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| Form C002-B071822 |

# PRICE AGREEMENT resulting from RFP 73000-00002899 (34537)

OREGON DEPARTMENT OF TRANSPORTATION

PRICE AGREEMENT #: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (ORBuys #: PO-\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

Professional Services and Related Services

*Full-Service A&E Price Agreements for*

*ODOT and Local Agency Transportation Projects*

This “Price Agreement” or “PA” is between the State of Oregon, acting by and through its Department of Transportation (“Agency” or “ODOT”) and [**legal company name as provided to IRS (and DBA name if applicable)**]\_\_\_\_\_\_\_ (“Consultant”). Agency and Consultant together are referred to as “Parties” and individually referred to as “Party.”

This is a Tier \_\_\_\_ PA. See **Exhibit F** – Work Order Contract Assignment and Requirements, Section 1, for applicable WOC/Project dollar ranges.

Agency’s designated Contract Administrator for this PA (“PA Administrator”) and Consultant’s contact for this PA are identified in **Exhibit J**, Contact Information and KeyPersons. This PA 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 PA. This PA does not guarantee that any WOCs will be entered between the Parties.

For purposes of this PA and any WOCs assigned under this PA:

1. “business days” means calendar days, excluding Saturdays, Sundays and all State of Oregon recognized holidays;
2. “calendar days” means any day appearing on the calendar, whether a weekday, weekend day, national holiday, State of Oregon holiday or other day;
3. “days” means calendar days;
4. “Professional Services” means architectural, engineering, photogrammetric mapping, transportation planning or land surveying services that must be procured using qualifications based selection procedures [see ORS 279C.100 and ORS 279C.110];
5. “Related Services” is defined in ORS 279C.100; and
6. “State” means State of Oregon.

**PART I. GENERAL PRICE AGREEMENT PROVISIONS**

The following provisions apply to this PA:

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

**a. Effective Date.** This PA shall become effective on the date this PA has been signed by the Parties and all required approvals have been obtained.

**b. Expiration and WOC Assignment Period**

**i. Expiration.** This PA 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) the expiration or termination of all WOCs assigned under this PA.

**ii. WOC Assignment Period.** Unless this PA is sooner terminated, the WOC assignment period ends 5 years from the effective date of this PA. A WOC is considered assigned (for purposes of meeting the WOC Assignment Period limitation) 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 Agency has issued a notice to proceed (“NTP”) to Consultant.

**c. Termination**

**i. Termination by Mutual Consent**. This PA 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 PA, in whole or in part, upon 30 calendar days written notice to Consultant.

**d. Effect of Expiration or Termination.** Expiration or termination of the PA shall not result in expiration or termination of any WOC issued before PA 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. Scope of Services.** Consultant shall perform all services and submit all deliverables as described in any WOCs executed under this PA (the “Services”). The Services included in a WOC must be within the Scope or Menu of Services set forth in **Exhibit A**, which is attached and incorporated into this PA by this reference, or within the Scope/Menu of Services for CA/CEI Services set forth in **Exhibit A.1**, which although not physically attached, is incorporated into this PA by this reference with the same force and effect as though fully set forth herein, as provided here and in Section 4.b. below**.** Consultant agrees to perform the Services and provide the deliverables required under each WOC in accordance with the terms and conditions for WOCs as set forth in this PA. Consultant agrees that Agency may amend the Scope/Menu of Services for CA/CEI Services (**Exhibit A.1)** from time to time. Consultant agrees that the version of the Scope/Menu of Services for CA/CEI Services that will apply and will be used for WOCs executed under this PA at any point in time will be the then most current version of the Scope/Menu of Services for CA/CEI Services, as amended by Agency from time to time, posted on Agency’s website under Section 4.b below.

**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 PA. This PA does not have an individual NTE. Instead, the collective maximum NTE compensation for all the WOCs issued under all of the PAs awarded from RFP #34537, including any allowable expenses, is $600,000,000. Agency will use this shared maximum NTE amount for assignment of WOCs under all of the PAs.

**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**.

**a. Exhibits Attached and Incorporated**

This PA includes the following exhibits, each of which is attached and incorporated into this PA by reference:

* + Exhibit A – Scope of Services (See Section 2 above)
  + Exhibit B – Compensation
  + Exhibit C – Insurance Requirements
  + Exhibit D – Title VI Non-Discrimination Provisions
  + Exhibit E – Disadvantaged Business Enterprise (“DBE”) Provisions (applicable to federally funded WOCs with DBE goal assigned)
  + Exhibit E.1 - Disadvantaged Business Enterprise (“DBE”) Provisions, No-Goal (applicable to federally funded WOCs with no DBE goal assigned)
  + Exhibit F – Work Order Contract Assignment and Requirements
  + Exhibit G – Performance Evaluation
  + Exhibit H – RESERVED
  + Exhibit I - RESERVED
  + Exhibit J – Contact Information and Key Persons
  + Exhibit L – ODOT’s ProjectWise Network
  + Exhibit M – AASHTOWare Project Application

**b. Exhibits Incorporated by Reference From Website(s)**

This PA includes the most current versions of the following exhibits (as may be revised from time to time by Agency), each of which, although not physically attached, is incorporated by this reference into this PA with the same force and effect as though fully set forth herein:

* Exhibit A.1 – Scope/Menu of Services for CA/CEI (See Section 2 above. It is titled “Statement of Work and Delivery Schedule for CA/CEI” on line. It is located at:

[**http://www.oregon.gov/ODOT/Business/Procurement/DocsSOW/CA\_cei.doc**](https://www.oregon.gov/ODOT/ProjectDel/Pages/Project-Delivery-Guide.aspx)

* Exhibit K – Certified Small Business Aspirational Target Provisions;

**The full text of the above referenced exhibits may be reviewed and downloaded on line at the following address:** [https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx](http://www.oregon.gov/ODOT/CS/OPO/Pages/lap_select.aspx)

**EACH WOC INCORPORATES APPLICABLE PROVISIONS FROM THE THEN MOST CURRENT VERSIONS OF THE FOREGOING EXHIBITS (subsections a. and b.) AT THE TIME THE WOC IS EXECUTED. WOCS MAY EXCLUDE SOME EXHIBITS IN THEIR ENTIRETY IF THEY ARE NOT APPLICABLE TO A PARTICULAR WOC.**

**Revisions to the exhibits under subsections a. and b. made after execution of a WOC will apply to that WOC only if the revised exhibits are incorporated by amendment to the WOC under the provisions of Section 25 below.**

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

**6. Performance Evaluation:** Agency intends to conduct performance evaluations on each assigned WOC and may conduct evaluations on each phase of the Services (see **Exhibit G-**Performance Evaluation). Additionally, poor performance under assigned WOCs 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. Agency may conduct a separate solicitation near the end of the initial WOC assignment period if it is less than 5 years or at any time thereafter to replace firms that do not receive an extension of the WOC assignment period.

**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 PA. The following provisions are also generally applicable to this PA, and where the context so requires, the reference in a provision to “Work Order Contract” or “WOC” shall be read to mean this PA for purposes of applying the provision to this PA:

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

**a.** Consultant, by its signature on the PA and WOC, certifies that it is an independent contractor as defined in ORS 670.600 and as described in IRS Publication 1779, which is available at: [https://www.irs.gov/pub/irs-pdf/p1779.pdf](https://www.oregon.gov/ODOT/Business/Pages/Standard_Specifications.aspx). Consultant shall perform all required Services as an independent contractor. Although Agency reserves the right (i) to determine the delivery schedule (as mutually acceptable to 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.** The ODOT Conflict of Interest Guidelines for Procurements and Contracts (“COI Guidelines”), as may be revised from time to time by Agency, is hereby incorporated into this PA with the same force and effect as though fully set forth herein, and is available at: <https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx>. Consultant, by its signature on the WOC, certifies that: (i) Consultant and, to the best of its information, knowledge and belief, its Associates are in compliance with theCOI Guidelines, and (ii) if submittal of a Conflict of Interest Disclosure Form is required, the information Consultant provided through the Conflict of Interest Disclosure 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 using the form available at the above Internet address, that is true, accurate and complete as of the WOC effective date. In addition, Consultant shall submit to Agency a Conflict of Interest Disclosure Form using the form available at the above Internet address, that is updated, true, accurate and complete, no later than 10 business days following the date that Consultant becomes aware of any staffing, organizational or other material changes that result in nonconformance with disclosure requirements of the COI Guidelines.

**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. Throughout the duration of the PA and any WOCs, Consultant shall submit an updated W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>)to Agency whenever Consultant’s backup withholding status or any other information changes. Consultant is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Consultant under the 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 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 Consultant’s professional responsibility to report to Agency any information pertaining to a project, or to performance by other consultants or contractors on a project, that would adversely affect Agency or a particular project, to the extent any such information may come to the attention of Consultant during the performance of Services within the scope of the WOC.

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

**a.** Consultant shall obtain Agency's written consent prior to entering into any subcontracts for any of the Services required by the WOC, or in any manner assigning, selling or transferring any of its rights or interest under the WOC or delegate any of its duties or performance under the WOC. 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, 6, 7, 8, 9, 12, 19, and 24 of these WOC provisions and the limitations provided in **Exhibit B** Compensation, in the performance of the subcontractor’s Services that are the subject of the WOC, as if the subcontractor were 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.

**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.

**c.** Any purported assignment, delegation or disposition in violation of subsection a. above is prohibited, whether voluntary or involuntary, by merger, consolidation, stock transfer, asset sale, change in control, dissolution, operation of law, or by any other manner.Any purported assignment, delegation, or disposition in violation of subsection a. above is void.

**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 Agency's 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 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, for this PA and the WOCs, 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; (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; and (vi) Consultant has no undisclosed liquidated and delinquent debt owed to the State or any department or agency of the State.

**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 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 Consultant.**

(i) Consultant shall be responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other Services and deliverables furnished by Consultant under the WOC, and all of the foregoing shall also be in accordance with Consultant’s approved Quality Plan. Consultant shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications and other Services and deliverables.

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

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

(iv) If Consultant is comprised of more than one legal entity (for example, a joint-venture or partnership), each such entity shall be jointly and severally liable under the WOC.

**c. Design Within Funding Limit.**

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

1. Consultant shall accomplish the design Services required under the WOC so as to permit construction of the project within Agency’s budget for construction as set forth in the WOC. Consultant shall promptly advise Agency’s Contract Administrator for the WOC if it finds 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 Contract Administrator for the WOC will review Consultant’s revised estimate of construction cost. Agency may, if it determines 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 Agency may adjust such estimated construction contract price.
2. 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 Consultant’s design exceeds 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. Consultant shall perform these additional Services at no increase in the price of the WOC. However, Consultant will not be required to perform such additional Services at no cost to Agency if Consultant’s design exceeds 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, 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 or a derivative work based on Consultant Intellectual Property or a compilation that includes Consultant Intellectual Property, or in the event any Consultant Intellectual Property is needed by Agency to reasonably enjoy and use any Work Product, 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 Consultant Intellectual Property and the pre-existing elements of the Consultant Intellectual Property employed in the Work Product, including the right of Agency to authorize contractors, consultants and others to do the same on Agency’s behalf. At the request of Consultant, Agency shall take reasonable steps to protect the confidentiality and proprietary interests of Consultant in any Consultant Intellectual Property licensed under this Section, within the limits of the Oregon Public Records Law (ORS 192.311 through 192.478) 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 or a derivative work based on Third Party Intellectual Property or a compilation that includes Third Party Intellectual Property, or in the event any Third Party Intellectual Property is needed by Agency to reasonably enjoy and use any Work Product, Consultant shall secure on Agency’s behalf and in the name of 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 Agency to authorize contractors, consultants and others to do the same on Agency’s behalf.

**e.** **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.

**f. 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 uses 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 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 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 of 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 Agency in the event Agency decides to oppose the disclosure of the Confidential Information. In the event Agency decides not to oppose such subpoena or other legal process or Agency’s decision to oppose the subpoena or legal process has not been successful, Consultant shall be excused from the confidentiality provisions of this Section, to the extent necessary to meet the requirements of the subpoena or other legal process controlling the required disclosure.

**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 attorney fees, of whatsoever nature, resulting from or arising out of the acts or omissions of Consultant or its subcontractors, or their respective agents or employees, under the 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 attorney 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 attorney fees, arising out of or relating to any claims that Consultant’s services, the Work Product or any other tangible or intangible items delivered to agency by Consultant that may be the subject of protection under any State or federal intellectual property law or doctrine, or 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, Consultant shall not be obligated to indemnify, defend, save and hold harmless the State and 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 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 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 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**

**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 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;

1. Consultant no longer holds any license or certificate that is required to perform the Services;
2. Consultant has liquidated and delinquent debt owed to the State of Oregon or any department or agency of the State; or
3. Consultant commits any material breach or default of any covenant, warranty, obligation, certification 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 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 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 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 (except as otherwise required by applicable State or federal law) 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 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 appropriations or limitations, 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), 11(c)(iv) or 11(c)(v), 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), 11(c)(iv) or 11(c)(v), the rights and obligations of the Parties shall be the same as if the WOC was terminated pursuant to Section 11(b).

(iii) In the event Consultant is in default under Section 11(c)(iv), Agency may:

1. Undertake collection by administrative offset, or garnishment if applicable, of all monies due for Services and Deliverables to recover liquidated and delinquent debt owed to the State of Oregon or any department or agency of the State. Offsets or garnishment may be initiated after Consultant has been given notice if required by law.
2. Pursue any or all of the remedies available under the PA, at law, or in equity.

(iv) These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever, to the extent the remedies are not inconsistent.

**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 Agency to complete the Services.

**12. Records Maintenance/Access**.

Failure by Consultant to carry out the requirements of subsections a and b of this section is a material breach of this PA, which may result in the termination of this PA (and any WOCs executed under the PA) or such other remedy as Agency deems appropriate.

**a. Records maintained by Consultant.** Consultant, and its subconsultants, shall maintain all fiscal records relating to the Contract in accordance with Generally Accepted Accounting Principles. In addition, Consultant shall maintain all other records pertinent to the Contract and the Project and shall do so in such a manner as to clearly document Consultant's performance. Agency, the Oregon Secretary of State's Office, the federal grantor agency, the Comptroller General of the United States, 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 Contract for the purpose of performing examinations and audits and making copies and transcripts. Consultant shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of6 years, or such longer period as may be required by applicable law, following final payment and expiration or termination of the Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later.

**b. Working Papers Prepared by Independent CPA.** To conduct reviews for compliance with Federal Cost Principles, Agency auditors require access to and copies of “working papers” related to audits and other non-audit services. This includes working papers prepared by independent Certified Public Accounting (CPA) firms when conducting audits (and other non-audit services, such as, but not limited to, analysis of total compensation related to the indirect costs) for Consultant. When using independent CPA firms for such audit or other non-audit services, Consultant shall ensure it selects CPA firms that are knowledgeable of Federal Cost Principles, and that will provide copies of applicable working papers to Agency auditors upon request. The working papers provided to Agency may also be accessed by the following regulatory agencies: the Oregon Secretary of State's Office, the federal grantor agency, the Comptroller General of the United States, and their duly authorized representatives.

**13. Performance Evaluations.** Agency may conduct performance evaluation(s) on Consultant and any subconsultant during the PA 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. Agency will provide copies of any performance evaluation documentation to the affected Consultant and upon request, to third parties, unless lawfully exempt from disclosure. The Performance Evaluation process is included in **Exhibit G** to this PA.

**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 Consultant’s schedule, scope and fee, depending on a reasonable assessment of the nature of the change, the extent to which the change was anticipated by Consultant or the Parties, and other circumstances then existing. Without limiting the generality of the foregoing, Consultant expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all other applicable requirements of federal and State civil rights and rehabilitation statutes, rules and regulations; (v) the Clean Air Act (42 U.S.C. 7401-7671q); (vi) the Water Pollution Control Act as amended (33 U.S.C. 1251-1387); (vii) Executive Order 11738; (viii) Environmental Protection Agency regulations (40 CFR part 15); and (ix) and all applicable standards, orders, regulations and administrative rules established pursuant to the foregoing laws. Agency’s performance under the WOC is conditioned upon Consultant’s compliance with, and Consultant shall comply with, the obligations applicable to public contracts and intended for contractors under ORS 279C.520 and 279C.530, which are incorporated by reference herein. All rights and remedies available to Agency under applicable federal, State and local laws are also incorporated by reference herein and are cumulative with all rights and remedies under the PA and WOC. **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**:

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

**b. Permits and licenses required for the project.** Unless otherwise specified in the WOC, Consultant shall obtain, hold and maintain during the term of the WOC all permits and licenses required for the project (for example, permits from regulatory authorities and use permits or licenses from owners of real and personal property), but Agency shall pay for such permits and licenses. Consultant shall review the project site and the nature of the Services that Consultant shall perform under the WOC. Consultant shall advise Agency throughout the course of the WOC 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 Part I Section 4 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 expressly or by their nature or context are intended to survive.

**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 e-mail, by personal delivery, facsimile, or mailing the same, postage prepaid, to Consultant or Agency at the e-mail address, the delivery address or facsimile number set forth in the WOC, or to such other addresses or numbers as either Party may hereafter indicate in writing to the other. Any notice or day-to-day communication sent by e-mail shall be deemed received when it is sent.  The recipient of any notice sent by e-mail shall reply by e-mail to confirm receipt of such notice. Any communication or notice made by personal delivery shall be deemed to be received when actually delivered. Any communication or notice properly addressed and mailed shall be deemed received 5 calendar days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed received on the date of the notice of successful transmission generated by the transmitting machine. To be effective, such facsimile transmission must be confirmed by telephone notice to Agency’s PA Administrator or 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. In such event, the Parties shall negotiate in good faith to agree on replacement language for the offending term or provision that will be consistent with the purposes of the WOC.

**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 PA, 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 do not resolve 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 (as may be revised from time to time by Agency), which is incorporated into this PA with the same force and effect as though fully set forth herein. The Errors & Omissions Claims Process is available at: <https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx>.

**b. Other Disputes.** In the event good faith efforts do not resolve disputes unrelated to Errors & Omissions, the Parties agree to make a good faith effort to determine if mediation might be productive in resolving any such dispute. If the Parties determine that mediating 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 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, construed and enforced in accordance with, the laws of the State of Oregon, without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, “Claim”) between Agency (or any 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; provided, however, if a Claim must, as mandated by federal law, 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. Agency 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 (“SOW”). 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.

**26. False Claims**

**a.** Consultant understands and acknowledges it is subject to the Federal False Claims Act, 31 U.S.C. Sections 3729 – 3733, and the Oregon False Claims Act (ORS 180.750 to 180.785) and to any liabilities or penalties associated with the making of a false claim under either Act. By its execution of the PA and any WOC, Consultant certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or cause to be made that pertains to the PA and any WOC or the project for which the Services are being performed, including but not limited to Consultant’s statement of proposal and any invoices, reports, or other deliverables.

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

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

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

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

**27. Merger Clause; Waiver; Interpretation**. The WOC, including everything incorporated by reference into the WOC, 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. The characterization of provisions of the PA or the WOC as material provisions or the failure to comply with certain provisions as a material breach of the PA or the WOC shall in no way be construed to mean that any other provisions of the PA or the WOC are not material or that failure to comply with any other provisions is not a material breach of the PA or the WOC.

**28. Order of Precedence.** All WOCs, (including all amendments, if any) shall be interpreted in the following order of precedence:

**a.** The WOC less all attachments, Exhibits and other documents/information incorporated into the WOC by reference;

**b.** The Statement of Workattachedto the WOC**;**

**c.** All Terms and Conditions contained in the PA;

**d.** All attachments, Exhibits, and other documents/information incorporated into the WOC by reference.

**29. Certified Small Businesses.** Respecting certification as a disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns or an emerging small business under ORS 200.055, as and when applicable, Consultant shall maintain the certifications, and require in its subcontracts that subcontractors maintain the certifications required by ORS 279A.107 as a material condition of the PA. If Consultant or subcontractor was awarded the PA, WOC or subcontract, as applicable, in the course of Agency carrying out an affirmative action goal, policy or program under ORS 279A.100, and Consultant or subcontractor fails to maintain the required certification, Agency may terminate the WOC or PA, require Consultant to terminate the subcontractor, or exercise any of the remedies reserved for a breach of the PA or WOC (except as provided under ORS 279A.107(2)(c)). Consultant shall promptly provide written notice to Agency if Consultant or any of its subconsultants fail to maintain an applicable certification under this provision.

**30. State Owned Assets.** All State owned assets, if any, in Consultant’s possession must be promptly returned to Agency when the Services are complete, when the WOC is terminated, or when requested by Agency, whichever occurs first.

**31. Electronic Signatures.** The Parties agree that signatures showing on PDF documents, including but not limited to PDF copies of the PA, WOCs and amendments, submitted or exchanged via email or other electronic means, are “Electronic Signatures” under ORS Chapter 84 and bind the signing Party and are intended to be and can be relied upon by the Parties. Agency reserves the right at any time to require the submission of the hard copy originals of any documents.

STATE OF OREGON PERSONAL/PROFESSIONAL SERVICES

Architectural & Engineering and Related Services

**Consultant Tax Identification Information.** Upon request, or when there are any changes to backup withholding status or other information,Consultant shall provide to Agency a current W-9 Form with Consultant’s taxpayer identification number (“TIN”) and the additional information required in the form. Information provided pursuant to this requirement will be used for the administration of State, federal and local tax laws. Agency may report the information to the Oregon Department of Revenue and Internal Revenue Service (“IRS”) under the name and TIN provided.

**PA #:**\_\_\_\_\_\_\_**;** **Legal, tax filing Company Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**CERTIFICATION**:

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

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

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

1. Consultant has read this PA, understands it, and agrees to be bound by its terms and conditions.
2. Consultant understands and agrees that any exhibits or other documents not physically attached to the PA that are incorporated by reference have the same force and effect as if fully set forth herein.
3. **(a)** Consultant understands and has provided to all Associates the ODOT Conflict of Interest ("COI") Guidelines and COI Disclosure Form. Consultant and, to the best of the undersigned’s information, knowledge and belief**,** Consultant’s Associates (as defined in the COI Guidelines) are in compliance with and have no disclosures required per the COI Guidelines (available at: <https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx>)**;** or

**(b)** Consultant has made all required disclosures and, if determined necessary by Agency, a mitigation plan has been approved by Agency.

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

**(b)** If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this PA, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," (<https://www.gsa.gov/cdnstatic/SFLLL_1_2_P-V1.2.pdf?forceDownload=1>) in accordance with its instructions.

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

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

1. Consultant has, and gives employees a written notice of, a policy and practice, that meets the requirements described in ORS279A.112. Such policy both prohibits, and prescribes disciplinary measures for, conduct that constitutes sexual harassment, sexual assault and discrimination against employees who are members of a protected class. Consultant agrees, as a material term of the PA and any WOCs assigned under the PA, to maintain the policy and practice in force during the entire term of the PA and any WOCs assigned under the PA (see additional information and sample policy template at <https://www.oregon.gov/DAS/Procurement/Pages/hb3060.aspx> ).
2. Consultant is an independent contractor as defined in ORS 670.600 and as described in IRS Publication 1779 ([https://www.irs.gov/pub/irs-pdf/p1779.pdf](mailto:AWPAdmin@odot.oregon.gov)).
3. In the event that Consultant is a general partnership or joint venture, that Consultant signature(s) on this PA constitute certifications to the above statements pertaining to the partnership or joint venture, as well as certifications of the above statements as to any general partner or joint venturer signing this PA.

# CONSULTANT

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_

(2nd signature if necessary for Consultant)

**DOJ REVIEW for ODOT:** (Reviewed by via e-mail dated \_\_\_\_\_\_\_\_)

Reviewed by Assistant Attorney General Date

**ODOT (Procurement Authority)**

Signature Print Name Date

**Accessibility**: The Oregon Department of Transportation is committed to complying with all statutory requirements to ensure that it is providing information that is more accessible to people with disabilities, as required by Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), and 36 C.F.R. 1194 Appendix A. To request reasonable accommodation for access, due to a disability, to information related to this document, please contact the Oregon Department of Transportation’s Procurement Office at [OPOAdministration@odot.oregon.gov](https://www.oregon.gov/ODOT/Forms/2ODOT/2882.pdf) or phone 503-986-2710.

**EXHIBIT A – SCOPE of SERVICES**

#### **A. PROJECT DESCRIPTION and OVERVIEW of SERVICES**

Consultant shall provide Professional Services and Related Services, as assigned in a Work Order Contract (“WOC”), within the scope of work identified in this Price Agreement (“PA”) or the associated solicitation. Projects may be located anywhere in the state on the state highway system, rail, or on local public agency (“LPA”) transportation systems. Consultant is not required to propose on all offered mini-solicitation opportunities for project assignments.

WOC assignments will generally be for projects approved in the Statewide Transportation Improvement Plan (“STIP”) that ODOT and LPAs do not have capacity to complete with in-house staff. Information regarding the STIP is available at the following website: [http://www.oregon.gov/ODOT/TD/STIP/Pages/STIPDocs.aspx](mailto:ProjectWiseAdmin@odot.oregon.gov).

WOC assignments will generally be fully outsourced projects which may include but are not limited to lane capacity projects; highway preservation, improvement, modernization and safety projects; interchange projects; minor to major bridge projects, bicycle/pedestrian path projects, site improvement projects, passenger and freight rail preservation and enhancement projects. In some cases, projects may be bundled for assignment under a single WOC.

Tasks and deliverables that may be assigned via WOCs under this PA may include but are not limited to those listed in the sections below. The tasks and deliverables identified in this exhibit are examples and are not exhaustive. Individual WOC assignments may include any task, reasonably within the scope of work included in this PA or the associated solicitation, as determined necessary to complete an assigned project.

**General Expectations**

Consultant commits to oversee and direct the design and other Services 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:

* Develop a design that is appropriate for the context of the project and the nature of its function, both present and future;
* Avoid expenditures for aesthetic effect which are disproportionate to the project as a whole;
* 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;
* Strive to reduce the construction cost of the project while keeping life-cycle costs low;
* Use recycled/recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document;
* 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 consistent with the provisions of the Oregon Sustainability Act (2001 HB 3948) that are included in ORS 184.421-.423.

**Project Phasing**

At Agency’s discretion, WOCs will use a phased development approach as described in the WOC.

**Agency Responsibilities**

* Execution of intergovernmental agreements (if applicable);
* Program Project funding with appropriate Agencies and assign expenditure accounts;
* Assign Agency’s Project Manager (“APM”) to perform contract administration (in collaboration with LPA-PM, when applicable) and monitor Consultant performance of assigned WOCs, including conformance with applicable standards, FHWA, ODOT rules and regulations, and acceptable procedures.
* Attend project meetings as needed;
* Right-of -Way appraisals, negotiations and acquisitions (unless specifically authorized and assigned to LPA or Consultant);
* Review Utility Notifications;
* Furnish available data sufficient to perform the work.
* Provide project information and documents as described in assigned WOCs
* Provide technical review and acceptance of all consultant deliverables;
* Advertise and award the construction contract when applicable; and
* Any additional items as specified in WOCs.

**LPA Responsibilities**

LPA responsibilities may be stated in WOCs for informational purposes. All work assigned to LPAs or other entities, other than subconsultants, is not subject to assigned WOCs, but shall be the subject of separate Intergovernmental Agreements or contracts which will contain the obligations of those entities.

**Acronyms and Definitions**

A table of acronyms and Definitions is located at the end of this Exhibit.

**B. STANDARDS and GENERAL REQUIREMENTS**

**1. Standards**

The standards, manuals, directives and other guidance applicable to Professional Services and Related Services provided under a WOC are referenced below or available on Agency’s webpages linked below and are incorporated by this reference with the same force and effect as though fully set forth herein. Additional standards, guidance and general requirements specific to an assigned project may be included in the WOC.

The standards, manuals, directives and other guidance listed below or available on Agency’s webpages 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 Professional Services** **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 the PA **or WOC** conflict with another, Consultant shall, in writing, request Agency to resolve the conflict.

Unless otherwise specified in a given task, 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 must be English.

**a. Planning, Survey, Preliminary Engineering and Design Manuals, Standards and Guidance:**

* **Technical Manuals - alphabetical list** ([https://www.oregon.gov/ODOT/Engineering/Pages/Manuals.aspx](https://www.ecfr.gov/current/title-49/subtitle-A/part-26))
* **Planning Guidance and Resources** ([https://www.oregon.gov/ODOT/Planning/Pages/Guidance.aspx](https://www.oregon.gov/das/Financial/Acctng/Documents/40.10.00.pdf))
* **Planning Analysis** (<https://www.oregon.gov/ODOT/Planning/Pages/Technical-Tools.aspx>)
* **Geo-Environmental Guidance (**<https://www.oregon.gov/ODOT/GeoEnvironmental/Pages/Guidance.aspx>)
* **Geometronics Resources & Guidance** ([https://www.oregon.gov/ODOT/ETA/Pages/OCRS.aspx](https://www.oregon.gov/odot/Business/AASHTOWare/AWP_EURR.pdf))
* **Surveying Manuals & Resources** ([https://www.oregon.gov/ODOT/ETA/Pages/Surveying.aspx](mailto:AWPAdmin@odot.oregon.gov))
* **Bridge Standards & Manuals** ([https://www.oregon.gov/odot/bridge/pages/index.aspx](http://www.oregon.gov/ODOT/CS/OPO/Pages/lap_select.aspx))
* **Engineering Guidance** ([https://www.oregon.gov/ODOT/Engineering/Pages/Eng-Guidance.aspx](https://www.oregon.gov/odot/ProjectDel/Pages/Quality-Guides.aspx))
* **Standard Drawings and Details (**<https://www.oregon.gov/ODOT/Engineering/Pages/Standards.aspx>)
* **Technical Guidance** ([https://www.oregon.gov/ODOT/Engineering/Pages/Technical-Guidance.aspx](https://www.oregon.gov/ODOT/Planning/Pages/Guidance.aspx))
* **Access Management Manual & Guidance** ([https://www.oregon.gov/odot/engineering/pages/access-management.aspx](https://www.oregon.gov/odot/Business/Procurement/Pages/PSK.aspx))
* **Project Delivery Guide & Forms** ([https://www.oregon.gov/ODOT/ProjectDel/Pages/Project-Delivery-Guide.aspx](mailto:OPOAdministration@odot.oregon.gov))
* **Oregon Standard Specifications for Construction** ([https://www.oregon.gov/ODOT/Business/Pages/Standard\_Specifications.aspx](https://www.oregon.gov/odot/Business/Procurement/Pages/PSK.aspx))
* **ODOT Forms Library** (<https://www.oregon.gov/ODOT/Forms/Pages/default.aspx>)
* **ADA Compliance – Assessment, Design, Inspection.** When the Services under a WOC include **assessment or design (or both)** for curb ramps, sidewalks or pedestrian-activated signals (new, modifications or upgrades), Consultant shall:

a. Use ODOT standards to assess and ensure Project compliance with the Americans with Disabilities Act of 1990 (“ADA”), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals  meet current ODOT Highway Design Manual standards; and

b. Follow ODOT’s processes for design, modification, upgrade, or construction of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form.

When the Services under a WOC include inspection of curb ramps, sidewalks or pedestrian-activated signals (new, modifications or upgrades), all such inspections shall include inspection for compliance with the standards and requirements in a. and b. above.  Inspections must be performed by ODOT certified inspectors (which must include certified environmental inspectors when appropriate). In addition, at Project completion, Consultant complete the applicable ramp-specific ODOT Curb Ramp Inspection Form734-5020(A-G) for each curb ramp constructed, modified, upgraded, or improved as part of the Project. Each completed form must be submitted electronically by clicking the “Submit by E-mail” button on the form (and cc APM). The forms are documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT’s fillable Curb Ramp Inspection Forms and instructions are available at: [https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx](https://www.oregon.gov/ODOT/Engineering/Pages/Technical-Guidance.aspx)

Above references to curb ramps, sidewalks or pedestrian-activated signals also include, when applicable, shared use paths, transit stops, park-and-rides and on-street parking.

* **Green Energy Technology:** For public buildings, if green energy technology is determined to be appropriate, designs must include green technologies based on at least 1.5% of the construction costs (see ORS 279C.527 and 279C.528 for applicability and reporting requirements).
* **Construction phase work** - If included in the WOC and authorized by the Agency, Consultant shall complete Construction Contract Administration/ Construction Engineering & Inspection (“CA/CEI”) Services in accordance with ODOT’s Construction Manual, the Manual of Field Test Procedures and the ODOT Inspectors Manual. All Inspection Services must be performed by Agency-certified Inspectors as required by Agency’s Inspection Quality Assurance Program (“IQAP”).
* Consultant’s qualified staff shall diligently monitor the work of the construction contractor 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.

**b.** **Website or Web Content Development and Maintenance Standards**

Consultant shall perform all required web-related Services in conformance with the **ODOT Web Standards** (available at: [https://www.oregon.gov/ODOT/Pages/Web-Toolkit.aspx](https://www.oregon.gov/odot/Business/Procurement/Pages/PSK.aspx)), which is incorporated into this PA with the same force and effect as though fully set forth herein. ODOT shall have ownership and control of Work Products developed by Consultant as set forth in the terms and conditions of the PA, Part II, Section 7 - **Ownership of Work Product**.

**c. ODOT Communications Standards**

* For any Consultant tasks that require communications functions on behalf of Agency, Consultant shall comply with the ODOT Communications Standards (available at: [https://www.oregon.gov/ODOT/Pages/Web-Toolkit.aspx](https://www.oregon.gov/odot/Business/Pages/ProjectWise.aspx?url=https://www.oregon.gov/ODOT/Pages/Web-Toolkit.aspx&data=02|01|Tonya.Finley@deainc.com|b074711c18f946d67a0708d728238274|75fc6250a5034863ab0060c7035d49b2|0|1|637022005307774139&sdata=A55gK1SVl1ka0UzdEqQregcOEO81SJyWodN9V30CtGc=&reserved=0)) which is incorporated into this PA with the same force and effect as though fully set forth herein.
* [DAS Editorial and Web Style Guide](https://www.oregon.gov/odot/Documents/ODOT%20Brand%20Publication%20Guidelines.pdf)
* [ODOT Web Writing Style Guide](https://www.oregon.gov/odot/Documents/ODOT-Web-Governance-Plan-Internet-Version.pdf)
* [ODOT Web Standards](https://www.oregon.gov/odot/Documents/ODOT-Web-Standards-InternetVersion.pdf)
* [DAS Plain Language Guides](https://www.oregon.gov/DAS/Pages/writingplainlanguage.aspx)
* [ODOT Style Guide](https://www.oregon.gov/odot/Business/Procurement/Pages/PSK.aspx)
* [ODOT Public Records Management Policy](https://www.oregon.gov/ODOT/ETA/Pages/Surveying.aspx)
* [ODOT Brand and Publication Guidelines](https://www.ecfr.gov/current/title-49/subtitle-A/part-26)
* [ODOT Communications Standards](https://www.oregon.gov/odot/Documents/ODOT%20Communications%20Standards.pdf)
* ADA Language Guidelines (provided by APM)
* Social Media Policy and Guidelines (provided by APM)

**2. Design Criteria and Project Assumptions/Conditions will be listed in the WOC.**

**3. Software Requirements**

Consultant shall deliver all Work Products in the format(s) required by Agency as may be specified in the PA or WOC. Consultant’s software must produce deliverables that are fully compatible, readable and useable by Agency (and LPA when applicable) software, requiring no modification or translation of Consultant’s deliverables. No loss of data integrity or accuracy may result from any transfer of data. Compressed data must be in a "self-expanding executable" format. To ensure and verify this level of compatibility, Agency may provide sample or required format(s) to Consultant, and Consultant and Agency may conduct tests of sample deliverables from 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 Agency for the rejected deliverables or for time associated with correcting the rejected deliverables.

Consultant may propose alternative software for consideration by Agency. If Agency determines that the alternative software meets the compatibility requirements of this section, Agency may choose to accept the use of the alternative software. Agency will document this approval in writing.

Software standards currently used by Agency are specified below. Additional formats and software requirements may be specified in the WOC. 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:

* **ProjectWise.** Use of ODOT’s ProjectWise network is required for this Project (see **Exhibit L**).
* Use of **AASHTOWare Project Application** is required for this Project (see **Exhibit M**).
* AG132
* AQCESSRAMP
* GuideSIGN
* AutoTURN
* AssetWise ALIM
* Bentley Descartes
* Bentley Descartes for MicroStation
* Bentley InRoads Bridge
* Bentley LumenRT
* BPS - ProjectWise Asset Tagging
* ContextCapture
* CulvertMaster
* gINT Professional
* LEAP Bridge Concrete
* MicroStation
* OpenBridge Modeler
* OpenFlows FlowMaster
* OpenFlows StormCAD
* OpenPlant Modeler
* OpenRoads ConceptStation
* OpenRoads Designer
* OpenSite Designer
* ProjectWise365Pro
* Dips – 8.016
* FoSSA – 2.0 – Update 18.1
* GeoMotions Suite Pro – 9.99.9930
* GeoStudio 2012 – 8.14.3.13430
* GeowebMSE – 1.11
* gINT Professional – 10.00.00.50
* GRLWEAP – 14
* GROUP – 2016-12
* LiqSVs – 2.2.1.8
* Liquefy – 3.01
* MSEW – 3.0
* Nordlund – 2.11a
* PYWall – 2015.18.5
* ReSSA Ver. 3 – Update 4.1
* RocFall – 8.016
* RocPlane – 4.009
* RocTopple – 2.004
* RSData – 1.001
* RSPile – 1.004
* Settle3D – 3.18
* SHAFT – 2017-05
* Shoring Suite – 8.15
* SLIDE2 – 9.020
* SWedge – 7.015
* HEC-SSP 2.2
* HEC-RAS 6.1
* HEC-HMS 4.8
* HY-8 7.7
* SWMM 5.1.015
* Hydraulic Toolbox 5.1.4
* SMS 13.1.17
* WMS 11.1.6
* HydroCAD 10.1 7c
* Bentley
* Flow Master V8i
* Bentley Culvert Master
* Bentley
* CivilStorm V8i
* Bentley PondPack V8i
* Bentley StormCAD V8i (Select Series 5)
* Bentley InRoads Storm and Sanitary
* Bentley OpenRoads Designer Drainage and Utilities
* HEC-RAS
* HEC-HMS
* HEC-SSP
* WinTR-55
* Midas Civil
* DFSAP
* LPile
* ODOT-Col
* PAP
* FHWA INSTRUCT
* Brass Girder LRFD
* Brass Girder STD
* Brass Library Utility
* Brass Pole
* PGSuper
* PSBeam
* Response 2000
* SIMON
* STLBridge LRFD
* QConBridge
* Convert 4.1
* Mathcad 15
* Mathcad Prime

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

* Consultant and its subconsultants 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 subconsultant personnel must be duly licensed to perform all Services which they will be performing under a resulting WOC, and must perform 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.
* Agency may require Consultant’s Personnel to demonstrate a competency in the particular area/discipline to which they are assigned. This may include, but is not limited to, submittal of license number, resume, and work samples from previously completed services or projects.

**5. General Requirements**

* **Consultant Quality Plan (“CQP”) for Professional Services and Related Services** - A CQP must be approved and on file with Agency before any WOCs may be assigned under the PA. The CQP must be developed consistent with requirements of Agency’s “[Consultant Quality Plan Guidance](https://www.oregon.gov/odot/ProjectDel/QAQC/consultantQPguidance.pdf)” available on the Quality Plans and Guides webpage at: [https://www.oregon.gov/odot/ProjectDel/Pages/Quality-Guides.aspx](http://www.oregon.gov/ODOT/TD/STIP/Pages/STIPDocs.aspx)

Consultant shall ensure quality assurance and quality control is performed in conformance with the approved CQP on all Services and deliverables provided under any assigned WOCs. Consultant shall submit an updated CQP for approval if there are changes to Consultant’s quality management processes or organizational structure from what is in the approved CQP during the term of the PA.

* **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 specified in ORS 671.025, 671.379, 672.020(2), 672.025(2), 672.028(2) and 672.605, as applicable, that require such seal and signature.
* **Electronic Documents, Digital Seal and Signature.** If required under the WOC, Consultant shall use ODOT’s ProjectWise Network (see **Exhibit L**) for electronic submittal and receipt of files as necessary for the Project. All final documents identified in ORS 671.025, 671.379, 672.020(2), 672.025(2), 672.028(2) and 672.605, as applicable, must bear the digital seal and signature of the Oregon registered professional under whose supervision and control they were prepared. Documents must be submitted in the format specified in the WOC for each deliverable and must comply with OAR 804-030, OAR 806-010, OAR 809-050 and OAR 820-025 requirements, as applicable, for digital seal and signature capable of independent verification, final and draft documents, modifications to designs, and dual stamping of documents.
* **Safety Equipment.** Consultant shall provide and use all safety equipment including (but not limited to) hard hats, safety vests and clothing if required by State and federal regulations and ODOT policies and procedures for the Services under the WOC.
* **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 must be in good operating condition and shall be kept in proper adjustment throughout the duration of any assigned WOCs. All materials and supplies must be of good quality and suitable for the assigned work.
* **Access to ODOT Right-Of-Way**. Consultant shall notify and coordinate with Agency District Manager, or Assistant District Manager, having jurisdiction over the Project area at least 48 hours in advance of needing to be on-site. Consultant shall not begin on-site work until approval is received from the district. Consultant shall reschedule the on-site work if requested by the district.

Oregon Department of Transportation  
District 3  
885 Airport Road SE, Building P  
Salem OR 97301  
District Manager – Cole Mullis

Assistant District Manager – Tim Swift

503-986-2900

* **Temporary Protection and Direction of Traffic.** When a field crew is working on (or within 30 feet of) a travel lane, Consultant shall protect the crew and warn approaching traffic by providing safety equipment and temporary traffic controls conforming to a stamped and approved traffic control plan or the 2011 Oregon Temporary Traffic Control Handbook ([https://www.oregon.gov/ODOT/Engineering/Docs\_TrafficEng/OTTCH-v2011.pdf](https://www.irs.gov/pub/irs-pdf/p1779.pdf)), for operations of 3 days or less. Consultant shall plan, coordinate and get approval of all work zone activity as outlined in the Mobility Procedures Manual (<https://www.oregon.gov/ODOT/MCT/Documents/MobilityProcedureManual.pdf>).

**6. Compliance with Applicable Law** (in addition to those identified elsewhere in the PA.)

In addition to the broad requirements set forth in the PA, state and federal laws specific to an assigned project may be included in the WOC.

**7. NEPA Related Requirements**

1. **NEPA Decision Documents and Final Design**

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

1. **NEPA Document Objectivity**

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

1. **Preparation of EA, EIS or Categorical Exclusion**

If a consultant is awarded a WOC to prepare an Environmental Impact Statement, Environmental Assessment or Categorical Exclusion for a project, that consultant and its Affiliates may prepare the designs/plans/specifications for the project or may propose under a separate solicitation to prepare designs/plans/specifications for the project only if Agency concludes that the NEPA document was prepared with objectivity. Agency is not obligated to proceed with final design for any alternative. All reasonable alternatives will be evaluated and given appropriate consideration, and consultant may not proceed with final design until the relevant NEPA decision documents have been issued (e.g., Categorical Exclusion, Finding of No Significant Impact, or Record of Decision).

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

* Consultant shall coordinate with Agency staff as necessary and shall revise draft deliverables to incorporate Agency draft review comments.
* Consultant shall return the revised deliverables to Agency staff (or other entities as may be indicated in the WOC), with Agency comments incorporated, within 10 business days of Consultant’s receipt of Agency’s comments, unless a different timeframe is specified for specific tasks or otherwise agreed to in writing by Agency.

#### **D. FORMAT REQUIREMENTS**

* Consultant shall submit draft and final deliverables in electronic format via e-mail (and hard copy if requested). Consultant shall also submit all graphic files accompanying reports separately in .jpg or .tif formats unless specified differently by Agency.
* Each draft and final text-based or spreadsheet-based deliverable must be provided in MS Office file formats (i.e., MS Word, Excel, etc.) and must be fully compatible with the version used by Agency.
* Additional format requirements may be listed with specific tasks/deliverables throughout the SOW or in the PA/WOC.

#### **E. TASKS and DELIVERABLES (or MENU of SERVICES)**

Assigned WOCs will include a detailed SOW and delivery schedule that may include, but is not limited to, any or all of the following types of tasks and deliverables that may be required for a given project assignment:

**PRELIMINARY ENGINEERING**

1. **TASKS**

Actual project work tasks may include but are not limited to some or all of the following areas:

**Task 1. Project Management**

* Contract Management
* Subcontractor Management
* Quality Control Plan (must be on file with Agency before work can be authorized under a WOC)
* Project Schedules
* Progress Reviews
* Schedule, coordinate and supervise project work
* Maintain Liaison and Coordination with ODOT, FHWA, FRA, FTA 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 eligibility

**Scoping**

ODOT may assign as a project the stand-alone task of scoping projects. If scoping is assigned as a task, the project will be done as an individual task without the implication or commitments for future WOCs. However, the same consultant that scoped the project would not necessarily be precluded from evaluation/selection and assignment of preliminary engineering, design and/or construction engineering/inspection phase of the project, provided

* Scoping documents or reports prepared by the consultant are available to all prospective proposers, and
* The consultant was not involved with development of solicitation requirements or evaluation/selection criteria.

**Task 2. Survey and Mapping**

* Research and Data Collection
* Control, Recovery, and Retracement (“CRR”) Survey
* Topographic Data and Basemap
* Horizontal and Vertical Control Network
* Preliminary Right of Way and Property Map
* Topographic Surveying and Mapping
* Existing R/W and Boundary Resolution
* Legal Descriptions and Acquisition Maps
* Survey Records
* Utilities Located
* Stream Cross Sections
* Monumentation and map

**Task 3. Environmental Services**

Hazardous Material 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)
* 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 or develop plans and specs for UST removal during construction and oversee such removal
* Excavate contaminated soil prior to construction 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
* 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

Environmental Analysis, Documentation, and Compliance

* Data Collection Draft and Final Environmental Documents for environmental class 1 and 3 projects.
* Draft and Final Technical Reports required for Environmental Class 1, 2, and 3 projects.
* ODOT Environmental Baseline Report
* Environmental Project Management
* Mapping, field data collection, and photo documentation of existing or baseline conditions for all resources present
* Compliance with state and local planning requirements including preparing findings, amendments and variances.
* Acquisition of Conditional Use Permits
* Interchange Area Management Plan
* Compliance with Section 106, including Determination of Eligibility (DOE) and Section 106 Finding of Effect (FOE), and the Memorandum of Agreement (MOA)
* Section 106 Programmatic Agreement (PA)
* Section 4(f) Evaluations
* Section 6(f)(3) Evaluations
* ARPA Permit (federal lands)
* Excavation Permit (SHPO)
* Wetland field delineation and wetland delineation report
* Wetland functional analysis
* Wetland impact assessment
* Compensatory Wetlands Mitigation Plan
* Final wetland mitigation grading and planting plans and specifications
* NPDES permit for discharge of storm water from construction sites for projects constructed on Tribal Reservation lands
* Oregon Natural Heritage database search and request species lists from USFWS and NMFS.
* Field survey for plants, birds and other species of concern
* Prepare Biological Assessment (BA) and Biological Evaluation
* Federal-Aid Highway Program (“FAHP”) Programmatic Endangered Species Act (“ESA”) Documentation
* Other ESA Programmatic Documentation
* Oregon Fish Passage Legal Requirements
* Fish Passage Compliance Review
* Determine Appropriate Approach to Meet Fish Passage Requirements
* Fish Passage Exemption Application
* Fish Passage Waiver
* Fish Passage Plan
* Fish Passage Plan under the ODOT/Oregon Department of Fish and Wildlife (“ODFW”) Culvert Repair Programmatic Agreement
* Prepare No Effect memo
* Develop mitigation plans for biological species
* Incorporate Terms and Conditions from Biological Opinion(BO) into Specifications
* Prepare Air Quality Analysis Technical Report:
* Air Quality Technical Report (conformity, criteria pollutants and air toxics analysis)
* Energy Technical Report
* Greenhouse Gas Report
* Indirect Source Construction Determination
* Indirect Source Construction Permit
* Climate Change report (specific to NEPA)
* 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
* Water resources assessments

**Task 4. Public Involvement**

* Public Information Plan
* Public Involvement or interagency meeting attendance
* Public Involvement or interagency meeting coordination and facilitation
* Design and prepare materials for public meetings, open houses, and hearings
* Design and prepare, and distribute Project materials
* Develop and maintain Web Pages and mailing and contact lists to disseminate information to the public
* Provide Technical Specialists as needed for public meetings and/or hearings
* Coordination and responses to public inquiries and comments
* Project Area Canvassing
* Equitable and accessible engagement practices and materials
* Schedule and book advertisement and media services

**Task 5. Utility Coordination**

* Perform tasks according to Chapter 10 and Chapter 11 of the *ODOT Right of Way Manual*
* Identify and Coordinate with Utility Owners
* Prepare Utility Notifications. Prepare utility notifications and conflict reports per the Procedures for Utility Relocation/Reimbursement for Federally Funded Local Public Agency Projects
* Conflict Assessment
* Utility Company Coordination and Certification
* Utility Relocation Plan Assistance
* Data Collection
* Utility Report
* Notification and Coordination
* On-Site Utility Coordination Meetings

**Task 6. Geotechnical Services**

* Geologic Site Characterization
* Subsurface Exploration including: Drilling, sampling, in-situ soil testing
* Laboratory Testing of soils and rock material
* Slope Design, embankment design, slide stabilization design
* Material source evaluation
* Foundation evaluation and design.
* Geology and Geotechnical Technical Reports
* Geotechnical element plan and specification preparation
* Construction observation of geotechnical project elements
* Retaining Wall design
* Seismic site evaluation and design including: site response, liquefaction, and soil structure interaction

**Task 7. Hydraulics Related Services**

* Hydrology
* Roadway & pavement drainage
* Stormwater conveyance systems
* Stormwater quality, quantity, and infiltration
* Bridge hydraulics
* Bank protection and scour mitigation
* Open channel hydraulics
* Sediment transport
* Floodplain hydraulics & FEMA studies
* Culvert hydraulics
* Trenchless pipe rehabilitation
* Fish passage & aquatic habitat improvements
* Temporary water management (in-steam & Stormwater)

**Task 8. Traffic Engineering and Management**

* Traffic Analysis, including roadway safety analysis
* Traffic Control Plans (TCP’s)
* Traffic Management Plan (TMP)
* Signal Design and Timing
* Traffic Control Design
* ITS Design
* Signing and Striping Design
* Illumination Design
* Traffic Technical Reports
* Intersection Control Evaluation Analysis
* Access Management
* Official Project Access List (“OPAL”)
* Access Management Methodology
* Access Management Methodology Letters
* Access Approach Decisions
* Proposed Access Approach Modification/Relocation/Closure Letters
* Access Management Meetings with Affected Property Owners
* Access Management Strategy (“AMStrat”)
* Final Access Approach Modification/Relocation/Closure Letters
* Access Management Strategy Exemption

**Task 9. Pavement Design**

* Pavement Field Exploration and Testing
* Laboratory Testing
* Pavement Design Analysis and Package
  + Additional Pavement Field Exploration and Testing
  + Additional Laboratory Testing
* Contract Documents

**Task 10. Roadway Design**

* Geometric Design
* Typical Sections
* Cut and Fill Lines
* Intersection Details
* Vertical and Horizontal Alignments
* Roadway Profiles of the Existing and Proposed Alignment
* Super-Elevation Diagrams
* Embankment and Excavation Profile Sheets
* 3D Roadway Design consistent with the Highway Design Manual
* Traffic Control Design
* Design Team Coordination and Document Assembly
* Multi-Modal Facility Design

**Task 11. Bridge Design/Other Transportation-related Structures Design**

* Bridge Load Rating
* Bridge Surface Component Evaluation and Design
* Bridge Rehabilitation Design, including but not limited to:
  + Bridge Deck Overlay
  + Bridge Deck Joint Repair or Replacement
  + Bridge Rail Retrofit or Replacement
* Bridge Preservation Design
* Sidewalk Rehabilitation or Replacement Design
* Bridge Design, New or Replacement
* Bridge Preservation Design
* Bridge Protective Screening
* Sound Wall Design, structural component
* Traffic Structure Design, structural component
* Culvert Design, structural component
* Landslide Design, structural
* Concrete Vault Design
* 3D Bridge Design
* Structural component of Bridge & other Transportation-related Structures foundations, ground anchors; scour mitigation
* Prepare Bridge Type Size and Location (TS&L) Report

**Task 12. Interchange Design**

* Geometric design considerations for both intersection and interchange designs
* Features of signalized and un-signalized intersections
* Development of various channelization techniques
* Accommodation of bicycle, pedestrian, and transit needs
* Intersection control selection criteria, design considerations and approval process
* Warrants for interchanges and grade separations
* Interchange Area Management Planning
* Identification of appropriate interchange forms based on expected performance
* Interchange ramp design
* Coordination of Interchange Modification Requests (“IMR”)

**Task 13. Design Acceptance Package (DAP)**

* Prepare Draft Design Acceptance Package and Narrative
* Design Acceptance Requests
* Prepare Final Design Acceptance Package
* Prepare Preliminary Cost Estimates

**Task 14. Right of Way**

* Right of Way Technical Report per ODOT Guidance
* 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)
* 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
* Recommend Certification of Project Right of Way Acquisition
* Prepare landowner list and Right-of-Entries (ROE) for project. May include in-person and/or phone follow-up with landowners

**Task 15. Prepare Final Plans, Special Provisions and Cost Estimates**

* Prepare 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 Advance and Final PS&E;
* Access management plans
* Access Management Technical Report per ODOT requirements

**Task 16. Bidding Assistance**

ODOT (and LPAs) 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 LPAs and shall not involve being a voting member of an evaluation & selection team. ODOT and LPAs shall exercise appropriate supervisory control over the Consultant's 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 LPA or ODOT bid projects until award of contract or cancellation of bid

Bid Assistance Tasks:

When federal funding is involved, ODOT must conduct the construction bid process for LPAs unless the LPA is certified by ODOT to independently conduct bid. When no federal funding is involved, at ODOT’s discretion, either ODOT or the LPA may perform the construction bid process. The extent of Consultant involvement in the construction bid process is typically limited to any or all of the following:

* When ODOT is conducting construction bid process:
* If assigned as the point of contact, respond to questions from bidders, LPA, and ODOT as directed by LPA or ODOT.
* Maintain log of bidder questions and answers for ODOT and LPA review. Email log to ODOT and LPA by 4:00 p.m. each day until bid closes {All contact with the bid community will cease at a time determined by the Agency and no further contact will be made without express directive and direction from ODOT Procurement Office (“OPO”) and ODOT Project Controls Office (“PCO”)}
* Make revisions to plans as needed for addenda and submit to ODOT for review and approval for distribution
* Prepare draft bid addenda for review and approval for finalization and issue by ODOT
* Provide additional information regarding submitted bids, only when requested by ODOT PCO
* When the LPA is conducting construction bid process:
* Write and submit bid advertisements to LPA and ODOT for review and approval;
* Distribute bid documents, including plans to requesting construction contractors
* If assigned as the point of contact, respond to questions from bidders, LPA, and ODOT as directed by LPA or ODOT.
* Maintain log of bidder questions and answers for ODOT and LPA review. Email log to ODOT and LPA by 4:00 p.m. each day until bid closes
* Make revisions to plans as needed for addenda and submit to LPA and ODOT for review and approval
* Prepare draft bid addenda and submit to LPA and ODOT for review and approval. Issue approved bid addenda;
* Attend and assist with bid openings as requested by LPA or ODOT
* Assist in providing information supporting the evaluation of bids when specifically requested to do so by the LPA or ODOT
* Prepare and provide final construction contract document(s)

**All Consultant contact with the bid community shall cease at a time determined by the Agency** **and no further contact will be made without express directive and direction from LPA or ODOT.**

**Task 17. Railroad Coordination**

* Light Rail Coordination
* Rail Crossing Design
* Crossing Order Development

**Task 18. Landscape Architecture**

* Provide landscape architectural services for roadside development, 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 and 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
* Erosion and sediment control plans

**Task 19. Construction and Post-Construction Support**

* Monitor mitigation or special features of the site as per permits or BO
* Prepare monitoring documents and submit to agencies
* Coordinate post-construction site remediation or maintenance as needed
* Construction inspection for wetland and biological mitigation site
* Adaptive management of wetland mitigation during construction
* Post-construction mitigation site monitoring with annual reports
* Wetland mitigation site maintenance
* Post-construction wetland mitigation site remediation plans

1. Water Quality mitigation design concept report engineering function **RESERVED**
2. **SCHEDULE**

Example Project Milestone Submittals Dates:

* Project Kickoff Meeting
* Preliminary Design Report
* Design Acceptance Package (DAP)
* Environmental Documents
* Right of Way Descriptions
* Plans Specs and Estimates (PS&E) Submittal
* Right of Way Certification

Consultant shall submit complete schedule

1. **DOCUMENTS FURNISHED BY CONSULTANT**

All documents and associated data prepared by Consultant pursuant to this PA shall be property of ODOT (or LPA, as applicable). Consultant may retain copies for its records. Reuse of work product created by Consultant for a purpose not originally intended by parties shall be at the sole risk of such user.

Documents furnished by Consultant to ODOT APM (and LPA when applicable) or designee will be specified in the WOC and may include, but not be limited to:

* + Copies of preliminary design reports / TS&L reports are to be delivered to ODOT Liaison/Contract Administrator
  + Copies of permit applications and wetlands delineation
  + 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 SOW in the WOC.

1. **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.

1. **DELIVERABLES OVERVIEW for PE & DESIGN PHASE**

* The types and quantities of deliverables will be specified in each individual WOC.
* 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 unless otherwise specified in a WOC.
* Graphics-based deliverables shall be prepared in the software or application as specified in the WOC.

**F. CONTINGENCY TASKS**

Projects may include Services that may or may not be needed, depending on conditions that arise or change during a WOC project period. These condition precedent Services are considered to be contingency Services and must be planned for in the WOC. Any contingency tasks or deliverables in the WOC must be within the Scope or Menu of Services included in 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 Agency, 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 NTP. Consultant shall proceed with a contingency task only after 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.

**Table of Acronyms and Definitions**

|  |  |
| --- | --- |
| AASHTO | American Association of State Highway and Transportation Officials |
| Agency/ODOT | Oregon Department of Transportation |
| APM | Agency’s Project Manager |
| BA | Biological Assessment |
| BLM | Bureau of Land Management |
| BO | Biological Opinion |
| CA | Contract Administrator |
| CA/CEI | Contract Administration/Construction Engineering and Inspection |
| CC | Construction Contractor |
| CE | Construction Engineering |
| CETAS | Collaborative Environmental & Transportation Agreement for Streamlining |
| CEQ | Council of Environmental Quality |
| DAP | Design Acceptance Package |
| DBE | Disadvantaged Business Enterprises |
| DLCD | Oregon Department of Land Conservation and Development |
| DTM | Digital Terrain Model |
| EA | Environmental Assessment |
| EPA | Environmental Protection Agency |
| FHWA | Federal Highway Administration |
| FONSI | Finding of No Significant Impact |
| FRA | Federal Rail Administration |
| FTA | Federal Transit Administration |
| GIS | Geographical Information System |
| IGA | Intergovernmental Agreement |
| LAPM | Local agency’s project manager |
| LPA | Local Public Agency |
| MFTP | Manual of Field Test Procedures |
| NEPA | National Environmental Policy Act |
| NMFS | National Marines Fisheries Service |
| NTE | Not to Exceed |
| NTP | Notice to Proceed |
| OCR | ODOT Office of Civil Rights |
| ORS | Oregon Revised Statutes |
| PA | Price Agreement |
| PCO | ODOT Project Controls Office |
| PE | Preliminary Engineering |
| PM | Consultant’s Project Manager |
| POR | Professional of Record |
| QA | Quality Assurance |
| QA/CA Plan | Quality Assurance & Contract Administration Plan |
| QC | Quantity Control |
| QCCS | Quality Control Compliance Specialist |
| RCRA | Resource Conservation Recovery Act |
| REA | Revised Environmental Assessment |
| RFP | Request for Proposal |
| R/W | Right of Way |
| SHPO | State Historic Preservation Office |
| SPCC | Spill Prevention, Control, and Countermeasure |
| SOW | Statement of Work |
| TS&L | Type, Size and Location |
| USFS | U.S. Forest Service |
| UST | Underground Storage Tank |
| WOC | Work Order Contract |

**EXHIBIT A.1 – SCOPE/Menu of SERVICES for CA/CEI SERVICES**

**Exhibit A.1, Scope/Menu of Services for CA/CAI Services is not physically attached but is incorporated by reference into this PA, from the web address provided in Part I, Section 4.b of the PA, with the same force and effect as though fully set forth herein. Consultant agrees that Agency may amend the Scope/Menu of Services for CA/CEI Services (Exhibit A.1) from time to time. Consultant agrees that the version of the Scope/Menu of Services for CA/CEI Services that will apply and will be used for WOCs executed under this PA at any point in time will be the then most current version of the Scope/Menu of Services for CA/CEI Services, as amended by Agency from time to time, posted on Agency’s website provided in Part I, Section 4.b of the PA.**

### EXHIBIT B – COMPENSATION

**Part 1**

**DEFINITIONS/ACRONYMNS**

**“BOC” –** Breakdown of Costs

**“CDQ” –** Cost Disclosure Questionnaire

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

**“DNL” –** Direct Non-Labor Rate Schedule. The DNL includes a list of Other Direct Costs approved for use under the PA (this may be integrated with the ESR or NBR 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 deferred compensation plans, and (4) all costs for any and all other fringe and supplemental benefits.

**“ESR” –** Escalated Salary Rate Schedule. The ESR is developed by Agency for firms that calculate an overhead rate. It includes the maximum rate and average rate (based on the actual direct salary rate of employees within the classification) for all classifications that may be used under the PA. ESRs approved for use under the PA may include rates for multiple years with escalations as approved by Agency.

**“FCCM” -** Facilities Capital Cost of Money means “cost of money as an element of the cost of facilities capital” as used at 48 CFR 9904.414--Cost Accounting Standard.

**“NBR” –** Negotiated Billing Rate Schedule. Negotiated Billing Rates are fully loaded rates, approved for use under the PA, that include profit, overhead and cost of living or merit raises.

**“ODCs”** - Other Direct Costs. ODCs are expenditures, not included in overhead, that are necessary and allowed as a direct charge which is properly tracked and applicable to a specific project. This includes, but is not limited to costs for: approved travel (up to the rates established in Section B of this Exhibit), trade services subcontractors such as flaggers and drilling companies, rental equipment, lab and testing services; and other approved ODCs.

**“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): CPFF;
* Option (b): Fixed Price;
* Option (c): T&M;
* Option (d): Price Per Unit

Assigned WOCs will identify the method(s) of compensation and progress payment option for each WOC, phase of Services 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 amount payable under a WOC may be adjusted by Agency or renegotiated to:

* Reduce the NTE, Fixed-Price or Fixed-Fee amount associated with WOC Tasks/deliverables that were not authorized by Agency or not performed by Consultant;
* Reduce the NTE, Fixed-Price or Fixed-Fee amount commensurate with deductive amendments to reduce the risk associated with the project or to reduce the scope of work required under the WOC;
* Increase the NTE, Fixed-Price or Fixed-Fee amount for additional Services via amendment to the WOC, subject to the conditions and limitations set forth in the PA terms and conditions Part II, Section 25.

**A.1 METHODS OF COMPENSATION**

**(a) CPFF [Note: CPFF is not applicable for Consultants that have NBRs.** CPFF is commonly used for preliminary engineering phase (Professional Services 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 are limited to:

* **Consultant Direct Salary Costs** –the direct salary rate (up to the maximum rate approved for use under the PA for each classification) paid to the specific employee(s) productively engaged in work to complete the Services required under the WOC.
* **Consultant Allowable Indirect Costs**  - (See section I, Indirect Costs)
* **Consultant ODCs** (without mark-up) – As approved under the WOC.
* **Subconsultant Costs** (without mark-up, up to the maximum rates approved for use under the PA or WOC) - direct salary rates, indirect costs (see section I- Indirect Costs), NBRs and ODCs that have been billed to Consultant and recognized by Consultant as valid, undisputed and payable for subconsultants productively engaged in work to complete the Services required under the WOC.

**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 (excluding labor costs from NBRs) for the WOC. The cost basis for calculating the Fixed Fee must not include:

* ODCs,
* labor costs for firms using NBRs (these rates already include profit),
* FCCM
* 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.

**Fixed Fee Payment Options.** 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:

1. 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 required under the WOC.

2**.** Other Payment Methods may be negotiated and set forth in the WOC.

Consultant acknowledges and agrees that the Fixed-Fee is only due and payable for work authorized by Agency and satisfactorily completed by Consultant. The Fixed-Fee is earned for complete performance of the WOC, and if less than full performance is made, Agency is entitled to a reduction of the Fixed-Fee based on the percentage of completion of the work.

**(b) FIXED PRICE [Note:** Fixed Price should be used only when the work is clearly defined and the level of effort required can be accurately quantified. For example, Fixed Price is not typically appropriate for preliminary engineering phase or CA/CEI phase but may be suitable for final design phase. In many cases, Fixed Price may not be appropriate for WOCs that include alternatives analysis.**]**

Agency will pay Consultant 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 other expenses). The Fixed Price amount(s) must not include any unallowable indirect or direct costs, including travel which must be based on the allowable travel and lodging rates identified in section B of this Exhibit.

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

**(c) T&M” [Note:** 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:

* **Consultant Labor Costs** (for employees productively engaged in work to complete the Services required under the WOC, up to the maximum rate approved for use under the PA for each classification)– the NBR; or the actual direct salary rate paid to the specific employee(s) plus profit and the allowable indirect costs (see section I- Indirect Costs).
* **Consultant ODCs** (without mark-up) - As approved under the WOC.
* **Subconsultant Costs** (without mark-up, up to the maximum rates approved for use under the PA or WOC) - direct salary rates, indirect costs (see section I- Indirect Costs), NBRs and ODCs that have been billed to Consultant and recognized by Consultant as valid, undisputed and payable for subconsultants productively engaged in work to complete the Services required under the WOC.

**(d) PRICE PER UNIT** **[Note:** 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 other expenses).

**A.2 PAYMENT OPTIONS**

[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 2 (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 3 –* 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**

For Fixed-Price WOCs (unless stated otherwise in the WOC), the Fixed price amount(s) identified in the WOC shall include all travel expenses and Agency shall not reimburse Consultant separately for any travel expenses. Estimates for travel expenses may not exceed the allowable travel rates as provided in this Exhibit.

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 Statewide Travel Policy in Oregon Accounting Manual (OAM) chapter 40.10.00, available at:** [https://www.oregon.gov/das/Financial/Acctng/Documents/40.10.00.pdf](https://www.oregon.gov/odot/Business/Procurement/Pages/PSK.aspx), **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 in OAM 40.10.00.
* Mileage - When travel expense 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 in OAM 40.10.00 that are in effect on the date when the travel occurs.
* Cost estimates for mileage, lodging and per diem rates 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 a cost estimate or seek reimbursement of full lodging costs or per diem rates (either short-term or long-term) for a given traveler for more than one WOC or 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.
* **Short-term lodging** expenses approved by Agency must be in conformance with the Travel Policy and will be reimbursed up to the maximum rates set forth by the State Controller in OAM 40.10.00 that are in effect on the date when the travel occurs or the actual cost, whichever is less.
* **Meal per diems** during short-term travel approved by Agency must be in conformance with the Travel Policy and will be reimbursed up to the maximum rates set forth by the State Controller in OAM 40.10.00.

**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 the traveler’s residence during an LTA. Unless pre-approved by Agency, per diem is not reimbursable when the traveler is within 60 miles of the traveler’s 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 (https://www.oregon.gov/das/Financial/Acctng/Documents/40.10.00.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**

Consultant shall submit invoices electronically via e-mail to the address as indicated in the WOC. Consultant shall not submit invoices to Agency any more frequently than once per month. Unless a different schedule is set forth in **Exhibit A** or **Exhibit A.1**, Consultant invoices are due no later than 20 calendar days following the end of the month in which the Services were rendered. 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. Consultant shall include in each invoice the information required in this PA and in Agency’s Procurement Standards for Invoice Requirements (“Invoice Requirements”) per the method(s) of compensation used for the WOC. The Invoice Requirements (as may be revised from time to time by Agency) is available at: [https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx](https://www.irs.gov/pub/irs-pdf/p1779.pdf).

**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 WOC 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 and budget identified for each.
* Identify issues/concerns that may affect the WOC SOW, schedule or budget.

**False Claims.** Each invoice submitted by Consultant is subject to the Federal False Claims Act, 31 U.S.C. Sections 3729 – 3733, and the Oregon False Claims Act, ORS 180.750 to 180.785 and to any liabilities or penalties associated with the making of a false claim under either Act.

**Additional Requirements for CPFF and T&M Compensation.** Agency may request, after as well as before making any payments, 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 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**

**1. Agency Payments to Consultant.** 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 to the invoice. If revisions are necessary, payment will be made no later than 45 calendar days from Agency’s receipt of the revised and properly completed invoice. Notwithstanding the above references to 45 calendar days, Agency will endeavor to make payments sooner as provided in the Procurement Standards for Invoice Requirements (“Invoice Requirements”). Any interest for overdue payment will be in conformance with Oregon law. Except as provided under subsection D.2 - Accelerated Partial Payments to Consultant, payments will be made only after Agency determines that Consultant has completed, or performed adequate progress on, the required Services (including associated deliverables) for which payment is sought via a properly completed, received and correct invoice. The Invoice Requirements is available at: <https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx> (under “Compensation Related”).

**2. Accelerated Partial Payments to Consultant.** When applicable, as specified in the Invoice Requirements, an accelerated partial payment will be made to Consultant for each properly submitted invoice. Such partial payments will be a percentage of the total invoiced amount for Services performed during the billing period. The percentage amount for such partial payments is set forth in the Invoice Requirements. Consultant shall comply with the payment and related provisions of this PA, and the Invoice Requirements (as may be revised from time to time by Agency).

For invoices on which accelerated partial payment has been made, the remaining balance will be paid in accordance with subsection D.1 - Agency Payments to Consultant (less any retainage withheld if applicable). If Agency determines that Consultant’s performance or the performance of any subcontractor was unsatisfactory or improper or disputed costs have been invoiced and paid via any partial payment, Agency will notify Consultant regarding this finding and may seek clarification.

Agency’s rights under Additional Requirements in C. above and under Corrective Work in E. below shall also apply. Additionally, when deemed appropriate by Agency, Agency may:

* Reduce the payment for Services by withholding the inaccurate, improper or disputed amounts from the remaining balance of an invoice on which any partial payment was made, or from any future payment(s) to Consultant, or both;
* Use any other means or remedies available to Agency to seek recovery of already paid but improperly invoiced amounts.

**3. Direct Deposit** **via Automated Clearing House (“ACH”).** For Consultants that receive ongoing monthly payments from Agency on one or more contracts or work orders, Agency prefers making payments via ACH direct deposit. While not required, if Consultant has not previously authorized ACH direct deposit and would prefer ACH to expedite transfer of payments after invoices are approved, Consultant must complete a **Vendor ACH Authorization form** ([https://www.oregon.gov/ODOT/Forms/2ODOT/7310781.pdf](https://www.oregon.gov/odot/Business/Procurement/Pages/PSK.aspx))and submit to Agency per the instructions on the form.

**4. Consultant Payments to Subcontractors.**  By submitting an invoice that includes subcontractor costs, Consultant certifies that such costs are reasonable and that the subcontractor performance is satisfactory. Consultant shall pay each subcontractor for satisfactory performance under its contract no later than 10 calendar days from receipt of each payment, including but not limited to any partial payments, Consultant receives from Agency. If there are any subcontractor billings included in the invoice, Consultant shall use any accelerated partial payments received from Agency for a Consultant invoice first to pay all subcontractors in full, up to the amount of the subcontractor billings included in that invoice or the amount of the partial payment (prorated among subcontractor billings for that invoice), whichever is less.

Any payment amount(s) received from Agency for a Consultant invoice remaining after subcontractors have been paid in full for that invoice shall be applied to the remainder of that invoice.  In addition, within 10 calendar days of receipt of retainage from Agency, Consultant shall pay to each subcontractor the retainage that pertains to the work of that subcontractor.  Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval by APM.

To expedite Consultant’s payments to its subcontractors, Consultant should make reasonable efforts to offer ACH direct deposit payments.

Consultant’s failure to comply with the Consultant Payments to Subcontractors provisions and the Invoice Requirements is a material breach of the PA. As a result of any such breach, in addition to any other rights or remedies provided under the PA, Agency, in its sole discretion, may:

* Withhold any or all reimbursements or payments otherwise due to Consultant until the Consultant ensures that the subcontractors have been and will be promptly paid for work performed in accordance with the Consultant Payments to Subcontractor provisions and the Invoice Requirements. No interest will be paid by Agency for the period that payment was withheld pursuant to this provision;
* Document Consultant’s performance in Consultant Evaluation Reports, which may be used by Agency as set forth in **Exhibit G**.

**E. CORRECTIVE WORK**

Consultant shall complete all Services, including deliverables, as required in the SOW to Agency’s satisfaction. If Agency, using reasonable discretion, determines that the Services or associated deliverables, or both, are unacceptable, Agency shall notify Consultant in writing of the deficiency. Within 7 calendar days (unless a different timeframe is agreed to by the Parties) of receipt of the deficiency notification Consultant shall respond to Agency outlining how the deficiency shall be corrected. Consultant shall correct any deficiencies in the Services and deliverables to Agency’s satisfaction without further compensation. 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 Part II, Section 6.a, Professional Standard of Care). Agency shall not unreasonably withhold payment. For accelerated partial payments, Agency may rely on Consultant’s certification under D.4, Consultant Payments to Subcontractors, regarding satisfactory subcontractor performance, however, at its discretion Agency may also utilize the provisions of this section E.

For disputes related to deficiencies or standard of care and potential Errors and Omissions, see PA Part II, Section 23, Dispute Resolution and 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 5 percent 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 if 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 (including accelerated partial payments or any other payments), 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, may 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](https://www.oregon.gov/ODOT/Pages/Web-Toolkit.aspx) and Agency’s business practices. The Billing Rate Policy (as may be revised from time to time by Agency) is incorporated by this reference with the same force and effect as though fully set forth herein, and is available at: [https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx](http://uscode.house.gov/).

The hourly rates approved under this PA shall apply to the WOC and remain in effect throughout the duration of the WOC unless revisions are approved by Agency. Any approved revisions to the hourly rates approved for use under the PA shall apply to subsequent invoices under the WOC(s) but shall not effect an increase in the WOC NTE amount (exceptions may be approved by Agency on a case by case basis and require an amendment to the WOC).

**I. INDIRECT COSTS**

**Overhead Schedule -** If Consultant or subconsultants calculate overhead as part of their normal business practice, the overhead schedules shall be prepared and submitted in accordance with Agency’s Billing Rate Policy (as may be revised from time to time by Agency) available at: [https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx](https://www.oregon.gov/ODOT/ETA/Pages/OCRS.aspx). 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 PA Administrator within 30 calendar days of any changes to Consultant or subconsultant accounting practices pertaining to overhead and direct costs. The CDQ (as may be revised from time to time by Agency) is available at: <https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx>.

**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**

**1. Specific Limitations**

For T&M and CPFF WOCs, Consultant shall invoice Agency only for actual productive time Consultant personnel spend on Services by any level of Consultant’s staff (up to the not-to-exceed amount established in the WOC). 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 approved for use under 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 direct salary rates than the actual amount paid to its employees.

**Discriminatory Pricing.** Direct and indirect costs as applied to work performed under Agency contracts and subcontracts may not be discriminatory against Agency. It is discriminatory against Agency if employee (or owner/sole proprietor) compensation (in whatever form or name) is in excess of that being paid for similar non-Agency work under comparable circumstances (see FAR Subpart 31.205-6).

**Pay Equity Compliance**

* **Discriminatory Wage Rates.** As required by ORS 279C.520, Consultant must comply with ORS 652.220 and shall not unlawfully discriminate against any of Consultant’s employees in the payment of wages or other compensation for work of comparable character on the basis of an employee’s membership in a protected class. “Protected class” means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability, or age.  Consultant’s compliance with this section constitutes a material element of this PA and a failure to comply constitutes a breach that entitles Agency to terminate this PA and the WOC for cause.
* **Employee Discussions Regarding Compensation.** As required by ORS 279C.520, Consultant may not prohibit any of its employees from discussing the employee’s rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee’s rate of wage, salary, benefits or other compensation with another employee or another person.

**2. Unallowable Charges**

Agency will not pay for direct or indirect costs that are unallowable under the provisions of 48 CFR Part 31 - Federal Contract Cost Principles and Procedures.

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 (as may be revised from time to time by Agency) available at: [https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx](https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx)
* Costs for negotiation of WOCs or WOC amendments, including but not limited to proposal preparation, BOC preparation, preparation for negotiations, and negotiation of level of effort/budget.
* Costs related to disputes or E&O Claims, including but not limited to discussions, meetings and preparation of any dispute or claim related documentation.
* Mark-up on subconsultants or ODC expenses.
* Transfer of knowledge and information related to Key Person replacements.
* Correcting or making adjustments to incorrect or improper invoices.
* Direct compensation for items included in firm’s indirect costs (unless properly credited back to indirect cost).
* Premium costs incurred as a result of working overtime or holidays. Premium time should normally be charged to overhead. In accordance with ORS 279C.520, employees shall be paid at not less than time and one-half for all overtime worked and for work on legal holidays, except for individuals who are excluded from receiving overtime under personal services contracts pursuant to ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209.
* Any unallowable expenses for non-travel meals and refreshments under the provisions of the Oregon Accounting Manual, Non-travel Meals and Refreshments section (OAM 10.40.10): [https://www.oregon.gov/das/Financial/Acctng/Documents/10.40.10.pdf](https://www.oregon.gov/ODOT/Engineering/Pages/Eng-Guidance.aspx).

**EXHIBIT B, PART 2 – COST INFORMATION**

**Forms referenced in this Exhibit may be viewed and downloaded at:** [https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx](https://nam05.safelinks.protection.outlook.com/)

**A. OVERHEAD (INDIRECT COSTS)**

Consultant shall submit, 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 information (in Excel format) using the standard format for overhead accounting (no ODOT template available). 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 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. Overhead rates that have been reviewed and accepted by Agency will generally be valid for one year, unless Agency specifically agrees in writing to a longer period.

**B. SALARY and BILLING RATE SCHEDULES**

Consultant shall submit, 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.

Approval of any rate revisions under this PA shall be in conformance with this **Exhibit B**, Part 1, section H – Rate Revisions.

The **DSR** includes the name, classification and actual direct salary rate as approved by Agency, for each employee that may be used under the PA. The DSR is required for firms that calculate an overhead rate and will be used to develop the Escalated Salary Rate Schedule for the PA. The DSR will not be included in the PA but will be retained by Agency.

The **NBR** may be required by Agency for Consultants or sub-contractors that do not have a cognizant or acceptable independent audit for overhead rates (or do not calculate overhead as part of their normal accounting practice) and Agency determines it is in the 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 in the NBR approved for use under the PA and no greater than the lowest rates charged to other public or private clients.

The **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).

**C. COST DATA and SUBCONSULTANTS**

**Approved rate schedules** for Consultant and its approved subconsultants/subcontractors are not physically attached but are on file electronically with Agency (in an internal Agency file server), are incorporated herein by reference and shall apply for WOC estimating and invoicing purposes with the same force and effect as though fully set forth herein.

Consultant may obtain copies of currently approved rate schedules on file with ODOT by emailing a request to: [odotBillingRateUpdates@odot.oregon.gov](https://sam.gov/SAM/).

Approved subconsultants/subcontractors for WOCs issued pursuant to this PA shall be listed in each executed WOC. Consultant shall provide to Agency any requested documentation of qualifications and experience of the prospective subconsultant and its staff.

# EXHIBIT C – INSURANCE REQUIREMENTS

Contractor shall obtain at Contractor’s expense the insurance specified in this **Exhibit C** prior to performing under the Contract and shall maintain it in force and at its own expense throughout the duration of the Contract, and as required by any extended reporting period or tail coverage requirements, and all warranty periods that may apply. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to ODOT. Coverage shall be primary and non-contributory with any other insurance and self-insurance with exception of Professional Liability and Workers’ Compensation. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

ODOT reserves the right to assess the risk for all WOCs or POs, as applicable, assigned under this PA to determine if additional insurance coverage is appropriate.

For purposes of this **Exhibit C**, the term “Contract” is interchangeably used with “Work Order Contract”, “WOC”, “Purchase Order” and “PO”.

If the term “Consultant” is used in the Contract, then references in this **Exhibit C** to “Contractor” shall be read to mean “Consultant”.

**INSURANCE REQUIREMENT REVIEW:**

Contractor agrees to periodic review of insurance requirements by ODOT under this Contract and to provide updated requirements as mutually agreed upon by Contractor and ODOT.

**SUBCONTRACTORS:**

Contractor shall require that all of its subcontractors carry insurance coverage that the Contractor deems appropriate based on the risks of the subcontracted work. Contractor shall obtain proof of the required insurance coverages, as applicable, from any subcontractor providing Services related to the Contract.

**WORKERS’ COMPENSATION & EMPLOYERS’ LIABILITY**

**Required by ODOT of Contractors with subject workers, as defined by ORS 656.027**.

All employers, including Contractor, 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). The coverage shall include Employer’s Liability Insurance with limits not less than $500,000 each accident. **Contractor shall require compliance with these requirements in each of its subcontractor contracts.**

All employers, including the Contractor and Subcontractor(s), if any, that are exempt under ORS 656.126(2) and subject to any other state’s Workers’ Compensation law, shall provide Workers’ Compensation Insurance coverage as required by applicable Workers’ Compensation laws. The coverage shall also include Employer’s Liability Insurance with limits not less than $500,000 each accident.

**PROFESSIONAL LIABILITY**

**Required**  **Not required**

Professional Liability insurance must cover damages caused by negligent acts, errors or omissions of Contractor and Contractor’s subcontractors, agents, officers or employees related to the professional Services to be provided under the Contract.

* Coverage shall be written with a per claim, incident or occurrence limit, or the equivalent, of not less than

**$1,000,000**  **$2,000,000  $5,000,000.**

* Annual aggregate limits shall not be less than  **$2,000,000  $4,000,000  $10,000,000**.

If this insurance is provided on a “claims made” basis, Contractor shall maintain continuous claims made liability coverage or shall acquire tail coverage to continue the same coverage for a duration of at least **2 years**, unless  **3** **years** or **5 years** is specified,after completion of the Contract or for the foregoing extended period beyond Contract expiration or termination. Evidence of any required extended period coverage will be a condition of final payment under the Contract.

**COMMERCIAL GENERAL LIABILITY**

**Required**

Commercial General Liability insurance must be issued on an “occurrence basis” covering “bodily injury” and “property damage” and shall include personal and advertising injury liability, products and completed operations, and contractual liability coverage.

* Coverage shall be written on an occurrence basis in an amount of not less than  **$1,000,000  $2,000,000  $5,000,000** per occurrence.
* Annual aggregate limits shall not be less than  **$2,000,000  $4,000,000  10,000,000.**

**AUTOMOBILE LIABILITY**

**Required  Not required**

Automobile Liability insurance covering Contractor’s business-related automobile use covering all owned, non-owned, or hired vehicles for “bodily injury” and ”property damage”, with a combined single limit of not less than  **$1,000,000  $2,000,000**  **$5,000,000.**

**EXCESS/UMBRELLA LIABILITY INSURANCE:**

A combination of primary and Excess/Umbrella Liability insurance may be used to meet the required limits of insurance.

**NOTICE OF CHANGE OR CANCELLATION:**

The Contractor or its insurer must provide at least 30 days’ written notice to ODOT before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

**CERTIFICATE(S) AND PROOF OF INSURANCE:**

Contractor shall provide to ODOT Certificate(s) of Insurance for all required insurance before delivering any Goods or performing any Services required under the Contract. The Certificate(s) shall:

* List the **“State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees”** as a Certificate Holder and **endorse** as an Additional Insured.
* Include all required endorsements or copies of the applicable policy language effecting coverage required by this Contract.
* Specify that all liability insurance coverages shall be primary and non-contributory with any other insurance and self-insurance, with exception of Professional Liability and Workers’ Compensation
* If Excess/Umbrella Liability insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the Excess/Umbrella Liability insurance.

If ODOT has on file current certificates of insurance that meet all requirements of this **Exhibit C**, and ODOT provides such notification to Contractor, then submittal of certificates prior to execution of the Contract will not be required. As proof of insurance, ODOT has the right to request copies of insurance policies, endorsements, self-insurance documents, and related insurance documents relating to the insurance requirements in this Contract.

**ENDORSEMENTS:**

1. **Additional Insured.** The liability insurance coverages, except Professional Liability or Workers’ Compensation/Employer’s Liability, if included, required for performance of the Contract must include an *"additional insured"* endorsement endorsing the **“State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees.”** Coverage shall be primary and non-contributory with any other insurance and self-insurance. Proof of additional insured status will include copies of endorsements or policy wording which must be submitted with the Certificate(s) of Insurance.
2. **Commercial General Liability** must endorse the **“State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees”** as additional insureds with respect to liability arising out of work or completed operations performed by, or on behalf of, the Contractor including materials, parts, or equipment furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds.
3. **The additional insured endorsements must be acceptable to ODOT.**

**STATE ACCEPTANCE:**

All insurance and insurance providers are subject to ODOT acceptance. In addition, all of the following are subject to ODOT acceptance and, if requested by ODOT, the Contractor shall provide complete copies of the following to ODOT’s representatives responsible for verification of the insurance coverages required by the Contract: insurance policies, endorsements, self-insurance documents and related insurance documents.

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

During the performance of any WOCs under this PA, Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the “Consultant”) agrees as follows:

1. **Compliance with Regulations:** Consultant shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this PA and any WOCs under this PA.
2. **Nondiscrimination:** Consultant, with regard to the work performed by it during the PA and any WOCs, shall not discriminate on the grounds or race, color, sex, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment. Consultant shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the WOC covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by Consultant of Consultant’s obligations under this PA and any WOCs and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.
4. **Information and Reports:** Consultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Agency, FHWA or the Federal Transit Administration (“FTA”) as appropriate, to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to Agency, FHWA or FTA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of Consultant’s noncompliance with the nondiscrimination provisions of this PA, Agency shall impose such PA and WOC sanctions as it, ODOT, FHWA or FTA may determine to be appropriate, including, but not limited to:

(i) Withholding of payments to Consultant under the WOC until Consultant complies, and/or

(ii) Cancellation, termination or suspension of the WOC or the WOC and PA, in whole or in part.

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

### EXHIBIT E – DISADVANTAGED BUSINESS ENTERPRISE (“DBE”)

PROVISIONS

(Applicable to federally funded WOCs with an assigned DBE goal greater than zero.)

For purposes of these DBE Provisions, “Contract” means any project-specific contract, Price Agreement (“PA”), Work Order Contract (“WOC”), Task Order, or any other contract entered into with ODOT (or local agency when applicable). “Consultant” and “Contractor” are hereinafter referred to as “Contractor”. **See sections d and i for specific documentation and reporting requirements of Contractor.**

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

* ODOT DBE Policy Statement (https://www.oregon.gov/ODOT/Business/OCR/Pages/Disadvantaged-Business-Enterprise.aspx)
* ODOT DBE Program Plan (https://www.oregon.gov/ODOT/Business/OCR/Pages/Disadvantaged-Business-Enterprise.aspx), and
* Requirements of Title 49, Code of Federal Regulations, Part 26 (<https://www.ecfr.gov/current/title-49/subtitle-A/part-26?toc=1>)- Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

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

1. **DBE Goals:** ODOT’s overall goal for DBE participation is 15.37% for FHWA funded contracting and 6% (proposed) for FTA funded contracting. For FHWA funded contracting, ODOT may assign DBE Contract goals to increase participation by DBEs. For any Contract with an assigned DBE goal, Contractor shall select a portion of work available under the Contract for DBE participation. Contractor may use DBE subcontractors, suppliers, manufacturers, or Professional Services and Related Services providers to fulfill the assigned DBE Contract goal as long as the DBE is certified in the types of work selected. The assigned DBE Contract goal remains in effect throughout the life of the Contract. Dollar values of participation shall be credited toward meeting the assigned DBE Contract goal based on DBE gross earnings.

* **A separate DBE Contract goal, as set forth on page 1 of the WOC or project-specific Contract (as applicable), has been assigned for this procurement.**

1. **Nondiscrimination Requirement:** Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Contract. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as ODOT deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR § 26.13(b)).
2. **Documentation of Proposed Participation:** Contractor shall document sufficient DBE participation to meet an assigned Contract goal or, alternatively, document adequate good faith efforts to do so (see 49 CFR § 26.53). All work committed to a DBE firm toward meeting the assigned participation goal must be performed under a written subcontract. The subcontract must fully describe any work committed to be performed by the DBE and shall include all required flow-down provisions of the primary Contract. Contractor must complete and submit the following documentation, as applicable:
   1. **Subcontractor Solicitation and Utilization Report (SSUR) –** submitted with proposal in response to formal and informal Requests for Proposals (RFPs).
   2. **Breakdown of Costs (“BOC”) or BOC-NBR -** submitted prior to negotiation and execution of the Contract and each amendment that changes the scope of work and costs under the Contract. The BOC forms and BOC Requirements are available from the Internet at: [https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx](https://www.oregon.gov/odot/SiteAssets/Pages/Web-toolkit/ODOT%20Style%20Guide_August2020.pdf)**.**  The BOC must clearly list any tasks or subtasks to be performed by subcontractors (DBEs and non-DBEs), each subcontractor’s Federal Tax ID and identification of any required personnel. Include in the Expense Detail tab any required equipment and supplies furnished by the DBE, any of the prime contractor’s resources that will be provided for the DBE’s use, and identification of any second or lower tier subcontractors with the dollar amounts for each.
   3. **Committed DBE Breakdown and Certification Form(s)-AE.** Required for all Contracts with assigned goals and completed prior to Contract execution and any proposed substitution. See submittal instructions on the form.
   4. **Subcontractor Reporting:** Complete and submit an initial **Paid Summary Reports -** form 734-2882 ([https://www.oregon.gov/ODOT/Forms/2ODOT/2882.pdf](https://www.oregon.gov/ODOT/Engineering/Pages/Manuals.aspx)) per the instructions on the form.
3. **Good Faith Efforts:** Contractor shall makegood faith efforts,as set forth in 49 CFR § 26.53, Appendix A to Part 26, and ODOT DBE Program Plan, to obtain and support DBE participation that could reasonably be expected to produce and maintain a level of DBE participation sufficient to meet the Contract goal. Good faith efforts are required during solicitation, upon Contract award, and continue throughout the performance of the Contract to maximize DBE participation. The Agency (or local agency when applicable) Project Manager (“APM”) may request Contractor to submit evidence of good faith efforts prior to Contract execution or at any time during the course of the Contract and Contractor shall promptly submit such evidence. Contractor shall use the specific DBEs listed in the Committed DBE Breakdown and Certification form(s) to perform the work and supply the materials for which each is listed unless Contractor obtains ODOT’s prior written consent to terminate and replace a DBE as provided in section **j.** below. Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBEs as required by this provision.
4. **Commercially Useful Function (“CUF”):** Contractor is responsible to ensure the DBE performs a commercially useful function on the Contract. A DBE performs a CUF when it is responsible for execution of the work of the Contract/subcontract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. Additional detail regarding CUF requirements and other conditions for counting participation by DBE contractors is set forth in 49CFR § 26.55. The APM will review the proposed DBE participation and may provide written comments as to whether the activities and type of work identified for DBEs complies with program regulations. In those instances where proposed activity and type of work violates applicable regulations, written comments will be offered as to corrective action required in order to comply with the regulations. ODOT may perform a CUF review at any time during the performance of the Contract.
5. **Changes in Work Committed to DBE:** ODOT will consider the impact on DBE participation in instances where the prime Contract is amended to reduce, or delete work committed to the DBE. In such instances, Contractor shall not be required to replace the work but is encouraged to do so to the maximum extent practicable.
6. **Prompt Payment and Retainage**: Contractor shall pay each subcontractor for satisfactory performance under its contract no later than 10 calendar days from receipt of each payment Contractor receives from ODOT (or local agency when applicable) for the subcontracted work. In addition, within 10 calendar days of receipt of retainage from ODOT (or local agency when applicable), Contractor shall pay to each subcontractor the retainage that pertains to the work of that subcontractor.
7. **Reporting Requirements:** Contractor must report payment information for all subcontractors and suppliers used under the Contract throughout the period of performance. Contractor shall complete and submit initial, interim and final Paid Summary Report(s) [form 734-2882] per the instructions included on the form.
8. **Termination of DBE Notification Requirement:** Contractor shall comply with all requirements set forth in 49 CFR § 26.53 regarding termination of DBEs including, without limitation, documentation of good cause, 5-day notice to the DBE subcontractor and ODOT, DBE responses, ODOT’s prior written consent of DBE termination, and replacement of DBEs. ODOT will provide such written consent only if it agrees the prime contractor has good cause to terminate the DBE in accordance with 49 CFR 26.53(f)(3).
9. **Remedies:** Contractor’s failure to comply with these DBE Provisions and the requirements of 49 CFR Part 26 may result in one or more of the following administrative actions as deemed appropriate by ODOT: non-compliance documented in ODOT evaluation of Contractor performance, a corrective action plan prepared by Contractor, ODOT(or local agency when applicable) withholding of retainage, suspension of work, reporting of non-compliance to the federal System for Award Management (“SAM”) available at [https://sam.gov/SAM/](https://www.oregon.gov/odot/Business/AASHTOWare/AWP_EUAA.pdf), any other remedies provided under the Contract.
10. **Information/Questions:** The DBE program is administered by the ODOT Office of Civil Rights (“OCR”). Questions related to the DBE Program may be sent via email to ocrinforequest@odot.oregon.gov or otherwise directed to: Oregon Department of Transportation Office of Civil Rights 800 Airport Road SE, Rm 61, Salem, OR 97301; Phone: 503-986-4350.
11. **Directory of Certified Firms:** A searchable database for active certified firms (by NAICS code, NIGP code, ODOT code, certification type, location or project ethnicity goals) is available on line at: <https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp>.

**Related Web Sites:**

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

* **Forms:** <https://www.oregon.gov/ODOT/Business/OCR/Pages/Forms.aspx>
* **Documents:** [https://www.oregon.gov/ODOT/Business/OCR/Pages/Disadvantaged-Business-Enterprise.aspx](https://www.oregon.gov/das/Pages/writingstyleguide.aspx)
* **49 CFR Part 26:** [https://www.ecfr.gov/current/title-49/subtitle-A/part-26?toc=1](https://www.oregon.gov/odot/Business/Procurement/Pages/PSK.aspx?toc=1)

**Acronyms & Definitions for Exhibit E**

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

Prior to WOC or WOC amendment execution, Consultant shall email (per the submittal instructions on the form) a separate, signed Committed DBE Breakdown and Certification Form(s)-AE for each DBE subcontractor that will provide Services under the WOC or added/new Services under a WOC Amendment.

**EXHIBIT E.1 - DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROVISIONS**

**(No-Goal)**

For purposes of these DBE Provisions, “Contract” means any project-specific contract, Price Agreement (“PA”), Work Order Contract (“WOC”), Task Order, or any other contract entered into with ODOT (or local agency when applicable). “Consultant” and “Contractor” are hereinafter referred to as “Contractor”. **See section e for specific reporting requirements of Contractor.**

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

* ODOT DBE Policy Statement (https://www.oregon.gov/ODOT/Business/OCR/Pages/Disadvantaged-Business-Enterprise.aspx)
* ODOT DBE Program Plan (https://www.oregon.gov/ODOT/Business/OCR/Pages/Disadvantaged-Business-Enterprise.aspx), and
* Requirements of Title 49, Code of Federal Regulations, Part 26 ([https://www.ecfr.gov/current/title-49/subtitle-A/part-26?toc=1](https://www.oregon.gov/ODOT/Business/OCR/Pages/Disadvantaged-Business-Enterprise.aspx?toc=1))- Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

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

1. **DBE Goals:** ODOT’s overall goal for DBE participation is 15.37% for FHWA funded Contracts and 6% (proposed) for FTA funded Contracts. For FHWA funded contracting, ODOT may assign DBE Contract goals to increase participation by DBEs. For any Contract with an assigned DBE goal, Contractor shall select a portion of work available under the Contract for DBE participation. Contractor may use DBE subcontractors, suppliers, manufacturers, or Professional Services and Related Services providers to fulfill the assigned DBE Contract goal as long as the DBE is certified in the types of work selected. The assigned DBE Contract goal remains in effect throughout the life of the Contract. Dollar values of participation shall be credited toward meeting the assigned DBE Contract goal based on DBE gross earnings.

**A DBE participation goal has not been established for this procurement.**

1. **Nondiscrimination Requirement:** Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this USDOT-assisted Contract. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as ODOT deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
2. **Prompt Payment and Retainage**: Contractor shall pay each subcontractor for satisfactory performance of its contract no later than 10 calendar days from receipt of each payment Consultant receives from ODOT (or local agency when applicable). In addition, Contractor shall return any retainage payments to each subcontractor within 10 calendar days after the subcontractor's work is satisfactorily completed.
3. **Reporting Requirements:**  Contractor shall complete and submit initial, interim and final Paid Summary Reports [form 734-2882] per the instructions on the form. Contractor must report payment information for all subcontractors and suppliers used under the Contract throughout the period of performance.
4. **Commercially Useful Function**: For Contracts with no DBE goal assigned, ODOT may count race-neutral DBE participation toward its overall goal, provided the DBE is performing a commercially useful function (“CUF”) as set forth in 49CFR § 26.55. A DBE performs a commercially useful function when it is responsible for execution of the work of the Contract/subcontract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. Additional detail regarding CUF requirements and other conditions for counting participation by DBE contractors is set forth in 49CFR § 26.55. ODOT may perform a CUF review at any time during the performance of the Contract.
5. **Termination of DBE Notification Requirement:** Contractor must promptly notify ODOT whenever a DBE subcontractor performing work related to this Contract is terminated or fails to complete its work. See additional requirements of 49 CFR § 26.53(f) regarding termination of a DBE.
6. **Remedies:** Contractor’s failure to comply with these DBE Provisions and the requirements of 49 CFR Part 26 may result in one or more of the following administrative actions as deemed appropriate by ODOT: non-compliance documented in ODOT evaluation of Contractor performance, a corrective action plan prepared by Contractor, ODOT (or local agency when applicable) withholding of retainage, suspension of work, reporting of non-compliance to the federal System for Award Management (“SAM”) available at [https://sam.gov/SAM/](https://www.oregon.gov/odot/Business/Procurement/Pages/PSK.aspx), any other remedies provided under the Contract.
7. **Information/Questions:** The DBE program is administered by the ODOT Office of Civil Rights (“OCR”). Questions related to the DBE Program may be sent via email to [ocrinforequest@odot.oregon.gov](mailto:ocrinforequest@odot.oregon.gov) or otherwise directed to: Oregon Department of Transportation Office of Civil Rights 800 Airport Road SE, Rm61, Salem, OR 97301; Phone: 503-986-4350 Fax: 503-986-6382.
8. **Directory of Certified Firms:** A searchable database for active certified firms (by NAICS code, NIGP code, ODOT code, certification type, location or project ethnicity goals) is available on line at: [https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp](https://www.oregon.gov/ODOT/Forms/2ODOT/7310781.pdf).

**Related Web Sites:**

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

* **Forms:** [https://www.oregon.gov/ODOT/Business/OCR/Pages/Forms.aspx](https://www.oregon.gov/odot/engineering/pages/access-management.aspx)
* **Documents:** [https://www.oregon.gov/ODOT/Business/OCR/Pages/Disadvantaged-Business-Enterprise.aspx](https://www.oregon.gov/odot/bridge/pages/index.aspx)
* **49 CFR Part 26:** [https://www.ecfr.gov/current/title-49/subtitle-A/part-26?toc=1](https://www.oregon.gov/das/Financial/Acctng/Documents/10.40.10.pdf?toc=1)

**Acronyms & Definitions Applicable to Exhibit E.1**

|  |  |
| --- | --- |
| APM | ODOT’s or local agency’s Project Manager for the WOC |
| CFR | Code of Federal Regulations |
| CUF | Commercially useful function |
| DBE | Disadvantaged Business Enterprise |
| OCR | ODOT Office of Civil Rights |
| ODOT | Oregon Dept. of Transportation |
| PA | Price Agreement |
| RFP | Request for Proposals |
| SSUR | Subcontractor Solicitation and Utilization Report |
| USDOT | United States Department of Transportation |
| WOC | Work Order Contract |

### EXHIBIT F – WORK ORDER CONTRACT ASSIGNMENT and REQUIREMENTS

**Forms referenced in this Exhibit may be viewed and downloaded at:** <https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx>

##### 1. WORK ORDER CONTRACT ASSIGNMENT PROCESS

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

* Tier A PA Consultants are eligible to compete for WOCs/projects $250,000 - $1.5 Million.
* Tier B PA Consultants are eligible to compete for WOCs/project $750,000 and above.
* Overlap Range: Both Tier A PA and Tier B PA Consultants are eligible to compete for WOCs/Project $750,000-$1.5 Million.

Agency reserves the right in its sole discretion to adjust the dollar ranges of the tiers and the Overlap Range, including but not limited to lowering the $750,000 threshold for Tier B and the Overlap Range, in the best interest of the Agency, for reasons including but not limited to increased need, capacity of PA holders, utilization by PA holders in the tiers, and for increased competition for WOCs.

If Consultant has liquidated and delinquent debt owed to the State or any department or agency of the State, Consultant may be ineligible for WOC assignment under the PA as determined in Agency’s sole discretion.

In compliance with federal law (including the Brooks Act) and Oregon law, except for direct appointments, selections for Professional Services WOC assignments will be made 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, in its discretion, may consider pricing, cost, overhead or billing rate factors in the selection phase for "Related Services" {as that term is defined in ORS 279C.100}, as provided in OAR 731-148-0130(3) (subject to federal requirements on federally funded projects). Agency’s PA Administrator shall document the Contract file with the criteria and scoring used for Consultant selection for individual WOCs.

WOCs within the Scope of Services identified in Exhibit A of this PA or within the Scope/Menu of Services for CA/CEI Services identified in Exhibit A.1 of this PA, or in the associated RFP, may be assigned for Agency projects and local public agency (LPA) projects located anywhere in the state in accordance with section 1.1 WOC Assignment Methods. WOC assignments, negotiations and requirements must be in conformance with OAR 731-148-0270 and the provisions of this Exhibit F, including any procedures incorporated by reference and any applicable federal requirements. Additional phases of projects will normally be added via WOC amendment rather than as a new WOC assignment; however, Agency may assign subsequent phases of a project to a different firm. WOCs may not be amended to add project work outside the scope of the PA, RFP or the assigned project.

**LPA Projects:** Following award and execution of the PAs by Agency (Tier 1), LPAs are responsible for the final selection and assignment of Consultants to LPA projects, pursuant to ORS 279C.125 and OAR 731-148-0260 (Tier 2). The projects will be assigned through Agency Work Order Contracts (WOCs) and will be administered by an Agency Project Manager (APM) in coordination with the LPA’s assigned project manager.

Each LPA must establish a selection/assignment committee of no fewer than 3 individuals to select the Consultant(s) for WOC assignments using the options available under section 1.1 - WOC Assignment Methods. If Agency representatives participate on the LPA selection committees, they may only serve as technical experts, advisors or facilitators and will not count as one of the “voting” members. Detailed [**Tier-2 Selection Procedures**](https://www.oregon.gov/odot/Business/Procurement/Pages/PSK.aspx#Tier_2_Selection_Procedures), forms and other guidance and resources for LPAs are available on the Internet at the following website: [**http://www.oregon.gov/ODOT/CS/OPO/Pages/lap\_select.aspx**](https://www.oregon.gov/odot/Get-Involved/PRR%20docs/ODOT%20Public%20Records%20Management%20Policy%20ADM%2007-01.pdf)

**1.1** **WOC Assignment Methods**. The Mini Solicitation WOC assignment method below applies to both Tier A PA Consultants and Tier B PA Consultants, for Agency projects and LPA projects. WOCs will be assigned using this method (but Agency reserves the right in its sole discretion to use any other methods permitted by applicable law).

**1.1.1 Mini Solicitation**

For WOCs that are anticipated to exceed $250,000 (including anticipated amendments), Agency will conduct a streamlined mini-solicitation open only to the firms with PAs awarded from the associated RFP.. The mini-solicitation will be brief and will include, but is not limited to:

* Response deadline and location for submittals,
* Project description and objectives (and information from Project prospectus, if available),
* Programmed budget for construction and right-of-way (if applicable),
* Schedule to complete the requested Services, and programmed bid let date (if applicable),
* General scope of work and period of performance expected under the WOC,
* If available, a detailed SOW (required if cost proposals will be evaluated on Related Services projects). The SOW should include the work to be performed; location of work; deliverable schedule; any applicable performance standards; items provided by Agency, if any; and any special requirements (*e.g.,* travel, special knowledge).
* Selection criteria and weighting.

**Selection Criteria**

The selection criteria used for a given WOC assignment will be in conformance with criteria allowed under State and federal rules for A&E solicitations. The criteria for mini-solicitations may include any 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 WOC assignment. How relevant and recent is the experience?
* Services Approach - approach to the Professional 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 (up to 10% of the total score).
* Past performance (as described in PA **Exhibit G**) on earlier WOCs assigned under the PA and may include available Agency records regarding Consultant performance (within the previous 3 years of a given WOC selection) on other Agency contracts/WOCs.
* References for specific types of services and project experience.

**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.

**Interviews**

Agency may elect to conduct interviews with two or more firms short-listed following evaluation and scoring of mini-proposals. 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).

**1.2 Negotiation**

Agency will negotiate the SOW, schedule, costs and profit amount with the selected firm.

**All selections for 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 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.**

##### 1.2.1 Labor Costs and Expenses:

##### For WOCs that are predominately Professional Services (or Related Services where competitive price proposals were not requested); 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 ODCs (as allowable) for the Services included in the WOC. The initial SOW and budget are both subject to negotiation.

##### Following initial agreement on the SOW tasks, deliverables and schedule, Agency and Consultant will develop independent cost estimates (see Section 2.2.2, Breakdown of Costs for Services) and negotiate the appropriate hours, classifications and ODCs (as allowable) for the Services included in the WOC. The initial SOW and budget are both subject to negotiation.

##### 1.2.2 Profit: Following agreement on labor costs and ODCs, Agency and Consultant shall negotiate profit for the WOC (except for Negotiated Billing Rates and “Related Services” WOC assignments based on low bid, each of which are inclusive of profit). The negotiated profit rate will be based on Agency’s Profit Worksheet. Agency may negotiate profit on each phase of Services for a given project; i.e. - for Professional Services work, 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:

* 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 WOC (excluding labor based on NBRs). The basis for calculating the Fixed Fee must not include ODCs, 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.
  + 1. **Certification of DBE Participation:** During negotiations of the WOC, Consultant shall submit a Committed DBE Breakdown and Certification Form-AE (one for each DBE subcontractor that will be used) if a DBE goal greater than 0% is assigned to the WOC. [**Note:** The Committed DBE Breakdown and Certification Form will not be required for WOCs with no goal assignment or if a DBE goal is not required (i.e., if WOC includes no federal funding)]. The Committed DBE Breakdown and Certification Form shall be used to determine Consultant’s responsiveness to the DBE requirements. See PA **Exhibit E**, DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROVISIONS for detailed requirements. The Committed DBE Breakdown and Certification Form-AE is available at:

[https://www.oregon.gov/ODOT/Business/OCR/Pages/Forms.aspx](mailto:odotBillingRateUpdates@odot.oregon.gov)

##### 2. WORK ORDER CONTRACT REQUIREMENTS

**2.1 General Requirements**

Consultant shall perform Services under the PA only under an Agency issued and approved WOC.

**SAMPLE WOC:** A sample WOC form, which may be revised by Agency from time to time, is incorporated by this reference and available at: <https://www.oregon.gov/odot/Business/Procurement/DocsPSK/WOC.pdf>. 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 Agency approved format, a sample of which is available at the Internet address in Section 2 above. ODOT Procurement Office will prepare, process and execute the WOC. Each WOC must indicate the maximum amount payable to Consultant, as negotiated by Agency (in collaboration with local public agency when applicable) and Consultant.

##### 2.2.1 Statement of Work

The SOW must include the Services to be performed by Consultant, a schedule for performance, and specific deliverables. All Services included in the SOW must be within the Scope of Services, Exhibit A, or the Scope/Menu of Services for CA/CEI Services, Exhibit A.1, included in the PA.

##### 2.2.2 Breakdown of Costs for Services

Following development and negotiation of the SOW tasks, deliverables and schedule for the WOC, Consultant shall submit a Breakdown of Costs (BOC) [https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx] to Agency in the form designated by Agency. The BOC must include a detailed breakdown of the costs for each element of the Services as specified in the BOC Requirements (<https://www.oregon.gov/ODOT/Business/Procurement/DocsPSK/bocrequirements.pdf>). The BOC Requirements document also provides additional information about which BOC form to use. An Instruction tab is provided on each of the BOC spreadsheets regarding preparation of the BOC form.

**Classification Averages:** Consultant shall prepare and submit the BOC based on the average of the actual direct salary rates (as listed in the ESR schedule(s) approved for use under the PA) for each classification (and approved NBRs as applicable) 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) and amendment that adds Services, the BOC must include a detailed breakdown of the costs for each element of the Services. The BOC must identify:

1. The assigned staff classifications, names of Key Personnel (and other staff if requested), and the number of hours per task and sub-task;
2. An itemization of rental equipment, flaggers, travel and other ODCs (estimates with documentation from vendors shall be provided upon request);
3. A cost estimate as provided by each subcontractor that shows the assigned staff (classifications and names) and hours per task and sub-task and itemized ODCs;
4. Classification averages, direct salary rate, ESR or NBR and current accepted multipliers of OH, FCCM and Profit Fee as appropriate;
5. Certification status of any disadvantaged business enterprise, minority-owned business, woman-owned business, service-disabled veteran-owned business or emerging small business subcontractors included in the BOC;
6. **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 ODCs for the task. ODCs for Contingency Tasks must not be included in an overall amount for ODCs 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 ODCs.

 If requested by Agency, Consultant shall use a standardized form (Excel spreadsheet format as provided by Agency) to prepare BOC.

##### 2.2.3 Committed DBE Breakdown and Certification Form

Each WOC with an assigned DBE goal greater than zero will include (as attachment or incorporated by reference) a signed Committed DBE Breakdown and Certification Form for each DBE subconsultant (see Section 1.2.3 of this Exhibit).

##### 2.2.4 Aspirational Targets

A Certified Small Business Aspirational Target will be assigned to applicable WOCs as set forth in PA **Exhibit K**.

Aspirational Targets are not binding on Consultant but will be listed in the WOC for informational purposes. (For additional information see PA **Exhibit K**, Certified Small Business Aspirational Target Provisions.)

**2.2.5 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”), Environmental Impact Statement (“EIS”), or Finding of No Significant Impact (“FONSI”). For all other WOC assignments, Consultant shall ensure its COI disclosures are in conformance with the COI Guidelines (as may be revised from time to time by Agency), available at**:** [https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx](https://sam.gov/SAM/)and Part II, Section 1.b of the PA.

**Exhibit F – Attachment 1**

**ADDITIONAL PROVISIONS APPLICABLE TO WOCs**

1. **Project Cooperation**

Consultant acknowledges that Agency may have separate contract(s) with other entities (i.e., contractors, consultants 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. Consultant shall only be responsible for those responsibilities and deliverables identified as being assigned to Consultant (or its subconsultants) in this WOC and the SOW. All work assigned to other entities, other than subconsultants, 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 subconsultant shall be construed as being the responsibility of Consultant.

Any Consultant tasks or deliverables which are contingent upon receiving information, resources, assistance, or cooperation in any way from another entity (other than Subconsultants) as described in this SOW shall be subject to the following guidelines:

1. At the first indication of non-cooperation, Consultant shall provide written notice to Agency’s Contract Administrator for the WOC 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.
2. Agency’s Contract Administrator for the WOC shall contact the non-cooperative entity/s to discuss the matter and attempt to correct the problem and expedite items determined to be delaying Consultant/Project.

If Consultant has followed the notification process described in section “a”, and delinquency or delay of any deliverable is found to be a result of the failure of other referenced entities to provide information, resources, assistance, or cooperation, as described in the SOW, Consultant will not be found in breach or default with respect to delinquencies beyond any reasonable control of Consultant; nor shall Consultant be assessed or liable for any damages arising as a result of such delinquencies. Neither shall ODOT be responsible or liable for any damages to Consultant as the result of such non-cooperation by other entities. Agency’s Contract Administrator for the WOC 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 Consultant. Revised delivery dates beyond the expiration date require an amendment to the WOC.

1. **Key Persons**

Consultant acknowledges and agrees that Agency selected Consultant and is entering into the WOC because of the qualifications and experience of Consultant’s key personnel (“Key Persons” or “Key Personnel”), which may include specific staff agreed upon during WOC negotiations. In particular, Agency, 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 subconsultant Key Persons (if any) will be listed in WOC.

No Key Person may delegate performance of any management powers or other responsibilities the Key Person 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 may 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 the Key Person’s 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 e-mail or other form as may be required by Agency.)

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

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

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

1. **Staffing Adjustments**

During the term of the WOC, Consultant may make necessary staffing/classification adjustments (other than Key Personnel) to the proposed staff/classifications as shown in Consultant’s BOC provided:

* the alternate staff/classifications are appropriately qualified to complete the assigned tasks,
* the billing rate for an alternate staff/classification does not exceed the classification billing rate maximum listed in the firm’s approved ESR or NBR on file with Agency (see limitations in Exhibit B, Part 2, section J – Specific Limitations and Unallowable Charges), and
* the Services can be completed without exceeding WOC (or task, if applicable) NTE amount(s).

Agency reserves the right to require Consultant to provide notice to APM prior to implementing needed changes to staffing assignments.

1. **Task Budget Monitoring**

The budget shown in the Breakdown of Costs for each task is the best estimate at time of WOC (and WOC Amendment, if applicable) execution. However, as work under the WOC progresses it may require that more funding be applied to some tasks and products and less to others. Consultant shall monitor such needs on an ongoing basis and, when needed, propose on a monthly basis as part of the invoicing and status report, budget refinements (within the limits of the not-to-exceed amount established for the WOC) to Agency for approval.

**EXHIBIT G -** **PERFORMANCE EVALUATION**

1. **Agency’s Right to Evaluate.** Agency may, at its sole discretion, conduct evaluations of Consultant’s performance and any subconsultant’s performance.

1. **Evaluation Criteria.** Generally, performance evaluations will include evaluation and scoring of various sub-criteria related to, but not limited to, the following categories: (a) WOC Project management and coordination of staff and subconsultants, (b) Project communication and responsiveness, (c) cost effectiveness and completing work within budget, (d) technical accuracy and quality control, (e) schedule performance.
2. **Evaluation Process.** The performance evaluation results may be used as written documentation for addressing areas of Consultant’s performance throughout the term of the PA and the term of any WOCs. Agency reserves the right to conduct performance evaluations at the end of each WOC/Project and on an interim basis throughout the term of the PA and the term of any WOCs. Agency may conduct performance evaluations at each major milestone. Deliverables must be submitted on or before the due date and be of acceptable quality (per Agency review) to be considered on time.
3. **Consultant’s Review/Response.** Agency will provide a copy of the performance evaluation results to Consultant within 14 calendar days following completion. Consultant may respond, in writing, or may request a meeting to address any or all findings contained in the completed Consultant’s performance evaluation form within 30 calendar days following receipt.

1. **Dispute Resolution:** In the event of a dispute regarding a Consultant’s performance evaluation, Consultant may request a teleconference (or meeting at Agency) with APM and Agency’s Contract Administrator for the WOC. If the dispute cannot be resolved with discussions or upon receipt of any follow-up documentation requested, Agency’s Contract Administrator for the WOC, in consultation with the applicable Area or Program Manager and APM shall make the final decision regarding the score received on a particular evaluation. Agency reserves the right to adjust score(s) upon Agency’s finding of good cause.
2. **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 a performance improvement plan by Consultant, withholding of retainage, determining eligibility for future WOC assignments (or extension of WOC assignment period, if applicable), and as a criterion of selection for future Agency contracts.

**EXHIBIT H – RESERVED**

**EXHIBIT I - RESERVED**

**EXHIBIT J – CONTACT INFORMATION and KEY PERSONS**

**1. Party Contact Information.**

**a.1 \*Agency’s PA Administrator for this PA** is:

|  |  |
| --- | --- |
| **Name:** | Mary M. Cole |
| **Address:** | ODOT – Procurement Office  355 Capitol St. NE, MS#51  Salem, OR 97301 |
| **Ph:** | 503-986-6918 |
| **E-mail:** | Mary.M.Cole@odot.oregon.gov |

1. **\*\*Consultant’s primary contact for this PA is:**

|  |  |
| --- | --- |
| **Name:** |  |
| **Address:** |  |
| **Ph:** |  |
| **E-mail:** |  |

**b.2 \*\*Consultant’s remit address for payments and contact for invoices (if different than section b.1 above).**

|  |  |
| --- | --- |
| **Name:** |  |
| **Address:** |  |
| **Ph:** |  |
| **E-mail:** |  |

\* Changes to Agency's Contract Administrator for the PA must be done by amendment.

\*\* Consultant shall provide written notice (email acceptable) to Agency’s Contract Administrator for the PA regarding any changes to Consultant’s primary or invoice contact for this PA.

**2. Key Persons.**

Consultant may request that Agency approve a substitution or replacement of a Key Person listed in Consultant’s Statement of Proposal. Agency shall have the right to interview, review the qualifications of, and approve or disapprove (e-mail 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. Throughout the term of the PA and any assigned WOCs, Consultant shall provide updated information (if requested by Agency) to demonstrate the continuing qualifications of any staff working on Agency projects, including those approved as Key Persons.

**EXHIBIT K – CERTIFIED SMALL BUSINESS** **ASPIRATIONAL TARGET PROVISIONS**

**(Applicable only to WOCs that include no federal funding)**

**Exhibit K** (as may be revised from time to time by Agency) is not physically attached but is incorporated into this PA with the same force and effect as though fully set forth herein, and is available at:

[https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx](https://www.oregon.gov/ODOT/Business/OCR/Pages/Disadvantaged-Business-Enterprise.aspx)

**Exhibit L - ODOT’s ProjectWise Network**

**(March 2022)**

1. **ProjectWise Access and General Requirements**

Consultant shall include the provisions set forth in this Exhibit in any subcontract that will require subcontractor access to ODOT’s ProjectWise network.

Consultant shall use ProjectWise for electronic submittal and receipt of files as necessary for the Project. Consultant employees, subcontractor employees, or other agents that will need access to ODOT’s ProjectWise network must have an ODOT-approved ProjectWise account. Each individual that needs access must agree to the Terms and Conditions of Use set forth in the External User Access Agreement – ODOT’s ProjectWise Network form (<https://www.oregon.gov/ODOT/Business/ProjectWise/EUAA.docx>) as a condition of access to the ProjectWise Network.

Consultant shall submit a completed and signed form for every individual requiring access to ODOT for review and approval. Individuals with approved accounts will be provided access only to appropriate folders specific to the Project that they have been contracted to work on. Consultant, its subcontractors and each individual seeking or having access to ODOT’s ProjectWise network shall follow the procedures provided in the Contract Consultant and External User Roles, Responsibilities and Security Requirements – ODOT’s ProjectWise Network (as may be revised from time to time by ODOT) <https://www.oregon.gov/ODOT/Business/ProjectWise/EURR.pdf>.

Consultant shall promptly send notice to ODOT at [ProjectWiseAdmin@odot.oregon.gov](https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp) to remove ProjectWise access for individuals that are no longer employed or that are reassigned or that otherwise no longer need access to ProjectWise for the Project. ODOT will send an attestation request to Consultant every 30 days (or such other period ODOT deems appropriate) to validate the list of individuals (including employees, subcontractor employees or other agents) with access to ODOT’s ProjectWise network. Consultant shall respond in writing to ODOT within 3 business days of any such validation request.

1. **Correct Use of ProjectWise**

Any person approved for accessing and using ODOT’s ProjectWise network on behalf of Consultant acquires the status of an “Account Holder”. Consultant shall require each Account Holder to: a) comply with the Terms and Conditions of Use set forth or incorporated in the External User Access Agreement – ODOT’s ProjectWise Network form, and b) receive appropriate training in the proper use of ProjectWise and follows the Contract Consultant and External User Roles, Responsibilities and Security Requirements – ODOT’s ProjectWise Network. ODOT reserves the right to monitor Account Holder activity within ODOT’s ProjectWise network and may suspend or terminate any Account Holder ODOT, in its sole discretion, determines to be in violation of the Terms and Conditions of Use.

1. **Responsibility for ProjectWise Functioning**

ODOT provides use of ODOT’s ProjectWise Network “as is”. ODOT does not warrant that the information or access thereto will be error free, uninterrupted or meet Consultant’s needs, nor does ODOT make any representation or warranty regarding the accuracy or completeness of the information. ODOT is not responsible for any damage that may occur due to error, omission, lack of timeliness or any other cause, of the information contained on ODOT’s ProjectWise network or other sites accessible from it. ODOT does not assume any responsibility for information added to the site by Account Holders. ODOT disclaims any liability arising from interferences or interruptions, viruses, telephone faults, malicious damage by third parties, electronic system downtime, overloading of the Internet or any cause beyond the control of ODOT. ODOT reserves the right to temporarily suspend access to ProjectWise, without notice, because of maintenance, repair, or any other reason deemed necessary for the proper functioning of ODOT’s ProjectWise network.

1. **Liability**

In no event shall the State of Oregon, the Oregon Transportation Commission and its members, ODOT, or their officers, agents and employees be liable for any claims, suits, actions, losses, liabilities, damages, costs and expenses, including attorney fees, of whatsoever nature, resulting from or arising out of Consultant’s use of ODOT’s ProjectWise network.

Consultant’s indemnification, defense and hold harmless obligations under its Contract or Price Agreement with ODOT shall apply to the terms, conditions and requirements of this ProjectWise Exhibit and the acts and omissions of Consultant or its subcontractors, or their respective agents or employees, respecting ProjectWise.

1. **Firewall, Virus and Malware**

Consultant will at all times maintain an active and current firewall protection in place for Account Holders who are accessing and using ODOT’s ProjectWise application. Consultant will at all times maintain an active and current Virus and Malware protection on the individual machines and network being used by Consultant to access ODOT’s ProjectWise and shall require that such active and current Virus and Malware protection is maintained on machines and networks used for access to ProjectWise but not owned or controlled by Consultant. Whether external users are accessing ODOT’s ProjectWise data through a company-owned or personally-owned machine, ODOT reserves the right to quarantine any infected files, documents or other items that are found to contain a virus, malware, adware or otherwise harmful component. Consultant shall immediately notify ODOT in the event of a breach or security concern at their company. ODOT reserves the right to suspend user accounts, consultant accounts, or both, if they contain harmful software. ODOT also reserves the right to require Consultant to clean devices of harmful software. In the event of chronic infections ODOT reserves the right to deny future access to ODOT’s ProjectWise network.

1. **Optional ProjectWise Add-on**

Bentley Systems, Inc. (“Bentley”) has developed an add-on for ODOT’s ProjectWise network. The add-on is available for use by Consultant’s employees, subcontractor employees, or other agents and users that have access to ODOT’s ProjectWise network, but installation and use of the add-on is not mandatory. The add-on creates a hook for ODOT’s required document name and description conventions, which eliminates the need for copying and pasting. The add-on is located between the Attributes and General tab of the document properties. By downloading or using this add-on, and as a condition of its use, Consultant understands and agrees that this add-on is provided for use “as is”.  Neither Bentley nor ODOT represents or warrants that access to or use of the add-on will be error free, uninterrupted or meet the user’s needs.  Neither Bentley nor ODOT is responsible or liable for any damage to any person or party that may occur due to error, omission, lack of timeliness or any other cause related to use of the add-on.  Bentley and ODOT each expressly disclaim all responsibility and liability arising from interference or interruptions, viruses, telephone faults, malicious damage by third parties, electronic system downtime, overloading of the Internet or any other cause related to use of the add-on.  Bentley and ODOT reserve the right to temporarily or permanently suspend access to this add-on, without notice. This add-on is not supported by Bentley or ODOT and users should consult their IT department before installing.

**Exhibit M - AASHTOWare Project Application**

**(March 2022)**

1. **AASHTOWare Project Application Access and General Requirements**

Consultant shall include the provisions set forth in this Exhibit in any subcontract that will require subcontractor access to AASHTOWare Project Application (“AWProject”).

Consultant shall use AWProject for electronic submittal and receipt of data as necessary for the Project. As a precondition for access to AWProject, Consultant employees, subcontractor employees, or other agents must have an ODOT-approved ProjectWise account. For a ProjectWise account, follow processes under “Request Access” at [https://www.oregon.gov/odot/Business/Pages/ProjectWise.aspx](https://www.oregon.gov/ODOT/Business/OCR/Pages/Forms.aspx).

Each individual that requires access to AWProject must:

* Agree to the Terms and Conditions set forth in the External User Access Agreement – AASHTOWare Project Application (“EUAA”) [[https://www.oregon.gov/odot/Business/AASHTOWare/AWP\_EUAA.pdf](http://www.oregon.gov/ODOT/Business/Procurement/DocsSOW/CA_cei.doc)] and click the “SUBMIT” button to electronically submit a completed EUAA to ODOT (at [AWPAdmin@odot.oregon.gov](https://www.ecfr.gov/current/title-49/subtitle-A/part-26)) for review and approval, and
* Complete ODOT’s online training and certification requirements specified at <https://www.oregon.gov/odot/Business/Pages/AW-Estimation.aspx>.

Individuals with approved accounts will be provided access only to appropriate data and user screens specific to the Project that they have been contracted to work on. Consultant, its subcontractors and each individual seeking or having access to AWProject shall follow the procedures provided in the External User Roles, Responsibilities and Security Requirements –AWProject Application (“EURR”) (as may be revised from time to time by ODOT): [https://www.oregon.gov/odot/Business/AASHTOWare/AWP\_EURR.pdf](https://www.oregon.gov/ODOT/Business/OCR/Pages/Forms.aspx).

Consultant shall promptly send notice to ODOT at [AWPAdmin@odot.oregon.gov](https://www.oregon.gov/ODOT/Engineering/Docs_TrafficEng/OTTCH-v2011.pdf) to remove AWProject access for individuals (including employees, subcontractor employees, or other agents) that are no longer employed or that are reassigned or that otherwise no longer need access to AWProject for the Project. ODOT will send an attestation request to Consultant every 30 days (or such other period ODOT deems appropriate) to validate the list of individuals (including employees, subcontractor employees or other agents) with access to AWProject. Consultant shall respond in writing to ODOT within 3 business days of any such validation request.

1. **Correct Use of AWProject**

Any person approved for accessing and using AWProject on behalf of Consultant acquires the status of an “Account Holder”. Consultant shall require each Account Holder to: a) comply with the Terms and Conditions of Use set forth or incorporated in the EUAA, and b) receive appropriate training in the proper use of AWProject and follows the EURR. ODOT reserves the right to monitor Account Holder activity within AWProject and may suspend or terminate any Account Holder ODOT, in its sole discretion, determines to be in violation of the Terms and Conditions of Use.

1. **Responsibility for AWProject Functioning**

ODOT provides use of AWProject “as is”. ODOT does not warrant that the information or access thereto will be error free, uninterrupted or meet Consultant’s needs, nor does ODOT make any representation or warranty regarding the accuracy or completeness of the information. ODOT is not responsible for any damage that may occur due to error, omission, lack of timeliness or any other cause, of the information contained on AWProject or other sites accessible from it. ODOT does not assume any responsibility for information added to the site by Account Holders. ODOT disclaims any liability arising from interferences or interruptions, viruses, telephone faults, malicious damage by third parties, electronic system downtime, overloading of the Internet or any cause beyond the control of ODOT. ODOT reserves the right to temporarily suspend access to AWProject, without notice, because of maintenance, repair, or any other reason deemed necessary for the proper functioning of AWProject.

1. **Liability**

Consultant shall be liable for any damage caused by AWProject use, intrusion or illegal or unauthorized access by Consultant or its subcontractors, or their respective agents or employees. In no event shall the State of Oregon, the Oregon Transportation Commission and its members, ODOT, or their officers, agents and employees be liable for any claims, suits, actions, losses, liabilities, damages, costs and expenses, including attorney fees, of whatsoever nature, resulting from or arising out of Consultant’s use of AWProject. Consultant’s indemnification, defense and hold harmless obligations under the standard terms and conditions of the Contract or Price Agreement shall apply to the terms, conditions and requirements of this AWProject Exhibit and the acts and omissions of Consultant or its subcontractors, or their respective agents or employees, respecting AWProject.

1. **Firewall, Virus and Malware**

Consultant will at all times maintain an active and current firewall protection in place for Account Holders who are accessing and using AWProject. Consultant will at all times maintain an active and current virus and malware protection on the individual machines and network being used by the Consultant to access AWProject and shall require that such active and current virus and malware protection is maintained on machines and networks used for access to AWProject but not owned or controlled by Consultant. Whether external users are accessing AWProject data through a company-owned or personally-owned machine, ODOT reserves the right to quarantine any infected files, documents or other items that are found to contain a virus, malware, adware or otherwise harmful component. Consultant shall immediately notify ODOT in the event of a breach or security concern at their company. ODOT reserves the right to suspend user accounts, consultant accounts, or both, if they contain harmful software. ODOT also reserves the right to require Consultant to clean devices of harmful software. In the event of chronic infections ODOT reserves the right to deny future access to AWProject.