

PAs 26524 to 26530; A&E Full-Service

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The following Exhibits are incorporated by reference from the Web

http://www.oregon.gov/ODOT/CS/OPO/AE.shtml##Contract_Docs

- a. Exhibit D – Influence and Debarment Provisions (May 2007)
- b. Exhibit E – Disadvantaged Business Enterprise (“DBE”) Required Provisions (May 2007)
- c. Exhibit H – Conflict of Interest Guidelines and Disclosure Process (June 2007)
- d. Exhibit I – Errors & Omissions (E&O) Claims Process (May 2007)
- e. Exhibit K – MWESB and DBE Aspirational Target Provisions (June 2007)

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PRICE AGREEMENT

OREGON DEPARTMENT OF TRANSPORTATION PRICE AGREEMENT NO. [REDACTED]

Architectural, Engineering, Land Surveying and Related Services

This "Price Agreement" or "PA" is between the State of Oregon, acting by and through its Department of Transportation, hereafter called "Agency" or "ODOT," and [REDACTED] (Legal company name) hereafter called "Consultant." Agency and Consultant together are referred to as "Parties" and individually referred to as "Party."

Agency's designated "Contract Administrator" is identified in **Exhibit J**, Contact Information and Key Persons. Agency may change the designated Contract Administrator by notifying Consultant in writing of the new Contract Administrator. This Price Agreement sets forth the terms and conditions applicable to services that may be required under "Work Order Contracts" or "WOCs" entered into between the Parties under this Price Agreement but does not guarantee that any WOCs will be entered between the Parties.

PART I. GENERAL PRICE AGREEMENT PROVISIONS

The following provisions apply to this Price Agreement:

1. Effective Date; Expiration and WOC Assignment Period; Termination.

a. **Effective Date.** This Price Agreement shall become effective on the date this Price Agreement has been signed by each Party hereto and all required approvals have been obtained.

b. Expiration and WOC Assignment Period

i. **Expiration.** This Price Agreement shall have a limited WOC assignment period but will not expire until the later of the following occurs: (1) the expiration of the WOC assignment period, or (2) each and all respective WOCs assigned under this Price Agreement have expired or have been terminated.

ii. WOC Assignment Period.

Unless this Price Agreement is sooner terminated, the WOC assignment period (which may be extended as provided in Section 5.b below) ends three (3) years from the effective date of this Price Agreement. A project/WOC is considered assigned when the WOC selection process is completed and the selection documentation has been submitted to the ODOT Procurement Office. All WOC assignments are tentative until negotiations are successfully completed, all required signatures have been obtained on the WOC, and ODOT has issued a notice to proceed to the Consultant.

c. Termination

i. **Termination by Mutual Consent.** This Price Agreement may be terminated at any time by mutual written consent of the Parties.

ii. **Agency's Right To Terminate For Convenience.** Agency may, at its sole discretion, terminate this Price Agreement, in whole or in part, upon thirty (30) calendar days written notice to Consultant.

d. **Effect of Expiration or Termination.** Expiration or termination of this Price Agreement shall not extinguish or prejudice Agency's right to enforce WOCs entered under this Price Agreement with respect to any breach of a Consultant warranty or any default or defect in Consultant performance

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that has not been cured. Expiration or termination of the Price Agreement shall not result in expiration or termination of any WOC in effect at the time of Price Agreement expiration or termination. Such WOCs shall remain in effect, and may be amended, until the particular WOC expires or terminates in accordance with its terms.

2. Menu of Services. The services that may be required under a WOC are more specifically described in the Scope of Services set forth in **Exhibit A**, attached and incorporated into this Price Agreement by this reference (the “Services”). Consultant agrees to perform the Services required under each WOC in accordance with the terms and conditions for WOCs as set forth in this Price Agreement.

3. Compensation

- a. Maximum Not-to-Exceed (NTE) Amount.** There is no guarantee that any specific amount of work or overall dollar amounts will be assigned via WOCs under this Price Agreement. The aggregate NTE compensation for all the PAs awarded under RFP 22910 (which may be increased per Section 5.a below), including any allowable expenses, is \$100 Million.
- b. Method of Compensation.** The payment methodology and options available for each WOC are described in **Exhibit B** - Compensation. Each WOC will identify and incorporate from **Exhibit B** the agreed-upon payment methodology and options applicable to the specific WOC.

4. Price Agreement Documents.

4.1 Exhibits Attached and Incorporated

This Price Agreement includes the following exhibits, each of which is attached and incorporated into this Price Agreement as though fully set forth herein:

- a. Exhibit A – Scope of Services
- b. Exhibit B – Compensation
- c. Exhibit C – Insurance
- d. Exhibit F – Work Order Contract Assignment and Requirements
- e. Exhibit G – Consultant Evaluation
- f. Exhibit J – Contact Information and Key Persons

4.2 Exhibits Incorporated by Reference From Website(s)

This Price Agreement includes the following exhibits, each of which, although not physically attached, is incorporated by this reference into this Price Agreement with the same force and effect as though fully set forth herein:

- a. Exhibit D – Influence and Debarment Provisions (May 2007)
- b. Exhibit E – Disadvantaged Business Enterprise (“DBE”) Required Provisions (May 2007)
- c. Exhibit H – Conflict of Interest Guidelines and Disclosure Process (June 2007)
- d. Exhibit I – Errors & Omissions (E&O) Claims Process (May 2007)
- e. Exhibit K – MWESB and DBE Aspirational Target Provisions (June 2007)

The full text of the above referenced exhibits may be reviewed and downloaded on line at the following address: http://www.oregon.gov/ODOT/CS/OPO/AE.shtml##Contract_Docs

EACH WOC INCORPORATES APPLICABLE PROVISIONS FROM THE FOREGOING EXHIBITS AND MAY EXCLUDE SOME EXHIBITS IN THEIR ENTIRETY IF THEY ARE

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NOT APPLICABLE TO A PARTICULAR WOC. EACH WOC INCORPORATES ALL PROVISIONS SET FORTH UNDER PART II, BELOW.

5. Amendments to PA. Agency may amend this PA to the extent permitted by applicable statutes and administrative rules. Except as provided in subparagraph 5.c below, any such amendments shall not be effective unless in writing, signed by the parties, and all approvals required by applicable law have been obtained.

a. Not-to-Exceed Amount. Depending on Consultant performance, need and available funding, the aggregate NTE compensation for all PAs awarded under RFP 22910 may be amended to add up to an additional \$100 Million, for an aggregate maximum total of \$200 Million.

b. WOC Assignment Period. Depending on Consultant performance, need and available funding, PAs may be amended to extend the WOC assignment period for up to an additional three (3) years.

c. Changes Via Written Communication. The following amendments to this PA may be accomplished by written communication (email and fax acceptable) that document agreement by Consultant and Agency, through Agency's PA Contract Administrator (or designee):

- (i) The addition of or change in Consultant's subcontractors approved by Agency;
- (ii) The addition of or changes to Direct Salary Rates (DSRs), Escalated Salary Rates (ESRs), Direct Non-Labor Rates (DNLs) and/or Negotiated Billing Rates (NBRs) for Consultant and its subcontractors {provided the procedures in the Agency's Billing Rate Policy_AGR 06-01, which may be revised from time to time, are followed (see Exhibit B, Part 1 - section H) and provided that Agency's approval is provided by the PA Contract Administrator (or designee)};
- (iii) Correction of errors, inaccuracies and omissions in the DSRs, ESRs, DNLs and/or NBRs or other schedules.

Performance Incentive:

Agency intends to conduct performance evaluations on each assigned project and may conduct evaluations on each phase of a project (see **Exhibit G-Performance Evaluation**). At or near the end of the initial WOC assignment period, Agency will assess the performance evaluations completed during the preceding three (3) years. Depending on Consultant performance, the PA may be amended to extend the WOC assignment period for up to an additional three (3)-year period. Only firms performing with a high level of client satisfaction (as determined by Agency) will be considered for extension of the WOC assignment period. Additionally, poor performance on assigned projects may result in withholding of retainage and negatively impact Consultant's eligibility for WOC assignments (under this or other PAs) or selection under other Agency solicitations.

PART II. TERMS & CONDITIONS APPLICABLE TO AND INCORPORATED INTO WORK ORDER CONTRACTS, AND APPLICABLE GENERALLY TO THIS PRICE AGREEMENT.

The following provisions apply to and are incorporated into Work Order Contracts under this Price Agreement. The following provisions are also generally applicable to this Price Agreement, and where the context so requires, the reference in a provision to "Work Order Contract" or "WOC" shall be read to mean this Price Agreement for purposes of applying the provision to this Price Agreement:

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

- a. Consultant shall perform all required Services as an independent contractor. Although the Agency reserves the right (i) to determine the delivery schedule (as mutually acceptable to ODOT and Consultant) for the Services to be performed and (ii) to evaluate the quality of the completed performance, Agency cannot and will not control the means or manner of Consultant's performance. Consultant is responsible for determining the appropriate means and manner of performing the Services. Consultant is not an "officer", "employee", or "agent" of Agency, as those terms are used in ORS 30.265.
- b. Consultant, by its signature on the WOC, declares and certifies under penalty of perjury that: (i) Consultant is in conformance with **Exhibit H**, Conflict of Interest Guidelines and Disclosure Process and (ii) the information Consultant provided through the Conflict of Interest Disclosure Form that Consultant submitted prior to entering this Price Agreement from which the WOC originates is true, accurate and complete as of the WOC effective date or if not, Consultant has submitted to Agency a Conflict of Interest Disclosure Form in the form required by Agency that is updated, true, accurate and complete as of the WOC effective date. In addition, Consultant shall submit to Agency an updated, true, accurate and complete Conflict of Interest Disclosure Form, in the form required by Agency, no later than ten (10) business days following the date that any material change in the information provided through the Conflict of Interest Disclosure Form that Consultant has most recently submitted to Agency becomes known to the Consultant's Project Manager, or other Consultant management personnel responsible for management of Consultant's performance under the WOC.
- c. Consultant shall be responsible for all federal or state taxes applicable to compensation or payments paid to Consultant under the WOC and, unless Consultant is subject to backup withholding, Agency will not withhold from such compensation or payments any amount(s) to cover Consultant's federal or state tax obligations. Consultant is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Consultant under the WOC, except as a self-employed individual.
- d. Consultant shall not be responsible for or have control over the means, manner, methods or techniques required of or used by other consultants or contractors under contract with the Agency who are performing services or construction work on projects within the scope of the WOC, unless otherwise expressly agreed to in writing by the Parties. The Parties agree, however, that these Section 1.d. provisions do not in any way revise or adjust the Consultant's professional responsibility to report to the Agency any information pertaining to a project, or to performance by other consultants or contractors on a project, that would adversely affect the Agency or a particular project, to the extent any such information may come to the attention of the Consultant during the performance of Services within the scope of the WOC.

2. Subcontracts and Assignment; Successors and Assigns

- a. Consultant shall not enter into any subcontracts for any of the Services required by the WOC, or assign or transfer any of its interest in the WOC, without Agency's prior written consent, except for subcontracts necessary to comply with any DBE requirements. In addition to any other provisions Agency may require, Consultant shall include, in any permitted subcontract under the WOC, contractual provisions that shall require any subcontractor (which may also be referred to as "subconsultant") to comply with Part II Sections 5, 7, 8, 9, 12, 19, and 24 of these WOC provisions, in the performance of the subcontractor's services on the Project that is the subject of the WOC, as if the subcontractor were the Consultant. Agency's consent to any subcontract shall not relieve Consultant of any of its duties or obligations under the WOC, including with respect to any Services, whether performed or to be performed by Consultant or a subcontractor.

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

3. No Third Party Beneficiaries. Agency and Consultant are the only Parties to the WOC and are the only Parties entitled to enforce its terms. Nothing in the WOC gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name in the WOC and expressly described as intended beneficiaries of the terms of the WOC.

4. Funds Available and Authorized; Payments. Consultant shall not be compensated for Services performed under the WOC by any other agency or department of the State of Oregon. Agency reasonably believes that, as of the effective date of the WOC, it has sufficient funds available and authorized for expenditure to finance the costs of the WOC within the Agency's biennial appropriation or limitation. Consultant understands and agrees that Agency's payment of amounts under the WOC is contingent on Agency receiving from the Oregon Legislative Assembly appropriations, limitations, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to make payments under the WOC. In the event Agency staff responsible for oversight of the WOC become aware that sufficient funds are not available and authorized for expenditure to finance the costs of the WOC within Agency's biennial appropriation or limitation, Agency shall give prompt written notice to Consultant.

5. Representations and Warranties.

a. Consultant's Representations and Warranties.

Consultant represents and warrants to Agency that (i) Consultant has the power and authority to enter into and perform the WOC, (ii) the WOC, when executed and delivered is a valid and binding obligation of Consultant, enforceable in accordance with its terms, (iii) the Services under the WOC will be performed in accordance with the professional standard of care set forth in Section 6 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 WOC.

- b. **Warranties Cumulative.** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

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

a. Professional Standard of Care.

Consultant shall perform all Services under the WOC 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 the Consultant.

- (i) The Consultant shall be responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other Services furnished by the Consultant under the WOC. The Consultant shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications and other Services.
- (ii) The Agency's review, approval or acceptance of, or payment for, the Services required under the WOC shall not be construed to operate as a waiver of any rights under the WOC or of any

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cause of action arising out of the performance of the WOC, and the Consultant shall be and remain liable to the Agency in accordance with applicable law for all damages to the Agency caused by the Consultant's negligent performance of any of the Services furnished under the WOC or negligent failure to perform any of the Services under the WOC.

- (iii) The rights and remedies of the Agency provided for under the WOC are in addition to any other rights and remedies provided by law.
- (iv) If the 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 WOC.

c. Design Within Funding Limit.

When the Services under the WOC include preparation of design plans for the project:

- (i) The Consultant shall accomplish the design Services required under the WOC so as to permit construction of the project within the Agency's budget for construction as set forth in the WOC. The Consultant shall promptly advise the Agency's WOC Administrator if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable project within these limitations. Upon receipt of such information, the WOC Administrator will review the Consultant's revised estimate of construction cost. The Agency may, if it determines that the estimated construction contract price set forth in the WOC is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in the WOC, or the Agency may adjust such estimated construction contract price.
- (ii) Prior to releasing the bid for the construction contract, Agency will prepare an estimate of constructing the design submitted. If Agency's estimator(s) determines the Consultant's design exceeds the Agency's budget for the construction contract as set forth in the WOC {and as may be revised per Section (i) above}, then Consultant shall perform such redesign and other Services as are necessary to permit contract award within the funding limitation. These additional Services shall be performed at no increase in the price of the WOC. However, the Consultant shall not be required to perform such additional Services at no cost to the Agency if the Consultant's design exceeds the Agency's budget (as set forth in the WOC) as a result of conditions beyond Consultant's reasonable control.

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

b. Work Product. All Work Product created by Consultant pursuant to the WOC, including derivative works and compilations, and whether or not such Work Product is considered a "work made for hire," shall be the exclusive property of Agency. Agency and Consultant agree that Work Product that constitutes original works of authorship (the "Original Work Product") is "work made for hire" of which Agency is the author within the meaning of the United States Copyright Act. If for any reason Original Work Product created pursuant to the WOC is not "work made for hire," Consultant hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all Original Work Product created pursuant to the WOC, whether arising from copyright, patent,

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trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Agency's reasonable request, Consultant shall execute such further documents and instruments necessary to fully vest such rights in Original Work Product in Agency. Consultant forever waives any and all rights relating to Original Work Product created pursuant to the WOC, 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 7.c., 7.d., 7.e. and 7.f. 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 Intellectual Property.** In the event that any Work Product is Consultant Intellectual Property (Consultant Intellectual Property that is applicable to the Services being performed by the Consultant under the WOC or included in Work Product deliverable to the Agency under the WOC), or in the event any Consultant Intellectual Property is needed by the Agency to reasonably enjoy and use any Work Product, the Consultant hereby grants to Agency an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Consultant Intellectual Property, including the right of the Agency to authorize contractors, consultants and others to do the same on Agency's behalf. At the request of the Consultant, the Agency shall take reasonable steps to protect the confidentiality and proprietary interests of the 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. **Third Party Intellectual Property.** In the event that Work Product is Third Party Intellectual Property (Third Party Intellectual Property that is applicable to the Services being performed by the Consultant under the WOC or included in Work Product deliverable to the Agency under the WOC), or in the event any Third Party Intellectual Property is needed by the Agency to reasonably enjoy and use any Work Product, Consultant shall secure on the Agency's behalf and in the name of the Agency, an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, including the right of the Agency to authorize contractors, consultants and others to do the same on Agency's behalf.
- e. **Consultant Intellectual Property-Derivative Work.** In the event that Work Product created by Consultant under the WOC is a derivative work based on Consultant Intellectual Property, or is a compilation that includes Consultant Intellectual Property, Consultant hereby grants to Agency an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Consultant Intellectual Property employed in the Work Product, including the right of the Agency to authorize others to do the same on Agency's behalf.
- f. **Third Party Intellectual Property-Derivative Work.** In the event that Work Product created by Consultant under the WOC is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Consultant shall secure on the Agency's behalf and in the name of the Agency an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, including the right to authorize others to do the same on Agency's behalf.
- g. **Limited Agency Indemnity.** To the extent permitted by the Oregon Constitution, Article XI, Section 7, and by the Oregon Tort Claims Act, ORS 30.260 through 30.400, Agency shall indemnify and hold Consultant harmless from liability arising out of Agency's re-use or alteration of the Work Product.

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- h. Consultant Use of Work Product.** Notwithstanding anything to the contrary in this Section 7, Consultant may refer to the Work Product in its brochures or other literature that Consultant utilizes for advertising purposes and, unless specified otherwise in the WOC, Agency hereby grants to Consultant a non-exclusive, non-transferable, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Agency-owned Work Product on other unrelated projects, except for any “Confidential Information” protected from disclosure under the provisions of Section 8 below, pertaining to Confidentiality and Non-Disclosure.

8. Confidentiality and Non-Disclosure

- a. Confidential Information.** Consultant acknowledges that it and its employees and agents may, in the course of performing their responsibilities under the WOC, be exposed to or acquire information that is confidential to Agency. Any and all information that Agency provides to Consultant or its employees or agents in the performance of the WOC that the Agency designates as confidential (either on the document itself or through related correspondence), as well as all reports and other documents and materials (including software) that result from Consultant’s use of such information and any other Work Product that the Agency designates as confidential, is deemed to be confidential information of Agency (“Confidential Information”). Confidential Information does not include information that (i) is or becomes (other than by disclosure by Consultant) publicly known; (ii) is furnished by Agency to others without restrictions similar to those imposed by the WOC; (iii) is rightfully in Consultant’s possession without the obligation of nondisclosure prior to the time of its disclosure under the WOC; (iv) is obtained from a source other than Agency without the obligation of confidentiality, (v) is disclosed with the written consent of Agency, or; (vi) is independently developed by employees or agents of Consultant who can be shown to have had no access to the Confidential Information.
- b. Non-Disclosure.** Consultant agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Consultant uses in maintaining the confidentiality of its own confidential information, and shall not, without Agency’s prior written consent, copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties, or use Confidential Information for any purposes whatsoever, other than the provision of Services to Agency hereunder. Consultant shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Consultant shall use reasonable efforts to assist Agency in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Consultant shall advise Agency immediately if Consultant learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms this Section 8(b), and Consultant shall, at its expense, cooperate with Agency in seeking injunctive or other equitable relief in the name of Agency against any such person. Consultant agrees that, except as directed by Agency, Consultant will not at any time during or after the term of the WOC disclose, directly or indirectly, any Confidential Information to any person, except in accordance with the WOC, and that upon termination of the WOC or at Agency’s request, Consultant shall turn over to Agency all documents, papers, and other matter in Consultant's possession that embody Confidential Information. In the event Consultant is required to disclose Confidential Information pursuant to a subpoena or other legal process, Consultant shall notify Agency of such subpoena or other legal process, provide Agency with copies of any subpoena, other legal process and any other written materials supporting the subpoena or other legal process, and otherwise cooperate with the Agency in the event the Agency decides to oppose the disclosure of the Confidential Information. In the event the Agency decides not to oppose such subpoena or other legal process or the Agency’s decision to oppose the subpoena or legal process has not

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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.

9. INDEMNITY.

- a. **CLAIMS FOR OTHER THAN PROFESSIONAL LIABILITY.** CONSULTANT SHALL INDEMNIFY DEFEND, SAVE, AND HOLD HARMLESS THE STATE OF OREGON, THE OREGON TRANSPORTATION COMMISSION AND ITS MEMBERS, THE DEPARTMENT OF TRANSPORTATION, THEIR OFFICERS, AGENTS AND EMPLOYEES FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES, INCLUDING ATTORNEYS FEES, OF WHATSOEVER NATURE, RESULTING FROM OR ARISING OUT OF THE ACTS OR OMISSIONS OF CONSULTANT OR ITS SUBCONTRACTORS, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES, UNDER THE WOC.
- b. **CLAIMS FOR PROFESSIONAL LIABILITY.** CONSULTANT SHALL INDEMNIFY, DEFEND, SAVE, AND HOLD HARMLESS THE STATE OF OREGON, THE OREGON TRANSPORTATION COMMISSION AND ITS MEMBERS, THE DEPARTMENT OF TRANSPORTATION, THEIR OFFICERS, AGENTS AND EMPLOYEES FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES, INCLUDING ATTORNEYS FEES, ARISING OUT OF THE PROFESSIONALLY NEGLIGENT ACTS, ERRORS OR OMISSIONS OF CONSULTANT OR ITS SUBCONTRACTORS, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES, IN THE PERFORMANCE OF CONSULTANT'S PROFESSIONAL SERVICES UNDER THE WOC.
- c. **INDEMNITY FOR INFRINGEMENT CLAIMS.** WITHOUT LIMITING THE GENERALITY OF SECTION 9.a OR 9.b., CONSULTANT EXPRESSLY AGREES TO INDEMNIFY, DEFEND, SAVE AND HOLD HARMLESS THE STATE OF OREGON, THE OREGON TRANSPORTATION COMMISSION AND ITS MEMBERS, THE DEPARTMENT OF TRANSPORTATION AND THEIR AGENCIES, SUBDIVISIONS, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES, INCLUDING ATTORNEYS FEES, ARISING OUT OF OR RELATING TO ANY CLAIMS THAT THE CONSULTANT'S SERVICES, THE WORK PRODUCT OR ANY OTHER TANGIBLE OR INTANGIBLE ITEMS DELIVERED TO AGENCY BY CONSULTANT THAT MAY BE THE SUBJECT OF PROTECTION UNDER ANY STATE OR FEDERAL INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR THE AGENCY'S USE THEREOF, INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY; PROVIDED, THAT STATE SHALL PROVIDE CONSULTANT WITH PROMPT WRITTEN NOTICE OF ANY INFRINGEMENT CLAIM. PROVIDED, HOWEVER, THE CONSULTANT SHALL NOT BE OBLIGATED TO INDEMNIFY, DEFEND, SAVE AND HOLD HARMLESS THE STATE AND THE AGENCY UNDER THIS SECTION 9.c, BASED SOLELY ON THE FOLLOWING: CONSULTANT'S COMPLIANCE WITH AGENCY SPECIFICATIONS OR REQUIREMENTS, INCLUDING, BUT NOT LIMITED TO THE REQUIRED USE OF TANGIBLE OR INTANGIBLE ITEMS PROVIDED BY THE AGENCY.
- d. **DEFENSE QUALIFICATION.** NOTWITHSTANDING CONSULTANT'S FOREGOING DEFENSE OBLIGATIONS, NEITHER CONSULTANT NOR ANY ATTORNEY ENGAGED BY CONSULTANT SHALL DEFEND ANY CLAIM IN THE NAME OF THE STATE OF OREGON OR ANY AGENCY OF THE STATE OF OREGON, NOR PURPORT TO ACT AS

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LEGAL REPRESENTATIVE OF THE STATE OF OREGON OR ANY OF ITS AGENCIES, WITHOUT THE PRIOR WRITTEN CONSENT OF THE OREGON ATTORNEY GENERAL. THE STATE OF OREGON MAY, AT ANY TIME AT ITS ELECTION ASSUME ITS OWN DEFENSE AND SETTLEMENT IN THE EVENT THAT IT DETERMINES THAT CONSULTANT IS PROHIBITED FROM DEFENDING THE STATE OF OREGON, OR THAT CONSULTANT IS NOT ADEQUATELY DEFENDING THE STATE OF OREGON'S INTERESTS, OR THAT AN IMPORTANT GOVERNMENTAL PRINCIPLE IS AT ISSUE OR THAT IT IS IN THE BEST INTERESTS OF THE STATE OF OREGON TO DO SO. THE STATE OF OREGON RESERVES ALL RIGHTS TO PURSUE ANY CLAIMS IT MAY HAVE AGAINST CONSULTANT IF THE STATE OF OREGON ELECTS TO ASSUME ITS OWN DEFENSE.

- e. **AGENCY'S ACTS OR OMISSIONS.** THIS SECTION 9 DOES NOT INCLUDE INDEMNIFICATION BY THE CONSULTANT OF THE STATE OF OREGON, THE OREGON TRANSPORTATION COMMISSION AND ITS MEMBERS, THE DEPARTMENT OF TRANSPORTATION AND ITS OFFICERS AGENTS AND EMPLOYEES, FOR THE ACTS OR OMISSIONS OF THE STATE OF OREGON, THE OREGON TRANSPORTATION COMMISSION AND ITS MEMBERS, THE DEPARTMENT OF TRANSPORTATION AND ITS OFFICERS AGENTS AND EMPLOYEES, WHETHER WITHIN THE SCOPE OF THE WOC OR OTHERWISE.

10. Insurance. Consultant shall carry insurance as indicated on **Exhibit C** throughout the term of the WOC.

11. Termination For purposes of the WOC, "calendar days" means any day appearing on the calendar, whether a weekday, weekend day, national holiday, State holiday or other day. A designation of "days" means calendar days.

- a. **Termination By Mutual Consent.** The WOC may be terminated at any time, in whole or in part, by mutual written consent of the Parties.
- b. **Agency's Right to Terminate For Convenience.** Agency may, at its sole discretion, terminate the WOC, in whole or in part, upon thirty (30) calendar days prior written notice to Consultant.
- c. **Agency's Right to Terminate For Cause.** Agency may terminate the WOC, in whole or in part, immediately upon written notice to Consultant or at such later date as Agency may establish in such notice, upon the occurrence of any of the following events:
 - (i) Agency fails to receive appropriations, limitations or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to make payments for Consultant's Services;
 - (ii) Federal, state or local laws, regulations or guidelines are modified or interpreted in such a way that either the Services under the WOC are prohibited or Agency is prohibited from paying for such Services from the planned funding source;
 - (iii) Consultant no longer holds any license or certificate that is required to perform the Services; or
 - (iv) Consultant commits any material breach or default of any covenant, warranty, obligation or agreement under the WOC, fails to perform the Services under the WOC within the time specified or any extension thereof, or so fails to perform the Services as to endanger Consultant's performance under the WOC in accordance with its terms, and such breach, default or failure is not cured within fourteen (14) calendar days after Agency's notice to Consultant, or such longer period as Agency may specify in such notice.
- d. **Consultant's Right to Terminate for Cause.**
 - (i) Consultant may terminate the WOC by giving written notice to Agency if Agency fails to pay Consultant pursuant to the terms of the WOC and if Agency fails to cure within fourteen

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(14) calendar days after receipt of Consultant's written notice, or such longer period of cure as Consultant may specify in such notice.

- (ii) Consultant may terminate the WOC, for reasons other than nonpayment, if Agency commits any material breach or default of any covenant, warranty, obligation or agreement under the WOC, fails to perform under the WOC within the times specified, or so fails to perform as to endanger Consultant's performance under the WOC, and such breach, default or failure is not cured within fourteen (14) calendar days after Consultant's notice to Agency, or such longer period as Consultant may specify in such notice.

e. Remedies

- (i) In the event of termination pursuant to Sections 11(a), 11(b), 11(c)(i), 11(c)(ii) or 11(d), Consultant's sole remedy shall be a claim for the sum designated for performing the Services multiplied by the percentage of Services completed and accepted by Agency (with acceptance by the Agency not to be unreasonably withheld), less previous amounts paid and any claim(s) which State has against Consultant, except in the event of a termination under Section 11(c)(i) where no payment will be due and payable for Services performed or costs incurred after the last day of the current biennium, consistent with Section 4, Funds Available and Authorized; Payments. If previous amounts paid to Consultant exceed the amount due to Consultant under this subsection, Consultant shall pay all excess to Agency upon demand.
- (ii) In the event of termination pursuant to Section 11(c)(iii) or 11(c)(iv), Agency shall have any remedy available to it in law or equity. If it is determined for any reason that Consultant was not in default under Section 11(c)(iii) or 11(c)(iv), the rights and obligations of the Parties shall be the same as if the WOC was terminated pursuant to Section 11(b).

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

12. Records Maintenance; Access. Consultant, and its Subconsultants, shall maintain all fiscal records relating to the WOC in accordance with generally accepted accounting principles. In addition, Consultant shall maintain any other records pertinent to the WOC in such a manner as to clearly document Consultant's performance. Consultant acknowledges and agrees that Agency and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access, and Consultant shall permit the aforementioned entities and individuals access, to such fiscal records and other books, documents, papers, plans and writings of Consultant that are pertinent to the WOC to perform examinations and audits and make excerpts and transcripts. Consultant shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and expiration or termination of the WOC, or until the conclusion of any audit, controversy or litigation arising out of or related to the WOC, whichever date is later.

13. Performance Evaluations. The Agency may conduct performance evaluation(s) on the selected Consultant(s) during the Price Agreement term and the term of the WOC, which will be compiled and maintained by Agency, and become a written record of Consultant's performance, including information gained during an exit interview. The Agency will provide copies of any performance evaluation

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documentation to the affected Consultant and upon request, to third parties, unless lawfully exempt from disclosure. The Performance Evaluation process and links to evaluation forms (which Agency may revise from time to time) to be used by the Agency are included in **Exhibit G** to this Price Agreement.

14. Compliance with Applicable Law. Consultant shall comply with all federal, state and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the WOC, in effect at the time the WOC is executed and as may be amended, revised, enacted or adopted thereafter. Changes in these legal requirements after the execution of the WOC may or may not be the basis for modifications to the 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 the Consultant or the Parties, and other circumstances then existing. Without limiting the generality of the foregoing, Consultant expressly agrees to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Agency's performance under the WOC is conditioned upon Consultant's compliance with, and Consultant shall comply with, the obligations intended for contractors under ORS 279C.515, 279C.520 and 279C.530, which are incorporated by reference herein. If conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the WOC, Consultant shall in writing request Agency to resolve the conflict. Consultant shall specify if the conflict(s) create a problem for the design or other Services required under the WOC.

15. Permits and Licenses: Unless otherwise specified in any WOC, Consultant shall obtain, hold, maintain and fully pay for during the term of the WOC all licenses and permits required by law for the Consultant to conduct its business and perform the Services under the WOC. As to any licenses and permits required for the Project, unless otherwise specified in the WOC, Consultant shall obtain, hold and maintain such licenses and permits during the term of the WOC, but Agency shall pay for such licenses and permits. Consultant shall review the Project site and the nature of the Services that the Consultant shall perform under the WOC. Consultant shall advise the Agency throughout the course of the Project as to the necessity of obtaining all Project permits and licenses, the status of the issuance of any such permits and licenses, and any issues or impediments related to the issuance or continuation of any such permits and licenses.

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

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

18. Survival. All rights and obligations shall cease upon termination or expiration of the WOC, except for the rights and obligations set forth in Section 4 of Part I and in Part II Sections 5, 6, 7, 8, 9, 11(e), 11(f), 12, 18, 19, 23, 24 and 27, and all other rights and obligations which by their context are intended to survive.

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

20. Notice. Except as otherwise expressly provided in the WOC, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by email, by personal delivery, facsimile, or mailing the same, postage prepaid, to Consultant or Agency at the email address, the delivery address or facsimile number set forth in the WOC, or to such other addresses or numbers as either Party may hereafter indicate in writing to the other. Any communication or notice given by email shall be effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system. 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 five (5) calendar days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed received on the date of the notice of successful transmission generated by the transmitting machine. To be effective, such facsimile transmission must be confirmed by telephone notice to Agency's Contract Administrator or the Consultant's representative, as applicable.

21. Severability. The Parties agree that if any term or provision of the WOC 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 WOC did not contain the particular term or provision held to be invalid.

22. Counterparts. The WOC 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 WOC so executed shall constitute an original.

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

a. Errors & Omissions Related. In the event those good faith efforts are not successful for disputes related to potential Errors and Omissions, the Parties agree to make good faith efforts to resolve the matter pursuant to the Errors & Omissions Claims Process, **Exhibit I**.

b. Other Disputes. In the event good faith efforts are not successful for disputes unrelated to Errors & Omissions, the Parties agree to make a good faith effort to determine if mediation might be productive in resolving any such dispute. If the Parties determine that such an attempt to mediate the dispute would be productive, the Parties agree to use reasonable efforts to establish an agreement through which such mediation proceeding could take place. In the event such a mediation proceeding takes place, the Parties acknowledge and agree that any mediator or mediators retained to assist the Parties in resolving any dispute will not have the power to issue a decision that will bind the Parties, but will merely act as a facilitator in the process of the Parties' attempting to resolve the dispute through mutual agreement. In the event that through good faith efforts or mediation proceedings (if entered into) it is determined that that the dispute includes issues related to Errors and Omissions, the Errors & Omissions Claims Process shall be followed.

24. Governing Law; Venue; Consent to Jurisdiction. The WOC shall be governed by, and construed in accordance with, the laws of the State of Oregon, without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between Agency (or any other agency or department of the State of Oregon) and Consultant that arises from or relates to the WOC shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon;

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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 State of Oregon of any form or defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution, or otherwise. **CONSULTANT, BY EXECUTION OF THE WOC, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

25. Amendments to WOCs. Agency may amend the WOC to the extent permitted by applicable statutes and administrative rules and as mutually agreed upon by Agency and Consultant.

a. Changes Via WOC Amendment. Agency, by written amendment, may agree to appropriate increases in the maximum compensation payable under the WOC, should any Agency-approved increase occur in the scope, character, schedule or complexity of Services as outlined in the Statement of Work. Consultant shall not commence any Services authorized under an amendment, and the amendment is not effective, unless it is in writing signed by the Parties and all approvals required by applicable law have been obtained.

b. Changes Via Written Communication. The following amendments to WOCs issued under this PA may be accomplished by written communication (email and fax acceptable) that document agreement by Consultant and Agency, through Agency's Regional WOC Administrator (or designee) and PA Contract Administrator (or designee):

- (i) The addition of or change in Consultant's subcontractors approved by Agency under the WOC;
- (ii) The addition of or changes to Direct Salary Rates (DSRs), Escalated Salary Rates (ESRs), Direct Non-Labor Rates (DNLs) and/or Negotiated Billing Rates (NBRs) for Consultant and its subcontractors {provided the procedures in the Agency's Billing Rate Policy_AGR 06-01, which may be revised from time to time, are followed (see Exhibit B, Part 1 – section H) and provided that Agency's approval is provided by the PA Contract Administrator (or designee)};
- (iii) Correction of errors, inaccuracies and omissions in the DSRs, ESRs, DNLs and/or NBRs, Breakdown of Costs for services, or other schedules.

26. Merger Clause; Waiver. The WOC, 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 WOC. No waiver, consent, modification or change of terms of the WOC shall bind either Party, unless such waiver, consent, modification or change of terms is in writing and signed by the Parties, and all necessary State of Oregon governmental approvals have been obtained. Such a waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. Either Party's failure to enforce any provision of the WOC shall not constitute a waiver by that Party of that or any other provision.

27. Order of Precedence

All WOC'S shall be interpreted in the following order of precedence:

- A. The WOC less all attachments, exhibits and other material incorporated into the WOC by reference;
- B. The **Exhibit A** – Statement of Work attached to the WOC;
- C. All Terms and Conditions contained in the Price Agreement;
- D. All attachments, exhibits, and other material incorporated into the WOC by reference.

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**STATE OF OREGON PERSONAL/PROFESSIONAL SERVICES
Architectural & Engineering and Related Services; Price Agreement # [REDACTED]**

CONSULTANT, BY EXECUTION OF THIS PRICE AGREEMENT, HEREBY ACKNOWLEDGES THAT CONSULTANT HAS READ THIS PRICE AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

Consultant Tax Identification Information. Consultant shall provide Consultant's Social Security number or Consultant's federal tax ID number and the additional information set forth below. This information is requested pursuant to ORS 305.385 and OAR 125-020-0410(3). Social Security Numbers provided pursuant to this requirement will be used for the administration of state, federal and local tax laws. Agency may report the information set forth above to the Internal Revenue Service (IRS) under the name and social security number or taxpayer identification number provided.

Legal, tax filing Company Name: [REDACTED]

Address: [REDACTED]

Federal Tax ID#: [REDACTED] **or SSN#:** [REDACTED]

CERTIFICATION: The individual signing on behalf of Consultant hereby certifies under penalty of perjury:

(1) Consultant has read, understands and agrees to comply with the requirements set forth in the PA and in all Exhibits incorporated by reference in Part I, Section 4.2 of the PA. Consultant understands and agrees that various Exhibits to the PA were not physically attached, but are incorporated by reference and have the same force and effect as if fully set forth herein. The full text of all exhibits not physically attached to the PA is available at the following Web address: http://www.oregon.gov/ODOT/CS/OPO/AE.shtml##Contract_Docs

(2) (a) the number shown on this form is Consultant's correct taxpayer identification; (b) Consultant is not subject to backup withholding because (i) Consultant is exempt from backup withholding, (ii) 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 (iii) the IRS has notified Consultant that Consultant is no longer subject to backup withholding; (c) 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 401.792 to 401.816 (Tax For Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 320 (Amusement Device and Transient Lodging Taxes), 321 (Timber and Forestland Tax), 323 (Cigarettes and Tobacco Products Tax), and the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Department of Revenue under ORS 305.620; (d) Consultant is an independent contractor as defined in ORS 670.600; and (e) if required by 40CFR1506.5(c), Consultant has no financial or other interest in the outcome of the project.

CONSULTANT

By: _____ Title: _____ Date: _____

By: _____ Title: _____ Date: _____
(2nd signature if necessary for Consultant)

LEGAL SUFFICENCY APPROVAL

Approved by Assistant Attorney General _____ Date _____

AGENCY

Approved by ODOT Procurement Office Manager or designee _____ Date _____

Approved by Director / Deputy Director or designee _____ Date _____

EXHIBIT A – SCOPE of SERVICES

1. OVERVIEW

Consultant shall provide a broad range of on-call engineering, land surveying, and related services (A&E Services) that are necessary to design and assure delivery of transportation-related projects. The A&E Services required are associated with, but not limited to, planning, project management or oversight, public involvement, land surveying, design, engineering, environmental and NEPA processes, right-of-way, construction engineering and inspection, and construction contract administration. Proposers will need to be full-service teams to include project management and all preliminary engineering (PE) and construction engineering, inspection and contract administration (CEI/CA) related facets of a given project from start to finish with minimal oversight and involvement from the Agency. Projects will primarily be on the State highway system and may be located anywhere in the state. The types of projects assigned may include but are not limited to lane capacity, highway preservation/improvement projects, interchange projects, and minor to major bridge projects. In some cases, projects may be bundled for assignment under a single Work Order Contract (WOC). Agency's intent is to complete construction inspection and construction contract administration services with in-house staff for the majority of projects; however, these services may be included in WOCs for some projects at the Agency's discretion, and may be assigned to a consultant other than the firm that completed the designs for the project.

2. GENERAL REQUIREMENTS

Professional Licenses - Consultant and its sub-consultants must be duly licensed to perform the services, as required by the applicable Oregon Revised Statutes and Oregon Administrative Rules, and other applicable laws. Consultant's personnel and sub-consultant personnel must be duly licensed to perform all services which they will be performing under a resulting WOC, must be performing such services under the "responsible charge" of a person so licensed (as that term is defined under ORS Chapter 672), or must be otherwise exempt from any licensing requirements applicable to the services being performed.

Personnel, Materials, and Equipment - Consultant shall provide competent personnel and shall furnish all supplies, equipment, tools, and incidentals required to accomplish the work. All equipment and tools shall be in good operating condition and shall be kept in proper adjustment throughout the duration of any assigned WOCs. All materials and supplies shall be of good quality and suitable for the assigned work.

Safety Equipment – Consultant shall provide and use all safety equipment including (but not limited to) hard hats, safety vests and clothing required by State and Federal regulations and ODOT policies and procedures.

Temporary Protection and Direction of Traffic –When Consultant has a survey party working within 30 feet of the travel lane, the Consultant shall protect the survey party, and warn approaching traffic by placing one "SURVEY CREW" (W21-6-36) sign facing each direction of incoming traffic, a normal minimum distance of 200 feet for lower speed streets and 500 feet for rural roads and highways in advance of the survey work area. The Consultant shall also place, facing each direction of incoming traffic, one each of "BE PREPARED TO STOP" (OW23-2-36) and "FLAGGER AHEAD" (OW20-7-

EXHIBIT A – Scope of Services

36) signs spaced a normal minimum distance of 200 feet for lower speed streets and 500 feet for rural roads and highways apart and approximately this same distance from W21-5-36 sign.

When a survey crew is working within a Consultant's work area, the use of "SURVEY CREW" signs are generally not required. However, when the Consultant's signing is not adequate for the survey work, the above signing requirements shall be followed.

Signs may be constructed of plywood, sheet aluminum or fabric. W21-6-36 signs shall be equipped with high level flags.

Each flagger shall wear an orange or yellow colored hard hat and an orange colored or florescent red-orange or florescent yellow-orange colored vest. Flaggers shall be equipped with "STOP-SLOW" hand sign conforming to current standards for daylight use and shall also be equipped with two-way radios when they are not visible to each other.

Consultant shall operate in conformance with the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD), and Part VI of the MUCTD, and the ODOT's latest edition of Traffic Control on State Highways for Short Term Work Zone.

3. STANDARDS

3.1 PE, Design and Construction Standards

The standards, manuals, directives and other procedural guidance applicable to A&E and Related Services provided under a WOC are available at the following web address and are incorporated by this reference with the same force and effect as though fully set forth herein:
<http://www.oregon.gov/ODOT/CS/OPO/docs/Standards.pdf>

The standards, manuals, directives and other procedural guidance listed in "Standards-A&E/Related Services, Attachment 2 and also available through the various links on Attachment 1 are not exhaustive and may not include all applicable standards for a given project. Consultant shall be responsible for determining all applicable practices and standards to be used in performing A&E and Related Services. Consultant shall inform and demonstrate to Agency if standards, directives or practices required by Agency in performance of the work are insufficient, in conflict with applicable standards, or otherwise create a problem for the design. Should the requirements of any reference, standard, manual or policy referenced in this PA or a WOC conflict with another, Consultant shall request Agency in writing to resolve the conflict.

Unless otherwise specified in a WOC or Contract, the most current version of applicable standards, manuals, directives and other procedural guidance shall apply. Unless otherwise specified, the system of measurement and language used in all deliverables will be English.

Consultant shall complete Construction Engineering, Inspection and Construction Contract Administration (CEI/CA) services in accordance with ODOT's Construction Manual, the Manual of Field Test Procedures and the ODOT Inspectors Manual. All Inspection work must be performed by Agency-certified Inspectors as required by the Agency's Inspection Quality Assurance Program (IQAP).

EXHIBIT A – Scope of Services

Consultant's qualified staff shall diligently monitor the work of the CC in order to determine whether the Project is constructed in compliance with the construction contract documents and any applicable current standards and Agency manuals, including but not limited to those included and incorporated in the PA. Consultant shall immediately advise Agency of any construction which Consultant knows, or with the exercise of professional care should know, fails to conform to the Federal or State standards applicable to construction of the Project.

3.2 Software Standards & Compatibility

Consultant's software shall produce deliverables that are fully compatible, readable and useable by Agency software, requiring no modification or translation of the 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. To ensure this level of compatibility, Consultant and Agency may conduct tests of sample deliverables from the Consultant, and Agency may provide sample or required format(s) to Consultant. Agency reserves the right to reject deliverables that do not meet these requirements. If a deliverable is rejected, Consultant shall resubmit deliverables to Agency that meet these requirements, and shall not bill the Agency for the rejected deliverables or for time associated with correcting the rejected deliverables.

Consultant shall deliver all work products in the format(s) required by the Agency as may be specified in the Price Agreement or WOC. The Consultant may propose alternative software for consideration by the Agency. If the Agency determines that the alternative software meets the compatibility requirements of this section, the Agency may choose to accept the use of the alternative software. Agency will document this approval in writing.

Software standards currently used by the Agency are specified below. The Agency anticipates that it will update its software periodically and at such time, new software may be required by notice provided to Consultant 30 days in advance. Software standards include but are not limited to the following:

- INROADS (Version 8) or most current Agency Requirements
- BRASS-Girder (latest version), which is available through the Wyoming Department of Transportation
- Crossbeam Load-rating software, which is available free from Agency
- *LISCAD (Current version)*
- XSTABL or Slope/w
- GRL Wave Equation Analysis Program (WEAP)
- Embank or approved equal
- Lpile, Com624p, or approved equal
- Group
- Shake2000
- gINT
- US Army Corps of Engineers HEC-RAS
- US Army Corps of Engineers HEC-HMS
- FHWA Hydrain fro Windows
- FHWA Hy-22 Vurban
- US Natural Resources Conservation Service TR55
- Arcview GIS
- Boxcar

EXHIBIT A – Scope of Services

- Pipecar
- King County Washington HYD
- XPSWMM
- Bristars
- Haestad Methods Culvertmaster
- Haestad Methods Stormcad
- Haestad Methods Flowmaster
- Storm and Sanitary (for Microstation)
- US Geologic Survey PeakFQ
- Primavera P3
- SureTrak
- Microsoft Project
- Signing - Sign design software (non-specific)
- Illumination –Lighting analysis software (non-specific)
- Traffic Structures –Structure analysis software (non-specific)
- gINT borehole logging software
- Any DEQ-recognized or industry-recognized software capable of modeling groundwater flow based on USGS MODFLOW
- Any DEQ-recognized or industry-recognized software capable of modeling groundwater and vadose zone, contaminant migration and degradation
- Software listed in ASTM’s “RBCA Fate and Transport Models: Compendium and Selection Guidance”, approved by DEQ as needed
- MOBILE 6.2 On Road Motor Vehicle emissions model or the most recent emissions program required by law.
- CAL3QHC Version 2 Model used for Predicting Pollutant Concentrations Near Roadway Intersections

4. PRELIMINARY ENGINEERING and DESIGN

A. GENERAL EXPECTATIONS

Consultant commits to oversee and direct the design of assigned projects to obtain the greatest long-term value for the State of Oregon, and which reflects the prudent expenditure of public funds within the constraints of the Project program, context and budget. In pursuing this goal, Consultant commits to:

- i. Develop a design that is appropriate for the context of the project and the nature of its function, both present and future;
- ii. Avoid expenditures for aesthetic effect which are disproportionate to the project as a whole;
- iii. Manage and facilitate all facets of the project that are reasonably within Consultant’s control to ensure the project is completed on or ahead of time and within budget;
- iv. Strive to reduce the construction cost of the project while keeping life-cycle costs low;
- v. Apprise ODOT throughout the project concerning the economic impact of all design decisions; and embody sound and cost-effective sustainability principles in the Services performed under the PA in accordance with the Department of Administrative Services Sustainable State Facilities Standards and Guidelines, which are found at - <http://egov.oregon.gov/DAS/FAC/gbindex.shtml>

EXHIBIT A – Scope of Services

B. TASK OVERVIEW and SOW TEMPLATES

The Consultant shall provide a broad range of A&E related services, as assigned in WOCs, within the scope of work identified in this PA or the associated RFP. Work tasks that may be assigned under this PA may include but are not limited to those listed in the sections below. The sample preliminary engineering (PE) and design tasks below are not exhaustive and individual WOC assignments are not limited to the tasks in this exhibit. WOCs may include any task, reasonably related to the scope of work included in this PA, as determined necessary to complete the design of an assigned project.

Task Templates. ODOT is currently developing standardized task templates for the various A&E and A&E Related disciplines within the scope of services included in this PA. Standardized task templates may be included in WOCs or incorporated by reference in WOCs.

C. MENU of PE and DESIGN SERVICES

Assigned WOCs will include a detailed statement of work that may include, but is not limited to, any or all of the following scope of services:

C.1. Project Management

- Contract Management;
- Subcontractor Management;
- Quality Control Plan;
- Project Schedules;
- Progress Reviews;
- Schedule, coordinate and supervise project work;
- Maintain Liaison and Coordination with ODOT, FHWA and Outside Agencies;
- Prepare Records of Decisions;
- Monitor Project Budget;
- Prepare, Maintain and Update Project Activity Schedule;
- Provide Timely Responses to ODOT Comments;
- FHWA Funding Participation.

C.2. Preliminary Field Surveys

- Data Collection;
- Topographic Surveying and Mapping;
- Survey Records;
- Utilities Located;
- Stream Cross Sections.

C.3. Geotechnical Investigations, Reports, and Design

- Geologic Site Characterization
- Subsurface Engineering Characterization
- Drilling, sampling, insitu testing
- Materials characterization with Laboratory Testing
- Slope Design, embankment design, slide stabilization design
- Embankment source evaluation
- Foundation evaluation and design.

EXHIBIT A – Scope of Services

- Geology and Geotechnical Technical Reports per FHWA Guidance
- Geotechnical related plan and specification preparation
- Construction observation of geotechnical project elements

C.4. Hydraulic Studies and Reports

- Contributing Drainage Area At Site;
- Flood Frequency versus Peak Discharge;
- Local Knowledge of Past Floods;
- Backwater Analysis;
- Hydraulic Analysis and Report.

C.5. Preliminary Design

- Location Narrative;
- Roadway Alternatives, Traffic analysis, traffic and transportation technical report per ODOT and FHWA guidance;
- Bridge Alternative Study;
- Type, Size, and Location Report.
- Perform Utility Coordination
- Perform Subsurface Utility Engineering
- Perform Railroad Coordination
- Prepare access management plans

C.6. Hazardous Materials Assessments

- Phase 1/Initial Site Assessment
- Phase 2/Preliminary Site Investigation
- Hazardous Materials Corridor Assessment
- Hazardous Materials Technical Report (Site investigation/analysis, and Preliminary Mitigation Statement)
- Additional sampling as needed to delineate extent of contamination (including probing, drilling, sampling, field testing, monitoring well installation and decommissioning, sample analysis, disposal of investigation derived waste, etc.)
- Lead-based paint testing (on bridges, structures and residences)
- Asbestos containing materials testing
- Wood preservative testing
- Develop all safety documents and procedures required for work on hazardous waste sites or for sampling hazardous materials
- Negotiation with property owners to remediate contamination prior to ODOT acquisition or prior to construction that may encounter contamination originating from off-site sources
- Remove Underground Storage Tanks (USTs) prior to construction and/or develop plans and specs for UST removal during construction and oversee such removal
- Excavate contaminated soil prior to construction and/or develop plans and specs for such soil excavation during construction and oversee such work
- Management and disposal of contaminated media (soil and groundwater) conducted prior to construction and develop plans and specs for such work and oversee that work during construction (includes NPDES, local sewer and solid waste permits)
- Hazardous waste determination for all wastes to be generated during construction

EXHIBIT A – Scope of Services

- Management of hazardous waste and solid waste in accordance with RCRA
- Create and implement pollution control plan for all hazardous materials stored or used on site
- Create and implement SPCC plan if required by 40 CFR 112 for fuel storage on site
- Develop contingency plans for unexpected contamination encountered during construction
- Oversee removal of contaminated media during construction
- Oversee waste management practices during construction
- Identify safety requirements for work in contaminated areas during construction
- Develop plans and specs for subsurface utilities to be installed in contaminated areas
- Ensure all subsurface linear installations in contaminated areas are designed to avoid preferential migration of contamination along their length

C.7. Environmental Analysis, Documentation, and Compliance

The research and relevant Project documents required of the Consultant for environmental related tasks must conform to all appropriate State and federal requirements. These include all federal, State, and local laws and regulations applicable to the relevant environmental discipline, including National Environmental Policy Act (NEPA), and those required by the Council of Environmental Quality (CEQ), State Historic Preservation Office (SHPO), the U.S. Department of Interior (USDOI), Federal Highway Administration (FHWA), Bureau of Land Management (BLM), US Forest Service (USFS), the Environmental Protection Agency (EPA), the Oregon Department of Land Conservation and Development (DLCD), and other federal, state, and local agencies that may also have jurisdiction over the particular transportation facilities construction project.

- Draft and Final Environmental Documents {including EA, REA, EIS, FEIS, FONSI, ROD, Notice of Intent (NOI), and Notice of Availability (NOA)}
- Draft and Final Recommendation Document
- Environmental Baseline Report
- Reconnaissance Report
- Visual Resources Technical Report
- Environmental Project Management
- Mapping, field data collection, and/or photo documentation of existing or baseline conditions
- Public Scoping and Early Agency Coordination Report
- Environmental baseline reports
- Mitigation plans
- Compliance with state and local planning requirements
- Findings for goal exceptions, plan amendments, and variances
- Acquisition of Conditional Use Permits
- Planning and Land Use analysis and reports
- Interchange Area Management Plan
- Facility or Refinement Plan
- Socio-economic analysis and Technical Report(s)
- Environmental Justice analysis and Technical Report(s)
- Cultural/Historic Resources Baseline Report
- Section 106 Determination of Eligibility

EXHIBIT A – Scope of Services

- 106 Finding of Effect
- 106 Memorandum of Agreement
- Cultural Resources Technical Report (EIS, EA only)
- Section 4(f) Evaluations
- Section 6(f)(3) Evaluations
- ORS 358 Coordination Form
- ARPA Permit (federal lands)
- Excavation Permit (SHPO)
- Wetland delineation and report
- Coordinate with designers on avoidance and minimization options
- Wetland functional analysis
- Wetland impact assessment
- Conceptual wetlands mitigation report
- Coordination with ACE and DSL on mitigation options
- Final wetland mitigation grading and planting plans and specifications
- Pre-construction meeting with CC
- Construction inspection for wetland and biological mitigation site
- Adaptive management of wetland mitigation during construction
- Post-construction mitigation site monitoring with annual reports
- Wetlands Technical Report
- Wetland mitigation site maintenance
- Wetland mitigation site remediation plans
- Water resources Impact Assessment and Technical Report
- Water Quality mitigation design concept report
- Final water quality mitigation design plans and specifications
- Erosion and sediment control plans
- NPDES permit for discharge of storm water from construction sites for projects constructed on Tribal Reservation lands
- Oregon Natural Heritage database search
- Request species' list from USFWS and NMFS
- Field survey for plants, birds and other species of concern
- Prepare Biological Assessment (BA) and Biological Evaluation
- Prepare No Effect memo
- Develop mitigation plans for biological species
- Incorporate Terms and Conditions from Biological Opinion(BO) into Specifications
- Photograph pre-existing baseline conditions at construction site
- Estimate costs for maintaining, remediating, and site inspection for inclusion in construction budgets.
- Monitor mitigation or special features of the site as per permits or BO
- Prepare monitoring documents and submit to agencies
- Coordinate site remediation or maintenance as needed.
- Conduct noise studies and prepare related technical reports
- Prepare Air Quality Technical Report per guidance and conformity criteria (OAR 340-252-0010 through 0290)
- Prepare Energy Technical Report
- Biological Technical Report

EXHIBIT A – Scope of Services

- Land Use Technical Report
- Photographic and Animated Simulations
- Permits and Clearances Technical Report
- Preparation of CETAS presentations, concurrence packages, and supporting documentation
- Attendance at CETAS meetings
- Public hearing facilitation
- Maintenance of all project mailing lists and contact lists
- Prepare reports to support Agency in any legal challenge
- Serve as expert witness(es) for Agency if litigation occurs
- Preparation of Bureau of Land Management (BLM) or US Forest Service (USFS) unique environmental documentation for ODOT/FHWA transportation facilities construction projects to meet those agencies' environmental documentation requirements

C.8. Public Involvement/Information

- Public Information Plan;
- Public Involvement or interagency meeting attendance;
- Public Involvement or interagency meeting coordination and facilitation;
- Preparation of materials for public meetings, open houses, and hearings;
- Preparation and distribution of Project Newsletters;
- Develop and maintain Web Pages to disseminate information to the public.

C.9. Prepare All Required Permit Applications

- Joint Permit Application to U.S. Army Corps of Engineers and Oregon Division of State Lands;
- Coast Guard;
- Determine permits required from or notification of other regulatory agencies;
- Prepare & Submit Required Permits to Contract Administrator or designee for Review, Approval and Signature.

C.10. Right of Way

- Right of Way Technical Report
- Prepare access list and coordinate closures with ODOT.
- Research and Survey;
- Provide original survey maps, field notes, and calculation sheets;
- Prepare Legal Descriptions and Maps for Right of Way to be acquired;
- Horizontal Control and Recovery Map;
- Right of Way Staking for Acquisition;
- Right of Way Monumentation and Mapping;
- File surveys with appropriate County Surveyor;
- R/W Descriptions;
- Obtain title documents and prepare conveyance documents;
- Prepare all appraisals needed for Right of Way files;
- Prepare relocation reports, studies and claims for displaced property owners;
- R/W Negotiations (with ODOT R/W Manager's approval on WOC by WOC basis);
- R/W Acquisition (with ODOT R/W Manager's approval on WOC by WOC basis);

EXHIBIT A – Scope of Services

- Prepare final report packet for each file where a signed agreement is reached;
- Prepare recommendations for condemnation, if needed;
- Perform project-related property management services;
- Perform Railroad Coordination Services;
- Perform Utility Coordination Services;
- Certification of Project Right of Way Acquisition.

C.11. Prepare Plans, Specification, and Cost Estimates

- Design Acceptance Package (DAP)
- Advance Plans
- Final Plans (including Traffic Engineering Design, and traffic noise impact mitigation measures, if required);
- Final Quantities and Engineer's Cost Estimate;
- Markup Special Provisions for ODOT Preparation;
- Engineers Construction Schedule;
- Respond to ODOT comments, if provided, on TS&L, Advance and Final PS&E;
- Prepare Utility Notifications. Prepare utility notifications and conflict reports per the Procedures for Utility Relocation/Reimbursement for Federally Funded Local Public Agency Projects;
- Access management plans;
- Access Management Technical Report.

C.12. Bidding Assistance

ODOT must retain key decision-making functions, in the context of evaluating and awarding contracts to consultants or construction contractors and making decisions on protests filed by proposers/bidders.

Precluded Activities:

- Consultant's role is to advise and provide information as requested by ODOT or other stakeholders and shall not involve being a voting member of an evaluation & selection team. ODOT will collaborate respecting appropriate limitations for the Consultant's role and actions related to bidding assistance.
- If Consultant's role included developing (or participation in developing) the plans and specs, the procurement documents, or the evaluative factors (if applicable), the Consultant would be precluded from acting as a subcontractor on bids for the resultant construction contract.
- Consultant shall not have any contact with bidder community following close of bid for ODOT bid projects until award of contract or cancellation of bid.

Bid Assistance Tasks:

- If assigned as the point of contact, respond to questions from bidders and ODOT
- Maintain log of bidder questions and answers for ODOT review. Email log to ODOT by 4:00 p.m. each day until bid closes {All contact with the bid community will cease at time of bid and no further contact will be made without express directive and direction from ODOT contracting office and ODOT Specifications, Estimating and Office of Pre-letting (SEOPL)};
- Make revisions to plans as needed for addenda and submit to ODOT for review and distribution;

EXHIBIT A – Scope of Services

- Prepare draft bid addenda for review, finalization and issue by ODOT;
- Provide additional information regarding submitted bids, only when requested by ODOT SEOPL.

[All Consultant contact with the bid community shall cease at time of bid closing and no further contact will be made without express directive and direction from ODOT.]

C.13. Landscape Architecture

- Provide landscape architectural services for roadside development within the state highway system, which may include preparation of plans/specifications and rendered presentation plans, estimates for roadside development work, and environmental mitigation and remediation.
- Coordinate Statewide Landscape Architectural Issues.
- Coordinate processing of project issues and permits with agencies and individuals outside ODOT.
- Represent landscape architectural expertise on ODOT Resource and Project Teams.
- Render expert opinion(s) within field of landscape architecture.
- Prepare landscape architectural documents as necessary.
- Provide technical expertise such as surveyors, GIS Specialists, wetland biologists, wetland specialists, plant or landscape specialists, irrigation specialists, or other specialties that are approved by ODOT as necessary for the execution of the landscape architects' work.

D. ODOT PROJECT RESPONSIBILITIES

- Execution of intergovernmental agreements (if applicable);
- Program Project funding with appropriate Agencies and assign expenditure accounts;
- Attend Project Kickoff Meeting;
- Right-of -Way appraisals, negotiations and acquisitions (unless specifically authorized and assigned to Consultant);
- Review and approve all Preliminary Reports and TS&L;
- Review and approve Final Plans, Specifications, and Cost Estimate;
- Prepare Plan Title Sheet, Quantity Summary, and Final Special Provisions;
- Advertise, Print and Distribute Bid Documents, Conduct Bid Letting, Award Contract;
- Review Utility Notifications;
- Review and revise funding agreement.
- Furnish plans, specifications, and other data sufficient to perform the work.
- Assign APM to review billings and monitor the work in progress for conformance with FHWA and ODOT rules and regulations pertaining to acceptable procedures, standards and related report forms during the preliminary engineering and design phases of the project.

Agency's review and approval does not release Consultant from liabilities due to any Errors or Omissions with respect to Consultant's Services and/or Deliverables.

E. SCHEDULE

Example Project Milestones:

- Project Kickoff Meeting

EXHIBIT A – Scope of Services

- Preliminary Design Report
- Environmental Documents
- Right of Way Descriptions
- Design Acceptance Package
- Advance Plans
- Plans Specs and Estimates (PS&E) Submittal
- Right of Way Certification
(Consultant shall submit complete schedule.)

F. DELIVERABLES for PE & DESIGN PHASE

Deliverables Overview

- All draft and final versions of graphics-based deliverables (maps, plans, drawings, etc.) and text-based deliverables (reports, memorandums, specifications, etc.) shall be provided electronically as well as the number of hard copies specified for each item.
- Text-based deliverables shall be prepared in MS Word format and be fully compatible with Agency version.
- Graphics-based deliverables shall be prepared in the appropriate software or application as specified in the WOC statement of work and must be fully compatible with Agency software.

Deliverables

The types and quantities of deliverables furnished to ODOT Contract Administrator or designee by Consultant will be stated in the WOC and may include, but are not limited to:

- Monthly status reports and other communications as necessary
- Copies of preliminary design reports / TS&L reports.
- Two copies of permit applications and wetlands delineation.
- Two copies of complete contract drawings (half size), 11" x 17", unless another format is required, special provisions and engineer's cost-estimate.
- Full size mylar(s).
- Electronic files.
- Schematically rendered plans, sections, elevations or details for display at public meetings, review by permitting agencies and ODOT resource or project teams.
- Technical or professional advice, testimony, expertise or opinions as requested by ODOT on matters of landscape architecture. Advice requested may be graphic, written, or oral.
- Geographical Information System (GIS) mapping and information of existing roadside data.
- Bridge and structure design calculation books.
- Bridge load rating reports with calculation books and with electronic files.
- As-constructed drawings on Mylar (full-size Mylar for bridge/structure related drawings) with electronic files of final contract drawings.
- Any technical report identified in the Statement of Work in the WOC.

G. ENDORSEMENT OF DATA

Every final document including drawings, specifications, designs, reports, narratives, maps and plans shall be stamped with the seal and signed by the registered engineer or appropriately licensed or accredited individual having responsible charge of the work. (OAR 672.020(2), registered landscape architect, as appropriate.

5. CONSTRUCTION ENGINEERING, INSPECTION & CONTRACT ADMINISTRATION

A. GENERAL EXPECTATIONS

All construction engineering services, inspection functions, material testing, and construction contract administration performed by Consultant shall be in conformance with the ODOT Construction Manual and the specifications included in the construction contract; such documentation shall be on forms and reports acceptable to ODOT.

All materials that require laboratory testing shall be tested in ODOT's Central laboratory at Salem or in a laboratory approved by ODOT to perform such tests.

B. TASK OVERVIEW and SOW TEMPLATES/FORMS

Individual WOC assignments may include any or all of the following:

- construction engineering services,
- construction inspection services,
- construction contract administration services.

The sample construction engineering, inspection and contract administration (CEI/CA) tasks in Section C below are not exhaustive and individual WOC assignments are not limited to the tasks in this exhibit. WOCs may include any task, reasonably related to the scope of work included in this PA, as determined necessary to complete the construction engineering, administration, and inspection of an assigned project.

Task Templates. ODOT has developed standardized task templates for CEI/CA services within the scope of services included in this PA. Standardized task templates may be included WOCs or incorporated by reference in WOCs.

The following documents, which Agency may revise from time to time, are available for download at this internet site: <http://www.oregon.gov/ODOT/CS/OPO/AE.shtml>

- **Construction Engineering, Inspection and Contract Administration (CEI/CA) Template** – The statement of work used for this phase of Services shall be the latest version of CEI/CA Template developed by ODOT and modified as necessary for the specific project needs. Substantive changes to the CEI/CA Template requirements must be approved by the ODOT Construction Office.
- **Construction Quality Assurance Plan (CQAP)** – Consultant shall submit this form (which Agency may revise from time to time) for each assigned CEI/CA project.
- **Monthly Project Status Report-CEI Phase** – Consultant shall use Agency's CEI/CA status report (which Agency may revise from time to time) during CEI/CA phase for all projects.

C. MENU of CEI/CA SERVICES

Assigned WOCs will include a detailed statement of work that may include, but is not limited to, any or all of the following scope of services:

C.1. Construction Quality Assurance Plan (CQAP)

C.2. Project management services and contract administration

Project management:

- Schedule, coordinate and supervise Consultant’s staff to properly inspect CC's project work, and provide the required construction contract administration;
- Maintain Liaison between Consultant’s staff and ODOT, LPA (if applicable), and CC;
- Provide Timely Responses to ODOT and CC's questions and comments;
- Prepare and submit to ODOT monthly Progress Payment Estimates for CC's work;
- Prepare and submit ODOT’s standard Monthly Project Status Report – CEI/CA Phase, invoices and backup documentation to ODOT for Consultant's work;
- Complete DBE field inspections and interviews.

Deliverable(s):

- Consultant's monthly progress report (submit with monthly invoice)
- CC's Monthly Progress Estimate
- Meeting agenda and minutes

C.3. Preconstruction conference

- As a minimum, a preconstruction conference will be arranged with representatives of ODOT, LPA (if applicable), Engineering Consultant, and the CC in attendance. When alternatives are to be considered, ODOT shall have the right of selection. Review construction project issues, requirements and permits.
- Document and distribute record of meeting with action items identified.
- Conduct a partnering workshop with all parties involved.

Deliverables:

- Meeting agendas
- Meeting minutes.

C.4. Office Engineering

C.5. Construction monitoring and inspection

- Provide construction monitoring and inspection. Monitor and report that CC's project work is progressing as scheduled and is completed according to the construction contract specifications.
- Make project decisions within authority, draft Contract Change Orders as required for ODOT approval.
- Prepare CC punch lists.
- Immediately advise ODOT of any construction which Consultant knows or, with the exercise of professional care should know, fails to conform to the federal or State standards applicable to said construction.

C.6. Contract Administration

- Prepare Invoices

EXHIBIT A – Scope of Services

- Maintain project quality documentation as required in ODOT Construction Manual;
- Generate or validate quantity calculations to support CC Monthly Progress Estimates, and submit to ODOT's Contract Administration Unit, Contract Services Group, no later than the 8th of each month.
- Prepare/negotiate change orders and submit as required to ODOT for approval;
- Provide management to Consultant's subcontractors;
- Labor compliance interviews and reports;
- EEO compliance reports;
- Prepare, Maintain and Update Project Activity Schedule (in Gantt style format).
- Conduct reviews of CC performance;
- Prepare Records of Decisions;
- Prepare project supporting data;
- Monitor project budget and costs;
- FHWA Funding Participation.
- Maintain a daily diary and an Inspector's Daily Progress Report of CC's project activity.
- Prepare and submit progress reports in support of payment to the CC.
- ODOT shall assign a liaison person to provide advice and guidance to the Engineering CC and to monitor work in progress for conformance with FHWA and ODOT rules and regulations pertaining to acceptable procedures, standards, and related report forms during the construction phase of the project.

Deliverable(s)

- Weekly and Monthly reports
- Monthly pay estimates
- Final pay quantities
- Construction contract documentation

C.7. Checking shop drawings/submittals

- Consultant shall complete review and provide contract required action on CC's submittals within the time allowed by the construction contract.
- Consultant will provide when requested by CC interpretation of contract documents, supplementary drawings, specification instructions, or change orders/requests, with sufficient data and direction to continue project work.

C.8. Field-testing and inspection of material.

- Provide owner supplied portion of QA/QC program as specified in construction contract.
- Track CC's required material testing schedule. Advise CC against incorporating products into the project that have not been tested on the required frequency.
- Provide all quality control material sampling and testing.
- Provide record tests.

Deliverables:

- QA/QC procedures
- QC material testing and test records
- If ODOT is QA lead, Consultant will maintain communication with QA person.

C.9. Central laboratory testing (records tests, etc.)

- All materials that require laboratory testing shall be tested in ODOT's Central Laboratory at Salem or in a laboratory approved by ODOT to perform such tests.

C.10. "Off Site" material testing and inspection

- Consultant shall prepare an estimate for "off-site" materials testing and inspection, and laboratory testing of materials.
- In the event Consultant contracts to do, but is unable to perform, any of these functions, ODOT may, at Consultant's request, perform such services with the actual cost to be deducted from Consultant's fees.
- Document using forms and reports acceptable to ODOT.
- Inform CC of deficiencies; retest corrections.
- Reject any materials that do not conform to drawings or specifications.

C.11. Prepare "As-Constructed" plans

- During the life of the construction project, prepare "As-constructed" project plans. Upon construction completion and acceptance, certified as built drawings shall be completed and submitted to ODOT

C.12. Public Relations

C.13. Construction Layout and Staking

C.14. Establish grades

C.15. Survey Control, Horizontal and Vertical

- Provide pre-construction survey control points for the project.
- Provide roadway centerline and stationing.
- All work shall be in English units.
- Cross sections or DTM, depending on purpose of survey work.

C.16. Remeasures

C.17. Monumentation

D. ODOT PROJECT RESPONSIBILITIES

- Execution of intergovernmental agreements (if applicable);
- Program Project funding with appropriate Agencies and assign expenditure accounts;
- Attend construction kickoff meeting;
- Furnish plans, specifications, and other data sufficient to perform the work.
- Assign Agency's Project Manager (APM) to review billings and monitor the work in progress for conformance with FHWA and ODOT rules and regulations pertaining to acceptable procedures, standards and related report forms during the CEI/CA phase of the project.

E. PROJECT SCHEDULE; TIME OF BEGINNING AND COMPLETION

- A project schedule shall be maintained and available/submitted to ODOT that contains all key tasks, durations and milestones.
- Consultant shall not proceed with any phase of the work covered by work orders within this agreement prior to receiving written authorization from ODOT. The time required for completion of all construction engineering services under this agreement shall be thirty (30) days following “third notification” during the actual construction project.

F. DELIVERABLES FOR CEI/CA PHASE

Deliverables Overview

- All draft and final versions of graphics-based deliverables (maps, plans, drawings, etc.) and text-based deliverables (reports, memorandums, specifications, etc.) shall be provided electronically as well as the number of hard copies specified for each item.
- Text-based deliverables shall be prepared in MS Word 2002 unless otherwise specified in a WOC.
- Graphics-based deliverables shall be prepared in software / applications as specified by Agency.

Deliverables

The types and quantities of deliverables furnished to ODOT Contract Administrator or designee by Consultant will be stated in the WOC and may include, but are not limited to:

- Monthly status reports and other communications as necessary
- Weekly and Monthly construction reports
- Notices of non-conformance as needed
- Monthly pay estimates
- Final pay quantities
- Construction contract documentation
- Pre-construction survey control points for the project.
- Roadway centerline and stationing.
- Cross sections or DTM, depending on purpose of survey work.
- QC material testing and test records
- If ODOT is QA lead, Consultant will maintain communication with QA person.
- Unreduced copy of the "as-constructed" plans. Consultant shall be responsible for revising "as-constructed" plans on permanent scale stable reproducibles and furnishing them to ODOT. Consultant may obtain copies at the actual cost of reproduction.

G. ENDORSEMENT OF DATA

Consultant shall place their official Oregon Registered Engineer seal and signature on all engineering design drawings and specifications furnished to ODOT, as well as any other materials where professional standards require such seal and signature.

H. OTHER

- Agency may require Consultant’s Personnel to demonstrate a competency in the particular area of inspection to which they are assigned.

6. CONTINGENCY TASKS

Projects may have work that may or may not be needed, depending on conditions that arise or change during a WOC Project period. This condition dependent work is considered to be contingency work and must be planned for in the WOC. Any contingency tasks or deliverables in the WOC must be within the scope of services of this PA. In the WOC, each contingency item must clearly be labeled as “Contingency” and must include a defined task, deliverable(s) and a schedule. The cost for each contingency task must be identified in the WOC. When provided for in the WOC and required by the Agency, the Consultant shall perform contingency tasks or deliverables related to a project. Agency will formally authorize the specific contingency work and associated costs with a Contingency Notice to Proceed (NTP). The Consultant shall only proceed with a Contingency Task after the Agency has issued the Contingency NTP. The budget for each Contingency Task is specific to that task and may not be used or billed in association with any other task.

EXHIBIT B –COMPENSATION

Part 1

DEFINITIONS/ACRONYMNS

BRD – Billing Rate Database

BOC – Breakdown of Costs

CDQ – Cost Disclosure Questionnaire

CPFF – Cost Plus Fixed Fee with Not-to-Exceed Amount

DNL – Direct Non-Labor Rate Schedule

DSR – Direct Salary Rate Schedule. To compute an employee's actual direct salary on an hourly basis, the employee's actual annual direct salary, as defined below in this paragraph, shall be divided by 2080. An employee's actual annual direct salary shall be the salary amount directly payable to such employee on an annual basis and shall not include any amount for the following costs or payments: (1) all payments for services performed during overtime hours; (2) all employer payments mandated by law, including without limitation, social security and Medicare taxes, insurance (Worker's Compensation, Employers Liability, Unemployment); (3) all employer contributions, if any, to retirement plans, including without limitation pension and/or deferred compensation plans, and (4) all costs for any and all other fringe and/or supplemental benefits.

ESR – Escalated Salary Rate Schedule.

NBR – Negotiated Billing Rate.

NTE – Not-to-Exceed Amount

T&M – Time and Materials with Not-to-Exceed Amount

A. METHODS OF COMPENSATION and PAYMENT OPTIONS:

Agency will determine, in its discretion, Work Order Contract (WOC) payment methodology which may be based on any one or a combination of the following:

- Option A.1: Cost Plus Fixed Fee with Not-to-Exceed (NTE);
- Option A.2: Fixed Price;
- Option A.3: Time and Materials with NTE.
- Option A.4: Price Per Unit

Assigned WOCs will identify the method(s) of compensation and progress payment option for each project or project phase.

Consultant shall complete all Services and provide all deliverables as defined in the WOC. If the applicable compensation is exhausted, but Services and deliverables are not complete, Consultant shall complete the Services and provide the deliverables to Agency's satisfaction without additional compensation.

The NTE amount, Fixed-Price, or Fixed-Fee amount applicable to the compensation methods described below may be adjusted by Agency or renegotiated to:

- Reduce the NTE, Fixed-Price or Fixed-Fee amount associated with WOC Tasks and/or Deliverables that were not authorized by Agency or not performed by Consultant;

- Reduce the NTE, Fixed-Price or Fixed-Fee amount commensurate with deductive amendments to reduce the risk associated with the project or to reduce the scope of work required under the WOC;
- Increase the NTE, Fixed-Price or Fixed-Fee amount for additional Tasks and/or Deliverables added to the scope of work via amendment to the WOC.

A.1 METHODS OF COMPENSATION

(a) COST PLUS FIXED FEE WITH NOT-TO-EXCEED (CPFF) [CPFF is industry standard for preliminary engineering phase (A&E and Related Services prior to Final Design).]

Agency will pay Consultant actual costs plus the negotiated fixed fee, up to the NTE established in the WOC, to complete the Services required under the WOC.

Actual Costs. Actual costs may include:

- **Labor Costs** – the DSR (up to the maximum rate approved in the PA for the employee’s classification) paid to the specific employee(s) productively engaged in work to complete the Services required under the WOC.
- **Allowable Indirect Costs** - (See section I, Indirect Costs)
- **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.
- **Subconsultant Costs** (without mark-up, unless Agency’s Procurement Office notifies Consultant otherwise in writing) - the actual labor costs, direct non-labor costs (as described above) and indirect costs that have been billed to Consultant and recognized by Consultant as valid, undisputed and payable.

(Note: Tasks that include staff compensated with NBRs must use T&M or Fixed-Price method of compensation, as the NBR includes all overhead and profit.)

Fixed-Fee. A profit rate will be negotiated using criteria in Agency’s Profit Worksheet. The Fixed-Fee amount will be developed by multiplying the negotiated profit rate by the labor costs for the project. The cost basis for calculating the Fixed Fee must not include direct non-labor expenses, or any costs (labor or expenses) for contingency tasks. Profit for contingency tasks will be included in the amount negotiated for each contingency task and will not be included in the Fixed-Fee. The Fixed-Fee amount shall be set forth in the WOC as well as the payment method for the Fixed-Fee which may include, but is not limited to the following **Fixed Fee Payment Options**:

1. **Partial Payments** – the Fixed-Fee will be paid incrementally in amounts negotiated and separately-priced for completed deliverables or milestones.
 2. **Progress Payments** – the Fixed-Fee will be paid for accepted and verified progress based on an estimated percentage of completion of the services and deliverables invoiced.
 3. **Single Payment (Lump Sum)** - the Fixed-Fee will be one payment following completion and Agency approval of all required Services and deliverables.
- Consultant acknowledges and agrees that the Fixed-Fee is only due and payable for work authorized by Agency and satisfactorily completed by Consultant.

(b) FIXED PRICE [Fixed Price is used only when the work is clearly defined and the level of effort required can be accurately quantified. Fixed Price is not typically appropriate for preliminary engineering phase but may be suitable for final design phase. Fixed Price is not used for CEI phase]

Agency will pay for the actual Services performed under the WOC according to the negotiated Fixed Price for the WOC, Fixed Price Per Milestone, or Fixed Price Per Deliverable as indicated in the WOC. The Fixed Price amount(s) includes all labor costs, overhead, profit, and may include expenses (if travel or other expenses are approved). Agency may exclude travel (or other expenses) from the Fixed Price amount and reimburse Consultant at cost for approved travel in accordance with Section B of this Exhibit (up to the NTE established for travel and/or other expenses).

- Consultant acknowledges and agrees that the Fixed Price is only due and payable for work authorized by Agency and satisfactorily completed by Consultant.

(c) TIME AND MATERIALS WITH NOT-TO-EXCEED (T&M) [T&M should be used only if no other method is suitable.]

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

- **Loaded Costs**– the NBR; or the actual DSR paid to the specific employee(s) (up to the maximum rate approved in the WOC for the employee’s classification) productively engaged in work to complete the Services required under the WOC, 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.
- **Subconsultant Costs** (without mark-up, unless Agency’s Procurement Office 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.

(d) PRICE PER UNIT [Identify in the WOC the “units” of repetitively-delivered services; for example, As-Built drawings, Standardized Scoping site-visits, geotechnical borings, or an identical training class that is delivered many times.]

Agency will pay Consultant for completion of Services required under the WOC on the basis of Price Per Unit, up to the NTE amount established in the WOC. The Price Per Unit amount includes all labor costs, overhead, profit, and may include expenses (if travel or other expenses are approved). Agency may exclude travel (or other expenses) from the Price Per Unit amount and reimburse Consultant at cost for approved travel in accordance with Section B of this Exhibit (up to the NTE established for travel and/or other expenses).

A.2 PAYMENT OPTIONS

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

{Note: Payment options for the Fixed-Fee (when using CPFF) are listed in Section A.1(a).}

OPTION 1 (For T&M and CPFF) - Progress Payments for Acceptable Progress. Agency will pay Consultant monthly progress payments for actual costs, up to the WOC NTE amount, for Consultant's acceptable (and verifiable) progress on tasks and deliverables included in the invoice.

OPTION 3 (For Fixed-Price) - Progress Payments for Percentage of Services Completed. Agency will pay Consultant monthly progress payments based on a percentage of the total agreed fixed price. Monthly progress payments shall be limited to an amount commensurate with the percentage of the total Services and deliverables that were completed in the month invoiced.

OPTION 2 – Payment upon Milestone (or other Unit) Completion. Agency will pay Consultant the fixed price per milestone amount(s) or all amounts due as actual costs for completed milestones (or other units) indicated in the WOC, up to the WOC NTE amount.

OPTION 4 – Single Payment for Full Completion. Agency will pay Consultant all amounts due under the WOC in one payment, up to the WOC NTE or Fixed-Price amount, upon Agency's acceptance and approval of all Services (including deliverables) required under the WOC.

B. TRAVEL

Agency will reimburse Consultant for authorized travel expenses only when the travel is essential to the normal discharge of Agency's responsibilities and is related to official Agency business. **In accordance with the Travel chapter of the Oregon Accounting Manual, available at the following web address: <http://www.oregon.gov/DAS/SCD/SARS/policies/oam/40.10.00.PO.pdf>, all travel shall be conducted in the most efficient and cost-effective manner that results in the best value for the State.** Personal expenses shall not be authorized at any time. The following guidelines shall apply to the WOC:

- The travel, lodging, and per diem rates referenced in this Section B are the maximums that Consultant's estimate or reimbursement may be based on. Travel rates other than those referenced in this Section B may be negotiated in the WOC, however, under no circumstance shall travel, lodging and per diem rates exceed the maximums set forth by the State Controller at <http://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 Agency will be reimbursed according to the rates set forth by the State Controller at <http://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 all methods of compensation; cost estimates for mileage, lodging and per diems for approved travel shall be based on the rates in effect on the date when the WOC is executed.

- Consultant shall submit receipts for travel-related expenses billed to Agency, such as but not limited to, lodging, rental vehicles, and air fare. If lodging is shared by two or more travelers, the lodging receipt must indicate the names of any travelers on official State business who shared the room.
- Multiple Concurrent Assignments –
 - Consultant (including subconsultants) may not include in cost estimate or seek reimbursement of full lodging costs and/or per diem rates (either short-term or long-term) for a given traveler for more than one project on the same day.
 - Consultant (including subconsultants) mileage expense estimate and reimbursement must be based on actual distance traveled whether from home office, residence, other project site(s) in proximity to the project, or from lodging accommodations used for project assignment(s), whichever is less.

Short-Term Lodging and Per Diem

Short-Term travel is defined as no more than 30 consecutive calendar days at the same location.

Consultant's (including subconsultants') return home for weekends or non-business related travel, does not break up the continuity of the assignment. The following shall apply to short-term lodging and per diem:

- Unless otherwise agreed to by Agency, to be eligible for overnight lodging expense reimbursement, the traveler must be at least 60 miles from home office or residence, whichever is less.
- For all **short-term lodging** expenses approved by Agency, Agency shall reimburse up to the maximum rates set forth by the State Controller at <http://www.oregon.gov/DAS/SCD/SARS/policies/oam/40.10.00.PO.pdf> that are in effect on the date when the travel occurs or the actual cost, whichever is less.
- Approved **meal per diem allowances** during short-term travel must be in conformance with the Travel Policy found in the Oregon Accounting Manual at: <http://www.oregon.gov/DAS/SCD/SARS/policies/oam/40.10.00.PO.pdf> .

Long-Term Lodging and Per Diem

A Long-Term Assignment (LTA) is an assignment which exceeds 30 consecutive calendar days at any one location. Consultant's (including subconsultants') return home for weekends or incidental short-term travel does not break the continuity of an LTA. The following shall apply to long-term travel and per diem:

- Unless otherwise agreed to by Agency, to be eligible for long-term lodging expense reimbursement, traveler must be at least 60 miles from home office or residence, whichever is less.
- Travelers are allowed short-term lodging and per diem allowances for a period not to exceed 7 calendar days while arranging for LTA accommodations.
- Mileage and per diem are not reimbursable if the traveler returns to his/her residence during an LTA. Unless pre-approved by Agency, per diem is not reimbursable when the traveler is within 60 miles of his/her residence or home office.
- Unless otherwise agreed to by Agency, rates for approved long-term lodging and per diem are as follows:
 - **Lodging:** Actual up to 50% of the allowable short-term lodging rates,

- **Meal per diem** allowance is 66% of the short-term per diem rates.
- For **Non-Commercial lodging**, as defined in the Travel Policy of the Oregon Accounting Manual (<http://www.oregon.gov/DAS/SCD/SARS/policies/oam/40.10.00.PO.pdf>), the non-commercial lodging allowance in effect on the date the travel occurs.
- If during an LTA, Consultant travels more than 60 miles one way on behalf of Agency to alternate project site and incurs approved short-term lodging and per diem expense, no long-term allowances for lodging or per diem may be claimed during the short-term travel.

C. INVOICES

Unless stated otherwise in the WOC, Consultant shall submit invoices electronically via email to [the](#) address as indicated in the WOC. Consultant shall not submit invoices to Agency any more frequently than once per month. Consultant shall include in each invoice all information contained in Agency's standard invoice format applicable to the method(s) of compensation used for the WOC. Samples showing the minimum invoice, back-up documentation, and progress report requirements for each method of compensation are available at the following web site:

<http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Forms> (under "Compensation Related").

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 and/or concerns that may affect the project SOW or schedule.

Expense Reporting: Consultant's invoice, even for Fixed-Price WOCs, must provide actual direct expenses (with travel broken out) for purposes of the statutory reporting requirement in ORS 279C.110 (7). For Fixed-Price WOCs, this information is for reporting purposes only; expenses are included in the Fixed-Price amount unless otherwise indicated in the WOC.

CPFF and T&M WOCs:

- Consultant shall prepare invoices based on the actual hourly rates, up to the maximums for each respective classification approved in the PA, 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 costs for which Consultant seeks reimbursement, including a breakdown by task of the number of labor hours for each employee, employee names and classifications. Include copies of all invoices, similarly detailed, from authorized subconsultants.
- Agency will reimburse Consultant for approved travel expenses incurred in accordance with **Exhibit B**, Section B of the Price Agreement (PA), if Agency has agreed to reimburse Consultant for travel expenses.

Fixed-Price WOCs: Consultant shall prepare invoice(s) based on the payment option identified in the WOC:

- For WOCs using “Full Completion” payment option, Consultant shall submit a single invoice requesting payment for the full Fixed-Price amount after all Services have been completed and all Deliverables have been accepted by Agency.
- For WOCs using “Monthly Progress Payments for Percentage of Services Completed” payment option, Consultant invoices shall be limited to an amount commensurate with the percentage of the total Services (including Deliverables) that were completed in the month invoiced.

Price Per Unit WOCs: Consultant shall prepare invoices based on the Fixed Price (or NTE amount for T&M) indicated in the WOC for each unit. Any amounts that are T&M must include detailed breakdown

Additional Requirements: If Consultant fails to present invoices in proper form within 60 calendar days after the end of the month in which Services were rendered, Consultant waives any rights to present such invoice thereafter and to receive payment therefor.

Agency reserves the right to request a full written itemization of and receipts for, but not limited to, any or all labor and direct costs billed by Consultant. Consultant shall provide receipts to Agency within five (5) Business Days of Agency’s request. Agency will not make payment to Consultant under the applicable invoice until Agency has received all requested receipts from Consultant. Any overdue payments to Consultant by Agency for an approved invoice are subject to ORS 293.462.

D. PAYMENT TERMS

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

E. CORRECTIVE WORK

Consultant shall complete all Services, including Deliverables, as required in the SOW to Agency’s satisfaction. If Agency, in its sole discretion, determines that the Services or associated deliverables, or both, are unacceptable, Agency shall notify Consultant in writing of the deficiency. Within 7 calendar days (unless a different timeframe is agreed to by the Parties) of receipt of the deficiency notification Consultant shall respond to Agency outlining how the deficiency shall be corrected. Consultant shall correct any deficiencies in the Services and Deliverables to Agency’s satisfaction without further compensation. If resolution is not achieved, Agency may withhold other payments until deficiencies have been corrected to the standard of care for such services or deliverables (see PA Section 6.a, Professional Standard of Care). Agency shall not unreasonably withhold payment.

For disputes related to deficiencies or standard of care and potential Errors and Omissions, see PA Section 23, Dispute Resolution and Errors & Omissions Claims Process, and **Exhibit I**, Errors & Omissions (E&O) Claims Process.

F. WITHHOLDING/RETAINAGE

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

G. PAYMENT REDUCTION

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

H. RATE REVISIONS

The hourly rates (including escalations, if any) approved under this PA shall be subject to review and potential revisions in conformance with Agency's Billing Rate Policy AGR 06-01 ("Billing Rate Policy") and Agency's business practices. The Billing Rate Policy (as may be revised from time to time) is incorporated by this reference with the same force and effect as though fully set forth herein, and is available at: <http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Resources> (under "Related Policies")

The hourly rates approved for use in any WOC under this PA, shall remain in effect throughout the duration of the WOC unless revisions are approved by Agency. Any approved revisions to the hourly rates allowable under a WOC shall not exceed the rate maximums per classification as stated in the PA or effect an increase in the WOC NTE amount.

I. INDIRECT COSTS

Consultant and subconsultant overhead schedules shall be prepared and submitted in accordance with Agency's Billing Rate Policy (as may be revised from time to time) available at: <http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Resources> (under "Related Policies"). See **Exhibit B**, Part 2 – Cost Information for additional information regarding overhead calculation.

In order to assess the adequacy of an audited overhead rate for use in fair and reasonable price negotiation, Agency 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.

Cost Disclosure Questionnaire (CDQ)- Throughout the duration of the PA, Consultant shall, and shall cause all of its subconsultants to submit a revised CDQ to Agency's Contract Administrator within 30 calendar days of any changes to Consultant or subconsultant accounting practices pertaining

to overhead and direct costs. The CDQ is available at the following Internet site:
<http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Forms> (under "Compensation Related").

Field Office Overhead Rates – Agency reserves the right to request a Field Office Overhead Rate for WOC projects that require a new field office to be established for Consultant (including subconsultants) and to use the Field Office Overhead Rate to replace the overhead established in the PA if applicable to the payment methodology. "Field Office" is defined as office work space established by Agency, a local agency or Consultant for use by a Consultant's (including subconsultants') employee(s) for a period of time that is agreed upon between Agency or local agency and Consultant (including subconsultants). Consultant (including subconsultants) shall use the provisional Field Office Overhead Rate to calculate direct labor performed by Consultant's (including subconsultants) employee(s) based in the field office facilities.

J. SPECIFIC LIMITATIONS and UNALLOWABLE CHARGES

Specific Limitations

Consultant shall charge Agency only for actual productive time Consultant personnel spend on Services by any level of Consultant's staff. Consultant's general supervisors or personnel who are responsible for more than one Agency project shall charge only for actual productive time spent directly on the Project identified in the WOC.

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

Unallowable Charges

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

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

- All items listed as "Direct Costs Not Allowable" in Agency's Billing Rate Policy available at: <http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Resources>
- Costs related to preparation for and negotiation of WOCs or WOC amendments, including but not limited to proposal preparation, cost summary preparation, and negotiation of scope of work or level of effort/budget.
- Costs related to disputes and/or E&O Claims, including but not limited to discussions, meetings and preparation of any dispute or claim related documentation.
- Mark-up on subconsultants or direct non-labor costs (unless Agency's Procurement Office notifies Consultant otherwise in writing).
- 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 unless approved in writing by Agency's WOC Project Manager.

EXHIBIT B, PART 2 – COST INFORMATION

The overhead rates, direct salaries, direct non-labor rates, and negotiated billing rates charged to Agency by Consultant and its subcontractors shall be equal to (or less than) the lowest rates charged to other public or private clients.

Forms referenced in this Exhibit may be viewed and downloaded at:

<http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Forms> (under “Compensation Related”)

A. OVERHEAD (INDIRECT COSTS)

Consultant shall, and shall cause all of its subconsultants to submit to Agency:

- The firm's most recent cognizant audit if one has been completed,
- The firm's most recent independent audit if one has been completed,
- Current overhead accounting information (preferably electronically in Excel format) on a form using the standard 3-column format substantially similar to the example “Calculation of Overhead” available at the above referenced Internet address. Firms shall condense or expand categories as applicable to Consultant’s method of accounting. Firms that have not established an overhead rate based upon their particular financial reporting methodology, shall be reviewed by the Agency to determine whether an overhead rate schedule will be required or a negotiated non-provisional billing rate used. If a firm does calculate O/H, the information must be submitted to Agency and updates must be provided annually.

B. DIRECT SALARY RATE SCHEDULE and ESCALATED RATE SCHEDULE

Consultant shall, and shall cause all of its subconsultants to submit electronically to Agency the applicable forms described below, which are available at the above referenced Internet address.

The **Escalated Rate Schedule (DSR)** includes the high rate and actual direct salary rate as approved by Agency, for each employee that may be used under the PA. The DSR will be used to develop the Escalated Salary Rate Schedule for the PA. BOC The DSR will not be included in the PA but will be retained by Agency.

The **Escalated Salary Rate Schedule (ESR)** includes the maximum rate and average rate (based on the actual DSR of employees within the classification) for all classifications that may be used under the PA. This schedule will be included in the PA and may include rates for multiple years with escalations as approved by Agency.

The **Direct Non-Labor Rate Schedule (DNL)** is an optional form 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).

The **Negotiated Billing Rate Schedule (NBR)** may be required by Agency for Consultants or subcontractors that do not have a cognizant or acceptable independent audit for overhead rates (or do not calculate overhead a part of their normal accounting practice) and Agency determines it is in the best interest of the State to negotiate specific billing rates. Instead of calculating a billing rate using a formula that applies overhead, profit, and FCCM to the direct salary rate; negotiated rate maximums that include profit, overhead and any cost of living or merit raises are set forth in the NBR. The billing rates invoiced under a WOC must be within the maximum rates per the classifications listed in the NBR and no greater than the lowest rates charged to other public or private clients.

C. COST DATA and SUBCONSULTANTS

Agency may approve changes to Consultant's cost data, the subconsultants approved for use under the PA, and the cost data for subconsultants (see **Appendix 1 to Exhibit B – Cost Data and List of Approved Subconsultants**) in writing (fax and email acceptable) provided to Consultant. "Appendix 1 to Exhibit B – Cost Data and List of Approved Subconsultants" is not physically attached but is incorporated into this Exhibit B by this reference with the same force and effect as though fully set forth herein. Prior to approval of additional subconsultants, Consultant shall provide to Agency any requested documentation of qualifications and experience of the prospective subconsultant and its staff.

EXHIBIT C - INSURANCE

During the term of this Price Agreement, Consultant shall maintain in force at its own expense, each insurance noted below:

1. **Required by Agency of Consultants with one or more workers, as defined by ORS 656.027.**
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 include these requirements in each of its subcontractor contracts.**
2. **Required by Agency** **Not required by Agency.**
Professional Liability insurance with a per claim, incident or occurrence limit, or the equivalent, of not less than \$100,000, \$500,000, \$1,000,000, or \$2,000,000. Any annual aggregate limits shall not be less than \$100,000, \$500,000, \$1,000,000, or \$2,000,000. This insurance must cover damages caused by negligent acts, errors or omissions of the Consultant and Consultant's subcontractors, agents, officers or employees related to the professional services to be provided under the WOC.
3. **Required by Agency** **Not required by Agency.**
General Liability insurance with a per occurrence limit, or the equivalent, of not less than \$200,000, \$500,000, \$1,000,000, or \$2,000,000 covering "bodily injury" and "property damage." Any annual aggregate limits shall not be less than \$100,000, \$500,000, \$1,000,000, or \$2,000,000. This insurance shall include personal and advertising injury liability coverage, as well as coverage for products and completed operations. This coverage may be written in combination with the Automobile Liability insurance required under this **Exhibit C** (with separate limits).
4. **Required by Agency** **Not required by Agency.**
Automobile Liability insurance covering the Consultant's business-related automobile use, with a combined single limit, or the equivalent, of not less than Oregon Financial Responsibility Law (ORS 806.060), \$200,000, \$500,000, or \$1,000,000, each accident for "bodily injury" and "property damage," including coverage for all owned, non-owned, rented or hired vehicles. This coverage may be purchased by the Consultant from a rental company, as appropriate, or written in combination with the Commercial General Liability insurance required under this **Exhibit C** (with separate limits).
5. **Notice of cancellation or change.** There shall be no cancellation, material change (one that would adversely impact the protection of the Agency provided through the insurance coverages required in this **Exhibit C**), reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) calendar days prior written notice from the Consultant or its insurer(s) to the Department of Transportation (Agency).
6. **Certificates of Insurance.** As evidence of the insurance coverages required by this Price Agreement and the WOC, the Consultant shall furnish acceptable insurance certificates to Department of Transportation (Agency) prior to contract execution. The certificate will specify "**The State of Oregon, the Oregon Transportation Commission and its members, and the Department of Transportation, its officers, agents and employees**" as Additional Insureds for Automobile and General Liability. It need not reference a specific Price Agreement or WOC name or number. Consultant shall establish to Agency that insuring companies or entities have a "Best's Rating" of A- or

better and a "Financial Size Category" of V or more, as set forth in the most current edition of "Best's Key Rating Guide, unless the Agency reviews the circumstances pertaining to the WOC and reasonably determines that the Consultant's insuring companies or entities with ratings below these levels are nevertheless adequate for the State's needs for the particular project. If requested by the Agency, the Consultant shall either: a) provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to the Agency; or, b) make such insurance policies, endorsements, self-insurance documents and related insurance documents available for inspection by the Agency's representatives at a location in the State of Oregon that is reasonably convenient for the Agency's representatives responsible for verification of the insurance coverages required under this **Exhibit C**. In the event the Consultant elects to have Agency representatives inspect the insurance policies, endorsements, self-insurance documents and related insurance documents, the Agency representative shall be entitled to make written notes regarding the documents inspected, for the purpose of verifying the coverages required under this **Exhibit C**. The Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

7. **Required by Agency** **Not required by Agency.**

Tail Coverage. If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the WOC for a duration of: 24 months, or 12 months. If "tail" coverage is required by the Agency, Consultant will be responsible for furnishing certification of "tail" coverage as described, or continuous "claims made" liability coverage, for the time period required in this **Exhibit C** following WOC expiration. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of the WOC. Evidence of suitable coverage will be a condition of final payment under the WOC.

8. **Additional Coverages.** Agency reserves the right to require Consultant to provide additional types of insurance coverage and additional coverage amounts as Agency determines necessary for any given WOC. Agency will compensate Consultant, as a direct expense, for the cost of additional coverage or coverage amounts required for a WOC to the extent they exceed the insurance coverages required for Consultant, or the insurance coverages carried by Consultant, whichever are greater, at the time Agency imposes the requirement for additional coverage or coverage amounts.

EXHIBIT D – INFLUENCE AND DEBARMENT PROVISIONS (May 2007)

Exhibit D – Influence and Debarment Provisions (May 2007) is not physically attached but is incorporated with the same force and effect as if it were fully set forth herein, and is available at the following Web address:

[http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Contract Docs](http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Contract_Docs) (under “Price Agreement & Exhibits”)

**EXHIBIT E – DISADVANTAGED BUSINESS ENTERPRISE (DBE)
REQUIRED PROVISIONS (May 2007)**

Exhibit E – Disadvantaged Business Enterprise (DBE) Required Provisions (May 2007) is not physically attached but is incorporated with the same force and effect as if it were fully set forth herein, and is available at the following Web address:

[http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Contract Docs](http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Contract_Docs) (under “Price Agreement & Exhibits”)

EXHIBIT F

EXHIBIT F – WORK ORDER CONTRACT ASSIGNMENT and REQUIREMENTS

All forms referenced in this Exhibit may be viewed and downloaded after June 2007 at:
<http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Forms>

1. WORK ORDER CONTRACT (WOC) ASSIGNMENT PROCESS

WOCs will be assigned as needed by the Agency, and there is no guarantee that any specific amount of Services or overall dollar amounts will be assigned to Consultant.

In compliance Federal law (including the Brooks Act) and Oregon law, firms awarded PAs from RFP 22910 will be selected for specific projects and WOC assignment using a Qualifications Based Selection (QBS) process. Pricing, cost, overhead or billing rate factors shall not be considered in the selection phase of the process. Agency's Contract Administrator shall document the Contract file with the criteria and scoring used for Consultant selection for individual WOCs.

1.1 WOC ASSIGNMENT METHODS. WOCs will be assigned using the following methods:

1.1.1 MINI SOLICITATION

Agency may conduct a streamlined mini-solicitation via email sent to all firms awarded PAs from RFP 22910. The mini-solicitation document will be as brief as practicable and will include, but is not limited to:

- Response deadline and location for submittals,
- Project description and objectives (and/or information from project prospectus),
- Programmed budget for construction and right-of-way,
- Schedule for A&E services and programmed bid let date,
- General scope of services expected under the WOC,
- Selection criteria and weighting.

1.1.1.1 Selection Criteria

The selection criteria used for a given project will be in conformance with criteria allowed under State and federal rules for A&E solicitations. The criteria for mini-solicitations may include one or more of the following categories:

- Capacity to accomplish the work in the required time - current and projected workloads of project manager and other key staff and the proportion of time such staff would have available for the needed services. This will normally include submittal of a Capacity Summary form.
- Experience, qualifications, and technical competence in the type of work required for the specific project. How relevant and recent is the experience?
- Project Approach - approach to the A&E Services for the project described in the mini-solicitation.
- Location in the general geographical area of the project and knowledge of the locality of the project.

EXHIBIT F

- Past performance – Agency intends to monitor performance in terms of cost control, project management, quality of work, and compliance with performance schedules.
- References for specific types of project experience.
- Volume of work, if any, awarded to the firm by Agency within the last 2 years, with the objective of effecting equitable distribution of the work among qualified firms.

1.1.1.2 Mini-Proposals

Mini-Proposals submitted in response to mini-solicitations will generally be limited to approximately 2 to 8 pages and the timeline for submittals will generally be limited to 1 to 2 weeks, depending on the number of criteria included in the mini-solicitation.

1.1.1.3 Interviews

Agency may elect to conduct interviews with two or more firms short-listed following evaluation and scoring of mini-proposals. The mini-solicitation must include one or more of the criteria categories above. If interviews are used, the criteria and weighting will be provided to interviewees at least one week prior to the date of the interview (and may be included in the mini-solicitation document).

1.1.2 DIRECT APPOINTMENT

Agency may make selections for WOC assignments using any selection methods or procedures permitted under applicable statutes and rules, including but not limited to:

- Direct Appointments under OAR 137-048-0200(1)(b) for WOCs for which the estimated fee to be paid under the WOC does not exceed \$25,000 (if federal funds are involved advance FHWA approval may be required);
- Direct Appointments for continuation of a project when the Direct Appointment meets the requirements stated in OAR 137-048-0200(1)(c) or 137-048-0200(1)(d).
- Direct Appointments for projects that have been delayed or delayed and materially altered as permitted by OAR 137-048-0310 (if federal funds are involved, advance FHWA approval may be required and limitations may apply to the total contract costs).

1.2 NEGOTIATION

Agency will negotiate the statement of work (SOW), schedule, costs and profit amount with the selected firm.

Labor Costs and Expenses: Following initial agreement on the SOW tasks, deliverables and schedule, Agency and Consultant will develop independent cost estimates and negotiate the appropriate hours, classifications and direct non-labor expenses (as allowable) for the services included in the WOC. The initial SOW and budget are both subject to negotiation.

Profit: Following agreement on labor costs and direct non-labor expenses, Agency and Consultant shall negotiate profit for the WOC. The negotiated profit rate will be based on Agency's Profit Worksheet. Agency may negotiate profit on each phase of work for a given project; i.e., profit may be negotiated separately for scoping phase, preliminary engineering and design phase, construction engineering & inspection/construction administration phase, etc. The agreed-to profit will be included in WOCs as follows:

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- Cost-Plus-Fixed-Fee WOCs will include the profit amount as a fixed amount to be paid as indicated in the WOC. The Fixed-Fee amount will be developed by multiplying the negotiated profit rate by the labor costs for the project. The basis for calculating the Fixed Fee must not include direct non-labor expenses, or labor costs for contingency tasks, if any. Profit for contingency tasks will be included in the amount negotiated for each contingency task and will not be included in the Fixed-Fee.
- T&M WOCs will include the profit in the billing rate.
- Fixed-Price WOCs will include the profit in the total Fixed-Price amount for the WOC.

All WOC assignments are tentative until negotiation of SOW and reasonable costs within project budget are completed, all required signatures and approvals have been obtained on the WOC, and ODOT has issued a notice to proceed to the Consultant. In the event that WOC negotiations fail to result in an acceptable agreement, Agency will terminate negotiations with the top ranked firm and begin negotiations with the second ranked firm and so on until agreement is reached and a WOC is executed. If negotiations fail to conclude in an agreement, Agency, at its sole discretion, may solicit separately for those services or take other action Agency deems appropriate.

2. WORK ORDER CONTRACT REQUIREMENTS

2.1 General Requirements

The Consultant shall perform Services under the Price Agreement only under an Agency issued and approved WOC.

SAMPLE WOC: A sample WOC, which may be revised by Agency from time to time, is incorporated by this reference and available at the following Agency Internet site:

http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Contract_Docs (Under Price Agreement and Exhibits). At the time a WOC is issued, the most recent available version of the WOC form will be used.

If Consultant refuses to enter or cannot comply with a WOC assignment, an authorized representative of Consultant shall submit to Agency a written justification for the refusal within 3 business days of Consultant's receipt of Agency's request for the WOC, or according to other Agency direction specified in the request. If Consultant refuses an assignment or takes more than the required response time to respond to Agency's request, Agency may offer the WOC to the next ranked Consultant (and so on), or solicit separately for those services, or take other action Agency deems appropriate.

The amount payable under each WOC may only be exceeded upon the prior written approval by Agency through a WOC Amendment. No Services under a WOC or WOC Amendment shall begin before Agency, Consultant and other required signatures are obtained on the WOC or WOC Amendment, and NTP is issued.

2.2. Work Order Contract Document

Each WOC must be in the Agency approved format, a sample of which is available at the Internet address in Section 2 above. If a DBE Goal other than 0% has been assigned, the WOC must include a Committed DBE Breakdown Form in the form specified in section 3.3 of this **Exhibit F**. ODOT

EXHIBIT F

Procurement Office will prepare, process and execute the WOC. Each WOC must indicate the maximum amount payable to Consultant, as negotiated by Agency and Consultant.

2.2.1 Statement Of Work

The SOW must include the Services to be performed by the Consultant, a schedule for performance, and specific deliverables. All Services included in the SOW must be within the Scope of Services in the PA.

2.2.2 BREAKDOWN OF COSTS FOR SERVICES

(formerly Summary of Estimate for Services)

Following development and negotiation of the SOW tasks, deliverables and schedule for the project, Consultant shall submit a Breakdown of Costs (BOC) to Agency in the form designated by Agency.

Classification Averages: Consultant shall prepare and submit the BOC based on the approved NBRs and ESR averages for each classification (as listed in the ESR schedule(s) in the PA) to be used under the WOC. Exceptions to using averages in the BOC for all classifications may be negotiated based on the specifics of the project, including but not limited to small projects with only one or two staff used for a given classification, Key Personnel for the project, or projects with specialized skills needed that cannot reasonably be accommodated with average rates. Any exceptions to using average rates for specific staff included in the BOC must be approved by Agency. Consultant shall include names of proposed Key Personnel (as well as other staff assignments if requested by Agency).

For each WOC assignment (regardless of compensation method), the BOC must include a detailed breakdown of the costs for each element of the work. The BOC must identify:

- a) the assigned staff (classifications and names of Key Personnel, and other staff if requested) and hours per task and sub-task;
- b) an itemization of rental equipment, flaggers, travel and other direct non-labor expenses (estimates with documentation from vendors shall be provided upon request);
- c) the estimate for services as provided by each subcontractor that shows the assigned staff (classifications and names) and hours per task and sub-task and itemized direct non-labor costs;
- d) Classification averages, Direct Salary Rate (DSR), Escalated Salary Rate (ESR) or Negotiated Billing Rate (NBR) and current accepted multipliers of OH, FCCM and Profit Fee as appropriate.
- e) **Contingency Tasks.** These are tasks that may or may not be required based on circumstances that are determined after the work has begun. These must be negotiated with Agency and identified in the WOC as Contingency Tasks. Amounts for any Contingency Tasks must be shown on the BOC as a separate line-item for each task. The amount for a Contingency Task must include all labor, overhead, profit, FCCM and direct non-labor expenses for the task. Direct non-labor expenses for Contingency Tasks must not be included in an overall amount for direct non-labor expenses applied to the budget for the non-contingency tasks.

Notes:

Consultant submits the BOC initially without profit included (profit will be negotiated following agreement on the SOW, labor costs and expenses)

- No mark-up is permitted on subconsultants or direct non-labor costs (unless Agency's Procurement Office notifies Consultant otherwise in writing).
- Consultant shall use standardized form (Excel spreadsheet format as provided by Agency) to prepare BOC.

EXHIBIT F

3.3 COMMITTED DISADVANTAGED BUSINESS ENTERPRISE (DBE) BREAKDOWN FORM

The Committed DBE Breakdown Form will not be required if the DBE Goal is 0% or if a DBE Goal is not required (i.e., if WOC includes no federal funding). If a DBE Goal greater than 0% is assigned to the project, the Committed DBE Breakdown Form shall be used to determine the Consultant's responsiveness to the DBE requirements. See PA **Exhibit E**, DISADVANTAGED BUSINESS ENTERPRISE (DBE), REQUIRED PROVISIONS for detailed requirements. **Exhibit E** and the Committed DBE Breakdown Form are available at the following Internet site:
<http://www.oregon.gov/ODOT/CS/OPO/AE.shtml>

3.4 ASPIRATIONAL TARGETS

Each WOC will be submitted to Agency's Office of Civil Rights for assignment of Aspirational Targets as follows:

- Federally funded projects will be assigned DBE Aspirational Targets, and
- State and/or Federally funded projects will be assigned MWESB Aspirational Targets.

The assigned Aspirational Target(s) are not binding on Consultant but will be listed in the WOC for informational purposes. (For additional information see PA **Exhibit K**, MWESB and DBE ASPIRATIONAL TARGET PROVISIONS.)

3.5 CONFLICT OF INTEREST (COI) DISCLOSURE

Consultant and its subconsultants shall submit a COI Disclosure Form prior to entering a WOC to provide Services that include development of an Environmental Assessment (EA) or Environmental Impact Statement (EIS). For all other WOC assignments, Consultant shall ensure its COI disclosures are in conformance with Part II, Section 1.b of the PA.

Exhibit F – Attachment 1

ADDITIONAL PROVISIONS APPLICABLE TO WOCs

Project Cooperation.

Consultant acknowledges that Agency may have separate contract(s) with other entities (i.e., contractors, consultants, and/or governmental agencies) involved with the Project. Consultant shall support Agency's efforts to create and maintain a cooperative working relationship between and among other entities involved in the Project, and their respective representatives, to further the interests of Agency to result in the Project being successfully completed on time and within budget.

This SOW describes the responsibilities of all entities involved in this project. In this WOC the Consultant shall only be responsible for those responsibilities and deliverables identified as being assigned to the Consultant (or its subconsultants) in this WOC and the SOW. All work assigned to other entities, other than sub-consultants, is not subject to this WOC, 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 sub-consultant shall be construed as being the responsibility of the 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 SOW shall be subject to the following guidelines:

- a. At the first indication of non-cooperation, the Consultant shall provide written notice to ODOT WOC 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 SOW.
- b. ODOT WOC Administrator shall contact the non-cooperative entity/s to discuss the matter and attempt to correct the problem and/or expedite items determined to be delaying the 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 SOW, the Consultant will not be found in breach or default with respect to delinquencies beyond any reasonable control of the Consultant; nor shall the Consultant be assessed or liable for any damages arising as a result of such delinquencies. Neither shall ODOT be responsible or liable for any damages to Consultant as the result of such non-cooperation by other entities. ODOT WOC Administrator will negotiate with Consultant in the best interest of the State, and may revise the delivery schedule to allow for delinquencies beyond any reasonable control of the Consultant. Revised delivery dates beyond the expiration date require an amendment to the WOC.

2. Key Persons and Specified Staff:

Key Persons. Consultant acknowledges and agrees that Agency selected Consultant, and is entering into the WOC because of the special qualifications of Consultant’s key personnel. In particular, Agency,

EXHIBIT F

through the WOC is engaging the expertise, experience, judgment and personal attention of the Key Persons identified in the WOC. The names and roles of Consultant and/or sub-consultant Key Persons will be listed in WOC.

Each Key Person shall not delegate performance of any management powers or other responsibilities he or she is required to provide under the WOC to another of Consultant's or subconsultant's personnel without first obtaining the written consent of Agency. Further, Consultant shall not re-assign or transfer any Key Person to other duties or positions such that the Key Person is no longer available to provide Agency with his or her expertise, experience, judgment, and personal attention according to any schedule established under the WOC without first obtaining Agency's prior written consent to such re-assignment or transfer. Notification of request to change a Key Person shall be in writing (via email or other form as may be required by Agency.)

Specified Staff (other than Key Personnel). Consultant and Agency may agree to specific staff for various task assignments within WOCs. The names and roles of Consultant and/or sub-consultant Specified Staff will be listed in WOC.

In the event Consultant requests that Agency approve a re-assignment or transfer of a Key Person or Specified Staff:

- Agency shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Key Person or Specified Staff.
- Any substitute or replacement for a Key Person or Specified Staff must be approved in writing (email acceptable) and shall be deemed to be a Key Person under the WOC.

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

3. Staffing Adjustments.

Consultant may make necessary staffing adjustments (other than Key Personnel or Specified Staff) to the proposed staff (as shown in Consultant's Breakdown of Costs for Services) provided:

- the alternate staff are appropriately qualified to complete the assigned tasks,
- any changes do not exceed approved billing rate maximums for the classification, and
- the Services can be completed without exceeding WOC (or task, if applicable) NTEs.

Consultant shall email notice to APM prior to implementing needed changes to staffing assignments.

EXHIBIT G - CONSULTANT EVALUATION

- a. **Agency's Right to Evaluate.** Agency may, at its sole discretion, conduct evaluations of the Consultant's performance and sub-consultant's performance.
- b. **Evaluation Criteria.** Generally, performance evaluations will include evaluation and scoring of various sub-criteria related to, but are not limited to, the following categories: (a) project management and coordination of staff and sub-consultants, (b) project communication and responsiveness, (c) cost effectiveness and completing work within budget, (d) Technical accuracy and quality control, (e) schedule performance.

Current evaluation forms (as may be updated by Agency from time to time) for PE/Design phase and CEI/CA phase are available at the following Web address:
<http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Forms>

- c. **Evaluation Process.** The performance evaluation results may be used as written documentation for addressing areas of Consultant's performance throughout the term of the Contract/Price Agreement and the term of any WOCs. Agency reserves the right to conduct performance evaluations at the end of each project and on an interim basis throughout the term of the Contract/Price Agreement and the term of any WOCs. During PE/Design phase, Agency may conduct performance evaluations at each major milestone on full-service projects. During CEI/CA phase, Agency intends to score Consultant performance on a project by project basis every six months (or other period as determined by Agency). If the project duration is less than six months, or if it is less than six months since the last evaluation when the project is completed, then the CEI/CA Evaluation Form will be completed at that time as an end of project evaluation. Deliverables must be submitted on or before the due date and be of acceptable quality (per Agency review) to be considered on time.
- d. **Consultant's Review/Response.** Agency shall provide a copy of the performance evaluation form results to Consultant within fourteen (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 Consultant's performance evaluation form within thirty (30) calendar days following receipt.
- e. **Dispute Resolution:** In the event of a dispute regarding a Consultant's performance evaluation, Consultant may request a teleconference (or meeting at Agency) with Agency's Project Manager (APM) and Agency's Contract Administrator. If the dispute cannot be resolved with discussions or upon receipt of any follow-up documentation requested, Agency's Contract Administrator, in consultation with the applicable Area Manager and APM shall make the final decision regarding the score received on a particular Form. Agency reserves the right to adjust score(s) upon Agency's finding of good cause.
- f. **Agency's Use of Performance Evaluation.** Agency may, at its sole discretion, use performance evaluation findings and conclusions in any way deemed necessary by Agency, including, but not limited to, corrective action, requiring submittal of performance improvement plan by Consultant, withholding of retainage, determining eligibility for future WOC assignments, and as a criterion of selection for future Agency contracts.

EXHIBIT H
CONFLICT OF INTEREST (COI) GUIDELINES AND DISCLOSURE PROCESS (May 2007)

Exhibit H – Conflict of Interest (COI) Guidelines and Disclosure Process (May 2007) is not physically attached but is incorporated with the same force and effect as if it were fully set forth herein, and is available at the following Web address:

http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Contract_Docs (under “Price Agreement & Exhibits”)

EXHIBIT I
EXHIBIT I – ERRORS & OMISSIONS (E&O) CLAIMS PROCESS (May 2007)

Exhibit I – Errors & Omissions (E&O) Claims Process (May 2007) is not physically attached but is incorporated with the same force and effect as if it were fully set forth herein, and is available at the following Web address:

http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Contract_Docs (under “Price Agreement & Exhibits”)

EXHIBIT J – CONTACT INFORMATION and KEY PERSONS

Party Contact Information.

a. Agency’s Contract Administrator for this Price Agreement is:

Name: Vic Folk
Address: 455 Airport Rd. SE, Bldg K
Salem, OR 97301-53

Ph: 503-986-2709
Email: victor.folk@odot.state.or.us

b. Consultant’s Contract Administrator for this Price Agreement is:

Name:
Address:

Ph:
Email:

Either Party may change the designated Price Agreement Administrator by notifying the other Party in writing of the new designation.

Key Persons

Consultant may request that Agency approve a substitution or replacement of a Key Person listed in the Consultant’s Statement of Proposal. Agency shall have the right to interview, review the qualifications of, and approve or disapprove (email acceptable) the proposed replacement(s) for the Key Person. Any approved substitute or replacement for a Key Person shall be deemed to be a Key Person for use under assigned WOCs.

EXHIBIT K

EXHIBIT K – MWESB AND DBE ASPIRATIONAL TARGET PROVISIONS (JUNE 2007)

Exhibit K – MWESB and DBE Aspirational Target Provisions (June 2007) is not physically attached but is incorporated with the same force and effect as if it were fully set forth herein, and is available at the following Web address:

http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Contract_Docs (under “Price Agreement & Exhibits”)