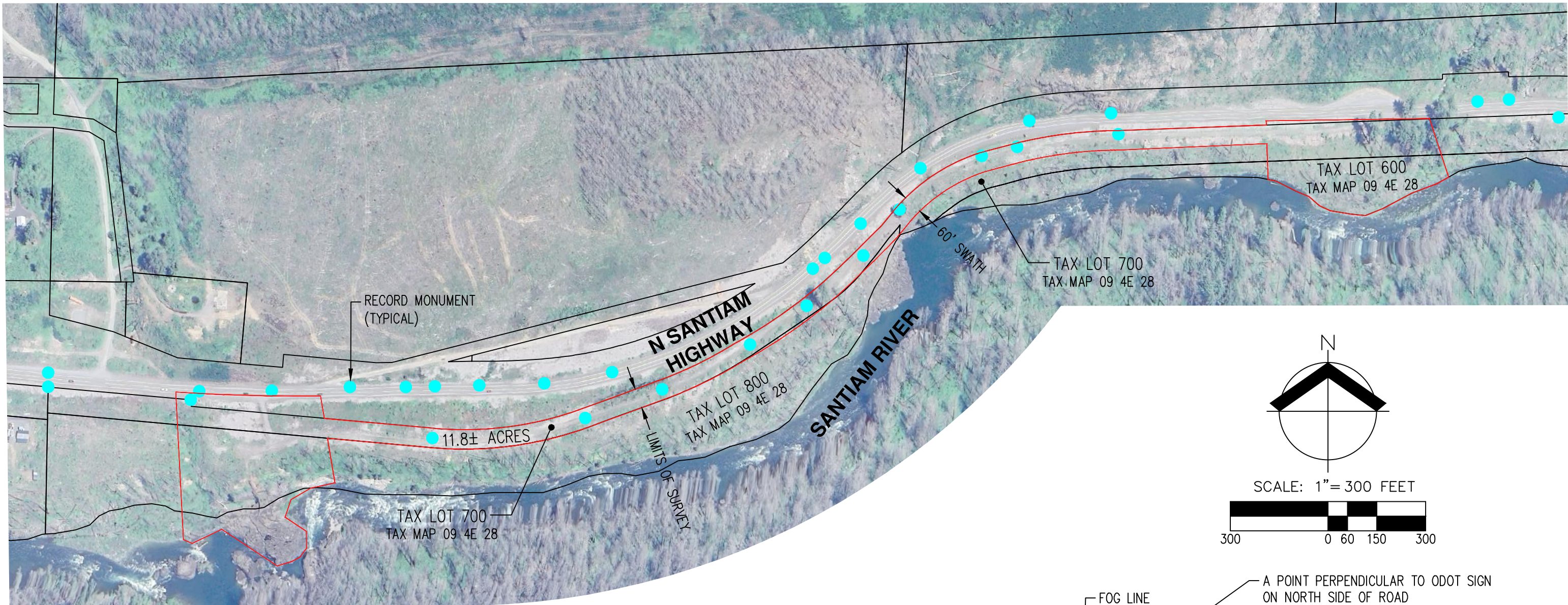
Reviewed by Signature:	Marion County Legal Counsel	Date
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Reviewed by Signature:	Marion County Contracts & Procurement	Date
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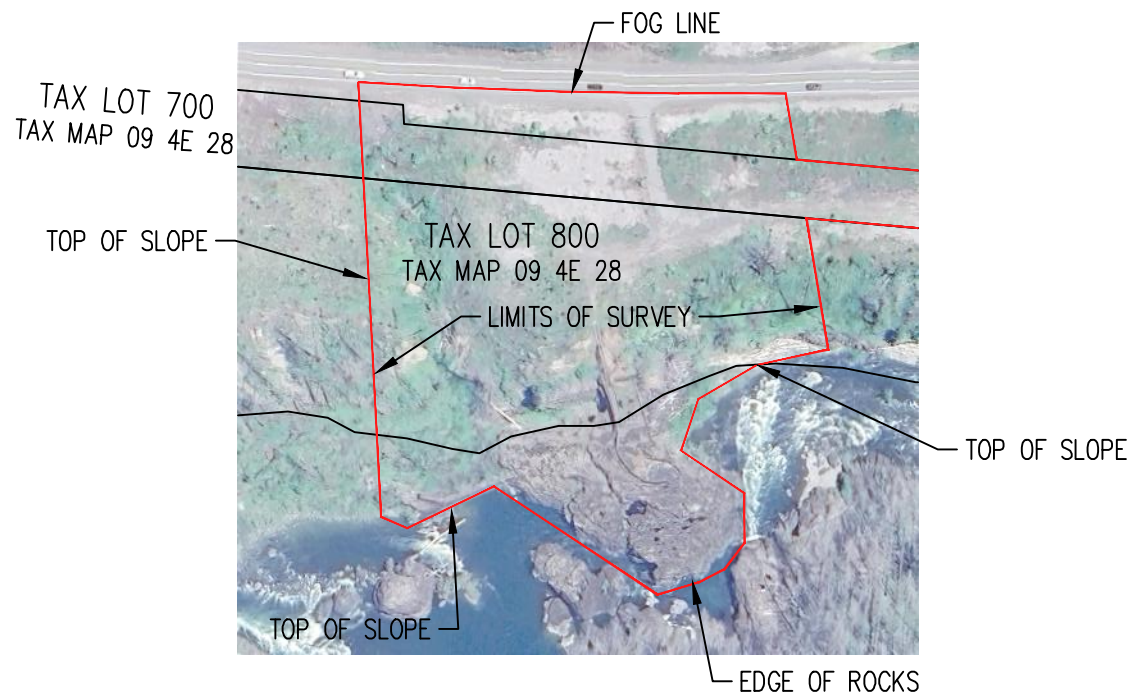
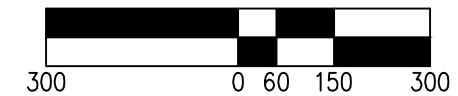
AKS ENGINEERING & FORESTRY, LLC SIGNATURE

Authorized Signature:	Date
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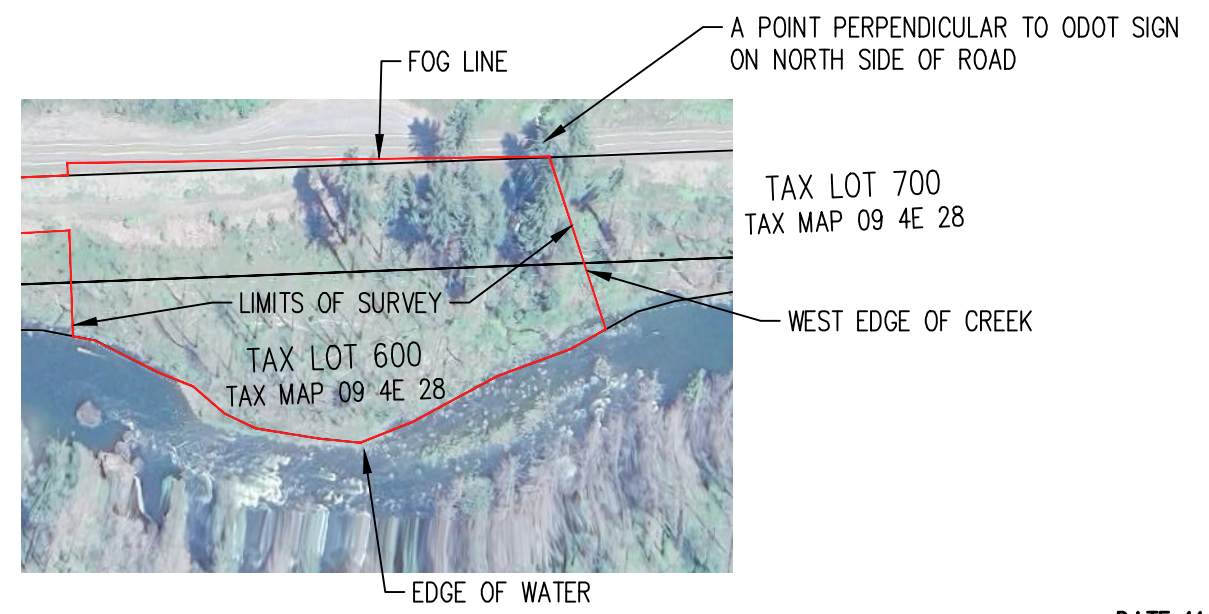
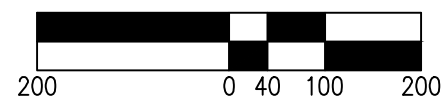
Title: _____



SCALE: 1" = 300 FEET



SCALE: 1" = 200 FEET



DATE: 11/13/2024

LIMITS OF SURVEY		EXHIBIT
NIAGARA PARK		B
AKS ENGINEERING & FORESTRY, LLC		DRWN: RC
3700 RIVER RD N, STE 1		CHKD: JS
KEIZER, OR 97303		AKS JOB:
503.400.6028 WWW.AKS-ENG.COM		9692-09



DWG: 9692-09 WORK AND PROPOSAL MAP | PROPOSAL 11X17 LANDSCAPE



Marion County
OFFICE
FINANCE DEPARTMENT

Contract Review Sheet

PW-5836-24

A&E Standard Prof Svcs Agmnt #: **PW-5836-24** Amendment #: _____

Contact: **Natalie Tomaszewski** Department: **Public Works Department**
Phone #: **503.365.3100** Date Sent: **Tuesday, February 27, 2024**

Title: **Santiam Canyon Parks Recovery Project - Design**

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

Term - Date From: **Execution** Expires: **December 31, 2027**

Original Contract Amount: \$ **157,020.00** Previous Amendments Amount: \$ **-**

Current Amendment: \$ **-** New Contract Total: \$ **157,020.00** Amd% **0%**

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

Source Selection Method: **20-0260 Request for Proposal** RFP# **PW1442-23**

Description of Services or Grant Award

Professional engineering, land surveying, environmental permitting, landscape architectural and related services necessary for the design and construction of fire damaged parks in the North Santiam Canyon.

3/13

Desired BOC Session Date:	<u>3/20/2024</u>	Files submitted in CMS for Approval:	<u>2/28/2024</u>
Agenda Planning Date	<u>3/7/2024</u>	Printed packets due in Finance:	<u>3/5/2024</u>
Management Update	<u>2/20/2024</u>	BOC upload / Board Session email:	<u>3/6/2024</u>
BOC Session Presenter(s) _____			

FOR FINANCE USE

Date Finance Received: _____ Date Legal Received: _____
Comments: Y

REQUIRED APPROVALS

DocuSigned by:

D1ECCAACCB14CB
Finance - Contracts 2/28/2024
Date

DocuSigned by:

2A051B5756514CE
Contract Specialist 3/5/2024
Date

DocuSigned by:

80C98A6F709240B
Legal Counsel 3/4/2024
Date

DocuSigned by:

1E084034505E453
Chief Administrative Officer 3/4/2024
Date



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: ¹³ ~~March 20~~, 2024

Department: Public Works

Title:

Consider approval of contract with AKS Engineering & Forestry, LLC for Santiam Canyon Parks Recovery Project - Design in the amount of \$157,020.00.

Management Update/Work Session Date: Tuesday, February 20, 2024

Audio/Visual aids ☐

Time Required: 10 Minutes

Contact: Kevin Thompson

Phone: 503.566.4158

Requested Action:

Approve a contract with AKS Engineering & Forestry, LLC for Santiam Canyon Parks Recovery Project - Design in the amount of \$157,020.00.

Issue, Description
& Background:

Marion County's Parks system is comprised of 17 developed parks, ranging from small neighborhood parks to large natural areas. 7 of these parks were heavily damaged during the Beachie Creek fire in Sept 2020. North Fork Park, Bear Creek Campground, and Salmon Falls Park on North Fork Rd experienced severe winds and fire conditions that culminated in 80-100% tree loss as well as major damage to facilities and amenities. Minto, Packsaddle, Niagara, and Old Roger's Wayside Parks on Hwy 22 also sustained significant damage and major tree loss due to fire conditions, severe wind, and subsequent emergency response activities. Marion County Public Works requires professional engineering, land surveying, environmental permitting, landscape architectural and related services necessary for the design and construction of fire damaged parks in the North Santiam Canvon.

Financial Impacts:

The proposed contract value is \$151,020,100% of which would be paid using Parks funds.

Impacts to Department
& External Agencies:

Staff time will be focused on management of this project and coordination with the other agencies that manage the North Fork Corridor.

List of attachments:

Contract Review Sheet and PW-5836-24 contract

Presenter:

Kevin Thompson; kthompson@co.marion.or.us

Department Head
Signature:

DocuSigned by:

Brian Melodas

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**MARION COUNTY
ENGINEERING AND RELATED SERVICES CONTRACT
Contract Number: PW-5836-24**

Project Title: Santiam Canyon Parks Recovery Project - Design	County Project Number: 105481/105482
Project Location: Various Marion County Parks	Associated RFP Number: PW1442-23
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) \$0.00 for contingency tasks, each of which must be separately authorized by County.	\$ 157,020.00

This Contract is between Marion County, hereafter called "County" and AKS Engineering & Forestry, an LLC corporation, hereafter called "Consultant." County and Consultant together are also referred to as "Parties" and individually referred to as "Party." The primary contacts for this Contract are identified in Exhibit F, Contact Information and Key Persons.

For purposes of this Contract:

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

If specified below, county'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 an agency or department of the federal government. If applicable, Consultant shall comply with Exhibit G: 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)

TERMS AND CONDITIONS

- Contract Effective Date and Term.** This Contract is effective on the date it has been signed by the parties and all required approvals have been obtained. No work or compensation under the Contract is authorized until notice to proceed has been issued in writing (email acceptable) by the County. Unless otherwise amended or terminated, this Contract shall expire December 31, 2027.
- 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.
- Compensation.** The maximum NTE amount, which includes the total of all allowable and reimbursable costs and expenses (and contingency tasks, if any) payable to Consultant under this Contract, is set forth in the table above and detailed further in Exhibit B, Compensation. County reserves the right, in its sole discretion, to amend this Contract to increase this amount for additional Services within the scope of the procurement. The payment methodology and basis for payment to Consultant is described in Exhibit B, Compensation.

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

- Exhibit A – Statement of Work
- Exhibit B – Compensation
- Exhibit C – Insurance
- Exhibit D – Special Terms and Conditions
- Exhibit E – Errors & Omissions (“E&O”) Claims Process
- Exhibit F – Contact Information and Key Persons
- Exhibit G – 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 County reserves the right (i) to determine the delivery schedule (as mutually acceptable to County and Consultant) for the Services to be performed and (ii) to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Consultant's performance. Consultant is responsible for determining the appropriate means and manner of performing the Services. Consultant is not an "officer", "employee", or "agent" of County.
- b. Consultant shall be responsible for all Federal or State of Oregon (“State”) taxes applicable to compensation or payments paid to Consultant under the Contract and, unless Consultant is subject to backup withholding, County will not withhold from such compensation or payments any amount(s) to cover Consultant's Federal or State tax obligations. Throughout the duration of the Contract, Consultant shall submit an updated W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>) to County whenever Consultant’s backup withholding status or any other information changes. Consultant is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Consultant under the Contract, except as a self-employed- individual.
- c. Consultant shall not be responsible for or have control over the means, manner, methods or techniques required of or used by other consultants or contractors under contract with County, unless otherwise expressly agreed to in writing by the Parties. The Parties agree, however, that these Section 6.d. provisions do not in any way revise or adjust Consultant’s professional responsibility to report to County any information that comes to Consultant’s attention (during performance of this Contract) pertaining to a project, or to performance by other consultants or contractors on a project, that would adversely affect County or a particular project.

7. Subcontracts and Assignment; Successors and Assigns

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

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

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

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

a. Professional Standard of Care.

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

b. Responsibility of Consultant.

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

c. Reserved.

11. Ownership of Work Product

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

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

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

Intellectual Property, Third Party Intellectual Property, Consultant Intellectual Property derivative works and Third-Party Intellectual Property derivative works.

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

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

13. Indemnity

- a. **Claims for Other Than Professional Liability.** Consultant shall indemnify, defend, save, and hold harmless County, and its officers, agents, and employees, from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature resulting from or arising out of the acts or omissions of Consultant or its sub-consultants, subcontractors, agents, or employees under this contract.
- b. **Claims for Professional Liability.** Consultant shall indemnify, defend, save, and hold harmless County, and its officers, agents, and employees, from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature arising out of the professionally negligent acts, errors or omissions of Consultant or its sub-consultants, subcontractors, agents, or employees in the performance of professional services under this contract.
- c. **Indemnity for Infringement Claims.** *Without limiting the generality of section 13(a) or 13(b), Consultant expressly agrees to indemnify, defend, save and hold harmless the County and its officers, agents, and employees from any and all claims, suits, actions, losses, damages, liabilities, costs and expenses, including attorney fees, arising out of or relating to any claims that Consultant's services, the Work Product or any other tangible or*

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

- d. **Defense Qualification.** Neither Consultant nor any attorney engaged by Consultant shall defend or purport to defend a claim in the name of the County, without first receiving from the applicable entity, authority to act as legal counsel, nor shall Consultant settle any claim on behalf of the foregoing entities without the approval of these entities. The County may at any time and at its election and expense, assume their own defense and settlement.*
- e. **County's Acts or Omissions.** This section 13 does not include indemnification by Consultant of the County or its officers, agents and employees, for the acts or omissions of the County or its officers, agents and employees, whether within the scope of the Contract or otherwise.*

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

15. Termination

- a. Termination by Mutual Consent.** The Contract may be terminated at any time, in whole or in part, by mutual written consent of the Parties.
- b. County's Right to Terminate for Convenience.** County may, at its sole discretion, terminate the Contract, in whole or in part, by written notice to Consultant specifying the termination date of the Contract.
- c. County's Right to Terminate for Cause.** County may terminate the Contract, in whole or in part, immediately upon written notice to Consultant or at such later date as County may establish in such notice, upon the occurrence of any of the following events:
 - (i) In the event the Board of Commissioners of the County, in the exercise of its reasonable discretion, reduces, changes, eliminates, or otherwise modifies the funding for any of the services identified, the Consultant agrees to abide by any such decision including termination of service;
 - (ii) Federal, State or local laws, regulations or guidelines are modified or interpreted in such a way that either the Services under the Contract are prohibited, or County is prohibited from paying for such Services from the planned funding source;
 - (iii) Consultant no longer holds any license or certificate that is required to perform the Services; or
 - (iv) Consultant commits any material breach or default of any covenant, warranty, obligation or agreement under the Contract, fails to perform the Services under the Contract within the time specified or any extension thereof, or so fails to perform the Services as to endanger Consultant's performance under the Contract in accordance with its terms, and such breach, default or failure is not cured within 10 calendar days after County's notice to Consultant, or such longer period as County may specify in such notice.
- d. Cessation of Services.** Upon receiving a notice of termination of the Contract, Consultant shall immediately cease all activities under the Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of the Contract, Consultant shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed. Upon County's request, Consultant shall surrender to anyone County designates, all documents, information, research, works-in-progress, Work Product and other property, that are deliverables or would be deliverables had the Contract been completed, that are in Consultant's possession or control and may be needed by County to complete the Services.
- e. Consultant's Right to Terminate for Cause.**
 - (i) Consultant may terminate the Contract by giving written notice to County if County fails to pay Consultant pursuant to the terms of the Contract and if County fails to cure within 15 calendar days after receipt of Consultant's written notice, or such longer period of cure as Consultant may specify in such notice.
 - (ii) Consultant may terminate the Contract, for reasons other than nonpayment, if County commits any material breach or default of any covenant, warranty, obligation or agreement under the Contract, fails to perform under the Contract within the times specified, or so fails to perform as to endanger Consultant's performance under the Contract, and such breach, default or failure is not cured within 30 calendar days after Consultant's notice to County, or such longer period as Consultant may specify in such notice.

f. Remedies.

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

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

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

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

19. Permits and Licenses

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

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

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

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

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

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

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

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

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

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

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

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

29. False Claims

- a. Consultant understands and acknowledges it is subject to the Oregon False Claims Act ([ORS 180.750](http://uscode.house.gov/) to [180.785](http://uscode.house.gov/)<http://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 County whenever, in connection with the award, performance or closeout of the Contract, or any subcontract thereunder, Consultant has credible evidence that a principal, employee, agent, or subcontractor of Consultant has committed:
 - (i) A violation of the Oregon False Claims Act; or
 - (ii) A violation of State or Federal criminal or civil law involving fraud, conflict of interest, bribery, gratuity or similar misconduct.
- c. Consultant must include subsections (a) and (b) of this section in each subcontract Consultant may award in connection with the performance of the Contract. In doing so, Consultant may not modify the terms of those subsections, except to identify the subcontractors or sub grantee that will be subject to those provisions.

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

CONSULTANT CERTIFICATIONS

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

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

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

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

- (1) **Consultant has read this Contract, understands it, and agrees to be bound by its terms and conditions.**
(2) Consultant understands and agrees that various documents are not physically attached but are incorporated by reference and have the same force and effect as if fully set forth herein.
(3) Consultant is an independent contractor as defined in ORS 670.600 and as described in IRS Publication 1779.
(4) In the event that Consultant is a general partnership or joint venture, Consultant signature(s) on this Contract constitutes certifications to the above statements pertaining to the partnership or joint venture, as well as certifications of the above statements as to any general partner or joint venturer signing this Contract.

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

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

**MARION COUNTY SIGNATURES
BOARD OF COMMISSIONERS:**

Chair *Kim Carson* Date *3.13.2024*

Don B... Date *3/13/2024*
Commissioner

Colehillier Date *3/13/2024*
Commissioner

Authorized Signature: *Brian Nicholas* Date *2/28/2024*
DocuSigned by: 9793DA7ACD6D443...
Department Director or designee

Authorized Signature: *Jan Fritz* Date *3/4/2024*
DocuSigned by: 1E984034595E453...
Chief Administrative Officer

Reviewed by Signature: *Scott Norris* Date *3/4/2024*
DocuSigned by: 00C95A6F708240B...
Marion County Legal Counsel

Reviewed by Signature: *Jeff D White* Date *2/28/2024*
DocuSigned by: D1FCEAA6CDB14EB...
Marion County Contracts & Procurement

CONSULTANT SIGNATURE(S)

Signature: *Richard Walker* Date: *3/15/2024*
DocuSigned by: BAF19D8CA641474...

Name: Richard walker Title: Principal

EXHIBIT A – STATEMENT OF WORK

A. PROJECT DESCRIPTION and OVERVIEW of SERVICES

Marion County Public Works Department (County) is currently seeking professional engineering, land surveying, environmental permitting, landscape architectural and related services necessary for the design and construction of fire damaged parks in the North Santiam Canyon.

The focus of this contract is the redevelopment of the Bear Creek Campground and Day-Use Area (Project A) and the Salmon Falls Campground and Day-Use Area (Project B). However, redevelopment of the following County parks may be added, by amendment to the Consultant contract resulting from this solicitation, once additional funding has been secured:

- North Fork Park
- North Santiam Park
- Minto Park
- Packsaddle Park
- Niagara Park
- Old Rogers Wayside

This Statement of Work (SOW) addresses the work required for limited survey and environmental services for Project A, and environmental, engineering, limited planning, and construction support services for Project B. Additional services at any of the parks identified above are optional, at County's discretion, and may be added via amendment(s) to this Contract.

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

County Responsibilities

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

Acronyms and Definitions

AJD	Approved Jurisdictional Determination	NMFS	National Marine Fisheries Service
APE	Area of Potential Effect	OAR	Oregon Administrative Rules
CFR	Code of Federal Regulations	OHW	Ordinary High Water
County	Marion County	ORS	Oregon Revised Statutes
CPM	Marion County's Project Manager	PS&E	Plans, Specifications & Estimate
DEQ	Oregon Department of Environmental Quality	QA	Quality Assurance
DSL	Oregon Department of State Lands	QC	Quality Control
ESA	Endangered Species Act	ROW	Right of Way
ESCP	Erosion and Sediment Control Plans	SOW	Statement of Work
JPA	Joint Permit Application	USACE	US Army Corps of Engineers
LWD	Large Woody Debris	USFWS	US Fish & Wildlife Service
NTE	Not To Exceed	WOTUS	Waters of the United States
NTP	Notice to Proceed		

B. STANDARDS and GENERAL REQUIREMENTS

1. Standards

The following standards shall apply to the contract:

- ORS Chapters 92, 93, 209 and 672
- Marion County Survey Standards
- ODOT Global Navigation Satellite System ("GNSS") Guidelines
- ODOT Manual for Survey Control Data Sheets for Construction Plans
- 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
- USACE Wetland Delineation Manual and Western Mountains, Valleys, and Coast Regional Supplement
- Endangered Species Act (ESA), 16 USC 1531
- SLOPES V (Standard Local Operating Procedures for Endangered Species)

2. Software and Format Requirements

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

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

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

3. Professional Licenses, Registrations and Qualifications

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

4. General Requirements

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

C. REVIEW, COMMENT and SCHEDULE OVERVIEW

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

D. PROJECT COOPERATION

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

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

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

E. TASKS, DELIVERABLES and SCHEDULE

PROJECT A: BEAR CREEK CAMPGROUND AND DAY-USE AREA

TASK 1 – PROJECT MANAGEMENT

Consultant shall provide management, subconsultant management, and coordination of Services under this SOW for delivery of Tasks and Deliverables according to the agreed-upon delivery schedule. Services that do not fall within this scope of work are excluded from this agreement.

1.1 Administration & Record Keeping

Consultant shall:

- Prepare invoices and progress reports consistent with requirements and standard practices.
- Each invoice must:
 - Itemize costs by project;
 - Reconcile the budget with the actual amount billed to date;
 - State the contract number, project number and any other applicable information as provided by the CPM; and
 - Be sent to the email address provided by the CPM.
- 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;
 - 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 five (5) progress reports will be necessary under this contract.

Consultant Deliverables and Schedule

Consultant shall provide:

- Progress reports and invoices submitted to County no later than the 20th calendar day of the month following the reporting period.

1.2 Coordination

Consultant shall:

- Coordinate with the CPM as the main point of contact for coordination and management of Consultant Services under this SOW;
- Contact other County staff, and regulatory agency staff, to gather any additional information needed for completion of the tasks detailed in this SOW;
- Provide overall management, direction and coordination of staff to include any necessary internal Consultant staff meetings;
- Contact CPM via telephone or email periodically as needed to provide Project status updates

Consultant Deliverables and Schedule

Consultant shall provide:

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

1.3 Project Meetings

Consultant shall:

- Prepare for and attend monthly coordination meetings via telephone or video call (assumed total of six (6) meetings). Consultant shall prepare meeting agenda and meeting notes and respond to comments/edits if necessary. For budgeting purposes, it is assumed that up to (2) Consultant staff shall attend the coordination meetings, and the meetings will not exceed 1 hour.

Consultant Deliverables and Schedule

For each meeting, Consultant shall provide:

- Attendance, feedback, comments, and schedule updates as necessary during meeting discussions (no tangible deliverables for this task)
- Draft Meeting Minutes

TASK 2 – SURVEY SERVICES

2.1 Topographic Survey

Consultant shall professionally land survey all wetland and waters flagging and sample plot locations that are placed in the field by Consultant's environmental staff during Task 3.1 fieldwork. This linework will then be added to the project base maps.

Consultant Deliverables and Schedule

- Updated project base files in AutoCAD format within four (4) weeks of the completion of Task 3.1

TASK 3 – ENVIRONMENTAL SERVICES

3.1 Wetland and Waters Delineation Fieldwork

Consultant shall conduct up to two (2) site visits to document the presence and/or absence of wetlands and waters within the project APE. This will include the demarcation of the OHW of the Little North Santiam River, where accessible. The delineation will be conducted in accordance with the methodology outlined in the Western Mountains, Valleys, and Coast Regional Supplement and the 1987 USACE Wetlands Delineation Manual. All data will be collected on standard Wetland Determination Data Forms for inclusion in the report prepared under Task 3.2. Wetland and water boundaries and plot locations will be flagged in the field for survey under Task 2.1.

Consultant Deliverables and Schedule

Consultant shall provide:

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

3.2 Wetland and Waters Delineation Report

Upon completion of the site visits, Consultant shall prepare a Wetland and Waters Delineation Report to document the results of Task 3.1, which will meet the requirements of the current OAR for wetland delineation reports and jurisdictional determinations (OAR 141-090-0035), including the preparation of the required wetland and waters delineation maps. A copy of a draft report will be submitted to the County for review and comment prior to submittal to DSL for concurrence. The report will also be submitted to USACE along with an AJD request form to determine if the wetlands and waters identified are jurisdictional WOTUS under the current rules. This task includes coordination with DSL and/or USACE to

facilitate their review and approval of the delineation report. If necessary, this will include one (1) post-submittal site visit with agency staff.

Consultant Deliverables and Schedule

Consultant shall provide:

- Draft Wetland and Waters Delineation Report to CPM within four (4) weeks of completing Task 3.1
- Final Wetland and Waters Delineation Report to CPM within two (2) weeks of receiving County comments on the draft report

PROJECT B: SALMON FALLS CAMPGROUND AND DAY-USE AREA

TASK 1 – PROJECT MANAGEMENT

Consultant shall provide management, subconsultant management, and coordination of Services under this SOW for delivery of Tasks and Deliverables according to the agreed-upon delivery schedule. Services that do not fall within this scope of work are excluded from this agreement.

1.1 Administration & Record Keeping

Consultant shall:

- Prepare a digital Project schedule for the deliverables listed in the SOW in a sharable format (e.g. Microsoft Projects or like program). The Project schedule must fit within the overall project schedule developed by the County, and it is assumed that the County will coordinate with the Consultant to ensure the overall project schedule allows sufficient time to prepare, review, submit, and get approvals for the deliverables listed in this SOW. Updates to the Project schedule shall be made during the course of the Project if milestone dates are modified by the County. For budgeting purposes, it is assumed that up to three (3) Project schedule updates will be necessary.
- Prepare invoices and progress reports consistent with requirements and standard practices.
- Each invoice must:
 - Itemize costs by project;
 - Reconcile the budget with the actual amount billed to date;
 - State the contract number, project number and any other applicable information as provided by the CPM; and
 - Be sent to the email address provide by the CPM.
- 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; and
 - 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 fourteen (14) progress reports will be necessary.

Consultant Deliverables and Schedule

Consultant shall provide:

- QA/QC documentation available upon request.
- Updates to the Project Delivery Schedule, as necessary per timeline agreed to by Consultant and County.
- Progress reports and invoices submitted to County no later than the 20th calendar day of the month following the reporting period.

1.2 Coordination

Consultant shall:

- Coordinate with the County as the main point of contact for coordination and management of Consultant Services under this SOW;
- Contact other County staff, as needed, to gather any additional information needed for completion of the tasks detailed in this SOW;
- Provide overall management, direction and coordination of staff (including sub-consultants) to include any necessary internal Consultant staff meetings;
- Contact CPM via telephone or email periodically as needed to provide Project status updates

- Coordinate with Subconsultants as necessary to review and conform with the Project schedule and provide updates to the County during Project Meetings.

Consultant Deliverables and Schedule

Consultant shall provide:

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

1.3 Project Meetings

Consultant shall:

- Prepare for and attend one Project kickoff meeting. The Project kickoff meeting will be held at Marion County Public Works office. Consultant shall prepare meeting agenda and meeting notes and respond to comments/edits if necessary. For budgeting purposes, it is assumed that up to three (3) Consultant staff shall attend the 1-hour Project kickoff meeting, drive time excluded.
- Prepare for and attend bi-weekly or monthly coordination meetings via telephone or video call as deemed necessary by the CPM (assumed total of twenty-one (21) meetings). Consultant shall prepare meeting agenda and meeting notes and respond to comments/edits if necessary. For budgeting purposes, it is assumed that up to two (2) Consultant staff shall attend each coordination meeting, and all meetings will not exceed 1 hour.

Consultant Deliverables and Schedule

For each meeting, Consultant shall provide:

- Attendance, feedback, comments, and schedule updates as necessary during meeting discussions (no tangible deliverables for this task)
- Draft Meeting Minutes

TASK 2 – ENVIRONMENTAL SERVICES

2.1 Wetland and Waters Delineation Report

Consultant shall prepare a Wetland and Waters Delineation Report to document the results of previous fieldwork, which will meet the requirements of the current OARs for wetland delineation reports and jurisdictional determinations (OAR 141-090-0035), including the preparation of the required wetland and waters delineation maps. A copy of a draft report will be submitted to the County for review and comment prior to submittal to DSL for concurrence. The report will also be submitted to USACE along with an AJD request form to determine if the wetlands and waters identified are jurisdictional WOTUS under the current rules. This task includes coordination with DSL and/or USACE to facilitate their review and approval of the delineation report. If necessary, this will include one (1) post-submittal site visit with agency staff.

Consultant Deliverables and Schedule

Consultant shall provide:

- Draft Wetland and Waters Delineation Report to CPM within four (4) weeks of receiving NTP
- Final Wetland and Waters Delineation Report to CPM within two (2) weeks of receiving County comments on the draft report

2.2 Agency Coordination

Consultant shall coordinate with regulatory agency staff, including, but not limited to, DSL, USACE, DEQ, USFWS, and NMFS, to discuss the Project and determine the permitting process for each agency and confirm submittal requirements. For budgeting purposes, it is assumed that this coordination will consist of up to three (3) one-hour virtual meetings, email correspondence, and phone calls. It is assumed that each meeting will be attended by up to two (2) Consultant staff.

Consultant Deliverables and Schedule

Consultant shall provide:

- Email summaries of key items discussed with agency staff within one (1) week of finalizing agency coordination

2.3 Joint Permit Application and DEQ 401 Certification/Water Quality Review Coordination

Consultant shall prepare permit documents to authorize any unavoidable impacts to jurisdictional waters, including wetlands. Because the extent of the impacts is currently unknown, it is assumed for this task that Consultant will need to prepare a JPA for submittal to the USACE and/or DSL. If it is determined based on design and Task 2.2 agency

coordination that the project will qualify for any federal or state exemptions, or if the impacts can be covered under a simplified process (i.e., DSL General Authorization), then Consultant will utilize these options for this Project. Consultant shall also aid in the submittal of the JPA and any other required documentation to obtain a Section 401 Water Quality Certification (or Mutual Agreement and Order in lieu of Permit (MAO)).

To authorize work within jurisdictional waters and wetlands to be impacted within the Project APE, Consultant shall complete the following tasks:

- Prepare all required background maps, project descriptions, and additional information as required to quantify and document wetland and waters impacts within the JPA.
- Prepare all permitting documents for County signature and submit required application materials directly to the regulatory agencies on behalf of the County.
- Provide post-submittal coordination with the regulatory agencies in the form of phone calls and email correspondence to facilitate permit review and issuance.
- Assist the County in setting up a facility on DEQ's YDO, assigning Consultant's Project Coordinator to the facility, and submitting the required Pre-filing Request, if determined to be required.
- After 30-days have elapsed since the DEQ Pre-filing Request, upload a copy of the complete JPA Package, required DEQ 401 Water Quality Certification Request form, and any other necessary supporting documentation to DEQ's YDO.

The above services are based on the following assumptions.

- County will be responsible for obtaining Planning Department signatures for the required LU Affidavit in the JPA.
- Due to the varied nature of post-submittal coordination, it is expected that the Consultant shall not spend more than eight hours for office review and coordination time for post-submittal agency coordination.
- No Post-Construction Stormwater Management Plan will be required as the project will not result in an increase in impervious surfaces.

Consultant Deliverables and Schedule

Consultant shall provide:

- Draft JPA to CPM per the approved Project schedule
- Final JPA to agencies and CPM within two (2) weeks of receiving County comments on the draft application

2.4 DEQ 1200-C Permitting

If a DEQ 1200-C Permit is required for the Project, Consultant shall:

- Provide pre-submittal coordination with DEQ staff, as necessary, to confirm permitting requirements and application procedures. Coordination includes correspondence in the form of telephone calls, e-mail, letters, and memos to document permit needs.
- Assemble permit application materials including the application forms, LUCS, plans, drawings, memos, details, and specifications to support the permit application.
- Provide support to transfer the permit to the eventual construction contractor once one has been selected.

Consultant Deliverables and Schedule

Consultant shall provide:

- Submittal of application materials to DEQ and CPM per the approved Project schedule

TASK 3 – ENGINEERING SERVICES

3.1 Campground and Day-use Area Conceptual Design

Consultant shall coordinate with the CPM and other County staff to modify, as determined to be necessary, the original conceptual design prepared by Walker Macy for this park. The updated conceptual design will be used to facilitate the completion of all environmental, engineering, and planning services under this contract.

Consultant shall:

- Attend one (1) virtual design review meeting to discuss the conceptual plans with the CPM and other County staff. It is anticipated that up to two (2) Consultant personnel shall attend the meeting, estimated to be up to 2 hours in length.

- Prepare conceptual layout for future park improvements and amenities based on County direction

The above services are based on the following assumptions.

- AKS will digitize the original concept plan prepared by Walker Macy; no significant changes to the location or design of the park improvements will be made.
- Goal for the Campground and Day-use Area Conceptual Design is to ensure future park improvements can be constructed without impacting adjacent wetlands.

Consultant Deliverables and Schedule

Consultant shall provide:

- Draft Conceptual Design to CPM per the approved Project schedule
- Final Conceptual Design to CPM within four (4) weeks of receiving County comments on the draft design

3.2 Preliminary (30%) Civil Engineering Services

Preliminary civil engineering services under this contract will cover grading and design for the proposed wetland habitat improvements at the park, and preliminary grading for future park improvements with a focus on how it ties into the proposed wetland improvements.

Consultant's preliminary civil engineering services shall include preparing a set of preliminary plans including the following:

- Preliminary grading plans
- Preliminary typical sections and details (including LWD details)
- Preliminary cost estimate

Consultant shall attend one (1) virtual design review meeting to discuss the preliminary plans with the CPM and other County staff. It is anticipated that up to two (2) Consultant personnel shall attend the meeting, estimated to be up to 2 hours in length.

The above services are based on the information provided in the draft proposal to the County and are based on the following assumptions.

- No improvements within the public ROW will be required
- The budget provided does not cover changes to the conceptual park layout prepared under Task 3.1 once it has been approved and Consultant has been authorized to move forward on this task.

Consultant Deliverables and Schedule

Consultant shall provide:

- Draft Preliminary Plans to CPM per the approved Project schedule
- Final Preliminary Plans to CPM within four (4) weeks of receiving County comments on the draft design
- Preliminary cost estimate

3.3 Advance (75%) Civil Engineering Services

Consultant shall prepare a set of advance plans including the following:

- Grading plans
- Erosion and sediment control plans (ESCP)
- Typical sections and details
- Landscape plans and details
- Project specifications, special provisions, and cost estimate

The above services are based on the following assumptions.

- Ground disturbance will be greater than 1 acre for the total project, so ESCP will be prepared in accordance with DEQ 1200-C requirements.
- Project specifications and special provisions will be provided in accordance with the 2024 Oregon Standard Specifications for Construction.

Consultant shall attend one (1) virtual design review meeting to discuss the advance plans with the CPM and other County staff. It is anticipated that up to two (2) Consultant personnel shall attend the meeting, estimated to be up to 2 hours in length.

Consultant Deliverables and Schedule

Consultant shall provide:

- Draft Advance Plans to CPM per the approved Project schedule
- Final Advance Plans to CPM within four (4) weeks of receiving County comments on the draft design

3.4 Final (100%) Civil Engineering Services

Consultant shall prepare a set of final plans including the following:

- Grading plans
- ESCP including notes and details
- Construction notes and details
- Landscape plans and details
- Project specifications and cost estimate

Consultant shall attend one (1) virtual design review meeting to discuss the final plans with the CPM and other County staff. It is anticipated that up to two (2) Consultant personnel shall attend the meeting, estimated to be up to 2 hours in length.

Consultant Deliverables and Schedule

Consultant shall provide:

- Draft Final PS&E to CPM per the approved Project schedule
- Final PS&E to CPM within four (4) weeks of receiving County comments on the draft design

TASK 4 – PLANNING SERVICES

4.1 Pre-Application Conference

Consultant shall:

- Complete preliminary Code research
- Prepare the letter, list of questions, and pre-application form
- Submit the pre-application conference package to the County
- Attend and participate in the pre-application conference
- Follow-up on various matters with the County

Consultant Deliverables and Schedule

Consultant shall provide:

- Submit pre-application materials to the County within one (1) week of receiving CPM approval of the conceptual design under Task 3.1

TASK 5 – CONSTRUCTION SUPPORT SERVICES

5.1 Bidding Support

Consultant shall provide support when requested.

- Attend the Pre-Bid conference
- Answer contractor questions during bidding to clarify the intent of the civil engineering drawings.
- Assist County in issuing addenda and supplemental information. Includes preparation of up to 2 bid addenda.
- Consultant will be available to meet and discuss the contractor bids, qualifications, and schedules with County and provide a recommendation for selection.

Consultant Deliverables

Consultant shall provide:

- PDF copy for up to two (2) bid addenda

PROJECT C: NORTH FORK PARK [RESERVED]

PROJECT D: NORTH SANTIAM PARK [RESERVED]

PROJECT E: MINTO PARK [RESERVED]

PROJECT F: PACKSADDLE PARK [RESERVED]

PROJECT G: NIAGARA PARK [RESERVED]

PROJECT H: OLD ROGERS WAYSIDE [RESERVED]

F. CONTINGENCY TASKS (RESERVED)

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 used by firms that do not have an audited, approved overhead rate. NBRs are inclusive of direct salary, indirect expenses and profit.

NTE – Not to Exceed Amount

T&M – Time and Materials

A. METHOD of COMPENSATION for NON-CONTINGENCY TASKS

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

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

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

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

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

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

B. PAYMENT OPTIONS

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

C. TRAVEL

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

- The travel, lodging, and per diem rates referenced in this Section C are the maximums that Consultant's estimate (or reimbursement, if applicable) may be based on. Travel rates other than those referenced in this Section C may be negotiated in the Contract, however, under no circumstance shall travel, lodging and per diem rates exceed the

maximums set forth by the State Controller at

<https://www.oregon.gov/DAS/SCD/SARS/policies/oam/40.10.00.PO.pdf>.

- Mileage - For compensation based on Cost-Plus-Fixed-Fee or Time and Materials (or Fixed Price or Price Per Unit when travel reimbursement is approved and mileage is compensated separately), all mileage approved by County will be reimbursed according to the rates set forth by the State Controller at <https://www.oregon.gov/DAS/SCD/SARS/policies/oam/40.10.00.PO.pdf> that are in effect on the date when the travel occurs.
- For compensation based on Cost-Plus-Fixed-Fee or Time and Materials, Consultant shall submit receipts for travel-related expenses billed to County, such as but not limited to, lodging, rental vehicles, and air fare. If lodging is shared by two or more travelers, the lodging receipt must indicate the names of any travelers on official State business who shared the room.

D. INVOICES

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

- The County's Contract number
- The County's project number

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.

CPFF and T&M Compensation:

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

E. PAYMENT TERMS

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

F. CORRECTIVE WORK

Consultant shall complete all Services, including Deliverables, as required in the Contract to County's satisfaction. If County, using reasonable discretion, determines that the Services or associated deliverables, or both, are unacceptable, County shall notify Consultant in writing of the deficiency. Within 7 calendar days (unless a different timeframe is agreed to by the Parties) of receipt of the deficiency notification Consultant shall respond to County outlining how the

deficiency shall be corrected. Consultant shall correct any deficiencies in the Services and Deliverables to County's satisfaction without further compensation. County will not unreasonably withhold payment.

G. WITHHOLDING/RETAINAGE

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

H. PAYMENT REDUCTION

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

I. SPECIFIC LIMITATIONS and UNALLOWABLE CHARGES

Specific Limitations

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

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

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

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

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

Unallowable Charges

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

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

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

worked and for work on legal holidays, except for individuals who are excluded from receiving overtime under personal services contracts pursuant to ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209.)

J. INDIRECT COSTS; SALARY and BILLING RATE SCHEDULES

1. Approved cost data - Consultant will submit rate schedules and any required certifications 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 to County. Consultant Certification of compliance with Federal Cost Principles is required. A signed Certification of Final Indirect Costs form must be submitted with the overhead schedule.

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

3. Salary and Billing Rate Schedules

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

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

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

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

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

K. RATE REVISIONS

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

L. BREAKDOWN OF COSTS (BOC)

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

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

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

The final BOC agreed to by the Parties is incorporated by this reference.

EXHIBIT C

INSURANCE PROVISIONS

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

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

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

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

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

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

Bodily Injury/Death:

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

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

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

Bodily Injury/Death:

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

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

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

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

EXHIBIT D – SPECIAL TERMS AND CONDITIONS

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

E&O CLAIMS PROCESS

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

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

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

Procedure for resolution of disagreements

GENERAL

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

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

INITIAL VERBAL NOTICE AND WRITTEN LETTER OF CONCERN

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

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

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

INFORMATION EXCHANGE AND RESOLUTION MEETING

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

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

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

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

CLAIMS PROCEDURE

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

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

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

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

COST EVALUATION AND RECOVERY

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

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

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

ALTERNATE METHODS OF RECOVERY

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

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

Documentation

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

- The determination of whether or not the Consultant met Contract requirements and met the standard of care;
- The determination of responsibility and whether there were mitigating circumstances beyond the reasonable control of the Consultant;

- The determination of whether or not the work requested by the County was within the scope of services of the Contract;
- If the Consultant was not required to correct deficiencies at no cost to the County, provide the reasons for that decision.
- A record of negotiation for any negotiated settlement subject to the rules regarding confidentiality of mediations in OAR 731 division 001.

DEFINITIONS

County – Marion County, Oregon

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

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

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

Contract - The project specific Contract between County and Consultant.

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

E&O – Errors and Omissions

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

Parties – Refers to County and Consultant collectively

Party – Refers to County and Consultant separately

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

- Work delays or inefficiencies.
The Premium Costs are the total delay/inefficiency damages paid to the construction contractor.
- Rework
The Premium Costs are the dollar amount of the original items of work that have to be removed and the costs to remove these items.
- Extra Work
The Premium Costs are computed as the net difference between the final agreed prices paid to the construction contractor and what the cost would have been had the extra work been included in the original bid at letting.

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

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

EXHIBIT F – CONTACT INFORMATION and KEY PERSONS**1. Party Contact Information.****a.1 * County's Project Manager (CPM)**

Name:	Ryan Wade
Ph:	503.365.3171
E-mail:	rwade@co.marion.or.us

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

Name:	Natalie Tomaszewski
Ph:	503.365.3100
E-mail:	ntomaszewski@co.marion.or.us

a.3 County's address for invoicing:

Mailing Address:	5155 Silverton Rd. Salem, OR 97305
E-mail:	PWAP@co.marion.or.us

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

Name:	Richard Walker
Ph:	503.400.6028 EXT. 404
E-mail:	richardw@aks-eng.com

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

Name:	AKS Engineering & Forestry LLC
Address:	3700 River Road N, Suite 1, Keizer, OR 97303
Ph:	503.400.6028
E-mail:	richardw@aks-eng.com

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

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

2. Key Persons

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

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

3. Reassignment or Transfer of Key Person

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

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

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

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

- Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian County Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.
- Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- See §200.322 Domestic preference for procurements.
- Audit Requirements of 2 CFR §200.5XX (Subpart F)
- Subrecipient must comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law.
- If Subrecipient expends federal awards in excess of \$750,000 in a fiscal year, Subrecipient is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Copies of all audits must be submitted to the County within 30 days of completion.
- Subrecipient must save, protect and hold harmless the County from the cost of any audits or special investigations performed by the Secretary of State with respect to the funds expended under this Agreement. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Subrecipient and the County.
- System for Award Management. Subrecipient must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at <https://www.sam.gov>. This includes applicable requirements regarding registration with SAM, as well as maintaining current information in SAM. Subrecipient must also comply with applicable restrictions on subawards ("subgrants") to first tier subcontractors (first-tier "Subcontractors"), including restrictions on subawards to entities that do not acquire and provide (to the County) the unique entity identifier required for SAM registration.

- Whistleblower Protection Act. Subrecipient must comply and ensure the compliance by subcontractors, with 41 U.S.C. 4712, Program for Enhancement of Employee Whistleblower Protection. Subrecipient must inform subcontractors, contractors and employees, in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 USC § 4712.
- See § 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.
- See § 200.323 Procurement of recovered materials.
- Recordkeeping Requirements. Subrecipient must maintain records and financial documents for five years after all funds have been expended or returned to the County. The County may request transfer of records of long-term value at the end of such period. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats.
- Subrecipient must agree to provide or make available such records to the County upon request, and to the Government Accountability Office (“GAO”), U.S. Treasury’s Office of Inspector General (“OIG”), and their authorized representative in order to conduct audits or other investigations.
- Civil Rights Compliance. Recipients of Federal financial assistance from the U.S. Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the U.S. Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Subrecipient's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Subrecipient's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Subrecipient implementing regulations at 31 CFR part 23.
- In order to carry out its enforcement responsibilities under Title VI of the Civil Rights Act, U.S. Treasury will collect and review information from non-Tribal recipients to ascertain their compliance with the applicable requirements before and after providing financial assistance. U.S. Treasury’s implementing regulations, 31 CFR part 22, and the Department of Justice (DOJ) regulations, Coordination of Non-discrimination in Federally Assisted Programs, 28 CFR part 42, provide for the collection of data and information from recipients (see 28 CFR 42.406). U.S. Treasury may request that recipients submit data for post-award compliance reviews, including information such as a narrative describing their Title VI compliance status. This collection does not apply to Tribal governments.
- Real Property, Equipment and Other Capital Expenditures. County shall, and shall cause its Subrecipients to, maintain policies and procedures for the management of property and equipment that comply with all requirements of the applicable Uniform Guidance at 2 CFR Part 200, Subpart D, 2 CFR Part 200.310 – 200.316 and 200.439, and specific requirements of the source of funds. These regulations shall apply to all real property, equipment, and other capital expenditures purchased with the federal funding.

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