



Yamhill County

Public Works Department

2060 NE Lafayette Avenue, McMinnville, OR 97128
Ph. 503.434.7515 Fax 503.472.4068 E-mail: pubwork@co.yamhill.or.us

YAMHILL COUNTY BOARD OF COMMISSIONERS COVERSHEET

DATE: December 9, 2021
TO: Board of Commissioners
FROM: Mark Lago, Public Works Director
RE: Intent to Award Professional Services Contract for the engineering design and replacement of Deer Creek Park Road Bridge

BACKGROUND:

On July 22, 2021, The Board of Commissioners approved a grant from State of Oregon – State Funded Local Projects (SFLP) to replace the Deer Creek Park Road Bridge (B.O. 21-305).

The existing Deer Creek Park Road bridge is a decaying timber bridge with reused salvaged steel supports that are damaged and bending. The existing bridge has load restrictions and needs to be replaced with a stronger bridge.

On October 18, 2021, a Request of Proposal (RFP) was advertised in the News Register, Daily Journal of Commerce, and sent to numerous engineering firms and plan centers (see attached plan holder list). Only four proposals were received on or before November 18, 2021, at 4:00 PM. The four proposals were evaluated by Greg Haffner, Engineering Manager; Bill Gille, retired County Engineer; and me (See evaluation results attached). The order of the RFP results was as follows:

1. David Evans and Associates (DEA)
2. DOWL
3. Otak
4. WH Pacific

STAFF RECOMMENDATION:

Authorize the Public Works Director to enter into professional service contract negotiations with David Evans and Associates (DEA).

Accepted by Yamhill County
Board of Commissioners on
12/9/21 by Board Order
21-485

FISCAL IMPACT:

None currently

ATTACHMENTS:

B.O. 21-305
Plan holder list
Evaluation results

B.O. 21-485

Yamhill County - RFP - Deer Creek Park Bridge Engineering Services

Yamhill County Public Works, 2060 NE Lafayette Ave, McMinnville, OR 97128, Phone: 503-472-3600 Fax: 503-472-4088, Site: <http://www.co.yamhill.or.us/public-works>



Company Name	Contact	Address	Email	Phone	Fax	Contact Date/How
AKS Engineering & Forestry	Michael Poissant	4300 Cherry Ave. NE, Keizer, OR 97303	michaelp@aks-eng.com	503-400-6028	503-400-7722	Email - 10/19/21 - JLH
Braun Construction	Jeanie Braun	24805 SW Gage Rd., Wilsonville, OR 97070	jbraun@msn.com	503-638-6406	503-638-3219	Email - 10/19/21 - JLH
Century West	Mat MacRostie	5331 S Macadam Ave., #287, Portland, OR 97239	mmacrostie@centurywest.com	503-419-2130	503-639-2710	Email - 10/19/21 - JLH
CMD Group	Nikki Diez	30 Technology Pkwy So., Ste #100, Norcross, GA 30092	nikki.diez@constructconnect.com	323-602-5079		Email - 10/19/21 - JLH
CMTSNW		3200 SW First Ave., Ste 150, Portland, OR 97239	cmtnw@cmisinc.com	503-242-1388	503-242-0094	Email - 10/19/21 - JLH
Contractor Plan Center	Tana Bishop	5468 SE International Way, Milwaukie, OR 97222	tana@contractorplancenter.com	503-650-0148	503-650-8273	Email - 10/19/21 - JLH
Contractor Plan Center	Brie Kidwell	5468 SE International Way, Milwaukie, OR 97222	brie@contractorplancenter.com	503-650-0148	503-650-8273	Email - 10/19/21 - JLH
Daily Journal of Commerce (DJC)	Plan Room	921 SW Washington St., Ste 210, Portland, OR 97205	plancenter@djcorregon.com	503-274-0624	503-802-7239	Email - 10/19/21 - JLH
Daily Journal of Commerce (DJC)	Sharlene Richardson	921 SW Washington St., Ste 210, Portland, OR 97205	plancenter@djcorregon.com	503-274-0624	503-802-7239	Email - 10/19/21 - JLH
DEA	Amanada Blankenship	530 Center St NE, Ste 605, Salem, OR 97301	Ablankenship@deainc.com	800.721.1916	503-361-8655	Email - 10/19/21 - JLH
Delttek	Jacqueline Sessa	509 Olive Way, Ste 400, Seattle, WA 98101	jacquelinesessa@delttek.com	206-373-9150		Email - 10/19/21 - JLH
ESA	Carissa Kuhnle	819 SE Morrison St., Ste 310, Portland, OR 97124	ckuhnle@esassoc.com	503-274-2010	503-274-2024	Email - 10/19/21 - JLH
GeoDesign, Inc.	Krey Younger	9450 SW Commerce Circle, Ste 300, Wilsonville, OR 97070	kyounger@geodesigninc.com	503-968-8787	458-215-3632	Email - 10/19/21 - JLH
GeoEngineers	Adrienne Lindsey	1200 NW Nato Parkway, Ste 180, Portland, OR 97209	alindsey@geoengineers.com	503-624-9274		Email - 10/19/21 - JLH
Geotechnical Resources, Inc	Michelle Dodgson	9750 SW Nimbus Ave., Beaverton, OR 97008	mdodgson@gri.com	503-641-3478	503-644-8034	Email - 10/19/21 - JLH
HBH Consulting	Mike Henry	501 E 1st St., Newberg, OR 97132	mhenry@hbh-consulting.com	503-554-9553		Email - 10/19/21 - JLH
HDR	Mikal Mitchell	1001 SW 5th Ave., Ste 1800, Portland, OR 97204	mikal.mitchell@hdrinc.com	503-480-1322	503-423-3737	Email - 10/19/21 - JLH
Keller Associates	Serena Larew	245 Commercial St SE, Ste 210, Salem, Oregon 97301	slarew@kellerassociates.com	503-364-2002		Email - 10/19/21 - JLH
Kittleton & Associates	Tony Roos	851 SW 6th Ave., Ste 600, Portland, OR 97204	troos@kittleton.com	503-703-2552		Email - 10/19/21 - JLH
KPFF	Curt Vanderzanden	111 SW Fifth Ave., Ste 2600, Portland, OR 97204	curt.vanderzanden@kpff.com	503-542-3860		Email - 10/19/21 - JLH
Lower Columbia Engineering	Andrew Niemi	58640 McNulty Way, St. Helens, OR 97051	andrew@lowercolumbiaengr.com	503-366-0399	503-366-0449	Email - 10/19/21 - JLH
Northwest Geotech, Inc.	Tom Ginsbach	9120 SW Pioneer Ct., Ste B, Wilsonville, Oregon 97070	tainsbach@nwgeotech.com	503-682-1880	503-682-2753	Email - 10/19/21 - JLH
OBEC Consulting Engineers	Guy Hakanson	920 Country Club Rd., Ste 100B, Eugene, OR 97401	Ghakanson@obec.com	541-762-2097	541-683-6576	Email - 10/19/21 - JLH
OTAK	David Kildal	808 SW 3rd Ave., Ste 300 Portland, OR 97204	david.kidal@otak.com	503-415-2421	503-415-2304	Email - 10/19/21 - JLH
Pace Engineers	Karleen B	5000 Meadows Rd., Ste 345, Lake Oswego, OR 97035	karleenb@paceengrs.com	503-597-3222	503-597-7655	Email - 10/19/21 - JLH
Quincy Engineering	Russ Norton	670 Hawthorne Ave. SE, Ste 110, Salem, OR 97301	russn@quincyeng.com	503-763-9995	503-763-9981	Email - 10/19/21 - JLH
RH2 Engineering		6500 SW Macadam Ave., Ste 125, Portland, OR 97239	mailbox@RH2.com	503-246-0881		Email - 10/19/21 - JLH
Salem Contactors	Lori Klopfenstein	2256 Judson St SE, Salem, OR 97302	lori@sceonline.org	503-362-7957	503-362-1651	Email - 10/19/21 - JLH

B.O. 21-485
Exhibit "A"

Company Name	Contact	Address	Email	Phone	Fax	Contact Date/How
SW Washington Contractors Assoc.	Plan/Bid Center	7017 NE Hwy 99, Ste 214, Vancouver, WA 98665	info@swca.org	360-694-7922		Email - 10/19/21 - JLH
TY LIN	Catherine Hovell	528 Cottage Street NE, Ste 205, Salem, OR 97301	catherine.hovell@tylin.com	360-754-0544	360-754-1714	Email - 10/19/21 - JLH
WEST Consultants	Thomas Grindeland	2601 25th St SE, Ste 450, Salem, OR 97302	tomg@westconsultants.com	503-485-5490	503-485-5491	Email - 10/19/21 - JLH
Westlake Consultants	Bernard Smith	1511 SW Sequoia Parkway, Ste 150, Tigard, OR 97224	bsmith@westlakeconsultants.com	503-684-0652	503-624-0157	Email - 10/19/21 - JLH
WHPacific	Andy Bowen	9755 SW Barnes Rd., Ste 300, Portland, OR 97225	ABowen@whpacific.com	503-372-3560	503-526-0775	Email - 10/19/21 - JLH
ZCS Engineering	Sy Allen	524 Main Street, Ste 2, Oregon City, OR 97045	sya@zcsengineering.com	503-659-2205		Email - 10/19/21 - JLH

**Deer Creek Park Bridge
Consultant Scoring of RFP**

Quality of Proposal (responsiveness)
Organization Profile and Qualifications: Previous Client References
Project Understanding and Approach
Extent of Previous Experience with Similar Projects

Maximum Points	DEA	DOWL	OTAK	NV5
15	14	13	13	12
15	14	13	13	13
30	26	26	25	20
40	35	33	32	33
100	89	85	83	78

Quality of Proposal (responsiveness)
Organization Profile and Qualifications: Previous Client References
Project Understanding and Approach
Extent of Previous Experience with Similar Projects

Maximum Points	DEA	DOWL	OTAK	NV5
15	15	15	13	13
15	15	15	15	14
30	29	30	28	28
40	35	35	33	33
100	94	95	89	88

Quality of Proposal (responsiveness)
Organization Profile and Qualifications: Previous Client References
Project Understanding and Approach
Extent of Previous Experience with Similar Projects

Maximum Points	DEA	DOWL	OTAK	NV5
15	15	15	10	12
15	15	15	15	12
30	28	28	28	25
40	40	40	40	35
100	98	98	93	84

TOTAL

100	281	278	265	250
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LOCAL AGENCY AGREEMENT
State Funded Local Project Program
Deer Creek Park Road Bridge (Number 11501)
Yamhill County

THIS AGREEMENT is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State" or "ODOT;" and YAMHILL COUNTY, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. Agency wishes to exchange federal funds for state funds, in order to fund the Project using state funding. State has determined that Agency is eligible for state funds for the work to be performed under this Agreement through the State Funded Local Project Program. The Parties enter into this Agreement to exchange these funds, identify the Project that will be funded with the state funds, and describe the method State will use to reimburse Agency for work performed on the Project using the state funds, including establishing invoicing requirements and the proportional reimbursement rate.
2. By the authority granted in Oregon Revised Statute (ORS) 190.110, 366.572 and 366.576, state agencies may enter into cooperative agreements with counties, cities, and units of local government for the performance of any or all functions and activities that a party to the Agreement, its officers, or agents have the authority to perform.
3. Deer Creek Park Road and Deer Creek Park Road Bridge Number 11501 are part of the county road system under the jurisdiction and control of Agency.
4. The existing Deer Creek Park Road Bridge is a decaying timber bridge with reused salvaged steel supports that are damaged and bending. The existing bridge has load restrictions and needs to be replaced with a stronger bridge.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. State and Agency agree to Agency replacing Deer Creek Park Road Bridge Number 11501 with a new bridge, hereinafter referred to as "Project." The Project location and approximate limits are shown on the map marked "Exhibit A," attached hereto and by this reference made a part hereof.
2. The total Project cost for the work to be performed under this Agreement is estimated at \$1,247,600.00, which is subject to change. Prior to exchanging funds, the federal share of the total Project cost is \$1,119,471.48.

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- a. Per the 1:1 fund exchange ratio of state dollars to federal dollars, Agency will exchange \$1,119,471.48 of federal dollars allocated for this Project for \$1,119,471.48 of state dollars.
- b. State funds under this Agreement are limited to \$1,119,471.48.
3. Upon receipt and approval of Agency's invoice(s), State shall proportionately reimburse Agency 89.73 percent of eligible, actual costs incurred in carrying out the Project, up to the maximum amount of state funds committed for the Project.
4. Agency is solely responsible for any and all costs incurred in excess of the state funds identified in this Agreement. Any unspent state funds will be retained by State and will not be available for Agency use. State funds transferred to Agency must be used for the Project.
5. To be eligible for reimbursement, expenditures must comply with the requirements of Article IX, Section 3a of the Oregon Constitution. Eligible costs are defined as reasonable and necessary costs incurred by the Agency in performance of the Project.
6. The term of this Agreement will begin upon the date all required signatures are obtained and will terminate upon completion of the Project and final payment or ten (10) calendar years following the date of final execution, whichever is sooner.

AGENCY OBLIGATIONS

1. Agency shall perform the work described in Terms of Agreement, Paragraph 1 of this Agreement.
2. **Americans with Disabilities Act Compliance:**
 - a. Agency shall ensure that the Project, including all sidewalks, curb ramps, and pedestrian-activated signals, is designed, constructed and maintained to comply with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA").

Agency may follow its own processes or may use ODOT's processes for design, construction, or alteration of Project sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current Curb Ramp Inspection form, available at:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>;

Additional ODOT resources are available at the above-identified link. ODOT has made its forms, processes, and resources available for Agency's use and convenience.

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- b. Agency assumes sole responsibility for ensuring that the Project complies with the ADA, including when Agency uses ODOT forms and processes. Agency acknowledges and agrees that ODOT is under no obligation to review or approve Project plans or inspect the completed Project to confirm ADA compliance.
 - c. Agency shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs and include accessibility features equal to or better than the features present in the existing pedestrian route. Agency shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations prior to the start of construction.
 - d. Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:
 - i. Pedestrian access is maintained as required by the ADA,
 - ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Agency, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,
 - iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
 - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
 - e. Maintenance obligations in this section shall survive termination of this Agreement.
3. Except as otherwise provided in Agency Obligations Paragraph 2 above, Agency agrees that the Project shall be developed in conformance with the applicable American Association of State Highway and Transportation Officials (AASHTO) standards, including the current edition of A Policy on Geometric Design of Highways and Streets.
4. Except as otherwise provided in this Agreement, State and Agency agree that the bridge design shall meet the AASHTO Load Resistance Factor Design (LRFD) Bridge Design Specification (current version), AASHTO Guide Specifications for

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LRFD Seismic Bridge Design, and ODOT Load and Resistance Factor Rating (LRFR), Tier 2 Load rating.

5. Agency shall comply with all federal permit provisions required for this Project.
6. Agency shall submit all of the following items to State's Project Manager, at Project completion and prior to final payment:
 - a. Final Project completion Inspection form No. 734-5063 (completed with State's Project Manager);
 - b. Final Cost; and
 - c. As-Constructed Drawings.
7. Agency, or its consultant, must email the following for any bridge project to: bridge@odot.state.or.us, and to the State's Senior Local Bridge Standards Engineer at: Holly.M.Winston@odot.state.or.us. This information must be received within ninety (90) days of the issuance of Second Notification pursuant to Oregon Standard Specification 00180.50(g), or Agency's approved equivalent:
 - a. Bridge As-Constructed Drawings;
 - b. Foundation Report;
 - c. Hydraulic Report including Scour Analysis;
 - d. Pile Records and drill logs (if applicable);
 - e. Final Load Rating calculation with a stamped report containing all files electronically to the State's Senior Local Bridge Standards Engineer;
 - f. Notify State's Local Agency Bridge Inspection Coordinator at Richard.J.King@odot.state.or.us, and bridge@odot.state.or.us to ensure the initial inspection will be scheduled; and
 - g. Inspection with State's Project Manager under this Agreement, State's Region Senior Structural Designer, or State's Senior Local Bridge Standards Engineer.
8. Agency shall submit, prior to final payment, required bridge plans, reports, and documentation to State's Project Manager and Senior Local Bridge Standards Engineer, using an electronic files package: MicroStation file and PDF file output that shows all red-line as-constructed markups of plan sheets (and additional files listed below, if applicable to the Project). Agency shall follow the file naming

convention required in the Bridge Design and Drafting Manual located at: [http://www.oregon.gov/ODOT/HWY/BRIDGE/Pages/standards_manuals.aspx#Bridge Design & Drafting Manual](http://www.oregon.gov/ODOT/HWY/BRIDGE/Pages/standards_manuals.aspx#Bridge%20Design%20&%20Drafting%20Manual).

- a. In the "AsConstructedPlans" folder on State's FTP directory (available at the following link): <ftp://ftp.odot.state.or.us/AsConstructedPlans/>, Agency shall create a subfolder under the "Bridge" folder using the bridge numbers shown in this Agreement for each bridge for the subfolder name. Agency shall place the PDF files in these folders, including:
 - i. **11 inch x 17 inch PDF plan sheets** stamped and signed - as-constructed markups, containing final construction notes.
 - ii. Agency shall also place copies in same FTP folder of the reports/records identified in Agency Obligations, paragraph 7 of this Agreement.
 - b. Agency shall send email notification to State's Project Manager and Senior Local Bridge Standards Engineer Holly.M.WINSTON@odot.state.or.us and to the bridge@odot.state.or.us mailbox after placing files on FTP site (include link to applicable FTP subfolder in email).
9. **Project Change Request (PCR) Process** - Agency must obtain approval from State's Bridge Engineer for changes to the Project's scope, schedule, or budget by submitting a PCR, as specified in Paragraphs 10 a-f, below. Agency shall be fully responsible for all costs attributable to changes to the established Project scope, schedule or budget made prior to an approved PCR. Amendments to this Agreement are required for all approved PCRs.
- a. **Scope** - A PCR is required for any significant change or reduction in the scope of work described in the Project description in Terms of Agreement, paragraph 1.
 - b. **Schedule**- A PCR is required if Agency or State's Contact anticipates that any Project Milestone will be delayed by more than ninety (90) days, and also for any change in schedule that will require amendment of the Statewide Transportation Improvement Program (STIP).
 - c. **Budget** - The Project's estimated budget is used for determining the level of compensation for completed work. Increases or decreases in the budget which require a STIP amendment also require the submission of a PCR to the State's Regional Local Agency Liaison.
 - d. PCR requests that result in Project cost increases that are equal to or less than twenty (20) percent of the total estimated Project cost or \$200,000, whichever amount is less, can be approved by the State Bridge Engineer. Such amendments can be approved and entered into by the State Bridge Engineer, subject to any applicable State approvals.

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- e. PCR requests that result in a Project cost increase in excess of twenty (20) percent of the total estimated Project cost or \$200,000, whichever amount is greater, must be approved by the State Bridge Engineer and the Local Agency Bridge Selection Committee with a majority vote. Such amendments must be executed by the same officials who executed the original Agreement, and are subject to any applicable State approvals.
- f. **PCR Form** - Agency must submit all change requests using PCR Form 734-2851 attached by reference and made a part of this Agreement. The PCR Form is due no later than thirty (30) days after the need for change becomes known to Agency. The PCR shall explain what change is being requested, the reasons for the change, and any efforts to mitigate the change. A PCR may be rejected at the discretion of State's Bridge Engineer.

The fillable PCR form and its instructions are available at the following web site:
<http://www.oregon.gov/ODOT/Forms/2ODOT/7342851.doc>

- 10. Agency shall present invoices for the eligible, actual costs incurred by Agency on behalf of the Project directly to State's Project Manager listed in this Agreement for review and approval. Such invoices shall be in a form identifying the Project, Key number, the Agreement number, the Project phase and amount charged to each (such as preliminary engineering, right of way, and construction), the invoice number, and will itemize all expenses for which reimbursement is claimed. Invoices shall be presented for periods greater than one month, based on actual expenses incurred, and must clearly specify the percentage of completion of the Project. Agency shall also include with the invoice a Project progress report or summary that describes work accomplished for the period being invoiced and work expected for the next invoicing period. Travel expenses will not be reimbursed.
- 11. Agency, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates in accordance with current state and federal laws and regulations; obtain all required permits; be responsible for all utility relocations; advertise for bid proposals; award all contracts; perform all construction engineering; and make all contractor payments required to complete the Project.
- 12. Agency or its consultant shall acquire all necessary right of way in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the State Right of Way Manual.
- 13. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation

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Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (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.

14. Agency shall perform the services under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
15. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its subcontractors complies with these requirements.
16. Agency shall, at its own expense, maintain, operate, and provide power as needed upon Project completion at a minimum level that is consistent with normal depreciation and/or service demand and throughout the useful life of the Project. State and Agency agree that the useful life of this Project is defined as seventy-five (75) years. Maintenance and power responsibilities shall survive any termination of the Project Agreement.
17. Utility relocation or reconstruction may or may not be an eligible Project expense according to the following standard:
 - a. The expense is an eligible expense if the owner of the utility facility possesses a property right for its location on the public right of way.
 - b. The expense is not an eligible expense if the owner of the utility facility does not possess a property right for its location, but the facility exists on the public right of way solely under the permission of the Agency or other road authority, whether that permission is expressed or implied, and whether written or oral.
18. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of the current budget. Agency further agrees that they will only submit invoices to State for reimbursement on work that has been performed and paid for by Agency as described in this Agreement.
19. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Oregon Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or

expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260 (Claims), to the extent such Claims are caused, or alleged to be caused by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor. It is the specific intention of the Parties that State shall, in all instances, except to the extent Claims arise from the negligent or willful acts or omissions of the State, be indemnified from and against all Claims caused or alleged to be caused by the contractor or subcontractor.

20. Any such indemnification shall also provide that neither Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's 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 claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.
21. If Agency enters into a construction contract for performance of work for the Project, then Agency will include provisions in that contract requiring its contractor to comply with the following:
- a. Contractor and Agency shall name State as a third party beneficiary of the resulting contract.
 - b. Contractor shall indemnify, defend and hold harmless State from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, sub-contractors, or agents under the resulting contract.
 - c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to State. This insurance shall include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage shall be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence shall not be less than \$1,000,000 \$2,000,000 \$5,000,000 for each job site or location. Each annual aggregate limit shall not be less than \$1,000,000 \$2,000,000 \$4,000,000 10,000,000.

- d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence shall not be less than \$1,000,000.
 - e. Additional Insured Endorsement. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the resulting contract will include State and its divisions, officers and employees as Additional Insured but only with respect to the Contractor's activities to be performed under the resulting contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.
 - f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to State. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of the resulting contract and shall be grounds for immediate termination of the resulting contract and this Agreement.
22. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts during the course of the Project and for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
23. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
24. Agency's Project Manager for this Agreement is Greg Haffner, Engineering Manager, 2060 NE Lafayette Avenue, McMinnville, OR 97128; phone: 503-434-7365; email: Haffnerg@co.yamhill.or.us, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. In consideration for the services performed under this Agreement, State shall reimburse Agency 89.73 percent of eligible costs incurred in carrying out the Project up to the maximum amount of state funds committed for the Project in Terms of Agreement, Paragraph 2 of this Agreement. Reimbursements shall be made by State within forty-five (45) days of State's approval of a request for reimbursement from Agency, except that final payment will be withheld until the State's Project Manager has completed final project inspection and project acceptance.
2. State shall provide the following items to Agency's Project Manager no later than 30 days after execution of this Agreement:
 - a. Scoping Notes; and
 - b. Any other project specific information gathered during the scoping and selection process.
3. State's Project Manager will arrange for a final project inspection upon notification from Agency of Project completion, to confirm project completeness and fulfillment of Agreement obligations, prior to final payment.
4. State's Project Manager for this Agreement is Valerie Greenway, Transportation Project Manager, ODOT Region 2, Area 3, 455 Airport Road SE, Salem, OR, 97301; phone: (503) 986-2865; email: Valerie.Greenway@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual consent of both Parties.
2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If Agency fails to provide payment of its share of the cost of the Project.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.

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- e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such work from the planned funding source.
3. If State terminates this Agreement for the reasons described in General Provisions 2(a) or (b) above, Agency must reimburse State for all state funds expended. If Agency fails to reimburse State, State may withhold Agency's proportional share of State Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach.
4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
5. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
6. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
7. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant

equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

8. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
9. State and Agency are the only Parties to this Agreement and, as such, are the only Parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third persons unless such third persons are expressly identified by name and specifically described as intended to be beneficiaries of its terms.
10. This Agreement may be executed in several counterparts (facsimile or otherwise) 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 this Agreement so executed shall constitute an original.
11. This Agreement and attached exhibits constitute 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 this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2021-2024 Statewide Transportation Improvement Program (STIP), (Key Number 21988) that was adopted by the Oregon Transportation Commission on July 15, 2020 (or subsequently by amendment to the STIP).

Signature Page to Follow

Yamhill County/ODOT
Agreement No. 34452

YAMHILL COUNTY, by and through its
elected officials

By [Signature]
Chair

By [Signature]
Vice Chair

By [Signature]
Commissioner

Date 7/22/21

LEGAL REVIEW APPROVAL
(If required in Agency's process)

By [Signature]
Agency Legal Counsel

Date 7/22/21

Agency Contact:
Greg Haffner
Engineering Manager
2060 NE Lafayette Ave.
McMinnville, OR 97128
503-434-7365
Haffnerg@co.yamhill.or.us

State Contact:
Valerie Greenway
Transportation Project Manager
ODOT Region 2
455 Airport Road SE
Salem, OR 97301
503-986-2865
Valerie.Greenway@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By [Signature]
Delivery & Operations Division
Administrator

Date 07/29/2021

APPROVAL RECOMMENDED

By [Signature] Digitally signed by Sonny P.A. Chickering
Date: 2021.07.28 11:10:03 -07'00'
Region 2 Manager

Date _____

By [Signature]
Region 2 Project Delivery Manager

Date 7-28-2021

By [Signature]
Region 2, Area 3 Manager

Date 7-27-2021

APPROVED AS TO LEGAL SUFFICIENCY
(If over \$150,000)

By Matthew Shoop (via email)
Assistant Attorney General

Date March 10, 2021 (in file record)

Accepted by Yamhill County
Board of Commissioners on
7/22/21 by Board Order
21-305

EXHIBIT A – Location Map
Deer Creek Park Road Bridge (Number 11501) Project

