



Multnomah County

Request for Proposals

P11-10272

Sellwood Bridge Project **Engineering Consulting Services**

October 8, 2010

Multnomah County

Proposal due date: Monday, November 8, 2010 4:00 p.m. Pacific Time

Proposals must be submitted to the physical address below.

Procurement Analyst:	Catherine Kwong, CPPB Senior Procurement Analyst	Gerald Jelusich, CPPB Senior Procurement Analyst
Address:	Multnomah County Purchasing Multnomah Building 501 SE Hawthorne Blvd., Suite 400 Portland, OR 97214	Multnomah County Purchasing Multnomah Building 501 SE Hawthorne Blvd., Suite 400 Portland, OR 97214
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County has scheduled a **Pre-Proposal Conference** on **October 18, 2010, at 9:30 am, at the Multnomah Building, 3rd Floor Room 315, 501 SE Hawthorne Blvd., Portland, OR 97214.** Attendance is not mandatory. The purpose of the conference is to provide additional information regarding this solicitation and to answer any questions Proposers may have. Regardless of information discussed at the pre-proposal conference, Proposers are cautioned that the official RFP requirements will change only by written addenda issued by County.

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The Contract includes terms, conditions and the following Exhibits:

- Exhibit A – Statement of Work
- Exhibit B – Compensation
- Exhibit C – Insurance
- Exhibit D – Influence and Debarment Provisions
- Exhibit E – Reserved
- Exhibit F – Special Terms & Conditions
- Exhibit G – Reserved
- Exhibit H – Conflict of Interest Disclosure
- Exhibit I – Errors & Omissions (E&O) Claims Process
- Exhibit J – Contact Information and Key Persons
- Exhibit K – Reserved

Section 1.0 SOLICITATION INFORMATION AND REQUIREMENTS

1.1 DEFINITIONS and SUMMARY OVERVIEW

1.1.1 DEFINITIONS

For purposes of this RFP:

ACT	Agency Coordination Team
BCC	Board of County Commissioners
CAC	Community Advisory Committee
City:	City of Portland
Contract:	The agreement between the County and Contractor, including its exhibits and other documents incorporated into it by reference.
Contractor:	The Proposer with whom the County enters into a contract as a result of this RFP process. This also includes subcontractors under the management of the Contractor.
County:	Multnomah County and its representatives
CM/GC:	Construction Manager/General Contractor. This has two meanings in this contract: <ol style="list-style-type: none">1. Refers to the Project Delivery Method wherein General Contractor participates in the Design Phase and provides a Guaranteed Maximum Price2. Refers to the Construction General Contractor (CM/GC Contractor).
DAP	Design Acceptance Phase: Preliminary design phase to take design to a 30% level with approval of affected jurisdictions
DBE	Disadvantaged Business Enterprise
ESB	Emerging Small Business
FHWA	Federal Highway Administration
MBE	Minority Business Enterprise
Metro:	Tri-County Regional Planning Authority
ODOT	Oregon Department of Transportation
PMT	Project Management Team
Proposer:	A consulting firm submitting a Proposal is referred to as Proposer in this document.
PSC	Public Stakeholder Committee
SAS	Senior Agency Staff Committee
SOW:	Statement of Work: The specific provision in the final Contract which sets forth and defines in detail the agreed-upon objectives, expectations, performance standards, Services (as that term is defined in the Contract), deliverables, schedule for delivery and other obligations.

Stakeholder: Individuals, businesses, associations, agencies and other entities either officially participating in the Sellwood Bridge project or potentially impacted by the process.

WBE Women Business Enterprise

1.1.2 CONTRACT OVERVIEW

Multnomah County (“County”) is seeking one (1) professional services consultant (Contractor) to provide engineering consultant services for the complete final design and construction assistance engineering for the Sellwood Bridge Project. An outline description of the anticipated services is described in the Statement of Work, Exhibit A of the attached contract (Attachment C).

All firms submitting a Proposal are referred to as Proposers in this document. Proposers responding to the RFP do so solely at their expense, and County is not responsible for any Proposer expenses associated with the RFP, including but not limited to expenses that any Proposer incurs in (a) preparing and submitting its Proposal, and (b) negotiating with the County after submitting its proposal. After negotiations, the awarded Proposer will be designated as Contractor. The resulting agreement will be set-up as a project-specific Contract.

Project Phases: There are four phases of consulting work associated with the Sellwood Bridge project:

- **Phase 1:** Project planning and National Environmental Policy Act (NEPA) process, production of Environmental Assessment (EA) or an Environmental Impact Statement (EIS) in accordance with Oregon Department of Transportation (ODOT) and Federal Highway Administration (FHWA) policies and procedures (2005-2010, nearing completion). By others.
- **Phase 2:** Design Acceptance Phase. 30% Preliminary Design and Type, Size and Location (T S & L) study for the preferred alternative and issue a report (2010-2011). By others.
- **Phase 3:** Complete Final Design and issue Final Plans, Specifications, Schedule and Estimate (2010-2012).
- **Phase 4:** Provide Construction Engineering assistance during the replacement construction project. (2011-2015)

The work under Phases 1 is complete. The work under Phase 2 is currently under way and is expected to be complete by January, 2011. Multnomah County expects to make a single award to the Proposer who is deemed best qualified to perform the work of Phase 3 and Phase 4. Without limiting the County’s termination rights under the Contract, the County reserves the right to cancel all or parts of Phase 4 of this contract, if in the best interest of the County. Multnomah County makes no commitment and is under no obligation to hire the same Contractor or continue the contract of any Contractor from one phase to the next. Each added phase will require an amendment to the Contract.

Contract Duration: The Contract is anticipated to be effective by January 1, 2011 and the Contractor’s period of performance is expected to last approximately 8 years. Contingent upon County’s need and Contractor’s performance, County reserves the right to amend the Contract for additional time as necessary for project completion.

Contract Not-to-Exceed (NTE) Amount: The estimated value of the Contract awarded from this RFP (for Phase 3) is approximately \$20,000,000 and will be negotiated after the award. Contingent upon County’s need, Contractor’s performance, and the availability of approved funding, the County reserves the right to amend this Contract (within the scope of the project described in this RFP) for additional tasks, project phases and compensation as necessary to complete the project. Proposers are advised that the award and potential dollar amount of the Contract under this RFP are contingent upon approval of funding from Multnomah County, the Oregon Legislature, City of Portland, and others for County’s use under this RFP as determined by County in its sole discretion.

Contract Payment: Payment will be made for completion of, or acceptable monthly progress on, tasks and deliverables in conformance with Contract requirements and all applicable standards. The method of compensation will be based on reimbursement of actual effort based on Contractor’s hourly rates, up to a maximum not-to-exceed amount. County reserves the right to negotiate or amend the method of payment and not-to-exceed amount in the final Contract. The selected Proposer and County will negotiate the final Statement of Work that is in the best interest of the County, within the scope of services set forth herein, for inclusion in the final Contract. For further information see RFP Attachment C - Contract, **Exhibit B** “Compensation”.

Offer Period: A Proposer's Proposal is a firm offer, irrevocable, valid and binding on the Proposer for not less than 180 days following the closing date for this RFP. County may request, orally or in writing that Proposer extends, in writing, the offer period.

1.1.3 GENERAL BACKGROUND INFORMATION

The existing Sellwood Bridge is five miles south of downtown Portland, Oregon. It connects Highway OR 43 at its west end to Highways US 99E and OR 224 to the east. It also connects several SE Portland communities, such as the Sellwood neighborhood and suburban Clackamas County, with downtown Portland, Lake Oswego and Washington County. Its importance is evident in the current usage rate of 30,000 vehicles per day and approximately 1,300 trucks even when the weight limit was restricted to 32 tons.

The 85-year-old two-lane Sellwood Bridge has been experiencing deterioration in the reinforced concrete deck girder approach spans and the concrete deck over the steel truss. This resulted in Multnomah County posting a new load restriction of 10 tons maximum in 2005. The structural sufficiency rating is 2 (out of 100 possible points). The County has conducted a physical condition inspection, structural analysis, and repair alternatives analysis on the existing bridge.

Between 2006 and 2009, the County led a National Environmental Policy Act (“NEPA”) planning process to develop alternatives and select a preferred alternative. The process included a Community Task Force which was composed of stakeholders representing a broad range of community interests. Also, a Policy Advisory Group composed of elected officials from Multnomah County, the City of Portland, Metro, ODOT, FHWA, TriMet, Clackamas County, the City of Milwaukie and the Oregon Legislature met at key decision points.

After the Record of Decision (“ROD”), Multnomah County expects to immediately begin preliminary design on the preferred alternative described in the Final EIS. The Final EIS is available on CD to proposers from the County upon request.

Preliminary Design will culminate in the Design Acceptance Phase (“DAP”) submittal which includes the Preliminary Design for the FEIS preferred alternative and a Type, Size and Location Report for the bridge.

1.1.4 PURPOSE AND INTENT

The primary purpose of the Sellwood Bridge Replacement Project (Project) is to provide a bridge that provides safe and efficient access for people, goods, and service vehicles across the Willamette River.

The bridge must serve for 75 to 100 years and meet current design standards for cars, trucks, pedestrians and bicycles. In addition, the new bridge should provide adequate capacity for anticipated future traffic volumes, heavy loads, and streetcars. The bridge is critical to the welfare of the daily commuters because it provides connection for vehicular access to several communities. This crossing, Highway 43 and the Westside interchange must remain open for traffic, bikes and pedestrians to use throughout construction.

For Phase 3 of this project, Multnomah County intends to hire a consultant or team of consultants (Contractor) who will provide engineering support for the completion of Final Design and issue packages of Final Plans, Specifications, Schedules and Estimates for the County, ODOT and FHWA. The Contractor will start from the County’s DAP submittal. The Contractor shall include a public involvement process as a part of the Final Design. Providing input into the design will be a Project Management Team (“PMT”), an interagency Senior Agency Staff (“SAS”) group, and a Community Advisory Committee (“CAC”).

The County also expects to hire a Construction Manager/ General Contractor (CM/GC) to join the Project Management Team. Selection of the CM/GC is expected to occur shortly after the successful Engineering proposer is selected.

1.1.5 SCHEDULE

The tentative schedule of milestones for the Phase 3 work is as follows:

<u>Action</u>	<u>Start Date</u>	<u>Completion Date</u>
▪ Record of Decision		Sept, 2010
▪ Phase 2 (Preliminary Design)	Oct, 2010	Dec 2010 (By others)
▪ 30% Design and TS&L Submittal		Dec 2010 (By others)
▪ Acceptance by PSC & County Board		Feb 2011
▪ Acceptance by ODOT, FHWA		Feb 2011
▪ Phase 3 Design	Feb 2011	July 2013 (by A&E firm)
▪ Phase 3 Design for CM/GC Pricing*	Feb 2011	Jan 2012 (by A&E firm)
▪ Establish GMP for Construction	Jan 2012	Apr 2012 (by A&E firm)
▪ Phase 4 Construction	July 2012	Dec 2016

* Two critical Multnomah County objectives on this project are:

1. Establishing with the CM/GC a Guaranteed Maximum Price (“GMP”) for construction in April 2012, and before commencement of in-water work. The selected Contractor, working with the CM/GC and County, will complete final design deliverables that are sufficient to support GMP pricing by the CM/GC in January, 2012. The County’s current intermediate, milestone schedule for critical, final design deliverables in support of this objective are:

June 15, 2011:

- 1) 60% in-water foundation design

September 1, 2011:

- 1) 90% in-water foundation design
- 2) 60% bridge and approach structure design

January 1, 2012:

- 1) 100% in-water foundation design
 - 2) 90% bridge and approach structure design
 - 3) 60% Westside Interchange design
 - 4) 60% all remaining design
2. Completing an Early Works final design package, in collaboration with the CM/GC and County, for commencing in-water construction work in July 2012. The Early Works package would include all necessary permitting and final design of in-water foundations. The CM/GC would be responsible for cofferdam design and installation, and foundation construction.

1.1.6. DETAILED PHASE 3 DESCRIPTION

A. PHASE 3 GOALS

The primary deliverables of Phase 3 shall be final plans, specifications, engineer's estimate (PS&E) meeting all requirements of a Federal Aid construction contract and complying with all standards of the Oregon Department of Transportation (ODOT) and County.

Contractor is expected to oversee and direct the complete final design of the project to obtain the greatest long-term value for the people of Multnomah County, the region and the state, and demonstrate the prudent expenditure of public funds within the constraints of the project program, context and budget. In pursuing this goal, Contractor, with County's assistance, commits to:

- Develop a design that is appropriate for the context of the project and the nature of its function, both present and future.
- Engage with the public and appropriate jurisdictions to ensure that high priority functionalities are met.
- Assure that the project is completed on time and within budget.
- Avoid expenditures for effects which are disproportionate to the project as a whole.
- Strive to reduce the construction cost of the project while keeping life-cycle costs low.
- Apprise County throughout the Project concerning the economic impact of all design decisions.
- Embody sound and cost-effective sustainability principles in the Services performed under the Contract (See Section E below).

B. SUMMARY OF TASKS

See Statement of Work in Attachment C, Exhibit A.

C. ORGANIZATIONAL FORMAT

The Sellwood Bridge Project involves a number of organizational groups/committees that are charged with:

managing the project,
vetting alternatives,
providing jurisdictional coordination,
providing oversight, and
decision-making.

Contractor is expected to work with the following groups/committees:

1. **Project Management Team (“PMT”):**

The Project Management Team will be composed of County staff including Bridge Services Manager, County Engineer, Project Manager, Public Affairs Officer; Contractor (Design) Project Manager (the Proposer) and a CM/GC Project Manager (County will have a separate contract with the CM/GC firm). The Project Management Team will meet weekly.

The Owner’s Representative (“OR”) will plan, prepare for, lead and document these meetings, track unresolved issues and actions items, and will log all decisions. The Project Management Team role:

- Provide day to day project management
- Manage the process, budgets, and schedule
- Handle public relations, press releases, public meetings
- Advise the County regarding appropriate direction to the Contractor
- Document the decision process
- Recommend solutions
- Complete the process in a timely manner, and submit the Final Design packages.

2. **Agency Coordination Team (“ACT”):**

The County has formed an Agency Coordination Team with staff level representatives from involved jurisdictions: the City of Portland, Metro, ODOT, FHWA and others. The OR will lead these meetings. The ACT meets approximately monthly, and the main responsibility is to coordinate issues regarding jurisdictional policies.

3. **Community Advisory Committee (“CAC”):**

The County has formed a Community Advisory Committee with representatives from a broad range of stakeholder interests: neighborhood associations, business groups, auto commuter and bicyclist groups, environmental groups, historic and architectural groups, and other significant interested groups. The Contractor will plan, prepare for, lead and document these meetings, track unresolved issues and actions items, and will log all decisions. The CAC will meet as required and make recommendations to the Project Management Team.

The CAC’s role:

- Represent and report to constituencies
- Help define goals and issues
- Suggest concepts and alternatives
- Develop consensus
- Recommend design solutions

The CAC may form specialized Ad-Hoc Working Groups composed of technical experts in a field of interest that will advise the CAC on their research and recommendations on specific issues. Working Groups will meet as needed. Potential Working Groups:

- Bridge Type
- Bicyclist / Pedestrian
- Aesthetics
- Transit

If required, the County will request technical expertise from the Contractor to research and investigate issues and address questions of feasibility.

4. **Senior Agency Staff committee (“SAS”):**

The County has formed an interagency Senior Agency Staff committee of Transportation Directors from local agencies. The contractor will plan, prepare for, lead and document the meetings of the SAS. The SAS has the main responsibility of reviewing and commenting on the options and alternatives under consideration by the CAC and ensuring that they are feasible. The SAS will meet once monthly and make recommendations to the Public Stakeholder Committee.

The SAS’s Role:

- Review the preliminary design
- Represent jurisdictional concerns
- Provide technical and political expertise
- Provide understanding of regulations/permits
- Test the feasibility of design concepts
- Suggest design concepts
- Recommend design solutions
- Report to their Public Stakeholder Committee members

5. **Public Stakeholder Committee (“PSC”):**

The PSC is composed of key regional elected officials and directors. The Contractor will plan, prepare for and document the PSC meetings. The PSC shall meet as needed and its members report to the leadership boards of their jurisdiction.

The PSC role:

- Review and approve the preliminary design
- Provide direction on political/policy issues
- Provide regional oversight
- Liaison with other officials in their jurisdiction
- Provide overall project leadership and oversight

6. **Board of County Commissioners (“BCC”)**

The BCC is composed of the 5 elected commissioners of Multnomah County.

The BCC role:

- Provide overall Project leadership and oversight
- Review and approve the preliminary design
- Provide direction on political/policy issues
- Approve funding and spending
- Approve intergovernmental agreements

7. **Contractor's Engineering Consultant Team:**

The Contractor will field a team of professionals in various specialties to provide plans, specifications and estimates and assist the Project Management Team in making informed decisions necessary for reaching Final Design. The Contractor has a primary responsibility to provide technical expertise and produce final design. In addition, the Contractor shall participate in, review and comment on the concepts and solutions under consideration by the CAC and SAS, ensuring that they are feasible.

Contractor's Roles:

- Review FEIS and Design Acceptance Package (DAP) and assist CAC, SAS and Project Management Team through the resolution of unresolved issues.
- Provide 60%, 90% and final design documents for review by County, ODOT and other jurisdictions as directed.
- Develop Early Work construction packages, as appropriate.
- Document all significant decisions in technical memos.
- Support County's public involvement program with strategic analysis and presentation materials.
- Work in cooperation with CM/GC Project Manager to develop construction methods that are efficient
- Design disciplines expected to include, but are not limited to:
 - Major River Crossing Structures
 - Roadway / Interchange
 - Geotechnical / Landslides / Rock Cuts
 - Environmental
 - Traffic
 - Permits
 - Utilities
 - Architecture
 - Landscaping
 - Surveying
 - Hydrology/Hydraulics
 - Storm water
 - Electrical
 - Cost Estimating
 - Constructability

D. DESIGN STANDARDS

ODOT shall designate the basic premises and criteria for design of state highways. County and City of Portland shall designate the basic premises and criteria for other roadway sections. The design shall utilize the most recent ODOT and County design standards and Standard Drawings. All specifications for the project shall be in compliance with the Oregon Standard Specifications for Highway Construction and modified by the Special Provisions as necessary.

Construction Plans and Specifications format shall conform to standard practices of ODOT for plans prepared by its own staff. Procedures shall be consistent with the provision of the current editions of the various manuals pertaining to design, which are published or endorsed by ODOT and FHWA.

Contractor shall make such minor changes, modifications, or revisions in the details of the work as may be approved by ODOT and County consistent with the progression of the development of the work as defined in the detailed project schedule submitted by Contractor. When alternatives are considered, the County and ODOT shall jointly have the right of selection.

The County, ODOT and FHWA reserve the right to initiate conferences within this scope of services with Contractor to review the work in progress.

The County will assign a Design Team Manager to provide coordination with Contractor and to monitor the work in progress. Work shall be reviewed and approved for conformance with FHWA and ODOT office practices, standards and related report formats during the preliminary engineering and design phases of the project.

Additional design standards, guidelines, requirements, and methodologies to be used are prescribed in the latest editions of the publications listed below. The list is not intended to be exhaustive.

General and Administrative

- The Oregon Action Plan for Transportation
- Standard Specifications for Highway Construction

Structural

- Load and Resistance Factor Design (LRFD) Bridge Design Specifications with ODOT Supplemental, AASHTO
- Bridge Office Practice Manual
- Retaining Structures Manual

Hydraulics

- Hydraulic Design and Reporting Writing for Project Designed by Consultants

Geotechnical

- Soil and Rock Classification Manual
- Foundation Design and Report Writing for Projects Designed by Consultants
- Load and Resistance Factor Design (LRFD) Bridge Design Specifications with ODOT Supplemental, AASHTO
- Standard Specifications for Highway Bridges with ODOT Supplemental, AASHTO
- Final Report Seismic Design Mapping, State of Oregon, Geomatrix
- Manual on Subsurface Investigation, AASHTO

Environmental

- Environmental Guide Book, U.S. Department of Transportation, FHWA
- HCD Stormwater On-Line Guidance – ESA Guidance for Analyzing Stormwater Effects NOAA Fisheries
- Hydraulic Manual

Roadway

- Highway Design Manual
- A Policy on Geometric Design of Highways and Streets, AASHTO
- Contract Plans Development Guide

- Guide to Region/Consultants/Local Agency for the Preparation of Highway Contract Specifications for Oregon State Highway Division (OSHD)
- Pavement Design Guide
- Guide for Design of Pavement Structural Manual
- Guide for Pavement Design of New Work Sections, Reconstruction, and Existing Pavement Rehabilitation or Overlay
- Oregon Bicycle and Pedestrian Plan
- Standards Manual of the Oregon Utilities Coordinating Council.
- ODOT Region 1 Utility Specialist Manual.

Right-of-Way

- Right-of-Way Manual
- Local Public Agency (LPA) Right-of-Way Acquisition Manual, approved by ODOT.

E. SUSTAINABILITY

The County seeks to partner with vendors who demonstrate a commitment to environmental stewardship.

It is expected that the successful Proposer incorporates sustainable practices into all phases of design while meeting the requirements of the contract resulting from this procurement.

1.2 QUESTIONS AND CLARIFICATIONS

1.2.1 RFP DOCUMENT

The Microsoft Word document of the RFP is posted on the Multnomah County Purchasing website: www.multcopurch.org. In the event of discrepancies between the Proposer's copy and the County's copy of the RFP, the County's copy on file at the Purchasing office supersedes.

1.2.2 PROPOSER QUESTIONS

All inquiries, whether relating to the RFP process, administration, deadline or award, or to the intent or technical aspects of the services **must be submitted in writing to Catherine Kwong and Gerald Jelusich, the Senior Procurement Analysts identified on page 1 of this RFP** (mail, fax or email are acceptable). **All questions must be received not later than 10 calendar days prior to the proposal submittal deadline.**

Answers to questions County receives and, in its sole discretion, determines to be substantive, will be issued as official addenda to this RFP to ensure that all Proposers base their Proposals on the same information. When appropriate, as determined by County in its sole discretion, revisions, substitutions, or clarifications of the RFP or attached terms and conditions will be issued as official addenda to this RFP. **Changes or modifications to this RFP shall be binding on County only if in the form of written addenda issued by the County.**

1.2.3 ADDENDA

If Multnomah County determines that additional information or clarification is necessary, such information or clarification will be supplied in addenda that will be sent by facsimile transmission, mail or e-mail to all persons or firms that have received this Request for Proposal from Multnomah County Purchasing, registered on the Purchasing website for this solicitation or who attended the pre-proposal conference. All such addenda shall have the same binding effect as though contained in the main body of the Request for Proposals. Oral instructions or information concerning the specifications from County managers, employees or agents to prospective Proposers shall not bind Multnomah County. The Purchasing Manager shall issue all Addenda not less than five (5) calendar days prior to the proposal deadline.

1.3 PROTESTS

1.3.1 SOLICITATION (RFP) PROTEST REQUIREMENTS

Potential Proposers may submit a written protest of anything contained in the RFP (including the Contract) and may request a change to any provision, specification or Contract term contained in the RFP. This protest should address any requirement, provision or feature of this RFP or the Contract that the potential Proposer believes is ambiguous, unclear, unfair, contrary to law or likely to limit competition. Potential Proposers must submit protests concerning the RFP and requests for change to any particular provisions, specifications, or Contract terms contained in the RFP, to **Gerald Jelusich**, the Procurement Analyst identified on page 1. **Protests and requests for change must be submitted in writing not later than 10 calendar days prior to the proposal submittal deadline.** County will not consider any protest to the RFP or request for change submitted after this deadline. The purpose of this deadline is to permit the County to timely correct any term or condition in this RFP that may be unlawful, improvident, unduly restrictive of competition or otherwise inappropriate. By permitting corrections before opening Proposals, much of the waste inherent in protests and in the possible rejection of all Proposals should be minimized. As a result, failure of a Proposer to protest in accordance with this section shall be deemed acceptance of the terms of this RFP and Contract and a waiver of Proposer's rights to later contend that it is ambiguous, unclear, unfair, contrary to law or likely to limit competition.

Each protest and request for change must include the reasons for the protest or request (supported by factual documentation) and any proposed changes to the RFP provisions, specifications or Contract terms. County will resolve all timely submitted protests in accordance with OAR 137-048-0240(3). County will address all timely submitted requests for change within a reasonable time following County's receipt of the request and once addressed, will promptly issue a written decision on the request to the Proposer who submitted the request.

1.3.2 AWARD PROTEST REQUIREMENTS

Every Proposer who submits a Proposal shall be notified of its selection status. Any Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer(s) must submit a written protest of the selection to the Procurement Analysts identified on page 1 of this RFP within **7 calendar days after the date of the selection notice.** County will not consider any protest submitted after this submittal deadline. County will not consider award protests based on

anything contained in the RFP – solicitation protests must be submitted during the solicitation protest period described in section 1.3.1.

Protesting Proposer may protest only deviations from laws, rules, regulations, or procedures. Protests must specify the grounds for the protest including the specific citation of law, rule, regulation, or procedure upon which the protest is based. The judgment used in scoring by individual evaluators is not grounds for protest. **Disagreement with the scores awarded by evaluators may not be protested.**

Protesting Proposer must claim that protesting Proposer is the highest ranked Proposer or is within the class of higher ranked Proposers with whom County will negotiate Contracts because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the Services. County will resolve all timely submitted protests in accordance with OAR 137-048-0240(3). Proposers who have been notified that they are not selected may contact the Procurement Analysts identified on page 1 to make an appointment to view the RFP files and request copies of the evaluation documentation.

1.3.3 COSTS AND DAMAGES

All costs of a protest shall be the responsibility of the protestor and undertaken at the protestor's expense. The County shall not be liable for the Proposer's damages or costs for filing the protest or to any participant in the protest, on any basis, expressed or implied.

1.4 “PASS/FAIL” PROPOSAL SUBMITTAL REQUIREMENTS

Each Proposal must comply with the following **Pass/Fail** criteria. Proposals not meeting ALL **Pass/Fail** criteria shall be rejected.

1.4.1 PROPOSAL SUBMITTAL DEADLINE (PASS/FAIL)

Proposals must be delivered to **Multnomah Building, 501 SE Hawthorne Blvd., Suite 400, Portland OR 97214** (the “Issuing Office”) and received by the Issuing Office by the submittal deadline (per official clock of Issuing Office). County will reject any late or mis-delivered proposal.

1.4.2 COVER SHEET (PASS/FAIL)

The Proposal must include a completed Cover Sheet in the form as set forth in **Attachment A** of this RFP, signed by a duly authorized representative empowered to bind the Proposer (**at least one original signature**). Any cover letters submitted in addition to the required Cover Sheet will not be forwarded to the evaluation committee.

1.4.3 MINIMUM QUALIFICATIONS (PASS/FAIL)

Please include responses to the following Minimum Qualifications in the space provided on the Proposal Coversheet (RFP Attachment A):

REGISTERED PROFESSIONAL ENGINEER

Contractor may not provide engineering services unless the work is under the full authority and responsible charge of an Oregon Registered Professional Engineer (“PE”) as defined in ORS 672.002(2). The PE must be currently registered in active status with the Oregon State Board of Examiners for Engineering and Land Surveying, and must supervise and direct the work proposed under the Contract. As required by Oregon law, Contractor shall place their official Oregon Registered PE certified seal and signature on all reports, maps, design drawings, and specifications delivered to County. **In the space provided on the Proposal Cover Sheet (RFP Attachment A), list the name and registration number of at least one Oregon Registered Civil Engineer intending to perform engineering services under the Contract.**

1.5 OTHER PROPOSAL SUBMITTAL REQUIREMENTS

1.5.1 FORMAT & PAGE LENGTH LIMITATION FOR PROPOSAL SUBMITTALS

- a.** Proposals must use 11-point minimum font size for the substantive text, including text in tables and resumes. Proposers may use their discretion for the font size of other materials that do not include substantive text (e.g. graphics, picture or graphics captions, and organizational charts).
- b.** Proposals must be submitted without cover-stock or binding (except for staple or binder clip). Print double-sided (on both sides of the paper).
- c.** The Proposal shall be organized in accordance with the list of scored criteria in this Section. **The Proposal must not exceed 30 pages, excluding** Cover Sheet (Attachment A) and all required forms and attachments. One Page is defined as: one side of a single 8-1/2" x 11" sheet of paper that meets the font size requirements stated in subsection “a” above. Any page over this size will be counted as more than 1 page, depending on the size of the page. Any page or partial page with substantive text, tables, graphics, charts, resumes, etc., will be counted as 1 page.
- d.** The Proposer may choose how to allocate pages between any sections, within the overall page limit. **If Proposer submits a proposal exceeding the page limit, County will consider the pages up to that allowable number and discard all subsequent pages.**

1.5.2 QUANTITY OF PROPOSALS & ELECTRONIC COPIES

Proposer must submit the following items to County at the address indicated on page 1:

- a. (REQUIRED) Ten (10) hard copies of the Proposal with Proposal Cover Sheet** (RFP Attachment A) attached as the first page of the proposal;
- b. (REQUIRED) 1 CD** that includes a single PDF file of the Proposal and the signed Proposal Cover Sheet (RFP Attachment A). County prefers that **the size of the PDF file be compressed so it does not exceed 4 megabytes.**

1.5.3 CONFLICT OF INTEREST (COI) DISCLOSURE (REQUIRED)

Proposer must be in compliance with the ODOT COI Guidelines:

- **(REQUIRED) All Proposers must indicate on Attachment A - Proposal Cover Sheet** (by checking the appropriate checkbox in the signature certification section) that the Proposer, its

subcontractors and all other Associates (as that term is defined in the ODOT COI Guidelines) are in compliance with all COI disclosure guidelines.

- **If there are no COI disclosures required** for Proposer, its subcontractors or other Associates, per the ODOT Conflict of Interest Guidelines, then submittal of COI Disclosure form(s) is not required.
- **If there are any disclosures required** per the ODOT Conflict of Interest Guidelines for Proposer (including subcontractors, or any other of the Proposer's Associates, as defined per the ODOT Conflict of Interest Guidelines), Proposer must submit a signed COI Disclosure Form with the Proposal. The Proposer shall incorporate in each required COI Disclosure Form any COI disclosure information provided by its staff, and attach COI Disclosure Forms from each of its subcontractors and any other Associates that require disclosures per the ODOT Conflict of Interest Guidelines.

The ODOT Conflict of Interest Guidelines and COI Disclosure Form are available at the following Internet site: <http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Forms> (under "Misc. Procurement Related Forms").

1.6 PUBLIC RECORDS

Multnomah County is required to disclose non-exempt public documents pursuant to ORS 192.410-192.505). ORS 192.502(4) exempts the County from disclosing information submitted in response to a solicitation where the information is such that it "should reasonably be considered confidential."

A Proposer who determines that information within a proposal meets the statutory requirement and desires that such information remain confidential shall mark the pages containing such information with the word "CONFIDENTIAL."

If a Proposer marks every page of a proposal as "CONFIDENTIAL" the statutory requirement is not met; any proposal so marked will not be deemed to have been submitted in confidence and, upon request, the entire proposal will be disclosed.

The County will keep properly marked information confidential unless ordered to release the information and materials by the District Attorney pursuant to ORS 192.460.

After award, the contract executed by the County and the successful Proposer will be a public document subject to disclosure. No part of the Contract can be designated as confidential.

Section 2.0 EVALUATION PROCESS & CONTRACTOR SELECTION

2.1 EVALUATION PROCESS

2.1.1 PROPOSAL EVALUATION

County will evaluate Proposals in accordance with this Section 2.0. County will review Proposals for conformance with the Pass/Fail and REQUIRED criteria identified in **sections 1.4 and 1.5**. Proposals meeting all Pass/Fail criteria (including submittal of all REQUIRED items in the time allowed) will be forwarded to an evaluation committee that will independently review, score and rank Proposals according to the Scoring Criteria set forth in **section 2.2**. The evaluation committee may, at its discretion, meet to discuss the Proposals, scoring and results.

Evaluation committee members shall finalize their scores and the results will then be assembled and totaled. At its sole discretion, the evaluation committee may reconvene and collectively review the scoring, making changes as the evaluation committee deems appropriate. Though original scoring will be done on an independent member-by-member basis, the evaluation committee members may change their scores, as they deem appropriate as a result of the discussions during any collective meeting. In the event there is a numerical tie, then the evaluation committee shall continue to meet and discuss the proposals until the scores reflect a single successful Proposer with the highest numerical score to be recommended to the County for award.

As stated, the evaluation committee will make a recommendation of award to the County after the evaluation is complete. Neither County nor the evaluation committee will evaluate any proposed prices for Services as part of the evaluation process.

The outcome of the evaluation process may, in County's sole discretion, result in:

- (a) notice to Proposer of selection, non-selection or rejection for Contract negotiation and possible award;
- (b) further steps to gather additional information for evaluation, (e.g. checking references, notice of placement on an interview list, requesting clarification); or
- (c) cancellation of the RFP and either re-issuance of the RFP in the same or revised form or no further action by County with respect to the RFP.

County may reject any or all Proposals and may cancel this RFP at any time if doing either would be in the public interest as determined by County. The County may waive any informalities, irregularities or minor defects as it deems appropriate. County is not liable for any costs a Proposer incurs while preparing or presenting the Proposal or during further evaluation stages. All Proposals will become part of the public file.

2.1.2 SIMILAR PROJECTS

A Proposer's performance in similar projects will be part of the evaluation and will be evaluated under Section 2.2.2, Evaluation Criterion of Technical Capabilities. Use the SIMILAR PROJECTS Form (Attachment B) to respond to Section 2.2.2, Question 3.

Multnomah County reserves the right to verify the information provided for each similar project and to ask follow-up questions. It is the responsibility of Proposers to provide a reference for each project who may be contacted to provide verification, additional information or to comment on the quality of service the Primary Team members have provided. If a representative from a reference is part of the evaluation committee, the Proposer may be asked to provide a substitute reference.

By providing a reference for each similar project, the proposer agrees to release references from any and all liability associated with providing information to Multnomah County, and agrees that responses to reference questions are confidential between Multnomah County and the references.

Multnomah County will make a maximum of two (2) attempts to reach each reference. If the reference cannot be reached, the County may ask the proposer for assistance in contacting the reference or an alternate reference. The County will make a maximum of two (2) additional attempts to reach the reference (or the alternate reference if one is provided). If these attempts are unsuccessful, the County will not make any further attempt to reach any other reference, which may result in a lower score for item 2.2.2.

2.1.3 INTERVIEWS

Interviews may be conducted and scored at the discretion of County. If interviews are conducted, the following will apply:

- Proposers with the highest scoring proposals will be invited to the interview.
- The number of Proposers selected for interviews is at the sole discretion of County.
- Interviews require physical attendance at County’s offices; however, County may elect to conduct interviews via teleconference or video conference. Further details will be included with notification of time and date of interviews, if conducted.
- Only Primary Team members listed in Section 2.2.2 of the proposal may participate in interview.

2.1.4 CLARIFICATIONS

County may require any clarification it needs to understand the Proposer’s Proposal. Any necessary clarifications which are in the best interest of County may be made before, during or after the Proposer’s proposal is evaluated. Clarifications may not be used to rehabilitate a non-responsive proposal.

2.2 PROPOSAL QUESTIONS AND EVALUATION CRITERIA

Scoring will be based on the evaluation criteria described below. Be clear and concise.

2.2.1 APPROACH AND PROJECT UNDERSTANDING

20 points

1. Describe your general understanding of the project’s issues, constraints and opportunities.
2. Discuss your approach to the proposed Project’s construction phasing plan for construction while maintaining continuous traffic flow, materials, means and methods.
3. Describe your general approach to a phasing construction of the bridge and interchange so that traffic is maintained throughout the project duration.

2.2.2 TECHNICAL CAPABILITIES

20 points

1. Provide an Organizational Chart with names of the Project Manager and the key members who will be performing the work on this Project, including subcontractors. Describe the responsibilities of five primary members (“Primary Team”): the Project Manager, Large Bridge Designer, Geotechnical Designer, Roadway Designer and Permitting Manager. Explain why these Primary Team members have been selected for the proposed project. Note: During the Contract period, changes to the Primary Team as identified by your proposal shall not be made without prior written approval of the County.
2. Provide concise, summary resumes of the Primary Team. List relevant qualifications, expertise, experience, licenses, and certifications. Describe the Primary Team’s experience, capability and resource capacity in the areas of major river crossings, geotechnical, road design, landslides, project management and permitting.
3. For each member of the Primary Team, list the last three (3) similar projects over \$25 million (in construction cost) that this member has worked on within the last 15 years, comparable to the requested services. Similar projects for the Large Bridge Designer team member must be projects with a construction cost over \$50 million. Provide the information for each team member using Attachment B. Attachment B forms are not counted in the overall page limit but are limited to one page per project.

2.2.3 CM/GC EXPERIENCE

10 points

1. Describe the experience of the Primary Team dealing with issues such as collaboration, responsiveness, change, flexibility, contractor-favored construction techniques, incorporating value engineering processes, and other needs. Include experience of similar projects utilizing the Construction Manager/General Contractor (CM/GC) or other alternative project delivery methods.
2. Describe how your firm will approach working with the CM/GC to create value engineering opportunities for the project. Please provide specific examples from previous projects within the last 10 years
3. Describe your overall plan for providing services in the pre-construction and construction phases in a CM/GC setting.

2.2.4 RISK IDENTIFICATION AND QUALITY MANAGEMENT

10 points

1. Identify the major areas of risk for the proposed Project.
2. Describe your project specific strategies for minimizing Project risks during the course of design on this project. Include ideas for mitigating major areas of risk identified above.
3. Provide a synopsis of Proposer’s Quality Assurance/Quality control Plan.

2.2.5 ON-SCHEDULE DELIVERY

20 points

1. Provide a schedule and describe how Proposer intends to provide the work products in accordance with the schedule constraints shown in section 1.1.5.
2. Describe your experience, strategies and challenges with splitting Early Work packages out of the main contract and expediting them before the bulk of the design work is complete.

3. Provide specific examples of how your proposed team has met fast-track schedule demands, budget constraints, challenges and mitigation within a CM/GC or other alternative delivery format.
4. Provide specific examples of how your team has developed innovative design solutions relating to in-water work limits and other environmental constraints.
5. Provide specific examples of how your proposed team has secured permits in shortened time periods and ensured that design does not conflict with permit language.

2.2.6 SUSTAINABILITY

10 points

1. Describe your approach to integrating sustainable practices in designing past bridge projects including but not limited to: 1) deconstruction, 2) re-use of materials, 3) origin of materials, 4) the types and costs of materials, (5) the location of material manufacture, (6) use of high performance materials, (7) low life-cycle costs, (8) site work solutions, (9) rapid construction and prefabrication, and (10) low VOC paints and sealers. Please provide specific examples from past projects and any that you would carry forward to this project.
2. Describe environmental stewardship efforts that your business has made within your own organization in the past three years, such as:
 - A written policy or plan that commits to operating in a sustainable manner;
 - Energy conservation measures;
 - Water conservation measures;
 - Waste reduction and recycling measures;
 - Plans for the reduction or management of fossil fuel usage for transportation.

2.2.7 DIVERSITY PLAN

10 points

Diversity: Identify and describe any DBE, MBE, WBE, or ESB certifications for Proposer and any proposed subcontractors, as well as Proposer’s nondiscrimination practices. Include any historical DBE, MBE, WBE, or ESB Joint Ventures, Subcontracting, or Mentoring plan that is consistent with the diversity policies available at:

<http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/index.shtml>.

- a. **Workforce Diversity Development:** Provide a narrative description of Proposer’s current workforce diversity plan.
 - Describe how:
 - Opportunities are provided to develop a diverse workforce within the Proposer’s organization
 - How On-the-Job training and Apprenticeships are used within the organization to address diversity
 - List any activities that are being undertaken to recruit or broaden the diversity within the organization and Proposer’s projects. Include information regarding:
 - Outreach activities
 - Activities that the Proposer has undertaken to advise or mentor subcontractors and suppliers regarding diversity within their workforces

b. Project Subcontracting, Consultant and Supplier Plan: Provide a discussion of Proposer's outreach program or plan for obtaining diversity on this Project utilizing certified DBE, MBE, WBE, or ESB Subcontractors, consultants and Suppliers.

- Describe:
 - Detailed schedule of events and specific steps that will be or have been taken to maximize broad based and inclusive participation
 - Proposer's plans to provide innovative mentoring, technical or other business development services to Subcontractors needing or requesting such services.

Possible elements of a project specific plan include:

- Special outreach efforts regarding announcement of subcontracting, consulting or supply opportunities to a diverse and inclusive community of broad based potential partner organizations. List the pertinent organizational or other channels used for announcement or outreach
- Commitment to provide administrative, technical or other support to the Subcontractors
- Opportunities identified in the Project where one or more Subcontractors may develop small prime contracting skills under mentorship of the Proposer.

The Contractor shall perform the Services according to the means and methods described in their diversity plan as proposed (which shall be part of the Contract), unless changes are requested or approved in writing in advance by the County or are required by applicable laws, ordinances, codes, regulations, rules, standards or County specifications.

2.2.8 INTERVIEW

60 points

Interviews have tentatively been scheduled on November 29, 2010. If the County chooses to conduct interviews, each interview will consist of three (3) distinct parts, each of which will be scored.

First, the Proposer will have the opportunity to present a brief synopsis of their proposal, highlighting significant strengths and features that in combination suggest their proposal is the most optimal solution. (25 points)

Secondly, the Proposer will respond to clarification questions that are specific to their proposal. (35 Points)

CRITERION: Degree to which the Proposal demonstrates that the Proposer meets or exceeds Agency objectives, as evaluated by the EC, who will apply the points shown above to each of the two parts. Agency objectives include contracting with a Proposer who a) has convincingly demonstrated an ability to work in a collegiate, productive working relationship together and with a multiple member government organization and b) presents realistic plans, processes and techniques to meet the program schedule, accomplish key objectives and maintain team relationships through a long-term design and construction process.

After the interview, each evaluator will independently assign a preliminary score to each evaluation criterion based on the interview. The evaluators will meet and share their key findings. After sharing their findings, each evaluator will be given an opportunity to revise their preliminary scores and to

finalize them independently. Final interview scores from each evaluator will be tallied and the sum of total scores assigned to each Proposal will be the total interview score for each Proposal.

2.2.9 SUMMARY OF EVALUATION CRITERIA

Evaluation Criteria	Maximum Score
Written Proposal	
Approach and Project Understanding	20
Technical Capabilities	20
CM/GC Experience	10
Risk Identification and Management	10
On-Schedule Delivery	20
Sustainability	10
Diversity Plan	10
Total for Written Proposal	100
Interview	60
Grand Total (with interview)	160

The scores for Proposer ranking and recommendation for award will be determined as follows:

- Total Proposal Score = Total of all evaluator scores for a given Proposal
- Total Interview Score (if conducted) = Total of all evaluator scores for a given Proposer
- **Final Score** = Total Proposal Score plus Total Interview Score (if conducted).

2.3 **METHOD OF AWARD**

Initial award will be made to the responsive and responsible proposer who has the highest Final Score.

2.4 **NEGOTIATIONS**

The County will initiate contract negotiations with the responsive and responsible Proposer that was selected for initial award. Multnomah County may, at its option, elect to negotiate general contract terms and conditions, services, pricing, implementation schedules, and such other terms as the County determines are in the County's best interest. If negotiations fail to result in a Contract, the County reserves the right to terminate the negotiations and initiate contract negotiations with the next highest scoring responsive and responsible Proposer. This process may continue until an agreement is reached.

Section 3.0 CONTRACT AWARD REQUIREMENTS

3.1 COST INFORMATION

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

3.1.1 BILLING RATE INFORMATION

Labor rate and cost data must not be submitted until after Proposers have been notified of their selection status. Labor rate and cost data for any Proposer selected for Contract negotiation and that of the Proposer's subcontractors (if any) must be submitted electronically in Excel© file format (using the forms specified below), **no later than 5 business days** after County notifies Proposer of selection.

Firms that have current rate data on file with County will normally not be required to resubmit. Submittal of rates higher than County has on file must be approved by County.

Rate information must include either "Direct Salary and Overhead Information" or "Negotiated Billing Rate Schedule" described below, as applicable to your firm's (and subcontractor's) accounting method:

A. Direct Salary and Overhead Information (subcontractors may submit this directly to County):

- (i) **Direct Salary Rate Schedule (DSR).** This schedule includes the name, classification and actual direct salary rate for each employee that may be used under the Contract. The DSR will not be included in the Contract but will be used by County to develop an Escalated Salary Rate Schedule if applicable for the Contract. The form may be downloaded at this link: <http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Forms>.
- (ii) **Calculation of Overhead Rate** (if applicable for your type of accounting). Current overhead accounting information (preferably electronically in Excel format) on a form using the standard 3-column format substantially similar to the example "Calculation of Overhead" available at the following Internet address: <http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Forms> . Firms shall condense or expand categories as applicable to the firm's method of accounting. Firms that have not established an overhead rate, based upon their particular financial reporting methodology, shall be reviewed by County to determine whether an overhead rate schedule will be required or a negotiated non-provisional billing rate will be used. If a firm does calculate overhead, the information must be submitted to County and updates must be provided annually.
- (iii) **Cognizant Audit** – If an audit has been completed for your firm or any subcontractors by the appropriate federal cognizant County (for the firm's most recent fiscal year), this must be submitted with the billing rate information (either hard copy or electronic scanned copy).
- (iv) **Independent Audit** – If an audit has been completed for your firm (or any subcontractors) by an independent, third party accounting firm (for the firm's most recent fiscal year), this must be submitted with the billing rate information (either hard copy or electronic scanned copy).

B. Negotiated Billing Rate Schedule (NBR): This schedule is used by firms that do not calculate overhead as part of their normal accounting practice and County determines it is in the best interest of the County to negotiate specific billing rates. The NBR includes rates that are fully loaded with direct salary, indirect expenses and profit. Provide name, classification (project role) and fully

loaded rate for each employee. Use of an NBR may be required by County for Contractors or subcontractors that do not have audited overhead rates or that, upon cursory review, appear not to be calculating overhead correctly. The NBR form may be downloaded at this link:
<http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Forms>.

3.1.2 COST DISCLOSURE QUESTIONNAIRE (CDQ)

Each selected Proposer and all subcontractors (if any) that do not have a current CDQ on file with County shall complete and submit a CDQ within 10 business days of receipt of Intent to Award notice. A CDQ is considered current if it has been submitted within the last 12 months and there are no changes since the prior submittal. Submit the CDQ using the on-line form available at:

http://www.oregon.gov/ODOT/CS/EXTERNALAUDITS/docs/Cost_Disclosure_Questionnaire.pdf

If unable to access or submit the CDQ form on-line using the above link, contact the Procurement Specialist identified on the cover page of this RFP to receive the form via email along with instructions for submittal.

For Sole Proprietors or small firms that do not have audited O/H rates and use negotiated reasonable and customary rates, the CDQ still needs to be prepared and submitted. Fill out the form to the extent possible; if none of the response options listed on the form fit with your firm's practice, please write in "no" or "N/A", or provide comments to explain.

Throughout the duration of the Contract, the CDQ must be revised and resubmitted to County within 30 calendar days of any changes to Contractor or subcontractor information provided on the form.

3.1.3 BREAKDOWN OF COSTS (BOC)

Following review/negotiation with County of the project statement of work, County will request submittal of a cost estimate for the Project. The selected Proposer shall submit, within 5 business days of the request, a BOC using one of the following spreadsheets as applicable (click on "Enable Macros" when prompted):

- Standard BOC - use if Proposer or any subcontractors calculate an overhead rate:
<http://www.oregon.gov/ODOT/CS/OPO/docs/aepage/BOC.xls> .
- BOC-nbr – use if Proposer and all subcontractors, if any, do not calculate overhead and use only the Negotiated Billing Rate schedule (NBR):
<http://www.oregon.gov/ODOT/CS/OPO/docs/aepage/BOC-nbr.xls> .

The BOC must include a detailed breakdown of the costs for each element of the work as specified in the BOC Requirements available at the following link:

<http://www.oregon.gov/ODOT/CS/OPO/docs/aepage/BOCrequirements.doc> . 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.

3.2 CERTIFICATES OF INSURANCE

Prior to contract execution, selected Proposer shall provide Certificates of Insurance to County for levels of insurance coverage shown in **Exhibit C** of the Contract (RFP Attachment C).

In addition, County reserves the right to purchase additional insurance liability coverage for this project.

3.3 MISCELLANEOUS FORMS

3.3.1 COI DISCLOSURE

If any disclosures (items not disclosed with the proposal submittal, or that have occurred or been discovered since the Proposal submittal) are required per the ODOT Conflict of Interest Guidelines, the selected Proposer shall complete and submit a signed COI Disclosure Form within 5 business days of receipt of Intent To Award notice. The selected Proposer shall incorporate in each required COI Disclosure Form any COI disclosure information provided by its staff and attach COI Disclosure Forms from each of its subcontractors (that require disclosures per the ODOT Conflict of Interest Guidelines), prior to such Firm performing any services under a Contract.

The ODOT Conflict of Interest Guidelines and COI Disclosure Form are available at the following Internet site: <http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Forms> (under “Misc. Procurement Related Forms”)

If, following review of Proposer’s COI Disclosure Form(s), a Proposer selected for award is determined to have a conflict of interest that cannot reasonably be mitigated to County’s satisfaction; the award to that Proposer may be withdrawn. At County’s discretion, the award may then be made to the next Proposer in the Proposal rankings.

3.3.2 LIST OF SUBCONTRACTORS

Selected Proposer(s) shall submit a list of subcontractors, electronically in MS Word format, using the form available at: <http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Forms> . List subcontractors, if any, proposed for use under the Contract.

3.4 CONTRACTOR RESPONSIBILITY

Selected Proposer shall submit a signed **Responsibility Inquiry form** within 3 business days of receipt of Intent to Award notice (see form for additional information regarding County’s responsibility review). The form must be signed and may be submitted as hard copy or electronically via fax or email. A copy of this form will be available on the Agency’s Purchasing website www.multcopurch.org

Contractor is responsible for any and all contractual matters, including performance of Services and the required deliverables included in the Contract, whether Contractor, a representative of Contractor, or subcontractor of Contractor produces them.

3.5 BUSINESS REGISTRY NUMBER/REGISTERED AGENT

If selected for Contract award, Proposer must be duly authorized by the State of Oregon to transact business in the State of Oregon before executing the Contract. The selected Proposer shall submit a current Oregon Secretary of State business registry number (unless operating as your real and true name). See [process for obtaining a business registry number](#). All Corporations and other business entities (domestic and foreign) must have a Registered Agent in Oregon. See requirements and exceptions regarding [Registered Agents](#). For more information, see [Oregon Business Guide, How to Start a Business in Oregon](#) and [Laws and Rules](#).

3.6 TAX ID NUMBER

The selected Proposer shall provide their Taxpayer Identification Number (TIN) on a completed W-9 form prior to execution of the Contract. The W-9 form is available at: <http://www.irs.gov/pub/irs-pdf/fw9.pdf>.

3.7 USE OF RECYCLED PRODUCTS

Contractors shall use recyclable products to the maximum extent economically feasible in the performance of the Contract work set forth in this document.

ATTACHMENT A PROPOSAL COVER SHEET

Proposal Cover Sheet is attached below as an electronic MS Word file.

Double-click icon to open attached file →



ATTACHMENT B SIMILAR PROJECTS

Name of Client	
Title and type of project Delivery Method? Fast Track or Early Work Packages?	
Duration of contract (month/year to month/year)	
Project location	
Project description	
Proposed Primary Team Members involved in project	
Services performed; describe whether Owner's schedule and cost objectives were met.	
Construction estimated cost (\$Million)	Construction actual cost (\$Million)
Reference contact (name, job title, phone number and e-mail address)	

ATTACHMENT C CONTRACT AND EXHIBITS

CONTRACT

Multnomah County, Oregon

Architectural, Engineering and Land Surveying and Related Services

CONTRACT NO. _____

Project Name: _____

Expenditure Account (EA) #: C2261930	ODOT Key # : 13762	Federal Aid #: X-BRF-C051(068)
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This Contract is between the Multnomah County, Oregon, acting by and through its elected officials, hereafter called "County," and __(legal name)_____, [Enter the state of incorporation if Contractor is a corporation] a (enter state) corporation, hereafter called "Contractor." County and Contractor together are referred to as "Parties" and individually referred to as "Party." County's designated "Contract Administrator" and Contractor's key personnel for this Contract are identified in **Exhibit J**, Contact Information and Key Persons.

For purposes of this Contract:

- a) "calendar days" means any day appearing on the calendar, whether a weekday, weekend day, national holiday, state holiday or other day;
- b) "days" means calendar days; and
- c) "business days" means calendar days, excluding Saturdays, Sundays and all state recognized holidays.

1. Contract Effective Date and Term

This Contract is effective on the date it has been signed by the Parties and all required County and State of Oregon approvals have been obtained. The project for which County requires Contractor's Services is described in **Exhibit A**, Statement of Work. Contractor shall perform its obligations according to this Contract through final completion of the project, including project construction, if any, and through completion of post-construction and warranty work, if required for the project, unless this Contract is terminated or suspended. Unless otherwise amended or terminated, this Contract shall expire when Contractor has completed all Services and submitted all deliverables required under the Contract (including all warranty or corrective work, if any) or on _____, whichever is later. [At least 1 year later than due date for deliverables.]

2. Statement of Work

Contractor shall perform all Services and deliver all deliverables as described in **Exhibit A**, Statement of Work (the "Services"). Contractor shall not provide any Services until this Contract has been signed by all Parties, all necessary County and State of Oregon approvals have been obtained, and County has issued a notice to proceed to Contractor.

3. Compensation

The maximum amount payable to Contractor under this Contract, which includes the amount of any allowable and reimbursable expenses, is \$20,000,000 as detailed further in **Exhibit B**, Compensation. County reserves the right, in its sole discretion, to amend this Contract to increase this amount. The payment methodology and basis for payment to Contractor is described in **Exhibit B**, Compensation.

4. Contract Documents

a. Exhibits Attached and Incorporated

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

- (i) Exhibit A – Statement of Work
- (ii) Exhibit B – Compensation
- (iii) Exhibit C – Insurance
- (iv) Exhibit F –Special Terms & Conditions
- (v) Exhibit G – Reserved
- (vi) Exhibit H –Conflict of Interest Disclosure
- (vii) Exhibit J – Contact Information and Key Persons

b. Exhibits Incorporated by Reference From Website(s)

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

- (i) Exhibit D – Influence and Debarment Provisions
- (ii) Exhibit E – Reserved
- (ii) Exhibit I – Errors & Omissions (E&O) Claims Process
- (iii) Exhibit K - Reserved

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

5. Order of Precedence

Unless a different order is required by law, this Contract shall be interpreted in the following order of precedence:

1. This Contract (including all amendments, if any) less all attachments, exhibits and other material incorporated into this Contract by reference;
2. Exhibit A - Statement of Work
3. Exhibit B - Compensation
4. Exhibit C - Insurance
5. Exhibit I – Errors & Omissions (E&O) Claims Process
6. Exhibit F - Special Terms & Conditions
7. Exhibit H – Conflict of Interest Guidelines and Disclosure Process
8. Exhibit D - Influence and Debarment Provisions
9. Exhibit G - Reserved
10. Exhibit J – Contact Information and Key Persons

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

- a.** Contractor, by its signature on the Contract, certifies that it is an independent contractor as defined in ORS 670.600 and as described in IRS Publication 1779, which is available at the following link: <http://www.irs.gov/pub/irs-pdf/p1779.pdf> . Contractor shall perform all required Services as an independent contractor. Although County reserves the right (i) to determine the delivery schedule (as mutually acceptable to ODOT and Contractor) for the Services to be performed and (ii) to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate

means and manner of performing the Services. Contractor is not an "officer", "employee", or "agent" of County, as those terms are used in ORS 30.265.

- b. Contractor, by its signature on the Contract, certifies that: (i) Contractor and, to the best of its information, knowledge and belief, its Associates are in compliance with the **ODOT Conflict of Interest Guidelines** (as may be revised from time to time by County) available at: <http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Forms>, and (ii) if submittal of a Conflict of Interest Disclosure Form is required, the information Contractor provided through the Conflict of Interest Disclosure Form is true, accurate and complete as of the Contract effective date or if not, Contractor has submitted to County a Conflict of Interest Disclosure Form in the form required by County that is updated, true, accurate and complete as of the Contract effective date. In addition, Contractor shall submit to County a true, accurate and complete Conflict of Interest Disclosure Form, in the form required by County, no later than 10 business days following the date Contractor becomes aware of any staffing, organizational or other material changes that result in nonconformance with disclosure requirements of the ODOT Conflict of Interest Guidelines.
- c. Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under the Contract and, unless Contractor is subject to backup withholding, County will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under the Contract, except as a self-employed individual.
- d. Contractor shall not be responsible for or have control over the means, manner, methods or techniques required of or used by other contractors or contractors under contract with County who are performing services or construction work on projects within the scope of the Contract, unless otherwise expressly agreed to in writing by the Parties. The Parties agree, however, that these Section 6.d. provisions do not in any way revise or adjust Contractor's professional responsibility to report to County any information pertaining to a project, or to performance by other contractors or contractors on a project, that would adversely affect County or a particular project, to the extent any such information may come to the attention of Contractor during the performance of Services within the scope of the Contract.

7. Subcontracts and Assignment; Successors and Assigns

- a. Contractor shall not enter into any subcontracts for any of the Services required by the Contract, or in any manner assign, sell or transfer any of its rights or interest under the Contract or delegate any of its duties or performance under the Contract, without County's prior written consent, except for subcontracts necessary to comply with any DBE requirements. In addition to any other provisions County may require, Contractor shall include, in any permitted subcontract under the Contract, contractual provisions that shall require any subcontractor to comply with Sections 10, 11, 12, 13, 14, 17, 24, and 29 of these Contract provisions and the limitations provided in Exhibit B Compensation, in the performance of the subcontractor's Services on the project that is the subject of the Contract, as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under the Contract, including with respect to any Services, whether performed or to be performed by Contractor or a subcontractor.
- b. The provisions of the Contract shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective successors and permitted assigns, if any.
- c. Any purported assignment, delegation or disposition in violation of subsection a. above is void.

8. No Third Party Beneficiaries. County and Contractor are the only Parties to the Contract and are the only Parties entitled to enforce its terms. Nothing in the Contract 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 Contract and expressly described as intended beneficiaries of the terms of the Contract.

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

10. Representations and Warranties.

a. Contractor's Representations and Warranties.

Contractor represents and warrants to County that (i) Contractor has the power and authority to enter into and perform the Contract, (ii) the Contract, when executed and delivered is a valid and binding obligation of Contractor, enforceable in accordance with its terms, (iii) the Services under the Contract will be performed in accordance with the professional standard of care set forth in Section 11 below; (iv) Contractor is duly licensed or registered, or both, to perform the Services, and if there is no licensing requirement for the profession or Services, is duly qualified and professionally competent to perform the Services; and (v) Contractor is an experienced firm having the skill, legal capacity, professional ability and resources necessary to perform all the Services required under the Contract.

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

11. Professional Standard of Care; Responsibility of Contractor; Design Within Funding Limit.

a. Professional Standard of Care.

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

b. Responsibility of Contractor.

- (i) Contractor shall be responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other Services furnished by Contractor under the Contract. Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications and other Services.
- (ii) Review, approval or acceptance of, or payment for, the Services required under the Contract by the County or its agents shall not be construed to operate as a waiver of any rights under the Contract or of any cause of action arising out of the performance of the Contract, and Contractor shall be and remain liable to County in accordance with applicable law for all damages to County caused by Contractor's breach of contract or negligent performance of any of the Services furnished under the Contract or negligent failure to perform any of the Services under the Contract.

- (iii) The rights and remedies of County provided for under the Contract are in addition to any other rights and remedies provided by law.
- (iv) If Contractor is comprised of more than one legal entity (for example, a joint-venture or partnership), each such entity shall be jointly and severally liable under the Contract in addition to the liability of the combined entity.

c. Design Within Funding Limit.

- (i) Contractor shall accomplish the design Services required under the Contract so as to permit construction of the project within County's budget for construction. County's budget for construction of the project is **\$160,000,000**. Contractor shall promptly advise County's Contract Administrator if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable project within these limitations. Upon receipt of such information, the Contract Administrator will review Contractor's revised estimate of construction cost. County may, if it determines that the estimated construction contract price set forth in this Section 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 this Section, or County may adjust such estimated construction contract price.
- (ii) Prior to releasing the bid for the construction contract, County will prepare an estimate of constructing the design submitted. If County's estimator(s) determines Contractor's design exceeds County's budget for the construction contract as set forth in Section (i) above {and as may be revised per Section (i) above}, then Contractor shall perform such redesign and other Services as are necessary to permit contract award within the funding limitation. These additional Services shall be performed at no increase in the price of the Contract. However, Contractor shall not be required to perform such additional Services at no cost to County if Contractor's design exceeds County's budget {as set forth in Section (i) above} as a result of conditions beyond Contractor's reasonable control or responsibility.

12. Ownership of Work Product.

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

- (i) "Contractor Intellectual Property" means any intellectual property owned by Contractor and developed independently from the Contract.
- (ii) "Third Party Intellectual Property" means any intellectual property owned by parties other than County or Contractor.
- (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 Contractor is required to deliver to County pursuant to the Contract.

b. Work Product. All Work Product created by Contractor pursuant to the Contract, including derivative works and compilations, and whether or not such Work Product is considered a "work made for hire," shall be the exclusive property of County. County and Contractor agree that Work Product that constitutes original works of authorship (the "Original Work Product") is "work made for hire" of which County is the author within the meaning of the United States Copyright Act. If for any reason Original Work Product created pursuant to the Contract is not "work made for hire," Contractor hereby irrevocably assigns to County any and all of its rights, title, and interest in all Original Work Product created pursuant to the Contract, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon County's reasonable request, Contractor shall execute such further documents and instruments necessary to fully vest such rights in Original Work Product in County. Contractor forever waives any and all rights relating to Original Work Product created pursuant to the Contract, including

without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. However, see Sections 12.c., 12.d., 12.e. and 12.f. immediately below, for provisions applicable to Contractor Intellectual Property, Third Party Intellectual Property, Contractor Intellectual Property derivative works and Third Party Intellectual Property derivative works.

- c. Contractor Intellectual Property.** In the event that any Work Product is Contractor Intellectual Property (Contractor Intellectual Property that is applicable to the Services being performed by Contractor under the Contract or included in Work Product deliverable to County under the Contract), or in the event any Contractor Intellectual Property is needed by County to reasonably enjoy and use any Work Product, Contractor hereby grants to County an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Contractor Intellectual Property, including the right of County to authorize contractors and others to do the same on County's behalf. At the request of Contractor, County shall take reasonable steps to protect the confidentiality and proprietary interests of Contractor in any Contractor Intellectual Property licensed under this Section, within the limits of the Oregon Public Records Law (ORS 192.410 through 192.505) and the Oregon Uniform Trade Secrets Act (ORS 646.461 to 646.475).
- d. Third Party Intellectual Property.** In the event that Work Product is Third Party Intellectual Property (Third Party Intellectual Property that is applicable to the Services being performed by Contractor under the Contract or included in Work Product deliverable to County under the Contract), or in the event any Third Party Intellectual Property is needed by County to reasonably enjoy and use any Work Product, Contractor shall secure on County's behalf and in the name of County, an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, including the right of County to authorize contractors, contractors and others to do the same on County's behalf.
- e. Contractor Intellectual Property-Derivative Work.** In the event that Work Product created by Contractor under the Contract is a derivative work based on Contractor Intellectual Property, or is a compilation that includes Contractor Intellectual Property, Contractor hereby grants to County an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of Contractor Intellectual Property employed in the Work Product, including the right of County to authorize contractors and others to do the same on County's behalf.
- f. Third Party Intellectual Property-Derivative Work.** In the event that Work Product created by Contractor under the Contract is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Contractor shall secure on County's behalf and in the name of County an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, including the right to authorize contractors and others to do the same on County's behalf.
- g. Limited County 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, County shall indemnify and hold Contractor harmless from liability arising out of County's re-use on other projects or alteration of the Work Product.
- h. Contractor Use of Work Product.** Notwithstanding anything to the contrary in this Section 12, Contractor may refer to the Work Product in its brochures or other literature that Contractor utilizes for advertising purposes and, unless specified otherwise in **Exhibit A** – Statement of

Work, County hereby grants to Contractor a non-exclusive, non-transferable, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display County-owned Work Product on other unrelated projects, except for any “Confidential Information” protected from disclosure under the provisions of Section 13 below, pertaining to Confidentiality and Non-Disclosure.

13. Confidentiality and Non-Disclosure

- a. Confidential Information.** Contractor acknowledges that it and its employees and agents may, in the course of performing their responsibilities under the Contract, be exposed to or acquire information that is confidential to County. Any and all information that County provides to Contractor or its employees or agents in the performance of the Contract that County 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 Contractor’s use of such information and any other Work Product that County designates as confidential, is deemed to be confidential information of County (“Confidential Information”). Confidential Information does not include information that (i) is or becomes (other than by disclosure by Contractor) publicly known; (ii) is furnished by County to others without restrictions similar to those imposed by the Contract; (iii) is rightfully in Contractor’s possession without the obligation of nondisclosure prior to the time of its disclosure under the Contract; (iv) is obtained from a source other than County without the obligation of confidentiality, (v) is disclosed with the written consent of County, or; (vi) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.
- b. Non-Disclosure.** Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and shall not, without County’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 County hereunder. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use reasonable efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Contractor shall advise County immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms this Section 13(b), and Contractor shall, at its expense, cooperate with County in seeking injunctive or other equitable relief in the name of County against any such person. Contractor agrees that, except as directed by County, Contractor will not at any time during or after the term of the Contract disclose, directly or indirectly, any Confidential Information to any person, except in accordance with the Contract, and that upon termination of the Contract or at County’s request, Contractor shall turn over to County all documents, papers, and other matter in Contractor's possession that embody Confidential Information. In the event Contractor is required to disclose Confidential Information pursuant to a subpoena or other legal process, Contractor shall notify County of such subpoena or other legal process, provide County with copies of any subpoena, other legal process and any other written materials supporting the subpoena or other legal process, and otherwise cooperate with County in the event County decides to oppose the disclosure of the Confidential Information. In the event County decides not to oppose such subpoena or other legal process or County’s decision to oppose the subpoena or legal process has not been successful, Contractor 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.

14. INDEMNITY.

- a. **GENERAL INDEMNITY.** CONTRACTOR SHALL INDEMNIFY, DEFEND, REIMBURSE, SAVE, AND HOLD HARMLESS MULTNOMAH COUNTY, THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS AND ITS MEMBERS, THE DEPARTMENT OF COMMUNITY SERVICES, AND EACH OF THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, LOSSES, INJURIES, LIABILITIES, DAMAGES (BOTH ECONOMIC AND NON-ECONOMIC), COSTS AND EXPENSES, INCLUDING EXPERTS' AND ATTORNEYS' FEES, OF WHATSOEVER NATURE, TO THE EXTENT CAUSED BY THE BREACH OF CONTRACT, ACTS OR OMISSIONS (INCLUDING BUT NOT LIMITED TO PROFESSIONAL NEGLIGENCE), OR OTHER FAULT OF CONTRACTOR OR ITS SUBCONTRACTORS, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES.
- b. **INDEMNITY FOR INFRINGEMENT CLAIMS.** WITHOUT LIMITING THE GENERALITY OF SECTION 14(a) OR 14(b), CONTRACTOR EXPRESSLY AGREES TO INDEMNIFY, DEFEND, REIMBURSE, SAVE AND HOLD HARMLESS MULTNOMAH COUNTY, THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS AND ITS MEMBERS, THE DEPARTMENT OF COMMUNITY SERVICES, THEIR OFFICERS, AGENTS AND EMPLOYEES FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES, INCLUDING EXPERTS' AND ATTORNEYS' FEES, ARISING OUT OF OR RELATING TO ANY CLAIMS THAT CONTRACTOR'S SERVICES, THE WORK PRODUCT OR ANY OTHER TANGIBLE OR INTANGIBLE ITEMS DELIVERED TO COUNTY BY CONTRACTOR THAT MAY BE THE SUBJECT OF PROTECTION UNDER ANY STATE OR FEDERAL INTELLECTUAL PROPERTY LAW OR DOCTRINE, OR COUNTY'S USE THEREOF, INFRINGES ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, TRADE DRESS, MASK WORK, UTILITY DESIGN, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY; PROVIDED, THAT STATE SHALL PROVIDE CONTRACTOR WITH PROMPT WRITTEN NOTICE OF ANY INFRINGEMENT CLAIM. PROVIDED, HOWEVER, CONTRACTOR SHALL NOT BE OBLIGATED TO INDEMNIFY, DEFEND, REIMBURSE, SAVE AND HOLD HARMLESS THE COUNTY UNDER THIS SECTION 14(c), BASED SOLELY ON THE FOLLOWING: CONTRACTOR'S COMPLIANCE WITH COUNTY SPECIFICATIONS OR REQUIREMENTS, INCLUDING, BUT NOT LIMITED TO THE REQUIRED USE OF TANGIBLE OR INTANGIBLE ITEMS PROVIDED BY COUNTY.
- c. **DEFENSE QUALIFICATION.** NOTWITHSTANDING CONTRACTOR'S FOREGOING DEFENSE OBLIGATIONS, NEITHER CONTRACTOR NOR ANY ATTORNEY ENGAGED BY CONTRACTOR SHALL DEFEND ANY CLAIM IN THE NAME OF THE STATE OF OREGON OR ANY COUNTY 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 CONTRACTOR IS PROHIBITED FROM DEFENDING THE STATE OF OREGON, OR THAT CONTRACTOR 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 CONTRACTOR IF THE STATE OF OREGON ELECTS TO ASSUME ITS

OWN DEFENSE, INCLUDING BUT NOT LIMITED TO THE COST OF DEFENSE INCLUDING ATTORNEYS' AND EXPERT WITNESS' FEES.

15. Insurance. Contractor shall carry insurance as indicated on **Exhibit C**.

16. Termination

- a. Termination by Mutual Consent.** The Contract may be terminated at any time, in whole or in part, by mutual written consent of the Parties.
- b. County's Right to Terminate for Convenience.** County may, at its sole discretion, terminate the Contract, in whole or in part, upon seven (7) calendar days prior written notice to Contractor, for the County's convenience.
- c. County's Right to Terminate for Cause.** County may terminate the Contract, in whole or in part, immediately upon written notice to Contractor or at such later date as County may establish in such notice, upon the occurrence of any of the following events:
 - (i) County fails to receive appropriations, limitations or other expenditure authority sufficient to allow County, in the exercise of its reasonable administrative discretion, to continue to make payments for Contractor'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 Contract are prohibited or County is prohibited from paying for such Services from the planned funding source;
 - (iii) Contractor no longer holds any license or certificate that is required to perform the Services; or
 - (iv) Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under the Contract in such a manner as to endanger Contractor's performance under the Contract in accordance with its terms, and such breach, default or failure is not cured within 14 calendar days after County's notice to Contractor, or such longer period as County may specify in such notice.
- d. Contractor's Right to Terminate for Cause.**
 - (i) Contractor may terminate the Contract by giving written notice to County if County fails to pay Contractor pursuant to the terms of the Contract and if County fails to cure within 14 calendar days after receipt of Contractor's written notice, or such longer period of cure as Contractor may specify in such notice.
 - (ii) Contractor may terminate the Contract, for reasons other than nonpayment, if County commits any material breach or default of any covenant, warranty, obligation or agreement under the Contract, fails to perform under the Contract within the times specified, or so fails to perform as to endanger Contractor's performance under the Contract, and such breach, default or failure is not cured within 14 calendar days after Contractor's notice to County, or such longer period as Contractor may specify in such notice.
- e. Remedies.**
 - (i) In the event of termination pursuant to Sections 16(a), 16(b), 16(c)(i), 16(c)(ii) or 16(d), Contractor'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 County (with acceptance by County not to be unreasonably withheld), less previous amounts paid and any claim(s) which County has against Contractor, except in the event of a termination under Section 16(c)(i) where no payment will be due and payable for Services performed or costs incurred after the last day of the current biennium, consistent with Section 9, Funds Available and Authorized; Payments. Under no circumstances will Contractor be entitled to compensation for (a) unperformed services, including but not limited to profit, markup or overhead on such services, (b) damages to Contractor's reputation, (c) damages for interference with

contractual relations, and (d) consequential damages on this Project or other projects. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor shall pay all excess to County upon demand.

(ii) In the event of termination pursuant to Section 16(c)(iii) or 16(c)(iv), County shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Section 16(c)(iii) or 16(c)(iv), the rights and obligations of the Parties shall be the same as if the Contract was terminated pursuant to Section 16(b).

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

17. Records Maintenance; Access. Contractor, and its Subcontractors, shall maintain all fiscal records relating to the Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain all other records pertinent to the Contract and the Project and shall do so in such a manner as to clearly document Contractor's performance. County and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access, and Contractor shall permit the aforementioned entities and individuals access, to such fiscal records and other books, documents, papers, plans and writings of Contractor that are pertinent to the Contract to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of 10 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.

18. Performance Evaluations. County may conduct performance evaluation(s) on the selected Contractor(s) during the term of the Contract, which will be compiled and maintained by County, and become a written record of Contractor's performance, including information gained during an exit interview. County will provide copies of any performance evaluation documentation to the affected Contractor and upon request, to third parties, unless lawfully exempt from disclosure.

19. Compliance with Applicable Law. Contractor shall comply with all federal, state and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Contract, in effect at the time the Contract is executed and as may be amended, revised, enacted or adopted thereafter. Changes in these legal requirements after the execution of the Contract may or may not be the basis for modifications to Contractor's schedule, scope and fee, depending on a reasonable assessment of the nature of the change, the extent to which the change was or could be anticipated by Contractor or the Parties, and other circumstances then existing. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. County's performance under the Contract is conditioned upon Contractor's compliance with, and Contractor 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. 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 Contract, Contractor shall in writing request County to resolve the conflict. Contractor shall specify if the conflict(s) create a problem for the design or other Services required under the Contract.

20. Permits and Licenses:

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

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

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

23. Survival. All rights and obligations shall cease upon termination or expiration of the Contract, except for the rights and obligations set forth in Sections 5, 10, 11, 12, 13, 14, 15, 16(e), 16(f), 17, 23, 24, 28 and 29 and all other rights and obligations which by their context are intended to survive.

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

The Contractor acknowledges that the County's success in controlling construction costs and schedule on this project is dependent upon timely delivery by the Contractor of final design packages. In particular, the County desires to establish a Guaranteed Maximum Price (GMP) for construction with its CM/GC prior to start of any in-water work. The County desires to begin in-water construction work by July 2012. Accordingly, the County and Contractor have negotiated a final deliverable schedule that accomplishes the County's objectives. In the event that the Contractor fails on its own accord to submit final design deliverables to the County in accordance with the negotiated milestone schedule, the County may assess liquidated damages against the Contractor in the amount of \$5,000 per day.

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

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

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

28. Dispute Resolution and Errors & Omissions Claims Process. In the event of a dispute between the Parties regarding any aspect of the Contract or performance under the Contract, the Parties agree to attempt in good faith to 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, **Exhibit I**.

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.

29. Governing Law; Venue; Consent to Jurisdiction. The Contract shall be governed by, and construed and enforced in accordance with, the laws of the State of Oregon, without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between County and Contractor that arises from or relates to the Contract shall be brought and conducted solely and exclusively within the Circuit Court of Multnomah County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form or defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution,

or otherwise. **CONTRACTOR, BY EXECUTION OF THE CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

30. Amendments

- a. Changes via Amendment.** County may amend the Contract to the extent permitted by applicable statutes and administrative rules and as mutually agreed upon by County and Contractor. County may agree to appropriate increases in the maximum compensation payable under the Contract, should any County-approved increase occur in the scope, character, schedule or complexity of Services as outlined in the Statement of Work. Contractor shall not commence any Services authorized under an amendment, and no Services shall be compensable and the amendment is not effective, unless it is in writing signed by the Parties and all approvals required by applicable law have been obtained.
- b. Changes via Written Communication.** The following amendments to this Contract may be accomplished by written communication (e-mail and fax acceptable) that document agreement by Contractor and County
 - (i) The addition of or change in Contractor’s subcontractors approved by County under the Contract;
 - (ii) The addition of or changes to Escalated Salary Rates (ESRs), Direct Non-Labor Rates (DNLs) and Negotiated Billing Rates (NBRs) for Contractor and its subcontractors {provided the procedures in the Billing Rate Policy AGR 06-01, which may be revised from time to time, are followed (see **Exhibit B**, Part 1 – Section H)};
 - (iii) Correction of errors, inaccuracies and omissions in the ESRs, DNLs and NBRs, Breakdown of Costs for Services, or other schedules.
 - (iv) Revisions to delivery schedule and Contract expiration date, when such revisions are time-only and do not include changes to scope of Services or not-to-exceed amount of the Contract.

County reserves the right to issue requirements for the written communications, including but not limited to specific language that must be included to document the agreement by Contractor and County.

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

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

Contractor Tax Identification Information. Contractor shall provide to County a [W-9 Form](#) with Contractor’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. County may report the information to the Oregon Department of Revenue and Internal Revenue Service (IRS) under the name and TIN provided.

Contract #: _____

Legal, tax filing Company Name: _____

Address: _____

CERTIFICATION:

A. Any individual signing on behalf of Contractor hereby certifies:

(1) Contractor understands and agrees that various Exhibits to the Contract are not physically attached, but are incorporated by reference in Part I, Section 4 and have the same force and effect as if fully set forth herein. The full text of all exhibits not physically attached to the Contract is available at the following Web address:

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

(2) [Conflict of Interest (COI). Check one of the following two certifications as applicable]

(a) Contractor understands and has provided to all Associates the COI Guidelines and COI Disclosure Form. Contractor and (to the best of the undersigned’s information, knowledge and belief) Contractor’s Associates are in compliance with the COI Guidelines and have no conflicts of interest, no County employees hired within the last one-year period, and no other disclosures required per the COI Guidelines. The response to each question on the COI Disclosure Form was “no”. “Associate” has the meaning provided in the COI Guidelines.

(b) All disclosures required, per the COI Guidelines and COI Disclosure Form, for Contractor and (to the best of the undersigned’s information, knowledge and belief) Contractor’s Associates (as defined in the COI Guidelines) have been indicated on the Conflict of Interest Disclosure Form(s) submitted regarding this Contract, and if determined necessary by County, a mitigation plan has been approved by County;

(The COI Guidelines and COI Disclosure Form are available at the following link:

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

(3) (a) Contractor is an independent contractor as defined in ORS 670.600 and as described in [IRS Publication 1779](#); and

(b) in the event that Contractor is a general partnership or joint venture, Contractor signature(s) on this Contract constitutes certifications to the above statements pertaining to the partnership or joint venture, as well as certifications of the above statements as to any general partner or joint venturer signing this Contract.

B. Any individual signing on behalf of Contractor hereby certifies under penalty of perjury:

(a) Contractor has provided its correct TIN to County; (b) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; and (c) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor’s payment of taxes, and to the best of her/his knowledge, Contractor 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, 320, 321, and 323; the elderly rental assistance program under ORS 310.630 to 310.706; and local taxes administered by the Department of Revenue under ORS 305.620.

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

CONTRACTOR

By: _____ Title: _____ Date: _____

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

COUNTY

Approved by County Chair or designee _____ Date _____

Approved by _____ Date _____

LEGAL SUFFICENCY APPROVAL

Approved by

Date

CONCURRENCE BY OREGON DEPARTMENT OF TRANSPORTATION

Manager, ODOT Purchasing and Contracts Management

Date

EXHIBIT A – STATEMENT OF WORK

A. PROJECT DESCRIPTION and OVERVIEW of SERVICES

NOTE: The final detailed Scope of Work Exhibit A will be negotiated with the successful Proposer.

I. The Project:

Engineering Services for the replacement of the existing Sellwood Bridge, Highway 43 interchange and mitigation work.

B. STANDARDS and GENERAL REQUIREMENTS

1. Standards

The standards, manuals, directives and other procedural guidance applicable to A&E and Related Services provided are available at the following web site and are incorporated by this reference with the same force and effect as though fully set forth herein:

<http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Resources> (select Standards-A&E/Related Services)

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

Contractor shall complete Construction Engineering and Construction Contract Administration (CEI/CA) Services in accordance with ODOT’s Construction Manual, the Manual of Field Test Procedures and the ODOT Inspectors Manual.

Contractor’s qualified staff shall diligently monitor the work of the CM/GC Contractor in order to determine whether the project is constructed in compliance with the construction contract documents and any applicable current standards and County manuals. Contractor shall immediately advise County of any construction which Contractor 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.

2. Software Requirements

Contractor’s software shall produce deliverables that are fully compatible, readable and useable by County software, requiring no modification or translation of Contractor’s deliverables. No loss of data integrity or accuracy shall result from any transfer of data. Compressed data shall be in a "self-

expanding executable" format. To ensure and verify this level of compatibility, County may provide sample or required format(s) to Contractor, and Contractor and County may conduct tests of sample deliverables from Contractor, and County may provide sample or required format(s) to Contractor. County reserves the right to reject deliverables that do not meet these requirements. If a deliverable is rejected, Contractor shall resubmit deliverables to County that meet these requirements, and shall not bill the County for the rejected deliverables or for time associated with correcting the rejected deliverables.

Contractor shall deliver all work products in the format(s) required by the County. Contractor may propose alternative software for consideration by the County. If the County determines that the alternative software meets the compatibility requirements of this section, the County may choose to accept the use of the alternative software. County will document this approval in writing.

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

3. Professional Licenses, Registrations and Qualifications

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

4. General Requirements

- **Endorsement of Data.** Contractor shall place their official Oregon Registered Engineer seal and signature on all engineering design drawings and specifications furnished to County, as well as any other materials where professional standards require such seal and signature.
- **Safety Equipment.** Contractor shall provide and use all safety equipment including (but not limited to) hard hats, safety vests and clothing if required by state and federal regulations and County policies and procedures for the Services under the Contract.
- **Personnel, Materials, and Equipment.** Contractor shall provide competent personnel and shall furnish all supplies, equipment, tools, and incidentals required to accomplish the work. All equipment and tools shall be in good operating condition and shall be kept in proper adjustment throughout the duration of the Contract. All materials and supplies shall be of good quality and suitable for the assigned work.

5. Compliance with Applicable Law (in addition to those identified elsewhere in the Contract.)

Design shall comply with FHWA, AASHTO, ODOT, Multnomah County, and City of Portland Standards, Codes and Regulations.

6. Design Criteria and Project Assumptions/Conditions

- Design shall conform to the Sellwood Bridge Project Final Environmental Impact Statement and the Approved Design Acceptance Submittal to FHWA.
- Design shall meet the conditions of National Marine Fisheries Service’s Biological Opinion, the US Army Corps of Engineers’ 404 Permit and any other regulatory agencies’ permits obtained for this project.
- Design work shall meet the constraints of schedule and cost set by the Design Acceptance Submittal.

C. REVIEW, COMMENT and SCHEDULE OVERVIEW

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

D. FORMAT REQUIREMENTS

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

E. TASKS, DELIVERABLES and SCHEDULE

PHASE 3 (DESIGN)

- 1. Project Management.** Provide 60%, 90% and PS&E plans and specifications for review by County and other jurisdictions. Develop Early Work packages as necessary. Keep written records of all design decisions. Perform QA/QC and independent full engineering checking on all plans and other deliverables.
- 2. Bridge.** Design must allow for traffic, bicyclists and pedestrians to continue through construction on a varying curb to curb width accommodating two pedestrian and bicycle facilities. Design is to be aimed at Early Work contract to install foundations/footings during an early in-water work window of July 1 – October 31, 2012.
- 3. Highway 43 Interchange.** Interchange shall allow for use by motor vehicles, bicyclists, pedestrians, transit and trucks. River View Cemetery shall have vehicle and bicycle-pedestrian access. Design shall allow for bus stops and transfers as well as connections to streetcar lines. Preliminary design shall operate at least as well as the modeled operations of Refined Preferred Alternative. Preserve traffic, bicyclist and pedestrian mobility throughout construction. Preserve access to River View Funeral Home / Cemetery throughout construction.

4. Minor Design Elements. Some examples (incomplete list) of other design work:

- a. Drainage and Water Quality Preliminary Design
- b. East end transition to Tacoma St.
- c. Traffic / Signal Operations – west & east
- d. River Hydrology/Hydraulics
- e. Macadam Bay Driveway Final Design
- f. Park and Historic Mitigation Final Design
 - i. Regional Bike Path
 - ii. Stephens Creek Crossing
- g. Sellwood Harbor Reconstruction Plans (South Side Condominiums)
- h. Electrical
- i. Landscaping
- j. Architecture
 - i. Bridge
 - ii. Retaining Walls
 - iii. Rock Cut walls
 - iv. Stephens Creek Crossing
 - v. Railings

5. Surveying, Utilities and Permits.

- a. Biological Assessment (Update)
- b. Navigational – Coast Guard Approval
- c. Historical / Archaeological
- d. Pre-Construction Survey & Control
- e. Other applicable permits

6. Geotechnical Studies / Foundations

- a. Landslide
- b. Rock cuts
- c. Bridge footings
- d. Other

7. Streetcar Coordination.

- a. Lake Oswego – Portland Streetcar Line
- b. Sellwood Streetcar Line & associated bridge elements
- c. Catenary Line Preliminary work

8. Demolition

- a. Bridge
- b. Sellwood Harbor – also reconstruction
- c. Mela Building

9. Public Involvement (See Section G)

10. Overall Scheduling and Phasing

11. Value Engineering / Constructability

12. Cost Estimates

PHASE 4 (CONSTRUCTION)

1. Reviews

- a. Submittals
- b. Request for Information (RFIs)
- c. Schedules
- d. Shop drawings
- e. Weld procedures
- f. Materials & Products for approval
- g. Traffic Control Plans

2. Inspections & Meetings

- a. Shop fabrication inspections
- b. Coordinating out-of-state inspections
- c. Attend Weekly Construction Meetings
- d. Attend Pre-Construction Meetings
- e. Available as an advisor at all times

3. Final As-Built Drawings

4. Load Ratings

F. CONTINGENCY TASKS Reserved.

G. PUBLIC INVOLVEMENT/PUBLIC INFORMATION

The County expects the design and construction phases (Phase 3 & 4) will include new public involvement projects such as public art for the bridge, historic interpretive panels, school outreach, and construction tours. The Contractor will have an active and possibly lead role in these new projects, which will all be overseen by County staff. All tasks are done with County input and approval.

Contractor Tasks (Phases 3 & 4):

- Develop public involvement plans
- Maintain project website
- Develop information products (newsletters, flyers, emails, etc.)
- Plan and provide logistics and products for public meetings
- Consult on public involvement strategy

H. DIVERSITY PLAN

Contractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR 26 have the opportunity to participate in the performance of the Contract and subcontracts under the Contract financed in whole or in part with federal funds provided by Federal Highway Administration (FHWA), Federal Transit Administration (FTA) and Federal Aviation Administration (FAA). Multnomah County and Contractor shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that

disadvantaged business enterprises have the opportunity to compete for and perform services on subcontracts under the Contract. Additionally, Contractor agrees to ensure that Minority, Women and Emerging Small Businesses have the opportunity to participate in the performance of the Contract and subcontracts under this contract.

I. SUSTAINABILITY

The County seeks to partner with vendors who demonstrate a commitment to environmental stewardship. The contractor agrees to incorporate sustainable practices into all phases of design while meeting project goals and timelines.

**EXHIBIT B –COMPENSATION
Part 1**

DEFINITIONS/ACRONYMS

CPM – County’s Project Manager

BOC – Breakdown of Costs

CDQ – Cost Disclosure Questionnaire

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

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 County 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 Contract. This schedule will be included in the Contract and may include rates for multiple years with escalations as approved by County.

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 that include profit, overhead and cost of living or merit raises.

NTE – Not-to-Exceed Amount

NTP – Notice-to-Proceed

SOW – Statement of Work

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

A. METHODS OF COMPENSATION and PAYMENT OPTIONS:

Contractor shall complete all Services and provide all deliverables as defined in the Contract. If the applicable compensation is exhausted, but Services and deliverables are not complete, Contractor shall complete the Services and provide the deliverables to County’s satisfaction without additional compensation.

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

- Reduce the NTE amount associated with Tasks/Deliverables that were not authorized by County or not performed by Contractor;
- Reduce the NTE amount commensurate with deductive amendments to reduce the risk associated with the project or to reduce the scope of work required under the Contract;

EXHIBIT B - Compensation

- Increase the NTE, Fixed-Price or Fixed-Fee amount for additional Tasks/Deliverables added to the scope of work via amendment to the Contract.

A.1 METHODS OF COMPENSATION

The method(s) of compensation for non-contingency tasks in this Contract is:

- Cost-Plus-Fixed-Fee with not-to-exceed (“CPFF”)
- Fixed Price (includes all labor costs, overhead, profit, travel and other expenses)
- Fixed Price (including all expenses except travel). Approved travel expenses will be reimbursed at the rates provided in Section B (Travel) up to the NTE amount identified as T&M for travel in Section A.3, Line 4 of Compensation Summary Table)
- Fixed Price Per Deliverable (includes all labor costs, overhead, profit, travel and other expenses)
- Fixed Price per Milestone for all non-contingency Services (includes all labor costs, overhead, profit, travel and other expenses)
- Fixed Price per ____ [Describe alternate method of fixed price compensation.]
- Time and Materials with Not-To-Exceed (“T&M”)
- Price Per Unit (detail is provided in section A.1(d) below)

TIME AND MATERIALS WITH NOT-TO-EXCEED (T&M)

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

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

<p>The dollar amount for T&M Services is entered in section A.3, line 4 of the Compensation Summary Table.</p>

A.2 PAYMENT OPTIONS

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

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

EXHIBIT B - Compensation

A.3 TOTAL NOT-TO-EXCEED (NTE) AMOUNT

Compensation Summary Table		Amount
1. CPFF NTE Amount (not including Fixed-Fee)	NTE Amount for allowable costs of non-contingency Services in this Contract	N/A
2. Fixed-Fee Amount	Total of Fixed-Fee amount(s) (for CPFF only)	N/A.
3. Fixed Price Amount	Total of Fixed Price amount(s)	N/A
4. T&M NTE Amount	Total for any non-contingency Services	\$20,000,000 (To be negotiated)
5. Price Per Unit NTE Amount	Total NTE for Price Per Unit Costs	N/A
6.	Total Non-Contingency Amount:	\$20,000,000
7.	Total for Contingency Tasks (if any) per Exhibit A, Section F:	TBD
	TOTAL NTE (line 6 plus line 7)	\$20,000,000
This amount includes all direct and indirect costs, profit, Fixed Fee amount (if any) and contingency task costs (if any).		(including Contingency tasks)

B. TRAVEL

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

- The travel, lodging, and per diem rates referenced in this Section B are the maximums that Contractor’s estimate (or reimbursement, if applicable) may be based on. Travel rates other than those referenced in this Section B may be negotiated in the Contract, however, under no circumstance shall travel, lodging and per diem rates exceed the maximums set forth by the State Controller at <http://www.oregon.gov/DAS/SCD/SARS/policies/oam/40.10.00.PO.pdf> .
- Mileage - For compensation based on Cost-Plus-Fixed-Fee or Time and Materials (or Fixed Price or Price Per Unit when travel reimbursement is approved and mileage is compensated separately), all mileage approved by County will be reimbursed according to the rates set forth by the State Controller at <http://www.oregon.gov/DAS/SCD/SARS/policies/oam/40.10.00.PO.pdf> that are in effect on the date when the travel occurs.
- For all methods of compensation; cost estimates for mileage, lodging and per diems for approved travel shall be based on the rates in effect on the date when the Contract is executed.
- For compensation based on Cost-Plus-Fixed-Fee or Time and Materials, Contractor shall submit receipts for travel-related expenses billed to County, such as but not limited to, lodging, rental

EXHIBIT B - Compensation

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 –
 - Contractor (including subcontractors) may not include in 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 project on the same day.
 - Contractor (including subcontractors) 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. Contractor's (including subcontractors) 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 County, to be eligible for overnight lodging expense reimbursement, the traveler must be at least 60 miles from home office or residence, whichever is less.
- For all **short-term lodging** expenses approved by County, County shall reimburse up to the maximum rates set forth by the State Controller at <http://www.oregon.gov/DAS/SCD/SARS/policies/oam/40.10.00.PO.pdf> that are in effect on the date when the travel occurs or the actual cost, whichever is less.
- Approved **meal per diem allowances** during short-term travel must be in conformance with the Travel Policy found in the Oregon Accounting Manual at: <http://www.oregon.gov/DAS/SCD/SARS/policies/oam/40.10.00.PO.pdf>.

Long-Term Lodging and Per Diem

A Long-Term Assignment (LTA) is an assignment which exceeds 30 consecutive calendar days at any one location. Contractor's (including subcontractors) 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 County, to be eligible for long-term lodging expense reimbursement, traveler must be at least 60 miles from home office or residence, whichever is less.
- Travelers are allowed short-term lodging and per diem allowances for a period not to exceed 7 calendar days while arranging for LTA accommodations.
- Mileage and per diem are not reimbursable if the traveler returns to his/her residence during an LTA. Unless pre-approved by County, per diem is not reimbursable when the traveler is within 60 miles of his/her residence or home office.
- Unless otherwise agreed to by County, rates for approved long-term lodging and per diem are as follows:
 - **Lodging:** Actual up to 50% of the allowable short-term lodging rates,
 - **Meal per diem** allowance is 66% of the short-term per diem rates.
 - For **Non-Commercial lodging**, as defined in the Travel Policy of the Oregon Accounting Manual (<http://www.oregon.gov/DAS/SCD/SARS/policies/oam/40.10.00.PO.pdf>), the non-commercial lodging allowance in effect on the date the travel occurs.

EXHIBIT B - Compensation

- If during an LTA, Contractor travels more than 60 miles one way on behalf of County 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

Contractor shall submit invoices electronically via e-mail to the following address:_____.

Contractor shall not submit invoices to County any more frequently than once per month. Contractor shall include in each invoice the information required in the “Invoice Requirements Guide” per the method(s) of compensation used for the Contract. The Invoice Requirements Guide (as may be revised from time to time) is available at: <http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Forms> (under “Compensation Related”).

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

- Describe the previous month’s project activities and the planned activities for the next month;
- For each task/deliverable identify the percentage completed during the month and the cumulative percentage completed;
- Reconcile progress of each task/deliverable with the schedule identified for each.
- The budget shown for each task is the best estimate at time of Contract (and Amendment, if applicable) execution. However, as work under the Contract progresses it may dictate that more funding be applied to some tasks and products and less to others. Contractor shall monitor such needs on an on-going 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 this Contract) to County for approval.
- Identify issues/concerns that may affect the project SOW, schedule or budget.

Expense Reporting per ORS 279C.110 (7):

- **Invoices** must provide direct expenses with travel broken out for purposes of the statutory reporting requirement.
- Include the above expense reporting information in the “279C.110 Expense Report” form and attach to invoice. The form is available at:
<http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Forms>

T&M Compensation:

- Contractor shall prepare invoices based on the actual hourly rates, up to the maximums for each respective classification approved in the Contract, of the employees (or subcontractors) that performed the Services.
- Contractor shall provide documentation in each invoice to itemize all reimbursable actual labor costs and direct non-labor costs for which Contractor seeks reimbursement, including a breakdown by task of the number of labor hours for each employee, employee names and classifications. Include copies of all invoices, similarly detailed, from authorized subcontractors.
- County will reimburse Contractor for approved travel expenses incurred in accordance with **Exhibit B**, Section B of the Contract, if County has agreed to reimburse Contractor for travel expenses.

EXHIBIT B - Compensation

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

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

D. PAYMENT TERMS

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

E. CORRECTIVE WORK

Contractor shall complete all Services, including Deliverables, as required in the SOW to County's satisfaction. If County, using reasonable discretion, determines that the Services or associated deliverables, or both, are unacceptable, County shall notify Contractor 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 Contractor shall respond to County outlining how the deficiency shall be corrected. Contractor shall correct any deficiencies in the Services and Deliverables to County's satisfaction without further compensation. If resolution is not achieved, and without limiting County's other remedies, County may withhold any payments until deficiencies have been corrected to the standard of care for such Services or deliverables (see Contract Section 11.a, Professional Standard of Care) in an amount equaling 100% of the County's estimated cost to correct the deficiency. County shall not unreasonably withhold payment.

For disputes related to deficiencies or standard of care and potential Errors and Omissions, see Contract Section 28, Dispute Resolution and Errors & Omissions Claims Process, and **Exhibit I**, Errors & Omissions (E&O) Claims Process.

F. WITHHOLDING/RETAINAGE

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

G. PAYMENT REDUCTION

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

EXHIBIT B - Compensation

withholding the inaccurate or improper amounts from any future payment to Contractor, withhold the inaccurate or improper amounts from final payment to Contractor, 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 Contract shall be subject to review and potential revisions in conformance with the Billing Rate Policy AGR 06-01 (“Billing Rate Policy”) and County’s business practices. The Billing Rate Policy (as may be revised from time to time) is incorporated by this reference with the same force and effect as though fully set forth herein, and is available at: <http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Resources> (under “Related Policies”)

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

I. INDIRECT COSTS

Overhead Schedule - If Contractor or subcontractors calculate overhead as part of their normal business practice, the overhead schedules shall be prepared and submitted in accordance with the Billing Rate Policy (as may be revised from time to time) available at:

<http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Resources> (under “Related Policies”). See **Exhibit B**, Part 2 – Cost Information for additional information regarding overhead calculation.

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

Cost Disclosure Questionnaire (CDQ)- Throughout the duration of the Contract, Contractor shall, and shall cause all of its subcontractors to submit a revised CDQ to County’s Contract Administrator within 30 calendar days of any changes to Contractor or subcontractor accounting practices pertaining to overhead and direct costs. The CDQ (as may be revised from time to time) is available at the following Internet site: <http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Forms> (under “Compensation Related”).

Field Office Overhead Rates – County may request a Field Office Overhead Rate for projects that require a new field office to be established for Contractor (including subcontractors) and to use the Field Office Overhead Rate to replace the overhead established in the Contract if applicable to the payment methodology. “Field Office” is defined as office work space established by County or Contractor for use by a Contractor’s (including subcontractors) employee(s) for a period of time that is agreed upon between County and Contractor (including subcontractors). Contractor (including subcontractors) shall use the provisional Field Office Overhead Rate to calculate direct labor performed by Contractor’s (including subcontractors) employee(s) based in the field office facilities.

EXHIBIT B - Compensation

J. SPECIFIC LIMITATIONS and UNALLOWABLE CHARGES

Specific Limitations

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

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

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

Unallowable Charges

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

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

- All items listed as "Direct Costs Not Allowable" in the Billing Rate Policy (as may be revised from time to time) available at: <http://www.oregon.gov/ODOT/CS/OPO/AE.shtml#Resources>
- Costs for negotiation of the Contract or Contract amendments, including but not limited to proposal preparation, BOC preparation, preparation for negotiations, and negotiation of level of effort/budget.
- Costs related to disputes or E&O Claims, including but not limited to discussions, meetings and preparation of any dispute or claim related documentation, including but not limited to attorneys' fees.
- Mark-up on subcontractors or direct non-labor costs.
- Transfer of knowledge and information related to Key Person replacements.
- Correcting or making adjustments to incorrect or improper invoices.
- Direct compensation for items included in firm's indirect costs (unless properly credited back to indirect cost).
- Premium costs incurred as a result of working overtime or holidays. (Premium time should normally be charged to overhead. Employees shall be paid at not less than time and one-half for all overtime worked in excess of 40 hours in any one week, 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.)

EXHIBIT B, PART 2 – COST INFORMATION

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

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

A. OVERHEAD (INDIRECT COSTS)

Contractor shall, and shall cause all of its subcontractors to, submit to County:

- The firm's most recent cognizant audit (e.g., audit performed by federal County or a state department of transportation) if one has been completed,
- The firm's most recent independent audit if one has been completed,
- Current overhead accounting information (preferably electronically in Excel format) on a form using the standard 3-column format substantially similar to the example “Calculation of Overhead” available at the above referenced Internet address. Firms shall condense or expand categories as applicable to Contractor’s method of accounting. Firms that have not established an overhead rate based upon their particular financial reporting methodology, shall be reviewed by County 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 County and updates must be provided annually. Overhead rates that have been reviewed and accepted by County will generally be valid for one year, unless County specifically agrees in writing to a longer period.

B. SALARY and BILLING RATE SCHEDULES

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

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

The **Negotiated Billing Rate Schedule (NBR)** may be required by County for Contractors or subcontractors that do not have a cognizant or acceptable independent audit for overhead rates (or do not calculate overhead as part of their normal accounting practice) and County determines it is in the best interest of the County 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 the Contract must be within the maximum rates per the classifications listed in the NBR and no greater than the lowest rates charged to other public or private clients.

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

C. COST DATA and SUBCONTRACTORS

Breakdown of Costs (BOC). Prior to execution of the Contract and any amendments that add Services, Contractor shall prepare and submit a BOC based on the average of the actual direct salary rates listed in the ESR schedule(s) for each classification (and approved NBRs as applicable) to be used under the Contract. 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

EXHIBIT B - Compensation

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 County. Contractor shall include names of proposed Key Personnel (as well as other staff assignments if requested by County).

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

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

Notes:

- The BOC must be submitted without profit included (profit will be negotiated following agreement on the SOW, labor costs and expenses).
- Cost estimates must be developed using approved labor rates and allowable expenses as described in this Exhibit B.
- No mark-up is permitted on subcontractors or direct non-labor costs.

Contractor shall use standardized form as described in RFP P11-10272, section 3.1.3

The rate schedules approved for the Contract and the BOC are inserted below. Prior to approval of additional subcontractors, Contractor shall provide to County any requested documentation of qualifications and experience of the prospective subcontractor and its staff.

Insert BOC here and place copy in cost data folder.

Insert rate schedules following BOC and place copy in cost data folder.

[When e-mailing for fax signatures on CPFF or T&M Contracts, the BOC is not required to be pasted into the Contract and may be sent in the e-mail as a separate attachment.]

EXHIBIT C - INSURANCE

MULTNOMAH COUNTY SERVICES CONTRACT

Contract No. [Insert Contract Number]

INSURANCE REQUIREMENTS

Contractor shall at all times maintain in force at Contractor's expense, each insurance noted below: **

Workers Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide workers' compensation coverage in accordance with ORS Chapter 656 for all subject workers. Contractor and all subcontractors of Contractor with one or more employees must have this insurance unless exempt under ORS 656.027 (See Exhibit 4). Employer's Liability Insurance with coverage limits of not less than \$500,000 must be included.

THIS COVERAGE IS REQUIRED. Attach Certificate of Insurance. If Contractor does not have coverage and claims to be exempt, attach Exhibit 4 in lieu of Certificate.

Professional Liability insurance with a combined single limit of not less than \$5,000,000 each claim, incident, or occurrence, with an annual aggregate limit of \$5,000,000. This is to cover damages caused by error, omission, or negligent acts related to professional services provided under this Contract. The policy must provide extended reporting period coverage for claims made within two years after this Contract is completed.

Required by County Not required by County (Needs Risk Manager's Approval)

Commercial General Liability insurance, on an occurrence basis, with a combined single limit of not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, with an annual aggregate limit of \$2,000,000. This insurance must include contractual liability coverage.

Required by County Not required by County (Needs Risk Manager's Approval)

Commercial Automobile Liability insurance with a combined single limit, or the equivalent of not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles.

Required by County Not required by County (Needs Risk Manager's Approval)

Additional Requirements. Coverage must be provided by an insurance company authorized to do business in Oregon or rated A- or better by Best's Insurance Rating. Contractor shall pay all deductibles and retentions. A cross-liability coverage clause or separation of insured's condition must be included in all commercial general liability policies required by this Contract to ensure that coverage applies to claims between any insureds, including additional insureds. Contractor's coverage will be primary in the event of loss. The insurance provided by Contractor shall provide coverage that will respond to claims discovered by the County for up to five years past the end date of this contract.

Certificate of Insurance Required. Contractor shall furnish a current Certificate of Insurance to the County. The Certificate shall provide that there shall be no cancellation, termination, material change, or reduction of limits of the insurance coverage without 30 days written notice from the Contractor's insurer to the County. The Certificate shall also state the deductible or retention level. For commercial general liability the Certificate shall also provide that the County, its agents, officers, directors, officials, and employees are Additional Insureds with respect to Contractor's services to be provided under this Contract. If requested, complete copies of insurance policies shall be provided to the County. All additional insured and cancellation extensions will be physically endorsed to the applicable insurance policies. All additional insured provisions will include coverage that is primary and non-contributory, and such coverage will specifically include products and completed operations coverage. Copies of all such endorsements shall be attached to the certificates of insurance required by this contract.

Completed by: _____
Contract Originator

EXHIBIT D – INFLUENCE AND DEBARMENT PROVISIONS (Sep 2007)

Exhibit D is not physically attached but is incorporated into this Contract with the same force and effect as though fully set forth herein, and is available at the following Web address:

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

EXHIBIT E – RESERVED

EXHIBIT F – SPECIAL TERMS & CONDITIONS

1. Project Cooperation.

Contractor acknowledges that County may have separate contract(s) with other entities (i.e., contractors or governmental agencies) involved with the project. Contractor shall support County'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 County to result in the project being successfully completed on time and within budget.

This SOW describes the responsibilities of all entities involved in this project. In this Contract Contractor shall only be responsible for those responsibilities and deliverables identified as being assigned to Contractor (or its subcontractors) in this Contract and the SOW. All work assigned to other entities, other than subcontractors, is not subject to this Contract, but shall be the subject of separate Intergovernmental Agreements or contracts which will contain the obligations of those entities. Any tasks or deliverables assigned to a subcontractor shall be construed as being the responsibility of Contractor.

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

- a. At the first indication of non-cooperation, late delivery or other defective or inadequate performance that could affect Contractor's performance, Contractor shall provide written notice to County's Contract Administrator of the specific acts or inaction indicating non-cooperation and of any deliverables that may be delayed or otherwise affected due to such lack of cooperation by other entities referenced in the SOW.
- b. County's Contract Administrator shall contact the involved entity/s to discuss the matter and attempt to correct the problem and expedite items determined to be delaying or affecting Contractor/project.

If Contractor has followed the notification process described in section "a", and delinquency, defect 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, Contractor will not be found in breach or default to the extent caused by delinquencies beyond any reasonable control of Contractor; nor shall Contractor be assessed or liable for any damages to the extent caused by such delinquencies. Neither shall County be responsible or liable for any damages to Contractor as the result of such non-cooperation, late delivery or other defective or inadequate performance by other entities. County's Contract Administrator will negotiate with Contractor in the best interest of the County for the limited purpose of revising the delivery schedule to allow for delinquencies beyond any reasonable control of Contractor. Revised delivery dates beyond the expiration date require an amendment to the Contract. A time extension shall be Contractor's sole remedy for items covered in this paragraph.

EXHIBIT G - RESERVED

EXHIBIT H - CONFLICT OF INTEREST DISCLOSURE

Contractor and its Associates shall be in conformance with the ODOT Conflict of Interest Guidelines. The ODOT Conflict of Interest Guidelines (as may be revised from time to time by County) is not physically attached but is incorporated into this Contract with the same force and effect as though fully set forth herein, and is available at the following Internet address:

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

If any disclosures must be made on the part of Contractor or any of its Associates per: (a) the ODOT Conflict of Interest Guidelines, or (b) Section 6.b of the Contract Terms and Conditions, Contractor shall submit a complete, true and accurate Conflict of Interest Disclosure Form using the form available at the above Internet address.

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

Exhibit I is not physically attached but is incorporated into this Contract with the same force and effect as though fully set forth herein. The E&O Claims Process (as may be revised from time to time) is available at the following Web address as Exhibit I:

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

EXHIBIT J – CONTACT INFORMATION and PRIMARY TEAM

1. Party Contact Information.

a. *County Contract Administrator for this Contract is:

Name:

Address:

Ph:

E-mail:

b. **Contractor’s Project Manager for this Contract is:

Name:

Address:

Ph:

E-mail:

* County may change the Contract Administrator or Project Manager designation by promptly sending written notice (e-mail acceptable) to Contractor, with a copy to ODOT Procurement Office.

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

2. Primary Team

Contractor acknowledges and agrees that County selected Contractor because of the special qualifications of Contractor’s Primary Team. County is engaging the expertise, experience, judgment and personal attention of the Primary Team identified in the Contract.

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

The Primary Team members are as follows:

Name	Role
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3. Specified Staff (other than Primary Team)

Contractor and County may agree to specific staff for various task assignments (“Specified Staff”). The names and roles of Contractor and subcontractor Specified Staff (if any) and their roles are as follows:

Name	Role
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4. Reassignment or Transfer of Primary Team members or Specified Staff

In the event Contractor requests that County approve a reassignment or transfer of a Primary Team member or Specified Staff:

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

Contractor agrees that the time/costs associated with the transfer of knowledge and information for a Primary Team member or Specified Staff replacement is not a cost borne by County and shall not be billed to County. Specifically, at least the first 50 hours of a replacement shall not be billed to the County. This includes labor hours spent reviewing project documentation, participation in meetings with personnel associated with the Contract/project, and participating in site visits to become familiar with the project.

5. Staffing Adjustments.

Contractor may make necessary staffing adjustments (other than Primary Team or Specified Staff) to the proposed staff (as shown in Contractor’s Breakdown of Costs for Services) provided:

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

Contractor shall e-mail notice to County Project Manager (CPM) prior to implementing needed changes to staffing assignments.

EXHIBIT K – RESERVED